



Tribunal de Justiça do Estado do Ceará - 2º Grau
Processo Judicial Eletrônico
Processos em pauta de julgamento
Sessão de 10/09/2025 às 14:00:00

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Processo	0200506-63.2023.8.06.0124
Número de ordem	1
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Rescisão do contrato e devolução do dinheiro
Polo ativo	MARIA HOLINDINA DOS SANTOS PEREIRA
Advogado(s) - Polo ativo	DEBORA BELEM DE MENDONCA - (CE34734-A)
Polo passivo	ASPECIR PREVIDENCIA
Advogado(s) - Polo passivo	MARCELO NORONHA PEIXOTO - (RS95975-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	3011480-08.2025.8.06.0000
Número de ordem	2
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Alienação Fiduciária
Polo ativo	NARGUILENE DA SILVA FREITAS ALVES
Advogado(s) - Polo ativo	ANTONIO HAROLDO GUERRA LOBO - (CE15166-A)
Polo passivo	BANCO GM S.A.
Advogado(s) - Polo passivo	CARLOS EDUARDO MENDES ALBUQUERQUE - (PE18857-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0273391-22.2024.8.06.0001
Número de ordem	3
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	LUIZ AUGUSTO DE OLIVEIRA RABELO
Advogado(s) - Polo ativo	RUBENS PEREIRA LOPES - (CE10243-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	0200789-85.2023.8.06.0092
Número de ordem	4
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado

Processo	0200789-85.2023.8.06.0092
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	MARILENE FERREIRA DE OLIVEIRA
Advogado(s) - Polo ativo	ANNA RONNERIA LACERDA SOUZA - (DF62386-B)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	FRANCISCO SAMPAIO DE MENEZES JUNIOR - (CE9075-A)
Terceiros	BANCO BRADESCO S/A
Voto proferido pelo relator	Não informado

Processo	0621363-78.2025.8.06.0000
Número de ordem	5
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Inventário e Partilha
Polo ativo	RITA DE CASSIA GOMES DE MORAES FABRICIO GOMES DIAS DE MORAES
Advogado(s) - Polo ativo	IGOR GUILHEN CARDOSO - (SP306033-A)
Polo passivo	THATIANNY GOMES CHAGAS ESAU FERREIRA GOMES Espolio de Luiz Gomes da Rocha MATEUS FERREIRA GOMES Espolio de Maria Gonçalves da Rocha MARIA JULIA ROCHA MESQUITA ARMENIA GONCALVES DA ROCHA AGEU GONCALVES DA ROCHA
Advogado(s) - Polo passivo	SAVIO CAVALCANTE DA PONTE - (CE6922-A)
Terceiros	AGESINEU GONCALVES DA ROCHA
Voto proferido pelo relator	Não informado

Processo	3000449-71.2024.8.06.0114
Número de ordem	6
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	JOSE SOARES DE SOUZA
Advogado(s) - Polo ativo	JHYULLY CAVALCANTE BESERRA LEITE - (CE42362-A) RENATO ALVES DE MELO - (CE29801-A) MARIA EUGENIA FILGUEIRAS MILFONT DE ALMEIDA - (CE52483-A) JULIANA RIBEIRO PROCOPIO - (CE52620-A)
Polo passivo	ASPECIR PREVIDENCIA
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	0200261-12.2024.8.06.0029
Número de ordem	7
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES

Processo	0200261-12.2024.8.06.0029
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	MARIA DO SOCORRO SILVA COSTA
Advogado(s) - Polo ativo	ANTONIA BIANCA MORAIS TORRES - (CE42286-A)
Polo passivo	APDAP PREV-ASSOCIACAO DE PROTECAO E DEFESA DOS DIREITOS DOS APOSENTADOS E PENSIONISTAS
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	0243157-96.2020.8.06.0001
Número de ordem	8
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Transação
Polo ativo	LEONARDO DUARTE GIRAO
Advogado(s) - Polo ativo	ELAINE CRISTINA CESAR SARAIVA - (CE25754-A) JOAO PAULO CESAR SARAIVA - (CE34045-A) ITALO FARIAS BRAGA - (CE35020-A)
Polo passivo	ANTONIO BENEVIDES TERCEIRO
Advogado(s) - Polo passivo	AMANDA JESSICA MENEZES DE ARAUJO PESSOA - (CE34536-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0265810-53.2024.8.06.0001
Número de ordem	9
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	JOSEFA SOUSA BRAGA
Advogado(s) - Polo ativo	JORGE MARTINS DE LIMA - (CE15407-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0257107-36.2024.8.06.0001
Número de ordem	10
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Seguro
Polo ativo	EDIMILSON ARAUJO DA ROCHA
Advogado(s) - Polo ativo	BRUNO BOYADJIAN SOBREIRA - (CE38828-A)
Polo passivo	BANCO SANTANDER (BRASIL) S.A. AYMORE CREDITO, FINANCIAMENTO E INVESTIMENTO S.A. ZURICH SANTANDER BRASIL SEGUROS E PREVIDENCIA S.A. SANTANDER AUTO S.A.
Advogado(s) - Polo passivo	Não informado

Processo	0257107-36.2024.8.06.0001
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0630786-96.2024.8.06.0000
Número de ordem	11
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Erro de Procedimento
Polo ativo	JOANA SARAIVA TAVARES FEITOSA PAULO DAVID FEITOSA SARAIVA
Advogado(s) - Polo ativo	EDSON SARAIVA TAVARES - (CE13998-A)
Polo passivo	Francisco Barreto Silva Maria Jose Cabral
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0246513-31.2022.8.06.0001
Número de ordem	12
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	CAROLINE LIMA BEZERRA
Advogado(s) - Polo ativo	JADER DE CARVALHO NOGUEIRA NETO - (CE34274-A) ANACLETO FIGUEIREDO DE PAULA PESSOA NETO - (CE29245-A)
Polo passivo	PRATA DA TERRA COMERCIO DE VEICULOS E REPRESENTACOES LTDA
Advogado(s) - Polo passivo	BIANCA TEIXEIRA BOTAO - (PB27482-A) MARINA JUCA OLIVEIRA - (CE42262-A)
Terceiros	JASSIL HOLANDA SALES FILHO
Voto proferido pelo relator	Não informado

Processo	3008211-92.2024.8.06.0000
Número de ordem	13
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Expurgos Inflacionários / Planos Econômicos
Polo ativo	BANCO DO BRASIL SA
Advogado(s) - Polo ativo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Polo passivo	ANTONIO FEITOSA NETO
Advogado(s) - Polo passivo	LUIZ VALDEMIRO SOARES COSTA - (CE14458-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0247780-67.2024.8.06.0001
Número de ordem	14
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES

Processo	0247780-67.2024.8.06.0001
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	PASEP
Polo ativo	PAULO SILVA DE ARAUJO
Advogado(s) - Polo ativo	ERICK SAMPAIO LEITE BRANDAO OLIVEIRA - (CE34345-A)
Polo passivo	BANCO DO BRASIL SA BANCO DO BRASIL SA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0241703-42.2024.8.06.0001
Número de ordem	15
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	PASEP
Polo ativo	JOSIEL PEREIRA DA COSTA
Advogado(s) - Polo ativo	GILBERTO SIEBRA MONTEIRO - (CE6004-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0625802-11.2020.8.06.0000
Número de ordem	16
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Obrigações de Fazer / Não Fazer
Polo ativo	GLORIA MARIA CARVALHO CAVALCANTE
Advogado(s) - Polo ativo	JOSE ALEXANDRE GOIANA DE ANDRADE - (CE11160-A)
Polo passivo	EDINARDO UCHOA COSTA JAMILE MARIA VASCONCELOS UCHOA COSTA
Advogado(s) - Polo passivo	DAVID LOPES BEZERRA MOURAO - (CE25970-A) ELCIAS DUARTE DE SOUZA FILHO - (CE31595-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0106318-35.2018.8.06.0001
Número de ordem	17
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Partilha
Polo ativo	RODOLFO ENRIQUE GOMES GONZALEZ
Advogado(s) - Polo ativo	JOAO BATISTA BANDEIRA GARCIA - (CE36618-A)
Polo passivo	ELAYNE ROCHA ADEODATO ANDRADE
Advogado(s) - Polo passivo	JOSE OLAVO CERQUEIRA ROCHA FILHO - (CE22322-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	3005102-36.2025.8.06.0000
Número de ordem	18
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Efeito Suspensivo / Impugnação / Embargos à Execução
Polo ativo	PAULO ROBERTO SALES MENDONCA GONDIM
Advogado(s) - Polo ativo	RODRIGO GONDIM DE OLIVEIRA - (CE13859-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	3000698-39.2025.8.06.0000
Número de ordem	19
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Fraude à Execução
Polo ativo	SCA-INDUSTRIA DE MOVEIS LTDA
Advogado(s) - Polo ativo	ITAMAR DE SOUSA SILVA - (SP242796)
Polo passivo	RIOS MOVEIS LTDA
Advogado(s) - Polo passivo	NARCILIO NASARENO CARNEIRO SARAIVA - (CE11888-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	3004342-87.2025.8.06.0000
Número de ordem	20
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Tratamento médico-hospitalar
Polo ativo	ALINE MARIANO FERREIRA
Advogado(s) - Polo ativo	PAOLO GIORGIO QUEZADO GURGEL E SILVA - (CE16629-A)
Polo passivo	UNIMED DO CARIRI - COOPERATIVA DE TRABALHO MEDICO LTDA
Advogado(s) - Polo passivo	SHALON MICHAELLI ANGELO TAVARES - (CE24016-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	0238395-95.2024.8.06.0001
Número de ordem	21
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	MARIA VILANI PINHO
Advogado(s) - Polo ativo	RAFAEL DA SILVA MARQUES - (CE43887-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	NEI CALDERON - (CE33485-A)

Processo	0238395-95.2024.8.06.0001
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0150354-02.2017.8.06.0001
Número de ordem	22
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	LUIZA EMANUELE MONTEIRO DE CARVALHO
Advogado(s) - Polo ativo	DANIEL MONTEIRO MENDES - (CE17642-A)
Polo passivo	JOSE SIDNEY CAMILO JUNIOR
Advogado(s) - Polo passivo	Não informado
Terceiros	GLAIRTON FERREIRA DE PAULA Francisco Eder de Souza Lilian Moreira Jpara Francisco Eder de Sousa
Voto proferido pelo relator	Não informado

Processo	0275929-44.2022.8.06.0001
Número de ordem	23
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Acidente de Trânsito
Polo ativo	FRANCISCO EDILSON DO NASCIMENTO
Advogado(s) - Polo ativo	MOYSES BARJUD MARQUES - (CE13496-A)
Polo passivo	EZEQUIEL DA SILVA PINTO
Advogado(s) - Polo passivo	ATILA MENESES COSTA - (CE47669-A) MARIA LAURA MIRANDA ARAUJO - (CE41431-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0629958-37.2023.8.06.0000
Número de ordem	24
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Confissão/Composição de Dívida
Polo ativo	LEDA MARIA CARDOSO DE MENESES
Advogado(s) - Polo ativo	RAFAEL CARDOSO DE MENESES - (CE31093)
Polo passivo	PAULO ROMERO DA CRUZ
Advogado(s) - Polo passivo	JOSE DJALRO DUTRA CORDEIRO - (CE5152-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0247061-85.2024.8.06.0001
Número de ordem	25
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES

Processo	0247061-85.2024.8.06.0001
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Tutela de Urgência
Polo ativo	CAIXA DE ASSISTENCIA DOS FUNCIONARIOS DO BANCO DO NORDESTE DO BRASIL
Advogado(s) - Polo ativo	SAULO GONCALVES SANTOS - (CE22281-A) MIKAEL PINHEIRO DE OLIVEIRA - (CE24800-A) GABRIELLE SILVA MATOS - (CE49898-A) DANIEL LOPES REGO - (PI3450-A) YANNI DA SILVA GOMES - (CE53357-A)
Polo passivo	MARIA BERNADETTE DE SOUSA OLIVEIRA
Advogado(s) - Polo passivo	JOSE LUCIANO DA SILVA - (CE26285-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0154648-63.2018.8.06.0001
Número de ordem	26
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	WILLIAMS ROGERS CARDOSO SILMARA BAZARIM
Advogado(s) - Polo ativo	Não informado
Polo passivo	ECC RENT A CAR LTDA
Advogado(s) - Polo passivo	IGOR DE ALENCAR SALGADO - (CE30354-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0201486-54.2024.8.06.0001
Número de ordem	27
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	ANTONIO CARLOS DA SILVA
Advogado(s) - Polo ativo	GILBERTO SIEBRA MONTEIRO - (CE6004-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	3001219-91.2025.8.06.0029
Número de ordem	28
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	FRANCISCO CARLOS DIMAS
Advogado(s) - Polo ativo	VICENTE PEREIRA DE ARAUJO JUNIOR - (CE32897-A)
Polo passivo	BANCO AGIPLAN S.A.
Advogado(s) - Polo passivo	EUGENIO COSTA FERREIRA DE MELO - (MG103082-A)

Processo	3001219-91.2025.8.06.0029
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0206767-88.2024.8.06.0001
Número de ordem	29
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Tratamento médico-hospitalar
Polo ativo	BRADERCO SAUDE S/A
Advogado(s) - Polo ativo	WILSON SALES BELCHIOR - (CE17314-A)
Polo passivo	MARINA FERREIRA DA SILVA
Advogado(s) - Polo passivo	CAICO GONDIM BORELLI - (CE24895-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0050060-91.2021.8.06.0100
Número de ordem	30
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	COMPANHIA ENERGETICA DO CEARA
Advogado(s) - Polo ativo	ANTONIO CLETO GOMES - (CE5864-A)
Polo passivo	JOSE ALUISIO MOTA MENDES
Advogado(s) - Polo passivo	SARAH CAMELO MORAIS - (CE37288-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	3034536-04.2024.8.06.0001
Número de ordem	31
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Interpretação / Revisão de Contrato
Polo ativo	FRANCISCO JUNIOR MENDES GONCALVES
Advogado(s) - Polo ativo	ALAN PEREIRA MOURAO - (CE21899-A) EDUARDO HENRIQUES FREIRE - (CE21901-A)
Polo passivo	BANCO SANTANDER (BRASIL) S.A.
Advogado(s) - Polo passivo	REGINA MARIA FACCA - (SC3246-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	3000468-91.2025.8.06.0001
Número de ordem	32
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Pagamento Indevido

Processo	3000468-91.2025.8.06.0001
Polo ativo	JAEDERSON SOUSA MELO
Advogado(s) - Polo ativo	MARCIO DA SILVA RODRIGUES - (AM15427-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	FRANCISCO SAMPAIO DE MENEZES JUNIOR - (CE9075-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0234087-16.2024.8.06.0001
Número de ordem	33
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alienação Fiduciária
Polo ativo	ERICA HELENA MARQUES DA SILVA
Advogado(s) - Polo ativo	ANTONIO HAROLDO GUERRA LOBO - (CE15166-A)
Polo passivo	AYMORE CREDITO, FINANCIAMENTO E INVESTIMENTO S.A.
Advogado(s) - Polo passivo	MARCO ANTONIO CRESPO BARBOSA - (SP115665-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	3000435-50.2025.8.06.0115
Número de ordem	34
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	EDSON TARGINO DA SILVA
Advogado(s) - Polo ativo	TAMARA KOSICKI VICENTE CORREA - (SP354703-A)
Polo passivo	BANCO BMG SA
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0227300-73.2021.8.06.0001
Número de ordem	35
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Interpretação / Revisão de Contrato
Polo ativo	CREFISA SA CREDITO FINANCIAMENTO E INVESTIMENTOS
Advogado(s) - Polo ativo	LAZARO JOSE GOMES JUNIOR - (MS8125-A)
Polo passivo	ANTONIO ALMEIDA DA SILVA
Advogado(s) - Polo passivo	ALEANDRO LIMA DE QUEIROZ - (CE33211-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0637354-31.2024.8.06.0000
Número de ordem	36
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado

Processo	0637354-31.2024.8.06.0000
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Contratos de Consumo
Polo ativo	RENATHA BRUNA COSTA FONTENELE DE PAULA PESSOA
Advogado(s) - Polo ativo	LUIZ GONZAGA ALVES MARTINS - (CE21395-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	FRANCISCO SAMPAIO DE MENEZES JUNIOR - (CE9075-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0636591-30.2024.8.06.0000
Número de ordem	37
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Rescisão do contrato e devolução do dinheiro
Polo ativo	MARCOS ANDRE DA SILVA LIRA GILMARA PEREIRA DE FARIAS
Advogado(s) - Polo ativo	HELEN LUIZA KOROBIANSKI MENDES - (CE24227-A)
Polo passivo	BRIC DEVELOPMENT BRASIL LTDA. ASSOCIACAO THE CORAL FRACTIONAL
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0636062-11.2024.8.06.0000
Número de ordem	38
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Empréstimo consignado
Polo ativo	JOSE PAES DE ARAUJO IRMAO
Advogado(s) - Polo ativo	THAIS DE MENDONCA ANGELONI - (CE25695-A)
Polo passivo	BANCO PAN S.A.
Advogado(s) - Polo passivo	FELICIANO LYRA MOURA - (CE29481-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0156360-88.2018.8.06.0001
Número de ordem	39
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Despejo para Uso Próprio
Polo ativo	Comercial Rabelo Som e Imagem Ltda - Em Recuperacao Judicial SHOPPING CENTERS IGUA TEMI S/A
Advogado(s) - Polo ativo	ROBERTO LINCOLN DE SOUSA GOMES JUNIOR - (SP329848-A) MARIO VIDAL DE VASCONCELOS NETO - (CE7337-A) ROBERTO LINCOLN DE SOUSA GOMES JUNIOR - (SP329848-A) MARIO VIDAL DE VASCONCELOS NETO - (CE7337-A)

Processo	0156360-88.2018.8.06.0001
Polo passivo	Comercial Rabelo Som e Imagem Ltda - Em Recuperacao Judicial SHOPPING CENTERS IGUAATEMI S/A
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA Jose Martonio Alves Coelho
Voto proferido pelo relator	Não informado

Processo	0636812-13.2024.8.06.0000
Número de ordem	40
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Despejo por Inadimplemento
Polo ativo	ENZILAV PROCESSAMENTOS TEXTEIS LTDA
Advogado(s) - Polo ativo	ALFREDO LEOPOLDO FURTADO PEARCE FILHO - (CE19596-A)
Polo passivo	FRANCISCO NETO SOBRINHO DA SILVA HORILAV PROCESSAMENTO TEXTIL LTDA JOSE EVILASIO SOBRINHO DA SILVA WE PROCESSAMENTO TEXTIL LTDA
Advogado(s) - Polo passivo	JOSE MAURICIO MOREIRA CAVALCANTE FILHO - (CE17550-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0637024-34.2024.8.06.0000
Número de ordem	41
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Tratamento médico-hospitalar
Polo ativo	M. L. V. Q.
Advogado(s) - Polo ativo	BERNARDO DALL MASS FERNANDES - (CE18889-A)
Polo passivo	SUL AMERICA COMPANHIA DE SEGURO SAUDE
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	3000558-74.2025.8.06.0171
Número de ordem	42
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Atualização de Conta
Polo ativo	RITA CARVALHO MOTTA
Advogado(s) - Polo ativo	FRANCISCO ADRIANO LUZ NASCIMENTO - (CE16653-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	NEI CALDERON - (CE33485-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0261373-66.2024.8.06.0001
Número de ordem	43

Processo	0261373-66.2024.8.06.0001
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	PASEP
Polo ativo	MARIA ELISABETE DA COSTA FRAGA
Advogado(s) - Polo ativo	GILBERTO SIEBRA MONTEIRO - (CE6004-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	3007360-19.2025.8.06.0000
Número de ordem	44
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Extinção da Execução
Polo ativo	NORDESTE CORDIS LTDA
Advogado(s) - Polo ativo	ALFREDO LEOPOLDO FURTADO PEARCE FILHO - (CE19596-A)
Polo passivo	SANTA CASA DE MISERICORDIA DE SOBRAL
Advogado(s) - Polo passivo	ALINE ANGELIM MORAIS DIAS - (CE20317-A) EVELINE DA SILVA ANGELIM - (CE49531-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0279844-38.2021.8.06.0001
Número de ordem	45
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigações de Fazer / Não Fazer
Polo ativo	FACEBOOK SERVICOS ONLINE DO BRASIL LTDA.
Advogado(s) - Polo ativo	CELSO DE FARIA MONTEIRO - (CE30086-A)
Polo passivo	FRANCISCO DAVI NOBRE DE SOUSA
Advogado(s) - Polo passivo	ANTONIO LEONARDO FERREIRA SANTOS - (CE43623-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0629238-36.2024.8.06.0000
Número de ordem	46
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Prestação de Serviços
Polo ativo	TICKET SERVICOS SA
Advogado(s) - Polo ativo	MARIO DE FREITAS MACEDO FILHO - (RS14630)
Polo passivo	MESQUITA E BRAGA INDUSTRIA E COMERCIO DE CONFECCOES LTDA
Advogado(s) - Polo passivo	Não informado

Processo	0629238-36.2024.8.06.0000
Terceiros	Não informado
Voto proferido pelo relator	Voto não liberado
Processo	3034260-36.2025.8.06.0001
Número de ordem	47
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigações de Fazer / Não Fazer
Polo ativo	THIAGO PEDROSA COSTA
Advogado(s) - Polo ativo	VINICIUS RIBEIRO DE ARAUJO - (CE44740-A) RUAN LUIZ ALMEIDA NASCIMENTO - (CE52489-A) GUILHERME CARVALHO LEMOS - (CE54882-A)
Polo passivo	UBER DO BRASIL TECNOLOGIA LTDA.
Advogado(s) - Polo passivo	CELSO DE FARIA MONTEIRO - (CE30086-A)
Terceiros	Não informado

Processo	3034260-36.2025.8.06.0001
Acórdão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> </p> </div>

Processo	3034260-36.2025.8.06.0001
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	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelada: Uber do Brasil Tecnologia Ltda</p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">&#160;</p> <p style="text-align: justify;"> EMENTA: DIREITO CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER C/C INDENIZAÇÃO POR DANOS MORAIS. DESLIGAMENTO DE MOTORISTA DA PLATAFORMA UBER. INEXISTÊNCIA DE RELAÇÃO DE CONSUMO OU EMPREGO. PARCERIA DE NATUREZA CIVIL. RESCISÃO UNILATERAL MOTIVADA. EXERCÍCIO REGULAR DE DIREITO. DANOS MORAIS INOCORRENTES. RECURSO DESPROVIDO. </p> <p style="text-align: justify;"> I. CASO EM EXAME </p> <p style="text-align: justify;"> 1. Apelação interposta por motorista de aplicativo contra sentença que julgou improcedente pedido de reintegração à plataforma Uber e de indenização por danos morais, sob o fundamento de que a empresa agiu em exercício regular de direito ao desativar unilateralmente o cadastro em razão de apontamento criminal e reclamações de passageiros. </p> <p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;"> 2. Há duas questões em discussão: (i) definir se a relação entre motorista e plataforma configura vínculo de consumo ou de emprego, ensejando proteção específica; (ii) estabelecer se a rescisão unilateral do contrato pela Uber, com base em apontamentos criminais e relatos de má conduta, configura ato ilícito a ensejar reintegração ou indenização. </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 3. A relação jurídica entre motorista e plataforma digital possui natureza civil, regida pela autonomia da vontade e liberdade contratual, não configurando vínculo de consumo (art. 2º, CDC) nem de emprego (art. 3º, CLT). </p> <p style="text-align: justify;"> 4. O Código Civil assegura a liberdade contratual nos limites da função social do contrato, admitindo a rescisão unilateral nos casos previstos (art. 421, CC). </p> <p style="text-align: justify;"> 5. A Uber apresentou fundamento objetivo para a desativação, consistente em apontamento criminal e relatos de direção perigosa, o que caracteriza descumprimento contratual pelo motorista. </p> <p style="text-align: justify;"> 6. A rescisão unilateral motivada, nos termos pactuados, configura exercício regular de direito, afastando a ilicitude e, consequentemente, a possibilidade de reintegração ou indenização por danos morais. </p> <p style="text-align: justify;"> 7. A jurisprudência consolidada reconhece a validade da cláusula que autoriza a exclusão unilateral do motorista em caso de descumprimento contratual, sem que isso configure ato ilícito indenizável. </p> <p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p> <p style="text-align: justify;"> 8. Recurso desprovido. </p> <p style="text-align: justify;"> Tese de julgamento: </p> <p style="text-align: justify;"> 1. A relação entre motorista de aplicativo e plataforma digital possui natureza civil, não configurando vínculo de consumo nem de emprego. </p> <p style="text-align: justify;"> 2. A cláusula que autoriza a rescisão unilateral motivada do contrato é válida e decorre da autonomia da vontade e da liberdade contratual. </p> <p style="text-align: justify;"> 3. O desligamento de motorista por

Processo	3034260-36.2025.8.06.0001
	descumprimento contratual, visando resguardar a segurança dos usuários, configura exercício regular de direito e não gera dever de indenizar. Dispositivos relevantes citados: CF/1988, art. 22, XI; CC, arts. 421 e 422; CDC, art. 2º; CLT, art. 3º; CPC, art. 85, §11. Lei nº 13.640/2018; Lei nº 12.587/2012. Jurisprudência relevante citada: STF, RE 1054110, Rel. Min. Roberto Barroso, Plenário, j. 09.05.2019; STJ, REsp 2.144.902/MG, Rel. Min. Ricardo Villas Bôas Cueva, 3ª Turma, j. 03.12.2024; TJ-AC, AI 1001879-89.2021.8.01.0000, Rel. Des. Luís Camolez, j. 07.04.2022; TJ-CE, Apelação 0202338-83.2021.8.06.0001, Rel. Des. Durval Aires Filho, j. 03.10.2023; TJ-CE, Apelação 0200841-34.2021.8.06.0001, Rel. Des. Carlos Augusto Gomes Correia, j. 13.09.2023; TJ-CE, AI 0630021-96.2022.8.06.0000, Rel. Des. Heráclito Vieira de Sousa Neto, j. 31.08.2022; TJ-MS, Recurso Inominado 0801324-04.2022.8.12.0101, Rel. Juíza Liliana de Oliveira Monteiro, j. 24.05.2024; TJ-PR, Recurso Inominado 0031571-23.2023.8.16.0014, Rel. Juiz Álvaro Rodrigues Júnior, j. 05.04.2024. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. EOP EOP EOP

Processo	3034260-36.2025.8.06.0001
	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Exmo. Sr. EDUARDO DE CASTRO NETO </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Juiz Convocado </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-

Processo	3034260-36.2025.8.06.0001
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 20.7px; font-family: Aptos, Aptos_EmbeddedFont, Aptos_MSFontService, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATÓRIO &#160; <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Trata-se de Recurso de Apelação interposto por Thiago Pedrosa Costa, com o escopo de adversar a sentença proferida pelo MM. Juízo da 25ª Vara Cível da Comarca de Fortaleza, que julgou improcedentes os pedidos formulados na Ação&#160;de Obrigação de Fazer e Reparação de Danos Morais c/c Tutela Provisória de Urgência, ajuizada em desfavor de Uber do Brasil Tecnologia Ltda. </p> <p style="text-align: justify;"> Em suas razões recursais, o autor/recorrente sustenta que “é evidente a ilegalidade da conduta da Uber, que desativou a conta do autor de forma unilateral e automática, sem qualquer instauração de procedimento prévio, tampouco comunicação formal que possibilitasse a apresentação de defesa.” </p> <p style="text-align: justify;"> Mais adiante, argumenta que “a certidão de antecedentes criminais emitida pelo próprio Tribunal de Justiça do Estado de São Paulo comprova que nada consta em seu nome em relação a condenações, evidenciando sua idoneidade e plena aptidão para continuar exercendo sua atividade profissional como motorista de aplicativo”. </p> <p style="text-align: justify;"> Argumenta, ainda, que “(...)demonstrou que o bloqueio de sua conta ocorreu de forma repentina, arbitrária e sem qualquer notificação formal prévia, em total desacordo com o próprio pacto firmado entre as partes”. </p> <p style="text-align: justify;"> Aduz, também, que “Nos termos do artigo 42, parágrafo único, do CDC, é devida a restituição em dobro dos valores cobrados indevidamente. O banco recorrido, ao descontar valores sem a anuência da autora, causou-lhe prejuízos financeiros e sofrimento psíquico, justificando a indenização por danos morais”. </p> <p style="text-align: justify;"> Ao final, protesta pelo “(...) provimento à presente Apelação, reformando integralmente a sentença recorrida, para julgar procedentes os pedidos iniciais, reconhecendo a ilegalidade e abusividade do bloqueio da conta do Apelante na plataforma da Requerida, com a consequente: reintegração o do Apelante ao sistema da plataforma, garantindo-lhe o direito de exercer sua atividade profissional; condenação da Requerida ao pagamento de indenização por danos morais, em valor a ser arbitrado por Vossas Excelências, em razão o das graves consequências impostas ao Apelante; Subsidiariamente, seja anulada a sentença de origem por cerceamento de defesa, omissão quanto a pontos essenciais da controvérsia (notadamente: violação da Cláusula 3.2 dos Termos de Uso, ausência de contraditório, violação à LGPD e a Lei Municipal nº 11.021/2020), e devolvido o feito à instância de origem para novo julgamento com o enfrentamento devido:(...)” </p> <p style="text-align: justify;"> Contrarrrazões – id. 26855059. </p> <p style="text-align: justify;"> É o que importa relatar. </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: center;"> VOTO </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: justify;"> Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. </p> &#160; </p> <p style="text-align: justify;"> Em sede de contrarrrazões a empresa demandada impugna o benefício da justiça gratuita concedido ao autor. </p> <p style="text-align: justify;"> No entanto, adianto, que não merece prosperar o argumento da apelada, posto que apresentado sem qualquer elemento

Processo	3034260-36.2025.8.06.0001
	probatório ou indiciário capaz de afastar a presunção de veracidade decorrente da declaração de hipossuficiência firmada pelo autor/recorrente. Nesse diapasão, é sólido o entendimento deste Tribunal de Justiça acerca da possibilidade de deferimento da assistência gratuita judiciária, quando a parte se incumbe de declarar seu estado de hipossuficiência, e a presunção de veracidade não é elidida por outros fundamentos. Desse modo, rejeito a preliminar suscitada. Do mérito O autor narra em sua exordial que "(...) teve sua conta bloqueada de forma abrupta e sem qualquer notificação prévia, sendo impedida de exercer sua atividade laboral sob a alegação genérica de "apontamentos criminais". Mesmo após o bloqueio, tentou exercer seu direito de defesa junto à plataforma, contudo, não obteve qualquer retorno da Requerida, permanecendo inativa até a presente data. Em contestação, a Uber afirma que encontrou apontamento criminal sobre agressão a menor, no cpf do autor, e que recebeu reclamações sobre direção perigosa. O juízo a quo entendeu pela improcedência dos pedidos de reintegração ao aplicativo e danos morais postulados pelo promovente, entendendo que a Uber agiu em exercício regular do seu direito. Pois bem. As plataformas digitais permeiam diversos aspectos da vida social e econômica, de mídias sociais ao fornecimento de serviços e bens, nesses incluídos os serviços de transporte de pessoas. O modelo de organização econômica on-line e sob demanda abre oportunidade para transacionar uma vastidão de possibilidades e fomenta o exercício da livre atividade econômica. Nesse cenário, os elementos tradicionalmente presentes nas relações comerciais e de trabalho ganham contornos mais tênues, na medida em que as atividades não permanecem adstritas aos padrões convencionais, permitindo estruturas mais flexíveis e autônomas, emergindo um cenário de novos desafios regulatórios. O referido fenômeno não é novo, a oferta de serviço de transporte de pessoas através de plataformas como a da recorrida teve início no Brasil em 2014, promoveu mudanças legislativas, impactos econômicos e dez anos depois ainda gera divergência na interpretação jurisprudencial, inclusive globalmente. À época, foram promulgadas legislações municipais autorizadoras ou limitadoras da atividade das plataformas intermediadoras de serviço de transporte, vindo a questão a ser pacificada com o julgamento da matéria pelo Supremo Tribunal Federal. "Direito constitucional. Recurso Extraordinário. Repercussão Geral. Transporte individual remunerado de passageiros por aplicativo. livre iniciativa e livre concorrência. 1. Recurso Extraordinário com repercussão geral interposto contra acórdão que declarou a inconstitucionalidade de lei municipal que proibiu o transporte individual remunerado de passageiros por motoristas cadastrados em aplicativos como Uber, Cabify e 99. 2. A questão constitucional suscitada no recurso diz respeito à licitude da atuação de motoristas privados cadastrados em plataformas de transporte compartilhado em mercado até então explorado por taxistas. 3. As normas que proíbam ou restrinjam de forma desproporcional o transporte privado individual de passageiros são inconstitucionais porque: (i) não há regra nem princípio constitucional que prescreva a exclusividade do modelo de táxi no mercado de transporte individual de passageiros; (ii) é contrário ao regime de livre iniciativa e de livre concorrência a criação de reservas de mercado em favor de atores econômicos já estabelecidos, com o propósito de afastar o impacto gerado pela inovação no setor; (iii) a possibilidade de intervenção do Estado na ordem econômica para preservar o mercado concorrencial e proteger o consumidor não pode contrariar ou esvaziar a livre iniciativa, a ponto de afetar seus elementos essenciais. Em um regime constitucional fundado na livre iniciativa, o legislador ordinário não tem ampla discricionariedade para suprimir espaços relevantes da iniciativa privada. 4. A admissão de uma modalidade de transporte individual submetida a uma menor intensidade de regulação, mas complementar ao serviço de táxi afirma-se como uma estratégia constitucionalmente adequada para acomodação da atividade inovadora no setor. Trata-se, afinal, de uma opção que: (i) privilegia a livre iniciativa e a livre concorrência; (ii) incentiva a inovação; (iii) tem impacto positivo sobre a mobilidade urbana e o meio ambiente; (iv) protege o consumidor; e (v) é apta a corrigir as ineficiências de um setor submetido historicamente a um monopólio 'de fato'. 5. A União Federal, no exercício de competência legislativa privativa para dispor sobre trânsito e transporte (CF/1988, art. 22, XI), estabeleceu diretrizes regulatórias para o transporte privado individual por aplicativo, cujas normas não incluem o controle de entrada e de preço. Em razão disso, a regulamentação e a fiscalização atribuídas aos municípios e ao Distrito Federal não podem

Processo	3034260-36.2025.8.06.0001
	contrariar o padrão regulatório estabelecido pelo legislador federal. 6. Recurso extraordinário desprovido, com a fixação das seguintes teses de julgamento: '1. A proibição ou restrição da atividade de transporte privado individual por motorista cadastrado em aplicativo é inconstitucional, por violação aos princípios da livre iniciativa e da livre concorrência; e 2. No exercício de sua competência para regulamentação e fiscalização do transporte privado individual de passageiros, os Municípios e o Distrito Federal não podem contrariar os parâmetros fixados pelo legislador federal (CF/1988, art. 22, XI)'." (RE 1054110, Relator(a): ROBERTO BARROSO, Tribunal Pleno, julgado em 09-05-2019, PROCESSO ELETRÔNICO REPERCUSSÃO GERAL - MÉRITO DJe-194 DIVULG 05-09-2019 PUBLIC 06-09-2019)". Superadas tais questões e admitido o regular exercício da atividade, foi promulgada a Lei nº 13.640/2018, que alterou a Lei nº 12.587/2012 (Lei da Política Nacional de Mobilidade Urbana), para incluir em seu art. 4º o inciso X, cuja finalidade é fazer constar no texto legal especificamente a atividade desenvolvida pelos motoristas de aplicativos. Art. 4º Para os fins desta Lei, considera-se: X – transporte remunerado privado individual de passageiros: serviço remunerado de transporte de passageiros, não aberto ao público, para a realização de viagens individualizadas ou compartilhadas solicitadas exclusivamente por usuários previamente cadastrados em aplicativos ou outras plataformas de comunicação em rede". Motoristas de aplicativos, como são popularmente conhecidos, exercem liberdade plena no que se refere à escolha do momento em que se colocam à disposição na plataforma. Não eventualmente, a atividade é exercida como forma de complementação de renda em períodos determinados exclusivamente pelo motorista. Além disso, a prestação do serviço de transporte via plataformas não denota subordinação. Existem diversas teorias a fundamentar tal requisito, a exemplo da subordinação objetiva e estrutural, que buscam estender seu escopo de aplicação. Contudo, mesmo diante dessas teorias mais abrangentes, o que se verifica é que as plataformas, ao disponibilizarem o acesso ao serviço, estabelecem uma série de condições mínimas de comportamento ao prestador de serviço e ao consumidor, bem como condições de estado ao veículo particular que será utilizado, tudo com a finalidade de garantir segurança e efetividade ao negócio jurídico intermediado. À luz da legislação vigente atualmente, de todo modo, verifica-se que os motoristas, prestadores do serviço de transporte, não preenchem os requisitos necessários à configuração de relação de emprego ou trabalho e atuam de modo autônomo, sem vínculo de emprego com a empresa gestora da plataforma digital em questão. Ademais, de igual modo, o vínculo mantido entre as empresas de tecnologia, tais como a recorrente, e os seus parceiros não configura relação de consumo, haja vista que o pacto existente entre os mesmos tem como finalidade a intermediação digital para transporte de passageiros, ou seja, o motorista utiliza-se da plataforma com o fito de obter clientes em sua atividade autônoma, não se inserindo no conceito de destinatário final, constante no art. 2º, do Código de Defesa do Consumidor. Assim, o sistema de transporte privado individual intermediado a partir de provedores de rede de compartilhamento detém natureza de cunho civil. Sobre o assunto: DIREITO CIVIL. RECURSO ESPECIAL. COMPETÊNCIA. RELAÇÃO JURÍDICA ENTRE MOTORISTA E PLATAFORMA DIGITAL. PRESTAÇÃO DE SERVIÇO AUTÔNOMO. NATUREZA CIVIL. PRETENSÃO. COMPETÊNCIA DA JUSTIÇA COMUM. 1. A controvérsia dos autos resume-se em definir (i) se há negativa de prestação jurisdicional e (ii) qual a natureza jurídica da relação entre o motorista e a plataforma digital, a fim de determinar a competência para julgamento da demanda. 2. Na espécie, não houve violação dos artigos 489 e 1.022 do Código de Processo Civil, visto que agiu corretamente o tribunal de origem ao rejeitar os embargos de declaração por inexistir omissão, contradição, obscuridade ou erro material no acórdão atacado, ficando patente o intuito infringente da irresignação. 3. A relação entre o motorista e a plataforma digital é de natureza civil. Os elementos demonstrativos da relação de emprego não estão configurados nessa modalidade de contratação, porquanto ausentes os requisitos de não eventualidade e subordinação. 4. A plataforma atua como meio intermediador da contratação digital pactuada entre motorista e consumidor, caracterizando uma relação de prestação de serviço autônomo. Exercício de atividade inserida no cenário da gig economy e economia compartilhada. 5. A

Processo	3034260-36.2025.8.06.0001
	natureza jurídica da pretensão decorre diretamente do pedido e da causa de pedir, os quais, na hipótese, possuem cunho eminentemente civil e conduzem à competência da Justiça Comum. 6. Recurso especial provido. (REsp n. 2.144.902/MG, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 3/12/2024, DJEN de 6/12/2024.) EXCLUSÃO SUMÁRIA DE MOTORISTA DA PLATAFORMA UBER NA CATEGORIA UBER PRO. TUTELA DE URGÊNCIA. REQUISITOS. REATIVAÇÃO DE CADASTRO DE MOTORISTA . PROBABILIDADE DO DIREITO. INEXISTÊNCIA. INDÍCIOS DE DESCUMPRIMENTO DOS TERMOS E CONDIÇÕES DA PLATAFORMA ELETRÔNICA. NEGÓCIO JURÍDICO DE NATUREZA CIVIL . RELAÇÃO OBRIGACIONAL. VALIDADE DAS ESTIPULAÇÕES DO INSTRUMENTO DO CONTRATO. POSSIBILIDADE. 1 . O vínculo mantido entre as empresas de tecnologia, tais como a UBER, e os seus parceiros não se consubstanciam em relação de consumo, haja vista que o pacto existente entre as partes tem como escopo a intermediação digital para transporte de passageiros, ou seja, o motorista utiliza-se da plataforma com o fito de obter clientes em sua atividade autônoma. Desse modo, não se insere no conceito de destinatário final, constante no art. 2º, do Código de Defesa do Consumidor. 2 . Lado outro, a mesma relação não caracteriza vínculo de emprego, pois a adesão de motorista particular à plataforma de aplicativo digital consubstancia relação autônoma de parceria, com os riscos inerentes à atividade e previstos em termo de adesão. À medida que o motorista goza de total autonomia e absoluta falta de subordinação, a ponto de escolher os dias e horários para captar passageiros, é evidente a ausência dos requisitos do art. 3º, da CLT. 3 . O vínculo jurídico entre os motoristas e a plataforma eletrônica UBER é obrigacional, regida pelo Código Civil e pelos termos da Lei nº 13.640/2018, sendo relação contratual na qual é válida a estipulação de rescisão por quaisquer das partes sem a necessidade prévia notificação em caso de descumprimento das disposições pactuadas. 4. A alegação de que houve violação aos termos e condições de uso da plataforma retira a probabilidade do direito vindicado pelo motorista/autor, inviabilizando a concessão de tutela de urgência (art. 300 do CPC) consistente na reativação de seu cadastro. 5. Agravo de Instrumento provido. (TJ-AC - Agravo de Instrumento: 1001879-89 .2021.8.01.0000 Rio Branco, Relator.: Des . Luís Camolez, Data de Julgamento: 07/04/2022, Primeira Câmara Cível, Data de Publicação: 07/04/2022) APELAÇÃO CÍVEL. OBRIGAÇÃO DE FAZER C/C INDENIZAÇÃO POR DANO MORAL. DESLIGAMENTO DE MOTORISTA DA PLATAFORMA DO APLICATIVO UBER. PRETENSÃO DE RESTABELECIMENTO DE SUA CONTA, BEM COMO A CONDENAÇÃO DA RÉ AO PAGAMENTO DE INDENIZAÇÃO POR LUCROS CESSANTES E DANOS MORAIS. SENTENÇA DE IMPROCEDÊNCIA. IRRESIGNAÇÃO DO AUTOR. INEXISTÊNCIA DE RELAÇÃO DE CONSUMO. PARCERIA ENTRE A EMPRESA DE TECNOLOGIA E OS MOTÓRISTAS, QUE ATUAM COMO EMPREENDEDORES INDIVIDUAIS. RELAÇÃO REGIDA PELO CÓDIGO CIVIL. PRELIMINAR DE CERCEAMENTO DE DEFESA. REJEIÇÃO. PRETENSÃO DE APRESENTAÇÃO DA UNIVERSALIDADE DAS AVALIAÇÕES RECEBIDAS PELO MOTORISTA NO APLICATIVO. INFORMAÇÕES QUE EM NADA ALTERA O JULGAMENTO DE MÉRITO DA DEMANDA. NO MÉRITO, O CONTRATO CELEBRADO ENTRE AS PARTES PREVÊ EXPRESSAMENTE A POSSIBILIDADE DE RESCISÃO UNILATERAL EM CASO DE DESCUMPRIMENTO DOS TEMOS PACTUADOS, DA POLÍTICA DE DESATIVAÇÃO, OU MESMO DO CÓDIGO DE CONDUTA DA UBER, COM A CONSEQUENTE DESATIVAÇÃO DA PLATAFORMA, SEM QUALQUER ÔNUS INDENIZATÓRIO OU AVISO PRÉVIO. OUTROSSIM, EMPRESA A APRESENTA RELATOS DE PASSAGEIROS USUÁRIOS DO APLICATIVO ACERCA DA CONDUTA PERIGOSA AO VOLANTE DO AUTOR, OS QUAIS NÃO FORAM NEGADOS PELO MESMO, QUE SE RESTRINGIU EM AFIRMAR QUE AS MESMAS SÃO ÍNFIMAS DIANTE DA UNIVERSALIDADE DE AVALIAÇÕES POSITIVAS. CERTO É QUE A RÉ NÃO É OBRIGADA A MANTER A PARCERIA QUE NÃO SEJA DE SEU INTERESSE E CUJA CONDUTA DO MOTORISTA ESTEJA EM DESACORDO COM SUA POLÍTICA DE PRESTAÇÃO DE SERVIÇOS OU AO SEU CÓDIGO DE CONDUTA, SENDO SEU DIREITO DEFINIR O PERFIL DESEJADO DO PROFISSIONAL COM QUEM FAZ PARCERIA E QUE SE UTILIZA SEU APLICATIVO. INEXISTÊNCIA DE QUALQUER ATO ILÍCITO PELA PARTE RÉ, CAPAZ DE ENSEJAR O RESTABELECIMENTO DA CONTA DO AUTOR NA PLATAFORMA, TAMPOUCO DE PAGAR INDENIZAÇÃO POR LUCRO CESSANTE OU DANO MORAL. MANUTENÇÃO DA SENTENÇA. RÉCURSO CONHECIDO E IMPROVIDO. (Apelação Cível - 0202338-83.2021.8.06.0001, Rel. Desembargador(a) DURVAL AIRES FILHO, 4ª Câmara Direito Privado, data do julgamento: 03/10/2023, data da publicação: 05/10/2023) Considerando que o caso em tela deve ser regido pelos ditames da lei civilista,

Processo	3034260-36.2025.8.06.0001
	entendo que o pacto deve ser analisado considerando os princípios do pacta sunt servanda e da livre manifestação de vontades, permitindo as partes acordarem sobre os termos que desejam estabelecer, os quais devem observados durante toda sua vigência e, ainda, indicar critérios para rescindi-lo. Por conseguinte, o Código Civil estabelece como regra a autonomia da vontade e a liberdade de contratar, nos limites da função social do contrato, com a intervenção mínima e excepcionalidade da revisão contratual, conforme o artigo 421 da legislação supra: Art. 421. A liberdade contratual será exercida nos limites da função social do contrato. Parágrafo único. Nas relações contratuais privadas, prevalecerão o princípio da intervenção mínima e a excepcionalidade da revisão contratual. No caso, em sua contestação a demandada/apelada alegou que, ao verificar um apontamento criminal do autor/apelante, bem como reclamações por direção imprudente, resolveu cancelar a sua inscrição na plataforma, considerando que o autor poderia representar um risco em potencial à integridade física de seus usuários. Ademais, de fato o autor respondeu a processo no juizado especial, de nº 0047290-11.2015.8.06.0012, na qual houve inclusive uma transação penal cumprida pelo autor, ora apelante, por agressão a um menor de idade. Com efeito, o desligamento restou baseado no fato de que o autor/apelante teria agido com infração contratual e, conseqüentemente, autorizaria sua rescisão unilateral nos termos livremente pactuados, independente de comunicação prévia, de modo que não se trata de aplicação do princípio da presunção de inocência, mas mero exercício legal da empresa apelada à rescisão contratual de forma unilateral, uma vez verificando violação aos termos acordados na plataforma e buscando resguardar a função social do contrato e a segurança dos usuários do serviço ofertado pelo aplicativo. A respeito: APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. AÇÃO DE OBRIGAÇÃO DE FAZER. DESCRENCIAMENTO DA PLATAFORMA DE TRANSPORTES 99 TECNOLOGIA LTDA. PRELIMINAR DE CERCEAMENTO DE DEFESA AFASTADA. MÉRITO. PREVALÊNCIA DA AUTONOMIA DA VONTADE PRIVADA E DA LIBERDADE DE CONTRATAR. INTELECÇÃO DO ART. 421, DO CÓDIGO CIVIL. CLÁUSULA INSERIDA NO TERMO DE CONTRATAÇÃO. RECLAMAÇÕES REITERADAS. EMPRESA QUE AGIU EM EXERCÍCIO REGULAR DO DIREITO. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. &#160; 1.Cinge-se a controvérsia recursal em analisar a suspensão do autor da plataforma de transportes 99 TECNOLOGIA LTDA. 2. In casu, em sede preliminar, é cediço que, pelo princípio do livre convencimento motivado, o juízo pode valorar as provas que se mostrem úteis ao seu convencimento e indeferir as diligências inúteis e meramente protelatórias não caracterizando cerceamento de defesa o julgamento antecipado da lide ao se verificar sua possibilidade com base nos documentos constantes nos autos. 3. Tem-se que o caso em tela deve ser regido pelos ditames da lei civilista, assim, entendo que o pacto deve ser analisado considerando os princípios do pacta sunt servanda e da livre manifestação de vontades, permitindo as partes acordarem sobre os termos que desejam estabelecer, os quais devem observados durante toda sua vigência e, ainda, indicar critérios para rescindi-lo. 4. Nessa vertente, insta ressaltar que o desligamento foi baseado no fato de que o autor/apelante teria agido com infração contratual e, conseqüentemente, autorizaria sua rescisão unilateral nos termos livremente pactuados, independente de comunicação prévia. Constituindo, pois, como mero exercício legal da empresa apelada a rescisão contratual unilateral, que inclusive se deu de forma motivada, conforme reclamações anexadas em contestação e contrarrazões, a fim de manter a segurança dos usuários do serviço ofertado pelo aplicativo. 5. Recurso conhecido e desprovido. (Apelação Cível&#160;- 0200841-34.2021.8.06.0001, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento:&#160; 13/09/2023, data da publicação:&#160; 14/09/2023) </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;">E M E N T A – RECURSO INOMINADO – AÇÃO DE OBRIGAÇÃO DE FAZER C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS – PRELIMINAR – IMPUGNAÇÃO À JUSTIÇA GRATUITA – REJEITADA – DESCRENCIAMENTO/SUSPENSÃO DE MOTORISTA DE APLICATIVO DA PLATAFORMA TECNOLÓGICA UTILIZADA PARA PRESTAÇÃO DO SERVIÇO DE TRANSPORTE DE PASSAGEIROS (99) – PREVISÃO CONTRATUAL QUE POSSIBILITA A RESCISÃO/SUSPENSÃO DO CONTRATO A QUALQUER TEMPO E DE FORMA UNILATERALL – EXERCÍCIO REGULAR DO DIREITO – RECURSO NÃO PROVIDO (TJ-MS - Juíza Liliana de Oliveira Monteiro, j: 24: 0801324-04.2022.8.12 .0101 Dourados, Relator.: Juíza Liliana de Oliveira Monteiro, Data de Julgamento: 24/05/2024, 3ª Turma Recursal Mista, Data de Publicação: 28/05/2024) </p> <p style="text-align: justify;">EMENTA: RECURSO INOMINADO.

Processo	3034260-36.2025.8.06.0001
	APLICATIVO DE TRANSPORTE (UBER). NEGATIVA DE CADASTRO EM VIRTUDE DE O MOTORISTA SER PARTE EM PROCESSO CRIMINAL. IMPOSSIBILIDADE DE REATIVAÇÃO DO MOTORISTA COLABORADOR . LIBERDADE CONTRATUAL DE CANCELAMENTO DO CONTRATO DO MOTORISTA COLABORADOR. PRINCÍPIOS DA AUTONOMIA DA VONTADE E LIVRE INICIATIVA. INÉRCIA DO MOTORISTA NO ENVIO DE DOCUMENTOS SOLICITADOS PELA PLATAFORMA. DANOS MORAIS NÃO CONFIGURADOS . RECURSO PROVIDO. (TJ-PR 0031571-23.2023.8 .16.0014 Londrina, Relator.: Alvaro Rodrigues Junior, Data de Julgamento: 05/04/2024, 2ª Turma Recursal, Data de Publicação: 08/04/2024) </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Nesta ordem de ideias, reconhecendo-se que a requerida se trata de empresa privada de tecnologia que possibilita o cadastro de pessoas para atuar na função de motoristas colaboradores, forçoso reconhecer que esta possui ampla liberdade de escolher os colaboradores que se enquadram em suas exigências para que seja possível a prestação de serviços, tudo isso observando inclusive o dever de segurança aos usuários. Daí por que a promovida/apelada possui liberdade contratual, decorrente da autonomia da vontade, de cancelar o cadastro do colaborador mesmo quando os requisitos foram cumpridos.</p> <p style="text-align: justify;"> Assim, mesmo que no caso concreto operada a denúncia contratual unilateral e sem a notificação prévia, não cabe a reativação do cadastro do autor nos quadros de motoristas do aplicativo se não há intenção da plataforma de transporte neste sentido verificada a violação dos seus termos, pelo que a sentença de improcedência dos pedidos deve ser mantida. </p> <p style="text-align: justify;"> Diante do exposto, conheço do presente recurso e nego-lhe provimento, mantendo incólume a sentença objurada. </p> <p style="text-align: justify;"> Diante da sucumbência recursal, majoro os honorários de 10% (dez por cento) para 12 % (doze por cento), nos termos do art. 85, §11 do CPC, ficando suspensa sua exigibilidade, uma vez que o autor/recorrente é beneficiário da gratuidade judiciária. </p> <p style="text-align: justify;"> É como voto. </p> <p style="text-align: justify;"> Fortaleza, data da assinatura digital</p> <p style="text-align: justify;"> EDUARDO DE CASTRO NETO </p> <p style="text-align: justify;"> Juiz Convocado Relator </p> <p style="text-align: justify;"> &#160; </p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">
 </p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">
 </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p></p>
Processo	3000825-84.2025.8.06.0126
Número de ordem	48

Processo	3000825-84.2025.8.06.0126
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	RAIMUNDO PINHEIRO DE MONTE
Advogado(s) - Polo ativo	TULIO ALVES PIANCO - (CE42491-A) ERICLES DE OLINDA BEZERRA - (CE41130-A)
Polo passivo	BANCO BRADESCO FINANCIAMENTOS S.A.
Advogado(s) - Polo passivo	THIAGO BARREIRA ROMCY - (CE23900-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	3000825-84.2025.8.06.0126
Acórdão	<p style="text-align: justify;"> EMENTA: PROCESSO CIVIL. RECURSO DE APELAÇÃO EM AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. INTERPOSIÇÃO DE MÚLTIPLAS AÇÕES CONTRA A MESMA INSTITUIÇÃO FINANCEIRA. FRACIONAMENTO DE DEMANDAS SIMILARES QUE INDICAM ABUSO DO DIREITO DE DEMANDAR. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. </p><p style="text-align: justify;"> I. CASO EM EXAME </p><p style="text-align: justify;"> 1. Apelação cível interposta por Raimundo Pinheiro de Monte contra sentença da 2ª Vara da Comarca de Mombaça, que indeferiu a petição inicial e extinguiu o processo sem resolução do mérito, com base no artigo 330, III do Código de Processo Civil.</p><p style="text-align: justify;"> 2. A ação visava à declaração de nulidade de empréstimo consignado, restituição de valores e indenização por danos morais em desfavor do Banco Bradesco Financiamentos S/A.</p><p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> 3. A questão em discussão consiste em saber se a propositura de múltiplas ações com pedidos semelhantes contra a mesma instituição financeira, ainda que baseadas em contratos distintos, configura fracionamento abusivo de demandas, esvaziando o interesse de agir.</p><p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p><p style="text-align: justify;"> 4. Verificou-se que o autor/recorrente, em um único dia, ajuizou 09 (nove) ações, sendo 05 (cinco), em desfavor do banco/recorrido, ou seja, ações similares contra o mesmo banco, com pedidos idênticos relacionados a supostos contratos indevidos.</p><p style="text-align: justify;"> 5. A sentença corretamente reconheceu o fracionamento indevido das demandas, que contraria os princípios da boa-fé processual e da cooperação, conforme art. 5º do CPC, caracterizando abuso do direito de ação.</p><p style="text-align: justify;"> 6. O ajuizamento simultâneo de ações com causa de pedir e pedidos conexos prejudica a racionalização da atividade jurisdicional e onera o serviço judiciário, em violação ao princípio da eficiência (CF/1988, art. 37, caput).</p><p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p><p style="text-align: justify;"> 7. Recurso conhecido e desprovido. </p><p style="text-align: justify;"> Tese de julgamento: "1. O fracionamento de demandas com causas de pedir e pedidos semelhantes configura abuso do direito de ação e ausência de interesse processual, autorizando o indeferimento da petição inicial. 2. O ajuizamento simultâneo de ações idênticas compromete a boa-fé processual e o funcionamento adequado do Poder Judiciário."</p><p style="text-align: justify;"> Dispositivos relevantes citados: CF/1988, art. 5º, inc. XXXV; art. 330, III.</p><p style="text-align: justify;"> Jurisprudência relevante citada: TJCE, Apelação Cível nº 0200835-72.2024.8.06.0049, Rel. Des. Carlos Augusto Gomes Correia, 1ª Câmara Direito Privado, j.18.05.2025; TJCE, Apelação Cível nº 0200461-16.2023.8.06.0203, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara Direito Privado, j. 07.08.2024.</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> A C Ó R D Ã O </p><p style="text-align: justify;"> Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso, mas para negar-lhe provimento nos termos do voto do eminente Relator, parte integrante desta decisão.</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> Fortaleza, 10 de setembro de 2025.</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="text-align: justify;"> Presidente do Órgão Julgador</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> EDUARDO DE CASTRO NETO</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> Juiz Convocado Relator</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">RELATÓRIO </p><p style="text-align: justify;">Recurso de Apelação interposto por Raimundo Pinheiro de Monte, com o escopo de adversar a sentença proferida pelo MM. Juízo da 2ª Vara da Comarca de Mombaça, que indeferiu a petição inicial ajuizada em desfavor do Banco Bradesco

Processo	3000825-84.2025.8.06.0126
	Financiamentos S/A, extinguindo o processo sem apreciação de mérito, sob a égide dos artigos 330, III do CPC. Em suas razões recursais a recorrente sustenta que “ao contrário do que pensou o eminente magistrado, as ações veiculadas tratam não da obtenção de enriquecimento ilícito pelo autor/apelante, mas sim de minoração de danos causados, enquanto vítima de possível fraude utilizando-se o seu nome, oportunidade que se pretendia provar pelos meios hábeis cabíveis, mas que foi liminarmente ceifada, em grave violação ao princípio da ampla defesa, artigo 5º, LV da Constituição Federal”. Argumenta, também, que “há que se dizer que o autor ajuizou apenas uma ação judicial para cada contrato, a fim de que se individualize o comportamento de cada uma das instituições financeiras, evitando-se o tumultuamento processual, sem qualquer resquício de má-fé processual. Portanto, é absurdo que o juiz sentenciante tenha proferido tal decisão sob o fundamento do abuso do direito de petição”. Ao final, requer o conhecimento e provimento do presente recurso, reformando a decisão do Juiz de 1º Grau, com o retorno dos autos a origem para o regular processamento do feito. Contrarrazões Id.26760609. É o que importa relatar. VOTO Exercendo o juízo de admissibilidade, constato o atendimento dos requisitos intrínsecos e extrínsecos que o compõem, levando-me ao qualificativo da positividade e, assim, ao conhecimento do recurso apelatório. Passo, então, ao seu deslinde. O cerne da controvérsia recursal consiste em verificar o interesse de agir do promovente, dado o fracionamento de ações e o suposto abuso no direito de demandar. Compulsando os fólios processuais, bem como, em consulta realizada no PJe de primeiro grau, verifiquei que, de fato, o autor/recorrente, em um único dia, ajuizou 09 (nove) ações, sendo 05 (cinco), em desfavor do banco/recorrido, ou seja, ações similares, em que busca a nulidade de contratos de empréstimos consignados, restituição dos valores descontados, e ainda, a condenação da instituição financeira/apelada ao pagamento de danos morais. Dessa forma, a manutenção de processos autônomos para discutir contratos consignados firmados com a mesma instituição financeira caracteriza fragmentação indevida da causa de pedir e do objeto da lide, ferindo os princípios da economia e da celeridade processual, e contrariando o dever de boa-fé processual e cooperação previsto no art. 6º do Código de Processo Civil. Além disso, o processamento de distintos feitos ainda eleva custos financeiros, sobrecarrega os funcionários do Poder Judiciário e, assim, prejudica a consecução dos princípios constitucionais que regem a administração pública, ao qual o Judiciário está vinculado, especialmente o da eficiência (art. 37, caput, da CF). Desse modo, o Judiciário deve coibir condutas temerárias que não respeitam a boa-fé processual tão preconizada na atual codificação processual, insculpida logo de início no artigo 5º do CPC, confira: “Art. 5º Aquele que de qualquer forma participa do processo deve comportar-se de acordo com a boa-fé.” A respeito, cito decisões deste sodalício, vejamos: DIREITO CIVIL E PROCESSUAL CIVIL. DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORÁIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO QUANTO AOS PEDIDOS DE INDENIZAÇÃO POR DANOS MORÁIS. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO ATIVO. RECURSO CONHECIDO DESPROVIDO. SENTENÇA MANTIDA. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para NEGAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (TJ-CE - Apelação Cível: 0200836-67.2023.8.06.0154 Quixeramobim, Relator: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 22/05/2024, 1ª Câmara Direito Privado, Data de Publicação: 22/05/2024) &#160; DIREITO CIVIL, PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS

Processo	3000825-84.2025.8.06.0126
	MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. O cerne da controvérsia consiste em verificar o interesse de agir do Autor, ora Apelante, dado o fracionamento de ações e suposto abuso no direito de demandar. 2. Do exame dos autos, nota-se que a autora ajuizou 4 (quatro) ações anulatórias de débito c/c indenização por danos materiais e morais contra a mesma instituição financeira apelada, alegando, em resumo, não ter firmado os empréstimos consignados e requerendo restituição de valores e indenização correspondente, e que, ao invés de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em diversos processos, como muito bem delimitou o d. Juízo singular, apesar de todas elas terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decisum recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, § 3º, do CPC. 3. Por último, a sentença recorrida se encontra devidamente fundamentada, com exposição clara do d. Juízo de primeiro grau, em consonância com o art. 93, IX, da CF/1988, não vindo a calhar o argumento sobre carência de fundamentação levantado na apelação. 4. De mais a mais, constata-se, nesta egrégia Corte de Justiça, a existência de inúmeras demandas praticamente idênticas patrocinadas pelo causídico do Autor/Apelante, de modo que é aceitável que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. Precedentes. 5. Recurso conhecido e desprovido. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para lhe negar provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (TJ-CE - Apelação Cível: 02004611620238060203 Ocara, Relator: JOSÉ RICARDO VIDAL PATROCÍNIO, Data de Julgamento: 07/08/2024, 1ª Câmara Direito Privado, Data de Publicação: 07/08/2024)</p><p style="text-align: justify;"> #160;</p><p style="text-align: justify;"> DIREITO CIVIL E PROCESSUAL CIVIL. DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO ATIVO. APELO DESPROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1a Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso, mas para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (Apelação Cível- 0201644-09.2022.8.06.0154, Rel. Desembargador (a) JOSÉ RICARDO VIDAL PATROCÍNIO, 1a Câmara Direito Privado, data do julgamento:26/04/2023, data da publicação: 26/04/2023)</p><p style="text-align: justify;"> #160;</p><p style="text-align: justify;"> PROCESSUAL. PECULIARIDADE DO CASO CONCRETO. FRACIONAMENTO DE AÇÕES QUE INDICAM ABUSO DO DIREITO DE DEMANDAR. CONDUTA ADOTADA QUE CONFIGURA LITIGÂNCIA DE MÁ-FÉ. DESLEALDADE PROCESSUAL EM OBTER VANTAGEM INDEVIDA. APLICAÇÃO DE MULTA DE OFÍCIO. MANUTENÇÃO DA SENTENÇA EXTINTIVA. RECURSO CONHECIDO E IMPROVIDO. SÉNTENÇA INALTERADA. 1. Foi indeferida a petição inicial da Ação Declaratória de Inexistência de Relação Jurídica sob o fundamento de que, a parte opta pelo fracionamento de ações, o que consiste em um verdadeiro abuso de direito de demandar. 2. Entretanto, em suas razões recursais, a apelante limita-se a defender a necessidade de ajuizamento de diferentes ações para cada contrato consignado não realizado com o Banco promovido. 3. O fracionamento das ações, como a do presente caso, consiste em um verdadeiro abuso do direito de demandar, na medida em que a autora ajuizou diversas ações contra a mesma parte, inclusive veiculando pedido idêntico, no caso, a declaração de inexigibilidade de débito, configurando conduta processual temerária e abusiva, a qual o Judiciário não pode dar guarida. 4. Recurso conhecido e improvido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2a Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer o recurso interposto e negar-lhe provimento, nos termos do voto da relatora. (Apelação Cível- 0200491-38.2022.8.06.0154, Rel. Desembargador (a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2a Câmara Direito Privado, data do julgamento: 29/06/2022, data da publicação: 29/06/2022).</p><p style="text-align: justify;"> Destaco, ainda, que vedar a tramitação desse tipo de ação não significa impedir o acesso à justiça, mas sim velar para que esse direito seja feito de forma eficaz e com padrões éticos adequados.</p><p style="text-align: justify;">

Processo	3000825-84.2025.8.06.0126
	justify;"> Dessa forma, não merece reparos a sentença.</p><p style="text-align: justify;"> E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados voto pelo conhecimento do presente recurso de apelação, mas para negar-lhe provimento, mantendo inalterada a sentença atacada.</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">É como voto.</p><p style="text-align: justify;">Fortaleza-CE, 10 de setembro de 2025.</p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify;"> Juiz Convocado Eduardo de Castro Neto </p><p style="text-align: justify;"> Relator</p><p style="text-align: justify;"> &#160;</p><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>
Processo	0283410-24.2023.8.06.0001
Número de ordem	49
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	WELLINGTON WAGNER FERREIRA SARMENTO
Advogado(s) - Polo ativo	LIDIANNE UCHOA DO NASCIMENTO - (CE26511-B)
Polo passivo	BANCO SANTANDER (BRASIL) S.A. BANCO DO BRASIL SA ITAU UNIBANCO HOLDING S.A. Itau Unibanco Holding S/A
Advogado(s) - Polo passivo	SERGIO SCHULZE - (SC7629-A)
Terceiros	Não informado

Processo	0283410-24.2023.8.06.0001
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> 53</p></div>

Processo	0283410-24.2023.8.06.0001
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Processo	0283410-24.2023.8.06.0001
	Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph

Processo	0283410-24.2023.8.06.0001
	transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 23px; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Apelado: &#160; <strong style="font-size: 12pt; text-indent: 2cm;"> BANCO SANTANDER (BRASIL) S.A. </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.18cm; align="justify"> Ementa DIREITO DO CONSUMIDOR E PROCESSUAL CIVIL. APELAÇÃO AÇÃO DE REPACTUAÇÃO DE DÍVIDAS. SUPERENDIVIDAMENTO. EMPRÉSTIMO CONSIGNADO EM FOLHA DE PAGAMENTO. EXCESSO NO COMPROMETIMENTO DOS VENCIMENTOS LÍQUIDOS. LIMITAÇÃO DE DESCONTOS. PROTEÇÃO AO MÍNIMO EXISTENCIAL. RECURSO PARCIALMENTE PROVIDO. </p> <h3 class="western"> >I. CASO EM EXAME </h3> <p style="line-height: 150%; margin-bottom: 0.18cm; background: transparent; page-break-before: auto;" align="justify"> Trata a presente espécie recursal de

Processo	0283410-24.2023.8.06.0001
	background-clip: initial;">recurso de apelação manejado por Wellington Wagner Ferreira Sarmento contra a decisão do d. Juízo da 21.ª Vara Cível da Comarca de Fortaleza, que julgou improcedentes os pleitos veiculados na ação de Repactuação de Dívidas (Lei de Superendividamento) &#160; proposta em desfavor de BANCO SANTANDER (BRASIL) S.A. e outros (3) . </p> <h3 class="western"> II. QUESTÃO EM DISCUSSÃO </h3> <p align="justify"> Questão em discussão: (i) verificar se os descontos mensais decorrentes de empréstimos consignados ultrapassam o percentual legal permitido sobre os rendimentos líquidos do consumidor. </p> <h3 class="western"> III. RAZÕES DE DECIDIR </h3> <p style="line-height: 150%; margin-bottom: 0.18cm; background: transparent; page-break-before: auto;" align="justify"> Busca a parte recorrente a reforma da decisão do juízo a quo, que julgou improcedente o pedido realizado no bojo da demanda, relativo à readequação dos valores descontados de sua conta </p>

Processo	0283410-24.2023.8.06.0001
	a título de empréstimo. Inicialmente, vale mencionar o tema 1085 do STJ firmado sob julgamento de recurso repetitivo, firmado em 30 de junho de 2023, onde o Superior Tribunal de Justiça fixou a seguinte tese: “são lícitos os descontos de parcelas de empréstimos bancários comuns em conta-corrente, ainda que utilizada para recebimento de salários, desde que previamente autorizados pelo mutuário e enquanto esta autorização perdurar, não sendo aplicável, por analogia, a limitação prevista no § 1º do art. 1º da Lei nº 10.820/2003, que disciplina os empréstimos consignados em folha de pagamento.” De acordo com a jurisprudência do STJ (AREsp 314.901/SP), é cabível a limitação de descontos referentes a empréstimos consignados a 30% dos vencimentos líquidos, em atenção aos princípios da dignidade da pessoa humana e do mínimo existencial. Como visto, diante do que restou definido naquela Corte, a limitação pretendida pela parte autora a limitação pretendida pela parte autora recorrente não alcança os empréstimos comuns, mas apenas os consignados. Em outras palavras, os descontos efetuados em conta-corrente com a anuência da correntista, na modalidade de crédito pessoal, relativos às parcelas dos empréstimos espontaneamente contraídos, não estão sujeitos ao percentual estabelecido para a consignação em folha de pagamento, assim como cobranças de dívidas de cartão de crédito. No entanto, revisitando o caso concreto, verifica-se pelo extrato de pagamento de e seguintes, que o empréstimo havido com o BANCO DO BRASIL S/A ocorreu em folha de pagamento de forma consignada, e não em conta corrente, o que atrai a incidência da limitação mencionada. A parte autora recebe vencimentos líquidos (excluindo o imposto de renda e o plano de seguridade social, dentre outros) em cada folha de pagamento em R\$ 4.546,64 (quatro mil, quinhentos e quarenta e seis reais e sessenta e quatro centavos), sendo subtraído a título de empréstimo consignado o montante de R\$ 1.974,18 (mil e novecentos e setenta e quatro reais e dezoito centavos), o que corresponde a aproximadamente 43% dos vencimentos líquidos da autora, devendo, por isso, sofrer a limitação legal, pelo que deve ser devendo, por isso, sofrer a limitação legal, pelo que deve ser reformada a decisão recorrida. IV. DISPOSITIVO E TESE Recurso provido. Tese de julgamento Segundo o tema 1085 do STJ firmado sob julgamento de recurso repetitivo, firmado em 30 de junho de 2023, onde o Superior Tribunal de Justiça fixou a seguinte tese: “são lícitos os descontos de parcelas de empréstimos bancários comuns em conta-corrente, ainda que utilizada para recebimento de salários, desde que previamente autorizados pelo mutuário e enquanto esta autorização perdurar, não sendo aplicável, por analogia, a limitação prevista no § 1º do art. 1º da Lei nº 10.820/2003, que disciplina os empréstimos consignados em folha de pagamento.”

Processo	0283410-24.2023.8.06.0001
	style="font-family: Verdana, sans-serif;">Dispositivos relevantes citados : CPC/2015, arts. 294, 300 e 485; CDC, arts. 104-A e seguintes; Lei nº 10.820/2003, art. 1º, § 1º. </p> <p align="justify"> Jurisprudência relevante citada : STJ, Tema 1085 (REsp 1.872.441/SP, Rel. Min. Marco Aurélio Bellizze, Segunda Seção, j. 09.03.2022); STJ, AREsp 314.901/SP, Rel. Min. Sidnei Beneti, Terceira Turma, j. 20.02.2013. </p> <p align="justify">&#160;</p> <p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.18cm;" align="justify">

 </p> <p align="justify"> &#160; </p> <p align="justify"> &#160; </p> <p align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direto Privado do Tribunal de Justiça do Estado do Ceará,&#160;por unanimidade, em conhecer do recurso e dar-lhe provimento, nos termos do voto do Relator. </p> <p align="center"> Fortaleza, 10 de setembro de 2025. </p> <p align="center"> &#160; </p> <p align="center"> Presidente do Órgão Julgador </p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado </p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center">&#160;</p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Relator </p> <p align="justify">
 </p> <p align="justify"> RELATÓRIO </p> <p align="justify"> Trata a presente espécie recursal de recurso de apelação manejado por Wellington Wagner Ferreira Sarmiento contra a decisão do d. Juízo da 21.ª Vara Cível da Comarca de Fortaleza, que julgou improcedentes os pleitos veiculados na ação de Repactuação de Dívidas (Lei de Superendividamento)&#160; proposta em desfavor de BANCO SANTANDER (BRASIL) S.A. e outros (3) . </p> <p align="justify"> O apelante, servidor público federal, narrou manter relação contratual de longa data com a instituição financeira, com a celebração de diversos contratos de crédito, dentre eles empréstimo consignado com parcelas mensais de R\$ 3.693,59. Sustentou que, em razão da pandemia de Covid-19 e do agravamento de suas responsabilidades familiares — notadamente despesas com tratamento de seu filho portador de paralisia cerebral —, viu-se impossibilitado de arcar com os compromissos assumidos, recorrendo à utilização de cartões de crédito e à portabilidade de seu salário. </p> <p align="justify"> A demanda originária foi proposta com o objetivo de obter a repactuação das dívidas, mediante a limitação dos descontos mensais em respeito ao mínimo existencial, nos termos da Lei nº 14.181/2021, bem como a suspensão de encargos considerados abusivos. </p> <p align="justify"> Inconformado, o autor interpôs apelação sustentando, em síntese:
 (i) a necessidade de aplicação integral da Lei nº 14.181/2021 (Lei do Superendividamento), que garante a preservação do mínimo existencial e autoriza a repactuação global das dívidas;
 (ii) a impossibilidade de restringir o mínimo existencial ao patamar fixo de R\$ 600,00, previsto no Decreto nº 11.150/2022;
 (iii) a nulidade da sentença por ter desconsiderado o procedimento próprio previsto no art. 104-B do Código de Defesa do Consumidor. </p> <p align="justify"> Requeru, ao final, a anulação da sentença e o retorno dos autos ao juízo de origem para prosseguimento do procedimento de

Processo	0283410-24.2023.8.06.0001
	repactuação judicial das dívidas. Contrarrrazões ofertadas. Nesse contexto, os autos vieram-me conclusos. E O RELATÓRIO NO ESSENCIAL. VOTO. Antes do estudo dos argumentos deste recurso, compete a este e. Relator exercer em análise perfunctória o Juízo de Admissibilidade, pelo qual declaro que o recurso ora sub examine atende a todos os requisitos intrínsecos e extrínsecos que compõem aquele crivo, levando-me, enfim, a concluir pelo seu conhecimento. Busca a parte recorrente a reforma da decisão do juízo a quo, que julgou improcedente o pedido realizado no bojo da demanda, relativo à readequação dos valores descontados de sua conta a título de empréstimo. Inicialmente, vale mencionar o tema 1085 do STJ firmado sob julgamento de recurso repetitivo, firmado em 30 de junho de 2023, onde o Superior Tribunal de Justiça fixou a seguinte tese: “são lícitos os descontos de parcelas de empréstimos bancários comuns em conta-corrente, ainda que utilizada para recebimento de salários, desde que previamente autorizados pelo mutuário e enquanto esta autorização perdurar, não sendo aplicável, por analogia, a limitação prevista no § 1º do art. 1º da Lei nº 10.820/2003, que disciplina os empréstimos consignados em folha de pagamento.” Busca a parte recorrente a reforma da decisão do juízo a quo, que julgou improcedente o pedido realizado no bojo da demanda, relativo à readequação dos valores descontados de sua conta a título de empréstimo. Inicialmente, vale mencionar o tema 1085 do STJ firmado sob julgamento de recurso repetitivo, firmado em 30 de junho de 2023, onde o Superior Tribunal de Justiça fixou a seguinte tese: “são lícitos os descontos de parcelas de empréstimos bancários comuns em conta-corrente, ainda que utilizada para recebimento de salários, desde que previamente autorizados pelo mutuário e enquanto esta autorização perdurar, não sendo aplicável, por analogia, a limitação prevista no § 1º do art. 1º da Lei nº 10.820/2003, que disciplina os empréstimos consignados em folha de pagamento.” No ensejo, cito trechos do voto de acórdão de relatoria do il. Ministro Marco Aurélio Bellizze, especificamente no que tange ao tratamento diferenciado da modalidade do empréstimo consignado em relação às demais espécies de mútuo bancário, considerada a distinção inserta nas características e no modo de operacionalização do empréstimo regulamentado pela Lei nº 10.820/2003: RECURSO ESPECIAL REPRESENTATIVO DA CONTROVÉRSIA. PRETENSÃO DE LIMITAÇÃO DOS DESCONTOS DAS PARCELAS DE EMPRÉSTIMO COMUM EM CONTA-CORRENTE, EM APLICAÇÃO ANALÓGICA DA LEI N. 10.820/2003, QUE DISCIPLINA OS EMPRÉSTIMOS CONSIGNADOS EM FOLHA DE PAGAMENTO. IMPOSSIBILIDADE. RATIFICAÇÃO DA JURISPRUDÊNCIA DO SUPERIOR TRIBUNAL DE JUSTIÇA, COM FIXAÇÃO DE TESE REPETITIVA. RECURSO ESPECIAL PROVIDO. [...] Sobre a questão de fundo, pontua-se, desde logo, que a jurisprudência do Superior Tribunal de Justiça perfilha o posicionamento de que não se aplica a limitação prevista na Lei n. 10.820/2003 (art. 1º, § 1º), para os contratos de empréstimos bancários livremente pactuados, nos quais haja previsão de desconto em contacorrente, ainda que usada para o recebimento de salário. [...] O empréstimo consignado apresenta-se, nesses termos, como uma das modalidades de empréstimo com menores riscos de inadimplência para a instituição financeira mutuante, na medida em que o desconto das parcelas do mútuo dá-se diretamente na folha de pagamento do trabalhador regido pela CLT, do servidor público ou do segurado do RGPS (Regime Geral de Previdência Social), sem nenhuma ingerência por parte do mutuário/correntista, o que, por outro lado, em razão justamente da robustez dessa garantia, reverte em taxas de juros significativamente menores em seu favor, se comparado com outros empréstimos. Uma vez ajustado o empréstimo consignado em folha de pagamento, não é dado ao mutuário, por expressa disposição legal, revogar a autorização concedida para que os descontos afetos ao mútuo ocorram diretamente em sua folha de pagamento, a fim de modificar a forma de pagamento ajustada. Nessa modalidade de empréstimo – que, a um só tempo, propicia ao fornecedor do crédito, sólida garantia contra a inadimplência; e ao mutuário, acesso a crédito por taxas de juros substancialmente menores das praticadas no mercado para outros empréstimos sem similar garantia –, a parte da remuneração do trabalhador comprometida à quitação do empréstimo tomado não chega nem sequer a ingressar em sua conta-corrente, não tendo sobre ela nenhuma disposição. Sob o influxo da autonomia da vontade, ao contratar o empréstimo consignado, o mutuário não possui nenhum instrumento hábil para impedir a dedução da parcela do empréstimo a ser

Processo	0283410-24.2023.8.06.0001
	descontada diretamente de sua remuneração, emprocedimento que envolve apenas a fonte pagadora e a instituição financeira. Inclusive, a informação sobre a existência de margem consignável, ao ensejo da contratação, é responsabilidade da fonte pagadora. É justamente em virtude do modo como o empréstimo consignado é operacionalizado que a lei estabeleceu um limite, um percentual sobre o qual o desconto consignado em folha não pode exceder. Revela-se claro o escopo da lei de, com tal providência, impedir que o tomador de empréstimo, que pretenda ter acesso a um crédito relativamente mais barato na modalidade consignado, acabe por comprometer sua remuneração como um todo, não tendo sobre ela nenhum acesso e disposição, a inviabilizar, por consequência, sua subsistência e de sua família. [...] Veja-se que, nas demais espécies de mútuo bancário, o estabelecimento (eventual) de cláusula que autoriza o desconto de prestações em conta-corrente, como forma de pagamento, consubstancia uma faculdade dada às partes contratantes, como expressão de sua vontade, destinada a facilitar a operacionalização do empréstimo contraído, sendo, pois, passível de revogação a qualquer tempo pelo mutuário. Nesses empréstimos, o desconto automático que incide sobre numerário existente em conta-corrente, devida e previamente autorizado pelo mutuário, como corolário da autonomia de vontade dos contratantes, decorre da própria obrigação assumida pela instituição financeira no bojo do contrato de conta-corrente de administração de caixa, procedendo, sob as ordens do correntista, aos pagamentos de débitos por ele determinados, desde que verificada a provisão de fundos a esse propósito. [...] O desconto operado pela instituição financeira sobre o numerário existente na contacorrente – em relação ao qual o récorrente possui livre disposição –, consubstancia procedimento absolutamente lícito, não se confundindo, como retoricamente se argumenta, com uma indevida retenção ou expropriação de patrimônio alheio ou com uma espúria constrição realizada por particular sobre o salário depositado na conta-corrente. Não se trata de indevida retenção de patrimônio alheio, na medida em que o desconto é precedido de expressa autorização do titular da conta-corrente, como manifestação de sua vontade, por ocasião da celebração do contrato de mútuo. Tampouco é possível equiparar o desconto em conta-corrente a uma dita constrição de salários, realizada por instituição financeira que, por evidente, não ostenta poder de império para tanto. Afinal, diante das características do contrato de conta-corrente já delineadas, o desconto, devidamente avençado e autorizado pelo mutuário, não incide, propriamente, sobre a remuneração ali creditada, mas sim sobre o numerário existente, sobre o qual não se tece nenhuma individualização ou divisão. [...] Não se encontra presente nos empréstimos comuns, com desconto em contacorrente, o fator de discriminação que justifica, no empréstimo consignado em folha de pagamento, a limitação do desconto na margem consignável estabelecida na lei de regência, o que impossibilita a utilização da analogia, com a transposição de seus regramentos àqueles. Reconhecida, nesses termos, a licitude da cláusula contratual em comento, mostra-se de suma relevância registrar, ainda, que a pretendida limitação dos descontos em conta-corrente, por aplicação analógica da Lei n. 10.820/2003, tampouco se revestiria de instrumento idôneo a combater o endividamento exacerbado, com vistas à preservação do mínimo existencial do mutuário. Essa pretensão, além de subverter todo o sistema legal das obrigações – afinal, tal providência, a um só tempo, teria o condão de modificar os termos ajustados, impondo-se ao credor o recebimento de prestação diversa, em prazo distinto daquele efetivamente contratado, com indevido afastamento dos efeitos da mora, de modo a eternizar o cumprimento da obrigação, num descabido dirigismo contratual –, não se mostraria eficaz, sob o prisma geral da economia, nem sequer sob o enfoque individual do mutuário, ao controle do superendividamento. Tal proceder, sem nenhum respaldo legal, importaria numa infundável amortização negativa do débito, com o aumento mensal e exponencial do saldo devedor, sem que haja a devida conscientização do devedor a respeito do dito "crédito responsável", o qual, sob a vertente do mutuário, consiste na não assunção de compromisso acima de sua capacidade financeira, sem que haja o comprometimento de seu mínimo existencial. Além disso, a generalização da medida – sem conferir ao credor a possibilidade de renegociar o débito, encontrando-se ausente uma política pública séria de "crédito responsável", em que as instituições financeiras, por outro lado, também não estimulem o endividamento imprudente – redundaria na restrição e no encarecimento do crédito, como efeito colateral. Ressai claro que a prevenção e o combate ao superendividamento, com vistas à preservação do mínimo existencial do mutuário, não se dão por meio de uma indevida intervenção judicial nos contratos, em substituição ao legislador. A esse relevante propósito, sobreveio – na seara adequada, portanto – a Lei n. 14.181/2021, que alterou disposições do Código de Defesa do Consumidor, para "aperfeiçoar a disciplina do crédito ao consumidor e dispor sobre a prevenção e o tratamento do superendividamento. [...] (REsp n. 1.872.441/SP, relator Ministro Marco Aurélio Bellizze, Segunda Seção, julgado em 9/3/2022, DJe de 15/3/2022.). Como visto, diante do que restou definido naquela Corte, <u>a limitação pretendida pela parte autora</u>

Processo	0283410-24.2023.8.06.0001
	underline;"> recorrente não alcança os empréstimos comuns, mas apenas os consignados. Em outras palavras, os descontos efetuados em conta-corrente com a anuência da correntista, na modalidade de crédito pessoal, relativos às parcelas dos empréstimos espontaneamente contraídos, não estão sujeitos ao percentual estabelecido para a consignação em folha de pagamento, assim como cobranças de dívidas de cartão de crédito. </p> <p align="justify">

 </p> <p align="justify"> No entanto, revisitando o caso concreto, verifica-se pelo extrato de pagamento de ID 26749403 e seguintes, que o empréstimo havido com o BANCO DO BRASIL S/A ocorreu em folha de pagamento de forma consignada, e não em conta corrente, o que atrai a incidência da limitação mencionada. <p align="justify">

 <p align="justify"> Com efeito, o STJ, também, no julgamento do AREsp 314.901/SP, em atenção aos princípios da razoabilidade e da dignidade da pessoa humana, firmou o entendimento de que os descontos de valores r realizados de forma consignada em folha de pagamento de salário, aposentadoria e pensão, ou diretamente na conta bancária em que o indivíduo recebe seus proventos ou benefícios previdenciários, devem ser limitados a 30% (trinta por cento) dos vencimentos líquidos, por força do caráter alimentar que envolve a verba em questão, sendo este o caso dos autos. <p align="justify"> A parte autora/recorrente recebe vencimentos líquidos (excluindo o imposto de renda e o plano de seguridade social, dentre outros) em cada folha de pagamento em R\$ 7.969,94, sendo subtraído a título de empréstimo consignado o montante de R\$ 3.693,59, o que corresponde a aproximadamente 46% dos vencimentos líquidos da parte autora, devendo, por isso, sofrer a limitação legal, pelo que deve ser reformada a decisão recorrida. <p align="justify">

 <p align="justify"> E é assim que, pelo exposto, conheço do recurso e dou-lhe parcial provimento, para acolher os pedidos autorais, determinando que o BANCO DO BRASIL S/A reajuste as cobranças das parcelas mensais dos empréstimos consignados de modo que não ultrapassem o limite de 30% (trinta por cento) dos vencimentos do autor, sob pena de aplicação de multa diária de R\$ 200,00 (duzentos reais), limitado a R\$ 10.000,00 (dez mil reais) a contar 48h da publicação desta decisão. Por conseguinte, devem ambas as partes arcam com o pagamento dos ônus sucumbenciais na mesma proporção (50%), sendo observada o benefício da gratuidade deferido ao recorrente. <p align="justify"> &#160; <p align="justify"> É como voto. <p align="justify"> &#160; <p align="justify"> Fortaleza/CE, 10 de setembro de 2025. <p align="justify"> &#160; <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center">&#160;</p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Relator </p></div>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0129343-77.2018.8.06.0001
Número de ordem	50

Processo	0129343-77.2018.8.06.0001
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Cédula de Crédito Bancário
Polo ativo	BANCO DO NORDESTE DO BRASIL SA
Advogado(s) - Polo ativo	TARCISIO REBOUCAS PORTO JUNIOR - (CE7216-A)
Polo passivo	ALAN DENIS FEIJAO LOIOLA ALAN COM DE CONFECÇÕES LTDA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0129343-77.2018.8.06.0001
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;">  </p> </div>

Processo	0129343-77.2018.8.06.0001
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	SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-

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	kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Processo: &#160;0129343-77.2018.8.06.0001 </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Classe: &#160;Apelação </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelante: <strong style="text-indent: 3cm;">Banco do Nordeste do Brasil S/A </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelado: &#160; <strong style="text-indent: 3cm;"> <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-

Processo	0129343-77.2018.8.06.0001
	variant-position: normal; font-variant-emoji: normal;"> ALAN DENIS FEIJAO LOIOLA e outros </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit- user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user- select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font- family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font- size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p align="justify"> Ementa DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PRESCRIÇÃO INTERCORRENTE. INÉRCIA DO CREDOR NÃO CONFIGURADA. DEMORA ATRIBUÍDA AO PODER JUDICIÁRIO. IMPOSSIBILIDADE DE APLICAÇÃO RETROATIVA DA LEI Nº 14.195/2021. SENTENÇA REFORMADA. RECURSO PROVIDO. </p> <p lang="PT-BR" xml:lang="PT-BR"> &#160; </p><hr /> <p lang="PT-BR" xml:lang="PT-BR"> medium;">&#160; </p> <h3> I. CASO EM EXAME </h3> <p lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <p align="justify"> Apelação cível interposta por Banco do Nordeste do Brasil S/A contra sentença que reconheceu a prescrição intercorrente e extinguiu a execução de título extrajudicial ajuizada em face de Alan Denis Feijão Loiola e outros. </p> <p lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <hr /> <p lang="PT-BR" xml:lang="PT- BR"> &#160; </p> <h3> II. QUESTÃO EM DISCUSSÃO </h3> <p lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <p align="justify"> A questão em discussão consiste em definir se houve efetiva inércia do credor a justificar a incidência da prescrição intercorrente ou se a paralisação do feito decorreu exclusivamente da morosidade judicial, afastando a prescrição. </p> <p lang="PT- BR" xml:lang="PT-BR"> &#160; </p> <hr /> <p lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <h3> III. RAZÕES DE DECIDIR </h3> <p lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <p align="justify"> A prescrição intercorrente, na redação original do CPC/2015, pressupõe a inércia injustificada do credor, após suspensão do processo por um ano, conforme art. 921, §§ 1º e 4º. </p> <p align="justify"> A Lei nº 14.195/2021 alterou o termo inicial da contagem do prazo, mas a nova disciplina não retroage para atingir processos em curso que já estavam regidos pela redação original do dispositivo. No caso, a primeira tentativa de penhora ocorreu antes da promulgação da lei de 2021, além do que não houve, em momento nenhum dos autos, despacho de suspensão do processo, requisito que era essencial à luz dos §§ 1º e 4º do art. 921 do CPC (redação original). </p> <p align="justify"> Com efeito, "não se verifica a prescrição intercorrente se não houve decisão judicial determinando a suspensão da execução por ausência de bens penhoráveis" (TJ-MT 00009220920128110044 MT, Relator.: SEBASTIAO BARBOSA FARIAS, Data de Julgamento: 25/10/2022, Primeira Câmara de Direito Privado, Data de Publicação: 27/10/2022). </p> <p align="justify"> No caso concreto, o exequente diligenciou reiteradamente na busca de endereços e bens penhoráveis, não se verificando desídia. A paralisação processual resultou de demora do Poder Judiciário. </p> <p align="justify"> Nos termos da Súmula 106 do STJ, a demora na citação por motivos inerentes ao mecanismo da Justiça não pode ser imputada ao credor para fins de prescrição. </p> <p lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <hr /> <p lang="PT-BR" xml:lang="PT- BR"> &#160; </p> <h3> <span

Processo	0129343-77.2018.8.06.0001
	style="font-size: medium;">>IV. DISPOSITIVO E TESE </h3> <p lang="PT-BR" xml:lang="PT-BR"> &#160;</p> <p align="justify"> Recurso provido. </p> <p lang="PT-BR" xml:lang="PT-BR"> &#160;</p> <p align="justify"> Tese de julgamento </p> <p lang="PT-BR" xml:lang="PT-BR"> &#160;</p> <p align="justify"> A prescrição intercorrente depende de inércia injustificada do credor, não se configurando quando a paralisação decorre de morosidade judicial. </p> <p align="justify"> A demora na citação, quando atribuível ao próprio Judiciário, não autoriza o reconhecimento da prescrição intercorrente. </p> <p lang="PT-BR" xml:lang="PT-BR"> &#160;</p> <hr /> <p lang="PT-BR" xml:lang="PT-BR"> &#160;</p> <p align="justify"> Dispositivos relevantes citados: CPC/2015, arts. 8º, 921, §§ 1º e 4º, 924, V, e 487, II; CC, art. 206, § 5º, I.
 Jurisprudência relevante citada: STJ, REsp 1.698.249/RJ, Rel. Min. Nancy Andrighi, j. 14/08/2018; STJ, REsp 2.090.768/PR, Rel. Min. Nancy Andrighi, j. 12/11/2024; STJ, AgInt no AREsp 1.774.763/PR, Rel. Min. Gurgel de Faria, j. 27/06/2022; TJCE, Apelação Cível nº 0001186-54.2010.8.06.0167, Rel. Des. Francisco Bezerra Cavalcante, j. 04/02/2025; TJCE, Apelação Cível nº 0014186-98.2012.8.06.0055, Rel. Des. José Ricardo Vidal Patrocínio, j. 25/09/2024. </p> <p lang="PT-BR" xml:lang="PT-BR"> &#160;</p> <p align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes&#160; autos, acorda a 1ª Câmara de Direto Privado do&#160; Tribunal de Justiça do Estado do Ceará,&#160;por&#160; unanimidade, em conhecer do recurso e dar-lhe&#160; provimento, nos termos do voto do Relator. </p> <p align="center"> Fortaleza, 10 de setembro de 2025. </p> <p align="center"> &#160;</p> <p align="center"> Presidente do Órgão Julgador </p> <p align="center"> &#160;</p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado </p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Relator </p> <p lang="PT-BR" xml:lang="PT-BR"> &#160;</p> <p lang="PT-BR" xml:lang="PT-BR">
 <p lang="PT-BR" xml:lang="PT-BR"> RELATÓRIO </p> <p align="justify"> Cuida-se de&#160; apelação cível&#160;interposta por&#160; Banco do Nordeste do Brasil S/A&#160;contra a sentença proferida pelo Juízo&#160;a quo, que reconheceu a ocorrência de&#160; prescrição intercorrente&#160;e extinguiu a execução de título extrajudicial ajuizada em face de&#160; ALAN DENIS FEIJAO LOIOLA e outros, com fundamento nos arts. 924, V, e 487, II, do CPC. </p> <p align="justify"> Em suas razões recursais, o apelante sustenta, preliminarmente, violação aos princípios do&#160; razoabilidade, proporcionalidade e eficiência&#160;(art. 8º do CPC), argumentando que a extinção da execução configura "rigor excessivo", pois "a efetividade da atividade jurisdicional não pode ser suprimida por formalidades que resguardam apenas as normas processuais, relegando o direito material e até mesmo a própria realidade dos fatos a um segundo plano". </p> <p align="justify"> Defende que a sentença incorreu em equívoco ao reputar configurada a prescrição intercorrente, uma vez que&#160; jamais permaneceu inerte, tendo, ao contrário, diligenciado sucessivamente na indicação de endereços e requerido novas tentativas de citação. Nesse sentido, afirma que "não se pode punir o credor por falhas estruturais da própria Justiça", razão pela qual a paralisação do feito não poderia ser atribuída à sua desídia. </p> <p align="justify"> Aduz que, para a caracterização da prescrição intercorrente, são necessários cumulativamente: (i) a intimação do credor para manifestação; (ii) a inércia injustificada por prazo superior ao prescricional; e (iii) a ausência de causas suspensivas ou impeditivas. Reforça que, conforme entendimento do STJ, "somente a inércia injustificada do credor caracteriza a prescrição intercorrente" (REsp 1.698.249/RJ,

Processo	0129343-77.2018.8.06.0001
	Rel. Min. Nancy Andrighi, j. 14/08/2018). Argumenta, ainda, que eventual lapso temporal deve ser atribuído à morosidade do Poder Judiciário, incidindo a Súmula 106 do STJ: "Proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da Justiça, não justifica o reconhecimento da prescrição ou decadência". Nesse ponto, destaca que: a primeira tentativa de citação ocorreu em 05/07/2018; a exequente foi intimada do insucesso apenas em 09/09/2019, quando se manifestou tempestivamente; nova deliberação judicial somente ocorreu em 15/03/2021; e o pedido de renovação da citação, protocolado em 29/03/2021, foi apreciado apenas em 21/03/2022. Alega, portanto, que o decurso de tempo não decorreu de sua inércia, mas sim da demora judicial, o que inviabiliza o reconhecimento da prescrição. Por fim, requer o provimento da apelação para cassar a sentença recorrida, reconhecendo-se a inexistência de prescrição intercorrente e determinando o regular prosseguimento da execução. É o relatório. VOTO Presentes os requisitos de admissibilidade previsto na legislação. Conheço, então, do recurso. Busca o recorrente a reforma da sentença do juízo a quo, que extinguiu a ação de execução de título extrajudicial com resolução do mérito diante do reconhecimento da prescrição intercorrente. A prescrição intercorrente, como é de conhecimento ordinário, ocorre quando o exequente permanece inerte, sem movimentar a execução ou o cumprimento de sentença, pelo prazo da prescrição da pretensão de direito material. Embora não contasse com previsão expressa no CPC/1973, jurisprudência desta Corte Superior já admitia a figura da prescrição intercorrente, que estava intimamente vinculada à inércia da parte. Inovando em relação a ordem jurídica anterior, o novo CPC passou a disciplinar o instituto, estatuinto o seu regime jurídico próprio, sobretudo, nos arts. 921 a 923. De acordo com o art. 921, inciso III e §1º, a execução deverá ser suspensa quando não for localizado o executado ou bens penhoráveis, pelo prazo de um ano, durante o qual também se suspenderá a prescrição. Sobre o instituto da prescrição intercorrente, o Superior Tribunal de Justiça fixou o seguinte entendimento: PROCESSUAL CIVIL E TRIBUTÁRIO. EXECUÇÃO FISCAL. PRESCRIÇÃO INTERCORRENTE. INOCORRÊNCIA. AGRAVO INTERNO. MANIFESTA IMPROCEDÊNCIA. MULTA. CABIMENTO. 1. De acordo com a orientação jurisprudencial firmada no julgamento do Recurso Especial repetitivo 1.340.553/RS, o prazo para a contagem da prescrição intercorrente começa depois de esgotado o prazo de um ano da intimação do exequente acerca da não localização do devedor ou de bens penhoráveis, referente à automática suspensão do processo. 2. Hipótese em que houve citação e penhora de bens nomeados pela própria devedora, tendo a exequente requerido as providências cabíveis para a liquidação da garantia, cuja realização demorou a acontecer por culpa exclusiva da máquina judiciária, de modo que, não existindo a intimação sobre inexistência de bens penhoráveis, não há falar sequer de início da contagem do prazo da prescrição intercorrente, muito menos de sua consumação. 3. A conformidade do acórdão recorrido com o referido precedente obrigatório enseja a aplicação do óbice de conhecimento estampado na Súmula 83 do STJ. 4. É manifestamente improcedente agravo interno que busca reformar decisão respaldada em tese firmada em julgamento de recurso especial repetitivo. 5. Agravo interno desprovido, com aplicação de multa. (AgInt no AREsp n. 1.774.763/PR, relator Ministro Gurgel de Faria, Primeira Turma, julgado em 27/6/2022, DJe de 5/8/2022.) Decorrido o referido prazo de um ano sem que seja localizado o executado ou que sejam encontrados bens penhoráveis, o juiz ordenará o arquivamento dos autos (art. 921, §2º), sendo certo, no entanto, que os autos deverão ser desarquivados para prosseguimento da execução se a qualquer tempo forem encontrados bens penhoráveis (art. 921, §3º). O termo inicial

Processo	0129343-77.2018.8.06.0001
	do prazo da prescrição intercorrente é estabelecido pelo §4º do art. 921, que, na redação original do código, dispunha que o termo a quo seria o término do prazo de suspensão da execução. Aponta a doutrina que, de acordo com a redação original do CPC/2015, “a prescrição intercorrente dependia essencialmente de uma desídia do exequente na movimentação do processo, porque enquanto houvesse tal movimentação, ainda que sem a localização de bens a serem penhorados ou ainda da localização do próprio executado, a execução mantinha-se em trâmite” (NEVES, Daniel Amorim Assumpção. Manual de Direito Processual Civil: volume único. 16. ed. São Paulo: JusPdivm, 2024, p. 972-973). No entanto, a Lei n. 14.195/2021 introduziu importantes alterações na disciplina da prescrição intercorrente, alterando o §4º do art. 921 do CPC/2015, que passou a prever que o termo inicial do prazo de prescrição intercorrente será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis, e será suspensa, por uma única vez, pelo prazo máximo previsto no § 1º do mesmo dispositivo legal, isto é, por um ano. Observa-se, desse modo que o termo inicial do prazo foi deslocado para momento anterior, facilitando a ocorrência da prescrição. Ou seja, pela nova redação, “logo que houver a situação de dificuldade na execução, já terá início a fluência do prazo prescricional – e, na sequência, haverá a suspensão do processo, e da prescrição, pelo prazo de 1 ano” (GAJARDONI, Fernando da Fonseca...[et.al.] Comentários ao código de processo civil. 5. Ed. Rio de Janeiro: Forense, 2022). Em síntese, atualmente, iniciada a execução, a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis dá início ao prazo da prescrição intercorrente. Essa não localização implica a suspensão da execução e do prazo da prescrição intercorrente, que já tinha iniciado. Finalmente, o prazo da prescrição intercorrente voltará a fluir ao final do prazo de um ano de suspensão da execução. Transcorrido o prazo de prescrição da pretensão de direito material do credor, o juiz, depois de ouvida as partes, no prazo de quinze dias, poderá, de ofício, reconhecer a prescrição intercorrente extinguindo o processo, sem ônus para as partes. Tal é a disciplina atual da prescrição intercorrente no ordenamento jurídico nacional. O ponto central da controvérsia consiste em definir se a nova redação do §4º do art. 921 do CPC – que alterou significativamente o termo inicial do prazo de prescrição intercorrente – é aplicável retroativamente. Nesse contexto, o art. 14 do CPC dispõe que “a norma processual não retroagirá e será aplicável imediatamente aos processos em curso, respeitados os atos processuais praticados e as situações jurídicas consolidadas sob a vigência da norma revogada”. Em primeiro lugar, se o processo for posterior às modificações introduzidas pela Lei n. 14.195/2021 ou se a execução infrutífera ocorrer quando já em vigor a nova lei, dúvida não há que será aplicável a lei nova, de modo que o termo inicial do prazo de prescrição intercorrente será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis. Em segundo lugar, se o processo estiver em curso no momento da entrada em vigor da Lei n. 14.195/2021 e ainda não tiver sido determinada a suspensão da execução por ausência de localização do executado ou de bens penhoráveis, aplica-se a nova lei. Isso significa que, após a entrada em vigor da Lei n. 14.195/2021, deverá ser realizada nova tentativa de localização do devedor ou de bens penhoráveis, que, se infrutífera, dará início ao transcurso do prazo da prescrição intercorrente nos termos da nova redação do §4º do art. 921 do CPC. Em terceiro lugar, se o processo estiver em curso no momento da entrada em vigor da Lei n. 14.195/2021, mas já tiver iniciado o transcurso do prazo da prescrição intercorrente nos termos da redação original do §4º do art. 921 do CPC, não se aplicará a nova lei. Em outras palavras, se o prazo da prescrição intercorrente já havia sido deflagrado durante a vigência da disciplina anterior, continuará por ela regulado. Desse modo, conclui-se que o novo regime da prescrição intercorrente introduzido pela Lei n. 14.195/21 não pode ser aplicado retroativamente, mas apenas: a) aos novos processos ou àqueles em que a execução infrutífera for posterior à nova lei; e b) aos processos anteriores à nova lei no qual ainda não tenha sido determinada a suspensão da execução. A respeito: APELAÇÃO. CIVIL E PROCESSO CIVIL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PRESCRIÇÃO INTERCORRENTE. EXEQUENTE QUE SE MANTEVE PROATIVA QUANTO À LOCALIZAÇÃO DO EXECUTADO E INDICAÇÃO DE BENS PASSÍVEIS DE PENHORA. INÉRCIA NÃO CONFIGURADA. IMPOSSIBILIDADE DE APLICAÇÃO RETROATIVA DA LEI 14.195/2021. PRINCÍPIO DA APLICAÇÃO IMEDIATA DAS NORMAS PROCESSUAIS (ART. 14 DO CPC). DIREITO

Processo	0129343-77.2018.8.06.0001
	INTERTEMPORAL. TERMO INICIAL. DATA DA PUBLICAÇÃO DA LEI 14.195/2021. SENTENÇA DESCONSTITUÍDA. RECURSO PROVIDO. 1. O instituto da prescrição intercorrente, na redação original do CPC de 2015, tinha como pressuposto a configuração da inércia do credor e a prévia suspensão do feito pelo prazo de um ano, de acordo com os §§ 1º e 4º do art. 921. Esse requisito foi reforçado por tese fixada pelo STJ, relativa à prescrição intercorrente no processo civil, mantendo-se fiel ao pressuposto da inércia para reconhecimento da prescrição intercorrente, independentemente do êxito das diligências postuladas (IAC no REsp 1.604.412/SC, Rel. Ministro Marco Aurélio Bellizze, 2ª Seção, J. 27/06/2018). 2. A nova redação do § 4º, trazida pela Lei nº 14.195/2021, não pode retroagir e alcançar atos processuais já praticados e modificar os seus efeitos no passado, pois, antes do seu advento, a prescrição intercorrente, nas execuções civis, somente se caracterizava com a inércia do credor por prazo superior ao prazo prescricional. 3. In casu, há de se evidenciar que o Exequente tentou realizar a citação da parte promovida diversas vezes, e em todas elas não obteve êxito. É o que se observa das fls. 111 e 120. Em seguida, após tentativas de obtenção de informações e busca de bens em diversos sistemas a disposição do Poder Judiciário, o Banco exequente requereu a expedição de mandado de penhora de um imóvel indicado, pleito que sequer foi apreciado pelo juízo singular. Observa-se que o exequente manteve-se diligente e atuante nos autos, afastando qualquer tipo de argumentação quanto a uma possível desídia sua. 4. Por outro lado, o prazo de suspensão da execução findou quando ainda não estava vigente a Lei 14.195/2021, entretanto o juiz sentenciante utilizou como prazo inicial da prescrição intercorrente a data da primeira citação infrutífera e sem penhora de bens (10/08/2010). Verifica-se, portanto, o equívoco no entendimento adotado pelo Juízo sentenciante quanto à configuração da prescrição intercorrente no caso concreto, tendo em vista que a regra prevista na nova redação do § 4º do art. 921 do CPC somente poderia ser aplicada a atos processuais que se realizaram após o início da sua vigência. 5. Recurso de Apelação conhecido e provido. Sentença anulada. (Apelação Cível nº 0001186-54.2010.8.06.0167, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento: 04/02/2025, data da publicação: 04/02/2025) DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PRESCRIÇÃO INTERCORRENTE. NÃO OCORRÊNCIA. PRESSUPOSTO DA INÉRCIA NAS EXECUÇÕES CIVIS QUE SOMENTE DEIXOU DE EXISTIR COM A LEI Nº 14.195/2021. IMPOSSIBILIDADE DE APLICAÇÃO RETROATIVA DO NOVO REGIME DE PRESCRIÇÃO. PRINCÍPIO DA APLICAÇÃO IMEDIATA DAS NORMAS PROCESSUAIS (ART. 14 DO CPC). DIREITO INTERTEMPORAL. PRAZO QUINQUENAL NÃO TRANSCORRIDO. SENTENÇA CASSADA. RECURSO PROVIDO. O cerne da controvérsia recursal consiste em analisar se deve ser mantida a sentença que decretou, de ofício, a ocorrência de prescrição intercorrente e, assim, extinguiu a execução com base no art. 206, § 5º, I, do Código Civil. O instituto da prescrição intercorrente, na redação original do CPC de 2015, tinha como pressuposto a configuração da inércia do credor e a prévia suspensão do feito pelo prazo de um ano, de acordo com os §§ 1º e 4º do art. 921. Esse requisito foi reforçado por tese fixada pelo STJ, relativa à prescrição intercorrente no processo civil, mantendo-se fiel ao pressuposto da inércia para reconhecimento da prescrição intercorrente, independentemente do êxito das diligências postuladas (IAC no REsp 1.604.412/SC, Rel. Ministro Marco Aurélio Bellizze, 2ª Seção, J. 27/06/2018). 6. Cumpre dizer que a nova redação do § 4º, trazida pela Lei nº 14.195/2021, não pode retroagir e alcançar atos processuais já praticados e modificar os seus efeitos no passado, pois, antes do seu advento, a prescrição intercorrente, nas execuções civis, somente se caracterizava com a inércia do credor por prazo superior ao prazo prescricional. No caso, verifica-se o equívoco na sentença proferida, pois a regra prevista na nova redação do § 4º do art. 921 do CPC somente poderia ser aplicada a atos processuais que se realizaram após o início da sua vigência. A propósito, é de se observar que a executada somente veio a ser citada em 15 de setembro de 2021 (fl. 89), quase nove anos após o ajuizamento da ação, mas não houve, até aquele momento, a prolação de despacho suspendendo o andamento da execução, requisito que era essencial à luz dos §§ 1º e 4º do art. 921 do CPC (redação original). No decorrer da tramitação processual, a tentativa de penhora de bens da executada restou inexitosa, como se observa da certidão do meirinho à fl. 94, lavrada em 23 de novembro de 2021, que atestou a inexistência de bens penhoráveis em nome da empresa demandada. Logo, a teor do § 4º do art. 921 do CPC, com a redação trazida pela Lei nº 14.195/2021, o prazo da prescrição intercorrente se iniciou a partir do resultado infrutífero de localização de bens penhoráveis em nome do devedor, ou seja, em 23 de novembro de 2021. O prazo quinquenal da prescrição, portanto, tem esse termo inicial, ainda está em curso e findar- se-á somente em 23 de novembro de 2026. Não configurada a prescrição intercorrente, a sentença deve ser anulada para possibilitar o retorno dos autos à origem a fim de dar continuação ao andamento processual. Recurso conhecido e provido. Sentença anulada. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (Apelação Cível nº 0014186-98.2012.8.06.0055, Rel. Desembargador(a) JOSE

Processo	0129343-77.2018.8.06.0001
	RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 25/09/2024, data da publicação: 25/09/2024) </p> <p align="justify"> RECURSO ESPECIAL. PROCESSUAL CIVIL. PRESCRIÇÃO INTERCORRENTE. CPC/2015. NOVO REGIME JURÍDICO INTRODUZIDO PELA LEI N. 14.195/21. APLICAÇÃO RETROATIVA. IMPOSSIBILIDADE. 1. Ação de execução de título executivo extrajudicial da qual foi extraído o presente recurso especial, interposto em 8/5/2023 e concluso ao gabinete em 23/8/2023. 2. O propósito recursal consiste em dizer se o novo regime da prescrição intercorrente introduzido pela Lei n. 14.195/21 pode ser aplicado retroativamente. 3. Inovando em relação ao CPC/1973, o CPC/2015 passou a disciplinar, expressamente, o instituto da prescrição intercorrente, erigindo o seu regime jurídico próprio, sobretudo, nos arts. 921 a 923. 4. De acordo com o art. 921, inciso III e § 1º do CPC/2015, a execução deverá ser suspensa quando não for localizado o executado ou bens penhoráveis, pelo prazo de um ano, durante o qual também se suspenderá a prescrição. 5. Nos termos da redação original do art. 921, § 4º, do CPC/2015, decorrido o prazo de suspensão de um ano sem manifestação do exequente, começaria a correr o prazo de prescrição intercorrente. 6. A Lei n. 14.195/2021 introduziu importantes alterações na disciplina da prescrição intercorrente, alterando o § 4º do art. 921 do CPC/2015, que passou a prever que o termo inicial do prazo de prescrição intercorrente será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis, e será suspensão, por uma única vez, pelo prazo máximo previsto no § 1º do mesmo dispositivo legal. 7. A partir da entrada em vigor da Lei n. 14.195/2021, ao contrário do que se verificava na redação original do código, não há mais necessidade de desídia do credor para a consumação da prescrição intercorrente, cujo prazo iniciará automaticamente. 8. O novo regime da prescrição intercorrente introduzido pela Lei n. 14.195/21 não pode ser aplicado retroativamente, mas apenas: a) aos novos processos ou àqueles em que a execução infrutífera for posterior à nova lei; e b) aos processos anteriores à nova lei no qual ainda não tenha sido determinada a suspensão da execução. 9. Na hipótese dos autos, não merece reforma o acórdão recorrido, pois incide na espécie a redação original do CPC/2015 e não aquela introduzida pela Lei n. 14.195/21, que não deve ser aplicada retroativamente a uma execução iniciada em 2015 e cuja suspensão findou em 2018. Além disso, Corte de origem constatou que não houve qualquer desídia da parte exequente - requisito exigido antes da Lei n. 14.195/21-, o que afasta a caracterização da prescrição intercorrente à luz da redação original do CPC/2015. 10. Recurso especial não provido. (STJ - REsp: 2090768 PR 2023/0280453-3, Relator.: Ministra NANCY ANDRIGHI, Data de Julgamento: 12/11/2024, T3 - TERCEIRA TURMA, Data de Publicação: DJe 14/11/2024) </p> <p align="justify"> No caso, a primeira tentativa de penhora ocorreu antes da promulgação da lei de 2021, além do que não houve, em momento nenhum dos autos, despacho de suspensão do processo, requisito que era essencial à luz dos §§ 1º e 4º do art. 921 do CPC (redação original). </p> <p align="justify"> Com efeito, não se verifica a prescrição intercorrente se não houve decisão judicial determinando a suspensão da execução por ausência de bens penhoráveis (TJ-MT 00009220920128110044 MT, Relator.: SEBASTIAO BARBOSA FARIAS, Data de Julgamento: 25/10/2022, Primeira Câmara de Direito Privado, Data de Publicação: 27/10/2022). </p> <p align="justify"> Nesta direção: </p> <p align="justify"> EMENTA: AGRADO DE INSTRUMENTO. AÇÃO DE EXECUÇÃO. PRELIMINAR. OFENSA AO PRINCÍPIO DA DIALETICIDADE. REJEIÇÃO. CÉDULA DE CRÉDITO BANCÁRIO. PRESCRIÇÃO TRIENAL. CITAÇÃO VÁLIDA DE UM CODEVEDOR SOLIDÁRIO. ART. 204, § 1º DO CÓDIGO CIVIL. PRESCRIÇÃO INTERCORRENTE. NÃO VERIFICADA. - Não há que se falar em ofensa ao princípio da dialeticidade se a parte recorrente, em sua peça recursal, enfrentou suficientemente os fundamentos da sentença - Havendo a citação válida de um dos devedores solidários, interrompe-se a prescrição também em relação aos demais, nos termos do § 1º, do art. 204 do Código Civil - Inexistindo nos autos decisão suspendendo o processo de execução por ausência de bens penhoráveis (art. 921, III do CPC) e tendo a parte exequente se manifestado reiteradamente pugnando por providências, a fim de receber o seu crédito, não há que se falar em configuração da prescrição intercorrente. </p> <p align="justify"> (TJ-MG - Agravo de Instrumento: 2538389-23.2023.8.13.0000, Relator.: Des. (a) Aparecida Grossi, Data de Julgamento: 03/04/2024, 17ª CÂMARA CÍVEL, Data de Publicação: 03/04/2024) </p> <p align="justify"> Execução de título extrajudicial - prescrição intercorrente - ausência de decisão de suspensão ou arquivamento do feito - ausência de início do prazo prescricional nos termos definidos pelo Superior Tribunal de Justiça no julgamento ao IAC nº 1.604.412-SC ou no art. 921, § 4º do Código de Processo Civil, em sua redação original - ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis - termo "a quo" definido pela alteração promovida no art. 921, § 4º do Código de Processo Civil pela Lei nº 14.195/21 - impossibilidade de retroação para

Processo	0129343-77.2018.8.06.0001
	atingir atos processuais anteriores - prescrição intercorrente afastada - sentença anulada - retorno dos autos à origem - recurso provido para esse fim.&#160;(TJ-SP - Apelação Cível: 1000265-62.2014 .8.26.0529 Santana de Parnaíba, Relator.: Coutinho de Arruda, Data de Julgamento: 14/03/2024, 16ª Câmara de Direito Privado, Data de Publicação: 14/03/2024) </p> <p align="justify"> Logo, pelos fundamentos expostos, não há que se falar em prescrição intercorrente, pelo que a reforma da sentença é medida impositiva. </p> <p align="justify"> Cotejando o processo de origem, verifiquei que o exequente/apelante, em todas as oportunidades em que restou intimado para dar seguimento ao feito, bem como localização o endereço do acionado, manifestou-se nos autos, solicitando, inclusive, a utilização do BACENJUD para localizar bens do devedor. </p> <p align="justify"> &#160; </p> <p align="justify"> Com efeito, pela simples análise do trâmite processual, vislumbrei que a paralisação processual não ocorreu por desídia do exequente/recorrente, que diligentemente apresentou diversas petições nos autos, ficando o processo paralisado por&#160;culpa exclusiva da máquina&#160;pública, não havendo que se falar, portanto,&#160;em&#160;prescrição intercorrente. </p> <p align="justify"> &#160; </p> <p align="justify"> Deve, portanto, ser reformada a decisão recorrida. </p> <p align="justify"> &#160; </p> <p align="justify"> E é assim que, pelo exposto, conheço do apelo e dou-lhe provimento, desconstituindo a sentença recorrida, devendo o processo retornar à origem para sua regular tramitação. </p> <p align="justify"> &#160; </p> <p align="justify"> É COMO VOTO. </p> <p align="justify"> &#160; </p> <p align="justify"> Fortaleza/CE, 10 de setembro&#160;de 2025. </p> <p align="justify"> &#160; </p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado </p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Relator </p> <p lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p></div>
Processo	0230165-06.2020.8.06.0001
Número de ordem	51
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigações de Fazer / Não Fazer
Polo ativo	ULTRA SOM SERVICOS MEDICOS S.A.
Advogado(s) - Polo ativo	NELSON WILIANS FRATONI RODRIGUES - (CE16599-A)
Polo passivo	Manuela de Souza Eduardo GABRIEL SILVA PEREIRA SANTOS
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0230165-06.2020.8.06.0001
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> </p> </div>

Processo	0230165-06.2020.8.06.0001
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	Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph

Processo	0230165-06.2020.8.06.0001
	transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 23px; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Apelado: &#160; Gabriel Silva Pereira Santos e outro </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p align="justify"> Ementa: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. ERROR IN PROCEDENDO. EMENDA À INICIAL. CONVERSÃO DE AÇÃO MONITÓRIA EM AÇÃO DE COBRANÇA. SENTENÇA PROFERIDA COMO SE MONITÓRIA FOSSE. VIOLAÇÃO AOS PRINCÍPIOS DA CONGRUÊNCIA E DA ADSTRIÇÃO. ARTS. 141 E 492 DO CPC. NULIDADE CONFIGURADA. SENTENÇA CASSADA. </p> <h3> >I. CASO EM EXAME </h3> <p align="justify"> Cuida-se de recurso de apelação interposto por Ultra Som Serviços Médicos Ltda em face de sentença proferida pelo Juiz de Direito da 29ª VARA CÍVEL DE FORTALEZA / CEARÁ que, acolhendo os embargos monitorios de Gabriel Silva Pereira Santos e outro, julgou improcedentes os pedidos veiculados na ação monitoria que ajuizou. </p> <h3> II. QUESTÃO EM DISCUSSÃO </h3> <p align="justify"> A questão em discussão consiste em verificar se a sentença que julgou a lide como ação monitoria, em vez de ação de cobrança, viola os princípios da congruência e da adstrição, configurando nulidade por error in procedendo. </p> <h3> III. RAZÕES DE DECIDIR </h3> <p align="justify"> A sentença deve guardar absoluta correlação com a demanda proposta, sob pena de nulidade por julgamento extra, ultra ou citra petita (CPC, arts. 141 e 492). </p> <p align="justify"> Durante a tramitação do procedimento monitorio, antes da citação, o recorrente/autor formulou pedido nos autos requestando a emenda da inicial para conversão da monitoria no rito ordinário ação de cobrança (ID 25776950), o que restou acolhido pelo juízo a quo através da decisão de ID 25776954, o que fez nos seguintes termos: “Defiro o pleito de aditamento da inicial, eis que não restou formalizada a relação processual até o momento. Prosseguimento o pleito inicial, como Ação de Cobrança devendo o trâmite obedecer o rito ordinário. Proceda-se as anotações relativa a mudança da nomenclatura da Ação de Monitoria para Cobrança”. </p> <p align="justify"> Todavia, ao prolatar a sentença, o juízo a quo olvidou-se dessa modificação processual e julgou improcedente a ação monitoria, e não a ação de cobrança que passou a ser a demanda em tramitação. </p> <p align="justify"> Verifica-se, assim, que a decisão impugnada padece de vício de congruência, porquanto não apreciou a demanda tal como delimitada após a emenda à inicial, violando os arts. 141 e 492 do Código de Processo Civil, que impõem ao julgador a estrita observância dos limites em que a lide foi proposta.

Processo	0230165-06.2020.8.06.0001
	Hapvida. </p> <p align="justify"> Os réus apresentaram embargos monitórios, defendendo, em síntese, que o paciente deu entrada em estado grave de saúde (septicemia), ocasião em que o plano de saúde recusou atendimento em razão de período de carência. Alegaram ainda que a cobrança seria indevida, à luz dos arts. 12 e 35-C, I, da Lei nº 9.656/1998. </p> <p align="justify"> &#160; </p> <p align="justify"> Impugnação foi ofertada pela autora, que reiterou a legalidade da cobrança. </p> <p align="justify"> &#160; </p> <p align="justify"> Sobreveio sentença que julgou improcedente a ação monitória, sob o fundamento de que a cobrança não poderia prevalecer diante da negativa abusiva de cobertura pelo plano de saúde, aplicando-se, ainda, a proteção do Código de Defesa do Consumidor. </p> <p align="justify"> &#160; </p> <p align="justify"> Irresignada, a parte autora interpôs apelação, sustentando, em síntese:
 (i) que a cobrança decorre de relação contratual própria, não se confundindo com o vínculo entre o paciente e a operadora do plano de saúde;
 (ii) que a negativa da Hapvida não poderia afastar a responsabilidade dos apelados, que firmaram termo de assunção de responsabilidade financeira;
 (iii) que eventual abusividade na negativa da operadora deve ser discutida em ação própria, não cabendo ao hospital suportar os custos;
 (iv) que não se configurou estado de perigo, pois não houve onerosidade excessiva nem vício de consentimento; (v) invocou jurisprudência do Superior Tribunal de Justiça e do Tribunal de Justiça do Ceará no sentido de reconhecer a legitimidade da cobrança por serviços médico-hospitalares prestados, ainda que negada a cobertura pelo plano de saúde. </p> <p align="justify"> &#160; </p> <p align="justify"> Ao final, requereu a reforma integral da sentença, com o julgamento de procedência da ação monitória. </p> <p align="justify"> &#160; </p> <p align="justify"> Contrarrrazões foram apresentadas. </p> <p align="justify">

 </p> <p align="justify"> É o relatório. </p> <p align="justify"> &#160; </p> <p align="justify"> VOTO. </p> <p align="justify"> &#160; </p> <p align="justify"> Exercendo juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. </p> <p align="justify"> &#160; </p> <p align="justify"> Conheço, pois, do apelo. </p> <p align="justify"> &#160; </p> <p align="justify"> Busca a parte recorrente a reforma da sentença do juízo a quo, que julgou improcedentes os pedidos veiculados na ação monitória ajuizada em desfavor do recorrido. </p> <p align="justify"> &#160; </p> <p align="justify"> A despeito da irresignação recursal, cotejando o caderno processual, verifiquei a ocorrência de nulidade processual, acarretando a desconstituição da sentença. </p> <p align="justify"> &#160; </p> <p align="justify"> Pois bem. </p>

Processo	0230165-06.2020.8.06.0001
	E ADMINISTRATIVO. RECURSO ESPECIAL. [...] JULGAMENTO EXTRA PETITA. VIOLAÇÃO DOS ARTS. 128 E 460 DO CPC. PROVIMENTO. 1. <u>Na invalidação judicial de ato administrativo, o julgador deve, por força dos princípios da inércia da jurisdição, do dispositivo e da correlação entre causa de pedir, pedido e sentença, obedecer aos limites objetivos da pretensão jurisdicional deduzida (CPC, arts. 128 e 460), sob pena de proferir decisão infra petita (aquém), ultra petita (além) ou extra petita (fora), suscetível à correção jurisdicional.</u> [...] (REsp 784.159/SC, Rel. Ministra DENISE ARRUDA, PRIMEIRA TURMA, julgado em 17/10/2006, DJ 07/11/2006 p. 250). DPVAT - COBRANÇA - CUMULAÇÃO DE PEDIDO - AUSÊNCIA DE APRECIÇÃO DE MATÉRIA - SENTENÇA CITRA PETITA - NULIDADE. Deve ser considerada nula a sentença que incorre no vício de julgamento citra-petita, por ausência de apreciação de pedido formulado pela parte, pois viola o comando do art. 458, III, do Código de Processo Civil, o julgador que não decide todas as questões submetidas à sua apreciação, não sendo permitido ao Tribunal apreciar questões que não foram sequer perfunctoriamente analisadas pelo Juiz de primeiro grau, sob pena de ferir o princípio do duplo grau de jurisdição, quando não inseridas dentre aquelas que lhe é dado conhecer de ofício, como no caso. (TJ-MG - AC: 10327130017418001 MG, Relator: Alberto Diniz Junior, Data de Julgamento: 07/05/2015, Câmaras Cíveis / 11ª CÂMARA CÍVEL, Data de Publicação: 13/05/2015) APELAÇÃO CÍVEL. CONTRATOS DE CARTÃO DE CRÉDITO. AÇÃO REVISIONAL. SENTENÇA CITRA PETITA. NULIDADE ABSOLUTA. <u>É nula a sentença citra petita, por deixar de analisar a totalidade dos pedidos expendidos na inicial, devendo ser desconstituída para que outra seja prolatada, abrangendo todas as questões suscitadas.</u> SENTENÇA DESCONSTITUÍDA, DE OFÍCIO, PREJUDICADO O JULGAMENTO DO MÉRITO DO RECURSO. (TJ-RS - AC: 70043829944 RS, Relator: Ana Paula Dalbosco, Data de Julgamento: 08/03/2016, Vigésima Terceira Câmara Cível, Data de Publicação: Diário da Justiça do dia 11/03/2016) DIREITO CIVIL. APELAÇÃO CÍVEL. PASSAGEM FORÇADA. SENTENÇA EXTRA PETITA FUNDADA EM SERVIDÃO DE PASSAGEM. NULIDADE DA SENTENÇA. RECURSO PROVIDO. I. CASO EM EXAME 1. Apelação Cível interposta por Manoel Felix Maia contra sentença proferida nos autos de Ação de Passagem Forçada proposta por Maria do Rosário de Sousa Macedo, visando à instituição de passagem sobre o imóvel do requerido para acesso à via pública. A sentença julgou procedente o pedido, porém com fundamento no instituto da servidão de passagem, reconhecendo a posse da servidão e determinando a abertura de passagem conforme croqui apresentado. O apelante sustenta nulidade da sentença por decisão extra petita e, no mérito, impugna a existência de encravamento do imóvel da autora. II. QUESTÃO EM DISCUSSÃO 2. Há duas questões em discussão: (i) verificar se a sentença incorreu em vício de decisão extra petita ao julgar a demanda com fundamento em instituto jurídico diverso do pleiteado; (ii) definir se estão presentes os requisitos legais para a instituição da passagem forçada. III. RAZÕES DE DECIDIR 3. <u>A sentença é nula por ser extra petita, pois a autora ajuizou Ação de Passagem Forçada com fundamento no art. 1.285 do Código Civil, enquanto o juízo sentenciante decidiu com base na servidão de passagem (art. 1.378 do CC), instituto distinto em natureza e requisitos legais.</u> 4. A decisão judicial deve guardar correspondência com o pedido e com os fundamentos jurídicos apresentados pelas partes, conforme determina o art. 489, I e II, do CPC. Ao decidir com base em premissa dissociada dos autos, a sentença incorre em nulidade. 5. A jurisprudência do Tribunal de Justiça do Ceará reconhece a nulidade de sentenças proferidas com base em premissas equivocadas ou dissociadas da causa de pedir, exigindo o retorno dos autos à origem para o devido processamento. IV. DISPOSITIVO E TESE 6. Recurso provido. Tese de julgamento: 1. A sentença é nula quando decide com base em instituto jurídico diverso do pleiteado, caracterizando decisão extra petita. 2. A passagem forçada, prevista no art. 1.285 do Código Civil, não se confunde com a servidão de passagem, regida pelo art. 1.378 do mesmo diploma, exigindo-se o correto enquadramento jurídico da demanda. 3. A decisão judicial deve manter vínculo com a causa de pedir e os fundamentos jurídicos apresentados, sob pena de nulidade por violação ao art. 489 do CPC. Dispositivos relevantes citados: CC, arts. 1.285 e 1.378; CPC, arts. 489, I e II; 487, I. Jurisprudência relevante citada: TJCE, ApCiv nº 0003231-14.2010.8.06.0108, Rel. Des. Francisco Mauro Ferreira Liberato, j. 08.03.2023; TJCE, ApCiv nº 0200812-62.2023.8.06.0114, Rel. Des. Francisco Jaime

Processo	0230165-06.2020.8.06.0001
	Medeiros Neto, j. 27.08.2024; TJRJ, ApCiv nº 0008054-21.2012.8.19.0004, Rel. Des. Denise Nicoll Simões, j. 15.05.2018. (TJ-CE - Apelação Cível: 00200136320198060114 Lavras da Mangabeira, Relator.: CARLOS AUGUSTO GOMES CORREIA, Data de Julgamento: 16/04/2025, 1ª Câmara Direito Privado, Data de Publicação: 16/04/2025) No caso em apreço, ao sentenciar a causa sob a ótica da ação monitória, e não da ação de cobrança, o juízo de origem incorreu em error in procedendo, o que conduz à nulidade da sentença, impondo-se a cassação do decisum para que outra seja proferida, desta vez em conformidade com a demanda efetivamente em trâmite. Diante do exposto, dou provimento ao recurso, de ofício, para cassar a sentença e determinar o retorno dos autos à origem, a fim de que nova decisão seja proferida com base na ação de cobrança resultante da emenda à inicial. É como voto. Fortaleza/CE, 10 de setembro de 2025. Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado Relator
Processo	0203552-28.2023.8.06.0167
Número de ordem	52
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	NATALIA MARIA RODRIGUES DE SOUSA
Advogado(s) - Polo ativo	HELTON HENRIQUE ALVES MESQUITA - (CE21260-A)
Polo passivo	CONCEICAO DE MARIA MOUTA HOLANDA
Advogado(s) - Polo passivo	LAIANA MOUTA HOLANDA - (CE32227-A) FRANCISCO AGENOR ANDRADE JUNIOR - (CE7512-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado
Processo	0009535-34.2013.8.06.0137
Número de ordem	53
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários

Processo	0009535-34.2013.8.06.0137
Polo ativo	BANCO BMG SA BANCO BONSUCESSO S.A. Banco BCV S.A BV FINANCEIRA S.A CRÉDITO FINANCIAMENTO E INVESTIMENTO
Advogado(s) - Polo ativo	LEONARDO FIALHO PINTO - (MG108654-A) MANUELA SAMPAIO SARMENTO E SILVA - (CE24247-A) JOAO FRANCISCO ALVES ROSA - (BA17023-A)
Polo passivo	NEUZA ALVES DO VALE
Advogado(s) - Polo passivo	LUDMILLA PASSOS DE ANDRADE FIGUEIRA - (CE19453-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0009535-34.2013.8.06.0137
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Processo	0009535-34.2013.8.06.0137
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</p><p style="line-height: 16.5px; margin-top: 0.07cm; margin-bottom: 0cm; text-align: center;">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">Processo:0009535-34.2013.8.06.0137</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">Classe:Embargos de Declaração Cível</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">Embargante:BancoBS2S/A</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"><span style="font-family: Verdana,

Processo	0009535-34.2013.8.06.0137
	sans-serif;"> Embargado: Neuza Alves do Vale </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Ementa : DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. ERRO MATERIAL NA IDENTIFICAÇÃO DA PARTE EMBARGANTE. OCORRÊNCIA. NECESSIDADE DE RETIFICAÇÃO. EMBARGOS CONHECIDOS E PROVIDOS. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> I. CASO EM EXAME </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 1. Embargos de declaração opostos por Banco BS2 S/A contra acórdão que, ao apreciar recurso anterior, mencionou equivocadamente como parte embargante o Banco BMG S/A, pleiteando a correção do erro material para assegurar a integridade e clareza do julgado. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 2. A questão em discussão consiste em definir se o acórdão embargado incorreu em erro material ao identificar incorretamente a instituição financeira recorrente, e se tal vício deve ser sanado nos termos do art. 1.022, III, do CPC. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 3. O art. 1.022 do CPC prevê os embargos de declaração como instrumento apto à correção de erro material. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 4. Constatada divergência entre o cabeçalho e o corpo do acórdão quanto à correta identificação da parte recorrente, o vício compromete a precisão da decisão, impondo a retificação. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 5. A correção deve observar a correspondência entre os acórdãos e os respectivos recursos, a fim de preservar a integridade do julgamento e evitar dúvidas futuras. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> IV. DISPOSITIVO E TESE </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> </p>

Processo	0009535-34.2013.8.06.0137
	Verdana, sans-serif;"> 6. Embargos conhecidos e providos.</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Tese de julgamento :" a) O erro material na identificação da parte recorrente pode ser sanado por meio de embargos de declaração, nos termos do art. 1.022, III, do CPC. b) A retificação deve abranger a correspondência correta entre os acórdãos e os recursos a que se referem, de modo a preservar a coerência e integridade do julgado."</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados CPC, art. 1.022, III.</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> AC ORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso e dar lhe provimento, nos termos do voto do Relator.</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Fortaleza, 10 de setembro de 2025. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz

Processo	0009535-34.2013.8.06.0137
	Convocado&#160; <strong style="font-size: small; font-family: Verdana, sans-serif;"> Relator </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Trata-se de Embargos de Declaração Cível opostos por Banco BS2 S/A, atual denominação do Banco Bonsucesso S/A , contra o acórdão id. 22520485, que negou provimento aos embargos de declaração 0009535-34.2013.8.06.0137/50000. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> E m suas razões recursais, a parte embargante sustenta, em síntese, que O acórdão faz referência equivocada ao "Banco BMG S/A", quando o correto seria "BANCO BS2", parte efetivamente integrante da presente demanda, conforme consta nos autos destes embargos de declaração e nas manifestações processuais da parte ora embargante. [...] Tal erro material compromete a precisão da decisão e pode acarretar dúvidas quanto à correta identificação da parte que opôs os embargos de declaração 0009535- 34.2013.8.06.0137/50000 sob pág 1-4, devendo ser corrigido para fins de resguardar a integridade do julgado e evitar eventuais prejuízos." </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Por essas razões, requer O conhecimento e provimento dos presentes embargos de declaração para corrigir o erro material constante do acórdão, substituindo-se a referência a "Banco BMG S/A" por "BANCO BS2 S/A", parte legítima no presente feito;

Processo	0009535-34.2013.8.06.0137
	style="color: #000000;"/> . </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Sem contrarrazões. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> É o relatório. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que compõem o referido crivo, levando-o ao qualificativo da positividade e, assim, ao conhecimento dos aclaratórios. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Cinge-se a presente demanda em saber se o acórdão embargado incorreu em erro material ao se referir à embargante como Banco BMG S/A, quando se trata do Banco BS2. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">
 </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none; page-break-before: auto;" align="justify"> Se gundo o art. 1.022 do Código de Processo Civil, cabem embargos de declaração contra qualquer decisão judicial para: </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> I - esclarecer obscuridade ou eliminar contradição; </p>

Processo	0009535-34.2013.8.06.0137
	II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material. Da análise dos autos, verifico que assiste razão à embargante quanto à existência de erro material. Contudo, ressalto que a correção não deve ocorrer exatamente nos termos pleiteados. Com efeito, no acórdão de id. 22520485, embora conste no cabeçalho como embargante o Banco BS2 S/A, verifica-se na ementa e corpo do acórdão que se trata de decisão sobre o recurso interposto pelo Banco BMG S/A. De igual modo, no acórdão de id. 22520655, consta no cabeçalho como embargante o Banco BMG S/A, quando, na realidade, refere-se à decisão sobre o recurso manejado pelo Banco BS2 S/A, conforme se depreende da ementa e do voto. E é assim que por todo o exposto, conheço do presente recurso para dar-lhe provimento, corrigindo o erro material, reconhecendo que o acórdão id. 22520485 corresponde ao recurso 22520679 e que o acórdão id. 22520655 corresponde ao recurso id. 22520682. É como voto.

Processo	0009535-34.2013.8.06.0137
	text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Fortaleza, 10 de setembro de 202 5 . </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-before: auto;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="font-size: small; font-family: Verdana, sans-serif;"> Relator </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p></p>
Processo	0241505-39.2023.8.06.0001
Número de ordem	54
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Rescisão do contrato e devolução do dinheiro
Polo ativo	SR COMERCIAL DE BEBIDAS LTDA
Advogado(s) - Polo ativo	MARCUS ANTONIO MOREIRA DA CRUZ - (CE28610-A)
Polo passivo	TAKE & GO SOLUCOES TECNOLOGICAS LTDA
Advogado(s) - Polo passivo	ARTHUR CAMPERONI - (SP432032-A)
Terceiros	Não informado

Processo	0241505-39.2023.8.06.0001
Acórdão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <img class="WACImage SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; text-wrap-mode: nowrap !important;" src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAJAAADCCAYAAABAFmIdAAAAAXNSR0IArs4c6QAAIABJREFUeF7svQmYHVd1Lbz2OTXc23O3JkvWZFuybHnARgZsDH5iCIEkEDI0X14CSVICtyGR8LzCy/h0fmSPwkWEANhMhDI9Ce/leE5fAkPwqBgwMQg22AsT7JsDZY1Dz3doeqc/WufU3X7dqtbfaw+3WrJtz6ak3fXPVW16wzrrL332oTW0bJAywlTC7Qs0LLAFLTATe8pQoW9CIM+cLoZC8G1MVgvhiwL4CpixhLAI4BpUDQYGim2sMYMKcgZoAGARwG8RGA9oCwB6T3gbEPCY7BVo+jUx/HVzaPgojnzla93R2FhjrDmf3/da3WhZoWWAyC/QPRNhFXQCNBUbaaBmpCRawYgKhrCo8gy2fKQMzMFitHEgAEYWoSoLoYI4ZFubM5OwCc+UN5E/W8CH8LUPnmhiy+dHU/13aTx7fdCuxjAcIldDqwuAeNiEPcB6AGhG0RFMEcAhe6TICK2IZgl/s24/68DOgDDgxaCAdgASAFKAFTdJ5kRWJwA4yiUOqg09tnEPIk0fTy2IUOdQbL/8LKhUWzZIt+d+SF9K007I8NLqsp2ICxlbcottY7GLJANPIIMZRM9hyE7T6CbW+d1lgtNOYVVtntSzQsAWWVeCXVgwWen+6ooo3p4iXMQWxm365lv8H2labap043gKp25ErfigC/rGKjh3YOICeLSMtedWb2gfLXT9dtcVXWujVIG5TULXLjUEe/6vTUwDy0k9zBiEB81EQHg4D/ILst/v+pi2ss2WgGbU7oDo3DvUNpcHFCNqvBom1QGUVU0FKYxaAuBegdGbtAEIwZGULQHUVILv+ZHB3HNCZ/j4twAKsV2FNBCwIKDVSf8A8G5w+tgU9PYosTtHjx04jO1bqtM3e+oZXVf9RI9a7LsROvpp6HBtlWwbqxSWLFhwWP5M2ee0tNJYd5z+dhqYd9w0NVIL012ngbanv8FpziByZ/mFNGA1wCmjdkKEwslDoO6vAG3fxT3vOjzxMVpAZ8bWbzVwVhgYGBA3fmfYUTnd1dFRNCvKj0kiiJh+1o72PHH3nHrkafcdmGW9vKbfrvY7fVKXoeakutFuE2pEPVubG5mwKG72fC+o8hmCLEoEPBsZ/QMyfq3y7awcw0Pxp9fxwf7Xs628HaD8CUM3eMW2rpjssV06gVWJunTLFvsZvAyFD+jrPI3W0n/BMWH9mPrVgF3F8JB6B8lcbTSiaS8TFNwhWFeD8RXQuLvgFoCpD2gpB3Whsj5mWIX+sl5vTMEot6+aQqwBbQGS EELVcTlkri8UuUdNBtTluBhsum9RVv53vA9H90Ri9mzWvi9raVL1FB4dc5KP4k66A3BQdGG1hisENs4x+4oedoZBU/Qzuct3TXaOBts/ITIOdTPlmQS4oyEvJ+2Kk5RQ6PkYq3KaJP7ycD37n6a1fHLcBasREtbHViMtC8wrCwh9HD0Z01TsCgNabJEU51StCFRbBZnC2tDEFwVJYZBs2/9NR6O/G3r0HUcauH9a8sl3R6Ne263oFcaBD0pxUhV6An1FtBpwlSnP0XWAs1WcOPjlug2ozu+jq0DwzNueGIDN2/q1GH3H8OqX2TWF2UekXFNRXoSMsk+/OULe8G9HtQsF/HVz800vRnm8sGN9waogq7IIvYbgbrGMFaMF/OhHVgrCLWSj4EBEX36n6xr0eT099sExgdfxJf/GvWHs8qApT1nhCjhFTSCcCHtE0fVFz5I0SZv8XWT8r7aWip77js5xZT28I3Uxi/HUG8krUWHxqMgkPw8uzSp+obawGdCZ3BvexsX0M5fGFnNCIaCZH8sTbDf1361hf21H+zBXSmH0etMy4kC2z89QKsj5EaikIK0F8qeL0CrpbOli6NOB4sbZRoGyByMRWcfDVkyvPB0o/+P37pjfDgFpy464XDEXdn2ZL1zIplVKIlliJsnZR5svnkW/T3deGclfNcYIXmpxGr6Pesav//shVgf5OfkNp+4h1LR03bP8CoF5DIYLKJsmIAJ5uwsZ4KQlvpQajggwJCT+MrA0eb/Gxz1BxTz8Y3d4+Yzsst42qo8PkAXc+gtQwsdMsSGLoN/HLPmKRhKABTz+kaQJRNKBTs4wgTnnjdY6crANITLNIWYVOHyAO3568ov1BDDTGKMZXvXGN1oXfVkh4Fh2GlbRCKoFDpGBJOYDJA Y+/EcfvNLJCN3LOGdpxSkangXZmr4MJmslZr3wedci0dsnllv4yMKU/H/3OX/ygBXRm7020Wp5fFiCs7w+XuL2taKnTMDotB8usDq4F9PWW1HVQuBSMNlhhCQjKEohDyCYTLADfFo+4cnv13g/98/SPNqAW37LrxhPo/SxDrWcoN3lboVhlgLo4yBbQmd6OU58hZlQQoIPKSbsOQNHfYOvte2fS5itfJdzy9uUI++6Gsdet6xunzvCzAXT8AkDSDgd3WPBH8fU/aYRJbPLjz6C5DbeGHW1JT1XHS3SqrkkpeJ1I9VIQLWHYiF/GhXzKEqVgEHAFxNaNIURF8wDoyO35e/SAh939OSCa9QMm7LXQf4qhY3di252NRRGv27SuUNC3qVBt0uLNVgTLAnQCMAlYohrQyXtbC+jU9UXnusrdV773gOU9CdDxACjkbvithH0Hf/4t4W0JnBOG59db5bYEBh/cMBgkIKIqlc hCsxSVsn1IPVSMN/C0KuYKGaS/FHykyorECso9qDETCqYwbmBZe6DMpux9Y5/mP7JB1TflbtuHKS+zxoVrpfJy2/NMoDTYnOmN2EjZ7gdrKmcnNgGgPRvsPXjswR0eu+GYQd0GvN O5HEWjTxE/QQ+fkUyYlCcsndUveWj+Ponzg+gs3FjgKHL06gTK7Xln2EEmxh6reUanemAg 81YG7c4OQxhobnqmb1hNaxb9BuhKM7Qxmd7Okn0swe6AnQyLCr3eohBF4Vi6ffw5Y9LIsH 0x7VvXKeC2AGdlJQYIAKz/ISwCPzzC/ipZ3laMUWOimYYR1PPjM1LRkfmY5I4KnngAHCb 0ZzN8RvlyI7cFdvKHUPf/UwL6Ezfl1tnnK8W6N3Qv9KGBTeO6uKNqYpexEqvA7gNzBpsAz dvjWNV8p2BRPDLJJuBHCWDSnz29j6odDO+/vGGgc4x3fdZpmi9j10VJkc2fMbZ0q1j5hblg M5JSDpgZwnoFG95+/JS0HU3rACdRm955kDH9Ua2Qxr2jimpwngCd/n4dPtNzjdH0X5nUz0 HpfWSDSEmYi1uEc3dDnQkZk0WKNmNC4uIHGpiznQunHkldTJugATg525f4s6cNq+u8Q D/+PMWE6iILbVKA3haGGlmcVRGFDx+qIC0hy5F2czpmy4LkldDj00kmOzcmZHG6pbtiK4 xOC+g00mu1zpvvFujv1xfvSnnKKI5DRNdZGzw/1eFIKfSyiooWWAq6hL3J+OfT7MozsOOe N2dzcn+wwQ+cbMbWxoBO5y3P3Dgc9HyWodd780nmqt8R+jl/ujzN+W70c39/wr4BtNLsnrP </p> </div>

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	Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph

Processo	0241505-39.2023.8.06.0001
	SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Processo: &#160;0241505-39.2023.8.06.0001 </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Classe: &#160;Apelação </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelante: <strong style="background-color: transparent; text-indent: 3cm;"> Maria Luiza de Sousa Lima </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun

Processo	0241505-39.2023.8.06.0001
	SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 23px; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Apelado: &#160; <strong style="background-color: transparent; text-indent: 3cm;"> Take & Go Soluções Tecnológicas Ltda </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p align="justify"> Ementa: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE RESOLUÇÃO CONTRATUAL C/C RESTITUIÇÃO DE VALORES. CONTRATO DE LICENCIAMENTO/FRANQUIA. SENTENÇA DE IMPROCEDÊNCIA. JULGAMENTO ANTECIPADO. AUSÊNCIA DE SUPORTE PROBATÓRIO MÍNIMO. NECESSIDADE DE INSTRUÇÃO PROBATÓRIA. CERCEAMENTO DE DEFESA CONFIGURADO. SENTENÇA ANULADA. </p> <h3> I. CASO EM EXAME </h3> <p align="justify"> Apelação cível interposta por consumidora que celebrou contrato de licenciamento com a empresa requerida (Take & Go), alegando descumprimento contratual por ausência de suporte técnico, treinamento e material. A sentença julgou improcedente a ação por falta de provas. </p> <h3> II. QUESTÃO EM DISCUSSÃO </h3> <p align="justify"> A questão em discussão consiste em definir se a improcedência poderia ter sido decretada sem a prévia instrução probatória, diante da complexidade fática da controvérsia. </p> <h3> III. RAZÕES DE DECIDIR </h3> <p align="justify"> O julgamento antecipado do mérito é possível apenas quando a matéria for exclusivamente de direito ou os fatos estiverem documentalmente provados (art. 355, CPC). </p> <p align="justify"> Quando a improcedência decorre de ausência de provas que poderiam ser produzidas em instrução, configura-se cerceamento de defesa. </p> <p align="justify"> O juiz é o destinatário da prova (arts. 370 e

Processo	0241505-39.2023.8.06.0001
	371, CPC), devendo oportunizar a produção de provas necessárias ao julgamento do mérito. Por certo, o juiz é o destinatário da prova, cabendo a ele determinar a produção das provas necessárias à formação do seu convencimento, de sorte que, na hipótese específica dos autos, entendo que o mais consentâneo, a fim de resguardar a efetividade da prestação jurisdicional e a segurança jurídica, é esgotar a fase de dilação probatória, o que não chegou a ocorrer no juízo a quo, de modo que no caso concreto a oitiva de todas as partes e, sobretudo, de testemunhas, é primordial ao desate da questão posta. Em outras palavras, o conteúdo probatório dos autos, estando ausente provas orais imprescindíveis para o caso concreto, não é suficiente a trazer segurança ao convencimento deste Relator quanto ao direito, ou não, da parte autora. Ademais, os documentos juntados pela parte autora, aliados às alegações de ausência de suporte técnico e de divergência entre a proposta inicial e o contrato final, demonstram a necessidade de aprofundamento probatório para adequada solução da lide. O STJ consolidou entendimento de que “há cerceamento de defesa quando o juiz indefere provas oportunamente requeridas e julga improcedente o pedido por ausência de provas” (REsp 1.677.926/SP, Rel. Min. Ricardo Villas Bôas Cueva, 3ª Turma, DJe 25/3/2021). IV. DISPOSITIVO E TESE Recurso provido. Sentença anulada. Tese de julgamento: O julgamento antecipado do mérito, em hipóteses de controvérsia fática não suficientemente comprovada por documentos, caracteriza cerceamento de defesa. É imprescindível oportunizar às partes a produção de provas orais quando necessárias à adequada solução da lide. A sentença que julga improcedente por ausência de provas, sem instrução, deve ser anulada para reabertura da fase probatória. Dispositivos relevantes citados: CPC/2015, arts. 355, 370 e 371. Jurisprudência relevante citada: STJ, REsp 1.677.926/SP, Rel. Min. Ricardo Villas Bôas Cueva, 3ª Turma, j. 23/3/2021, DJe 25/3/2021; STJ, AgRg no REsp 1.157.796/DF, Rel. Min. Benedito Gonçalves, 1ª Turma, DJe 28/5/2010. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direto Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e dar-lhe provimento, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. Presidente do Órgão Julgador Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado Relator RELATÓRIO

Processo	0241505-39.2023.8.06.0001
	caso concreto, julgou o magistrado a quo improcedente o pedido autoral, sem exaurir a instrução probatória do feito. &#160; &#160; &#160; Segundo o art. 370, do CPC, “cabera ao juiz, de ofício ou a requerimento da parte, determinar as provas necessárias ao julgamento do mérito”. &#160; A respeito: &#160; PROCESSUAL CIVIL. ADMINISTRATIVO. CONTRATOS ADMINISTRATIVOS. AGRAVO INTERNO NO AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. CÓDIGO DE PROCESSO CIVIL DE 2015. APLICABILIDADE. VIOLAÇÃO AO ART. 1.022 DO CÓDIGO DE PROCESSO CIVIL. NÃO CONFIGURADO. CERCEAMENTO DE DEFESA. AUSÊNCIA. LIVRE CONVENCIMENTO MOTIVADO. HIGIDEZ DA PERÍCIA. IMPOSSIBILIDADE DE REEXAME DE PROVAS. SÚMULA 7/STJ. ALEGAÇÃO DE JULGAMENTO ULTRA PETITA. INTERPRETAÇÃO LÓGICO-SISTEMÁTICA DA PETIÇÃO INICIAL. SÚMULA 7/STJ. ART. 1º-F DA LEI N. 9.494/1997. PRECEDENTES. ARGUMENTOS INSUFICIENTES PARA DESCONSTITUIR A DECISÃO ATACADA. APLICAÇÃO DE MULTA. ART. 1.021, § 4º, DO CÓDIGO DE PROCESSO CIVIL DE 2015. DESCABIMENTO. &#160; I - Consoante o decidido pelo Plenário desta Corte na sessão realizada em 09.03.2016, o regime recursal será determinado pela data da publicação do provimento jurisdicional impugnado. In casu, aplica-se o Código de Processo Civil de 2015. &#160; II - Cabe a oposição de embargos de declaração para: i) esclarecer obscuridade ou eliminar contradição; ii) suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; e, iii) corrigir erro material. No caso, não verifico omissão acerca de questão essencial ao deslinde da controvérsia e oportunamente suscitada, tampouco de outro vício a impor a revisão do julgado. &#160; III - O Superior Tribunal de Justiça tem entendimento no sentido de que há cerceamento de defesa quando o tribunal julga improcedente o pedido por ausência de provas cuja produção foi indeferida no curso do processo, o que não ocorreu no caso dos autos. &#160; IV - A jurisprudência desta Corte é assente no sentido de que o juiz é o destinatário da prova e pode, assim, indeferir, fundamentadamente, aquelas que considerar desnecessárias, a teor do princípio do livre convencimento motivado, bem como que a revisão das conclusões do tribunal de origem nesse sentido implicariam em reexame de fatos e provas. &#160; (...) &#160; X - Agravo Interno improvido. &#160; (AgInt no AgInt nos EDcl no REsp n. 1.994.224/DF, relatora Ministra Regina Helena Costa, Primeira Turma, julgado em 27/11/2023, DJe de 29/11/2023.) &#160; &#160; &#160; RECURSO ESPECIAL. PROCESSUAL CIVIL. AÇÃO DE PRESTAÇÃO DE CONTAS. PROVA PERICIAL. COMPLEMENTAÇÃO. NECESSIDADE. MATÉRIA PROBATÓRIA. PRECLUSÃO PRO JUDICATO. NÃO OCORRÊNCIA. &#160; 1. Recurso especial interposto contra acórdão publicado na vigência do Código de Processo Civil de 1973 (Enunciados Administrativos nºs 2 e 3/STJ). &#160; 2. A jurisprudência do Superior Tribunal de Justiça é firme no sentido de que o juiz é o destinatário da prova, cabendo-lhe, com base em seu livre convencimento, avaliar a necessidade de sua produção. &#160; 3. A iniciativa probatória do magistrado, em busca da veracidade dos fatos alegados, com realização de provas até mesmo de ofício, não se sujeita à preclusão temporal, porque é feita no interesse público de efetividade da Justiça. Precedentes. &#160; 4. Em questões

Processo	0241505-39.2023.8.06.0001
	probatórias, não há preclusão para o magistrado. Precedentes. 5. Há cerceamento de defesa quando o juiz indefere a realização de provas requeridas, oportuna e justificadamente pela parte autora, com o fito de comprovar suas alegações, e o pedido é julgado improcedente por falta de provas. Precedentes do STJ. 6. Recurso especial não provido. (REsp n. 1.677.926/SP, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 23/3/2021, DJe de 25/3/2021.) AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. CÓDIGO DE PROCESSO CIVIL DE 2015. AÇÃO DE RESCISÃO CONTRATUAL, COMBINADO COM PEDIDO DE RESTITUIÇÃO DOS VALORES PAGOS E APLICAÇÃO DA CLÁUSULA PENAL. ACÓRDÃO RECORRIDO . O ÓRGÃO JURISDICIONAL É O DESTINATÁRIO DA PROVA. CERCEAMENTO DE DEFESA. INCIDÊNCIA DO PRINCÍPIO DO LIVRE CONVENCIMENTO MOTIVADO. ENTENDIMENTO DIVERSO ACERCA DA PROVA REQUERIDA NA ORIGEM . NECESSIDADE DE REVOLVIMENTO DE MATÉRIA FÁTICA. INADMISSIBILIDADE. APLICAÇÃO DO ÓBICE DA SÚMULA 7/STJ. AGRAVO INTERNO DESPROVIDO . (STJ - AgInt no AREsp: 1370624 SP 2018/0250056-2, Relator.: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 21/10/2019, T3 - TERCEIRA TURMA, Data de Publicação: REPDJe 03/12/2019 DJe 29/10/2019) 160; APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER C/C INDENIZATÓRIA. AMPLA. COBRANÇAS EXORBITANTES . FALTA DE PROVA PERICIAL. Sentença de improcedência, ao argumento de que houve apenas alegação genérica de irregularidade, afastada com exame da própria documentação que envolve a unidade e a constatação de que não houve manutenção ou substituição do medidor. Irresignação da autora. Matéria eminentemente técnica a exigir que o julgador seja assistido por perito . Cabe ao juiz, como destinatário das provas, determinar a sua realização de ofício, quando indispensável ao julgamento do mérito. Inteligência dos artigos 156 e 370 do CPC. Precedente da Corte Superior. Sentença anulada para que se garanta a dilação probatória na instância originária . Demais pedidos prejudicados. RECURSO PREJUDICADO. (TJ-RJ - APELAÇÃO: 0025476-97.2021.8.19.0002 202400103963, Relator.: Des(a). ANDREA MÁCIEL PACHA, Data de Julgamento: 26/02/2024, SEGUNDA CAMARA DE DIREITO PRIVADO (ANTIGA 3ª CAMAR, Data de Publicação: 29/02/2024) 160; Por certo, o juiz é o destinatário da prova, cabendo a ele determinar a produção das provas necessárias à formação do seu convencimento, de sorte que, na hipótese específica dos autos, entendo que o mais consentâneo, a fim de resguardar a efetividade da prestação jurisdicional e a segurança jurídica, é esgotar a fase de dilação probatória, o que não chegou a ocorrer no juízo a quo, de modo que no caso concreto a oitiva de todas as partes e, sobretudo, de testemunhas, é primordial ao desate da questão posta. Em outras palavras, o conteúdo probatório dos autos, estando ausente provas orais imprescindíveis para o caso concreto, não é suficiente a trazer segurança ao convencimento deste Relator quanto ao direito, ou não, da parte autora. Ademais, os documentos juntados pela parte autora, aliados às alegações de ausência de suporte técnico e de divergência entre a proposta inicial e o contrato final, demonstram a necessidade de aprofundamento probatório para adequada solução da lide. 160; No ensejo, vale lembrar que o STJ, em inúmeras oportunidades, reconheceu que "a iniciativa probatória do magistrado, em busca da veracidade dos fatos alegados, com realização de provas até mesmo de ofício, não se sujeita à preclusão temporal, porque é feita no interesse público de efetividade da Justiça" (AgRg no REsp 1.157.796/DF, Rel. Min. Benedito Gonçalves, Primeira Turma, DJe de 28/5/2010). Da mesma forma, o STJ tem decidido que, " em questões probatórias, não há preclusão para o magistrado" (AgInt no TP 1.539/RJ, Rel. Ministro Paulo de

Processo	0241505-39.2023.8.06.0001
	Tarso Sanseverino, Terceira Turma, julgado em 27/8/2018, DJe 30/8/2018). A propósito ainda: AGRAVO INTERNO. RECURSO ESPECIAL. PROCESSUAL CIVIL. ART. 1.022 DO CPC. OMISSÃO. INEXISTÊNCIA. REEXAME DE PROVAS. SÚMULAS 5 E 7/STJ. PRECLUSÃO PRO JUDICATO. MATÉRIA PROBATÓRIA. JUROS REMUNERATÓRIOS. LIMITAÇÃO. IMPOSSIBILIDADE. 1. O acórdão recorrido analisou todas as questões necessárias ao deslinde da controvérsia, não se configurando ausência de fundamentação na prestação jurisdicional. 2. Não cabe, em recurso especial, reexaminar matéria fático-probatória e a interpretação de cláusulas contratuais (Súmulas 5 e 7/STJ). 3. <u>A revogação da decisão que tratou do deferimento da produção de prova pericial não induz preclusão pro judicato, pois tal instituto é inaplicável ao magistrado em matéria probatória. Precedentes.</u> (...) 5. Agravo interno a que se nega provimento." (AgInt no REsp 1.669.725/SP, Rel. Ministra MARIA ISABEL GALLOTTI, QUARTA TURMA, julgado em 08/06/2020, DJe 12/06/2020) Nesta ordem de ideias é que verifico, de ofício, a nulidade da sentença. E é assim que, pelo exposto, conheço do recurso e dou-lhe provimento para, de ofício, desconstituir a sentença, de modo a determinar o retorno dos autos à origem para produção de provas (oitiva das partes e de testemunhas) na forma determinada na fundamentação desta decisão. É como voto. Fortaleza/CE, 10 de setembro de 2025. Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado Relator Relator
Processo	0204376-48.2022.8.06.0158
Número de ordem	55
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	BANCO C6 CONSIGNADO
Advogado(s) - Polo ativo	FERNANDA RAFAELLA OLIVEIRA DE CARVALHO - (PE32766-A)

Processo	0204376-48.2022.8.06.0158
Polo passivo	CICERO APRIGIO DOS SANTOS
Advogado(s) - Polo passivo	SAMARA MARIA RODRIGUES - (CE42339-A) AMINADAB PEREIRA SILVA - (CE45518-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0011104-59.2012.8.06.0055
Número de ordem	56
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Nota de Crédito Rural
Polo ativo	BANCO DO NORDESTE DO BRASIL SA
Advogado(s) - Polo ativo	TARCISIO REBOUCAS PORTO JUNIOR - (CE7216-A)
Polo passivo	JOSE RODRIGUES MOTA JORGE EGIDIO DE SOUSA
Advogado(s) - Polo passivo	Não informado
Terceiros	EROTILDE PEREIRA DE SOUSA JOAO PEREIRA DE SOUSA

Processo	0011104-59.2012.8.06.0055
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> </p> </div>

Processo	0011104-59.2012.8.06.0055
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Processo	0011104-59.2012.8.06.0055
	Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph

Processo	0011104-59.2012.8.06.0055
	tendo o último ocorrido no ano de 2017, pelo que o prazo prescricional do direito material (3 anos para o caso de execução de crédito rural - art. 70 da Lei Uniforme de Genebra Decreto 57.663/66) começaria a correr do fim do prazo de suspensão havido em <u>27/12/2018</u>. Ocorre que a citação do primeiro executado ocorreu 31 de outubro de 2020, dentro do prazo prescricional do direito. Além disso, pelos peticionamentos no feito, vê-se que o exequente/apelante empreendeu todos os esforços necessários à localização dos demais executados, o que não ocorreu por sua desídia. Logo, pelos fundamentos expostos, não há que se falar em prescrição intercorrente, pelo que a reforma da sentença é medida impositiva. IV. DISPOSITIVO E TESE Recurso provido. Tese de julgamento: Tese de suspensão do prazo prescricional. A prescrição intercorrente exige a configuração da inércia do credor após a suspensão legal do processo pelo prazo de um ano, não se caracterizando quando este se mantém diligente. A alteração do art. 921, §4º, do CPC, promovida pela Lei nº 14.195/2021, não se aplica retroativamente a execuções já em curso ou suspensas sob a redação anterior. A demora decorrente da atuação da máquina judiciária não pode ser imputada à parte credora, à luz da Súmula 106 do STJ. Dispositivos relevantes citados: CPC/2015, arts. 14, 921, §§1º-4º, 924, V, e 487, II; Lei Uniforme de Genebra (Decreto nº 57.663/1966), art. 70. Jurisprudência relevante citada: STJ, REsp nº 1.340.553/RS, rel. Min. Marco Aurélio Bellizze, 2ª Seção, j. 27.06.2018; STJ, REsp nº 2.090.768/PR, rel. Min. Nancy Andrighi, 3ª Turma, j. 12.11.2024; TJCE, Apelação nº 0001186-54.2010.8.06.0167, rel. Des. Francisco Bezerra Cavalcante, j. 04.02.2025. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direto Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e dar-lhe provimento, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. Relator RELATÓRIO Cuida-se de apelação cível interposta por Banco do Nordeste do Brasil S/A contra a sentença proferida pelo Juízo

Processo	0011104-59.2012.8.06.0055
	da 2ª Vara Cível da Comarca de Canindé/CE, que reconheceu a ocorrência de prescrição intercorrente e extinguiu a execução de título extrajudicial ajuizada em face de Jorge Egídio de Sousa e José Rodrigues Mota, com fundamento nos arts. 924, V, e 487, II, do CPC.</p> A execução teve início em 07 de fevereiro de 2012, visando à cobrança de valores decorrentes de Nota de Crédito Rural. Houve determinação de citação em março de 2012, frustrada em razão da não localização dos executados. Em agosto de 2013, o exequente requereu a suspensão do feito, com fundamento na Lei nº 12.844/2013, que instituiu programa de renegociação de dívidas rurais. Posteriormente, novas suspensões foram deferidas com base em legislações específicas de caráter similar (Leis nº 13.340/2016, nº 13.606/2018 e nº 13.729/2018), todas voltadas à composição extrajudicial da dívida.</p> Durante o trâmite processual, constatou-se o falecimento de um dos executados (Jorge Egídio de Sousa), sendo determinada a sucessão processual, com citação da herdeira. Contudo, a diligência citatória restou frustrada, em virtude de equívoco do oficial de justiça. </p> O juízo a quo entendeu configurada a prescrição intercorrente, diante da longa duração do feito (mais de 13 anos), reconhecendo a extinção da execução. </p> Inconformado, o apelante sustenta, em síntese: (i) que os sucessivos pedidos de suspensão do processo decorreram de leis federais cogentes, que determinaram a suspensão da exigibilidade e do prazo prescricional das dívidas rurais, não havendo inércia do credor;
 (ii) que a pandemia da COVID-19 gerou dificuldades adicionais para impulsionar o feito;
 (iii) que a prescrição intercorrente exige a presença simultânea de dois requisitos — lapso temporal e desídia do credor —, o que não se verificou no caso concreto, pois o Banco sempre adotou providências para o prosseguimento da demanda;
 (iv) que a decisão recorrida desconsiderou os princípios da razoabilidade, proporcionalidade e eficiência processual, bem como a Súmula 106 do STJ, que afasta a penalização da parte pela demora imputável à máquina judiciária. </p> Ao final, requer a anulação da sentença, com a determinação de prosseguimento da execução. </p> É o que importa relatar. </p> &#160;</p> VOTO.</p> Presentes os requisitos de admissibilidade previsto na legislação. </p> Conheço, então, do recurso. </p> Busca o recorrente a reforma da sentença do juízo a quo, que extinguiu a ação de execução de título extrajudicial com resolução do mérito diante do reconhecimento da prescrição intercorrente. </p> A prescrição intercorrente, como é de conhecimento ordinário, ocorre quando o exequente permanece inerte, sem movimentar a execução ou o cumprimento de sentença, pelo prazo da prescrição da pretensão de direito material. </p> Embora não contasse com previsão expressa no CPC/1973, a jurisprudência desta Corte Superior já admitia a figura da prescrição intercorrente, que estava intimamente vinculada à inércia da parte. Inovando em relação a ordem jurídica anterior, o novo CPC passou a disciplinar o instituto, estatuidando o seu regime jurídico próprio, sobretudo, nos arts. 921 a 923. De acordo com o art. 921, inciso III e §1º, a execução deverá ser suspensa quando não for localizado o executado ou bens penhoráveis, pelo prazo de um ano, durante o qual também se suspenderá a prescrição. </p> &#160;</p> Sobre o instituto da prescrição intercorrente, o Superior Tribunal de Justiça fixou o seguinte entendimento: </p> &#160;

Processo	0011104-59.2012.8.06.0055
	PROCESSUAL CIVIL E TRIBUTÁRIO. EXECUÇÃO FISCAL. PRESCRIÇÃO INTERCORRENTE. INOCORRÊNCIA. AGRAVO INTERNO. MANIFESTA IMPROCEDÊNCIA. MULTA. CABIMENTO. 1. De acordo com a orientação jurisprudencial firmada no julgamento do Recurso Especial repetitivo 1.340.553/RS, o prazo para a contagem da prescrição intercorrente começa depois de esgotado o prazo de um ano da intimação do exequente acerca da não localização do devedor ou de bens penhoráveis, referente à automática suspensão do processo. 2. Hipótese em que houve citação e penhora de bens nomeados pela própria devedora, tendo a exequente requerido as providências cabíveis para a liquidação da garantia, cuja realização demorou a acontecer por culpa exclusiva da máquina judiciária, de modo que, não existindo a intimação sobre inexistência de bens penhoráveis, não há falar sequer de início da contagem do prazo da prescrição intercorrente, muito menos de sua consumação. 3. A conformidade do acórdão recorrido com o referido precedente obrigatório enseja a aplicação do óbice de conhecimento estampado na Súmula 83 do STJ. 4. E manifestamente improcedente agravo interno que busca reformar decisão respaldada em tese firmada em julgamento de recurso especial repetitivo. 5. Agravo interno desprovido, com aplicação de multa. (AgInt no AREsp n. 1.774.763/PR, relator Ministro Gurgel de Faria, Primeira Turma, julgado em 27/6/2022, DJe de 5/8/2022.) Decorrido o referido prazo de um ano sem que seja localizado o executado ou que sejam encontrados bens penhoráveis, o juiz ordenará o arquivamento dos autos (art. 921, §2º), sendo certo, no entanto, que os autos deverão ser desarquivados para prosseguimento da execução se a qualquer tempo forem encontrados bens penhoráveis (art. 921, §3º). O termo inicial do prazo da prescrição intercorrente é estabelecido pelo §4º do art. 921, que, na redação original do código, dispunha que o termo a quo seria o término do prazo de suspensão da execução. Aponta a doutrina que, de acordo com a redação original do CPC/2015, “a prescrição intercorrente dependia essencialmente de uma desídia do exequente na movimentação do processo, porque enquanto houvesse tal movimentação, ainda que sem a localização de bens a serem penhorados ou ainda da localização do próprio executado, a execução mantinha-se em trâmite” (NEVES, Daniel Amorim Assumpção. Manual de Direito Processual Civil: volume único. 16. ed. São Paulo: JusPdivm, 2024, p. 972-973). No entanto, a Lei n. 14.195/2021 introduziu importantes alterações na disciplina da prescrição intercorrente, alterando o §4º do art. 921 do CPC/2015, que passou a prever que o termo inicial do prazo de prescrição intercorrente será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis, e será suspensa, por uma única vez, pelo prazo máximo previsto no § 1º do mesmo dispositivo legal, isto é, por um ano. Observa-se, desse modo que o termo inicial do prazo foi deslocado para momento anterior, facilitando a ocorrência da prescrição. Ou seja, pela nova redação, “logo que houver a situação de dificuldade na execução, já terá início a fluência do prazo prescricional – e, na sequência, haverá a suspensão do processo, e da prescrição, pelo prazo de 1 ano” (GAJARDONI, Fernando da Fonseca...[et.al.] Comentários ao código de processo civil. 5. Ed. Rio de Janeiro: Forense, 2022). Em síntese, atualmente, iniciada a execução, a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis dá início ao prazo da prescrição intercorrente. Essa não localização implica a suspensão da execução e do prazo da prescrição intercorrente, que já tinha iniciado. Finalmente, o prazo da prescrição intercorrente voltará a fluir ao final do prazo de um ano de suspensão da execução. Transcorrido o prazo de prescrição da pretensão de direito material do credor, o juiz, depois de ouvida as partes, no prazo de quinze dias, poderá, de ofício, reconhecer a prescrição intercorrente extinguindo o processo, sem ônus para as

Processo	0011104-59.2012.8.06.0055
	partes. Tal é a disciplina atual da prescrição intercorrente no ordenamento jurídico nacional. O ponto central da controvérsia consiste em definir se a nova redação do §4º do art. 921 do CPC – que alterou significativamente o termo inicial do prazo de prescrição intercorrente – é aplicável retroativamente. Nesse contexto, o art. 14 do CPC dispõe que “a norma processual não retroagirá e será aplicável imediatamente aos processos em curso, respeitados os atos processuais praticados e as situações jurídicas consolidadas sob a vigência da norma revogada”. Em primeiro lugar, se o processo for posterior às modificações introduzidas pela Lei n. 14.195/2021 ou se a execução infrutífera ocorrer quando já em vigor a nova lei, dúvida não há que será aplicável a lei nova, de modo que o termo inicial do prazo de prescrição intercorrente será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis. Em segundo lugar, se o processo estiver em curso no momento da entrada em vigor da Lei n. 14.195/2021 e ainda não tiver sido determinada a suspensão da execução por ausência de localização do executado ou de bens penhoráveis, aplica-se a nova lei. Isso significa que, após a entrada em vigor da Lei n. 14.195/2021, deverá ser realizada nova tentativa de localização do devedor ou de bens penhoráveis, que, se infrutífera, dará início ao transcurso do prazo da prescrição intercorrente nos termos da nova redação do §4º do art. 921 do CPC. Em terceiro lugar, se o processo estiver em curso no momento da entrada em vigor da Lei n. 14.195/2021, mas já tiver iniciado o transcurso do prazo da prescrição intercorrente nos termos da redação original do §4º do art. 921 do CPC, não se aplicará a nova lei. Em outras palavras, se o prazo da prescrição intercorrente já havia sido deflagrado durante a vigência da disciplina anterior, continuará por ela regulado. Desse modo, conclui-se que o novo regime da prescrição intercorrente introduzido pela Lei n. 14.195/21 <u>não</u> pode ser aplicado retroativamente, mas apenas: a) aos novos processos ou àqueles em que a execução infrutífera for posterior à nova lei; e b) aos processos anteriores à nova lei no qual ainda não tenha sido determinada a suspensão da execução. A respeito: APELAÇÃO. CIVIL E PROCESSO CIVIL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PRESCRIÇÃO INTERCORRENTE. EXEQUENTE QUE SE MANTEVE PROATIVA QUANTO À LOCALIZAÇÃO DO EXECUTADO E INDICAÇÃO DE BENS PASSÍVEIS DE PENHORA. INÉRCIA NÃO CONFIGURADA. IMPOSSIBILIDADE DE APLICAÇÃO RETROATIVA DA LEI 14.195/2021. PRINCÍPIO DA APLICAÇÃO IMEDIATA DAS NORMAS PROCESSUAIS (ART. 14 DO CPC). DIREITO INTERTEMPORAL. TERMO INICIAL. DATA DA PUBLICAÇÃO DA LEI 14.195/2021. SENTENÇA DESCONSTITUÍDA. RECURSO PROVIDO. 1. O instituto da prescrição intercorrente, na redação original do CPC de 2015, tinha como pressuposto a configuração da inércia do credor e a prévia suspensão do feito pelo prazo de um ano, de acordo com os §§ 1º e 4º do art. 921. Esse requisito foi reforçado por tese fixada pelo STJ, relativa à prescrição intercorrente no processo civil, mantendo-se fiel ao pressuposto da inércia para reconhecimento da prescrição intercorrente, independentemente do êxito das diligências postuladas (IAC no REsp 1.604.412/SC, Rel. Ministro Marco Aurélio Bellizze, 2ª Seção, J. 27/06/2018). 2. A nova redação do § 4º, trazida pela Lei nº 14.195/2021, não pode retroagir e alcançar atos processuais já praticados e modificar os seus efeitos no passado, pois, antes do seu advento, a prescrição intercorrente, nas execuções civis, somente se caracterizava com a inércia do credor por prazo superior ao prazo prescricional. Precedentes. 3. In casu, há de se evidenciar que o Exequente tentou realizar a citação da parte promovida diversas vezes, e em todas elas não obteve êxito. É o que se observa das fls. 111 e 120. Em seguida, após tentativas de obtenção de informações e busca de bens em diversos sistemas a disposição do Poder Judiciário, o Banco exequente requereu a expedição de mandado de penhora de um imóvel indicado, pleito que sequer foi apreciado pelo juízo singular. Observa-se que o exequente manteve-se diligente e atuante nos autos, afastando qualquer tipo de argumentação quanto a uma possível desídia sua. 4. Por outro lado, o prazo de suspensão da execução findou quando ainda não estava vigente a Lei 14.195/2021, entretanto o juiz sentenciante utilizou como prazo inicial da prescrição intercorrente a data da primeira citação infrutífera e sem penhora de bens (10/08/2010). Verifica-se, portanto, o equívoco no entendimento adotado pelo Juízo sentenciante quanto

Processo	0011104-59.2012.8.06.0055
	à configuração da prescrição intercorrente no caso concreto, tendo em vista que a regra prevista na nova redação do § 4º do art. 921 do CPC somente poderia ser aplicada a atos processuais que se realizaram após o início da sua vigência. 5. Recurso de Apelação conhecido e provido. Sentença anulada.
 (Apelação Cível&#160;- 0001186-54.2010.8.06.0167, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento:&#160; 04/02/2025, data da publicação:&#160; 04/02/2025) </p> <p align="justify"> DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PRESCRIÇÃO INTERCORRENTE. NÃO OCORRÊNCIA. PRESSUPOSTO DA INÉRCIA NAS EXECUÇÕES CIVIS QUE SOMENTE DEIXOU DE EXISTIR COM A LEI Nº 14.195/2021. IMPOSSIBILIDADE DE APLICAÇÃO RETROATIVA DO NOVO REGIME DE PRESCRIÇÃO. PRINCÍPIO DA APLICAÇÃO IMEDIATA DAS NORMAS PROCESSUAIS (ART. 14 DO CPC). DIREITO INTERTEMPORAL. PRAZO QUINQUENAL NÃO TRANSCORRIDO. SENTENÇA CASSADA. RECURSO PROVIDO. O cerne da controvérsia recursal consiste em analisar se deve ser mantida a sentença que decretou, de ofício, a ocorrência de prescrição intercorrente e, assim, extinguiu a execução com base no art. 206, § 5º, I, do Código Civil. O instituto da prescrição intercorrente, na redação original do CPC de 2015, tinha como pressuposto a configuração da inércia do credor e a prévia suspensão do feito pelo prazo de um ano, de acordo com os §§ 1º e 4º do art. 921. Esse requisito foi reforçado por tese fixada pelo STJ, relativa à prescrição intercorrente no processo civil, mantendo-se fiel ao pressuposto da inércia para reconhecimento da prescrição intercorrente, independentemente do êxito das diligências postuladas (IAC no REsp 1.604.412/SC, Rel. Ministro Marco Aurélio Bellizze, 2ª Seção, J. 27/06/2018). Cumprir dizer que a nova redação do § 4º, trazida pela Lei nº 14.195/2021, não pode retroagir e alcançar atos processuais já praticados e modificar os seus efeitos no passado, pois, antes do seu advento, a prescrição intercorrente, nas execuções civis, somente se caracterizava com a inércia do credor por prazo superior ao prazo prescricional. No caso, verifica-se o equívoco na sentença proferida, pois a regra prevista na nova redação do § 4º do art. 921 do CPC somente poderia ser aplicada a atos processuais que se realizaram após o início da sua vigência. A propósito, é de se observar que a executada somente veio a ser citada em 15 de setembro de 2021 (fl. 89), quase nove anos após o ajuizamento da ação, mas não houve, até aquele momento, a prolação de despacho suspendendo o andamento da execução, requisito que era essencial à luz dos §§ 1º e 4º do art. 921 do CPC (redação original). No decorrer da tramitação processual, a tentativa de penhora de bens da executada restou inexitosa, como se observa da certidão do meirinho à fl. 94, lavrada em 23 de novembro de 2021, que atestou a inexistência de bens penhoráveis em nome da empresa demandada. Logo, a teor do § 4º do art. 921 do CPC, com a redação trazida pela Lei nº 14.195/2021, o prazo da prescrição intercorrente se iniciou a partir do resultado infrutífero de localização de bens penhoráveis em nome do devedor, ou seja, em 23 de novembro de 2021. O prazo quinquenal da prescrição, portanto, tem esse termo inicial, ainda está em curso e findar-se-á somente em 23 de novembro de 2026. Não configurada a prescrição intercorrente, a sentença deve ser anulada para possibilitar o retorno dos autos à origem a fim de dar continuação ao andamento processual. Recurso conhecido e provido. Sentença anulada. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator

 (Apelação Cível&#160;- 0014186-98.2012.8.06.0055, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 25/09/2024, data da publicação:&#160; 25/09/2024) </p> <p align="justify"> RECURSO ESPECIAL. PROCESSUAL CIVIL. PRESCRIÇÃO INTERCORRENTE. CPC/2015 . NOVO REGIME JURÍDICO INTRODUZIDO PELA LEI N. 14.195/21. APLICAÇÃO RETROATIVA . IMPOSSIBILIDADE. 1. Ação de execução de título executivo extrajudicial da qual foi extraído o presente recurso especial, interposto em 8/5/2023 e concluso ao gabinete em 23/8/2023.2 . O propósito recursal consiste em dizer se o novo regime da prescrição intercorrente introduzido pela Lei n. n. 14.195/21 pode ser aplicado retroativamente .3. Inovando em relação ao CPC/1973, o CPC/2015 passou a disciplinar, expressamente, o instituto da prescrição intercorrente, erigindo o seu regime jurídico próprio, sobretudo, nos arts. 921 a 923.4 . De acordo com o art. 921, inciso III e § 1º do CPC/2015, a execução deverá ser suspensa quando não for localizado o executado ou bens penhoráveis, pelo prazo de um ano, durante o qual também se suspenderá a prescrição.5. Nos termos da redação original do art. 921, § 4º, do CPC/2015, decorrido o prazo de suspensão de um ano sem manifestação do exequente, começaria a correr o prazo de prescrição intercorrente.6. A Lei n. 14 .195/2021 introduziu importantes alterações na disciplina da prescrição intercorrente, alterando o § 4º do art. 921 do CPC/2015, que passou a prever que o termo inicial do prazo de prescrição intercorrente será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis, e será suspensa, por uma única vez, pelo prazo máximo previsto no § 1º do mesmo dispositivo legal.7. A partir da entrada em vigor da Lei n. 14.195/2021, ao contrário do que se verificava na redação original do

Processo	0011104-59.2012.8.06.0055
	código, não há mais necessidade de desídia do credor para a consumação da prescrição intercorrente, cujo prazo iniciará automaticamente.8. O novo regime da prescrição intercorrente introduzido pela Lei n. 14.195/21 não pode ser aplicado retroativamente, mas apenas: a) aos novos processos ou àqueles em que a execução infrutífera for posterior à nova lei; e b) aos processos anteriores à nova lei no qual ainda não tenha sido determinada a suspensão da execução.9. Na hipótese dos autos, não merece reforma o acórdão recorrido, pois incide na espécie a redação original do CPC/2015 e não aquela introduzida pela Lei n. 14.195/21, que não deve ser aplicada retroativamente a uma execução iniciada em 2015 e cuja suspensão findou em 2018. Além disso, Corte de origem constatou que não houve qualquer desídia da parte exequente - requisito exigido antes da Lei n. 14.195/21-, o que afasta a caracterização da prescrição intercorrente à luz da redação original do CPC/2015.10. Recurso especial não provido. (STJ - REsp: 2090768 PR 2023/0280453-3, Relator.: Ministra NANCY ANDRIGHI, Data de Julgamento: 12/11/2024, T3 - TERCEIRA TURMA, Data de Publicação: DJe 14/11/2024) No caso, além de o processo ter sido ajuizado em 2012, antes da promulgação da lei, houve determinação de suspensão, pelo que a nova lei não se aplica. Pois bem. Com efeito, <u>“não se verifica a prescrição intercorrente se não houve decisão judicial determinando a suspensão da execução por ausência de bens penhoráveis”</u> (TJ-MT 00009220920128110044 MT, Relator.: SEBASTIAO BARBOSA FARIAS, Data de Julgamento: 25/10/2022, Primeira Câmara de Direito Privado, Data de Publicação: 27/10/2022). Nesta direção: EMENTA: AGRAVO DE INSTRUMENTO. AÇÃO DE EXECUÇÃO. PRELIMINAR. OFENSA AO PRINCÍPIO DA DIALETICIDADE. REJEIÇÃO. CÉDULA DE CRÉDITO BANCÁRIO. PRESCRIÇÃO TRIENAL. CITAÇÃO VÁLIDA DE UM CODEVEDOR SOLIDÁRIO. ART. 204, § 1º DO CÓDIGO CIVIL. PRESCRIÇÃO INTERCORRENTE. NÃO VERIFICADA. - Não há que se falar em ofensa ao princípio da dialeticidade se a parte recorrente, em sua peça recursal, enfrentou suficientemente os fundamentos da sentença - Havendo a citação válida de um dos devedores solidários, interrompe-se a prescrição também em relação aos demais, nos termos do § 1º, do art. 204 do Código Civil - <u>inexistindo nos autos decisão suspendendo o processo de execução por ausência de bens penhoráveis (art. 921, III do CPC) e tendo a parte exequente se manifestado reiteradamente pugnando por providências, a fim de receber o seu crédito, não há que se falar em configuração da prescrição intercorrente.</u> (TJ-MG - Agravo de Instrumento: 2538389-23.2023.8.13.0000, Relator.: Des. (a) Aparecida Grossi, Data de Julgamento: 03/04/2024, 17ª CÂMARA CÍVEL, Data de Publicação: 03/04/2024) Execução de título extrajudicial - prescrição intercorrente - ausência de decisão de suspensão ou arquivamento do feito - ausência de início do prazo prescricional nos termos definidos pelo Superior Tribunal de Justiça no julgamento ao IAC nº 1.604.412-SC ou no art. 921, § 4º do Código de Processo Civil, em sua redação original - ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis - termo "a quo" definido pela alteração promovida no art. 921, § 4º do Código de Processo Civil pela Lei nº 14.195/21 - impossibilidade de retroação para atingir atos processuais anteriores - prescrição intercorrente afastada - sentença anulada - retorno dos autos à origem - recurso provido para esse fim. (TJ-SP - Apelação Cível: 1000265-62.2014.8.26.0529 Santana de Parnaíba, Relator.: Coutinho de Arruda, Data de Julgamento: 14/03/2024, 16ª Câmara de Direito Privado, Data de Publicação: 14/03/2024) No caso, houve três pedidos de suspensão dos autos formulados pelo exequente/apelante diante da não localização dos devedores, tendo o juízo a quo deferido todos os pleitos, tendo o último ocorrido no ano de 2017, pelo que o prazo prescricional do direito material (3 anos para o caso de execução de crédito rural - art. 70 da Lei Uniforme de Genebra Decreto 57.663/66) começaria a correr do fim do prazo de suspensão havido em <u>27/12/2018.</u> Ocorre que a citação do primeiro executado ocorreu 31 de outubro de 2020, dentro do prazo prescricional do direito. Além disso, pelos petições no feito, vê-se que o exequente/apelante empreendeu todos os esforços necessários à localização dos demais executados, o que não ocorreu por sua desídia.

Processo	0011104-59.2012.8.06.0055
	Logo, pelos fundamentos expostos, não há que se falar em prescrição intercorrente, pelo que a reforma da sentença é medida impositiva. </p> <p align="justify"> E é assim que, pelo exposto, conheço do apelo e dou-lhe provimento, desconstituindo a sentença recorrida, devendo o processo retornar à origem para sua regular tramitação. </p> <p align="justify"> É COMO VOTO. </p> <p align="justify"> Fortaleza/CE, 10 de setembro de 2025. </p> <p align="justify"> ¶ </p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado </p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center">¶</p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Relator </p></div>

<p>¶</p><p>¶</p><p style="text-align: center;"> ¶ </p>
Processo	0204934-35.2024.8.06.0001
Número de ordem	57
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Superendividamento
Polo ativo	BANCO BMG SA BANCO C6 CONSIGNADO BANCO DAYCOVAL S/A BANCO INTERMEDIUM SA BANCO BRADESCO S/A CIASPREV - CENTRO DE INTEGRACAO E ASSISTENCIA AOS SERVIDORES PUBLICOS PREVIDENCIA PRIVADA BANCO BNP PARIBAS BRASIL S.A. CAPITAL CONSIG SOCIEDADE DE CREDITO DIRETO S.A
Advogado(s) - Polo ativo	JOAO FRANCISCO ALVES ROSA - (BA17023-A)
Polo passivo	RAQUEL PEREIRA DE BRITO
Advogado(s) - Polo passivo	JOAO AUGUSTO SILVA SALLES - (RS112962-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado
Processo	3011985-96.2025.8.06.0000
Número de ordem	58
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Contratos Bancários
Polo ativo	CREFISA SA CREDITO FINANCIAMENTO E INVESTIMENTOS
Advogado(s) - Polo ativo	LAZARO JOSE GOMES JUNIOR - (MS8125-A)
Polo passivo	VILK MARIA VIDAL DA SILVA
Advogado(s) - Polo passivo	ANTONIO ALEXANDRE PAIVA DE OLIVEIRA - (CE54147) JOSE EDUARDO GOYANA BENTO - (CE42451-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	3040045-13.2024.8.06.0001
Número de ordem	59
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Atualização de Conta
Polo ativo	BANCO DO BRASIL SA
Advogado(s) - Polo ativo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Polo passivo	FRANCISCA DIVA DE FARIAS TORRES
Advogado(s) - Polo passivo	MONICA ROCHA BORGES COSTA - (CE9903-A)
Terceiros	Não informado

Processo	3040045-13.2024.8.06.0001
Acórdão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAQAAAABXCAYAAADrjpu dAAAgAEIEQVR4nOy9eZxVXxo/11rn3urqucGGpknAbEbEGmh6fk2iIRG/DIV+by8DETzSD S2NnMSTVix/owyl8YoLzE+k2h+VDS+JA5RgeoJaLBBWmlUEBFBhgaaHqq66t6z9/r9sfe5 U809Arl+n+5b955z9tnTGvYahVdhb4NAt8Y/e/3Y92Ecd1Enh806vv5reW93Z7wGqyP/7C2w /uePpDHEvo4OjesLLZkRxsLiDPMY4uvVGR6l5ge4+8bHxhvb7kO3g14DQv2nhZccRJa9Hjg dOAmR12JyLMJhGF2IprULHmWHzj9H+Cn4R8EeAtIE/84fsvGWgdRi+9w0vi+64rW40EFO oOQIXi4mZJR5HxVGW8cJtlNzhgaHuS3cee2zRT9lkr14FUYGhYpCX6B5swEsvWwuJoey7 to1TdfiJlm66nDlBkXkTRg1xBQZC89GgPYVHLakOk4Dof170QEH3MbOnb/Nxlu2MTYREM B06eU3mPAeTKomJoDU+9fclWtqx8JNrLn+Q+OOP0nodi3Ed8HKO+govQXhnQR9I3CEiJ Tixfb5Kb6H1k8Jqev0Y/wYwh3g/5Y1n3h4xL4vv/xTIL8PmscfCgLQ3n6C0da9vp6jrWP7+o0 Klvr5IsHezdr/hvQVwnA7kEzlw80L/6JKzs4orwA03cgUkHkdKAT789n3bXfjpsToNez9lqLRP jH1pYnvKDACPhuo23o0aB9I7Z99/5XWxvjV4YhVesLAouueK1mPFLvRnv/RtppBljYivl5rL3 xqXpbuw1tfVxyxdTE7X9BOBeRWfGdcT7MzBAC5qTopYhIM4KamYEZYHbvmYn3ULTxKIN DZ3PP3z6fRihAYNn7T0LKD4G44Qg/GgEYZdj19dxjAgBmhohg9iXWXPsbGTYTf/oXHtpE+ +aNtuoEYDFOz8VcBeE4RNufPmx4i17BYZBJgJHjBB0xGeH6+9Ue4XAohDZGKHEqlmRs kL4ixizngPGKCIVffCPkxrE9fELb70N4XSJWIs8ARACEZAzLCIUQmRXSRMI/PBEl8J3SOqu NAHhVH6CdZROAdan96dhawZSIy5uSMQjtdr+ySfii59Hu3+c50YekAcyGtTEXiUAY4NCtzT OkQnpT1zZwWEdZ6C2BJE3I3IWxsEATYifY2jkHuLA5cNaD2pxKZo4i0xOKLNMziCpy7Hx 5h/HgLbrxfstie9mE2Mx4gwTQerIFZsZ7fWGPVooMFTdA6pXcP1ez7L3L4LdL8XcW1wleM wMgpmoqGLE5D0TekVEzEzjJwFKw2+qOaOCCacmiAjDzkKjzXtaP2fV9H6PZnxFH1qUI1X CUArtCvwAvTGr4suPxTnzKJlOfBmkDcgoYF9Yh5LXC1OdJbWJhINC8NXSoPEo/ZLGHRf HRNNJDFG6yjt5jsqGfTmzL+4xOxpf4mXqwiaecxHdBcndS6/I9QLLDy16G9SgDqXB6Gi/Z/ ejJii5DwTpCFKle3iHBGjjpgQUEQiJtdFRlvcrrhddLd24LhbbMkt7SHReoKweyi2u7q/bge9Ocs uP56S/gtBFgKg3puJ8xaltdM47tF1q83z0q6CCKPqMOq/T7rr4531J/nchslvlgFlypoW0T5eO XFIR+mQaWel2FuC82/PtToP1en1jWHEdymipmluAxzmBHEfDAJIM5hmpA+AP45LKxmc LAvvqQ3NKSMLzb3FwMby5C5h7D7/DOJ/ctXLgX3JYLOWUI05hBxBbJONqWERIXSVrXBM o1SST9krXvuF4UAtlv2Vkf6hZccSUMWTKmW3pp5WSyWn+wIz9ANRvzULp/U1UlwJVgm wazkSwYuVldMqO3SzpkdDFar0DUjt1r+QNBZeUe+9dlvTZ0164H+2z76TKMfzfuyhIkHarSz mNGRYzx00X7fObt5klaHsdtq/Fn0v+C8w74XRimxSWJqEvuXrfo10FshOELIKfZy0ZaEkSX /9vEO47yhpB/D56dQtl4nuWi6p3CjmCQM0wWMC9+IEECq8ZMsnUyHqI8UgnASFy+wcvO WXUmWVZBZAVZOBvjUNOAmRbLmptPMuLUUg584BEfHSColKCFKfHHEyfdNWdd0/1O+ /lajvXvbjus9/L007qj28sdK3rjglquH3IYvcGSNg9yX6fQCWDvpzFI/0apr0CauK9II19PK4o/XK FdjPiJJ6TAJZHXXTbar6SCEAZ0ifZJ3H5+ZcdknXomWg4D2S5F85EXMkKli3md2VGJkHU RITOLPip0QbMUEBrAknhp0owBocy/30s3OXKdntg+107b/v7Z9r6k3V3Y9BNN3Bhb+9wRF Kp88WJWc6a/reW3xowwqtO2kDt7xndtcwgdBuzxwbJi/WRzPd+JCQf9nl52L8qwgaxQ2Iva adrETTDH9jDZrkFgPqFhp2X5dYn/9xpnPYPhjPfnjGQFraj5bOurhlzml/GvP9cicASYG3RaA vp1W0P5GSL0DsLWK2Auzogno6WOM9puBFkxhJjgYgiHMGkiWxP/FufdJ5/92y7bpDa4PF6 t+w60Ho9b6lL0h3N3QDc+ZVWE2f9fT0ht7GPDLSR8njglirgwmMgEjRJGcYAZk0G0iNjmyT CdjCkr0c1Yn7rl7T6uiKuMHxWtal/JcejfFEFSk1kH/3BRQrfAMQw1CROrEtA/YPiA40PhGE wpQmY41o9zo0wvrU/xzPHMjw68nVocm0m3739cZebgQgcfmT9uETMdd1Mmxh52G5+2lv Rn86SAzhBCPPaHw/BIRMykjizY7INn2/PPPe/zoaCuK1NvNcx2kWXUspL74WCoffPQaQd /89mfP/OAv/dTT+9q7Y+rVCoyZ84c6079uLAX3wvQ2wfAz/7PwUdmNnjeUOj//nHv4r6eHrS nJy1F/vxtZNM3CXXK6WaqC047cxBCN4f9mzmqMn4Xm109kPcxNEWXniEjfiexlGinf2BnbcES /07pGyoECV1peGtOfHfPRCTBD9AiKHGuQgWXESnww0PABFRNB6C3FaBoB+hGryaejA bAoiXQgZddyHOiF2snfOcPX1cenvvWBine18LBRtZlh4EfGfL255ORCApMBr5vJ9cdcsuvx QXGkRTn+JEBaCzMUlxysylPeGgplp07OIEQUCLZymg1uf0GcePVZCfM8Vxa5O7OBR06t vnD3lr7eTUB4ttEX7QahweVIRU+fB6zg8j//DFPKjlo98HYTWeZk6xu8hoMy+D3gvrkPNmm G1t/yOHPfu9jmlF5PYGw7YakEIQSQDyPytuSgoxM6ExoBECw4FfJrEefl87G5V6aeJ/Pv8cg tQ+yZ8Dte38aBtOQ37PK/BlikCNBR+k36YeYlMwZCQ/mcltxFKPeYfwWQL+B1YdRdJfXRJ FxKmYW42yLEyb0RsOXAqlh1gG9ixbVNsVXeiz5mROlasz9cl/sOtF9v9x8YjmO2OSUkKoA ZOIOrg49z16SfThfBSJABNZ3los80LS646HXQ5aAXCAqR6BCEHFIIzoiH64jifZEEwTM3E +2aqbwi78sFa0J2btDRldak8e60bqt27665rnqWCA43+JC7fZ/E03zuMyz/7jOedpH7bojC4ozL D6QlKvM6rqBfwlSAmuJpW285rkYft/tRO4N4Jz87Sy69CbYVAR+JmY2+6OmehH/FX0Xft YxN+V4R9h/zjQmHuu+wsjCsBMHOT8eYTi1zfIFDoC8zsS5j8M7mt4a4bXphgU2uBfwaEJZ edifJaVNakqMBijZPABrrkxP8n7Hu+gcm3cbkoe7w8FliHAM0KvFyz3RmrZmVdOh/lvByt4O SsJNdEzWaoGVYNKk5EVINF0R4NAQKi5jAVn1ygJfinSiG/p+SrQzO2r962/p/vD2BNB12pV HAVKsydM8cALutzQF6U5++38O0Yw/pPHPawdOX5WF75ekXnjgnK+vUzq4OsIBGB1SP xIl2QV0enAxT2NQ3Tff4bLyyRejrywnVF5GO7YjNoXAZn5CeznZSHUx0rZLBnAkgdVug036 HdOww7UEogfm6Y9UEICJ/CCKomLoAt+P5S9Zfv67ptmZHsHZNW/q9uwmxez3rrtslbGy6 Z4Q5moBAEPU/CIKh21DdHi9MdH12B1rDow8kARhBtE9lv+x9x2OdC/DufldU1DhBQg3vL B57nfeYh5ArhmhwGryPFEFUyszTfNeLTjgFmzPmhWi38lPlh6+mY+i17buv66oabnmnWbHW D25LO8vPmbZG5D/bZhb19Ldj600/NPKFD8wWOvJKFWsXL0MnbXxjEHEwrgxGC5EOWx /UUVZwZCARTjxvd3Gfj5A2i0Jdk/ZlqBG3dck1iYZ0YFFrn4i1O8R1pR/Z59hViN+/5Ec79zRg m9TPqSDhdcp/L3wm8PXHKySE/3jvxzkyDRz7E2uv/Jl3WEa1FwyF1t+V6u7VphHkciumSG SC0SCxNVgexgAs1UEcumZiXuQhGCCvfr7A/CcBICry48ed2lzn4iFMwdwHKWxE5E2Qm KmDgLTfUQISL5ArikGCUyG6yri86mzHdrgHQCZ0yewaQpB8ob+yi/78C0z9b8+L92ZdXlpTX 7S7O+7LprN85PjprX/wD0yf4kundJh/W2bHfLfbxBRtXyhhlmQICACOOIwGwb0RcdRtF4/ +5CtWaU1MSKaJpXKhTcXy5JOycwCdfJwKpg2E5v1s26678R9SDh3a3Y8mfY5znDRruH2 PcJhoDukRBA/td2trXBGB0Bd7Cdx8E084ic78ErEBKXkEigOh4ozXzQUQy1BAFZ4TgCaa4

Processo	3040045-13.2024.8.06.0001
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Processo	3040045-13.2024.8.06.0001
	: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. AÇÃO INDENIZATÓRIA ENVOLVENDO PASEP. ALEGAÇÃO DE OMISSÃO QUANTO À PRESCRIÇÃO, À ILEGITIMIDADE PASSIVA DO BANCO DO BRASIL E À COMPETÊNCIA DA JUSTIÇA ESTADUAL. INEXISTÊNCIA DE VÍCIOS. PRETENSÃO DE REDISCUSSÃO DA MATÉRIA. EMBARGOS REJEITADOS. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> I. CASO EM EXAME </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 1. Embargos de declaração opostos por Banco do Brasil S/A contra acórdão que, em apelação, anulou a sentença e determinou o retorno dos autos à origem para regular prosseguimento. O embargante alega omissão quanto à prescrição, à ilegitimidade passiva e à competência da Justiça Estadual.</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 2. Há três questões em discussão: (i) definir se o acórdão embargado incorreu em omissão quanto ao prazo prescricional aplicável às ações relativas ao PASEP; (ii) estabelecer se o Banco do Brasil é parte ilegítima nas demandas que discutem correção monetária e índices aplicados às contas do PASEP; (iii) determinar se a Justiça Estadual é absolutamente incompetente diante do interesse jurídico da União.</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 3. O art. 1.022 do CPC autoriza embargos de declaração apenas para sanar obscuridade, contradição, omissão ou erro material, não servindo ao reexame de matéria já decidida. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 4. A análise da prescrição já foi expressamente realizada no acórdão, que aplicou o Tema 1150/STJ para fixar o prazo decenal do art. 205 do CC, com termo inicial na ciência do desfalque, afastando a alegada omissão. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 5. A decisão consignou que a autora obteve o extrato em 22/07/2024, omo a ação foi ajuizada em 05/12/2024, não há </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 6. que se falar em prescrição. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 7. A competência da Justiça Estadual igualmente foi enfrentada, inexistindo fundamento para reconhecer a Justiça Federal como competente, visto que o Banco do Brasil figura como réu e a União não é

Processo	3040045-13.2024.8.06.0001
	parte na lide. 8. As razões recursais revelam mero inconformismo com a decisão colegiada, não caracterizando omissão, obscuridade ou contradição, conforme reiterada jurisprudência do STJ. IV. DISPOSITIVO E TESE 9. Embargos de declaração rejeitados. Tese de julgamento “a) Embargos de declaração não se prestam à rediscussão da matéria já decidida. b) O prazo prescricional para ações de ressarcimento de danos em contas do PASEP é decenal, com termo inicial na ciência comprovada do desfalque. c) O Banco do Brasil é parte legítima para responder por falhas na administração das contas vinculadas ao PASEP, inclusive ausência de aplicação de rendimentos. d) A Justiça Estadual é competente para processar e julgar demandas em que o Banco do Brasil figura no polo passivo sem participação da União.” Dispositivos relevantes citados CF/1988, art. 109; CC, art. 205; CPC, art. 1.022. Jurisprudência relevante citada STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022; STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. &#160; AC ÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. &#160;

Processo	3040045-13.2024.8.06.0001
	bottom: 0cm;" align="center"> Fortaleza, 10 de setembro de 2025. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="font-size: small; font-family: Verdana, sans-serif;"> Relator </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="font-weight: normal; line-height: 150%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Trata-se de Embargos de Declaração Cível opostos por Banco do Brasil S/A contra o acórdão id. 23275156 que deu proveniente do recurso de apelação, no sentido de anular a sentença vergastada e determinar o retorno dos autos à origem para regular prosseguimento do feito. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> E m suas razões recursais, a parte embargante sustenta a existência de vício transparent;">no referido acórdão alegando transparent;">, em síntese,

Processo	3040045-13.2024.8.06.0001
	Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento os requisitos intrínsecos e extrínsecos que compõem o referido crivo, levando-o ao qualificativo da positividade e, assim, ao conhecimento dos aclaratórios. A presente demanda cinge-se a verificar se o acórdão embargado incorreu em omissões quanto: (i) à prescrição; (ii) à ilegitimidade passiva do embargante; e (iii) à incompetência da Justiça Estadual. Registro, inauguralmente, que da simples leitura da insurgência aclaratória, é possível verificar o mero inconformismo da Embargante com a decisão do recurso anteriormente manejado, limitando-se tão somente em expedir argumentos com visos a rediscutir a questão já decidida. Segundo o art. 1.022 do Código de Processo Civil, cabem embargos de declaração contra qualquer decisão judicial para: I - esclarecer obscuridade ou eliminar contradição; II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material.

Processo	3040045-13.2024.8.06.0001
	III - corrigir erro material. Na ensanचा, anoto o disposto na Súmula 18 deste egrégio Tribunal de Justiça, in verbis São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. Com efeito, quanto à alegada omissão relativa à prescrição da ação, verifica-se que a matéria foi devidamente apreciada, conforme restou decidido por ocasião do julgamento: 3. A jurisprudência consolidada no Superior Tribunal de Justiça (Tema 1150) estabelece que o prazo prescricional para ressarcimento de danos em conta vinculada ao PASEP é decenal, tendo início na data em que o titular comprovar ciência dos desfalques. 4. Na hipótese dos autos, o termo inicial deve ser fixado na data de obtenção do extrato completo da conta PASEP pela autora, ocorrida em 22/07/2024. Como a ação foi ajuizada em 05/12/2024, não há prescrição. Sobre as preliminares de ilegitimidade passiva e competência da Justiça Estadual, ressaltou o acórdão: 4. Na hipótese dos autos, o termo inicial deve ser fixado na data de obtenção do extrato completo da conta PASEP pela autora, ocorrida em 22/07/2024. Como a ação foi ajuizada em 05/12/2024, não há prescrição. Da ilegitimidade passiva -

Processo	3040045-13.2024.8.06.0001
	text-indent: 2cm; margin-bottom: 0cm;" align="justify"> E é assim que , por todo o exposto, conheço o presente recurso, negar-lhe provimento . </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> É como voto. </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Fortaleza, 10 de setembro 5 . </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-before: auto;" align="center"> EDUARDO DE CASTRO NETO </p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="background-color: transparent; font-size: medium; font-family: Verdana, sans-serif;"> Relator </p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0204935-12.2023.8.06.0112
Número de ordem	60
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Cartão de Crédito
Polo ativo	CICERO FREIRE DOS SANTOS

Processo	0204935-12.2023.8.06.0112
Advogado(s) - Polo ativo	VIRLANIA DA SILVA CALOU - (CE48774-A)
Polo passivo	BANCO DAYCOVAL S/A
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado

Processo	0204935-12.2023.8.06.0112
Acórdão	<p style="text-align: justify;"> EMENTA: DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. CARTÃO DE CRÉDITO CONSIGNADO. CONTRATAÇÃO ELETRÔNICA. COMPROVAÇÃO DA CONTRATAÇÃO E DEMONSTRAÇÃO DO REPASSE DO VALOR PARA CONTA DE TITULARIDADE DO AUTOR. VÍCIO DE CONSENTIMENTO NÃO CONSTATADO. AUSÊNCIA DE FALHA NA PRESTAÇÃO DE SERVIÇO. INEXISTÊNCIA DE DANOS MORAIS E MATERIAIS. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. </p><p style="text-align: justify;"> I. CASO EM EXAME </p><p style="text-align: justify;"> 1. Apelação interposta por consumidor contra sentença que julgou improcedente ação declaratória de inexistência de débito c/c repetição de indébito e indenização por danos morais, ajuizada em face de instituição financeira.</p><p style="text-align: justify;"> 2. O apelante alegou não ter ciência nem consentimento válido para contratar cartão de crédito com reserva de margem consignável, postulando anulação do contrato, restituição em dobro dos valores descontados e indenização moral.</p><p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> 3. A controvérsia consiste em definir:</p><p style="text-align: justify;"> (i) se houve vício de consentimento na contratação de cartão de crédito consignado mediante assinatura eletrônica e autenticação biométrica;</p><p style="text-align: justify;"> (ii) se o banco cumpriu o dever de informação e comprovou a regularidade da contratação, afastando o dever de indenizar.</p><p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p><p style="text-align: justify;"> 4. Aplica-se o Código de Defesa do Consumidor às instituições financeiras (Súmula nº 297/STJ).</p><p style="text-align: justify;"> 5. A instituição financeira comprovou a contratação por meio de documentos assinados eletronicamente, com autenticação biométrica, protocolo de sessão, termo de consentimento e comprovante de transferência do valor para a conta do autor.</p><p style="text-align: justify;"> 6. O dever de informação foi observado, não havendo prova de fraude ou de vício de consentimento.</p><p style="text-align: justify;"> 7. Os descontos realizados encontram amparo na legalidade, inexistindo ato ilícito a ensejar restituição ou indenização moral.</p><p style="text-align: justify;"> 8. Precedentes do TJCE confirmam a validade de contratações eletrônicas em hipóteses semelhantes, afastando alegações genéricas de fraude.</p><p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p><p style="text-align: justify;"> 9. Recurso conhecido e desprovido. Sentença mantida. </p><p style="text-align: justify;"> 1. A contratação de cartão de crédito consignado por meio eletrônico, com autenticação biométrica e documentação comprobatória, é válida e eficaz. </p><p style="text-align: justify;"> 2. Inexistindo prova de fraude ou vício de consentimento, não há falar em restituição de valores ou indenização por danos morais.</p><p style="text-align: justify;"> Dispositivos relevantes citados: Código de Processo Civil, art. 373, II; CDC, arts. 6º, III, e 14, § 3º, I.</p><p style="text-align: justify;"> Jurisprudência relevante citada: STJ, Súmula nº 297; TJCE, AC nº 0050949-03.2021.8.06.0114, Rel. Des. Jane Ruth Maia de Queiroga, 3ª Câmara de Direito Privado, j. 26.04.2023; TJCE, AC nº 0230355-95.2022.8.06.0001, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara de Direito Privado, j. 02.08.2023.</p><p style="text-align: justify;"> A C Ó R D Ã O </p><p style="text-align: justify;"> Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso, mas para negar-lhe provimento nos termos do voto do eminente Relator, parte integrante desta decisão.</p><p style="text-align: justify;"> Fortaleza, 10 de setembro de 2025.</p><p style="text-align: justify;"> JOSE RICARDO VIDAL PATROCINIO</p><p style="text-align: justify;"> Presidente do Órgão Julgador</p><p style="text-align: justify;"> EDUARDO DE CASTRO NETO</p><p style="text-align: justify;"> Juiz Convocado Relator</p><p style="text-align: justify;"> </p>

Processo	0204935-12.2023.8.06.0112
	justify;"> RELATÓRIO </p><p style="text-align: justify;"> >Trata-se de Recurso de Apelação interposto por Cícero Freire dos Santos, com o escopo de adversar a sentença proferida pelo MM. Juízo da 2ª Vara Cível da Comarca de Juazeiro do Norte, que julgou improcedentes os pedidos formulados na ação Declaratória de Inexistência de Débito c/c Repetição de Indébito e Indenização por Danos Morais, ajuizada em desfavor do Banco Daycoval S/A.</p><p style="text-align: justify;"> >Em suas razões recursais a autora/recorrente sustenta, que “não houve ciência nem consentimento válido para contratar cartão de crédito com reserva de margem consignável. A ré apenas formalizou tecnicamente o contrato, mas à custa da falta de informação, da omissão dolosa e do abuso da cobrança do consumidor”.</p><p style="text-align: justify;"> >Em continuidade, argumenta, que “a instituição financeira Daycoval S/A. não trouxe provas de que informou corretamente ao apelante do que realmente se tratava, além de não informar o teor do contrato, pois o apelante acreditou se tratar de uma proposta de redução de juros. Dessa forma, resta evidente que o contrato firmado é nulo por vício de consentimento, devendo ser anulado, com a devolução dos valores descontados e o reconhecimento da inexistência da dívida indevidamente constituída”.</p><p style="text-align: justify;"> >Sustenta, também, que “a instituição financeira não trouxe aos autos qualquer prova de que tenha informado, de forma clara e transparente, a verdadeira natureza da contratação. Não houve apresentação prévia de contrato, tampouco esclarecimentos objetivos que permitissem ao apelante compreender o que estava sendo efetivamente contratado. Neste cenário, resta caracterizado o vício de consentimento, fruto de conduta abusiva e desleal da apelada, que se aproveitou da fragilidade do consumidor para firmar contrato com manifestação de vontade viciada”.</p><p style="text-align: justify;"> >Argumenta, ainda, que “não tendo a apelada comprovado a regular e informada contratação do serviço, impõem-se a anulação do contrato, a devolução dos valores descontados indevidamente — de forma dobrada — e a devida reparação por danos morais, cuja ocorrência se presume diante da conduta abusiva praticada”.</p><p style="text-align: justify;"> >Por fim, protesta pelo conhecimento e provimento do apelo, para, consequentemente, reformar a sentença vergastada, julgando totalmente procedentes os pedidos feitos em exordial.</p><p style="text-align: justify;"> >Contrarrrazões Id.25231702.</p><p style="text-align: justify;"> >É o que importa relatar. </p><p style="text-align: justify;"> > VOTO </p><p style="text-align: justify;"> >Inicialmente, cumpre salientar que o banco/promovido, em suas contrarrrazões, suscita a preliminar de ofensa ao princípio da dialeticidade recursal, a ensejar o não conhecimento do recurso da parte autora, ao argumento que o recorrente não impugnou, de maneira específica, os fundamentos da decisão objurgada, reproduzindo exatamente o teor da peça contestatória, não se contrapondo aos argumentos da sentença.</p><p style="text-align: justify;"> >No caso, restou comprovado que o recurso interposto enfrentou, de forma satisfatória, expondo, em suas razões, os fundamentos de fato e de direito que embasam o seu inconformismo com o ato judicial combatido, portanto, não há que se falar em ofensa ao princípio da dialeticidade.</p><p style="text-align: justify;"> >Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso.</p><p style="text-align: justify;"> >Passo, então, ao seu deslinde.</p><p style="text-align: justify;"> >O douto magistrado singular entendeu pela improcedência dos pedidos autorais, uma vez que, não havendo demonstração de ilicitude das contratações e restando demonstrada a expressa anuência do autor no aperfeiçoamento contratual, incabível se torna a condenação da instituição financeira/requerida em devolução de valores e em pagamento de danos morais.</p><p style="text-align: justify;"> >Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Súmula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista: “ O Código de Defesa do Consumidor é aplicável às instituições financeiras”.</p><p style="text-align: justify;"> >Por certo, conforme entendimento firmado pela Segunda Seção do Superior Tribunal de Justiça, quando do julgamento do REsp 1197929 / PR submetido ao rito dos recursos repetitivos, “ as instituições bancárias respondem objetivamente pelos danos causados por fraudes ou delitos praticados por terceiros — como, por exemplo, abertura de conta-corrente ou recebimento de empréstimos mediante fraude ou utilização de documentos falsos,”

Processo	0204935-12.2023.8.06.0112
	porquanto tal responsabilidade decorre do risco do empreendimento, caracterizando-se como fortuito interno". No presente caso, não verifico causas que maculem a regularidade das celebrações dos contratos em questão, isto porque, a instituição financeira/apelada juntou os contratos discutidos nessa demanda (Id.25231612 e Id.25231621), assinados por meio de autenticação eletrônica e fotografia do momento das contratações. Em que pese as alegações do autor/recorrente acerca do dever do prestador de serviços em proceder com todas as informações necessárias à compreensão do consumidor em virtude do negócio celebrado, não desconheço a previsão positivada no Código de Defesa do Consumidor, em seu art. 6º inciso III, que reconhece tal conduta como direito básico do consumidor. Todavia, percebo que o dever de informação clara e adequada ao consumidor restou perfectibilizado, por parte do banco/apelado, na medida em que apresenta o "Termo de Consentimento Esclarecido do Cartão de Crédito Consignado", assinado eletronicamente pelo promovente/recorrente. Acostou, ainda, o protocolo de assinatura (Id.25231635 e Id. 25231610), onde consta dados de localização e Id da sessão do usuário, com informação do dia e horário da coleta dos dados. Consta, também, comprovante de transferência eletrônica do valor de R\$ 1.250,00 (um mil, duzentos e cinquenta reais), para a conta-corrente do autor/recorrente, conforme comprovante constante no Id. 25231628. Portanto, embora o autor/recorrente afirme que não contratou os empréstimos consignados na modalidade cartão de crédito, o conjunto probatório dos autos não corrobora suas alegações. Ademais, suposto vício de consentimento, sem suporte probatório sobre sua veracidade, não permite a anulação do negócio que, a rigor, como dito, se mostra juridicamente perfeito. Além disso, a própria resolução do INSS (Instrução Normativa INSS nº 28/2008, alterada pela Instrução Normativa INSS nº 39/2009), em seu art. 3º, inciso III, autoriza o desconto no benefício na adesão de cartão de crédito, quando seja dada autorização de forma expressa, por escrito ou por meio eletrônico, o que aconteceu nos presentes autos, tornando-se válido o contrato e a cláusula da Reserva de Margem Consignável (RMC), in verbis: Artigo 3º Os titulares de benefícios de aposentadoria e pensão por morte, pagos pela Previdência Social, poderão autorizar o desconto no respectivo benefício dos valores referentes ao pagamento de empréstimo pessoal e cartão de crédito concedidos por instituições financeiras, desde que: (...) III - a autorização seja dada de forma expressa, por escrito ou por meio eletrônico e em caráter irrevogável e irretratável, não sendo aceita autorização dada por telefone e nem a gravação de voz reconhecida como meio de prova de ocorrência. Desse modo, a apontada fraude na celebração do contrato não ficou evidenciada, posto que, a instituição financeira não somente apresentou os contratos firmados, assinados eletronicamente pelo autor/apelante, como também comprovou o regular cumprimento daqueles pactos, de modo que, os descontos realizados em seu benefício previdenciário restam albergados pela legalidade, não havendo que se falar em danos materiais e morais. Sobre as operações realizadas por meio eletrônico, é imprescindível, ainda, salientar o entendimento consolidado por esta Egrégia Corte, vejamos: CONSUMIDOR E PROCESSUAL CÍVEL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. C ARTÃO DE CRÉDITO CONSIGNADO. ASSINATURA COM AUTENTICAÇÃO ELETRÔNICA E RECONHECIMENTO BIOMÉTRICO (SELFIE). VALIDADE. COMPROVAÇÃO DA REGULARIDADE DA AVENÇA PELA INSTITUIÇÃO FINANCEIRA APELANTE. RECURSO CONHECIDO É PROVIDO. SENTENÇA REFORMADA. 1. O cerne da controvérsia reside em analisar a existência de relação jurídica entre as partes, no que diz respeito ao cartão de crédito consignado (Contrato n. 17016597), bem como analisar se, constatada a irregularidade da operação, a instituição financeira apelante responde pelos prejuízos (materiais e/ou morais) supostamente experimentados pelo autor apelado. 2. Nesse contexto, observa-se que o banco apelante se desincumbiu do ônus de comprovar a regularidade do Contrato n. 17016597, nos moldes do art. 373, II, do CPC e art. 14, § 3º, I, do CDC, mediante a apresentação do Termo de Adesão do Cartão de Crédito Consignado, da Cédula de Crédito Bancário (CCB) e do Termo de Consentimento Esclarecido (TCE), todos assinados eletronicamente pelo requerente recorrido (IP 177.56.191.243), em 15.06.2021, na cidade de Lavras da Mangabeira, onde reside, acompanhados do comprovante de transferência eletrônica do saque solicitado (TED), do seu documento de identificação (RG), válido e com foto, e da sua selfie, a qual é semelhante à fotografia encontrada no seu RG. 3. Desse modo,

Processo	0204935-12.2023.8.06.0112
	demonstrada a regularidade da contratação do cartão de crédito (Contrato n. 17016597) livremente pactuado entre as partes, não há que se falar em repetição do indébito nem em dano moral indenizável, pois ausentes os pressupostos da responsabilidade civil, visto que o banco apelante apenas efetuou as cobranças amparado no exercício regular do seu direito. 4. Recurso conhecido e provido para declarar a existência de relação jurídica entre as partes, no que diz respeito à regularidade do Contrato de Cartão de Crédito Consignado n. 17016597 e, via de consequência, afastar a condenação do banco recorrente ao pagamento dos danos materiais e morais fixados na sentença. ACÓRDÃO: Vistos, relatados e discutidos estes autos em que litigam as partes acima nominadas, acordam os Desembargadores integrantes da e. 3ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e dar provimento ao recurso interposto, nos termos do voto da eminente Relatora. Fortaleza, data e hora da assinatura digital. Jane Ruth Maia de Queiroga Desembargadora Presidente e Relatora (TJ-CE - AC: 00509490320218060114 Lavras da Mangabeira, Relator: JANE RUTH MAIA DE QUEIROGA, Data de Julgamento: 26/04/2023, 3ª Câmara Direito Privado, Data de Publicação: 26/04/2023) &#160; APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. PRELIMINARES DE CERCEAMENTO DE DEFESA E NÃO CONHECIMENTO DO RECURSO REJEITADAS. CONTRATO DE EMPRÉSTIMO CONSIGNADO CELEBRADO POR MEIO ELETRÔNICO (BIOMETRIA FACIAL). INSTITUIÇÃO FINANCEIRA QUE COMPROVOU A REGULARIDADE DA CONTRATAÇÃO. INEXISTÊNCIA/NULIDADE DO NEGÓCIO JURÍDICO, REPETIÇÃO DE INDÉBITO E CONDENÇÃO DA PARTE REQUERIDA AO PAGAMENTO DE INDENIZAÇÃO POR DANOS MORAIS PELO BANCO AFASTADAS. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PROVIMENTO nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (TJ-CE - Apelação Cível: 0202038-03.2022.8.06.0029 Acopiara, Relator: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 20/09/2023, Data de Publicação: 20/09/2023) &#160; DIREITO DO CONSUMIDOR. DIREITO CIVIL E PROCESSUAL CIVIL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. RESERVA DE MARGEM CONSIGNADA. CONTRATO ELETRÔNICO. AUTORIZAÇÃO MEDIANTE BIOMETRIA FACIAL. PESSOA IDOSA E ALFABETIZADA. COMPROVAÇÃO DE VALOR CREDITADO EM CONTA DE TITULARIDADE DA APELANTE. REGULARIDADE DO CONTRATO. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. A apelante alega, em suas razões recursais, que os contratos assinados eletronicamente não teriam contado com a sua anuência, em razão de ser idosa e não deter conhecimento do que se trata o contrato de empréstimo consignado. No entanto, os argumentos não prosperam, pois se percebe que o banco apelado trouxe prova da existência do contrato na modalidade eletrônica, colacionando vasta documentação em sua peça contestatória, que comprova a validade dos empréstimos. No caso, a contratação do empréstimo fora realizada pela apelante por meio eletrônico, mediante leitura da biometria facial da consumidora e de confirmações através de tokens e links de validação (fls. 142/144; 149; 154/155; 159; 166/168), afastando a hipótese alegada pela recorrente de contratação mediante fraude de terceiros. A instituição financeira, por sua vez, colacionou cópias de transferências bancárias (fl. 171/172) e dos contratos de empréstimos assinados eletronicamente (fls. 145/156; 159/168), bem como RG e CPF (fls. 157/158; 169/170) e biometria facial (fls. 116/222). Os documentos colacionados pelo apelado não demonstram ilegalidade nas tratativas contratuais. Tem-se que a autora manifestou seu pleno consentimento em relação às cláusulas presentes no contrato, não sendo crível que, após ter seguido todos os passos para validação e confirmação da transação, como tokens e links (fls. 142/144; 149; 154/155; 159; 166/168), a apelante não tenha tomado conhecimento de que estava formalizando contrato de empréstimo consignado, até mesmo porque não é necessário vasto conhecimento tecnológico para a sua pactuação. Dessarte, entende-se pela validade do negócio jurídico celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, do seu ônus probante acerca de fato impeditivo, modificativo ou extintivo do direito autoral (art. 373, II, CPC), produzindo prova pertinente à regularidade da contratação. Ante a regularidade dos descontos nos proventos de aposentadoria da parte recorrente, não há que falar na ocorrência de ato ilícito por parte do recorrido e, por consequência, em dano moral capaz de ensejar o pagamento de indenização, nos termos do artigo 5º, inciso X, da Constituição Federal. Recurso conhecido e desprovido. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para negar-lhe

Processo	0204935-12.2023.8.06.0112
	provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (TJ-CE - Apelação Cível: 0230355-95.2022.8.06.0001 Fortaleza, Relator: JOSÉ RICARDO VIDAL PATROCÍNIO, Data de Julgamento: 02/08/2023, 1ª Câmara Direito Privado, Data de Publicação: 02/08/2023) E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados, voto pelo conhecimento do presente recurso de apelação, mas para negar-lhe provimento, mantendo inalterada a sentença atacada. Em decorrência da sucumbência recursal, majoro os honorários advocatícios devidos pela parte promovente/apelante, de 10% (dez por cento) para 11% (onze por cento), nos termos do artigo 85, § 11, do Código de Processo Civil/2015, ficando, contudo, suspensa a exigibilidade, por ser a autora/recorrente beneficiária da justiça gratuita (Art. 98, § 3º, do CPC). É como voto. Fortaleza-CE, 10 de setembro de 2025. Relator Juiz Convocado Eduardo de Castro Neto
Processo	0632628-14.2024.8.06.0000
Número de ordem	61
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Contratos Bancários
Polo ativo	BANCO DO BRASIL SA
Advogado(s) - Polo ativo	WILSON SALES BELCHIOR - (CE17314-A)
Polo passivo	ANGELINA MARIA PASSOS
Advogado(s) - Polo passivo	MARCELO DE SA CORTEZ - (CE32099-A) JOAO MARCELO BRITO DA SILVA - (CE46565-A)
Terceiros	Não informado

Processo	0632628-14.2024.8.06.0000
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> </p> </div>

Processo	0632628-14.2024.8.06.0000
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	Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph

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	SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Processo: &#160;0632628-14.2024.8.06.0000 </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Classe: &#160;AGRAVO DE INSTRUMENTO </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Agravante: BANCO DO BRASIL S/A </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-

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	numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 23px; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">Agravado: &#160; ANGELINA MARIA PASSOS</p> <p align="justify"> Ementa: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. CUMPRIMENTO DE SENTENÇA. IMPUGNAÇÃO ACOLHIDA PARCIALMENTE. DECISÃO INTERLOCUTÓRIA. RECURSO CABÍVEL. EXCESSO DE EXECUÇÃO. MATÉRIA DE ORDEM PÚBLICA. POSSIBILIDADE DE RECONHECIMENTO DE OFÍCIO. DECISÃO RECORRIDA CARENTE DE FUNDAMENTAÇÃO. NULIDADE CONFIGURADA. RECURSO PROVIDO. </p> <h3> I. CASO EM EXAME </h3> <p align="justify"> Agravado de instrumento interposto pelo Banco do Brasil S/A contra decisão do Juízo da 4ª Vara Cível da Comarca de Fortaleza que, nos autos de cumprimento de sentença ajuizado por Angelina Maria Passos, acolheu parcialmente a impugnação apresentada, determinando o levantamento de R\$ 5.537,99 em favor do agravante, sem explicitar os fundamentos do cálculo adotado. </p> <h3> II. QUESTÃO EM DISCUSSÃO </h3> <p align="justify"> Há duas questões em discussão: (i) definir se o recurso cabível contra a decisão que acolhe parcialmente impugnação ao cumprimento de sentença é o agravo de instrumento; (ii) estabelecer se a decisão recorrida, ao acolher parcialmente a impugnação sem apresentar motivação idônea, padece de nulidade por ausência de fundamentação. </p> <h3> III. RAZÕES DE DECIDIR </h3> <p align="justify"> A decisão que acolhe parcialmente a impugnação ao cumprimento de sentença possui natureza interlocutória, de modo que o recurso cabível é o agravo de instrumento. </p> <p align="justify"> O excesso de execução constitui matéria de ordem pública, podendo ser alegada a qualquer tempo e conhecida de ofício pelo magistrado. </p> <p align="justify"> A decisão judicial deve conter fundamentação clara e específica, sob pena de nulidade, nos termos do art. 93, IX, da CF/1988, e do art. 489, § 1º, do CPC. </p> <p align="justify"> A ausência de explicitação dos critérios utilizados para acolher parcialmente a impugnação e determinar o levantamento de valores configura nulidade por falta de fundamentação. </p> <h3> IV. DISPOSITIVO E TESE </h3> <p align="justify"> Recurso provido. </p> <p align="justify"> Tese de julgamento: </p> <p align="justify"> A decisão que acolhe parcialmente impugnação ao cumprimento de sentença tem natureza interlocutória e é impugnável por agravo de instrumento. </p> <p align="justify"> O excesso de execução é matéria de ordem pública, cognoscível de ofício a qualquer tempo no curso do cumprimento de sentença. </p> <p align="justify"> A ausência de fundamentação específica na decisão judicial acarreta sua nulidade por violação ao art. 93, IX, da CF/1988 e ao art. 489, § 1º, do CPC. </p> <hr /> <p align="justify"> Dispositivos relevantes citados: CF/1988, art. 93, IX; CPC/2015, arts. 489, § 1º; 995; 1.019, I. </p> <p align="justify"> </p>

Processo	0632628-14.2024.8.06.0000
	Jurisprudência relevante citada: STJ, REsp n. 2.092.982/RS, Rel. Min. Nancy Andrighi, 3ª Turma, j. 24.10.2023; STJ, AgInt no AREsp n. 638.541/MA, Rel. Min. Mauro Campbell Marques, 2ª Turma, j. 21.11.2023; STF, RE 217631, Rel. Min. Sepúlveda Pertence, 1ª Turma, j. 09.09.1997. </p> <p align="justify"> #160; </p> <p align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direto Privado do Tribunal de Justiça do Estado do Ceará,&#160;por unanimidade, em conhecer do recurso e dar-lhe provimento, nos termos do voto do Relator. </p> <p align="center"> Fortaleza, 10 de setembro de 2025. </p> <p align="center"> #160; <p align="center"> Presidente do Órgão Julgador </p> <p align="center"> #160; </p> <p align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado </p> <p align="center"> #160; </p> <p align="center"> Relator </p> <p align="justify"> #160; </p> <p align="justify"> RELATÓRIO </p> <p align="justify"> #160; </p> <p align="justify"> Cuida-se de agravo de instrumento interposto pelo BANCO DO BRASIL S/A adversando decisão do juízo da 4ª Vara Cível da Comarca de Fortaleza que, nos autos do cumprimento de sentença n. 0147373-29.2019.8.06.0001 oposto por ANGELINA MARIA PASSOS, acolheu parcialmente a impugnação ao cumprimento de sentença, o que fez nos seguintes termos: </p> <p align="justify"> “(…) Acolho parcialmente as impugnações </p> <p align="justify"> #160; </p> <p align="justify"> Alega que “No presente processo há nítido excesso de execução, visto que há extrapolação dos limites do título executivo, está sendo executado valor maior que aquele estabelecido pela decisão do juízo de primeiro grau.” </p> <p align="justify"> Aduz que “Intimada a emitir parecer, a Contadoria do Foro apontou como devido pelo banco do Brasil um total de R\$ 165.277,39”; que “Intimado, o banco do Brasil manifestou CONCORDÂNCIA com os cálculos da contadoria (fls. 825)”; que “A decisão agravada determinou que o banco do Brasil fosse restituído em R\$ 5.537,99 (cinco mil quinhentos e trinta e sete reais e noventa e nove centavos) e que “Diante do exposto acima e tendo o banco do Brasil depositado em garantia R\$ 249.693,73 (duzentos e quarenta e nove mil, seiscentos e noventa e três reais e setenta e três centavos), subtraindo-se o valor indicado pela contadoria, acrescidos 5% de honorários sucumbenciais, resulta no excesso de R\$ 76.152.” </p> <p align="justify"> #160; </p> <p align="justify"> Requer, por fim, a reforma da decisão recorrida. </p> <p align="justify"> #160; </p>

Processo	0632628-14.2024.8.06.0000
	arial, helvetica, sans-serif;">Contrarrrazões ofertadas. align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">&#160; align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">É o que importa relatar. align="justify" strong> font-size: medium;"> font-family: arial, helvetica, sans-serif;">VOTO. align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">

 align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">Em sede de Juízo de Admissibilidade, entendo que deve ser recebido o recurso de agravo de instrumento em trâmite nestes autos, porquanto preenchidos todos os requisitos intrínsecos e extrínsecos que compõem esse crivo. align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>Inicialmente, rejeito o alegado não cabimento do recurso de agravo de instrumento contra a decisão do juízo a quo suscitado pela parte recorrida. align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>Isso porque, apesar de o juízo ter nomeado a decisão como “sentença”, o seu teor carrega cunho interlocutório, por não colocar fim ao cumprimento de sentença, sobretudo por ter acolhido apenas parcialmente a impugnação apresentada. align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>Segundo o STJ, “segundo a jurisprudência desta Corte, no sistema regido pelo CPC/2015, o recurso cabível da decisão que acolhe impugnação ao cumprimento de sentença e extingue a execução é a apelação. As decisões que acolherem parcialmente a impugnação ou a ela negarem provimento, por não acarretarem a extinção da fase executiva em andamento, tem natureza jurídica de decisão interlocutória, sendo o agravo de instrumento o recurso adequado ao seu enfrentamento. Não obstante, a decisão que acolhe, ainda que integralmente, a impugnação ao cumprimento de sentença para reconhecer o excesso de execução tem natureza de decisão interlocutória recorrível por agravo de instrumento, quando não impedir o prosseguimento da execução pelo valor devido. A aplicação da fungibilidade recursal pressupõe dúvida objetiva a respeito do cabimento do recurso e que a escolha pela parte recorrente não configure erro grosseiro”. (REsp n. 2.092.982/RS, relatora Ministra Nancy Andrichi, Terceira Turma, julgado em 24/10/2023, DJe de 30/10/2023). align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>Logo, o recurso cabível contra a decisão combatida é o agravo de instrumento – e não apelação. align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>Busca a parte recorrente a suspensão, seguido da reforma da decisão do juízo a quo, que acolheu parcialmente a sua impugnação ao cumprimento de sentença proposto pela parte contrária. align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>Sobre a possibilidade de concessão de efeito suspensivo em agravo de instrumento, anoto o teor do inciso I do art. 1.019 e do art. 995, ambos do Código de Processo Civil de 2015, que correspondiam aos artigos 527, II, e 558, do CPC de 1973: align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>“Art. 1.019. Recebido o agravo de instrumento no tribunal e distribuído imediatamente, se não for o caso de aplicação do art. 932, incisos III e IV, o relator, no prazo de 5 (cinco) dias: align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>I - poderá atribuir efeito suspensivo ao recurso ou deferir, em antecipação de tutela, total ou parcialmente, a pretensão recursal, comunicando ao juiz sua decisão; align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>Art. 995. Os recursos não impedem a eficácia da decisão, salvo disposição legal ou decisão judicial em sentido diverso. align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>Parágrafo único. A eficácia da decisão recorrida poderá ser suspensa por decisão do relator, se da imediata produção de seus efeitos houver risco de dano grave, de difícil ou impossível reparação, e ficar demonstrada a probabilidade de provimento do recurso.” align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>Por conseguinte, imprescindível, que: (a) da decisão possa resultar dano grave, de difícil ou impossível reparação; e (b) demonstração da possibilidade de provimento do recurso. align="justify" font-size: medium;"> font-family: arial, helvetica, sans-serif;">>No caso em análise, do confronto entre as razões recursais tecidas pelo Agravante e o conjunto da controvérsia recursal, verifico, em juízo <u>superficial</u>,

Processo	0632628-14.2024.8.06.0000
	underline;">presentes os citados requisitos. Pois bem. Inicialmente, vale ressaltar que o excesso de execução constitui matéria de ordem pública, não sofrendo os efeitos da preclusão, sendo este o entendimento do STJ, podendo ser conhecido de ofício pelo juízo, vejamos: PROCESSUAL CIVIL. CONTRATO ADMINISTRATIVO. EMBARGOS À EXECUÇÃO. RELATIVIZAÇÃO DA COISA JULGADA. FUNDAMENTAÇÃO DEFICIENTE. EXCESSO DE EXECUÇÃO. CONHECIMENTO DE OFÍCIO. POSSIBILIDADE. HONORÁRIOS ADVOCATÍCIOS. EXORBITÂNCIA CONFIGURADA. AFASTAMENTO DA SÚMULA 7/STJ PARA FINS DE READEQUAÇÃO. POSSIBILIDADE. AGRAVO INTERNO PARCIALMENTE PROVIDO. 1. A sustentar a possibilidade de relativização da coisa julgada na hipótese dos autos, o recorrente apresentou razões recursais dissociadas da fundamentação do acórdão recorrido, deixando de impugná-la de modo objetivo. Incidência das Súmulas 284 e 283 do STF, por analogia. 2. Nos termos da jurisprudência desta Corte, o excesso de execução é matéria de ordem pública e pode ser reconhecido de ofício. Nesses termos, deve ser restabelecida a sentença que considerara indevida a aplicação integral do índice de correção monetária de março de 1990, que alcançou 84,32% (IPC), tendo em vista que o título executivo determinou a incidência da correção somente a partir de 30/3/1990. 3. (...) 4. Agravo parcialmente provido. (AgInt no AREsp n. 638.541/MA, relator Ministro Mauro Campbell Marques, Segunda Turma, julgado em 21/11/2023, DJe de 24/11/2023.) AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. CUMPRIMENTO DE SENTENÇA. OMISSÃO DO ACÓRDÃO. ART. 1.022 DO CÓDIGO DE PROCESSO CIVIL. DEFICIÊNCIA DE FUNDAMENTAÇÃO. INEXISTÊNCIA. EXCESSO DE EXECUÇÃO. PRECLUSÃO. NÃO OCORRÊNCIA. NÃO PROVIDO. 1. Não há falar-se em omissão ou falta de justificativa adequada nos casos em que o Tribunal de origem resolve a controvérsia na extensão da matéria devolvida, como no caso. 2. A adequação do valor executado ao título executivo correspondente constitui matéria de ordem pública, e pode ser alegada na instância ordinária a qualquer tempo, cognoscível inclusive de ofício. Súmula 83/STJ. 3. Agravo interno a que se nega provimento. (AgInt no AgInt no AREsp n. 2.365.103/SP, relatora Ministra Maria Isabel Gallotti, Quarta Turma, julgado em 22/4/2024, DJe de 13/5/2024.) PROCESSUAL CIVIL E ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO ESPECIAL. VIOLAÇÃO DOS ARTS. 489, § 1º, E 1.022, II, DO CPC/2015 NÃO CONFIGURADA. SERVIDOR PÚBLICO FEDERAL. EXECUÇÃO DE SENTENÇA. PAGAMENTOS ADMINISTRATIVOS. LIQUIDAÇÃO DE SENTENÇA. AFERIÇÃO DO QUANTUM DEBEATUR. ALEGADO EXCESSO DE EXECUÇÃO. PRECLUSÃO. NÃO OCORRÊNCIA. MATÉRIA DE ORDEM PÚBLICA. 1. Inexiste afronta aos arts. 489, § 1º, e 1.022, II, do CPC/2015 quando o acórdão recorrido pronuncia-se, de forma clara e suficiente, acerca das questões suscitadas nos autos, manifestando-se sobre todos os argumentos que, em tese, poderiam infirmar a conclusão adotada pelo Juízo. 2. Quanto à preclusão, constitui matéria de ordem pública a adequação do valor executado, para se

Processo	0632628-14.2024.8.06.0000
	extirpar o excesso. Ressalte-se que, em se tratando de matéria de ordem pública, pode ser alegada na instância ordinária a qualquer tempo, podendo inclusive ser conhecida de ofício. Precedentes: AgInt nos EDcl no AgRg no AREsp 640.804/RS, Relator Ministro Napoleão Nunes Maia Filho, Primeira Turma, DJe 28/2/2019 e AgInt no REsp 1.617.906/MG, Relator Ministro Mauro Campbell Marques, Segunda Turma, DJe 21/5/2019. Agravo interno não provido. (AgInt no REsp n. 1.608.052/RS, relator Ministro Benedito Gonçalves, Primeira Turma, julgado em 7/10/2019, DJe de 9/10/2019.) Com efeito, “Eventual excesso de execução pode ser arguido pelo executado, e analisado pelo magistrado, em qualquer momento até a extinção do cumprimento de sentença em razão do pagamento do quantum devido” (TJ-MG - Agravo de Instrumento: 26889502520248130000 1.0000.22.100775-0/004, Relator: Des.(a) Jair Varão, Data de Julgamento: 25/07/2024, 3ª CÂMARA CÍVEL, Data de Publicação: 29/07/2024). Prosseguindo, a decisão que transitou em julgado determinou (fls. 513-532 do processo de origem): (i) a declaração da nulidade “dos contratos discutidos nessa ação; (ii) que os valores devidos a título de danos materiais devem ser ressarcidos em dobro somente as parcelas alcançadas pela modulação dos efeitos do EAREsp 676.608/RS, as demais na forma simples, visto que não restou demonstrada a má-fé do banco (art. 42, parágrafo único, CDC); acrescidos de juros de 1% (um por cento) ao mês, a partir do evento danoso (Súmula n.º 54, STJ) e correção monetária pelo INPC, a partir da data do efetivo prejuízo (Súmula n.º 43, STJ)”. Os honorários de sucumbência restaram fixados em 10% sobre o valor da condenação. Em sua petição de cumprimento de sentença, a exequente apresentou o valor de R\$ 249.693,73 (duzentos e quarenta e nove mil, seiscentos e noventa e três reais e setenta e três centavos) a ser executado (fls. 684-702), relativo ao débito de R\$ 237.803,55, acrescido de R\$ 11.890,18 de honorários advocatícios. Houve o depósito judicial do montante exigido no cumprimento de sentença. O banco ora agravante, em sua impugnação às fls. 744-748, apresentou o valor incontroverso de R\$ 233.691,93 (duzentos e trinta e três mil, seiscentos e noventa e um reais e noventa e três centavos), referente à soma do valor do débito (R\$ 232.529,28) e dos honorários, que calculou a 0,5% do valor da condenação (R\$ 1.162,65), alegando o excesso quanto ao valor de R\$ 16.001,18 (dezesseis mil, um real e dezoito centavos). Remetidos os autos à Contadoria do Fórum, de acordo com a planilha de fl. 785, o valor devido pelo recorrente seria de R\$ 181.805,13, correspondendo à soma do débito de R\$ 165.277,39 como valor de R\$ 16.527,74 relativo aos honorários advocatícios, havendo um excesso de R\$ 67.888,60. Pois bem. Vale mencionar que o ora recorrente não ofereceu resposta aos cálculos apresentados pela Contadoria, deixando transcorrer o prazo sem qualquer manifestação. Pelo que se extrai dos autos, do valor do débito exigido pela exequente/agravada, na quantia de R\$ 237.803,55, o banco/executado concordou com o montante de R\$ 232.529,28, ao passo em que o valor dos honorários, exigidos pela exequente em R\$ 11.890,18, houve a concordância no montante de R\$ 1.162,65. Em relação ao valor dos honorários, vale consignar de imediato o erro no cálculo

Processo	0632628-14.2024.8.06.0000
	elaborado pelo banco, na medida em que calculou em 0,5% da condenação, ao passo em que a decisão que transitou em julgado fixou-os em 10% sobre o valor da condenação. O douto julgador de origem resolveu por acolher parcialmente a impugnação do ora recorrente, alegando que “a incorreção dos valores apresentados, determinando assim, por conseguinte, o levantamento no valor de R\$5.537,99 (cinco mil quinhentos e trinta e sete reais e noventa e nove centavos) pelo BANCO DO BRASIL”. No entanto, em que pese o entendimento do julgador originário, não fundamentou qual a incorreção apontada, muito menos o motivo pelo qual logrou êxito a impugnação do ora recorrente, explicando como se chegou ao valor de R\$5.537,99 (cinco mil quinhentos e trinta e sete reais e noventa e nove centavos). a ser levantado pelo impugnante, pelo que entendo a decisão carente de motivação, gerando a sua nulidade, o que pode ser reconhecida de forma oficiosa. A respeito da motivação inerente a toda e qualquer decisão jurisdicional, dispõe o Código de Processo Civil no art. 489, §1º que não se considera fundamentada qualquer decisão judicial, seja ela interlocutória, sentença ou acórdão, que “invocar motivos que se prestariam a justificar qualquer outra decisão”. Sobre o tema Uadi Lammêgo Bulos: O ministro, desembargador ou juiz tem necessariamente de explicar o porquê do seu posicionamento. Não basta que a autoridade jurisdicional escreva: “denego a liminar” ou “ausentes os pressupostos legais, revogo a liminar”. A dicção constitucional inadmitte a chamada “motivação implícita, ou seja, aquela em que o julgado não evidencia um raciocínio lógico, direto, explicativo e convincente da postura adotada. Daí o art. 93, IX, cominar pena de nulidade pela não-observância do princípio.” Nesta mesma linha de raciocínio, assim se manifesta Fredie Didier Jr. preleciona que: “É bastante comum o operador do direito deparar-se, no seu dia-a-dia, com decisões do tipo “presentes os pressupostos legais, concedo a tutela antecipada”, ou simplesmente “defiro o pedido do autor porque em conformidade com as provas produzidas nos autos”, ou ainda “indefiro o pedido, por falta de amparo legal”. Essas decisões não atendem à exigência da motivação: trata-se de tautologias, que, exatamente por isso, não servem como fundamentação.” Ao deparar-se com espécies similares a dos autos, assim tem reiteradamente decidido o Pretório Excelso: “HABEAS CORPUS” – IMPETRAÇÃO FUNDADA, EM PARTE, EM RAZÕES NÃO APRECIADAS PELO TRIBUNAL APONTADO COMO COATOR – INCOGNOSCIBILIDADE, NO PONTO, DO REMÉDIO CONSTITUCIONAL – PRETENDIDA NULIDADE DA SENTENÇA PENAL CONDENATÓRIA – ALEGADA OFENSA AO DISPOSTO NO ART. 381 DO CPP E NO ART. 93, IX, DA CONSTITUIÇÃO – AUSÊNCIA DE FUNDAMENTAÇÃO DO ATO SENTENCIAL CONDENATÓRIO – IMPROCEDÊNCIA – SENTENÇA PENAL QUE APRESENTA FUNDAMENTAÇÃO SUFICIENTE E ADEQUADA – SITUAÇÃO DE ILIQUIDEZ QUANTO AOS FATOS SUBJACENTES À IMPETRAÇÃO FUNDADA EM REFERIDOS PRECEITOS LEGAIS – CONTROVÉRSIA QUE, ADEMAIS, IMPLICA EXAME APROFUNDADO DE FATOS E CONFRONTO ANALÍTICO DE MATÉRIA ESSENCIALMENTE PROBATÓRIA – INVIABILIDADE NA VIA SUMARÍSSIMA DO “HABEAS CORPUS” – PEDIDO CONHECIDO EM PARTE E, NESSA PARTE, INDEFERIDO. IMPETRAÇÃO DE “HABEAS CORPUS” COM APOIO EM FUNDAMENTOS NÃO EXAMINADOS PELO TRIBUNAL APONTADO COMO COATOR: HIPÓTESE DE INCOGNOSCIBILIDADE DO “WRIT” CONSTITUCIONAL . - Revela-se insuscetível de conhecimento, pelo Supremo Tribunal Federal, o remédio constitucional de “habeas corpus”, quando impetrado com suporte em fundamentos que não foram apreciados pelo Tribunal apontado como coator. Se se revelasse lícito ao impetrante agir “per saltum”, registrar-se-ia indevida supressão de

Processo	0632628-14.2024.8.06.0000
	instância, com evidente subversão de princípios básicos de ordem processual. Precedentes. SENTENÇA PENAL CONDENATÓRIA: NECESSIDADE DE FUNDAMENTAÇÃO SÚFICIENTE E ADEQUADA, SOB PENA DE OFENSA AO DISPOSTO NO ART. 381 DO CPP E NO ART. 93, IX, DA CONSTITUIÇÃO . - É inquestionável que a exigência de fundamentação das decisões estatais, mais do que expressiva imposição consagrada e positivada pela ordem constitucional, reflete uma poderosa garantia contra eventuais excessos do Estado, pois, ao torná-la elemento imprescindível e essencial dos atos que veiculam a privação da liberdade individual, quis o ordenamento jurídico erigi-la como fator de limitação dos poderes deferidos às autoridades públicas . - Não se pode jamais esquecer que a exigência de motivação dos atos judiciais constrictivos da liberdade individual deriva de postulado constitucional inafastável, que traduz expressivo elemento de restrição ao exercício do próprio poder estatal, além de configurar instrumento essencial de respeito e proteção às liberdades públicas . - A fundamentação dos atos decisórios qualifica-se como pressuposto constitucional de validade e eficácia das decisões emanadas do Poder Judiciário, de tal modo que a inobservância do dever imposto pelo art. 93, IX, da Constituição Federal, precisamente por afetar a legitimidade jurídica dessas deliberações estatais, gera, de maneira irremissível, a sua própria nulidade . - (...) - A ocorrência de iliquidez quanto aos fatos alegados na impetração basta, por si só, para inviabilizar a utilização adequada da ação de "habeas corpus", que constitui remédio processual que não admite dilação probatória, nem permite o exame aprofundado de matéria fática, nem comporta a análise valorativa de elementos de informação produzidos no curso do processo penal de conhecimento. Precedentes. (STF - HC: 95034 PE, Relator: Min. CELSO DE MELLO, Data de Julgamento: 15/05/2012, Segunda Turma, Data de Publicação: ACÓRDÃO ELETRÔNICO DJe-204 DIVULG 14-10-2013 PUBLIC 15-10-2013) </p> <p align="justify"> AGRAVO REGIMENTAL NO AGRAVO DE INSTRUMENTO. DIREITO CIVIL. DANO MORAL. IMPUTAÇÃO FALS A DO CRIME DE FURTO. INCURSIONAMENTO NO CONTEXTO PROBATÓRIO JÁ CARREADO AOS AUTOS. IMPOSSIBILIDADE. SÚMULA Nº 279 DESTA CORTE. ALEGADA VIOLAÇÃO AO ARTIGO 93, IX, DA CF/88. INEXISTÊNCIA. 1. (...) 4. A decisão judicial tem que ser fundamentada (art. 93, ix), ainda que sucintamente, sendo prescindível que a mesma se funde na tese suscitada pela parte. Precedente: AI-QO-RG 791.292, Rel. Min. Gilmar Mendes, Tribunal Pleno, dje de 13/8/2010. 5. (...) 6. Agravo regimental desprovido. (Supremo Tribunal Federal STF; AI-AgR 749.008; PA; Primeira Turma; Rel. Min. Luiz Fux; Julg. 20/08/2013; DJE 03/09/2013; Pág. 31) </p> <p align="justify"> "Decisão judicial: ausência de fundamentação e nulidade. Não satisfaz a exigência constitucional de que sejam fundamentadas todas as decisões do Poder Judiciário (CF, art. 93, IX) a afirmação de que a alegação deduzida pela parte é "inviável juridicamente, uma vez que não retrata a verdade dos compêndios legais". não servem à motivação de uma decisão judicial afirmações que, a rigor, se prestariam a justificar qualquer outra ." (RE 217631, Relator(a):&#160; Min. SEPÚLVEDA PERTENCE, Primeira Turma, julgado em 09/09/1997, DJ 24-10-1997 PP-54194 EMENT VOL-01888-12 PP-02408) </p> <p align="justify"> E é assim que, por todo o exposto, conheço do recurso e dou-lhe provimento, para, de ofício, reconhecer a nulidade da decisão objurgada quanto ao Banco do Brasil S/A, porque carente de fundamentação, devendo o douto juízo a quo, caso ainda entenda pelo acolhimento da impugnação, declinar as razões pelas quais entende que houve incorreção no valor executado. </p> <p align="justify"> É como voto. </p> <p align="justify"> Fortaleza/CE, 10 de setembro de 2025. </p> <p align="justify"> &#160; </p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado </p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center">&#160;</p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Relator

269

Processo	0264163-62.2020.8.06.0001
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Processo	0264163-62.2020.8.06.0001
	margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> I. CASO EM EXAME </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 1. Embargos de declaração opostos por Maria do Carmo Vasconcelos Bandeira contra acórdão que negou provimento a apelação, mantendo a sentença que julgou improcedente a ação consignatória. A embargante sustenta omissão e contradição quanto à prova dos reparos no imóvel, confissão extrajudicial da ex-locatária e possibilidade de utilização da caução para abatimento de despesas.</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 2. Há quatro questões em discussão: (i) definir se houve omissão quanto à análise de prova inequívoca do reconhecimento da responsabilidade pelos reparos; (ii) verificar se existe contradição entre a fundamentação do acórdão e a prova documental; (iii) averiguar se houve omissão na valoração da confissão extrajudicial da locatária; e (iv) estabelecer se o acórdão deixou de enfrentar a incidência do art. 23, III, da Lei nº 8.245/91 e da cláusula contratual que autoriza a utilização da caução. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 3. Os embargos de declaração têm cabimento restrito às hipóteses do art. 1.022 do CPC, não constituindo instrumento apto à rediscussão do mérito já apreciado. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 4. O acórdão embargado analisou a questão dos reparos e concluiu que não houve prova documental suficiente, como notas fiscais ou recibos, aptos a comprovar a responsabilidade da locatária, não configurando omissão. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 5. Não há contradição entre os fundamentos da decisão e a prova dos autos, uma vez que a divergência apontada corresponde apenas à inconformidade da parte com a valoração das provas. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 6. O julgador não está obrigado a rebater todos os argumentos ou documentos apresentados pelas partes, bastando que fundamente de forma suficiente sua decisão, como ocorreu no caso. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 7. A decisão foi proferida em consonância com o entendimento do STJ no Tema Repetitivo nº 967, segundo o qual a consignação em pagamento exige o depósito integral e o pagamento parcial não extingue a obrigação. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 8. As razões da embargante representam mero inconformismo, não havendo obscuridade, contradição, omissão ou erro material que justifique o acolhimento dos aclaratórios. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> IV. DISPOSITIVO E TESE </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 9.

Processo	0264163-62.2020.8.06.0001
	normal;">Embargos de declaração rejeitados. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Tese de julgamento :" a) O julgador não está obrigado a rebater um a um todos os argumentos e documentos das partes, desde que a decisão seja fundamentada de forma suficiente. b) A contradição apta a ensejar embargos de declaração deve ocorrer entre os próprios fundamentos da decisão judicial, não entre estes e a interpretação da parte. c) A consignação em pagamento exige o depósito integral da obrigação, sendo incabível o abatimento unilateral sem prova idônea dos reparos alegados." </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados CPC/2015, art. 1.022; CC, art. 413; Lei nº 8.245/91, art. 23, III. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada: AgInt no REsp n. 1.903.903/MS, relator Ministro Paulo de Tarso Sanseverino, Terceira Turma, julgado em 13/6/2022, DJe de 17/6/2022; STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022; STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> AC ORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Fortaleza, 10 de setembro de 2025. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">

Processo	0264163-62.2020.8.06.0001
	mesmas não apresentarem data, a Vistoria final reforça e comprova o que estava sendo cobrado, além do que, conforme farta jurisprudência existente sobre o assunto, a obrigação do(a) Locador(a) é apenas a de convidar para participar da Vistoria, o que no caso dos autos foi devidamente cumprido, conforme se vê do Recibo de entrega de Chaves constante nos autos no ID 16117059." 3. OMISSÃO SOBRE A VALORAÇÃO DA CONFISSÃO EXTRAJUDICIAL (ART. 389, CPC) O acórdão deixa de analisar o valor probatório dos documentos e emails, que configuram confissão da devedora acerca dos reparos devidos, apta a autorizar o abatimento correspondente da caução (art. 413, CC). 4. OMISSÃO SOBRE O ART. 23, III, DA LEI 8.245/91 E CLÁUSULA 12ª DO CONTRATO O acórdão não enfrentou a tese de que a Caução pode ser validamente utilizada para cobrir reparos admitidos pela Locatária, conforme previsão contratual e legal. Por essas razões requer "a) o regular recebimento e o devido processamento do presente recurso, porque cabível e tempestivo; (b) que ao presente recurso de embargos de declaração seja atribuído efeito suspensivo, à luz do artigo 1.026, §1º, do CPC, de modo a evitar danos graves aos Embargantes; (c) que V. Exa. ACOLHA os presentes embargos de declaração em sua íntegra para, operando-lhes efeitos modificativos, reformar o acórdão no sentido de no sentido de anular a sentença, devolvendo aos Embargantes o direito de se manifestar acerca do documento novo (planilha de cálculos) juntado aos autos, bem como devolvendo o direito à produção de prova tempestivamente requestada." Sem contrarrazões. É o relatório. VOTO Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento aos requisitos intrínsecos e extrínsecos que compõem o referido crivo, levando-o ao qualificativo da positividade e, assim, ao conhecimento dos aclaratórios. Cinge-se a presente demanda em verificar se

Processo	0264163-62.2020.8.06.0001
	o acórdão embargado incorreu em: (i) omissão quanto à alegada prova inequívoca de que a ex-locatária reconheceu a responsabilidade pelos reparos; (ii) contradição entre o item 4 do acórdão e a prova documental constante nos autos; (iii) omissão quanto à valoração da confissão extrajudicial; e (iv) omissão quanto à aplicação do art. 23, III, da Lei nº 8.245/91, bem como da cláusula 12 do contrato de locação. &#160; Registro, inauguralmente, que da simples leitura da insurgência aclaratória, é possível verificar o mero inconformismo da Embargante com a decisão do recurso anteriormente manejado, limitando-se tão somente em expedir argumentos com visos a rediscutir a questão já decidida. decidida. Segundo o art. 1.022 do Código de Processo Civil, cabem embargos de declaração contra qualquer decisão judicial para: I - esclarecer obscuridade ou eliminar contradição; II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material. Na ensancha, anoto o disposto na Súmula 18 deste egrégio Tribunal de Justiça, in verbis Na ensancha, anoto o disposto na Súmula 18 deste egrégio Tribunal de Justiça,

Processo	0264163-62.2020.8.06.0001
	Tribunal de origem, com base nos documentos acostados aos autos, reconheceu a ocorrência da cumulação. Alterar o entendimento do Tribunal de Justiça esbarra no óbice previsto no Enunciado n.º 7/STJ. 5. Não apresentação de argumentos novos capazes de infirmar os fundamentos que alicerçaram a decisão agravada. 6. AGRAVO INTERNO CONHECIDO E DESPROVIDO. (AgInt no REsp n. 1.903.903/MS, relator Ministro Paulo de Tarso Sanseverino, Terceira Turma, julgado em 13/6/2022, DJe de 17/6/2022.) Ressalte-se, também, por oportuno, que a contradição a que se refere o art. 1.022, inciso I, do Código de Processo Civil, deve estar presente entre os próprios fundamentos adotados no acórdão ou na sentença, caracterizando-se pela existência de juízos inconciliáveis no corpo da decisão judicial. Não configura contradição, para fins de embargos declaratórios, a mera divergência entre as alegações ou pretensões das partes e os fundamentos que embasam a conclusão do julgador. Assim, encontrada a solução do litígio nos seguintes termos: Assim, encontrada a solução do litígio nos seguintes termos:

Processo	0264163-62.2020.8.06.0001
	III. RAZÕES DE DECIDIR 3. A consignação em pagamento exige que o depósito judicial corresponda ao valor integral, certo e exigível da obrigação, sob pena de improcedência do pedido e continuidade da mora do devedor. 4. O valor depositado pela autora foi unilateralmente fixado em R\$ 5.962,01, após abatimentos de aluguel, IPTU e alegados reparos, mas não houve prova documental suficiente sobre a realização dos reparos, como notas fiscais, recibos ou laudo técnico, tampouco vistoria final assinada por ambas as partes. 5. Fotografias sem data e vistoria inicial de 2017 que já apontava defeitos no imóvel não comprovam a responsabilidade da locatária pelos danos alegados. 6. O STJ, no Tema Repetitivo nº 967, firmou entendimento de que a insuficiência do depósito conduz ao julgamento de improcedência da ação consignatória, pois o pagamento parcial não extingue a obrigação. 7. A recusa da apelada em receber o valor foi justificada, porquanto não comprovada a quitação integral das obrigações locatícias e de conservação do imóvel. 8. Recurso conhecido e desprovido. Tese de julgamento 1. A consignação em pagamento exige o depósito integral da obrigação, sendo incabível o pagamento parcial unilateralmente arbitrado pelo devedor. 2. A recusa do credor em receber valor inferior ao devido é considerada justificada, afastando o efeito liberatório da consignação. 3. A ausência de provas hábeis a demonstrar os danos e os reparos no imóvel impede o abatimento da caução prestada. 160. Não há que se falar em vícios ensejadores à procedência aclaratória, restando evidenciado o mero inconformismo da Embargante com a solução jurídica prestada por este Sodalício, invocando instrumento processual incabível para a pretensão posta, no caso, a tentativa de rediscutir a matéria já decidida. 160.

Processo	0264163-62.2020.8.06.0001
	A respeito, anoto entendimento perfilhado na ambiência deste Eg. Tribunal in verbis 1. A solução correta e integral da controvérsia, com lastro em fundamentos suficientes, não configura omissão. 2. Os Embargos de Declaração não constituem instrumento adequado para a rediscussão da matéria de mérito consubstanciada na decisão recorrida, quando não presentes os vícios de omissão, obscuridade ou contradição, nos termos do art. 1.022 do CPC. 3. Embargos de Declaração rejeitados. 1. Não há qualquer contradição ou mesmo omissão no acórdão embargado, que examinou de forma clara e expressa as razões apresentadas pelas partes, tendo apenas decidido de forma contrária à pretensão das ora embargantes. 2. Os embargos de declaração não se prestam à rediscussão da matéria já decidida no julgamento do recurso especial. EMBARGOS DE DECLARAÇÃO REJEITADOS. (STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022)

Processo	0247495-74.2024.8.06.0001
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	Não informado

Processo	0247495-74.2024.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAQAAAABXCAYAAADrjpu dAAAgAEIEQVR4nOy9eZxVXxo/11rn3urqucGGpknAbEbEGmh6fk2iIRG/DIV+by8DETzSD S2NnMSTVix/owyl8YoLzE+k2h+VDS+JA5RgeoJaLBBWmlUEBFBhgaaHqq66t6z9/r9sfe5 U809Arl+n+5b955z9tnTGVYahVdhb4NAt8Y/e/3Y92Ecd1Enh806vv5reW93Z7wGqyP/7C2w /uePpDHEvo4OjesLLZkRxsLiDPMY4uvVGR6l5ge4+8bHxhvb7kO3g14DQv2nhZccRJa9Hjg dOAmR12JyLMJhGF2IprULHmWHzj9H+Cn4R8EeAtIE/84fsvGWgdRi+9w0vi+64rW40EFO oOQIXi4mZJR5HxVGW8cJtlNzhgaHuS3cee2zRT9lkr14FUYGhYpCX6B5swEsvWwuJoey7 to1TdfiJlM66nDlBkXkTRg1xBQZC89GgPYVHLakOk4Dof170QEH3MbOnb/Nxlu2MTYREM B06eU3mPAeTKomJoDU+9fclWtqx8JNrLn+Q+OOP0nodi3Ed8HKO+govQXhnQR9I3CEiJ Tixfb5Kb6H1k8Jqev0Y/wYwh3g/5Y1n3h4xL4vv/xTIL8PmscfCgLQ3n6C0da9vp6jrWP7+o0 Klvr5IsHezdr/hvQVwnA7kEzlw80L/6JKzs4orwA03cgUkHkdKAT789n3bXfjpsToNez9lqLRP jH1pYnvKDACPThu023o0aB9I7Z99/5XWxvjV4YhVesLAouueK1mPFLvRnv/RtppBljYivl5rL3 xqXpbuw1tfVxyxdTE7X9BOBeRWfGdcT7MzBAC5qTopYhIM4KamYEZYHbvmYn3ULTxKIN DZ3PP3z6fRihAYNn7T0LKD4G44Qg/GgEYZdj19dxjAgBmhohg9iXWXPsbGTYTf/oXHtpE+ +aNtuoEYDFOz8VcBeE4RNufPmx4i17BYZBJgJHjBB0xGeH6+9Ue4XAohDZGKHEqlmRs kL4ixizngPGKCIvffCPkxrE9fELb70N4XSJWIs8ARACEZAzLCIUQmRXSRMI/PBEl8J3SOqu NAHhVH6CdZROAdan96dhawZSIy5uSMQjtdr+ySfii59Hu3+c50YekAcyGtTEXiUAY4NCtzT OkQnpT1zZwWEdZ6C2BJE3I3IWxsEATYifY2jkHuLA5cNaD2pxKZo4i0xOKLnmziCpy7Hx 5h/HgLbrxfstie9mE2Mx4gwTQerIFZsZ7fWGPVooMFTdA6pXcP1ez7L3L4LdL8XcW1wleM wMgpmoqGLE5D0TekVEzEzjJwFKw2+qOaOCCacmiAjDzkKjzXtaP2fV9H6PZnxFH1qUI1X CUArtCvwAvTGr4suPxTnzKJlOfBmkDcgoYF9Yh5LXC1OdJbWJhINC8NXSoPEo/ZLGHRf HRNNJDFG6yjt5jsqGfTmzL+4xOxpf4mXqwiaecxHdBcndS6/I9QLLDy16G9SgDqXB6Gi/Z/ ejJii5DwTpCFKle3iHBGjjpgQUEQiJtdFRlvcrrhddLd24LhbbMkt7SHReoKweyi2u7q/bge9Ocs uP56S/gtBFgKg3puJ8xalDtM47tF1q83z0q6CCKPqMOq/T7rr4531J/nchslvlgFlypoW0T5eO XFIR+mQaWel2FuC82/PtToP1en1jWHEdMypmluAxzmBHEfDAJIM5hmpA+AP45LKxmc LAvvqQ3NKSMLzb3FwMby5C5h7D7/DOJ/ctXLgX3JYLOWUI05hBxBbJONqWERIXSVrXBM o1SST9krXvuF4UAtlv2Vkf6hZccSUMWTKmW3pp5WSyWn+wlZ9ANRvzULp/U1UlwJVgm wazkSwYUvIdMqO3SzpkdDFar0DUjt1r+QNBZeUe+9dlvTZ0164H+2z76TKMfzfuyhIkHarSz mNGRYzx00X7fObt5klaHsdTq/Fn0v+C8w74XRimxSWJqEvuXrfo10FshOELIKfZy0ZaEkSX /9vEO47yhpB/D56dQtl4nuWi6p3CjmCQM0wWMC9+IEECq8ZMsnUyHqI8UgnASFy+wcvO WXUmWVZBZAVZOBVJUNOAmRbLmptPMuLUg584BEfHSColKCFKfHHEyfdNWdd0/1O+ /lajvXvbjus9/L007qj28sdK3rjglquH3IYvcGSNg9yX6fQCWDvpzFI/0apr0CauK9II19PK4o/XK FdjPiJJ6TAJZHXXTbar6SCEAZ0ifZJ3H5+ZcdknXomWg4D2S5F85EXMkKli3md2VGJkHU RITOLPip0QbMUEBrAknhp0owBocy/30s3OXKdntg+107b/v7Z9r6k3V3Y9BNN3Bhb+9wRF Kp88WJWc6a/reW3xowqqT02kDt7xndtcwgdBuzxwbJi/WRzPd+JCQf9nl52L8qwgaxQ2Iva adrETTDH9jDZrkFgPqFhp2X5dYn/9xpnPYPhjPfnjGQFraj5bOurhlzml/GvP9cicASYG3RaA vp1W0P5GSL0DsLWK2Auzogno6WOM9puBFkxhJjgYgiHMGkiWxP/FufdJ5/92y7bpDa4PF6 t+w60Ho9b6lL0h3N3QDc+ZVWE2f9fT0ht7GPDLSR8njglirgwmMgEjRJGcYAZk0G0iNjmyT CdjCkr0c1Yn7rI7T6uiKuMHxWtal/JcejfFEFSk1kH/3BRQrfAMQw1CROrEtA/YPiA40PhGE wpQmY41o9zo0wvrU/xzPHMjw68nVocm0m3739cZebgQgclmt9uETMdd1Mmxh52G5+2lv Rn86SAzhBCPPaHw/BIRMykjizY7INn2/PPPe/zoaCuK1NvNcx2kWXUspL74WCoffPQaQd /89mfP/OAv/dTT+9q7Y+rVCoyZ84c6079uLAX3wvQ2wfAz/7PwUdmNnjeUOj//nHv4r6eHrS nJy1F/vxtZNM3CXXK6WaqCo47cxBCN4f9mzmqMn4XmI09kPcxNEWXniEjfiexlGinf2BnbcES /07pGyoECV1peGtOfHfPRCTBD9AiKHGuQgWXESnww0PABFRNB6C3FaBoB+hGryaejA bAoiXQgZddyHOiF2snfOcPX1cenvvWBine18LBRtZlh4EfGfL255ORCApMBr5vJ9cdcsuvx QXGkRTn+JEBaCzMUlxysylPeGgplp07OIEQUCLZymg1uf0GcePVZCfM8Vxa5O7OBR06t vnD3lr7eTUB4ttEX7QahweVIRU+fB6zg8j//DFPKjI098HYTWeZk6xu8hoMy+D3gvrkPNmm G1t/yOHPfu9jmlF5PYGw7YakEIQSQDyPytuSgoxM6ExoBECw4FfJrEefl87G5V6aeJ/Pv8cg tQ+yZ8Dte38aBtXQ37PK/BikCNBR+k36YeYlMwZCQ/mcltxFKPeYfwWQL+B1YdRdJfXRJ FxKmYW42yLEyb0RsOXAqlh1gG9ixbVNsVXeiz5mROlasz9cl/sOtF9v9x8YjmO2OSUkKoA ZOIOrg49z16SfThfBSJABNZ3los80LS646HXQ5aAXCAqR6BCEHFIIzoiH64jiFzEEwTM3E +2aqbwi78sFa0J2btDRIdak8e60bqt27665rnqWCA43+JC7fZ/E03zuMyz/7jOedpH7bojC4ozL D6QlKvM6rqBfwlSAmuJpW285rkYft/tRO4N4Jz87Sy69CbYVAR+JmY2+6OmehH/FX0Xft YxN+V4R9h/zjQmHuu+wsjCsBMHOT8eYTi1zfIFDoC8zsS5j8M7mt4a4bXphgU2uBfwaEJZ edifJaVNakqMBijZPABrrkxP8n7Hu+gcm3cbkoe7w8FliAM0KvFyz3RmrZmVdOh/lvByt4O SsJNdEzWaoGVYNKk5EVINF0R4NAQKi5jAVn1ygJfinSiG/p+SrQzO2r962/p/vD2BNB12pV HAVKsydM8cALutzQF6U5++38O0Yw/pPHPawdOX5WF75ekXnjgnK+vUzq4OsIBGB1SP xIl2QV0enAxT2NQ3Tff4bLyyRejrywnVF5GO7YjNoXAZn5CeznZSHUx0rZLBnAkgdVug036 HdOww7UEogfm6Y9UEICJ/CCKomLoAt+P5S9Zfv67ptmZHsHZNW/q9uwmxez3rrtslbGy6 Z4Q5moBAEPU/CIKh21DdHi9MdH12B1rDow8kARhBtE9lv+x9x2OdC/DufidU1DhBQg3vL B57nfeYh5ArhmhwGryPFEFUyszTfNeLTjgFmzPmhWi38lPlh6+mY+i17buv66oabnmnWbHW D25LO8vPmbZG5D/bZhb19Ldj600/NPKFD8wWOvJKFWsXL0MnbXxjEHEwrgxGC5EOWx /UUVZwZCARTjxvd3Gfj5A2i0Jdk/ZlqBG3dck1iYZ0YFFrn4i1O8R1pR/Z59hViN+/5Ec79zRg m9TPqSDhdcp/L3wm8PXHKySE/3jvxzkyDRz7E2uv/Jl3WEa1FwyF1t+V6u7VphHkciumSG SC0SCxNVgexgAs1UEcumZiXuQhGCCvfr7A/CcBICry48ed2lzn4iFMwdwHKWxE5E2Qm KmDgLTfUQISL5ArikGCUyG6yri86mzHdrgHQCZ0yewaQpB8ob+yi/78C0z9b8+L92ZdXlpTX 7S7O+7LprN85PjprX/wD0yf4kundJh/W2bHfLfbxBRtXyhhlmQICACOOIwGwb0RcdRtF4/ +5CtWaU1MSKaJpXKhTcXy5JOycwCdfJwKpg2E5v1s26678R9SDh3a3Y8mfY5znDRruH2 PcJhoDukRBA/td2trXBGB0Bd7Cdx8E084ic78ErEBKXkEigOh4ozXzQUQy1BAFZ4TgCaa4

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	sfoPGJmHK/fQJ0nQE3HTIXT88iOmzbmEosh36OtrxtPbEeciYolz8ffJfkm5PQMY+QrV9TcQa5hLPPFPxOv+mlMbDsfoxXTvWvCXXG7d2HtWkQ3YvsepLdnGxiZh2cflpWcg7KRKD52P9ZwGaJx0t6twAMI54P4e+WJx9yCUiZxXcyMev4Pif2F6w3F+w9Q6gGV64iSMMxf7qHPLAE5AfRUnr3zT8Trf4TRb+P1NTKQvgOVC4IfNwPIOT8vZ6D6FJ0taabUFhEOiuPnFIMc/UcwrBQ2z/Hj+1XM9pvTuljbQqppNsaMZxK0FgDlcsScjev+nIGB57E6FvRhnmm+FtX3GWMuy+mPg02hvpUpATCDaaQZlILZp9aXE/E+TbFJW1ijOAftTT+liDkZRTFwA9JrCh2+D8ZdZIJfQiuL0wsVrXwHyF8dcRLGcJJraPwFfDufzKCCApjxwd8iOcJnuOfS5HNfqlV+7FyBBPYmB+g3r2sW/QKzzVuY3VyCU5kE9OvnkRpyal09911x7L3WZvcQtq9CAeqKNNvi96lQenGykvqvoyVTpAuntu8HZX3KR9zJQPFA3S2pLH6Pla2s+aOrXS29JBqehprPqSyvgrDFJQAZsw0XG5m3ZIPSDX9AbwkancQv+5IBEMqeRurl+9kdVMHeA/gcDYAFep9OkU4F2vvlbXer1Pbc83AK8TmTgKZyven7LmjQ2sX7oZr+8mMP4Blw3bQx9rBA3iBmzYbjOQ3sklpyBMxKqlZv6ZIF0IFVDr0JZ8AiRC9YLTUT0KkcP8vOQTrHcn65Z8QMey92lPrqSPLs6YF0fkpAzy7/8QJXYcOGv8ebrpaht0+qjvmMwFyhMB45SIUawmRz3Ug6ZjBcgUIBu5qUGYAQUEU9T2l7oiCJFRbolNA/JLAWAMYF0XnDCNsxcyPQC1UDZCGr8skagEWptY67+ktTSEDsZ/6qjlRLU25P7BGt24UWLSGP52GTf9Wo30cyd936Zpa6D2u20N/9mSN7ttTcQP/lcSrmRaXU/R4wOOgQUS8xBOAxrOID9ADg2866rpyebkekC6YP+Eqzj+6ArZkV9oWI+wQS44SxFMIsGAFpdpGIXRESAlwObski9voFuyktCI2hwoMI7gUjKx8D9OYYxUI3IX28EtqgMr98iTpKaSaVoYi5IGvWeBXZko1Zp2jcuATU1EfTka4ByXNOJ0S3ABD9drRykEGmfOe1NPIDAhBf4r9t4wsIT1FxWAuO/JCdHg5mEWxwM8DA6bbDq9KXXUhydOeyqnruigilXUisLe9uGYMdifBedjHhpqyrDah5iFZUiQoDFICsr0LGtm6pjZmF1HEZGd2FYqyARsNvZsCI0CA2uk/lzsL9CdEBVBVFH8bbSdmcq5GrIN3tFlaDHPokxl1x62U6W3qoqr8YoZKOZdcRa9jMESVzeYsmQBgmbQ12E7I9FYlWIPF+EI30TtxIEb3azcCAS1FRhFTzY8QS3yDiTCXtvkZx5C8AgtX8HPZ8ciGdLT1UJ26BYNVE32Vi+dVAU+CauhajE2m7/U2qE+OJ1X+X9uRKkuonYuSHeN7dAHRuCrQluxpxLqVi1qu+Afc6mahMJ5V8j1jil+LfmkeqNQkYysZeCwSW+FqBFYY1S56nOjGDeOJWbPcitkV6mGAPwbIBQ3dxadFH/StvXZtxwcWOqckR42hdfCV/kyhnHLORQACJFmGsn86edCQilbQlZwJQXX8umVuu9keL+/Okfd3LSl67qNA+ZDggw+dNnzcfcA6+5OHEqu/eqQKkS6wO4BvJ0trNndQ82x/4zaCf6FrPY92pK/INcLUDErSnl5lyqHAnsQylB5FZFhGwTBSID7CR8O3MBby/qJNdyM6F/hETdiTAyRU4DdWFmJozPwdb2rk/cTq1+EmHH4+PttqOOilWwhnjgWWOIHINNwG9pa3qEfFBWrP5qRP4W2AVsRUTZ3n0XG+7qlb7gJmABYqOgm2IL3IKwdWL1dUEeu4FutvYvYLLzdVytD8pKu7zdu8spK3mc1uR/cfqCvVhb7m8LdJVRrrJqm1C+Qdq2sn7pZgCq638KegxGuvDskzgyE3ilZ5p/z8H3Bnwm9L8/VfJox0HJBQAAAABJRU5ErkJggg==" alt="" /></p><p style="text-align: center;">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> ESTADO DO CEARÁ </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> PODER JUDICIÁRIO </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Processo: 0 247495-74.2024.8.06.0001 </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Classe: Embargos de Declaração Cível </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Embargante: Banco do Brasil S/A </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Embargado: Francisca Francileide Pinho Pinheiro </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Ementa DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. CONTA PASEP. SENTENÇA ANULADA POR ERROR IN PROCEDENDO. NECESSIDADE DE PROVA PERICIAL. TEMA REPETITIVO Nº 1.300 DO STJ. SUSPENSÃO PROCESSUAL. NÃO CABIMENTO. OMISSÃO. INEXISTÊNCIA. RECURSO DESPROVIDO.

Processo	0247495-74.2024.8.06.0001
	lang="pt-BR"> < > < > Saber a qual das partes compete o ônus de provar que os lançamentos a débito nas contas individualizadas do PASEP correspondem a pagamentos ao correntista. &#160; &#160; < < < < < < lang="pt-BR"> < < < > Da análise dos autos, constata-se que a questão jurídica central submetida à deliberação deste colegiado consistiu na inadequação do julgamento antecipado da lide, diante da necessidade de produção de prova pericial. Não se discutiu, portanto, a quem competiria comprovar que os lançamentos a débito correspondem a pagamentos efetivamente realizados ao verdadeiro titular da conta individualizada, ou outro assunto condizente ao ônus da prova. Assim, o caso concreto não se enquadra na afetação realizada pelo STJ no Tema 1300. &#160; &#160; < < < < < < lang="pt-BR"> < < < > Nesse sentido: &#160; &#160; < < < < < < lang="pt-BR"> < < < > PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. SUPOSTOS DESFALQUES EM CONTA VINCULADA DO PASEP. ERROR IN PROCEDENDO . NECESSIDADE DE PERÍCIA CONTÁBIL. MATÉRIA SUBMETIDA A DELIBERAÇÃO. DISTINÇÃO COM A DISCUSSÃO AFETADA NO TEMA 300 DO STJ. SOBRESTAMENTO . NÃO CABIMENTO. OMISSÃO. INEXISTÊNCIA. EFEITOS INFRINGENTES AFASTADOS . DESPROVIMENTO. I. CASO EM EXAME 1. Embargos de declaração opostos contra acórdão que desconstituiu a sentença em face do inadequado julgamento antecipado da lide e ordenou o retorno dos autos à origem para regular tramitação com produção de prova pericial . II. QUESTÃO EM DISCUSSÃO 2. A matéria em discussão consiste em saber se houve omissão no acórdão em razão da não suspensão do processo decorrente da afetação realizada pelo STJ no REsp nº 2.162.222/PE. III. RAZÕES DE DECIDIR 3. A questão jurídica principal submetida a deliberação deste colegiado consistiu na inadequação do julgamento antecipado da lide em face da necessidade da produção de prova pericial, não estando em discussão a quem competiria a prova de que os lançamentos a débito correspondem a pagamentos eficazes realizados ao verdadeiro titular da conta individualizada (correntista) . 4. Logo, o caso concreto não restou alcançado pela afetação realizada pelo STJ no TEMA 1300. IV. Dispositivo e tese 5 . Recurso conhecido e não provido. Tese de julgamento: 2. 1. A questão jurídica submetida a deliberação desta e. Corte é distinta da controvérsia delimitada pelo STJ no TEMA 1300, não cabendo o sobrestamento do recurso . 2. O decisum embargado analisou adequadamente a matéria posta em discussão, não existindo qualquer um dos defeitos elencados na citada norma processual. 3. Dispositivo relevante citado: CPC, art. 1022 . Jurisprudência relevante citada: STJ 2 REsp nº 2.162.222/PE. ACÓRDÃO ACORDA a PRIMEIRA CÂMARA DE DIREITO PRIVADO DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ, por uma de suas turmas julgadoras, à unanimidade, em conhecer dos embargos de declaração, mas para negar-lhes provimento, nos termos do voto do Relator, parte deste . Fortaleza, 11 de junho de 2025. RELATOR (TJ-CE - Embargos de Declaração Cível: 02579382620208060001 Fortaleza, Relator.: ANTÔNIO ABELARDO BENEVIDES MORAES, Data de Julgamento: 11/06/2025, 1ª Câmara Direito Privado, Data

Processo	0247495-74.2024.8.06.0001
	acorda a Primeira Câmara de Direito Privado do Egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para anular de ofício a sentença, tudo nos termos do voto da Relatora que integra esta decisão. Fortaleza, data da assinatura digital. DES . JOSÉ RICARDO VIDAL PATROCÍNIO PRESIDENTE DO ÓRGÃO JULGADOR DESA. MARIA REGINA OLIVEIRA CÂMARA RELATORA (TJ-CE - Apelação Cível: 02014496720248060117 Maracanaú, Relator.: MARIA REGINA OLIVEIRA CAMARA, Data de Julgamento: 02/07/2025, 1ª Câmara Direito Privado, Data de Publicação: 03/07/2025). Ademais , plausível que o juízo a quo , que receberá novamente os autos para condução da correta instrução processual, nos termos da Nota Técnica nº 04/2024 do TJCE , proceda à análise da possibilidade de eventual inversão do ônus da prova nos moldes do art. 373, § 1º, CPC, atentando-se que a responsabilidade processual pela prova está sendo objeto de apreciação pelo Superior Tribunal de Justiça a partir da afetação do tema repetitivo nº 1.300.

Processo	0247495-74.2024.8.06.0001
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Processo	0000052-81.2018.8.06.0176
Número de ordem	64
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Anulação
Polo ativo	CONSTRUTORA E IMOBILIARIA ANDRADE LTDA
Advogado(s) - Polo ativo	FABIO DA SILVA PEREIRA - (CE31195-A)
Polo passivo	ISMAEL DA GAMA SOUZA
Advogado(s) - Polo passivo	FLAVIA VIEIRA DE SANTANA - (CE45866-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado
Processo	0633143-49.2024.8.06.0000
Número de ordem	65
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Obrigações de Fazer / Não Fazer
Polo ativo	Espolio de Manuel Braga Neto
Advogado(s) - Polo ativo	EUGENIO DE ARAUJO E OLIVEIRA LIMA - (CE18264-A)
Polo passivo	JOSE ALMEIDA GOMES DA SILVA
Advogado(s) - Polo passivo	GLEIDSON CARLOS DOS SANTOS - (CE48677-A) JONHSON RODRIGUES FERREIRA FILHO - (CE50139-A)
Terceiros	GERMANO LOPES BRAGA PROCURADORIA GERAL DE JUSTICA

Processo	0633143-49.2024.8.06.0000
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;">  </p> </div>

Processo	0633143-49.2024.8.06.0000
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	SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-

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	Opx; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">
 </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p align="justify"> Ementa: DIREITO CIVIL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO POSSESSÓRIA (INTERDITO PROIBITÓRIO). TUTELA PROVISÓRIA DE URGÊNCIA. JUSTO RECEIO DE MOLESTIA NA POSSE. INADMISSIBILIDADE DE DISCUSSÃO SOBRE DOMÍNIO EM SEDE POSSESSÓRIA. RECURSO DESPROVIDO. </p> <h3> I. CASO EM EXAME </h3> <p align="justify"> Agravado de instrumento interposto pelo Espólio de Manuel Braga Neto contra decisão interlocutória da 2ª Vara Cível da Comarca de Aquiraz que, nos autos da ação possessória de interdito proibitório ajuizada por José Almeida Gomes da Silva, concedeu tutela provisória de urgência em favor do autor, determinando a expedição de mandado proibitório. O agravante sustenta ausência de justo receio de turbação ou esbulho, pleiteando a revogação da medida. </p> <h3> II. QUESTÃO EM DISCUSSÃO </h3> <p align="justify"> A questão em discussão consiste em verificar se estão presentes os requisitos legais para a concessão da tutela provisória de urgência em ação possessória de interdito proibitório, notadamente a prova da posse e o justo receio de molestia, afastada a discussão acerca do domínio do imóvel. </p> <h3> III. RAZÕES DE DECIDIR </h3> <p align="justify"> A tutela possessória exige apenas a comprovação da posse e da ameaça ou prática de turbação ou esbulho, sendo irrelevante a alegação de domínio (CC, art. 1.210, §2º). </p> <p align="justify"> O CPC de 2015 (art. 561) impõe ao autor o ônus de demonstrar a posse, a turbação ou o esbulho, sua data e a perda ou ameaça de perda da posse, o que foi atendido no caso concreto mediante provas documentais e testemunhais. </p> <p align="justify"> O STJ firmou entendimento de que não se discute propriedade em ação possessória, sob pena de confusão entre o jus possessionis e o jus domini (AgRg no REsp 1389622/SE). </p> <p align="justify"> A exceção de domínio (exceptio proprietatis), prevista no Código Civil de 1916, foi abolida pelo CC/2002, restando superada a aplicação da Súmula 487 do STF em hipóteses regidas pelo novo diploma. </p> <p align="justify"> Demonstrado que o autor exerce posse mansa e pacífica há mais de duas décadas, e comprovadas ameaça e turbação por atos do inventariante, mantém-se a tutela de urgência deferida pelo juízo de origem. </p> <h3> IV. DISPOSITIVO E TESE </h3> <p align="justify"> Recurso desprovido. </p> <p align="justify"> Tese de julgamento: </p> <p align="justify"> A ação possessória protege a posse independentemente da discussão sobre propriedade, sendo irrelevante o título de domínio. </p> <p align="justify"> A exceção de domínio (exceptio proprietatis) não subsiste no regime do Código Civil de 2002. </p> <p align="justify"> O deferimento da tutela provisória de urgência em interdito proibitório exige a comprovação da posse e do justo receio de turbação ou esbulho, conforme art. 561 do CPC. </p> <hr /> <p align="justify"> Dispositivos relevantes citados: CC/2002, art. 1.210, §§1º e 2º; CPC/2015, arts. 561, 567, 557 e 1.017.
 Jurisprudência relevante citada: STJ, AgRg no REsp 1389622/SE, Rel. Min. Luis Felipe Salomão, 4ª Turma, j. 18.02.2014, DJe 24.02.2014; STJ, EREsp 1134446/MT, Rel. Min. Benedito Gonçalves, Corte Especial, j. 21.03.2018, DJe 04.04.2018; STF, Súmula 487; STF, ACO 685, Rel. Min. Ellen Gracie, Pleno, j. 11.12.2014, DJe 12.02.2015; STJ, AREsp 746.998/SE, Rel. Min. Marco Aurélio Bellizze, j. 11.09.2015. </p> <p align="justify"> &#160; </p> <p align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direto Privado do Tribunal de Justiça do Estado do Ceará,&#160;por unanimidade, em conhecer do recurso e negar-lhe provimento, nos termos do voto do Relator. </p> <p align="center"> Fortaleza, 10 de setembro de 2025. </p> <p align="center">

Processo	0633143-49.2024.8.06.0000
	</p> <p align="center"> Presidente do Órgão Julgador </p> <p align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado </p> <p align="center"> Relator </p> <p align="justify">
 </p> <p align="justify"> RELATÓRIO </p> <p align="justify">

 </p> <p align="justify"> Cuida-se de agravo de instrumento com pedido de tutela provisória de urgência interposto por ESPÓLIO DE MANUEL BRAGA NETO em face de decisão interlocutória proferida pelo douto judicante da 2ª Vara Cível da Comarca de Aquiraz, que CONCEDEU a liminar requestada no bojo da ação possessória (interdito proibitório) n. 0200067-94.2024.8.06.0034, ajuizada por José Almeida Gomes da Silva. </p> <p align="justify"> Em suas razões recursais, alegou o Agravante que “Para que a Justiça conceda a ação de interdito proibitório, é necessário atender aos seguintes requisitos: ameaça de perturbação e a probabilidade de que a agressão possa se concretizar” e que “por não restar evidenciado o justo receio de moléstia na posse, tampouco o risco ao resultado útil do processo, não restam preenchidos os requisitos dos arts. 567 e 300 do CPC”. </p> <p align="justify"> Prosseguindo, aduziu que “Em casos dessa natureza, ou seja, de posse precária, decorrente de mera permissão e onde não há demonstração de ameaça, não há de se falar em liminar”. </p> <p align="justify"> Por derradeiro, requereu a reforma da decisão agravada, para que seja revogada a tutela provisória de urgência deferida em favor da parte contrária. </p> <p align="justify"> É o relatório. </p> <p align="justify"> VOTO </p> <p align="justify"> Em análise perfunctória, entendo que deve ser recebido o recurso de agravo de instrumento em trâmite nestes autos, porquanto, além de atender as exigências do art. 1.017 do CPC de 2015, preencheu todos os requisitos intrínsecos e extrínsecos que compõem o juízo positivo de admissibilidade recursal, não despontando também falhas formais no instrumento. </p> <p align="justify"> Conheço, então, do recurso. </p> <p align="justify"> Busca o Agravante a revogação da tutela provisória de urgência deferida pelo juízo a quo, que determinou a expedição de mandado proibitório em favor da parte autora/agravada. </p> <p align="justify"> Pelo cotejo das peças que instruíram o instrumento do agravo, extraí, do conjunto da controvérsia posta, que o agravado ajuizou ação visando que seja judicialmente seguro de turbação e esbulho iminentes, em relação ao imóvel descrito no bojo da exordial. </p> <p align="justify"> Como causa de pedir da inicial, argumentou o Autor, ora Recorrido, a turbação da posse exercida sobre o imóvel exercido pelo ora recorrente. Aleou que (i) detém a posse do imóvel há mais de dez anos e que o imóvel não é registrado; (ii) há cerca de 40 anos foi contratado pelo Sr. Manoel Braga Neto, hoje falecido, para cuidar, zelar e proteger terreno contra terceiros, e que o terreno do Sr. Manoel era confinante ao de sua casa, e referido senhor costumava ir ao local para lhe pagar, deixando, no entanto, de frequentar o local, mas o autor continuou a cuidar do terreno; (iii) devido o desaparecimento do Sr. Manoel o postulante passou a exercer a posse mansa e pacífica da área; (iv) o Sr. Germano apareceu no local falando do falecimento do pai e que estaria a frente da administração dos bens do espólio, bem como que sabia que seu pai o havia contratado para zelar pelo imóvel e que o espólio estava em débito pelos anos de serviço não remunerados, tendo sido feito um acordo onde o Espólio representado pelo inventariante cederia uma faixa da área do imóvel, correspondente a 10,9 metros de largura por 27,84 metros de comprimento, com área total de 303,45 metros quadrados, ficando o autor de fazer o muro separando sua parte do restante do terreno que caberia ao espólio, bem como de construir o muro do terreno do espólio e o Sr. Germano lhe restituiria o valor; (v) em dezembro de 2023 o Sr. Germano esteve novamente no local informando que teria vendido a área total e o autor teria que desocupar o seu imóvel, ou seja, a área do acordo celebrado entre as partes; (vi) o Sr. Germano fez ameaças verbais dizendo que iria arrancar o autor e a família do imóvel fosse por força policial ou por medida judicial. </p> <p align="justify"> Segundo Nelson Nery Jr <sup>1</sup>, “as possessórias se caracterizam pelo pedido de posse com fundamento no fato jurídico da posse. O que determina o caráter possessório de uma ação não é só o pedido, como à primeira vista poderia aparecer, mas sim a causa pretendi e os fundamentos do pedido do autor”. </p> <p align="justify"> Mas, importante lembrar que pretensões deste naipe, para serem tuteladas, não dependem de título ou causa, bastando apenas a comprovação da posse do

Processo	0633143-49.2024.8.06.0000
	autor ou da suscetibilidade da posse diante da violação do direito. Este posicionamento extraio da disposição do §2º, do art. 1210 do Código Civil, de seguinte teor: Art. 1.210. O possuidor tem direito a ser mantido na posse em caso de turbação, restituído no de esbulho, e segurado de violência iminente, se tiver justo receio de ser molestado. § 1 O possuidor turbado, ou esbulhado, poderá manter-se ou restituir-se por sua própria força, contanto que o faça logo; os atos de defesa, ou de desforço, não podem ir além do indispensável à manutenção, ou restituição da posse. § 2 Na verdade, a posse é protegida para evitar a violência e assegurar a paz social, uma vez que, geralmente, a situação de fato aparenta ser uma situação de direito. Sendo assim, a posse é caracterizada como uma situação de fato protegida pelo legislador e, como tal, não é difícil de ser provada, bastando somente, para a propositura dos interditos possessórios (manutenção e reintegração de posse) a prova da condição de possuidor, sendo desnecessária, portanto, a existência de título que comprove a propriedade do bem. O Superior Tribunal de Justiça já firmou, sobre o assunto, posicionamento no sentido de que “em sede de ação possessória é inviável a discussão a respeito da titularidade do imóvel sob pena de se confundir os institutos, ou seja, discutir a propriedade em ação possessória”(AgRg no REsp 1389622/SE, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 18/02/2014, DJe 24/02/2014). Neste sentido: PROCESSUAL CIVIL. EMBARGOS DE DIVERGÊNCIA EM RECURSO ESPECIAL. DEMANDA POSSESSÓRIA ENTRE PARTICULARES. POSSIBILIDADE DE DEFESA DA POSSE DE BEM PÚBLICO POR MEIO DE OPOSIÇÃO. 1. Hipótese em que, pendente demanda possessória em que particulares disputam a posse de imóvel, a União apresenta oposição pleiteando a posse do bem em seu favor, aos fundamentos de que a área pertence à União e de que a ocupação de terras públicas não constitui posse. 2. Quadro fático similar àqueles apreciados pelos paradigmas, em que a Terracap postulava em sede de oposição a posse de bens disputados em demanda possessória pendente entre particulares, alegando incidentalmente o domínio como meio de demonstração da posse. 3. (...) 5. O art. 923 do CPC/73 (atual art. 557 do CPC/2015), ao proibir, na pendência de demanda possessória, a propositura de ação de reconhecimento do domínio, apenas pode ser compreendido como uma forma de se manter restrito o objeto da demanda possessória ao exame da posse, não permitindo que se amplie o objeto da possessória para o fim de se obter sentença declaratória a respeito de quem seja o titular do domínio. 6. A vedação constante do art. 923 do CPC/73 (atual art. 557 do CPC/2015), contudo, não alcança a hipótese em que o proprietário alega a titularidade do domínio apenas como fundamento para pleitear a tutela possessória. Conclusão em sentido contrário importaria cancelar eventual fraude processual e negar tutela jurisdicional a direito fundamental. 7. Titularizar o domínio, de qualquer sorte, não induz necessariamente êxito na demanda possessória. Art. 1.210, parágrafo 2º, do CC/2002. A tutela possessória deverá ser deferida a quem ostente melhor posse, que poderá ser não o proprietário, mas o cessionário, arrendatário, locatário, depositário, etc. 8. A alegação de domínio, embora não garanta por si só a obtenção de tutela possessória, pode ser formulada incidentalmente com o fim de se obter tutela possessória. 9. Embargos de divergência providos, para o fim de admitir a oposição apresentada pela União e determinar o retorno dos autos ao Tribunal de origem, a fim de que aprecie o mérito da oposição. (EREsp 1134446/MT, Rel. Ministro BÊNEDITO GONÇALVES, CORTE ESPECIAL, julgado em 21/03/2018, DJe 04/04/2018) Por outro lado, destarte o entendimento daquela Corte, o Supremo Tribunal Federal já havia editado, em 12 de dezembro de 1969, a Súmula n. 487, que dispõe sobre a possibilidade de disputa da posse do bem com fulcro no domínio, ao expressar que “será deferida a posse a quem, evidentemente, tiver o domínio, se com base neste for ela disputada”. Ocorre que, para a correta aplicação do entendimento sumular, o Excelso Tribunal definiu os critérios a serem levados em consideração para tanto, vejamos: “O atual Código Civil e a redação atribuída ao art. 923 do

Processo	0633143-49.2024.8.06.0000
	Código de Processo Civil impedem a apreciação de questões envolvendo a jus petitorium em juízo possessório. No entanto, a doutrina de Pontes de Miranda esclarece ser possível a exceptio domini nos casos em que duas pessoas disputam a posse a título de proprietários ou quando é duvidosa a posse de ambos os litigantes. Dessa forma, 'a exceção do domínio somente é aplicável quando houver dúvida acerca da posse do autor e do réu ou quando ambas as partes arrimarem suas respectivas posses no domínio, caso em que a posse deverá ser deferida àquela que tiver o melhor título, ou seja, ao verdadeiro titular, sem, contudo, fazer coisa julgada no juízo petitório . 10. Por fim, a questão debatida nos autos encontra respaldo na Súmula STF n. 487, in verbis (...) Silvio de Salvo Venosa adverte que 'somente se traz à baila a súmula se ambos os contendores discutirem a posse com base no domínio, ou se a prova do fato da posse for de tal modo confusa que, levadas as partes a discutir o domínio, se decide a posse em favor de quem evidentemente tem o domínio. Todavia a ação não deixa de ser possessória, não ocorrendo coisa julgada acerca do domínio'. (ACO 685, Relatora Ministra Ellen Gracie, Tribunal Pleno, julgamento em 11.12.2014, DJe de 12.2.2015) <p align="justify"> Daí porque, para que a titularidade do bem seja considerada como fundamento singular da ação possessória, é dizer, para que seja arvorada a exceção de domínio (exceptio proprietatis) no caso dos autos, basta que estejam presentes as seguintes situações: (a) quando ambas as partes assentem suas respectivas posses exclusivamente na titularidade do bem; OU, (b) quando houver dúvida sobre a posse do autor, consubstanciada na confusão da posse invocada, desembocando a solução da questão pela análise do domínio. <p align="justify"> Contudo, o Código Civil de 2002, na tentativa de ratificar a pureza das ações possessórias e impedir a invocação de propriedade em tais ações, aboliu a segunda parte do art. 505 do Código Civil de 1916 e expressamente não recepcionou o instituto jurídico da exceção de propriedade (exceptio proprietatis nos interditos possessórios, consoante redação do já mencionado §2º do art. 1.210 do CC/2002. <p align="justify"> &#160; <p align="justify"> A respeito do tema, nos dias 11 a 13 de setembro de 2002, a Jornada de Direito Civil promovida pelo Centro de Estudos Judiciários do Conselho da Justiça Federal, sob a coordenação científica do Ministro Ruy Rosado do Superior Tribunal de Justiça, assentou os enunciados n.s 78 e 79, que dispõem: <p align="justify"> "78 – Art. 1.210: Tendo em vista a não-recepção pelo novo Código Civil da exceptio proprietatis (art. 1.210, § 2º) em caso de ausência de prova suficiente para embasar decisão liminar ou sentença final ancorada exclusivamente no ius possessionis, 12 deverá o pedido ser indeferido e julgado improcedente, não obstante eventual alegação e demonstração de direito real sobre o bem litigioso. <p align="justify"> &#160; <p align="justify"> "79 – Art. 1.210: A exceptio proprietatis, como defesa oponível às ações possessórias típicas, foi abolida pelo Código Civil de 2002, que estabeleceu a absoluta separação entre os juízos possessório e petitório. <p align="justify"> &#160; <p align="justify"> Nesta toada, não é possível olvidar o magistério de Carlos Roberto Gonçalves sup>2</sup>, para quem: <p align="justify"> &#160; <p align="justify"> "Com o advento do Código Civil de 2002 ficou evidenciada, de modo irrefragável, a referida extinção, pois esse diploma não contempla a possibilidade de se argüir a exceptio proprietatis, limitando-se a proclamar, no art. 1210, §2º: 'Não obsta à manutenção ou reintegração na posse a alegação de propriedade, ou de outro direito sobre a coisa'". <p align="justify"> &#160; <p align="justify"> Na oportunidade, anoto a decisão proferida pelo Min. Marco Aurélio Bellize do STJ, quando do julgamento do Agravo em REsp nº. 746.998 em 11 de setembro de 2015, in verbis: <p align="justify"> &#160; <p align="justify"> [...] <p align="justify"> Na ação de reintegração de posse, discute-se a posse a que se pretende garantir, incumbindo ao autor da demanda a prova dos requisitos descritos no art. 927 do CPC, quais sejam, a sua posse, o esbulho praticado pelo réu, a data da turbação ou esbulho e a perda da posse. Compulsando os autos, verifica-se que a autora tinha a posse mansa e pacífica do imóvel sob discussão, o lote nº. 02, quadra I, do Loteamento _Paraíso da Barra&#160;, localizado no Município da Barra dos Coqueiros, área esta que fora adquirida do Sr. Manoel Romão da Silva, conforme atesta o instrumento particular de compra e venda de fl.09/verso, e cuja posse foi exercida pela senhora desde

Processo	0633143-49.2024.8.06.0000
	a edificação de alicerce no terreno, com a contratação de pedreiros, ajudantes, etc. Em relação às alegações da construtora requerida de que a Habitar Construções SPE Ltda. detém a propriedade do imóvel não devem prosperar, pois em sede de ação possessória, não se discute domínio. [...] Ressalte-se que o título de domínio não pressupõe o exercício de fato da posse, não podendo a proteção possessória em comento fundar-se em título de propriedade, como pretende a recorrente. Com efeito, a discussão quanto à propriedade do imóvel não mais é cabível em sede de ação possessória. Ora, por longo período existiu grande celeuma sobre o tema, todavia, vale lembrar que o novo Código Civil aboliu a exceptio proprietatis em seu art. 1.210, §2º. </p> <p align="justify">Vale frisar o que restou assentado na Jornada de Direito Civil promovida pelo Centro de Estudos Judiciários do Conselho da Justiça Federal, no período de 11 a 13 de setembro de 2002, sob a coordenação científica do então Ministro do STJ Ruy Rosado, pelo seu caráter elucidativo: </p> <p align="justify">Art. 1210: Tendo em vista a não recepção, pelo novo Código Civil, da exceptio proprietatis (art. 1210, § 2.º), em caso de ausência de prova suficiente para embasar decisão liminar ou sentença final ancorado exclusivamente no jus possessionis, deverá o pedido ser indeferido e julgado improcedente, não obstante eventual alegação e demonstração de direito real sobre o bem litigioso.[...] </p> <p align="justify">Desta forma, é de se ressaltar que restou comprovada a ocorrência da turbacão possessória, atendendo a autora aos requisitos elencados no art. 927, do CPC para propositura e procedência da presente ação possessória. Daí que outra solução não poderia ser dada ao caso concreto, porquanto atendidos os requisitos legais, a reintegração de posse é medida que se impõe. (AGRAVO EM RECURSO ESPECIAL Nº 746.998 - SE (2015/0175188-0. Ministro MARCO AURÉLIO BELLIZZE, 11/09/2015) </p> <p align="justify">&#160; <p align="justify">Por tais razões, assim como pelo fato de a ação possessória ter sido ajuizada sob a vigência do atual Código Civil, filio-me à corrente doutrinária que trata como revogada a referida súmula, pois elaborada sob a vigência do Código Civil de 1916 (art. 505). </p> <p align="justify">&#160; <p align="justify">Essa clássica separação entre o possessório e o petitório tem como propósito impedir que o proprietário justifique sua má conduta no campo possessório invocando o direito de propriedade. Com fundamento nisto, entendo que o documento de fls. 9-10 do processo matruz colacionado pelo Requerente, ora Agravante, que trata da promessa de compra e venda firmada entre os vendedores (genitores do recorrido) e compradora (genitora do requerente), não tem o condão de, por si só, comprovar a sua posse. </p> <p align="justify">&#160; <p align="justify">Segundo o art. 561 do CPC de 20158, incumbe ao autor da ação possessória comprovar: </p> <p align="justify">&#160; <p align="justify">I – a sua posse; </p> <p align="justify">II – a turbacão ou o esbulho praticado pelo réu; </p> <p align="justify">III – a data da turbacão ou do esbulho; </p> <p align="justify">IV – a continuação da posse, embora turbada, na ação de manutenção; </p> <p align="justify">perda da posse, na ação de reintegração". </p> <p align="justify">&#160; <p align="justify">No caso, o autor/agravado demonstrou que se encontra na posse do imóvel há mais de duas décadas, o que restou confirmado pelas testemunhas, tendo o réu/agravado, em sua contestação, reconhecido que o inventariante esteve no local e derrubou parte do muro feito pelo autor, falando em desforço imediato, de modo que o esbulho e a ameaça restam verificadas, de modo a autorizar o deferimento da tutela. </p> <p align="justify">Logo, não há que se falar em reforma da decisão recorrida. </p> <p align="justify">E é assim que, por todo o exposto, conheço do recurso e nego-lhe provimento. </p> <p align="justify">É como voto. </p> <p align="justify">Fortaleza/CE, 10 de setembro de 2025. </p> <p align="center">

 </p> <p align="center">Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado </p> <p align="center">&#160; <p align="justify">1 </p> <p align="justify">1 </p> <p align="justify">Código de processo civil comentado. 12 ed. rev., ampl. e atualizada até 13 de julho de 2012.- São Paulo: Editora Revista dos Tribunais, 2012. </p> <p align="justify"> </p>

Processo	0633143-49.2024.8.06.0000
	medium;"> </p> <p align="left"> 2 GONÇALVES, Carlos Roberto. Direito civil brasileiro, volume 5: direito das coisas. São Paulo: Saraiva, 2012, p. 143.</p></div> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	0050506-94.2020.8.06.0176
Número de ordem	66
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Nomeação
Polo ativo	CACILDA PEREIRA COSTA
Advogado(s) - Polo ativo	CARLOS HENRIQUE LEMOS PEIXOTO - (CE47222-A)
Polo passivo	HUMBERTO RIBEIRO LIMA JUNIOR
Advogado(s) - Polo passivo	CARMEM NAZARE DE FARIAS ROCHA - (CE37786)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado
Processo	3011108-59.2025.8.06.0000
Número de ordem	67
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Contratos Bancários
Polo ativo	BANCO DO NORDESTE DO BRASIL SA
Advogado(s) - Polo ativo	SANDRA MARA TAVARES LAVOR - (CE8831-A)
Polo passivo	CENTRO AUTOMOTIVO APACHE LTDA ANA PAULA SILVA FERREIRA GADELHA ADAMILTON GADELHA CORREIA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3011108-59.2025.8.06.0000
	style="font-weight: normal; ">conhecido e provido. Decisão modificada. </p><p style="line-height: 200%;," align="justify"> Tese de julgamento 1. O uso dos sistemas eletrônicos de apoio ao Judiciário (Infojud, Renajud, Bacenjud) pode ser autorizado para localização de endereço e bens do devedor independentemente do exaurimento de diligências pelo credor. 2. O princípio da efetividade e a razoável duração do processo autorizam o magistrado a requisitar diretamente informações de órgãos públicos e privados, quando inviabilizada a citação por meios ordinários.</p><p style="line-height: 200%;," align="justify"> Dispositivos relevantes citados : CPC, arts. 4º, 6º, 139, IV, 256 §3º, 319 §1º. </p><p style="line-height: 200%;," align="justify"> Jurisprudência relevante citada : STJ, REsp 1.809.329/RS, Rel. Min. Francisco Falcão, 2ª Turma, j. 10.09.2019, DJe 16.09.2019; STJ, AgInt no AREsp 1.730.314/RS, Rel. Min. Antônio Carlos Ferreira, 4ª Turma, j. 23.11.2020, DJe 30.11.2020; TJCE, Agravo de Instrumento nº 0625289-43.2020.8.06.0000, Rel. Des. José Ricardo Vidal Patrocínio, 3ª Câmara de Direito Privado, j. 23.06.2021; TJCE, Agravo de Instrumento nº 0637663-52.2024.8.06.0000, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara de Direito Privado, j. 04.12.2024. </p><p style="line-height: 200%; margin-bottom: 0cm;," align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, por próprio e tempestivo, para dar provimento ao agravo interposto, modificando a decisão vergastada, nos termos do voto do Relator. </p><p style="font-variant: normal; letter-spacing: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;," align="justify">&#160;</p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;," align="justify"> Fortaleza, data e hora da assinatura no sistema. </p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;," align="justify">&#160;</p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;," align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;," align="center">

Processo	3011108-59.2025.8.06.0000
	Presidente do Órgão Julgador </p><p style="font-variant: normal; letter-spacing: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="center"> Juiz Convocado Relator </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Trata-se de Agravo de Instrumento interposto por Banco do Nordeste do Brasil S/A em face de decisão interlocutória proferida pelo douto juízo da 9ª Vara Cível da Comarca de Fortaleza que, nos autos da Ação de Execução Extrajudicial de nº 0167306-56.2017.8.06.0001, ajuizada em desfavor de Adamilton Gadelha Correia, Ana Paula Silva Ferreira Gadelha e Centro Automotivo Apache LTDA, indeferiu o pedido de consulta do endereço dos executados nos sistemas do Poder Judiciário, o que fez nos seguintes termos: </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> O deferimento da utilização dos sistemas de pesquisa para localização do endereço dos executados é providência a ser adotada quando demonstrada pela parte requerente o exaurimento das diligências que lhes cabia para localização dos requeridos, não sendo função do juízo promover atos de responsabilidade das partes. Os executados não foram localizados nos endereços indicados na exordial/informado nos autos. É dever da parte exequente promover a citação dos executados, o que inclui a correta indicação do endereço como forma a possibilitar a citação. Diante ao exposto, intime-se a parte exequente para, em 5 (cinco) dias, oferecer o endereço do executado completo, promovendo a citação do mesmo, sob pena de extinção por ausência de pressupostos processuais (endereço), nos moldes do art. 485, IV do CPC.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> No agravo (ID 25029647), argumentou a parte recorrente que “Não obstante o entendimento do juízo de primeiro grau, é necessário considerar a realidade fática, buscando-se a efetividade da prestação jurisdicional. Nesse prisma, a decisão agravada viola a normas extraíveis dos dispositivos dos artigos 4º, 6º, 256 §3º, 319 §1º do CPC. O indeferimento do pedido de consulta eletrônica de endereço e de bens do Devedor junto aos sistemas postos à disposição do Poder Judiciário não se compatibiliza com as normas fundamentais que orientam o processo civil, dentre as quais se incluem os princípios da celeridade e da cooperação entre os sujeitos processuais para a solução do mérito em tempo razoável, incluindo-se a atividade satisfativa”.</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> Também aduz que “Em que pese seja ônus do autor diligenciar para localizar o paradeiro dos Exequidos para citação, pode e deve contar com a colaboração do juiz, a fim de viabilizar o andamento do feito, sobretudo quando as informações pretendidas constam dos cadastros de órgãos ou instituições públicas. Com efeito, as informações prestadas através dos convênios institucionais com os sistemas INFOJUD, RENAJUD, SIEL, INFOSEG e BACENJUD são sigilosas e restritas às autoridades, não sendo possível, a princípio, a obtenção sem a intervenção do judiciário, portanto, o seu indeferimento retarda, ainda mais, a resolução da demanda, o que contraria os princípios da efetividade e celeridade. Também a remessa de ofício as prestadoras de serviços públicos é adstrita ao juízo, não podendo, as partes acessar as informações de forma autônoma.”. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> Complementa, alegando que “Ressalte-se, ainda,

Processo	3011108-59.2025.8.06.0000
	que após a frustração da tentativa de citação, o Banco do Nordeste efetivamente diligenciou nos sistemas de informação que se encontravam ao seu alcance, tendo exaurido suas possibilidades de localizar a parte Devedora. Diante desse cenário fático-processual, evidencia-se o erro de julgamento da decisão agravada, impondo-se sua reforma imediata por meio da via recursal adequada de agravo de instrumento. Por fim, é necessário destacar que a decisão agravada contraria a jurisprudência consolidada deste Tribunal de Justiça do Estado do Ceará, firme em afirmar não só a necessidade de ser deferida consulta aos sistemas de informação à disposição do juízo, como também a prescindibilidade da demonstração de exaurimento das tentativas de localização do réu, haja vista que são meios colocados à disposição dos magistrados exatamente para garantir efetividade à prestação jurisdicional". Por fim, requer que "a) a concessão liminar dotando de efeito suspensivo o presente recurso de agravo de instrumento, obstando assim os efeitos da decisão agravada, para determinar a consulta sobre o endereço dos réus nos sistemas de informação à disposição do juízo, inclusive mediante remessa de ofícios às concessionárias e permissionárias de serviços públicos. b) o provimento do recurso"; Determinada a intimação da parte agravada para contraminutar (ID 25370443), os agravados não foram localizados (ID 27338155). Vieram-me os autos conclusos. Esse é o relatório, em essencial. VOTO Em análise perfunctória, entendo que deve ser recebido o recurso de agravo de instrumento em trâmite nestes autos, porquanto, além de atender as exigências do art. 1.017 do CPC, preencheu todos os requisitos intrínsecos e extrínsecos que compõem o juízo positivo de admissibilidade recursal, não despontando também falhas formais no instrumento. Na hipótese, busca a parte recorrente a reforma da decisão do juízo a quo que, que indeferiu o pleito de pesquisa dos endereços da parte ré através dos sistemas de informação judicial. Consta dos autos originários que a parte agravante informou os endereços disponibilizados pelos agravados, previstos no contrato, não tendo sido, em nenhum dos endereços diligenciados, encontrado os acionados para fins de citação e intimação para pagamento voluntário. Destarte ser do autor da ação o ônus de localização do acionado, para efetivação do princípio da inafastabilidade da jurisdição mostra-se necessário que a dificuldade na localização do paradeiro do acionado seja contornada com a pesquisa nos sistemas eletrônicos e bancos de dados disponibilizados ao estado-juiz. Com efeito, quando a autora não consegue obter quaisquer elementos quanto ao paradeiro da parte adversa, nada obsta que o juiz autorize a expedição de ofício a órgãos públicos ou privados, no intuito de agilizar a prestação jurisdicional, ou que se utilize dos sistemas à disposição da Justiça para tal finalidade, a exemplo dos sistemas Renajud, Infojud e Bacenjud. Vale lembrar que a requisição desse tipo de

Processo	3011108-59.2025.8.06.0000
	informação é até mesmo condição prévia para o deferimento da citação por edital, nos termos do art. 256, §3º, do CPC. O Superior Tribunal de Justiça (STJ) tem admitido a utilização dos sistemas eletrônicos disponíveis ao Poder Judiciário para que se obtenha a localização de endereços e bens de devedores, haja vista serem meios colocados à disposição do jurisdicionado, não apenas dos credores, com o objetivo de simplificar e agilizar a tramitação dos processos, com notórios ganhos à celeridade e a efetividade da jurisdição. A respeito: &#160; PROCESSUAL CIVIL. EXECUÇÃO FISCAL. SOLICITAÇÃO DE INFORMES ACERCA DE TÍTULOS EM NOME DA PARTE EXECUTADA PERANTE A B3 S.A. - BRASIL, BOLSA, BALCÃO. EXPEDIÇÃO DE OFÍCIO. REQUERIMENTO EM EXECUÇÃO FISCAL. POSSIBILIDADE. I - Na origem, o lbama ajuizou execução fiscal e, tendo em vista a não localização de ativos penhoráveis em nome do devedor, requereu a expedição de ofício à B3 S.A. - Brasil, Bolsa, Balcão, para que fosse informada a existência de registro ou de depósito de ativos e títulos em nome da parte executada e sob a custódia da BM&F Bovespa e da Cetip. O requerimento foi indeferido pelo Juízo de primeira instância e, interposto agravo de instrumento, o Tribunal Regional Federal da 4ª Região decidiu que não há, nos autos, indícios de que a parte executada possua valores mobiliários a serem informados pela companhia B3 S/A. II - A jurisprudência do Superior Tribunal de Justiça é no sentido de que incumbe ao Poder Judiciário promover a razoável duração do processo em consonância com o princípio da cooperação processual, além de impor medidas necessárias para a solução satisfativa do feito (arts. 4º, 6º e 139, IV, todos do CPC/2015), mediante a utilização de sistemas informatizados (sistemas Bacenjud, Renajud, Infojud, Serasajud etc.) ou a expedição de ofício para as consultas e construições necessárias e suficientes. Dentre essas medidas, inclui-se, efetivamente, a consulta junto à B3 S.A. de informes acerca da existência ou não de títulos registrados em nome da parte executada e sob a custódia da BM&F Bovespa e da Cetip. Precedentes citados: REsp n. 1.809.328/RS, Rel. Ministro Herman Benjamin, Segunda Turma, DJe 1º/7/2019; REsp n. 1.736.217/SC, Rel. Ministro Francisco Falcão, Segunda Turma, DJe 1º/3/2019; REsp n. 1.801.946/RS, Rel. Ministro Herman Benjamin, Segunda Turma, DJe 29/5/2019; AgInt no AREsp n. 1.398.071/RJ, Rel. Ministro Mauro Campbell Marques, Segunda Turma, DJe 15/3/2019; REsp n. 1.679.562/RJ, Rel. Ministro Herman Benjamin, Segunda Turma, DJe 13/9/2017. III - (...) V - Recurso especial provido. (STJ – REsp n. 1.809.329/RS, relator Ministro Francisco Falcão, Segunda Turma, julgado em 10/9/2019, DJe de 16/9/2019.) &#160; PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. DECISÃO DA PRESIDÊNCIA DO STJ. RECONSIDERAÇÃO. NOVO EXAME DO AGRAVO NOS PRÓPRIOS AUTOS. NEGÓCIOS JURÍDICOS BANCÁRIOS. AÇÃO DE EXECUÇÃO. AUSÊNCIA DE INDICAÇÃO DO DISPOSITIVO LEGAL OBJETO DA ALEGADA DIVERGÊNCIA JURISPRUDENCIAL. SÚMULA N. 284 DO STF. BACEN-JUD. RENAJUD. INFOJUD. EXAURIMENTO DE DILIGÊNCIAS. DESNECESSIDADE. ACÓRDÃO RECORRIDO EM CONSONÂNCIA COM JURISPRUDÊNCIA DESTA CORTE. SÚMULA N. 83 DO STJ. AGRAVO INTERNO PROVIDO. 1. O conhecimento do recurso

Processo	3011108-59.2025.8.06.0000
	especial fundamentado na alínea "c" do permissivo constitucional exige a indicação dos dispositivos legais que supostamente foram objeto de interpretação divergente. Ausente tal requisito, incide a Súmula n. 284/STF. 2. A utilização dos Sistemas BacenJud, Renajud e Infojud prescinde do exaurimento de diligências extrajudiciais por parte do exequente. Precedentes. 3. Inadmissível o recurso especial quando o entendimento adotado pelo Tribunal de origem coincide com a jurisprudência do STJ (Súmula n. 83/STJ). 4. Agravo interno a que se dá provimento para reconsiderar a decisão da Presidência desta Corte e negar provimento ao agravo nos próprios autos. &#160; 5. (STJ – AgInt no AREsp 1.730.314/RS, Rel. Ministro ANTÔNIO CARLOS FERREIRA, Quarta Turma, j. 23/11/2020, DJe 30/11/2020). &#160; &#160; PROCESSO CIVIL. AGRAVO DE INSTRUMENTO. JULGAMENTO IMEDIATO. AUSÊNCIA DE CITAÇÃO NO PRIMEIRO GRAU. IMPOSSIBILIDADE DE LOCALIZAÇÃO DA PARTE PROMOVIDA. CONSULTA ATRAVÉS DOS SISTEMAS INFOJUD, BACENJUD OU RENAJUD. UTILIZAÇÃO PARA OBTENÇÃO DO ENDEREÇO DA PARTE PROMOVIDA. COMPROVAÇÃO DO ESGOTAMENTO DE DILIGÊNCIAS. DESNECESSIDADE. PREPONDERÂNCIA DA EFETIVIDADE E Celeridade Processual. AGRAVO CONHECIDO E PROVIDO. &#160; 1. Trata-se de Agravo de Instrumento com pedido de efeito suspensivo interposto por Banco Itaú – Unibanco S/A , objetivando a reforma da decisão interlocutória prolatada pela Juíza de Direito da 8ª Vara Cível da Comarca de Fortaleza, nos autos da Ação de Busca e Apreensão (processo nº 0103254-85.2016.8.06.0001) ajuizada em face de Francisco Chagas Tomaz Silva, que indeferiu o pedido de consulta aos sistemas BACENJUD, RENAJUD e INFOJUD com o objetivo de localizar o endereço do promovido. 2. Inicialmente, registro que diante da impossibilidade de intimação da parte agravada, devido a sua não localização até o momento, por ausência de endereço certo e definido, antevejo que o feito comporta julgamento de imediato, em atenção aos princípios da celeridade e efetividade processual. 3. Deve ser sopesado o fato de que os órgãos públicos, assim como as empresas privadas, a fim de preservar a privacidade dos cidadãos, não fornecem usual e gratuitamente as informações constantes de seus cadastros para terceiros. 4. (...) o STJ posiciona-se no sentido de que o entendimento adotado para o Bacenjud deve ser aplicado ao Renajud e ao Infojud, haja vista que são meios colocados à disposição dos credores para simplificar e agilizar a busca de bens aptos a satisfazer os créditos executados. (...) (REsp 1582421/SP, Relator: Min. Herman Benjamin, Segunda Turma, j. 19-04-2016) (TJSC, Agravo de Instrumento nº 4010153-88.2017.8.24.0000, de Itajaí, rel. Des. Jaime Machado Junior, j. 15-3-2018)". Desta forma, tem-se que não há sequer a necessidade de se exigir do autor/credor o exaurimento de todas as diligências extrajudiciais para que se autorize a utilização dos convênios firmados pelo Poder Judiciário para localização de bens da parte promovida/devedora, quanto mais para a mera localização do seu endereço.

Processo	3011108-59.2025.8.06.0000
	5. Com efeito, quando a parte interessada não consegue obter quaisquer elementos quanto ao paradeiro da parte adversa, nada impede que o juiz autorize a expedição de ofício a órgãos públicos ou privados, no intuito de agilizar a prestação jurisdicional, ou que se utilize dos sistemas à disposição da Justiça para tal finalidade, a exemplo dos sistemas Renajud, Infojud e Bacenjud. Aliás, a requisição desse tipo de informação é condição prévia até mesmo para o deferimento da citação por edital, nos termos do art. 256, §3º, do CPC. 6. Agravo de instrumento conhecido e provido. (TJCE – Agravo de Instrumento - 0625289-43.2020.8.06.0000, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO, 3ª Câmara Direito Privado, data do julgamento: 23/06/2021, data da publicação: 29/06/2021) EMENTA: PROCESSO CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO DE EXECUÇÃO. E XECUTADO NÃO LOCALIZADO. AUSÊNCIA DE CITAÇÃO NO PRIMEIRO GRAU. IMPOSSIBILIDADE DE LOCALIZAÇÃO DA PARTE PROMOVIDA. CONSULTA ATRAVÉS DOS SISTEMAS INFOJUD, BACENJUD OU RENAJUD. UTILIZAÇÃO PARA OBTENÇÃO DO ENDEREÇO DA PARTE PROMOVIDA. COMPROVAÇÃO DO ESGOTAMENTO DE DILIGÊNCIAS. DESNECESSIDADE. PREPONDERÂNCIA DA EFETIVIDADE E CELERIDADE PROCESSUAL. AGRAVO CONHECIDO E PROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e dar-lhe provimento, nos termos do voto do Relator. 160; (TJCE – Agravo de Instrumento nº 0637663-52.2024.8.06.0000, Rel. Des. EMANUEL LEITE ALBUQUERQUE, 1ª Câmara de Direito Privado, data do julgamento: 04/12/2024). 160; 160; 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> Por certo, não se exige mais a comprovação pelo exequente do esgotamento de todas as diligências extrajudiciais para que se autorize a utilização dos convênios firmados pelo Poder Judiciário para localização do endereço da parte promovida. 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> 160; 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> Logo, deve ser reformada a decisão recorrida. 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> 160; 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> 160; 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> E é assim que, pelo exposto, conheço do recurso e dou-lhe provimento para, desconstituindo a decisão hostilizada, deferir o pleito de utilização dos sistemas informatizados (Renajud, Infojud e Bacenjud) para a localização de bens e endereços dos devedores para dar-se prosseguimento ao processo executivo. 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> 160; 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> 160; 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> É como voto. 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> 160; 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; align="justify"> Fortaleza/CE,

Processo	3011108-59.2025.8.06.0000
	data da assinatura no sistema. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> Juiz Convocado Relator </p> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	0271474-70.2021.8.06.0001
Número de ordem	68
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Fornecimento de medicamentos
Polo ativo	HAPVIDA ASSISTENCIA MEDICA S.A.
Advogado(s) - Polo ativo	IGOR MACEDO FACO - (CE16470-A)
Polo passivo	P. V. R. D. S.
Advogado(s) - Polo passivo	JOSE CELIO PEIXOTO SILVEIRA - (CE9925-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0271474-70.2021.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAQAAAABXCAYAAADrjpu dAAAgAEIEQVR4nOy9eZxVXxo/11rn3urqucGGpknAbEbEGmh6fk2iIRG/DIV+by8DETzSD S2NnMSTVix/owyl8YoLzE+k2h+VDS+JA5RgeoJaLBBWmlUEBFBhgaaHqq66t6z9/r9sfe5 U809Arl+n+5b955z9tnTGvYahVdhb4NAt8Y/e/3Y92Ecd1Enh806vv5reW93Z7wGqyP/7C2w /uePpDHEvo4OjesLLzkRxsLiDPMY4uvVGR6l5ge4+8bHxhvb7kO3g14DQv2nhZccRJa9Hjg dOAmR12JyLMJhGF2IprULHmWHzj9H+Cn4R8EeAtIE/84fsvGWgdRi+9w0vi+64rW40EFO oOQIXi4mZJR5HxVGW8cJtlNzhgaHuS3cee2zRT9lkr14FUYGhYpCX6B5swEsvWwuJoey7 to1TdfiJlm66nDlBkXkTRg1xBQZC89GgPYVHLakOk4Dof170QEH3MbOnb/Nxlu2MTYREM B06eU3mPAeTKomJoDU+9fclWtqx8JNrLn+Q+OOP0nodi3Ed8HKO+govQXhnQR9I3CEiJ Tixfb5Kb6H1k8Jqev0Y/wYwh3g/5Y1n3h4xL4vv/xTIL8PmscfCgLQ3n6C0da9vp6jrWP7+o0 Klvr5IsHezdr/hvQVwnA7kEzlw80L/6JKzs4orwA03cgUkHkdKAT789n3bXfjpsToNez9lqLRP jH1pYnvKDACPhuo23o0aB9I7Z99/5XWxvjV4YhVesLAouueK1mPFLvRnv/RtppBljYivl5rL3 xqXpbuw1tfVxyxdTE7X9BOBeRWfGdcT7MzBAC5qTopYhIM4KamYEZYHbvmYn3ULTxKIN DZ3PP3z6fRihAYNn7T0LKD4G44Qg/GgEYZdj19dxjAgBmhohg9iXWXPsbGTYTf/oXHTpE+ +aNtuoEYDFOz8VcBeE4RNufPmx4i17BYZBJgJHjBB0xGeH6+9Ue4XAohDZGKHEqlmRs kL4ixizngPGKCIVffCPkxrE9fELb70N4XSJWIs8ARACEZAzLCIUQmRXSRMI/PBEl8J3SOqu NAHhVH6CdZROAdan96dhawZSIy5uSMQjtdr+ySfii59Hu3+c50YekAcyGtTEXiUAY4NCtzT OkQnpT1zZwWEdZ6C2BJE3I3IWxsEATYifY2jkHuLA5cNaD2pxKZo4i0xOKLNMziCpy7Hx 5h/HgLbrxfstie9mE2Mx4gwTQerIFZsZ7fWGPVooMFTdA6pXcP1ez7L3L4LdL8XcW1wleM wMgpmoqGLE5D0TekVEzEzJwFKw2+qOaOCCacmiAjDzkKjzXtaP2fV9H6PZnxFH1qUI1X CUArtCvwAvTGr4suPxTnzKJlOfBmkDcgoYF9Yh5LXC1OdJbWJhINC8NXSoPEo/ZLGHRf HRNNJDFG6yjt5jsqGfTmzL+4xOxpf4mXqwiaecxHdBcndS6/I9QLLDy16G9SgDqXB6Gi/Z/ ejJii5DwTpCFKle3iHBGjjpgQUEQiJtdFRlvcrrhddLd24LhbbMkt7SHReoKweyi2u7q/bge9Ocs uP56S/gtBFgKg3puJ8xaltdM47tF1q83z0q6CCKPqMOq/T7rr4531J/nchslvlgFlypoW0T5eO XFIR+mQaWel2FuC82/PtToP1en1jWHEdymipmluAxzmBHEfDAJIM5hmpA+AP45LKxmc LAvvqQ3NKSMLzb3FwMby5C5h7D7/DOJ/ctXlgX3JYLOWUI05hBxBbJONqWERIXSVrXBM o1SST9krXvuF4UAtlv2Vkf6hZccSUMWTKmW3pp5WSyWn+wIz9ANRvzULp/U1UlwJVgm 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Processo	0271474-70.2021.8.06.0001
	family: Verdana, sans-serif;"> I. CASO EM EXAME </p><p style="line-height: 150%;" align="justify"> 1. Embargos de Declaração opostos por Pedro Vitor Ribeiro de Sá, representado por Jacilene Ribeiro de Sousa, contra acórdão que deu parcial provimento ao apelo da operadora de plano de saúde, reformando a sentença para julgar improcedente o pedido de indenização por danos morais. O embargante alega omissão quanto ao fato de não ter falecido, embora o acórdão mencione óbito no curso da lide, e quanto à inexistência de dúvida razoável na negativa de fornecimento do medicamento Duxipent. </p><p style="line-height: 150%;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%;" align="justify"> 2. Há duas questões em discussão: (i) verificar se houve omissão no acórdão ao afirmar equivocadamente o falecimento do autor; (ii) apurar se o acórdão deixou de analisar a inexistência de dúvida razoável quanto à cobertura contratual do medicamento recusado pela operadora de saúde. </p><p style="line-height: 150%;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%;" align="justify"> 3. A alegação de erro quanto ao falecimento do autor não foi suscitada nos recursos anteriores, configurando inovação recursal vedada em sede de embargos de declaração, conforme entendimento pacífico do STJ e desta Corte, ainda que se trate de matéria de ordem pública. </p><p style="line-height: 150%;" align="justify"> 4. A suposta omissão sobre a ausência de dúvida razoável no contrato foi devidamente enfrentada no acórdão, que entendeu pela existência de dúvida legítima na interpretação contratual, afastando o dever de indenizar por dano moral com base em jurisprudência consolidada do STJ e precedentes análogos do TJCE. </p><p style="line-height: 150%;" align="justify"> 5. Os embargos de declaração não constituem via adequada para rediscussão do mérito da decisão, sendo incabíveis quando utilizados com o propósito de manifestar mero inconformismo da parte com o resultado do julgamento. </p><p style="line-height: 150%;" align="justify"> IV. DISPOSITIVO E TESE </p><p style="line-height: 150%;" align="justify"> 6. Embargos de declaração parcialmente conhecidos e, na parte conhecida, rejeitados. </p><p style="line-height: 150%;" align="justify"> Tese de julgamento “ </p><p style="line-height: 150%;" align="justify"> a </p><p style="line-height: 150%;" align="justify"> b </p><p style="line-height: 150%;" align="justify"> c </p><p style="line-height: 150%;" align="justify"> Embargos de declaração não se prestam à rediscussão do mérito nem ao reexame de fundamentos já enfrentados na decisão embargada. </p><p style="line-height: 150%;" align="justify"> Dispositivos relevantes citados </p>

Processo	0271474-70.2021.8.06.0001
	 : CPC, arts. 1.022 e 1.025. <p style="line-height: 150%;" align="justify"> Jurisprudência relevante citada : STJ, EDcl no Resp 1776418/SP, Ministra NANCY ANDRIGHI, j. 09/02/2021; Embargos de Declaração Cível - 0847675-90.2014.8.06.0001, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 1ª Câmara Direito Privado, data do julgamento: 27/03/2024, data da publicação: 27/03/2024; Embargos de Declaração Cível - 0034805-17.2012.8.06.0001, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento: 21/02/2024, data da publicação: 21/02/2024; Embargos de Declaração Cível - 0120241-02.2016.8.06.0001, Rel. Desembargador(a) LISETTE DE SOUSA GADELHA, 1ª Câmara Direito Público, data do julgamento: 19/02/2024, data da publicação: 21/02/2024; TJCE Apelação Cível - 0255241-32.2020.8.06.0001, Relator: Desembargador FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, julgamento: 06/03/2024, data da publicação: 06/03/2024; STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022; STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. <p style="font-style: normal; line-height: 150%;" align="justify">&#160;</p><p style="font-style: normal; line-height: 150%;" align="justify"> AC ÓRDÃO >Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer >parcialmente >do presente recurso >e, na parte conhecida, >negar-lhe provimento, nos termos do voto do Relator. <p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> >Fortaleza, 10 de setembro de 2025. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> >JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> >Presidente do Órgão Julgador </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> >EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> >Juiz Convocado&#160; <strong style="font-size: small; font-family: Verdana, sans-serif;"> </p><p style="line-height: 150%;" align="justify">

</p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify">&#160;</p>

Processo	0271474-70.2021.8.06.0001
	align="center"> RELATÓRIO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Trata-se de Embargos de Declaração Cível opostos por Pedro Vitor Ribeiro de Sá, representado por Jacilene Ribeiro de Sousa, contra o acórdão às fls. 462/470 que conheceu o apelo da parte ré, dando-lhe parcial provimento para reformar a sentença julgando improcedente o pedido de indenização por danos morais, ficando prejudicado o recurso adesivo.</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> E m suas razões recursais, a parte embargante sustenta a existência de omissão no referido acórdão alegando , em síntese, que “Respeitável Magistrado, em acórdão prolatado ficou decidido que (ementa): “EMENTA: CONSUMIDOR. APELO E RECURSO ADESIVO. PLANO DE SAÚDE. SENTENÇA DE PROCEDÊNCIA. MORTE NO CURSO DA LIDE. INDENIZAÇÃO POR DANOS MORAIS OBJETO DE AMBOS OS RECURSOS. FORNECIMENTO DO FÁRMACO DUXIPENT PARA TRATAR DERMATITE ATÓPICA GRAVE. PRECEDENTES DESTE COLENDO COLEGIADO EM CASOS SIMILARES. OBRIGATORIEDADE DO FORNECIMENTO PELA OPERADORA DE PLANOS DE SAÚDE, MAS QUE NÃO GERA DANO MORAL INDENIZÁVEL EM FACE DA EXISTÊNCIA DE DÚVIDA RAZOÁVEL NO CONTRATO. RECURSO DA OPERADORA PROVIDO. SENTENÇA REFORMADA. RECURSO ADESIVO PREJUDICADO.” 3. Eminente Desembargador, A CERTIDÃO DE ÓBITO É A PROVA DA MORTE/FALECIMENTO DE ALGUÉM, O AUTOR PERMANECE VIVO, EMBORA COM GRAVES PROBLEMAS DE SAÚDE, PERMANECENDO SEM O TRATAMENTO ADEQUADO E CORRETO DO PLANO, QUE SÓ NÃO TEM DÚVIDAS PARA NEGAR ATENDIMENTO! ”</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> A duz, ainda, que “Para negar a condenação em danos morais a fundamentação é: “EM FACE DA EXISTÊNCIA DE DÚVIDA RAZOÁVEL NO CONTRATO” Observe preclaro magistrado, que não há nem nunca houve, dúvida razoável para negar o fornecimento do medicamento em questão. Ainda em 2021, por ocasião da impetração da inicial foi juntado, DECISÃO de 08/01/2021 do Presidente do STJ que determina continuidade de tratamento a criança não previsto no rol da ANS. A ré duvida da decisão de Ministro do STJ? Em 01/04/2024, foi publicado a RESOLUÇÃO NORMATIVA ANS Nº 603, DE 1º DE ABRIL DE 2024, que diz, ratificando o pensamento do STJ [...]” </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Complementa que “Assim, face ao erro em se considerar o autor falecido, pois vivo, e a inexistência de dúvida razoável na interpretação do contrato, o Eminente Desembargador se manifeste sobre: O falecimento errôneo e incorrido do autor, e; A inexistência de dúvida razoável no contrato, existia somente a vontade e intuito em negar o medicamento sem fundamentação. Espera o autor ver o acórdão reformado, prevalecendo a sentença de 1º grau, pelos efeitos modificativos aqui arguidos.” </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Sem contrarrazões. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">

Processo	0271474-70.2021.8.06.0001
	#000000;"> É o relatório. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">&#160;</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento, em parte, d os requisitos intrínsecos e extrínsecos que compõem o referido crivo, levando-o ao qualificativo da positividade e, assim, ao conhecimento, em parte, dos aclaratórios. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Cinge-se a presente demanda em suposta o missão quanto ao falecimento do autor e quanto à suposta inexistência de dúvida razoável no contrato.</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Acerca do falecimento do autor, compulsando o caderno processual, a parte agrav ada embargante não se debruçou sobre a questão em momento oportuno, qual seja, em recurso de apelação, após a sentença que decidiui: Pontuo, ademais, que a autora veio a óbito no curso da ação, razão pela qual o pedido inerente à obrigação de fazer restou insubsistente; a verba indenizatória acima fixada, de outro giro, será revertida ao espólio da promovente. , fazendo-o apenas nesses aclaratórios. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Assim, entendo que a presente demanda se trata, indiscutivelmente, de inovação recursal, não podendo este Julgador ad quem , neste momento processual, discorrer sobre a questão

Processo	0271474-70.2021.8.06.0001
	arguida. Sobre o tema, a jurisprudência do Superior Tribunal de Justiça “é pacífica no sentido de que é vedada a inovação recursal em sede de embargos de declaração, ainda que sobre matéria considerada de ordem pública, haja vista o cabimento restrito dessa espécie recursal às hipóteses em que existente vício no julgado” (STJ, EDcl no REsp 1776418/SP, Ministra NANCY ANDRIGHI, j. 09/02/2021). Colaciono, a seguir, jurisprudência desta egrégia Corte de Justiça: “Colaciono, a seguir, jurisprudência desta egrégia Corte de Justiça: 2. Compulsando os autos, especialmente o recurso de apelação às fls. 2081/2093, verifica-se que em nenhum momento foi mencionada a necessidade de aplicação do regramento vigente à época do ajuizamento da demanda, tratando-se de inovação recursal, o que é vedado em sede de embargos de declaração. 3. A jurisprudência do Superior Tribunal de Justiça “é pacífica no sentido de que é vedada a inovação recursal em sede de embargos de declaração, ainda que sobre matéria considerada de ordem pública, haja vista o cabimento restrito dessa espécie recursal às hipóteses em que existente vício no julgado” (STJ, EDcl no REsp 1776418/SP, Ministra NANCY ANDRIGHI, j. 09/02/2021). 4. Com efeito, a inexistência de controvérsia sobre a matéria apontada pela embargante configura verdadeira inovação recursal, que impede a análise dos embargos por parte deste Tribunal. Por consectário, em observância à decisão objurgada, verifica-se que não se afiguram os vícios integrativos suscitados pela embargante, de modo que, estando regular o julgado impugnado, o desprovemento do apelo foi adequado. 5. Constata-se, portanto, que a única pretensão do recorrente consiste em alterar a conclusão do julgado. Trata-se de insatisfação do embargante com a decisão proferida, pois entende que as suas razões expostas no feito não foram acolhidas quando do julgamento do recurso. 6. Recurso não conhecido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará por unanimidade, em não conhecer dos presentes embargos de declaração, nos termos do voto do Relator. Fortaleza, 27 de março de 2024. DESEMBARGADOR RAIMUNDO NONATOSILVA SANTOS Relator (Embargos de Declaração Cível - 0847675-90.2014.8.06.0001, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 1ª Câmara Direito Privado, data do julgamento: 27/03/2024, data da publicação: 27/03/2024) por unanimidade, em não conhecer dos presentes embargos de declaração, nos termos do voto do Relator. Fortaleza, 27 de março de 2024. DESEMBARGADOR RAIMUNDO NONATOSILVA SANTOS Relator (Embargos de Declaração Cível - 0847675-90.2014.8.06.0001, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 1ª Câmara Direito Privado, data do julgamento: 27/03/2024, data da publicação: 27/03/2024) EMBARGOS DE DECLARAÇÃO EM APELAÇÃO. PENSÃO POR MORTE. POLICIAL MILITAR. ALEGAÇÃO DE OMISSÃO QUANTO À MATÉRIA DE ORDEM PÚBLICA. NÃO RECEPÇÃO DO ART. 7º, 2, DA LEI ESTADUAL Nº 10.972/84 PELA CONSTITUIÇÃO FEDERAL DE 1988. INOVAÇÃO RECURSAL. NÃO CONHECIMENTO. ACLARATÓRIOS NÃO CONHECIDOS. (...) 3. Ocorre que, considerando que as matérias de ordem públicas também se sujeitam à preclusão temporal, caberia ao embargante ter suscitado a questão nos debates travados no primeiro ou no segundo grau de jurisdição, como forma de resistência do Estado do Ceará ao pedido principal da autora (concessão de pensão por morte), o que não se viu. Sendo assim, está configurada a inovação

Processo	0271474-70.2021.8.06.0001
	recursal do único fundamento dos presentes embargos, o que impede seu conhecimento. 4. Embargos de Declaração não conhecidos. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer dos Embargos de Declaração, nos termos do voto do Relator. Fortaleza, data e hora indicadas pelo sistema. Presidente do Órgão Julgador DESEMBARGADOR LUIZ EVALDO GONÇALVES LEITE Relator (Embargos de Declaração Cível - 0034805-17.2012.8.06.0001, Rel. Desembargador(a) LUIZ EVALDO GONÇALVES LEITE, 2ª Câmara Direito Público, data do julgamento: 21/02/2024, data da publicação: 21/02/2024). PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. ALEGAÇÃO DE OMISSÃO. VÍCIO INEXISTENTE. DEDUÇÃO DE TEMA NÃO SUSCITADO ANTERIORMENTE. INOVAÇÃO RECURSAL. PRECLUSÃO CONSUMATIVA, AINDA QUE VERSE SOBRE MATÉRIA DE ORDEM PÚBLICA. PRECEDENTES DO STJ E DO TJCE. EMBARGOS DE DECLARAÇÃO REJEITADOS. (...) 4. Sucede-se que a alegação de temas que não foram suscitados na origem, tampouco em sede de Contrarrazões, sendo trazido tão somente em sede Embargos de Declaração, configura indevida inovação recursal e impede o conhecimento da insurgência, em decorrência da preclusão consumativa, ainda que verse sobre matéria de ordem pública. Precedentes do STJ e do TJCE. 5. Embargos de declaração rejeitados. ACÓRDÃO Vistos, relatados e discutidos estes autos de Embargos de Declaração n. 0120241-02.2016.8.06.0001/50000, Acorda a 1ª Câmara de Direito Público do Tribunal de Justiça do Estado do Ceará, por unanimidade, em rejeitar o recurso, nos termos do voto da Relatora, parte integrante deste. Fortaleza/CE, 19 de Fevereiro de 2024. (Embargos de Declaração Cível - 0120241-02.2016.8.06.0001, Rel. Desembargador(a) LISETTE DE SOUSA GADELHA, 1ª Câmara Direito Público, data do julgamento: 19/02/2024, data da publicação: 21/02/2024). Desse modo, o referido pedido não merece ser conhecido, porquanto configura nítida inovação recursal. Sobre a parte conhecida, registra-se, inauguralmente, que da simples leitura da insurgência aclaratória, é possível verificar o mero inconformismo do Embargante com a decisão do recurso anteriormente manejado, limitando-se tão somente em expedir argumentos com visos a rediscutir a questão já decidida. Segundo o art. 1.022 do Código de Processo Civil, cabem embargos de declaração contra qualquer decisão judicial para:

Processo	0271474-70.2021.8.06.0001
	style="text-decoration: none; "> I - esclarecer obscuridade ou eliminar contradição; </p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none; " align="justify"> II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; " align="justify"> III - corrigir erro material". </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none; " align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; " align="justify"> Na ensanचा, anoto o disposto na Súmula 18 deste egrégio Tribunal de Justiça, in verbis </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none; " align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none; " align="justify"> São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada." </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none; page-break-before: auto; " align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto; " align="justify"> Com efeito, no tocante a suposta

Processo	0271474-70.2021.8.06.0001
	 (STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022) &#160; E é assim que , por todo o exposto, conheço parcialmente o presente recurso, e na parte conhecida, nego-lhe provimento. &#160; É como voto. &#160; Fortaleza, 1 0 de setembro 5 . &#160;&#160; EDUARDO DE CASTRO NETO Juiz Convocado&#160; <strong style="font-size: medium; font-family: Verdana, sans-serif; background-color: transparent;"> Relator &#160;

Processo	3012548-87.2025.8.06.0001
Número de ordem	69
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	FRANCISCO DAMASCO CRUZ FERREIRA
Advogado(s) - Polo ativo	JULIO MANUEL URQUETA GOMEZ JUNIOR - (SC52867-A)
Polo passivo	FACTA FINANCEIRA S.A. CREDITO, FINANCIAMENTO E INVESTIMENTO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3012548-87.2025.8.06.0001
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> </p> </div>

Processo	3012548-87.2025.8.06.0001
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	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelado: &#160;Facta Financeira S/A Crédito, Financiamento e Investimento </p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">&#160;</p> <p style="text-align: justify;"> EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE NULIDADE DE CONTRATO BANCÁRIO C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. INDEFERIMENTO DA INICIAL. EXTINÇÃO SEM RESOLUÇÃO DE MÉRITO. DOCUMENTOS INDISPENSÁVEIS. JUNTADA REALIZADA. FORMALISMO EXCESSIVO. PRINCÍPIOS DO ACESSO À JUSTIÇA E DA PRIMAZIA DO JULGAMENTO DE MÉRITO. SENTENÇA ANULADA. RECURSO PROVIDO. </p> <p style="text-align: justify;"> I. CASO EM EXAME </p> <p style="text-align: justify;"> 1. Recurso de apelação interposto por Francisco Damasco Cruz Ferreira contra sentença da 34ª Vara Cível de Fortaleza que extinguiu, sem resolução de mérito, ação declaratória de nulidade de contrato bancário c/c repetição do indébito e indenização por danos morais, ajuizada contra Facta S/A Crédito, Financiamento e Investimento, sob fundamento de ausência de documentos indispensáveis (CPC, art. 485, I). </p> <p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;"> 2. A questão em discussão consiste em definir se a petição inicial, instruída com documentos pessoais, comprovante de residência e extrato de empréstimos consignados do INSS, atende aos requisitos dos arts. 319 e 320 do CPC, de modo a afastar o indeferimento e permitir o prosseguimento da demanda. </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 3. A petição inicial deve conter os elementos previstos no art. 319 do CPC e ser instruída com os documentos indispensáveis à propositura da ação (art. 320), não se confundindo com aqueles necessários à procedência do pedido. </p> <p style="text-align: justify;"> 4. O autor apresentou procuração, documento de identificação, comprovante de residência e extrato do benefício previdenciário com descontos consignados, documentos suficientes para o ajuizamento da ação. </p> <p style="text-align: justify;"> 5. A exigência de documentos adicionais, como valores efetivamente recebidos ou comprovação administrativa prévia, configura formalismo exacerbado e indevido obstáculo ao direito de ação. </p> <p style="text-align: justify;"> 6. O STJ entende que documentos indispensáveis à propositura são apenas os necessários à compreensão da causa de pedir e à possibilidade de julgamento de mérito, não aqueles essenciais à vitória do autor (AgRg no AREsp 391.083/SP; AgRg no AgRg no REsp 1.513.217/CE). </p> <p style="text-align: justify;"> 7. A extinção sem mérito, na hipótese, viola os princípios constitucionais do acesso à justiça, do devido processo legal e da primazia da resolução de mérito. </p> <p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p> <p style="text-align: justify;"> 8. Recurso provido. Sentença anulada. </p> <p style="text-align: justify;"> Tese de julgamento: </p> <p style="text-align: justify;"> 1. Documentos indispensáveis à propositura da ação são apenas aqueles que viabilizam a análise da causa de pedir e não se confundem com documentos necessários à procedência do pedido. </p> <p style="text-align: justify;"> 2. O indeferimento da inicial por ausência de documentos já juntados traduz formalismo exacerbado, vedado pelo princípio do acesso à justiça. </p> <p style="text-align: justify;"> 3. O juiz deve

Processo	3012548-87.2025.8.06.0001
	prestigiar a primazia do julgamento de mérito, evitando a extinção do processo por exigências desnecessárias. Dispositivos relevantes citados: CF/1988, art. 5º, XXXV e LIV; CPC, arts. 319, 320, 321 e 485, I. Jurisprudência relevante citada: STJ, AgRg no AREsp 391.083/SP, Rel. Min. Ricardo Villas Bôas Cueva, 3ª Turma, j. 15.12.2015, DJe 03.02.2016; STJ, AgRg no AgRg no REsp 1.513.217/CE, Rel. Min. Mauro Campbell Marques, 2ª Turma, j. 27.10.2015, DJe 05.11.2015; TJCE, Apelação Cível nº 0201487-72.2023.8.06.0163, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara Direito Privado, j. 06.11.2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso para dar-lhe provimento, nos termos do voto do Relator.

Processo	3012548-87.2025.8.06.0001
	padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">Fortaleza, data da assinatura digital </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> JOSÉ RICARDO VIDAL PATROCÍNIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Presidente do Órgão Julgador &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px

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	Opx Opx; padding: Opx; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: Opx; padding: Opx; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px Opx Opx; padding: Opx; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Exmo. Sr. EDUARDO DE CASTRO NETO</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: Opx; padding: Opx; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px Opx Opx; padding: Opx; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Juiz Convocado Relator &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: Opx; padding: Opx; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px Opx Opx; padding: Opx; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: Opx; padding: Opx; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px Opx Opx; padding: Opx; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: Opx; padding: Opx; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px Opx Opx; padding: Opx; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline;

Processo	3012548-87.2025.8.06.0001
	font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATÓRIO &#160; <p style="text-align: justify;"> &#160; <p style="text-align: justify;"> Trata-se de Recurso de Apelação interposto por Francisco Damasco Cruz Ferreira, com o escopo de adversar a sentença proferida pelo MM. Juízo 34ª Vara Cível da Comarca de Fortaleza, que nos autos da ação declaratória de nulidade de contrato bancário, repetição do indébito e indenização por danos morais, ajuizada em desfavor de Facta S/A, Crédito, Financiamento e Investimento, indeferiu a petição inicial e extinguiu o feito sem resolução do mérito, com fundamento no art. 485, I do CPC. <p style="text-align: justify;"> Em suas razões recursais, o recorrente sustenta, que “descabe atribuir como condição específica para a propositura da ação que visa a declaração de nulidade do contrato a ônus probatório excessivo, pois tal exigência constitui uma violação ao direito de acesso à justiça. O apelante cumpriu todas as exigências processuais e instruiu os autos com documentos idôneos e robustos, comprovando de forma inequívoca os fatos constitutivos de seu direito, nos termos do artigo 373, I, do Código de Processo Civil”. <p style="text-align: justify;"> Em complemento, argumenta, que “A ação pode ser admitida ou não pelo simples preenchimento dos requisitos, previstos no art. 319, do CPC/15. A decisão que considerará que esta seja apta ou não de deferimento, será apenas de requisitos legais, e não de mérito”. <p style="text-align: justify;"> Por fim, protesta pelo conhecimento e provimento do apelo, para, consequentemente, anular a sentença vergastada, retornando os autos ao primeiro grau para a regular tramitação do feito. <p style="text-align: justify;"> Sem contrarrazões. <p style="text-align: justify;"> É o que importa relatar. <p style="text-align: justify;"> &#160; <p style="text-align: center;"> VOTO </p><p style="text-align: justify;"> VOTO &#160; <p style="text-align: justify;"> Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. <p style="text-align: justify;"> Na hipótese, busca o autor/recorrente a reforma da sentença que extinguiu, sem resolução do mérito, a ação declaratória de nulidade de contrato bancário, repetição do indébito e indenização por danos morais, ajuizada contra o banco/apelado, sob o argumento de que “(...)A ausência de informações objetivas, como a indicação de valores efetivamente recebidos, forma de liberação do crédito, datas relevantes, ou qualquer esforço administrativo junto à instituição financeira, impede a adequada compreensão da controvérsia, comprometendo o regular desenvolvimento da demanda. A resistência da autora em apresentar a documentação necessária para afastar a presunção de abuso de direito, impede a continuidade.(...)”. <p style="text-align: justify;"> No caso em exame, trata-se de demanda na qual o autor, ora apelante, questiona a existência de contrato de cartão de crédito consignado que resultou em descontos em seu benefício previdenciário em favor da instituição financeira requerida, pleiteando, além da declaração de inexistência da relação jurídica, a restituição em dobro das quantias descontadas e o pagamento de indenização por dano moral. <p style="text-align: justify;"> Compulsando os autos, verifico que o autor/recorrente, quando do ingresso da ação, ofertou a seguinte

Processo	3012548-87.2025.8.06.0001
	documentação: procuração (id. 27433091); documento de identificação (id. 27433092) comprovante de residência (id. 27433091); histórico de empréstimo INSS (id. 27432989). Sobre o tema, é certo que a petição inicial deve vir acompanhada dos documentos indispensáveis a sua propositura, nos termos do arts. 319 e 320 do CPC, vejamos: Art. 319. A petição inicial indicará: I - o juízo a que é dirigida; II - os nomes, os prenomes, o estado civil, a existência de união estável, a profissão, o número de inscrição no Cadastro de Pessoas Físicas ou no Cadastro Nacional da Pessoa Jurídica, o endereço eletrônico, o domicílio e a residência do autor e do réu; III - o fato e os fundamentos jurídicos do pedido; IV - o pedido com as suas especificações; V - o valor da causa; VI - as provas com que o autor pretende demonstrar a verdade dos fatos alegados; VII - a opção do autor pela realização ou não de audiência de conciliação ou de mediação. § 1º Caso não disponha das informações previstas no inciso II, poderá o autor, na petição inicial, requerer ao juiz diligências necessárias a sua obtenção. § 2º A petição inicial não será indeferida se, a despeito da falta de informações a que se refere o inciso II, for possível a citação do réu. § 3º A petição inicial não será indeferida pelo não atendimento ao disposto no inciso II deste artigo se a obtenção de tais informações tornar impossível ou excessivamente oneroso o acesso à justiça. Art. 320. A petição inicial será instruída com os documentos indispensáveis à propositura da ação. Destaco que, ao contrário do que consignado pelo juízo a quo, “a demonstração dos valores efetivamente percebidos, modo de disponibilização do crédito, datas pertinentes, bem como eventual diligência administrativa realizada perante a instituição financeira”, não são elementos essenciais para o ajuizamento da ação. No ensejo, cito jurisprudência dessa egrégia Câmara de Direito Privado, inclusive de minha Relatoria, in verbis: APelação CÍVEL. Ação DECLARatória DE INEXISTÊNCIA DE DÉBITO C/C CONDENAÇÃO A INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. ALEGAÇÃO DE AUSÊNCIA DE DOCUMENTO INDISPENSÁVEL À PROPOSITURA DA AÇÃO. INOCORRÊNCIA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTIGOS 319 E 320 DO CPC/15. RATIFICAÇÃO DE DOCUMENTOS QUE PODEM SER REALIZADAS EM JUÍZO POR OCASIÃO DE EVENTUAL INSTRUÇÃO. PRECEDENTES. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. O cerne recursal cinge-se em examinar o acerto, ou o desacerto da sentença, que extinguiu a ação, por inépcia da inicial, sob o fundamento de que o autor não cumpriu a determinação de emenda à inicial da forma como ordenada pelo juízo de primeiro grau, valendo lembrar que constou da determinação de emenda à inicial que o apelante adunasse aos autos documentos originais de identidade, comprovante de endereço, bem como que comparecesse ao juízo para ratificação dos termos da procuração e do pedido inicial. 2. Analisando este caderno processual digital, vejo que o autor/recorrente, quando do ingresso da ação, ofertou a seguinte documentação: procuração (fl. 9); documento de identificação (fl. 19); comprovante de endereço (fls. 20/21); extrato de empréstimos consignados feitos junto ao INSS (fls. 10/18). 3. Com efeito, afigura-se despcienda a determinação da emenda à inicial para a juntada da documentação exigida pelo juiz, posto que nos autos já repousam os documentos essenciais à análise da demanda, a exemplo dos documentos pessoais da apelante, do comprovante de endereço e do extrato de registros dos empréstimos consignados feitos junto ao INSS, em que são indicados o número do benefício sobre o qual estão incidindo os descontos tidos pela apelante como indevidos e que pretende discutir nesta ação. 4. Do mesmo modo, não se pode exigir o comparecimento da parte em juízo para apresentar seus documentos originais de identificação e ratificar os termos da procuração outorgada, até mesmo porque tal providência pode até ser adotada por ocasião de eventual instrução processual, se for o caso. 5. Em arremate: o indeferimento da inicial, tal qual como proclamado pela sentença, traduziu-se em patente formalismo exacerbado, sendo vedado ao julgador obstar o acesso à justiça, como aconteceu no caso presente. 6. APELAÇÃO CONHECIDA E PROVIDA.

Processo	3012548-87.2025.8.06.0001
	ACÓRDÃO: Vistos, relatados e discutidos estes autos da APELAÇÃO CÍVEL nº 0201487-72.2023.8.06.0163, em que é apelante FRANCISCO DE ASSIS SAMPAIO e apelado BANCO PAN S/A, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer e dar provimento ao recurso, nos termos do voto do relator. Fortaleza, 6 de novembro de 2024. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador EMANUEL LEITE ALBUQUERQUE Relator (TJ-CE - Apelação Cível: 02014877220238060163 São Benedito, Relator: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 06/11/2024, 1ª Câmara Direito Privado, Data de Publicação: 07/11/2024) Dáí que, o indeferimento da inicial, tal qual como proclamado pela sentença, traduziu-se em patente formalismo exacerbado, sendo vedado ao julgador obstar o acesso à justiça, como aconteceu no caso presente, tendo em vista que a promovente cumpriu todas as formalidades legais exigidas pelo art. 319 do CPC, bem como instruiu a inicial com o mínimo de prova dos fatos constitutivos de seu direito (art. 320, CPC), não sendo possível, assim, o indeferimento da exordial, sob pena de ofensa aos princípios do acesso à justiça e da primazia da resolução do mérito. Ademais, segundo entende o Superior Tribunal de Justiça, "documentos indispensáveis à propositura da demanda são aqueles cuja ausência impede o julgamento de mérito da demanda, não se confundindo com documentos indispensáveis à vitória do autor, ou seja, ao julgamento de procedência do pedido". (AgRg no AREsp 391.083/SP, Rel. Ministro RICARDO VILLAS BÔAS CUEVA, TERCEIRA TURMA, julgado em 15/12/2015, DJe 03/02/2016; AgRg no AgRg no REsp 1513217/CE, Rel. Ministro MAURO CAMPBELL MARQUES, SEGUNDA TURMA, julgado em 27/10/2015, DJe 05/11/2015). Sobre o assunto: APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE NULIDADE/INEXISTÊNCIA DE RELAÇÃO CONTRATUAL C/C INDENIZAÇÃO. EMPRÉSTIMO CONSIGNADO. ALEGATIVA DE FRAUDE BANCÁRIA. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. AUSÊNCIA DE DOCUMENTO INDISPENSÁVEL À PROPOSITURA DA AÇÃO. INOCORRÊNCIA. PETIÇÃO INICIAL EM TERMOS. PRINCÍPIOS DO ACESSO À JUSTIÇA, DO DEVIDO PROCESSO LEGAL E DA PRIMAZIA DO JULGAMENTO DE MÉRITO VIOLADOS. PRECEDENTE. RECURSO CONHECIDO E PROVIDO. SENTENÇA CASSADA. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. 1. No caso, o indeferimento da inicial quanto à ausência da juntada dos extratos da conta-corrente onde são creditados os proventos de aposentadoria do autor, para fins de análise de possíveis repasses dos valores objeto do contrato de empréstimo consignado em discussão não são imprescindíveis para fins de recebimento da peça vestibular, já que se trata de meio de prova cujo ônus poderá ser invertido em favor do consumidor. 2. Para o STJ, "Os documentos indispensáveis à propositura da ação, e que devem ser instruídos com a inicial, são aqueles que comprovam a ocorrência da causa de pedir (documentos fundamentais) e, em casos específicos, os que a própria lei exige como da substância do ato que está sendo levado à apreciação (documentos substanciais)". (AgRg no AgRg no REsp 1513217/CE, Rel. Ministro MAURO CAMPBELL MARQUES, SEGUNDA TURMA, julgado em 27/10/2015, DJe 05/11/2015) 3. Logo, uma vez demonstrado que a peça vestibular em análise atende plenamente aos requisitos dos artigos 319 e 320 do CPC/15, e, sobretudo, que o autor comprovou em seus proventos de aposentadoria a incidência dos descontos consignados, tidos por ele fraudulentos, impõe-se o acolhimento do apelo para anular a sentença recorrida, em obediência aos princípios do acesso à justiça, do devido processo legal e da primazia do julgamento de mérito. 4. Recurso de apelação conhecido e provido. Sentença anulada. Retorno dos autos à origem para regular processamento. (Relator (a): FRANCISCO BEZERRA CAVALCANTE; Comarca: Milagres; Órgão julgador: Vara Única da Comarca de Milagres; Data do julgamento: 06/08/2019; Data de registro: 07/08/2019) APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C CONDENAÇÃO A INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. ALEGAÇÃO DE AUSÊNCIA DE DOCUMENTO INDISPENSÁVEL À PROPOSITURA DA AÇÃO. INOCORRÊNCIA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTIGOS 319 E 320 DO CPC/15. RATIFICAÇÃO DE DOCUMENTOS QUE PODEM SER REALIZADAS EM JUÍZO POR OCASIÃO DE EVENTUAL INSTRUÇÃO. PRECEDENTES. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. O cerne recursal cinge-se em examinar o acerto, ou o desacerto da sentença, que extinguiu a ação, por inépcia da inicial, sob o fundamento de que o autor não cumpriu a determinação de emenda à inicial da forma como ordenada pelo juízo de primeiro grau, valendo lembrar que constou da determinação de emenda à inicial que o apelante adunasse aos autos documentos originais de identidade, comprovante de

Processo	3012548-87.2025.8.06.0001
	endereço, bem como que comparecesse ao juízo para ratificação dos termos da procuração e do pedido inicial. 2. Analisando este caderno processual digital, vejo que o autor/recorrente, quando do ingresso da ação, ofertou a seguinte documentação: procuração (fl. 9); documento de identificação (fl. 19); comprovante de endereço (fls. 20/21); extrato de empréstimos consignados feitos junto ao INSS (fls. 10/18). 3. Com efeito, afigura-se despicienda a determinação da emenda à inicial para a juntada da documentação exigida pelo juiz, posto que nos autos já repousam os documentos essenciais à análise da demanda, a exemplo dos documentos pessoais da apelante, do comprovante de endereço e do extrato de registros dos empréstimos consignados feitos junto ao INSS, em que são indicados o número do benefício sobre o qual estão incidindo os descontos tidos pela apelante como indevidos e que pretende discutir nesta ação. 4. Do mesmo modo, não se pode exigir o comparecimento da parte em juízo para apresentar seus documentos originais de identificação e ratificar os termos da procuração outorgada, até mesmo porque tal providência pode até ser adotada por ocasião de eventual instrução processual, se for o caso. 5. Em arremate: o indeferimento da inicial, tal qual como proclamado pela sentença, traduziu-se em patente formalismo exacerbado, sendo vedado ao julgador obstar o acesso à justiça, como aconteceu no caso presente. 6. APELAÇÃO CONHECIDA E PROVIDA. ACÓRDÃO: Vistos, relatados e discutidos estes autos da APELAÇÃO CÍVEL nº 0201487-72.2023.8.06.0163, em que é apelante FRANCISCO DE ASSIS SAMPAIO e apelado BANCO PAN S/A, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer e dar provimento ao recurso, nos termos do voto do relator. Fortaleza, 6 de novembro de 2024. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador EMANUEL LEITE ALBUQUERQUE Relator (TJ-CE - Apelação Cível: 02014877220238060163 São Benedito, Relator: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 06/11/2024, 1ª Câmara Direito Privado, Data de Publicação: 07/11/2024 </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Desse modo, observo que o autor/recorrente instruiu a peça vestibular com os documentos indispensáveis a propositura da ação, não havendo no que se falar em desatendimento ao artigo 321 do CPC e em inépcia da inicial. </p> <p style="text-align: justify;"> Desta feita, enxergo que, para a correta aplicação da norma processual cogente, assim como em observância às garantias constitucionais do acesso a uma tutela jurisdicional efetiva, célere e eficaz, asseguradas pelo legislador constituinte e em observância ao princípio da primazia das decisões de mérito, merece reforma a sentença vergastada. </p> <p style="text-align: justify;"> E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados, voto pelo conhecimento do recurso, para dar-lhe provimento, com o fim de anular a sentença atacada e determinar o retorno dos autos à origem para o regular processamento. </p> <p style="text-align: justify;"> É como voto. </p> <p style="text-align: justify;"> Fortaleza-CE, data da assinatura digital </p> <p style="text-align: justify;">
 </p> <p style="text-align: justify;"> EDUARDO DE CASTRO NETO </p> <p style="text-align: justify;"> Juiz Convocado Relator </p> <p style="text-align: justify;"> &#160; </p> <p style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;">&#160;</p> <p style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;">&#160;</p> <p style="font-family: &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;">&#160;</p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">
 </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 20.925px; font-family: Aptos, Aptos_EmbeddedFont, Aptos_MSFontService,

Processo	3012548-87.2025.8.06.0001
Processo	0635862-04.2024.8.06.0000
Número de ordem	70
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Fornecimento de Água
Polo ativo	COMPANHIA DE AGUA E ESGOTO DO CEARA CAGECE
Advogado(s) - Polo ativo	KENIA RIOS DE LIMA - (CE21769-A)
Polo passivo	JOCELIO DE ARAUJO SOUSA
Advogado(s) - Polo passivo	FRANCISCO GUSTAVO MUNIZ DE MESQUITA - (CE31449-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0635862-04.2024.8.06.0000
Acordão	<p>
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Processo	0635862-04.2024.8.06.0000
	xeYdBDak5HX/n8pEgkxqWrVijav6b+sPTKu6/zwrB1BEwDcli5FrkCpNxpZEJRGfVdijMq1mGK/gzcZkBDWXlu9V0OyJOKaPDLWzPC9EFrINTWCKtnXMaD19y06Jn4HAAuX3nFWR849ZVD5PiROhPLS1h8yeXDjtr5/Rtr2X5sz1e2gnJDeR/dXfO+xW8/+puioM/q/nhc1iODc/X4udy2+iJmzZijcP3WLvuoP3z4rLlnKH2tA0dEUZTWvfs27fzJFE+bxpXLVxDfbVn95R5+/8ZaPqnfhIhoVXaEn44MaLh16qXDFPE/dnwoV7Gcjf5qjaLxhZivLebfb7pHUQmiKEpbPv+MQ/v3YkvN5sbrV3+t4/DP+fj7+BFmC+bOYc7C5scrGwu07d/BfH73Clq4DCDlmZbEzvlR1KpVa0Il/xW+YXD7ptlp4KMwV8vKMaXx3xQ2sWLBu2QFa/eUetm/dglprYtV1V1NeVPq153pejq6prq6Wtm7dCsDc+bMV38rv9UjvfbYRFzb+k51ROOKOWfGXthUjg6jhl6t/AoCrVZond746ajsYbrGuvuBy4juX4mPZtauKoN/DxZdecV7Ovz2v5/vEwdLp1Cy96EJFubd0OaW3N6zn2c2v0drvUjhrqBiW6tJJ0iZxxNFAxnY2zohv9M3Ro1gsgMb6WumzbduH/U8X52te38ghSNXV1dKmTz7AIGxjxUUXKU6aw26X/vLmi4oItJws7zg4NR4EhomZAQ3h1iCprRHuXHoNd11907A+P9206RsBJ07f6EIR8d3R5ZMmsWz58hGWcGPnzuH6ahQFP1Tv/PyqW1l60eUKdw61WHFI/U3M4xsTmuo6z90MqloSv/4xz/47aa/067ykTg5c5hSN+hk7fnyqPn+0uu459t3Kkp5y+efEQf/qhUrv/H/Aed/25ljLV1O6f1163B2dAwLJKurq6VHXnqKLV0HFEcUYPCYmnaYn5/36+UtiX1h6UP316HWMvi+ltvPi9H2/9LUnV1tftQww9Ka9askeLFm6loSj/77SOS/pJiyXbflkl/SbH0g4cfUK77vR7pH6+9lj308INSZdW2f63T9b5JWrfuDemhxx+UqqurlUk//eJz0oTpFdIT//UfUnz7Qr2jUXri8cekNWvWSKfb3fh/LcW5asPGDxWOqq6uVjiosmqbdP/99/34p7RyO/1jAAK5HTMQw8/KDns9v/eAMVJFMVhQFVWbZMeevjB/57idTqKc9S2zRukJx5/TBrrYMz/9IRdXS1dc8O1/08HnYn+Fa3Y/w/4xO6ZKrSKnAAAAABJRU5ErkJggg==" alt="" /> </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> ESTADO DO CEARÁ </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> PODER JUDICIÁRIO </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE </p><p style="line-height: 150%; margin-bottom: 0cm;" align="center">
 </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> Processo: 0635862-04.2024.8.06.0000 – Agravo de Instrumento Cível </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> Agravante: Companhia

Processo	0635862-04.2024.8.06.0000
	de > Á > gu > a > e > Esgoto > do > Cear > á – > Cagece > </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> Agravado Joc e lio de Araújo Sousa </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify">
 </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. COMPANHIA DE ÁGUA E ESGOTO DO CEARÁ – CAGECE. SOCIEDADE DE ECONOMIA MISTA. REGIME DE PRECATÓRIOS. AUSÊNCIA DE INTERESSE RECURSAL. NÃO CONHECIMENTO DO RECURSO. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> I. CASO EM EXAME </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> 1. Agravo de instrumento interposto pela Companhia de Água e Esgoto do Ceará – CAGECE contra decisão da Vara Única da Comarca de Tamboril, em cumprimento de sentença movido por Jocélio de Araújo Sousa, que reconheceu a submissão da dívida ao regime de precatórios, mas afastou a aplicação do rito processual previsto para a Fazenda Pública. </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify"> 2. A questão em discussão consiste em definir se há interesse recursal da agravante diante de precedente anterior do mesmo órgão colegiado que já reconheceu a submissão da CAGECE ao regime de precatórios e

Processo	0635862-04.2024.8.06.0000
	determinou a aplicação do rito dos arts. 534 e seguintes do CPC no mesmo cumprimento de sentença. III. RAZÕES DE DECIDIR O art. 76, XIV, do Regimento Interno do TJCE e o art. 932, III, do CPC autorizam o relator a não conhecer de recurso inadmissível ou sem impugnação específica. 4. O interesse recursal pressupõe a utilidade e necessidade do provimento jurisdicional para modificar a situação jurídica da parte. 5. A Turma julgadora já decidiu, no Agravo de Instrumento nº 0637809-93.2024.8.06.0000, oriundo do mesmo cumprimento de sentença, que a CAGECE deve observar tanto o regime de precatórios quanto o rito do art. 534 e seguintes do CPC. 6. Diante da existência de decisão anterior que contemplou integralmente a pretensão da agravante, resta configurada a ausência de interesse recursal, impondo-se o não conhecimento do recurso. IV. DISPOSITIVO E TESE Recurso não conhecido. Tese de julgamento: O recurso não deve ser conhecido quando não subsiste interesse recursal, em razão de decisão anterior que já atendeu integralmente à pretensão da parte. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em não conhecer o recurso, nos termos do voto do Relator. Fortaleza, data e hora do sistema. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador

[illegible]

Processo	0635862-04.2024.8.06.0000
	small;"> III – não conhecer de recurso inadmissível, prejudicado ou que não tenha impugnado especificamente os fundamentos da decisão recorrida .</p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">
 </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Confrontando o dispositivo em referência com o caso dos autos, o presente recurso não pode ser conhecido, como demonstrarei pelas razões a seguir expostas. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> A insurgência recursal gira em torno da tese de que, por força da Lei Estadual nº 18.432/2023 e da jurisprudência consolidada do Supremo Tribunal Federal, a CAGECE, enquanto sociedade de economia mista prestadora de serviço público essencial em regime não concorrencial, deve se submeter integralmente ao regime de precatórios, não podendo ser excluída dos efeitos que lhe são inerentes. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">
 </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Ocorre que, ao proceder à análise dos autos de origem, verifico que não subsiste interesse recursal da parte agravante. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Conforme se observa da certidão de id. 154379190, bem como do documento de id. 154456746, esta própria Turma Julgadora, em sessão realizada em 26 de março de 2025 , deu provimento ao Agravo de Instrumento nº 0637809-93.2024.8.06.0000, de relatoria do Exmo. Sr. Desembargador Emanuel Leite Albuquerque, no qual se discutia exatamente a mesma controvérsia, isto é, a submissão da CAGECE ao regime de precatórios, em razão de sua natureza jurídica e da atividade desempenhada. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">
 </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> A saber: </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">
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Processo	0635862-04.2024.8.06.0000
	de Castro Neto </p><p style="line-height: 150%; margin-bottom: 0cm; background: transparent;" align="center"> Relator </p><p> </p> <br </p> </p><p> </p><p style="text-align: center;"> </p>
Processo	3005542-32.2025.8.06.0000
Número de ordem	71
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Curatela
Polo ativo	EVORA GURGEL MACHADO
Advogado(s) - Polo ativo	ANDRE LUIS QUEIROZ DE PAIVA - (CE35900-A)
Polo passivo	MADALENA ALVES BEZERRA FLAVIO ALVES GURGEL
Advogado(s) - Polo passivo	CAROLINNE PEIXOTO TEIXEIRA - (CE29276-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	3005542-32.2025.8.06.0000
Acórdão	<p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm; page-break-before: always;" align="justify"> EMENTA : DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO DE EXIGIR CONTAS. CURATELA. COMPETÊNCIA ABSOLUTA DO JUÍZO DE FAMÍLIA QUE DECRETOU A INTERDIÇÃO. PRELIMINAR RECONHECIDA. NULIDADE DA DECISÃO INTERLOCUTÓRIA. RECURSO CONHECIDO E PROVIDO. DECISÃO ANULADA. <p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> I. CASO EM EXAME </p> <p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 1. Agravo de instrumento interposto por Évora Gurgel Machado contra decisão da 5ª Vara Cível da Comarca de Fortaleza/CE, que, nos autos da Ação de Exigir Contas ajuizada por Madalena Alves Bezerra e Flávio Alves Gurgel, julgou procedente o pedido para determinar a prestação de contas no prazo de 15 (quinze) dias. A agravante suscita preliminares de nulidade por incompetência absoluta do juízo cível e ausência de fundamentação, além de ilegitimidade ativa e ausência de interesse de agir. </p> <p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p> <p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 2. Há duas questões em discussão: (i) definir se a ação de exigir contas relativa ao exercício de curatela deve ser processada e julgada pelo juízo cível ou pelo juízo de família que decretou a interdição; (ii) estabelecer se a decisão interlocutória deve ser anulada por vício de incompetência absoluta. </p> <p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR 3. O juízo que nomeia o curador detém competência absoluta e funcional para processar e julgar todas as questões correlatas à curatela, inclusive a ação de exigir contas, nos termos do art. 553 do CPC e do art. 54, I, da Lei de Organização Judiciária do Estado do Ceará. </p> <p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 4. A especialização jurisdicional deve ser preservada para garantir a coerência da tutela judicial, não se prorrogando a competência absoluta em razão da perpetuatio jurisdictionis. </p> <p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 5. O falecimento do curatelado não afasta a competência do juízo de família, uma vez que a prestação de contas decorre do exercício da curatela e mantém relação de acessoriedade com o processo de interdição. </p> <p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 6. A decisão proferida por juízo absolutamente incompetente configura nulidade insanável, impondo-se sua anulação. </p> <p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> IV. DISPOSITIVO E TES E

Processo	3005542-32.2025.8.06.0000
	normal;">6. Recurso conhecido e provido. Decisão anulada.</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Tese de julgamento 1. O juízo de família que decretou a interdição e nomeou o curador possui competência absoluta para processar e julgar a ação de exigir contas decorrente da curatela. 2. O falecimento do curatelado não altera a competência, subsistindo o dever do curador de prestar contas do período em que exerceu a administração. 3. A decisão proferida por juízo absolutamente incompetente é nula e deve ser anulada com a remessa dos autos ao juízo competente.</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados CPC/2015, arts. 489, §1º, VI, 485, VI, 550, §§2º e 5º, e 553; CC, arts. 1.755 e 1.781; Lei estadual nº 16.397/2017 (COJ-CE), art. 54, I, "f". </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada TJ-CE, Conflito de competência cível nº 0003575-71.2023.8.06.0000, Rel. Des. Francisco Bezerra Cavalcante, 4ª Câmara Direito Privado, j. 26.03.2024; TJ-MT, Conflito de competência nº 1017217-27.2021.811.0000, Rel. Des. Sebastião de Moraes Filho, Primeira Turma de Câmaras Cíveis Reunidas de Direito Privado, j. 02.12.2021. </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, por próprio e tempestivo, para dar providimento ao agravo interposto, anulando a decisão vergastada, nos termos do voto do Relator. </p><p style="font-variant: normal; letter-spacing: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify">&#160;</p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify"> Fortaleza, data e hora da assinatura no sistema. </p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify">&#160;</p><p style="font-variant: normal; letter-spacing: normal; line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-bottom: 0cm;" align="center"> </p><p style="color: #000000;"> </p>

Processo	3005542-32.2025.8.06.0000
	apresentados diversos precedentes, todos eles atestando a necessidade estrita de justificação das razões da exigência das contas, sob pena de indeferimento. (...) Assim, o juízo não abordou expressamente o argumento principal da parte promovida. Ao omitir-se, o juízo incorreu no defeito de fundamentação descrito no artigo 489, parágrafo 1º, inciso VI, do Código de Processo Civil". Também aduz a ilegitimidade da agravada, visto que "O Sr. Flávio Luciano Costa Lima Gurgel do Amaral deixou como herdeiros apenas os seus três filhos – ÉVORA GURGEL MACHADO e FRANCISCO MACHADO GURGEL, frutos de seu casamento com Izaura Machado Gurgel; e FLÁVIO ALVES GURGEL, fruto de sua união com Madalena Alves Bezerra. Em relação à Sra. Madalena Alves Bezerra, não há direito sucessório, porque, ao tempo do óbito, ela e o de cujus encontravam-se separados de fato, conforme se depreende da sentença proferida na ação de reconhecimento de união estável". No mérito, alega que "(...) a requerente busca questionar a gestão realizada pela requerida Évora Gurgel Machado sobre os recursos do seu pai, e ex-marido da requerente, o Sr. Flávio Luciano Costa Lima Gurgel do Amaral, falecido em 2018, do qual a requerida Évora Gurgel Machado fora judicialmente nomeada curadora. Contudo, a presente ação deveria ter sido extinta sem resolução do mérito, em razão da falta de interesse de agir dos promoventes (...) Com efeito, é entendimento unânime do Superior Tribunal de Justiça que a ação de exigir contas depende, para seu conhecimento, da exposição de motivos consistentes, ou de ocorrências duvidosas, na gestão patrimonial, não podendo ser requerida simplesmente "porque sim", ou com base em alegações genéricas". Complementa, afirmando que "(...) ainda que superadas as preliminares supra, e realizado exame de mérito, é inegável que a pretensão às contas, ajuizada pelos agravados, foi inteiramente satisfeita pela ora agravante, de modo que a sentença do feito não poderia ser outra senão a de extinção do processo por ausência do interesse de agir, ou perda de objeto, pela prestação das contas em contestação. Assim, é imperiosa a reforma da decisão agravada nesse sentido, como adiante se requer." Por fim, pleiteia que "I. O recebimento do presente agravo de instrumento no plano formal; II. Intimação da parte agravada para que, querendo, apresente contrarrazões; III. Ao final, o provimento integral do presente agravo de instrumento, sucessivamente: a. Preliminarmente, declaração da nulidade da decisão agravada, por incompetência absoluta do juízo cível, com a remessa do feito à vara cabível; b. Preliminarmente, declaração da nulidade da decisão agravada, por falta de fundamentação, com a devolução do processo à origem para novo julgamento; c. Preliminarmente, seja reconhecida a ilegitimidade ativa da senhora Madalena Alves Bezerra para a ação de exigir contas, por não ter mais a qualidade de companheira quando do óbito do falecido; d. No mérito, seja extinta a ação sem resolução do mérito em razão da falta de interesse de agir (art. 485, inciso VI, CPC). e. No mérito, seja declarada a perda de objeto da ação – isto é, a perda superveniente do interesse de agir, pela apresentação das contas exigidas em anexo à contestação". Vieram-me os autos conclusos. É O RELATÓRIO NO ESSENCIAL. VOTO Antes do estudo dos argumentos deste agravo, compete a este e. Relator exercer em análise perfunctória o Juízo de Admissibilidade, pelo qual declaro que o recurso ora sub examine atende a todos os requisitos intrínsecos e extrínsecos que compõem aquele crivo, levando-me, enfim, a concluir pelo seu conhecimento. Preliminarmente, cumpre analisar a alegação de nulidade da decisão, em razão da incompetência absoluta do juízo prolator. Com efeito, verifica-se dos autos que a demanda em questão foi julgada por uma das Varas Cíveis desta Comarca, quando, na realidade,

Processo	3005542-32.2025.8.06.0000
	ao efetivo exercício da curatela e a administração efetiva dos bens do curatelado pela sua curadora, havendo assim indissociável conexão com o processo de interdição. Precedentes. VII. Conflito Negativo de Competência conhecido e provido para declarar a competência do Juízo da 14ª Vara de Família da Comarca de Fortaleza/CE (suscitado). (TJ-CE - Conflito de competência cível: 0003575-71 .2023.8.06.0000 Fortaleza, Relator.: FRANCISCO BEZERRA CAVALCANTE, Data de Julgamento: 26/03/2024, 4ª Câmara Direito Privado, Data de Publicação: 26/03/2024) CONFLITO NEGATIVO DE COMPETÊNCIA – AÇÃO DE EXIGIR CONTAS E AÇÃO DE INTERDIÇÃO JULGADA EXTINTA – INTERDITADO JÁ FALECIDO – IRRELEVÂNCIA - RELAÇÃO DE ACESSORIEDADE E INTERDEPENDÊNCIA ENTRE AS DEMANDAS - COMPETÊNCIA DO JUÍZO ONDE TRAMITOU A AÇÃO DE INTERDIÇÃO - INTELIGÊNCIA DO ARTIGO 553 DO CÓDIGO DE PROCESSO CIVIL – CONFLITO IMPROCEDENTE – COMPETÊNCIA DO JUÍZO SUSCITANTE. 1 - Questão visada na ação de exigir contas de quantificação da divisão patrimonial estabelecida na anterior demanda de interdição. Patente relação de acessoriedade e interdependência entre as demandas, a luz do art. 553 do CPC. 2 - Mesmo diante da extinção da ação de interdição e falecimento do interdito, subsiste o dever do curador nomeado de prestar contas de sua gestão, é gide dos artigos 1.781 e 1.755 e seguintes do Código Civil, sem prejuízo da ação de prestação de contas, com fundamento no artigo 550 do Código de Processo Civil. 3 - Conflito improcedente. (TJ-MT 10172172720218110000 MT, Relator.: SEBASTIÃO DE MORAES FILHO, Data de Julgamento: 02/12/2021, Primeira Turma de Câmaras Cíveis Reunidas de Direito Privado, Data de Publicação: 03/12/2021) Nesse contexto, a prolação de decisão por juízo absolutamente incompetente constitui nulidade insanável, razão pela qual se impõe a anulação da decisão agravada, com a consequente remessa dos autos ao Juízo da Fazenda Pública que decretou a interdição e nomeou o curador, único competente para processar e julgar a presente Ação de Exigir Contas. E é assim que, por todo o exposto e na linha da jurisprudência pátria, voto por acolher a preliminar, anulando a decisão vergastada e determinando a remessa dos autos para o juízo competente, aquele que nomeou o curador. É como voto. Fortaleza, data da assinatura no sistema. Exmo. Sr. EDUARDO DE CASTRO NETO Juiz Convocado Relator Exmo. Sr. EDUARDO DE CASTRO NETO
Processo	3007959-89.2024.8.06.0000
Número de ordem	72

Processo	3007959-89.2024.8.06.0000
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Sucumbenciais
Polo ativo	SERGIO SEBASTIAO DE LIMA BERNI
Advogado(s) - Polo ativo	GIULIANO PIMENTEL FERNANDES - (CE14241-A) MARCUS VINICIUS DE ALMEIDA - (CE33806-A)
Polo passivo	PAOLO GIOVANNI PRESA
Advogado(s) - Polo passivo	FRANCISCO JOSE DA SILVA - (CE32367-A)
Terceiros	Não informado

Processo	3007959-89.2024.8.06.0000
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	style="font-size: medium;"> I. CASO EM EXAME </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 1. Embargos de declaração opostos por Sérgio Sebastião de Lima Berni contra acórdão que negou provimento a recurso e manteve decisão anterior. O embargante alega omissão quanto ao argumento de que a ausência de oposição ao pedido de prestação de contas afastaria a condenação em honorários sucumbenciais.</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 2. A questão em discussão consiste em verificar se o acórdão embargado incorreu em omissão ao não apreciar o argumento de que, inexistindo oposição à prestação de contas, não se justificaria a condenação em honorários advocatícios.</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 3. O art. 1.022 do CPC delimita as hipóteses de cabimento dos embargos de declaração, não servindo o recurso para rediscutir matéria de mérito.</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 4. O acórdão embargado enfrentou expressamente a questão dos honorários advocatícios, destacando a jurisprudência pacífica do STJ segundo a qual, sendo procedente o pedido do autor na primeira fase da ação de exigir contas, há sucumbência do réu, ainda que não haja oposição expressa. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 5. A ausência de oposição não afasta a condenação, pois houve efetiva procedência do pedido, resultando em condenação à prestação das contas exigidas, hipótese distinta da supressão da primeira fase. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 6. O embargante manifesta mero inconformismo com a decisão colegiada, o que não caracteriza omissão, contradição ou obscuridade, inviabilizando o acolhimento dos aclaratórios. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> IV. DISPOSITIVO E TESE </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 7. Embargos de declaração rejeitados. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Tese de julgamento “ a) Embargos de declaração não constituem meio hábil para rediscutir matéria já apreciada. b) A procedência do pedido na primeira fase da ação de prestação de contas enseja condenação em honorários advocatícios, independentemente da oposição expressa do réu. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">

Processo	3007959-89.2024.8.06.0000
	indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Trata-se de Embargos de Declaração Cível opostos por Sérgio Sebastião de Lima Berni , contra o acórdão id. 19902268 que negou provimento ao recurso, mantendo inalterada a decisão proferida .</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> E m suas razões recursais, a parte embargante sustenta a existência de omissão omissão no referido acórdão alegando , em síntese, que essa C. Câmara negou provimento ao agravo de instrumento, mantendo a Decisão Agravada por entender que a jurisprudência é pacífica sobre o cabimento de honorários de sucumbência em decisão da primeira fase da ação de prestação de contas [...] Com a devida vênia, o acórdão embargado incorre em omissão ao não apreciar argumento suscitado no agravo de instrumento e que seria apto a afastar a condenação em honorários: a ausência de oposição ao pedido de prestação de contas. 11. Não se nega que é cabível a condenação em honorários de sucumbência na decisão que encerra a primeira fase da ação de prestação de contas, apenas questiona o seu cabimento quando não há oposição à prestação de contas. O Embargante não se opôs à prestar contas (que já foram prestadas), na verdade, apresentou as contas cabíveis e esclareceu a relação jurídica efetivamente existente entre as partes. [...] E por isso, como não houve oposição, não há que se falar em condenação sucumbencial, como já decidiu o Superior Tribunal de Justiça: [...] Por tais razões, requer que o acórdão seja complementado para sanear a omissão presente, explicando o porquê de manter a condenação em honorários advocatícios de sucumbência quando não há oposição ao pedido de prestação de contas. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Por essas razões o Embargante roga pelo regular recebimento destes embargos de declaração, pela oitiva do Embargado e pelo provimento deste recurso para se sanar a omissão verificada, imprimindo efeitos infringentes se entender cabíveis. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p></table>

Processo	3007959-89.2024.8.06.0000
	 </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-before: auto;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="background-color: transparent; font-size: medium; font-family: Verdana, sans-serif;"> Relator </p><p>&#160;</p>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3001634-48.2025.8.06.0070
Número de ordem	73
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	MARIA DE FATIMA EVARISTO DO NASCIMENTO
Advogado(s) - Polo ativo	MARCIO EMANUEL FERNANDES DE OLIVEIRA - (CE53206-A)
Polo passivo	BANCO C6 S.A.
Advogado(s) - Polo passivo	FERNANDA RAFAELLA OLIVEIRA DE CARVALHO - (PE32766-A)
Terceiros	Não informado

Processo	3001634-48.2025.8.06.0070
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Processo	3001634-48.2025.8.06.0070
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	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelado: &#160;Banco C6 S/A </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <p style="text-align: justify;"> EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EXTINÇÃO SEM RESOLUÇÃO DE MÉRITO. EXIGÊNCIA JUDICIAL DE COMPARECIMENTO PESSOAL. FORMALISMO EXACERBADO. PRINCÍPIO DA INAFASTABILIDADE DA JURISDIÇÃO E DA PRIMAZIA DA DECISÃO DE MÉRITO. RECURSO PROVIDO. SENTENÇA ANULADA. </p> <p style="text-align: justify;"> I. CASO EM EXAME </p> <p style="text-align: justify;"> 1. Recurso de Apelação interposto por Maria de Fátima Evaristo do Nascimento contra sentença da 2ª Vara Cível da Comarca de Crateús que extinguiu, sem resolução de mérito (art. 485, I, do CPC), ação declaratória de inexistência de negócio jurídico cumulada com repetição de indébito e indenização por danos morais, ajuizada em desfavor de Banco C6 S/A. A decisão de primeiro grau condicionou a regularidade da representação à presença pessoal da autora em juízo para ratificar documentos já juntados. </p> <p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;"> 2. Há duas questões em discussão: (i) definir se a exigência de comparecimento pessoal da parte autora para ratificar a procuração constitui pressuposto de validade da petição inicial; (ii) estabelecer se a ausência de apresentação de comprovante de residência recente configura ausência de documento indispensável à propositura da ação. </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 3. A exigência de comparecimento pessoal da parte autora para ratificação de procuração regularmente outorgada representa rigor formal injustificado e viola o princípio da inafastabilidade da jurisdição (CF/1988, art. 5º, XXXV). </p> <p style="text-align: justify;"> 4. O CPC/2015 (art. 4º) assegura a primazia da decisão de mérito, de modo que o indeferimento da inicial por ausência de confirmação presencial de documentos configura excesso de formalismo. </p> <p style="text-align: justify;"> 5. A procuração constante dos autos confere amplos poderes ao advogado da parte, inexistindo irregularidade de representação. </p> <p style="text-align: justify;"> 6. O comprovante de residência não é documento essencial à propositura da ação (CPC, arts. 319 e 320), podendo eventuais diligências ser realizadas na fase instrutória, inclusive mediante inversão do ônus da prova em matéria consumerista. </p> <p style="text-align: justify;"> 7. A jurisprudência do TJCE orienta-se no sentido de que tais exigências não podem obstar o prosseguimento do feito, devendo prevalecer a garantia de acesso à justiça. </p> <p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p> <p style="text-align: justify;"> 8. Recurso provido. Sentença anulada. </p> <p style="text-align: justify;">

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	style="font-size: medium;"> Tese de julgamento: </p> <p style="text-align: justify;"> 1. A exigência de comparecimento pessoal da parte autora para ratificar procuração regularmente juntada constitui formalismo excessivo e não pode ensejar a extinção do processo. </p> <p style="text-align: justify;"> 2. O comprovante de residência não integra o rol de documentos indispensáveis à propositura da ação, cabendo eventual comprovação na instrução processual. </p> <p style="text-align: justify;"> 3. O juiz deve privilegiar a solução de mérito em observância ao princípio da primazia da decisão de mérito e ao direito fundamental de acesso à jurisdição. </p> <p style="text-align: justify;"> Dispositivos relevantes citados: CF/1988, art. 5º, XXXV; CPC/2015, arts. 4º, 319, 320 e 485, I. </p> <p style="text-align: justify;"> Jurisprudência relevante citada: TJ-CE, Apelação Cível nº 0201487-72.2023.8.06.0163, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara Direito Privado, j. 06.11.2024; TJ-CE, Apelação Cível nº 0203517-94.2023.8.06.0029, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara Direito Privado, j. 03.04.2024. </p> <p style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;">&#160;</p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">&#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: &#160;Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso para dar-lhe provimento, nos termos do voto do Relator. &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div>

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	transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">Fortaleza, data da assinatura digital </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> JOSÉ RICARDO VIDAL PATROCÍNIO &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Presidente do Órgão Julgador &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -

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	webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> EDUARDO DE CASTRO NETO </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Juiz Convocado Relator &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text; font-size: 12pt; line-height: 20.7px; font-family: Aptos, Aptos_EMBEDDEDFont, Aptos_MSFontService, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATÓRIO &#160; <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">&#160;</p> <p style="text-align: justify;"> Trata-se de Recurso de Apelação interposto por Maria de Fátima Evaristo do Nascimento com o escopo de adversar a sentença proferida pelo MM. Juízo 2ª Vara Cível da Comarca de Crateús, que extinguiu sem resolução de mérito a ação declaratória de inexistência de negócio jurídico cumulada com repetição de indébito e indenização por danos morais, ajuizada em desfavor de Banco C6 S/A, com fundamento no art. 485, I, do CPC. </p> <p style="text-align: justify;"> Em suas razões recursais, a autora/recorrente sustenta, que (...) o despacho que intimou o apelante para comparecer ao Fórum acompanhado de documento oficial de identidade e cópia de comprovante de residência dos últimos três meses em seu nome ou em nome de terceiro demonstrando o vínculo entre ambos, além de confirmar a procuração constante dos autos e os pedidos veiculados na peça de inauguração, representa um obstáculo significativo ao acesso à justiça". </p> <p style="text-align: justify;"> Em continuidade argumenta que "Tais requisitos, que poderiam ser firmados e verificados posteriormente em sede de audiência, acabam por dificultar desnecessariamente a tramitação do processo e o direito do apelante em ter ressarcido os valores descontados indevidamente de sua conta." </p> <p style="text-align: justify;"> Aduz, ainda, que "a exigência da documentação indicada pelo magistrado de primeiro grau mostra-se indevida, visto que os documentos exigidos não se constituem em documentos indispensáveis à propositura da ação, mas sim são necessários para a verificação do direito questionado, constituindo-se em provas que inclusive podem ser obtidas no decorrer da instrução processual do feito, com a possibilidade de inversão do ônus em caso de vulnerabilidade consumerista." </p> <p style="text-align: justify;"> Ao final, protesta pelo conhecimento e provimento do apelo, para, consequentemente, reformar a sentença vergastada, anulando-a, com o retorno dos autos ao juízo de origem para seu regular processamento. </p> <p style="text-align: justify;"> Contrarrazões – id. 27427172. </p> <p style="text-align: justify;"> É o que importa relatar. </p> <p style="text-align: center;"> VOTO </p> <p style="text-align: justify;"> Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. </p> <p style="text-align: justify;"> Na hipótese, busca a autora/apelante a reforma da sentença prolatada pelo douto julgante da 2ª Vara Cível da Comarca de Crateús, que nos autos da ação declaratória de inexistência de negócio jurídico cumulada com repetição de indébito e indenização por danos morais, julgou extinto o processo, sem resolução de mérito, sob o fundamento de irregularidade de representação da parte requerente, ao não comparecer em juízo para ratificar os documentos anexados junto a exordial. </p> <p style="text-align: justify;"> No caso, esclareço que o magistrado de primeiro grau, ao observar que se tratava de causa de massa – discussão de empréstimos consignados afirmadamente não contrários na qual a parte autora, através do mesmo advogado, ajuizou mais de uma demanda com o mesmo desiderato em face da mesma ou de outras instituições financeiras, cada uma visando a declaração de inexistência de um dado contrato,

Processo	3001634-48.2025.8.06.0070
	constatou que a demanda em liça preenche o perfil indicado pela Recomendação nº 01/2019/NUMOPEDE/CGJ, atualizada pela Recomendação nº 01/2021/NUMOPEDE/CGJ. Por conta disso, determinou que a parte promovente/apelante comparecesse na secretaria do juízo, para apresentar documento oficial de identidade e cópia do comprovante de residência dos últimos três meses, oportunidade em que, por firma presencial de termo, confirmará a procuração constante nos autos e os pedidos veiculados na exordial, sob pena de extinção do feito sem resolução do mérito. Ressalto, que a parte promovente deixou o prazo transcorrer in albis, ocasionando a prolação da sentença terminativa. A inicial foi acompanhada de procuração ad judícia (id. 27427149), documento pessoal de identidade (id. 27427147), declaração de residência (id. 27427148); histórico de empréstimos consignados do INSS (id. 27427150); e e-mail requerendo cópia do suposto contrato firmado junto a instituição bancária (id. 27427146). Pois bem. No caso, o juízo de primeiro grau, ao desconsiderar a procuração e exigir da autor/recorrente a sua ratificação como condição de procedibilidade da ação, indeferindo a petição inicial sem fundamentação plausível, terminou por prestigiar o rigor formal em detrimento do direito constitucional à jurisdição (art. 5º, XXXV, CF/88) e do postulado da primazia da sentença de mérito (art. 4º do CPC/15). É que, o instrumento procuratório acostado aos autos, confere amplos poderes ao advogado da parte apelante, de modo que pode transigir, fazer acordo, firmar compromisso, entre outros, o que afasta a falta de interesse de agir, por conta da ausência do comparecimento do promovente a secretaria do respectivo juízo para ratificar as prerrogativas estabelecidas, de sorte a extinção da ação, como posto na sentença, violou o princípio da inafastabilidade de jurisdição. No que se refere a necessidade do comprovante de residência e cópia da carteira de identidade original do requerente/recorrente, é sabido que, não há necessidade da juntada do original, tendo em vista que se presumem verdadeiros os documentos e informações trazidos, cabendo à parte contrária o ônus de impugná-los, até mesmo porque tal providência pode até ser adotada por ocasião de eventual instrução processual, se for o caso. Ademais, o comprovante de endereço não constitui documento indispensável à propositura da ação, sendo irrelevante para o deslinde da causa, porque não opera qualquer influência para o julgamento do mérito. No ensejo, cito jurisprudência dessa egrégia Primeira Câmara de Direito Privado, inclusive de minha Relatoria, in verbis: APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C CONDENAÇÃO A INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. ALEGAÇÃO DE AUSÊNCIA DE DOCUMENTO INDISPENSÁVEL À PROPOSITURA DA AÇÃO. INOCORRÊNCIA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTIGOS 319 E 320 DO CPC/15. RATIFICAÇÃO DE DOCUMENTOS QUE PODEM SER REALIZADAS EM JUÍZO POR OCASIÃO DE EVENTUAL INSTRUÇÃO. PRECEDENTES. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. O cerne recursal cinge-se em examinar o acerto, ou o desacerto da sentença, que extinguiu a ação, por inépcia da inicial, sob o fundamento de que o autor não cumpriu a determinação de emenda à inicial da forma como ordenada pelo juízo de primeiro grau, valendo lembrar que constou da determinação de emenda à inicial que o apelante adunasse aos autos documentos originais de identidade, comprovante de endereço, bem como que comparecesse ao juízo para ratificação dos termos da procuração e do pedido inicial. 2. Analisando este caderno processual digital, vejo que o autor/recorrente, quando do ingresso da ação, ofertou a seguinte documentação: procuração (fl. 9); documento de identificação (fl. 19); comprovante de endereço (fls. 20/21); extrato de empréstimos consignados feitos junto ao INSS (fls. 10/18). 3. Com efeito, afigura-se despicienda a determinação da emenda à inicial para a juntada da documentação exigida pelo juiz, posto que nos autos já repousam os documentos essenciais à análise da demanda, a exemplo dos documentos pessoais da apelante, do comprovante de endereço e do extrato de registros dos empréstimos consignados feitos junto ao INSS, em que são indicados o número do benefício sobre o qual estão incidindo os descontos tidos pela apelante como indevidos e que pretende discutir nesta ação. 4. Do mesmo modo, não se pode exigir o comparecimento da parte em juízo para apresentar seus documentos originais de identificação e ratificar os termos da procuração outorgada, até mesmo porque tal providência pode até ser adotada por ocasião de eventual instrução processual, se for o caso. 5. Em arremate: o indeferimento da inicial, tal qual como proclamado pela sentença, traduziu-se em patente formalismo exacerbado, sendo vedado ao julgador obstar o acesso à justiça, como aconteceu no caso presente. 6. APELAÇÃO CONHECIDA E PROVIDA. ACÓRDÃO: Vistos, relatados e discutidos estes autos da APELAÇÃO CÍVEL nº 0201487-72.2023.8.06.0163,

Processo	3001634-48.2025.8.06.0070
	em que é apelante FRANCISCO DE ASSIS SAMPAIO e apelado BANCO PAN S/A, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer e dar provimento ao recurso, nos termos do voto do relator. Fortaleza, 6 de novembro de 2024 . FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador EMANUEL LEITE ALBUQUERQUE Relator (TJ-CE - Apelação Cível: 02014877220238060163 São Benedito, Relator.: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 06/11/2024, 1ª Câmara Direito Privado, Data de Publicação: 07/11/2024) </p> <p style="text-align: justify;"> APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA NEGATIVA DE DÉBITO C/C CONDENÇÃO A INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. ALEGAÇÃO DE AUSÊNCIA DE DOCUMENTO INDISPENSÁVEL À PROPOSITURA DA AÇÃO . INOCORRÊNCIA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTIGOS 319 E 320 DO CPC/15. RATIFICAÇÃO DE DOCUMENTOS QUE PODEM SER REALIZADAS EM JUÍZO POR OCASIÃO DE EVENTUAL INSTRUÇÃO. PRECEDENTES . RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. O cerne recursal cinge-se em examinar o acerto, ou o desacerto da sentença, que extinguiu a ação, por inépcia da inicial, sob o fundamento de que o autor não cumpriu a determinação de emenda à inicial da forma como ordenada pelo juízo de primeiro grau, valendo lembrar que constou da determinação de emenda à inicial que o apelante adunasse aos autos documentos originais de identidade, comprovante de endereço, bem como que comparecesse ao juízo para ratificação dos termos da procuração e do pedido inicial . 2. Analisando este caderno processual digital, vejo que a autora/recorrente, quando do ingresso da ação, ofertou a seguinte documentação: procuração (fl. 08); documento de identificação (fl. 09); comprovante de endereço (fl. 10); extrato de empréstimos consignados feitos junto ao INSS (fls. 11/17); requerimento administrativo em que pleiteou as cópias dos contratos de empréstimos consignado pela via administrativa (fl. 18). 3 . Com efeito, afigura-se despicienda a determinação da emenda à inicial para a juntada da documentação exigida pelo juiz, posto que nos autos já repousam os documentos essenciais à análise da demanda, a exemplo dos documentos pessoais da apelante, do comprovante de endereço e do extrato de registros dos empréstimos consignados feitos junto ao INSS, em que são indicados o número do benefício sobre o qual estão incidindo os descontos tidos pela apelante como indevidos e que pretende discutir nesta ação. 4. Do mesmo modo, não se pode exigir o comparecimento da parte em juízo para apresentar seus documentos originais de identificação e ratificar os termos da procuração outorgada, até mesmo porque tal providência pode até ser adotada por ocasião de eventual instrução processual, se for o caso. 5 . Em arremate: o indeferimento da inicial, tal qual como proclamado pela sentença, traduziu-se em patente formalismo exacerbado, sendo vedado ao julgador obstar o acesso à justiça, como aconteceu no caso presente. 6. APELAÇÃO CONHECIDA E PROVIDA. ACÓRDÃO: Vistos, relatados e discutidos estes autos da APELAÇÃO CÍVEL nº 0203517-94 .2023.8.06.0029, em que é apelante MARIA CILEDIA RODRIGUES GUEDES e apaldo BANCO BRADESCO S/A, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer e dar provimento ao recurso nos termos do voto do Relator . Fortaleza, 3 de abril de 2024. EMANUEL LEITE ALBUQUERQUE Relator (TJ-CE - Apelação Cível: 0203517-94.2023.8.06.0029 Acopiara, Relator.: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 03/04/2024, 1ª Câmara Direito Privado, Data de Publicação: 04/04/2024) </p> <p style="text-align: justify;"> Desta feita, enxergo que, para a correta aplicação da norma processual cogente, assim como em observância às garantias constitucionais do acesso a uma tutela jurisdicional efetiva, célere e eficaz, asseguradas pelo legislador constituinte e em observância ao princípio da primazia das decisões de mérito, merece reforma a sentença vergastada. </p> <p style="text-align: justify;"> E é assim que, por todo o exposto, conheço do presente recurso, por próprio e tempestivo, para dar-lhe provimento, anulando a sentença vergastada e determinando o retorno dos autos à origem, para que seja dada regular tramitação ao feito. </p> <p style="text-align: justify;"> É como voto </p> <p style="text-align: justify;"> Fortaleza, data da assinatura digital </p> <p style="text-align: justify;"> <strong style="text-align: center; white-space-collapse: preserve;"> EDUARDO DE CASTRO NETO </p> <p style="text-align: justify;"> Juiz Convocado Relator </p> <p style="font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif;"> &#160; </p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

Processo	3001634-48.2025.8.06.0070
	transparent; margin: 0px; padding: 0px; user-select: text; line-height: 23px;"> </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> </p></div> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	3007002-51.2025.8.06.0001
Número de ordem	74
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Atualização de Conta
Polo ativo	RILDO FERREIRA DE SOUZA
Advogado(s) - Polo ativo	MARIA ROSINE MAGALHAES DOS SANTOS CASTRO - (CE22838-A) LARISSA ROCHA DE PAULA PESSOA - (CE39149-A) BRUNA PASCOAL COSTA - (CE46526-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	Não informado

Processo	3007002-51.2025.8.06.0001
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Processo	3007002-51.2025.8.06.0001
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Processo	3007002-51.2025.8.06.0001
	desfalques em conta vinculada ao PASEP é decenal, com termo inicial na data em que o titular tem ciência dos desfalques. Não configurada omissão quando o acórdão expressamente enfrenta a matéria e aplica a tese firmada no Tema 1150 do STJ. Dispositivos relevantes citados: CC, arts. 189 e 205; CPC, arts. 1.013, § 4º, e 1.022. Jurisprudência relevante citada: STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022. STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. AC ORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. JOSÉ RICARDO VIDAL PATROCÍNIO EDUARDO DE CASTRO NETO

Processo	3007002-51.2025.8.06.0001
	style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="font-size: small; font-family: Verdana, sans-serif;"> Relator </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="font-weight: normal; line-height: 150%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin- bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Trata-se de Embargos de Declaração Cível opostos por Banco do Brasil S/A contra o acórdão id. 24745116 que deu provisamento do recurso de apelação, no sentido de anular a sentença vergastada e determinar o retorno dos autos à origem para regular prosseguimento do feito. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text- indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> E m suas razões recursais, a parte embargante sustenta a existência de omissão no referido acórdão alegando , em síntese, " A 1ª Câmara Direito Privado decidiu, por votação unânime, dar provimento ao recurso do autor. [...] A parte autora apresentou microfilmagens dos extratos e demonstrou que tomou conhecimento do saldo PASEP quando sacou o abono, em 30.06.2003 [...] Para a caracterização da prescrição não basta o transcurso do tempo, é necessária a presença concomitante da possibilidade de exercício de uma ação que tutele o direito e a inércia do seu titular (AgInt no AREsp 489.724/RN, Rel. Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, julgado em 18/11/2019, DJe 22/11/2019). Conforme bem pontuado pelo Magistrado a quo, o argumento de que a prescrição deve correr do momento da não

Processo	3007002-51.2025.8.06.0001
	realização dos depósitos, ou da subtração indevida (e não do momento da aposentadoria), não pode ser admitido, pois não se pode exigir à parte checar, periodicamente, a retidão das quantias depositadas, pois assim, se a prescrição for contada da emissão do extrato, o feito se torna imprescritível na prática. Destarte, o Superior Tribunal de Justiça firmou no julgamento do REsp nº 1.895.936/TO, sob a égide dos Recursos Repetitivos (Tema 1150), em 13/09/2023, que “a pretensão do ressarcimento dos danos havidos em razão dos desfalques em conta individual se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil” e “o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP”, contudo, ainda configura-se prescrita a pretensão da autora, considerando marco inicial da prescrição a data do saque do PASEP referente à aposentação e da ciência dos desfalques, em 30.06.2003, ou seja, já decorreram mais de dez anos, visto que a ação foi proposta somente em 31/01/2025. [...] Deste modo, para evitar prejuízo futuro, necessário a correção do julgamento sem prejuízo de outras matérias em todo o teor do acórdão. Requer-se, portanto, o acolhimento destes aclaratórios para que seja corrigida a questão apontada. Diante disso, é de rigor o reconhecimento da prescrição do caso posto em tela, já que a presente demanda foi ajuizada tão somente em 31/01/2025.” Por essas razões o embargante, com intuito de esclarecer as questões fáticas que envolvem a presente discussão e a título de prequestionamento, vem requerer sejam sanadas as omissões para reformar o acórdão atacado, ante a prescrição da pretensão veiculada. Não sendo deferido efeito modificativo aos presentes embargos, postula sejam sanados os vícios apontados, com expressa manifestação, para efeito de prequestionamento, acerca dos artigos acima citados e da matéria fática aqui envolvida. De toda sorte, tendo os presentes embargos o intuito de incitar a manifestação desta câmara cível sobre circunstâncias ignoradas (omitidas) no presente julgado, não podem os presentes embargos serem considerados como meramente protelatórios. Contrarrazões id. 27090983. É o relatório. VOTO Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento os requisitos intrínsecos e extrínsecos que compõem o referido crivo, levando-o ao qualificativo da positividade e, assim, ao conhecimento dos aclaratórios.

Processo	3007002-51.2025.8.06.0001
	é nula se não houver oportunidade de manifestação sobre a matéria, o que não se verifica no caso concreto. 2. O prazo prescricional decenal para pleitear indenização por desfalques em conta vinculada ao PASEP tem como termo inicial a data em que o titular tem ciência comprovada da lesão, mediante acesso a extratos, microfilagens ou documentos equivalentes. 3. O Tema 1.300 do STJ não se aplica a ações cujo núcleo da controvérsia seja a má gestão e não a distribuição do ônus da prova quanto aos saques do PASEP. Logo, não havendo nenhum dos vícios ensejadores à procedência aclaratória, restando evidenciado o mero inconformismo da Embargante com a solução jurídica prestada por este Sodalício, invocando instrumento processual incabível para a pretensão posta, no caso, a tentativa de rediscutir a matéria já decidida, o presente recurso deve ser rejeitado. A respeito, anoto entendimento perfilhado na ambiência deste Eg. Tribunal in verbis 1. A solução correta e integral da controvérsia, com lastro em fundamentos suficientes, não configura omissão. 2. Os Embargos de Declaração não constituem instrumento adequado para a rediscussão da matéria de mérito consubstanciada na decisão recorrida, quando não presentes os vícios de omissão, obscuridade ou contradição, nos termos do art. 1.022 do CPC. 3. Embargos de Declaração rejeitados. PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. OMISSÕES INEXISTENTES. REDISCUSSÃO DE MATÉRIA DE MÉRITO. IMPOSSIBILIDADE. 1. A solução correta e integral da controvérsia, com lastro em fundamentos suficientes, não configura omissão. 2. Os Embargos de Declaração não constituem instrumento adequado para a rediscussão da matéria de mérito consubstanciada na decisão recorrida, quando não presentes os vícios de omissão, obscuridade ou contradição, nos termos do art. 1.022 do CPC. 3. Embargos de Declaração rejeitados. (STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de

Processo	3007002-51.2025.8.06.0001
	Publicação: DJe 25/04/2022) </p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. DIREITO EMPRESARIAL. DIREITO DE PROPRIEDADE INDUSTRIAL. DIREITO MARCÁRIO. ALEGAÇÃO DE CONTRADIÇÃO E DE OMISSÃO NO ACÓRDÃO EMBARGADO. INEXISTÊNCIA. PRETENSÃO DE REDISCUSSÃO DE MATÉRIA JÁ DECIDIDA. 1. Não há qualquer contradição ou mesmo omissão no acórdão embargado, que examinou de forma clara e expressa as razões apresentadas pelas partes, tendo apenas decidido de forma contrária à pretensão das ora embargantes. 2. Os embargos de declaração não se prestam à rediscussão da matéria já decidida no julgamento do recurso especial. EMBARGOS DE DECLARAÇÃO REJEITADOS. (STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022) </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm;" align="justify"> E é assim que , por todo o exposto, conheço presente recurso. mas para negar-lhe provimento normal;"> </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> É como voto. </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> none;"> Fortaleza, 10 de setembro

Processo	3007002-51.2025.8.06.0001
	de 202 EDUARDO DE CASTRO NETO Juiz Convocado Relator
Processo	0201125-50.2024.8.06.0029
Número de ordem	75
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	FRANCISCA RAIMUNDA DA SILVA BANCO BRADESCO S/A
Advogado(s) - Polo ativo	DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A) DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A)
Polo passivo	BANCO BRADESCO S/A PROCURADORIA BANCO BRADESCO SA FRANCISCA RAIMUNDA DA SILVA
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A) ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado

Processo	0201125-50.2024.8.06.0029
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAQAAAABXCAYAAADrjpu dAAAgAEIEQVR4nOy9eZxVXxo/11rn3urqucGGpknAbEbEGmh6fk2iIRG/DIV+by8DETzSD S2NnMSTVix/owyl8YoLzE+k2h+VDS+JA5RgeoJaLBBWmlUEBFBhgaaHqq66t6z9/r9sfe5 U809Arl+n+5b955z9tnTGVYahVdhb4NAt8Y/e/3Y92Ecd1Enh806vv5reW93Z7wGqyP/7C2w /uePpDHEvo4OjesLLzkRxsLiDPMY4uvVGR6l5ge4+8bHxhvb7kO3g14DQv2nhZccRJa9Hjg dOAmR12JyLMJhGF2IprULHmWHzj9H+Cn4R8EeAtIE/84fsvGWgdRi+9w0vi+64rW40EFO oOQIXi4mZJR5HxVGW8cJtlNzhgaHuS3cee2zRT9lkr14FUYGhYpCX6B5swEsvWwuJoey7 to1TdfiJlm66nDlBkXkTRg1xBQZC89GgPYVHLakOk4Dof170QEH3MbOnb/Nxlu2MTYREM B06eU3mPAeTKomJoDU+9fclWtqx8JNrLn+Q+OOP0nodi3Ed8HKO+govQXhnQR9I3CEiJ Tixfb5Kb6H1k8Jqev0Y/wYwh3g/5Y1n3h4xL4vv/xTIL8PmscfCgLQ3n6C0da9vp6jrWP7+o0 Klvr5IsHezdr/hvQVwnA7kEzlw80L/6JKzs4orwA03cgUkHkdKAT789n3bXfjpsToNez9lqLRP jH1pYnvKDACPThu023o0aB9I7Z99/5XWxvjV4YhVesLAouueK1mPFLvRnv/RtppBljYivl5rL3 xqXpbuw1tfVxyxdTE7X9BOBeRWfGdcT7MzBAC5qTopYhIM4KamYEZYHbvmYn3ULTxKIN DZ3PP3z6fRihAYNn7T0LKD4G44Qg/GgEYZdj19dxjAgBmhohg9iXWXPsbGTYTf/oXHtpE+ +aNtuoEYDFOz8VcBeE4RNufPmx4i17BYZBJgJHjBB0xGeH6+9Ue4XAohDZGKHEqlmRs kL4ixizngPGKCIVffCPkxrE9fELb70N4XSJWIs8ARACEZAzLCIUQmRXSRMI/PBEl8J3SOqu NAHhVH6CdZROAdan96dhawZSIy5uSMQjtdr+ySfi59Hu3+c50YekAcyGtTEXiUAY4NCtzT OkQnpT1zZwWEdZ6C2BJE3I3IWxsEATYifY2jkHuLA5cNaD2pxKZo4i0xOKLnmziCpy7Hx 5h/HgLbrxfstie9mE2Mx4gwTQerIFZsZ7fWGPVooMFTdA6pXcP1ez7L3L4LdL8XcW1wleM wMgpmoqGLE5D0TekVEzEzJwFKw2+qOaOCCacmiAjDzkKjzXtaP2fV9H6PZnxFH1qUI1X CUArtCvwAvTGr4suPxTnzKJlOfBmkDcgoYF9Yh5LXC1OdJbWJhINC8NXSoPEo/ZLGHrf HRNNJDFG6yjt5jsqGfTmzL+4xOxpf4mXqwiaecxHdBcndS6/I9QLLDy16G9SgDqXB6Gi/Z/ ejJii5DwTpCFKle3iHBGjjpgQUEQiJtdFRlvcrrhddLd24LhbbMkt7SHReoKweyi2u7q/bge9Ocs uP56S/gtBFgKg3puJ8xaltdM47tF1q83z0q6CCKPqMOq/T7rr4531J/nchslvlgFlypoW0T5eO XFIR+mQaWel2FuC82/PtToP1en1jWHEdymipmluAxzmBHEfDAJIM5hmpA+AP45LKxmc LAvvqQ3NKSMLzb3FwMby5C5h7D7/DOJ/ctXLgX3JYLOWUI05hBxBbJONqWERIXSVrXBM o1SST9krXvuF4UAtlv2Vkf6hZccSUMWTKmW3pp5WSyWn+wIz9ANRvzULp/U1UlwJVgm wazkSwYuVldMqO3SzpkdDFar0DUjt1r+QNBZeUe+9dlvTZ0164H+2z76TKMfzfuyhIkHarSz mNGRYzx00X7fObt5klaHsdtdq/Fn0v+C8w74XRimxSWJqEvuXrfo10FshOELIKfZy0ZaEkSX /9vEO47yhpB/D56dQtl4nuWi6p3CjmCQM0wWMC9+IEECq8ZMsnUyHqI8UgnASfY+wcvO WXUmWVZBZAVZOBVJUNOAmRbLmptPMuLUUg584BEfHSColKCFKfHHEYfndWdd0/1O+ /lajvXvbjus9/L007qj28sdK3rjglquH3IYvcGSNg9yX6fQCWDvpzFI/0apr0CauK9II19PK4o/XK FdjPiJJ6TAJZHXXTbar6SCEAZ0ifZJ3H5+ZcdknXomWg4D2S5F85EXMkKli3md2VGJkHU RITOLPip0QbMUEBrAknhp0owBocy/30s3OXKdntg+107b/v7Z9r6k3V3Y9BNN3Bhb+9wRF Kp88WJWc6a/reW3xowqqT02kDt7xndtcwgdBuzxwbJi/WRzPd+JCQf9nl52L8qwgaxQ2Iva adrETTDH9jDZrkFgPqFhp2X5dYn/9xpnPYPhjPfnjGQFraj5bOurhlzml/GvP9cicASYG3RaA vp1W0P5GSL0DsLWK2Auzogno6WOM9puBFkxhJjgYgiHMGkiWxP/FufdJ5/92y7bpDa4PF6 t+w60Ho9b6lL0h3N3QDc+ZVWE2f9fT0ht7GPDLSR8njglirgwmMgEjRJGcYAZk0G0iNjmyT CdjCkr0c1Yn7rl7T6uiKuMHxWtal/JcejfFEFSk1kH/3BRQrfAMQw1CROrEtA/YPiA40PhGE wpQmY41o9zo0wvrU/xzPHMjw68nVocm0m3739cZebgQgclmt9uETMdd1Mmxh52G5+2lv Rn86SAzhBCPPaHw/BIRMykjizY7INn2/PPPe/zoaCuK1NvNcx2kWXUspL74WCoffPQaQd /89mfP/OAv/dTT+9q7Y+rVCoyZ84c6079uLAX3wvQ2wfAz/7PwUdmNnjeUOj//nHv4r6eHrS nJy1F/vxtZNM3CXXK6WaqC047cxBCN4f9mzmqMn4Xm109kPcxNEWXniEjfiexlGinf2BnbcES /07pGyoECV1peGtOfHfPRCTBD9AiKHGuQgWXESnww0PABFRNB6C3FaBoB+hGryaejA bAoiXQgZddyHOiF2snfOcPX1cenvvWBine18LBRtZlh4EfGfL255ORCApMBr5vJ9cdcsuvx QXGkRTn+JEBaCzMULxysylPeGgplp07OIEQUCLZymg1uf0GcePVZCfM8Vxa5O7OBR06t vnD3lr7eTUB4ttEX7QahweVIRU+fB6zg8j//DFPKjlo98HYTWeZk6xu8hoMy+D3gvrkPNmm G1t/yOHPfu9jmlF5PYGw7YakEIQSQDyPytuSgoxM6ExoBECw4FfJrEefl87G5V6aeJ/Pv8cg tQ+yZ8Dte38aB5Q37PK/BlkCNBR+k36YeYlMwZCQ/mcltxFKPeYfwWQL+B1YdRdJfXRJ FxKmYW42yLEYb0RsOXAqlh1gG9ixbVNsVXeiz5mROlasz9cl/sOtF9v9x8YjmO2OSUkKoA ZOIOrg49z16SfThfBSJABNZ3los80LS646HXQ5aAXCAqR6BCEHFIIzoiH64jiFzEEwTM3E +2aqbwi78sFa0J2btDRldak8e60bqt27665rnqWCA43+JC7fZ/E03zuMyz/7jOedpH7bojC4ozL D6QlKvM6rqBfwlsAmuJpW285rkYft/tRO4N4Jz87Sy69CbYVAR+JmY2+6OmehH/FX0Xft YxN+V4R9h/zjQmHuu+wsjCsBMHOT8eYTi1zfIFDoC8zsS5j8M7mt4a4bXphgU2uBfwaEJZ edifJaVNakqMBijziPABrrkxP8n7Hu+gcm3cbkoe7w8FliAM0KvFyz3RmrZmVdOh/lvByt4O SsJNdEzWaoGVYNKk5EVINF0R4NAQKi5jAVn1ygJfinSiG/p+SrQzO2r962/p/vD2BNB12pV HAVKsydM8cALutzQF6U5++38O0Yw/pPHPawdOX5WF75ekXnjgnK+vUzq4OsIBGB1SP xIl2QV0enAxT2NQ3Tff4bLyyRejrywnVF5GO7YjNoXAZn5CeznZSHUx0rZLBnAkgdVug036 HdOww7UEogfm6Y9UEICJ/CCKomLoAt+P5S9Zfv67ptmZHsHZNW/q9uwmxez3rrtslbGy6 Z4Q5moBAEPU/CIKh21DdHi9MdH12B1rDow8kARhBtE9lv+x9x2OdC/DufidU1DhBQg3vL B57nfeYh5ArhmhwGryPFEFUyszTfNeLTjgFmzPmhWi38lPlh6+mY+i17buv66oabnmnWbHW D25LO8vPmbZG5D/bZhb19Ldj600/NPKFD8wWOvJKFWsXL0MnbXxjEHEwrgxGC5EOWx /UUVZwZCARTjxvd3Gfj5A2i0Jdk/ZlqBG3dck1iYZ0YFFrn4i1O8R1pR/Z59hViN+/5Ec79zRg m9TPqSDhdcp/L3wm8PXHKySE/3jvxzkyDRz7E2uv/Jl3WEa1FwyF1t+V6u7VphHkciumSG SC0SCxNVgexgAs1UEcumZiXuQhGCCvfr7A/CcBICry48ed2lzn4iFMwdwHKWxE5E2Qm KmDgLTfUQISL5ArikGCUyG6yri86mzHdrgHQCZ0yewaQpB8ob+yi/78C0z9b8+L92ZdXlpTX 7S7O+7LprN85PJprX/wD0yf4kundJh/W2bHfLfbxkRtXyhhlmQicACOOIwGwb0RcdRtF4/ +5CtWaU1MSKaJpXKhTcXy5JOycwCdfJwkp2E5v1s26678Rr9SDh3a3Y8mfY5znDRruH2 PcJhoDukRBA/td2trXBGB0Bd7Cdx8E084ic78ErEBKXkEigOh4ozXzQUQy1BAFZ4TgCaa4

Processo	0201125-50.2024.8.06.0029
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Processo	0201125-50.2024.8.06.0029
	0.12cm; margin-bottom: 0cm;" align="justify"> I. CASO EM EXAME </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 1. Embargos de declaração opostos por Banco Bradesco S/A contra acórdão que negou provimento ao recurso da instituição financeira e deu provimento ao recurso da parte autora, condenando o banco ao pagamento de indenização por danos morais e determinando a restituição de valores descontados de benefício previdenciário, conforme critérios legais de atualização. O embargante sustenta omissão do acórdão quanto à análise de documentos juntados (contrato e extratos). </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 2. A questão em discussão consiste em definir se o acórdão embargado incorreu em omissão ao deixar de analisar os documentos juntados aos autos pelo banco. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 3. O art. 1.022 do CPC prevê que os embargos de declaração somente se prestam a sanar obscuridade, contradição, omissão ou erro material. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 4. O acórdão embargado apreciou expressamente os documentos apresentados, concluindo que o banco não se desincumbiu do ônus da prova previsto no art. 373, II, do CPC, limitando-se a alegações genéricas, sem comprovar a legitimidade dos descontos realizados. </p><p style="font-style: normal; line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 5. O suposto contrato anexado encontra-se incompleto, com páginas em branco e sem assinatura da parte autora, não servindo como prova da regularidade da contratação. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 6. Inexistindo omissão, os embargos configuram mera tentativa de rediscutir matéria já decidida, o que é incabível na via aclaratória, conforme a Súmula 18 do TJ local e a jurisprudência do STJ. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> IV. DISPOSITIVO E TESE </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 7. Embargos conhecidos e desprovidos Tese de julgamento </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Tese de julgamento a </p><p style="font-family: Verdana, sans-serif;"> A análise desfavorável de documentos apresentados não configura omissão, mas julgamento contrário à pretensão da parte. </p>

Processo	0201125-50.2024.8.06.0029
	normal;">b) Os embargos de declaração não constituem instrumento hábil para rediscutir matéria de mérito já decidida. c) O contrato incompleto e sem assinatura da parte autora não comprova a regularidade da contratação e não afasta a responsabilidade da instituição financeira." </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados : CPC, arts. 1.022 e 373, II; CC, arts. 389, parágrafo único, 398 e 406, § 1º; Súmulas 18 do TJ local, 43, 54 e 362 do STJ. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada : STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022; STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line- height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> AC ORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Fortaleza, 10 de setembro de 2025. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin- bottom: 0cm;" align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Presidente do Órgão Julgador </p><p style="line- height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin- bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="font-size: small; font-family: Verdana, sans- serif;"> Relator </p><p style="line- height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="font-weight: normal; line-height: 150%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> <span style="background:

Processo	0201125-50.2024.8.06.0029
	sim, sob pena de ofensa a garantia do contraditório), c) sobre questões de ordem pública, que não são apreciáveis de ofício, pelo magistrado tenham ou não sido suscitados pela parte. Dessa forma, em que pese o brilho e a clareza com que a venerável Sentença embargada deslinda as complexas questões sob julgamento, o recorrente pede vênica para sanar a omissão quanto aos documentos anexados em fase recursal de contrato e extrato. Diante disso, pugna desde já para que seja sanado o presente vício apontado. Por essas razões a) O recebimento dos presentes Embargos de Declaração, posto que tempestivos; b) Que seja sanada a OMISSÃO constante na Decisão embargada sendo os embargos recebidos e apreciado por este Douto Juízo; c) Que intime a parte embargada para responder aos presentes embargos. VOTO Contrarrazões id. 27013303. É o relatório. Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento os requisitos intrínsecos e extrínsecos que compõem o referido crivo. levando-o ao qualificativo da positividade e, assim, ao conhecimento dos aclaratórios. Cinge-se a presente demanda em saber se o acórdão embargado incorreu em

Processo	0201125-50.2024.8.06.0029
	EDUARDO DE CASTRO NETO ="" ><br="" ><p>&#160;<="" >juiz="" >relator<="" <="" <span="" <strong="" ="" &#160;<="" <="" center">="" convocado&#160;<="" p="" p>="" p><br="" p><p="" p><p>&#160;<="" span>="" span><="" strong>="" strong><="" style="font-size: medium;">
Processo	0236164-95.2024.8.06.0001
Número de ordem	76
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Atualização de Conta
Polo ativo	BANCO DO BRASIL SA
Advogado(s) - Polo ativo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Polo passivo	MERCIA CRISTINA MANGUEIRA SALES
Advogado(s) - Polo passivo	CARLOS EUDENES GOMES DA FROTA - (CE10341-A)
Terceiros	Não informado

Processo	0236164-95.2024.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAQAAAABXCAYAAADrjpu dAAAgAEIEQVR4nOy9eZxVXxo/11rn3urqucGGpknAbEbEGmh6fk2iIRG/DIV+by8DETzSD S2NnMSTVix/owyl8YoLzE+k2h+VDS+JA5RgeoJaLBBWmlUEBFBhgaaHqq66t6z9/r9sfe5 U809Arl+n+5b955z9tnTGvYahVdhb4NAt8Y/e/3Y92Ecd1Enh806vv5reW93Z7wGqyP/7C2w /uePpDHEvo4OjesLLzkRxsLiDPMY4uvVGR6l5ge4+8bHxhvb7kO3g14DQv2nhZccRJa9Hjg dOAmR12JyLMJhGF2IprULHmWHzj9H+Cn4R8EeAtIE/84fsvGWgdRi+9w0vi+64rW40EFO oOQIXi4mZJR5HxVGW8cJtlNzhgaHuS3cee2zRT9lkr14FUYGhYpCX6B5swEsvWwuJoey7 to1TdfiJlM66nDlBkXkTRg1xBQZC89GgPYVHLakOk4Dof170QEH3MbOnb/Nxlu2MTYREM B06eU3mPAeTKomJoDU+9fclWtqx8JNrLn+Q+OOP0nodi3Ed8HKO+govQXhnQR9l3CEiJ Tixfb5Kb6H1k8Jqev0Y/wYwh3g/5Y1n3h4xL4vw/xTIL8PmscfCgLQ3n6C0da9vp6jrWP7+o0 Klvr5IsHezdr/hvQVwnA7kEzlw80L/6JKzs4orwA03cgUkHkdKAT789n3bXfjpsToNez9lqLRP jH1pYnvKDACPThu023o0aB9l7Z99/5XWxvjV4YhVesLAouueK1mPFLvRnv/RtppBljYivl5rL3 xqXpbuw1tfVxyxdTE7X9BOBeRWfGdcT7MzBAC5qTopYhIM4KamYEZYHbvmYn3ULTxKIN DZ3PP3z6fRihAYNn7T0LKD4G44Qg/GgEYZdj19dxjAgBmhohg9iXWXPsbGTYTf/oXHTpE+ +aNtuoEYDFOz8VcBeE4RNufPmx4i17BYZBJgJHjBB0xGeH6+9Ue4XAohDZGKHEqlmRs kL4ixizngPGKCIVffCPkxrE9fELb70N4XSJWIs8ARACEZAzLCIUQmRXSRMI/PBEl8J3SOqu NAHhVH6CdZROAdan96dhawZSIy5uSMQjtdr+ySfii59Hu3+c50YekAcyGtTEXiUAY4NCtzT OkQnpT1zZwWEdZ6C2BJE3l3lWxsEATYifY2jkHuLA5cNaD2pxKZo4i0xOKLNMziCpy7Hx 5h/HgLbrxfstie9mE2Mx4gwTQerIFZsZ7fWGPVooMFTdA6pXcP1ez7L3L4LdL8XcW1wleM wMgpmoqGLE5D0TekVEzEzjJwFKw2+qOaOCCacmiAjDzkKjzXtaP2fV9H6PZnxFH1qUI1X CUArtCvwAvTGr4suPxTnzKJlOfBmkDcgoYF9Yh5LXC1OdJbWJhINC8NXSoPEo/ZLGHRf HRNNJDFG6yjt5jsqGfTmzL+4xOxpf4mXqwiaecxHdBcndS6/l9QLLDy16G9SgDqXB6Gi/Z/ ejJii5DwTpCFKle3iHBGjjpgQUEQiJtdFRlvcrrhddLd24LhbbMkt7SHReoKweyi2u7q/bge9Ocs uP56S/gtBFgKg3puJ8xaltdM47tF1q83z0q6CCKPqMOq/T7rr4531J/nchslvlgFlypoW0T5eO XFIR+mQaWel2FuC82/PtToP1en1jWHEdMypmluAxzmBHEfDAJIM5hmpA+AP45LKxmc LAvvqQ3NKSMLzb3FwMby5C5h7D7/DOJ/ctXlgX3JYLOWUI05hBxBbJONqWERIXSVrXBM o1SST9krXvuF4UAtlv2Vkf6hZccSUMWTKmW3pp5WSyWn+wIz9ANRvzULp/U1UlwJVgm wazkSwYuVldMqO3SzpkdDFar0DUjt1r+QNBZeUe+9dlvTZ0164H+2z76TKMfzfuyhIkHarSz mNGRYzx00X7fObt5klaHsdtq/Fn0v+C8w74XRimxSWJqEvuXrfo10FshOELIKfZy0ZaEkSX /9vEO47yhpB/D56dQtl4nuWi6p3CjmCQM0wWMC9+IEECq8ZMsnUyHqI8UgnASFy+wcvO WXUmWVZBZAVZOBVJUNOAmRbLmptPMuLUUg584BEfHSCoIKCFKfHdYfndWdd0l0+ /lajvXvbjus9/L007qj28sdK3rjglquH3lYvcGSNg9yX6fQCWDvpzFI/0apr0CauK9lI19PK4o/XK FdjPiJJ6TAJZHXXTbar6SCEAZ0ifZJ3H5+ZcdknXomWg4D2S5F85EXMkKli3md2VGJkHU RITOLPip0QbMUEBrAknhp0owBocy/30s3OXKdntg+107b/v7Z9r6k3V3Y9BNN3Bhb+9wRF Kp88WJWc6a/reW3xowqqT02kDt7xndtcwgdBuzxwbJi/WRzPd+JCQf9nl52L8qwgaxQ2lVa adrETTDH9jDZrkFgPqFhp2X5dYn/9xpnPYPhjPfnjGQFraj5bOurhlzml/GvP9cicASYG3RaA vp1W0P5GSL0DsLWK2Auzogno6WOM9puBFkxhJjgYgiHMGkiWxP/FufdJ5/92y7bpDa4PF6 t+w60Ho9b6lL0h3N3QDc+ZVWE2f9fT0ht7GPDLSR8njglirgwmMgEjRJGcYAZk0G0iNjmyT CdjCkr0c1Yn7rl7T6uiKuMHxWtal/JcejfFEFSk1kH/3BRQrfAMQw1CROrEtA/YPiA40PhGE wpQmY41o9zo0wvrU/xzPHMjw68nVocm0m3739cZebgQgclmt9uETMdd1Mmxh52G5+2lv Rn86SAzhBCPPaHw/BIRMykjizY7lNn2/PPPe/zoaCuK1NvNcx2kWXUspL74WCoffPQaQd /89mfP/OAv/dTT+9q7Y+rVCoyZ84c6079uLAX3wvQ2wfAz/7PwUdmNnjeUOj//nHv4r6eHrS nJy1F/vxtZNM3CXXK6WaqC047cxBCN4f9mzmqMn4Xm109kPcxNEWXniEjfiexlGinf2BnbcES /07pGyoECV1peGtOfHfPRCTBD9AiKHGuQgWXESnww0PABFRNB6C3FaBoB+hGryaeJA bAoiXQgZddyHOiF2snfOcPX1cenvvWBINe18LBRtZlh4EfGfL255ORCApMBr5vJ9cdcsuvx QXGkRTn+JEBaCzMULxysylPeGgplp07OIEQUCLZymg1uf0GcePVZCfM8Vxa5O7OBR06t vnD3lr7eTUB4ttEX7QahweVIRU+fB6zg8j//DFPKjlo98HYTWeZk6xu8hoMy+D3gvrkPNmm G1t/yOHPfu9jmlF5PYGw7YakEIQSQDyPytuSgoxM6ExoBECw4FfJrEefl87G5V6aeJ/Pv8cg tQ+yZ8Dte38aB5OG37PK/BlkCNBR+k36YeYlMwZCQ/mcltxFKPeYfwWQL+B1YdRdJfXRJ FxKmYW42yLEyb0RsOXAqlh1gG9ixbVNsVXeiz5mROlasz9cl/sOtF9v9x8YjmO2OSUKoA ZOIOrg49z16SfThfBSJABNZ3los80LS646HXQ5aAXCAqR6BCEHFIIzoiH64jiFzEEwTM3E +2aqbwi78sFa0J2btDRldak8e60bqt27665rnqWCA43+JC7fZ/E03zuMyz/7jOedpH7bojC4ozL D6QlKvM6rqBfwlSAmuJpW285rkYft/tRO4N4Jz87Sy69CbYVAR+JmY2+6OmehH/FX0Xft YxN+V4R9h/zjQmHuu+wsjCsBMHOT8eYTi1zfIFDoC8zsS5j8M7mt4a4bXphgU2uBfwaEJZ edifJaVNakqMBijZPABrrkxP8n7Hu+gcm3cbkoe7w8FlhAM0KvFyz3RmrZmVdOh/lvByt4O SsJNdEzWaoGVYNKk5EVINF0R4NAQKi5jAVn1ygJfinSiG/p+SrQzO2r962/p/vD2BNB12pV HAVKsydM8cALutzQF6U5++38O0Yw/pPHPawdOX5WF75ekXnjgnK+vUzq4OsIBGB1SP xIl2QV0enAxT2NQ3Tff4bLyyRejrywnVF5GO7YjNoXAZn5CeznZSHUx0rZLBnAkgdVug036 HdOww7UEogfm6Y9UEICJ/CCKomLoAt+P5S9Zfv67ptmZHsHZNW/q9uwmxez3rrtslbGy6 Z4Q5moBAEPU/CIKh21DdHi9MdH12B1rDow8kARhBtE9lv+x9x2OdC/DufldU1DhBQg3vL B57nfeYh5ArhmhwGryPFEFUyszTfNeLTjgFmzPmhWi38lPlh6+mY+i17buv66oabnmnWbHW D25LO8vPmbZG5D/bZhb19Ldj600/NPKFD8wWOvJKFWsXL0MnbXxjEHEwrgxGC5EOWx /UUVZwZCARTjxvd3Gfj5A2i0Jdk/ZlqBG3dck1iYZ0YFFrn4i1O8R1pR/Z59hViN+/5Ec79zRg m9TPqSDhdcp/L3wm8PXHKySE/3jvxzkyDRz7E2uv/Jl3WEa1FwyF1t+V6u7VphHkciumSG SC0SCxNVgexgAs1UEcumZiXuQhGCCvfr7A/CcBICry48ed2lzn4iFMwdwHKWxE5E2Qm KmDgLTfUQISL5ArikGCUyG6yri86mzHdrgHQCZ0yewaQpB8ob+yi/78C0z9b8+L92ZdXlpTX 7S7O+7LprN85PJprX/wD0yf4kundJh/W2bHfLfbxkRtXyhhlmQICACOOIwGwb0RcdRtF4/ +5CtWaU1MSKaJpXKhTcXy5JOycwCdfJwkp2E5v1s26678R9SDh3a3Y8mfY5znDRruH2 PcJhoDukRBA/td2trXBGB0Bd7Cdx8E084ic78ErEBKXkEigOh4ozXzQUQy1BAFZ4TgCaa4

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	Verdana, sans-serif;"> DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. ALEGADA OMISSÃO QUANTO À PRESCRIÇÃO, À ILEGITIMIDADE PASSIVA E À COMPETÊNCIA DA JUSTIÇA ESTADUAL. MATÉRIAS EXPRESSAMENTE ENFRENTADAS NO ACÓRDÃO EMBARGADO. VÍCIO INEXISTENTE. MERO INCONFORMISMO. IMPOSSIBILIDADE DE REDISCUSSÃO DO MÉRITO. EMBARGOS REJEITADOS. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> I. CASO EM EXAME </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 1. Embargos de declaração opostos por Banco do Brasil S/A contra acórdão que deu provimento à apelação para anular a sentença e determinar o retorno dos autos à origem, com fundamento no Tema 1150 do STJ. A instituição financeira alega omissões quanto à prescrição, à sua ilegitimidade passiva e à competência da Justiça Estadual. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 2. Há três questões em discussão: (i) definir se houve omissão do acórdão embargado quanto à análise da prescrição; (ii) estabelecer se a preliminar de ilegitimidade passiva do Banco do Brasil deixou de ser apreciada; (iii) verificar se o acórdão se omitiu sobre a competência da Justiça Estadual para processar e julgar a demanda. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 3. O art. 1.022 do CPC prevê que embargos de declaração se prestam apenas a sanar obscuridade, contradição, omissão ou erro material. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 4. O acórdão embargado apreciou expressamente a questão da prescrição, aplicando o Tema 1150 do STJ e fixando como termo inicial a data de ciência dos desfalques pelo titular da conta. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 5. A preliminar de ilegitimidade passiva foi igualmente analisada, sendo reconhecida a legitimidade do Banco do Brasil como gestor do Pasep em hipóteses de saques indevidos e ausência de aplicação de rendimentos. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 6. A alegação de incompetência da Justiça Estadual foi rejeitada, uma vez que o STJ firmou, no Tema 1150, a possibilidade de o Banco responder diretamente pelas falhas na administração das contas Pasep. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 7. Inexistindo vício de omissão, contradição ou obscuridade, os embargos configuram mera tentativa de rediscutir matéria já decidida, o que é vedado, conforme a Súmula 18 do TJCE e a jurisprudência do STJ. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> IV. DISPOSITIVO E TESE </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> 8.

Processo	0236164-95.2024.8.06.0001
	Embargos rejeitados. Tese de julgamento a) b) c) Os embargos de declaração não constituem meio idôneo para rediscutir matéria já apreciada e decidida. Dispositivos relevantes citados Os embargos de declaração não constituem meio idôneo para rediscutir matéria já apreciada e decidida. Jurisprudência relevante citada STJ - EDcl no Resp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022; STJ - EDcl no Resp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. AC ORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador EDUARDO DE

Processo	0236164-95.2024.8.06.0001
	CASTRO NETO Juiz Convocado Relator RELATÓRIO Banco do Brasil S/A contra o acórdão id. que deu provimento do recurso de apelação, no sentido de anular a sentença vergastada e determinar o retorno dos autos à origem para regular prosseguimento do feito. E em suas razões recursais, a parte embargante sustenta a existência de vício no referido acórdão alegando que não é possível fazer uma síntese da matéria debatida nos autos, pois os fatos são complexos e envolvem diversas questões jurídicas, sendo necessária a análise detalhada das peças processuais para se chegar ao entendimento correto sobre o caso. Urge trazer à baila, ainda, que o Acórdão ora hostilizado, data maxima venia, não demonstrou o devido respeito à disposição desta C. Corte Cidadã ao Tema Repetitivo 1.150/STJ, uma vez que, conforme exposto de forma clara e objetiva à síntese fática-processual do presente apelo nobre, a presente demanda fora ajuizada em data posterior ao que estipula o Art. 205 do Código Civil, ao tratar da prescrição decenal. [...] Excel

Processo	0236164-95.2024.8.06.0001
	ó rd ã é s é Por essas razões requer o Embargante que Vossa Excel é ncia se digne de conhecer e dar provimento aos presentes Embargos Declarat ó rios para os devidos fins de direito, sanando das omissões acima expostas, conhecendo o recurso oposto, vez que se verificam todos os seus requisitos de admissibilidade, por ser medida de Direito e Justiça. Contrarrazões id. 27210407. É o relatório. É o relatório. VOTO VOTO

Processo	0236164-95.2024.8.06.0001
	margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> III - corrigir erro material. </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Na ensancha, anoto o disposto na Súmula 18 deste egrégio Tribunal de Justiça, in verbis </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Com efeito, quanto à alegada omissão relativa à prescrição da ação, verifica-se que a matéria foi devidamente apreciada, conforme restou decidido por ocasião do julgamento: </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">3. A jurisprudência consolidada no Superior Tribunal de Justiça (Tema 1150) estabelece que o prazo prescricional para ressarcimento de danos em conta vinculada ao PASEP é decenal, tendo início na data em que o titular comprovar ciência dos desfalques. 4. Na hipótese dos autos, o termo inicial deve ser fixado na data de obtenção do extrato completo da conta PASEP pela autora, ocorrida em 23/07/2023. Como a ação foi ajuizada em 23/05/2024, não há prescrição.</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> Sobre as preliminares de ilegitimidade passiva e competência da Justiça Estadual, ressaltou o acórdão: </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-left: 4cm; background: transparent; page-break-before: auto;" align="justify"> Da ilegitimidade passiva - <span style="font-family: Verdana, sans-

Processo	0236164-95.2024.8.06.0001
	serif;"> Cumprer destacar que o Tema 1150, do Superior Tribunal de Justiça, reconheceu a legitimidade do Banco do Brasil como gestor do Programa para figurar nas ações que discutam irregularidades de sua administração, razão pela qual rejeito a referida preliminar."</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Sobre o tema, a Primeira Seção do c. Superior Tribunal de Justiça, em julgamento submetido ao rito dos recursos repetitivos (Tema 1150), sedimentou as seguintes teses jurídicas: </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> i) o Banco do Brasil possui legitimidade ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa; (grifo nosso) ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil; e iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Por oportuno, cumpre registrar, ainda, que Órgão da Vice-Presidência do Tribunal de Justiça do Estado do Ceará, emitiu a Nota Técnica nº 07/2024 (https://portal.tjce.jus.br/uploads/2022/08/NT-no-7-2024-PASEP-1.pdf), a fim orientar os procedimentos a serem adotados nas ações indenizatórias vinculadas ao referido tema repetitivo. </p></p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> Logo, não havendo nenhum dos vícios ensejadores à procedência aclaratória, restando evidenciado o mero inconformismo da Embargante com a solução jurídica prestada por este Sodalício, invocando instrumento processual incabível para a pretensão posta, no caso, a tentativa de rediscutir a matéria já decidida, o presente recurso deve ser rejeitado. </p></p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> </p>

Processo	0236164-95.2024.8.06.0001
	 A respeito, anoto entendimento perfilhado na ="" >ambiência<="" >deste="" <="" <span="" eg.="" span>="" span><br="" style="font-weight: normal;" tribunal<=""> , in verbis : </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. OMISSÕES INEXISTENTES. REDISCUSSÃO DE MATÉRIA DE MÉRITO. IMPOSSIBILIDADE. 1. A solução correta e integral da controvérsia, com lastro em fundamentos suficientes, não configura omissão. 2. Os Embargos de Declaração não constituem instrumento adequado para a rediscussão da matéria de mérito consubstanciada na decisão recorrida, quando não presentes os vícios de omissão, obscuridade ou contradição, nos termos do art. 1.022 do CPC. 3. Embargos de Declaração rejeitados. (STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022) </p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. DIREITO EMPRESARIAL. DIREITO DE PROPRIEDADE INDUSTRIAL. DIREITO MARCÁRIO. ALEGAÇÃO DE CONTRADIÇÃO E DE OMISSÃO NO ACÓRDÃO EMBARGADO. INEXISTÊNCIA. PRETENSÃO DE REDISCUSSÃO DE MATÉRIA JÁ DECIDIDA. 1. Não há qualquer contradição ou mesmo omissão no acórdão embargado, que examinou de forma clara e expressa as razões apresentadas pelas partes, tendo apenas decidido de forma contrária à pretensão das ora embargantes. 2. Os embargos de declaração não se prestam à rediscussão da matéria já decidida no julgamento do recurso especial. EMBARGOS DE DECLARAÇÃO REJEITADOS. (STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022) </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%;

Processo	0236164-95.2024.8.06.0001
	text-indent: 2cm; margin-bottom: 0cm;" align="justify"> E é assim que , por todo o exposto, conheço o presente recurso, negar-lhe provimento . </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> É como voto. </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Fortaleza, 10 de setembro 5 . </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-before: auto;" align="center"> EDUARDO DE CASTRO NETO </p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="background-color: transparent; font-size: medium; font-family: Verdana, sans-serif;"> Relator </p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	3000903-08.2025.8.06.0117
Número de ordem	77
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Cessão de Direitos
Polo ativo	MEMORIAL DA PAZ PARTICIPACOES IMOBILIARIAS LTDA

Processo	3000903-08.2025.8.06.0117
Advogado(s) - Polo ativo	RAUL AMARAL JUNIOR - (CE13371-S)
Polo passivo	PROCURADORIA GERAL DE JUSTICA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3000903-08.2025.8.06.0117
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;">  </p> </div>

Processo	3000903-08.2025.8.06.0117
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Processo	3000903-08.2025.8.06.0117
	SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-

Processo	3000903-08.2025.8.06.0117
	kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Processo: &#160;3000903-08.2025.8.06.0117 </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Classe: &#160;Apelação </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelante: Memorial da Paz Participações Imobiliárias Ltda </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">
</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p align="justify"> Ementa</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p align="justify"> DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. ALVARÁ JUDICIAL. PROCEDIMENTO DE JURISDIÇÃO VOLUNTÁRIA. PEDIDO DE EXUMAÇÃO E INCINERAÇÃO DE RESTOS MORTAIS. EXISTÊNCIA DE QUESTÕES CONTRATUAIS, POSSÍVEL ABUSIVIDADE DE CLÁUSULA E DIREITOS</p></div>

Processo	3000903-08.2025.8.06.0117
	PERSONALÍSSIMOS ENVOLVIDOS. NECESSIDADE DE COGNIÇÃO CONTENCIOSA. INADEQUAÇÃO DA VIA ELEITA. EXTINÇÃO SEM RESOLUÇÃO DO MÉRITO MANTIDA. RECURSO DESPROVIDO. I. CASO EM EXAME Apelação cível interposta por Memorial da Paz Participações Imobiliárias Ltda. contra sentença que extinguiu, sem resolução de mérito, pedido de alvará judicial formulado em jurisdição voluntária para autorização de exumação e incineração de 310 corpos em jazigos inadimplidos. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em definir se a via do alvará judicial é adequada para apreciar pedido que envolve análise de contratos, alegação de abusividade de cláusula resolutiva e repercussão sobre direitos da personalidade dos familiares dos sepultados. III. RAZÕES DE DECIDIR O alvará judicial é instrumento de jurisdição voluntária, cabível apenas em hipóteses previstas em lei e quando ausente litígio, sendo inadequado para resolver controvérsias que exigem contraditório e cognição plena. A pretensão de exumação e incineração de restos mortais envolve a interpretação de cláusulas contratuais, aplicação do Código de Defesa do Consumidor e preservação da dignidade post mortem, matérias de índole contenciosa incompatíveis com jurisdição voluntária. A jurisprudência do STJ é firme no sentido de que o procedimento de jurisdição voluntária não pode ser utilizado como sucedâneo de ação contenciosa, quando há necessidade de contraditório e dilação probatória (STJ, REsp 1.284.379/RS, Rel. Min. Nancy Andrighi, 3ª Turma, DJe 01.02.2013; STJ, AgInt no AREsp 1.462.474/SP, Rel. Min. Marco Aurélio Bellizze, 3ª Turma, DJe 18.12.2019). IV. DISPOSITIVO E TESE Recurso desprovido. Tese de julgamento: O alvará judicial, como procedimento de jurisdição voluntária, somente é cabível em hipóteses expressamente previstas em lei e na ausência de litígio. Questões que demandam análise contratual, alegação de abusividade e repercussão sobre direitos da personalidade não podem ser decididas em jurisdição voluntária. A existência de controvérsia sobre a posse ou destino de restos mortais impõe a utilização da via contenciosa, com contraditório e ampla defesa. Dispositivos relevantes citados: CPC/2015, arts. 485, VI; 719 e 725; CC, art. 11; CDC, arts. 6º, IV, e 51, IV. Jurisprudência relevante citada: STJ, REsp 1.284.379/RS, Rel. Min. Nancy Andrighi, 3ª Turma, DJe 01.02.2013; STJ, AgInt no AREsp 1.462.474/SP, Rel. Min. Marco Aurélio Bellizze, 3ª Turma, DJe 18.12.2019; STJ, REsp 1.215.568/PR, Rel. Min. Luis Felipe Salomão, 4ª Turma, DJe 22.09.2011. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direto Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. Presidente do Órgão Julgador Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado Relator RELATÓRIO

Processo	3000903-08.2025.8.06.0117
	size: medium;">&#160; </p> <p align="justify"> Trata-se de apelação cível proposta por Memorial da Paz Participações Imobiliárias Ltda contra sentença prolatada pelo juízo a quo, que extinguiu, sem resolução do mérito, a demanda de alvará judicial intentada. </p> <p align="justify"> &#160; </p> <p align="justify"> Em suas razões recursais, a apelante sustenta que “o Cemitério Memorial da Paz requereu, em procedimento de jurisdição voluntária, a autorização judicial para a exumação e incineração de 310 (trezentos e dez) corpos sepultados em seus jazigos, uma vez que os familiares não vêm adimplindo as obrigações contratuais há anos – com sepultamentos datados desde a década de 1990 até 2018, portanto, o mais recente já com mais de sete anos – mesmo após o envio de notificações extrajudiciais (Ids. 136208641 e 136208642) e múltiplas publicações em jornais de grande circulação no Estado do Ceará (Ids. 136208643 e 136208645), com a finalidade de dar ampla ciência sobre a comunicação formal do inadimplemento e na esperança de que pudessem tomar conhecimento da situação, e, caso quisessem, saudar seus débitos para regularizar a dívida ou transferir os restos mortais de seus entes queridos para outro local”. </p> <p align="justify"> &#160; </p> <p align="justify"> Sustenta, adiante, que “a rescisão automática por inadimplemento está explicitamente previsto no contrato e foi acolhido por todos os contratantes com sua inequívoca ciência, nos termos da Cláusula Segunda, §§ 4º e 5º” e que “não se revela uma medida de justiça que o Cemitério apelante não possa realizar as exumação dos cadáveres há anos abandonados em seu estabelecimento, esquecidos pelas família que não assumem a devida taxa de manutenção, arcando a empresa com todos os custos, pelo simples fato de que não há norma regulamentadora em Maracanaú, enquanto outros cemitérios, em igual condição, tenha tal direito respeitado por previsão legal de seu respectivos entes municipais onde estão localizados, demonstrando uma clara situação que põe o apelante em desigualdade de atuação”. </p> <p align="justify"> &#160; </p> <p align="justify"> Por fim, requer o provimento do apelo, para que seja reformada a sentença. </p> <p align="justify"> Parecer ministerial apresentado. </p> <p align="justify"> &#160; </p> <p align="justify"> É o que importa relatar. </p> <p align="justify"> &#160; </p> <p align="justify"> VOTO. </p> <p align="justify"> &#160; </p> <p align="justify"> Exercendo juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. </p> <p align="justify"> Com efeito, o referido recurso revela-se, de um lado: cabível, manejado por parte legítima, dotada de interesse recursal, e que não praticou qualquer ato que revele a existência de fatos impeditivos ou extintivos do direito de recorrer, a saber, renúncia, aceitação da decisão ou desistência do recurso. De outro, colho dos autos a tempestividade da interposição e, em análise última, a regularidade formal do recurso. </p> <p align="justify"> Conheço, pois, do apelo. </p> <p align="justify"> &#160; </p> <p align="justify"> Na hipótese, busca o recorrente a reforma da sentença que extinguiu, sem resolução do mérito, o pedido de alvará judicial formulado em procedimento de jurisdição voluntária, com fundamento no art. 485, VI, do CPC. </p> <p align="justify"> &#160; </p> <p align="justify"> Com efeito, a pretensão deduzida pelo apelante extrapola os limites da jurisdição voluntária. A via do alvará judicial é admitida apenas em hipóteses específicas, de previsão legal expressa, nas quais inexistia litígio e se busque mera autorização judicial para a prática de determinado ato jurídico. </p> <p align="justify"> &#160; </p> <p align="justify"> No caso concreto, entretanto, o que se pretende é a exumação e incineração de 310 corpos sepultados em jazigos inadimplidos, sob a alegação de resolução automática dos contratos em razão do descumprimento de obrigações pelos familiares. </p> <p align="justify"> &#160; </p> <p align="justify"> Tal providência envolve, necessariamente, a análise da validade de cláusula contratual, eventual abusividade, incidência do Código de Defesa do Consumidor e, sobretudo, a preservação da dignidade da pessoa falecida e dos familiares, questões de natureza contenciosa, que demandam cognição plena e bilateralidade da audiência, incompatíveis com o rito da jurisdição voluntária. </p> <p align="justify"> A jurisprudência deste Tribunal tem reiteradamente afirmado que o procedimento de jurisdição voluntária não pode ser utilizado como sucedâneo para

Processo	3000903-08.2025.8.06.0117
	resolver conflitos que exigem contraditório e dilação probatória, sob pena de violação ao devido processo legal, vejamos: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. ALVARÁ JUDICIAL. EXISTÊNCIA DE LITÍGIO SOBRE VERBA RESCISÓRIA. INADEQUAÇÃO DA VIA ELEITA. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. RECURSO PREJUDICADO. I. CASO DE ORIGEM 1. Apelação cível interposta por empresa empregadora contra sentença que deferiu alvará judicial para levantamento de verba rescisória em favor de menores herdeiras de ex-empregado falecido. Alegação de pagamento parcial a familiar do falecido. Controvérsia instaurada em sede de embargos de declaração e apelação. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em saber se a existência de controvérsia sobre o valor devido a título de verbas rescisórias inviabiliza o manejo do procedimento de jurisdição voluntária. III. RAZÕES DE DECIDIR 3. O procedimento de jurisdição voluntária, cabível apenas na ausência de litígio. 4. A existência de controvérsia entre os envolvidos, evidenciada pela alegação de pagamento parcial e resistência ao pedido, exige a adoção da via contenciosa, com contraditório e ampla defesa. 5. Precedentes do STJ e desta Corte Estadual firmam o entendimento de que o alvará judicial não é via adequada para dirimir conflitos sobre valores controversos. IV. DISPOSITIVO E TESE 6. Inadequação da via eleita suscitada de ofício. Processo extinto sem resolução de mérito, na forma do art. 485, VI do CPC. Apelação prejudicada. Tese de julgamento: 1. A existência de controvérsia sobre valores supostamente devidos impede a adoção da via do alvará judicial. 2. Questões litigiosas devem ser resolvidas por meio de ação própria, no âmbito da jurisdição contenciosa, com contraditório e ampla defesa. 3. Dispositivos relevantes citados: CPC, arts. 485, VI, 719 e 725. Jurisprudência relevante citada: STJ, AgRg no REsp nº 1.203.009/RJ, Rel. Min. Herman Benjamin, Segunda Turma, j. 04.11.2010; TJCE, AC nº 0010464-98.2016.8.06.0028, Rel. Des. Maria do Livramento Alves Magalhães, j. 31.10.2023; TJCE, AI nº 0626777-91.2024.8.06.0000, Rel. Des. José Tarcílio Souza da Silva, j. 16.12.2024. (Apelação Cível nº 0002707-51.2017.8.06.0179, Rel. Desembargador(a) CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento: 14/05/2025, data da publicação: 14/05/2025) DIREITO PROCESSUAL CIVIL E PREVIDENCIÁRIO. AÇÃO DE ALVARÁ JUDICIAL. LEVANTAMENTO DE VALORES PREVIDENCIÁRIOS. PEDIDO DE REVISÃO DE BENEFÍCIO. IMPOSSIBILIDADE. PROCEDIMENTO DE JURISDIÇÃO VOLUNTÁRIA. AUSÊNCIA DE LITÍGIO. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Apelação Cível interposta contra sentença que julgou parcialmente procedente pedido de alvará judicial para levantamento de valores residuais do benefício previdenciário de segurado falecido, indeferindo, contudo, o pedido de inclusão do acréscimo de 25% sobre o benefício, em razão de erro administrativo alegado pelo INSS. 2. O apelante sustenta que o alvará judicial deve abranger os valores corrigidos, conforme previsão do artigo 45 da Lei nº 8.213/1991. II. QUESTÃO EM DISCUSSÃO 3. Há uma questão em discussão: (i) determinar se a Ação de Alvará Judicial é meio processual adequado para compelir o INSS a revisar valores de benefício previdenciário não implantados em razão de erro administrativo. III. RAZÕES DE DECIDIR 4. A Ação de Alvará Judicial é procedimento de jurisdição voluntária, que não comporta litígio, sendo inadequada para determinar a revisão de benefício previdenciário ou compelir o INSS a proceder ao pagamento de valores não implantados administrativamente. 5. A Lei nº 6.858/1980, que regula o pagamento de valores não recebidos em vida pelo segurado, não prevê a possibilidade de correção de eventuais erros administrativos da autarquia previdenciária por meio de alvará judicial. 6. A existência de controvérsia sobre valores pendentes de revisão caracteriza litígio, o que exige o ajuizamento de ação própria com contraditório e ampla defesa, sendo inviável sua apreciação em jurisdição voluntária. 7. A jurisprudência pátria pacificou o entendimento de que a via do alvará judicial não se presta a resolver disputas sobre valores previdenciários, devendo eventuais correções serem requeridas administrativamente ou por meio de ação litigiosa específica. IV. DISPOSITIVO E TESE 8. Recurso desprovido. Tese de julgamento: 1. A Ação de Alvará Judicial, por ser procedimento de jurisdição voluntária, não é meio adequado para discutir revisão de benefício previdenciário nem para compelir o INSS a corrigir valores não implantados por erro administrativo. 2. A controvérsia sobre valores pendentes de revisão deve ser solucionada por meio de procedimento contencioso próprio, com contraditório e ampla defesa. Dispositivos relevantes citados: CPC, arts. 719 e 725; Lei nº 6.858/1980, arts. 1º e 2º; Lei nº 8.213/1991, arts. 45 e 128. Jurisprudência relevante citada: TJ-MT, AI nº 10023976620228110000, Rel. Des. Dirceu dos Santos, j. 27.07.2022; TJ-GO, AI nº 54022450220238090000, Rel. Des. Reinaldo Alves Ferreira, j. 2023; TJ-CE, AI nº 0624093-33.2023.8.06.0000, Rel. Des. Francisco Bezerra Cavalcante, j. 12.12.2023; TJ-CE, AC nº 0010464-98.2016.8.06.0028, Rel. Des. Maria do Livramento Alves Magalhães, j. 31.10.2023. (Apelação Cível nº 0200798-55.2023.8.06.0154, Rel. Desembargador(a)

Processo	3000903-08.2025.8.06.0117
	CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 05/02/2025, data da publicação: 05/02/2025) /p> <p align="justify"> Ademais, o art. 485, VI, do CPC, autoriza a extinção do feito sem resolução de mérito quando ausente interesse processual, como corretamente reconhecido pelo juízo de origem. O simples insucesso na localização dos contratantes não autoriza o requerente a suprimir o contraditório por meio de jurisdição voluntária. O argumento de lacuna legislativa municipal e de precedentes de outras localidades não socorre o apelante. A ausência de regulamentação específica em Maracanaú não permite ao Judiciário substituir o legislador, tampouco conferir, por via transversa, autorização genérica para exumação e incineração de restos mortais, sem a necessária participação dos interessados e sem respaldo normativo claro. /p> <p align="justify"> Por fim, a alegação de isonomia tampouco se aplica, uma vez que cada demanda deve ser julgada à luz da legislação vigente no local de tramitação e das peculiaridades fáticas, não se podendo invocar decisões proferidas em outros estados como vinculantes. /p> <p align="justify"> Diante do exposto, conheço do presente recurso, por próprio e tempestivo, e nego-lhe provimento. /p> <p align="justify"> É como voto. /p> <p align="justify"> Fortaleza/CE, 10 de setembro de 2025. /p> <p align="justify"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado /p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO Juiz convocado /p> <p style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;" align="center"> Relator /p> <p align="justify"> /p></div>

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Processo	0263124-88.2024.8.06.0001
Número de ordem	78
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	PASEP
Polo ativo	Banco do Brasil S/A
Advogado(s) - Polo ativo	WILSON SALES BELCHIOR - (CE17314-A)
Polo passivo	IDEMIRZA PEIXOTO GURGEL
Advogado(s) - Polo passivo	REGINALDO CASTELO BRANCO ANDRADE - (CE9975-A)
Terceiros	Não informado

Processo	0263124-88.2024.8.06.0001
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Processo	0263124-88.2024.8.06.0001
	AUSÊNCIA DE OMISSÃO. EMBARGOS Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">CONHECIDOS E DESPROVIDOS Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">I. CASO EM EXAME Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">1. Embargos de declaração opostos por Banco do Brasil S/A contra acórdão que deu provimento ao recurso de apelação da parte autora para anular a sentença e determinar o retorno dos autos à origem para regular instrução. Alegação de omissão quanto à prescrição, aplicação dos arts. 189 e 205 do Código Civil e jurisprudência do STJ (Tema 1150). Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">II. QUESTÃO EM DISCUSSÃO Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">2. A questão em discussão consiste em saber se o acórdão embargado incorreu em omissão ao não declarar a prescrição da pretensão indenizatória por desfalques em conta vinculada ao PASEP. Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">III. RAZÕES DE DECIDIR Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">3. Ausência de omissão. O acórdão embargado enfrentou a matéria e reconheceu que, conforme o Tema 1150 do STJ, o prazo prescricional é de dez anos, com termo inicial a partir da ciência do extrato completo, e não do saque dos valores. Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">4. A decisão consignou que a autora obteve o extrato em 17/07/2024 e ajuizou a ação em 25/08/2024, dentro do prazo. Assim, não há falar em prescrição. Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">5. A pretensão recursal busca rediscutir o mérito da decisão, finalidade para a qual os embargos de declaração não se prestam (CPC, art. 1.022; Súmula 18/TJ). Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">IV. DISPOSITIVO E TESE Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">6. Embargos de declaração rejeitados. Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">Tese de julgamento: Verdana, sans-serif; font-size: medium; font-style: normal; background: transparent;">a)

Processo	0263124-88.2024.8.06.0001
	transparent;";O prazo prescricional para o ajuizamento de ação indenizatória por desfalques em conta vinculada ao PASEP é decenal, com termo inicial na data em que o titular tem ciência dos desfalques. b) Não configurada omissão quando o acórdão expressamente enfrenta a matéria e aplica a tese firmada no Tema 1150 do STJ." Dispositivos relevantes citados: CC, arts. 189 e 205; CPC, arts. 1.013, § 4º, e 1.022. Jurisprudência relevante citada: STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022; STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. AC ORDÃO: Fortaleza, 10 de setembro de 2025. Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. AC ORDÃO: JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador EDUARDO DE CASTRO NETO

Processo	0263124-88.2024.8.06.0001
	style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="font-size: small; font-family: Verdana, sans-serif;"> Relator </p></p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="font-weight: normal; line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Trata-se de Embargos de Declaração Cível opostos por Banco do Brasil S/A contra o acórdão id. 23881794 que deu provimento do recurso de apelação, no sentido de anular a sentença vergastada e determinar o retorno dos autos à origem para regular prosseguimento do feito. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> transparent;">E m suas razões recursais, a parte embargante sustenta a existência de vício no referido acórdão alegando transparent;">, em síntese. A Primeira Câmara decidiu, por votação unânime, deu provimento ao recurso da parte autora. Entretanto, incorreu em omissão [...] A parte autora apresentou microfilmagens dos extratos do seu benefício e demonstrou que tomou conhecimento do seu saldo PASEP quando sacou na sua aposentadoria, em 16/01/2003 [...] Para a caracterização da prescrição não basta o transcurso do tempo, é necessária a presença concomitante da possibilidade de exercício de uma ação que tutele o direito e a inércia do seu titular (AgInt no AREsp 489.724/RN, Rel. Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, julgado em 18/11/2019, DJe 22/11/2019). Conforme bem pontuado pelo Magistrado a quo, o argumento de que a prescrição deve correr do momento da não realização dos depósitos, ou da subtração indevida (e não do momento da aposentadoria), não pode ser admitido, pois não se pode exigir à parte checar, periodicamente, a retidão das quantias depositadas, pois assim, se a prescrição for contada da emissão do extrato, o

Processo	0263124-88.2024.8.06.0001
	feito se torna imprescritível na prática. Destarte, o Superior Tribunal de Justiça firmou no julgamento do REsp nº 1.895.936/TO, sob a égide dos Recursos Repetitivos (Tema 1150), em 13/09/2023, que “a pretensão do ressarcimento dos danos havidos em razão dos desfalques em conta individual se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil” e “o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP”, contudo, ainda configura-se prescrita a pretensão da autora, considerando marco inicial da prescrição a data do saque do PASEP referente à aposentação e da ciência dos desfalques, em 16/01/2003, ou seja, já decorreram mais de dez anos, visto que a ação foi proposta somente em 25/08/2024. [...] Deste modo, para evitar prejuízo futuro, necessário a correção do julgamento sem prejuízo de outras matérias em todo o teor do acórdão. Requer-se, portanto, o acolhimento destes aclaratórios para que seja corrigida a questão apontada. Diante disso, é de rigor o reconhecimento da prescrição do caso posto em tela, já que a presente demanda foi ajuizada tão somente em 24/08/2024.” Por essas razões o embargante, com intuito de esclarecer as questões fáticas que envolvem a presente discussão e a título de prequestionamento, vem requerer sejam sanadas as omissões para reformar o acórdão atacado, ante a prescrição da pretensão veiculada. Não sendo deferido efeito modificativo aos presentes embargos, postula sejam sanados os vícios apontados, com expressa manifestação, para efeito de prequestionamento, acerca dos artigos acima citados e da matéria fática aqui envolvida. De toda sorte, tendo os presentes embargos o intuito de incitar a manifestação desta câmara cível sobre circunstâncias ignoradas (omitidas) no presente julgado, não podem os presentes embargos serem considerados como meramente protelatórios. Sem contrarrazões. É o relatório. VOTO Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento os requisitos intrínsecos e extrínsecos que compõem o referido crivo. levando-o ao qualificativo da positividade e, assim, ao conhecimento dos aclaratórios.

Processo	0263124-88.2024.8.06.0001
	III - corrigir erro material. Na ensancha, anoto o disposto na Súmula 18 deste egrégio Tribunal de Justiça, in verbis São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. Com efeito, no tocante suposta omissão sobre a prescrição da ação

Processo	0263124-88.2024.8.06.0001
	style="letter-spacing: normal;";> , assim restou acertadamente decidido quando do julgamento: </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> EMENTA: DIREITO CIVIL. APELAÇÃO CÍVEL. PRELIMINAR DE ILEGITIMIDADE PASSIVA SUSCITADA EM CONTRARRAZÕES REJEITADA. AÇÃO DE INDENIZAÇÃO. CONTA VINCULADA AO PASEP. PRESCRIÇÃO DECENAL. TERMO INICIAL A PARTIR DO CONHECIMENTO DO EXTRATO COMPLETO E NÃO DO SAQUE DOS VALORES. SENTENÇA ANULADA. TEORIA DA CAUSA MADURA. INAPLICABILIDADE. NECESSIDADE DE DILAÇÃO PROBATÓRIA. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. RETORNO DOS AUTOS AO JUÍZO A QUO. I. CASO EM EXAME 1. Apelação cível interposta contra sentença que julgou improcedente ação indenizatória, ao reconhecer a prescrição da pretensão ao ressarcimento de valores supostamente suprimidos de conta vinculada ao PASEP. II. QUESTÃO EM DISCUSSÃO 2. Definir se a pretensão indenizatória está prescrita, considerando o termo inicial do prazo prescricional. III. RAZÕES DE DECIDIR 3. A jurisprudência consolidada no Superior Tribunal de Justiça (Tema 1150) estabelece que o prazo prescricional para ressarcimento de danos em conta vinculada ao PASEP é decenal, tendo início na data em que o titular comprovar ciência dos desfalques. 4. Na hipótese dos autos, o termo inicial deve ser fixado na data de obtenção do extrato completo da conta PASEP pela autora, ocorrida em 17/07/2024. Como a ação foi ajuizada em 25/08/2024, não há prescrição. 5. O julgamento da lide nesta instância não se mostra adequado, pois a demanda requer dilação probatória, especialmente a realização de perícia contábil. 6. Diante da necessidade de instrução probatória, não se aplica a teoria da causa madura (art. 1.013, § 4º, do CPC). IV. DISPOSITIVO 7. Recurso provido para anular a sentença e determinar o retorno dos autos ao juízo de origem para

Processo	0263124-88.2024.8.06.0001
	regular prosseguimento do feito. Logo, não havendo nenhum dos vícios ensejadores à procedência aclaratória, restando evidenciado o mero inconformismo da Embargante com a solução jurídica prestada por este Sodalício, invocando instrumento processual incabível para a pretensão posta, no caso, a tentativa de rediscutir a matéria já decidida, o presente recurso deve ser rejeitado. A respeito, anoto entendimento perfilhado na ambiência deste Eg. Tribunal in verbis PROCESSIONAL CIVIL. EMBARGOS DE DECLARAÇÃO. OMISSÕES INEXISTENTES. REDISCUSSÃO DE MATÉRIA DE MÉRITO. IMPOSSIBILIDADE. 1. A solução correta e integral da controvérsia, com lastro em fundamentos suficientes, não configura omissão. 2. Os Embargos de Declaração não constituem instrumento adequado para a rediscussão da matéria de mérito consubstanciada na decisão recorrida, quando não presentes os vícios de omissão, obscuridade ou contradição, nos termos do art. 1.022 do CPC. 3. Embargos de Declaração rejeitados. HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022

Processo	0263124-88.2024.8.06.0001
	style="font-weight: normal;". </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-before: auto;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="background-color: transparent; font-size: medium; font-family: Verdana, sans-serif;"> Relator </p><p>&#160;</p>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	3006855-62.2024.8.06.0000
Número de ordem	79
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Nulidade - Título Extrajudicial Não Correspondente a Obrigação Certa, Líquida e Exigível
Polo ativo	NORTE NORDESTE LOCACAO DE IMPRESSORAS E COPIADORAS LTDA
Advogado(s) - Polo ativo	WELLINGTON ROCHA LEITAO FILHO - (CE6622-A) BARBARA OZARINA RODRIGUES BARROS - (CE29613-A) RACHEL PINHEIRO FERREIRA DE MELO - (CE15213-A) GUSTAVO REBELO DE CAMPOS - (CE35289-A) MARIANA DA COSTA CAVALCANTE - (CE47199-A)
Polo passivo	BANCO SANTANDER (BRASIL) S.A.
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	Não informado

Processo	3006855-62.2024.8.06.0000
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAQAAAABXCAYAAADrjpu dAAAgAEIEQVR4nOy9eZxVXxo/11rn3urqucGGpknAbEbEGmh6fk2iIRG/DIV+by8DETzSD S2NnMSTVix/owyl8YoLzE+k2h+VDS+JA5RgeoJaLBBWmlUEBFBhgaaHqq66t6z9/r9sfe5 U809Arl+n+5b955z9tnTGvYahVdhb4NAt8Y/e/3Y92Ecd1Enh806vv5reW93Z7wGqyP/7C2w /uePpDHEvo4OjesLLzkRxsLiDPMY4uvVGR6l5ge4+8bHxhvb7kO3g14DQv2nhZccRJa9Hjg dOAmR12JyLMJhGF2IprULHmWHzj9H+Cn4R8EeAtIE/84fsvGWgdRi+9w0vi+64rW40EFO oOQIXi4mZJR5HxVGW8cJtlNzhgaHuS3cee2zRT9lkr14FUYGhYpCX6B5swEsvWwuJoey7 to1TdfiJlM66nDlBkXkTRg1xBQZC89GgPYVHLakOk4Dof170QEH3MbOnb/Nxlu2MTYREM B06eU3mPAeTKomJoDU+9fclWtqx8JNrLn+Q+OOP0nodi3Ed8HKO+govQXhnQR9I3CEiJ Tixfb5Kb6H1k8Jqev0Y/wYwh3g/5Y1n3h4xL4vv/xTIL8PmscfCgLQ3n6C0da9vp6jrWP7+o0 Klvr5IsHezdr/hvQVwnA7kEzlw80L/6JKzs4orwA03cgUkHkdKAT789n3bXfjpsToNez9lqLRP jH1pYnvKDACPuho23o0aB9I7Z99/5XWxvjV4YhVesLAouueK1mPFLvRnv/RtppBljYivl5rL3 xqXpbuw1tfVxyxdTE7X9BOBeRWfGdcT7MzBAC5qTopYhIM4KamYEZYHbvmYn3ULTxKIN DZ3PP3z6fRihAYNn7T0LKD4G44Qg/GgEYZdj19dxjAgBmhohg9iXWXPsbGTYTf/oXHTpE+ +aNtuoEYDFOz8VcBeE4RNufPmx4i17BYZBJgJHjBB0xGeH6+9Ue4XAohDZGKHEqlmRs kL4ixizngPGKCIvffCPkxrE9fELb70N4XSJWIs8ARACEZAzLCIUQmRXSRMI/PBEl8J3SOqu NAHhVH6CdZROAdan96dhawZSIy5uSMQjtdr+ySfii59Hu3+c50YekAcyGtTEXiUAY4NCtzT OkQnpT1zZwWEdZ6C2BJE3I3IWxsEATYifY2jkHuLA5cNaD2pxKZo4i0xOKLNMziCpy7Hx 5h/HgLbrxfstie9mE2Mx4gwTQerIFZsZ7fWGPVooMFTdA6pXcP1ez7L3L4LsL8XcW1wleM wMgpmoqGLE5D0TekVEzEzjJwFKw2+qOaOCCacmiAjDzkKjzXtaP2fV9H6PZnxFH1qUI1X CUArtCvwAvTGr4suPxTnzkJIOfBmkDcgoYF9Yh5LXC1OdJbWJhINC8NXSoPEo/ZLGHRf HRNNJDFG6yjt5jsqGfTmzL+4xOxpf4mXqwiaecxHdBcndS6/I9QLLDy16G9SgDqXB6Gi/Z/ ejJii5DwTpCFKle3iHBGjjpgQUEQiJtdFRlvcrrhddLd24LhbbMkt7SHReoKweyi2u7q/bge9Ocs uP56S/gtBFgKg3puJ8xaltdM47tF1q83z0q6CCKPqMOq/T7rr4531J/nchslvlgFlypoW0T5eO XFIR+mQaWel2FuC82/PtToP1en1jWHEdMypmluAxzmBHEfDAJIM5hmpA+AP45LKxmc LAvvqQ3NKSMLzb3FwMby5C5h7D7/DOJ/ctXLgX3JYLOWUI05hBxBbJONqWERIXSVrXBM o1SST9krXvuF4UAtlv2Vkf6hZccSUMWTKmW3pp5WSyWn+wIz9ANRvzULp/U1UlwJVgm wazkSwYuVldMqO3SzpkdDFar0DUjt1r+QNBZeUe+9dlvTZ0164H+2z76TKMfzfuyhIkHarSz mNGRYzx00X7fObt5klaHsdtdq/Fn0v+C8w74XRimxSWJqEvuXrfo10FshOELIKfZy0ZaEkSX /9vEO47yhpB/D56dQtl4nuWi6p3CjmCQM0wWMC9+IEECq8ZMsnUyHqI8UgnASFy+wcvO WXUmWVZBZAVZOBVJUNOAmRbLmptPMuLUUg584BEfHSCoIKCFKfHdYfndWdd0/1O+ /lajvXvbjus9/L007qj28sd3jrjglquH3IYvcGSNg9yX6fQCWDvpzFI/0apr0CauK9II19PK4o/XK FdjPiJJ6TAJZHXXTbar6SCEAZ0ifZJ3H5+ZcdknXomWg4D2S5F85EXMkKli3md2VGJkHU RITOLPip0QbMUEBrAknhp0owBocy/30s3OXKdntg+107b/v7Z9r6k3V3Y9BNN3Bhb+9wRF Kp88WJWc6a/reW3xowwqtO2kDt7xndtcwgdBuzxwbJi/WRzPd+JCQf9nl52L8qwgaxQ2Iva adrETTDH9jDZrkFgPqFhp2X5dYn/9xpnPYPhjPfnjGQFraj5bOurhlzml/GvP9cicASYG3RaA vp1W0P5GSL0DsLWK2Auzogno6WOM9puBFkxhJjgYgiHMGkiWxP/FufdJ5/92y7bpDa4PF6 t+w60Ho9b6lL0h3N3QDc+ZVWE2f9fT0ht7GPDLSR8njglirgwmMgEjRJGcYAZk0G0iNjmyT CdjCkr0c1Yn7rl7T6uiKuMHxWtal/JcejfFEFSk1kH/3BRQrfAMQw1CROrEtA/YPiA40PhGE wpQmY41o9zo0wvrU/xzPHMjw68nVocm0m3739cZebgQgclmt9uETMdd1Mmxh52G5+2lv Rn86SAzhBCPPaHw/BIRMykjizY7INn2/PPPe/zoaCuK1NvNcx2kWXUspL74WCoffPQaQd /89mfP/OAv/dTT+9q7Y+rVCoyZ84c6079uLAX3wvQ2wfAz/7PwUdmNnjeUOj//nHv4r6eHrS nJy1F/vxtZNM3CXXK6WaqC047cxBCN4f9mzmqMn4Xm109kPcxNEWXniEjfiexlGinf2BnbcES /07pGyoECV1peGtOfHfPRCTBD9AiKHGuQgWXESnww0PABFRNB6C3FaBoB+hGryaejA bAoiXQgZddyHOiF2snfOcPX1cenvvWBine18LBRtZlh4EfGfL255ORCApMBr5vJ9cdcsuvx QXGkRTn+JEBaCzMUlxysylPeGgplp07OIEQUCLZymg1uf0GcePVZCfM8Vxa5O7OBR06t vnD3lr7eTUB4ttEX7QahweVIRU+fB6zg8j//DFPKjlo98HYTWeZk6xu8hoMy+D3gvrkPNmm G1t/yOHPfu9jmlF5PYGw7YakEIQSQDyPytuSgoxM6ExoBECw4FfJrEefl87G5V6aeJ/Pv8cg tQ+yZ8Dte38aBtXQ37PK/BlikCNBR+k36YeYlMwZCQ/mcltxFKPeYfWwQL+B1YdRdJfXRJ FxKmYW42yLEyb0RsOXAqlh1gG9ixbVNsVXeiz5mROlasz9cl/sOtF9v9x8YjmO2OSUkKoA ZOIOrg49z16SfThfBSJABNZ3los80LS646HXQ5aAXCAqR6BCEHFIIzoiH64jifZEEwTM3E +2aqbwi78sFa0J2btDRldak8e60bqt27665rnqWCA43+JC7fZ/E03zuMyz/7jOedpH7bojC4ozL D6QlKvM6rqBfwlSAmuJpW285rkYft/tRO4N4Jz87Sy69CbYVAR+JmY2+6OmehH/FX0Xft YxN+V4R9h/zjQmHuu+wsjCsBMHOT8eYTi1zfIFDoC8zsS5j8M7mt4a4bXphgU2uBfwaEJZ edifJaVNakqMBijZPABrrkxP8n7Hu+gcm3cbkoe7w8FliHAM0KvFyz3RmrZmVdOh/lvByt4O SsJNdEzWaoGVYNKk5EVINF0R4NAQKi5jAVn1ygJfinSiG/p+SrQzO2r962/p/vD2BNB12pV HAVKsydM8cALutzQF6U5++38O0Yw/pPHPawdOX5WF75ekXnjgnK+vUzq4OsIBGB1SP xIl2QV0enAxT2NQ3Tff4bLyyRejrywnVF5GO7YjNoXAZn5CeznZSHUx0rZLBnAkgdVug036 HdOww7UEogfm6Y9UEICJ/CCKomLoAt+P5S9Zfv67ptmZHsHZNW/q9uwmxez3rrtslbGy6 Z4Q5moBAEPU/CIKh21DdHi9MdH12B1rDow8kARhBtE9lv+x9x2OdC/DufidU1DhBQg3vL B57nfeYh5ArhmhwGryPFEFUyszTfNeLTjgFmzPmhWi38lPlh6+mY+i17buv66oabnmnWbHW D25LO8vPmbZG5D/bZhb19Ldj600/NPKFD8wWOvJKFWsXL0MnbXxjEHEwrgxGC5EOWx /UUVZwZCARTjxvd3Gfj5A2i0Jdk/ZlqBG3dck1iYZ0YFFrn4i1O8R1pR/Z59hViN+/5Ec79zRg m9TPqSDhdcp/L3wm8PXHKySE/3jvxzkyDRz7E2uv/Jl3WEa1FwyF1t+V6u7VphHkciumSG SC0SCxNVgexgAs1UEcumZiXuQhGCCvfr7A/CcBICry48ed2lzn4iFMwdwHKWxE5E2Qm KmDgLTfUQISL5ArikGCUyG6yri86mzHdrgHQCZ0yewaQpB8ob+yi/78C0z9b8+L92ZdXlpTX 7S7O+7LprN85PjprX/wD0yf4kundJh/W2bHfLfbxBRtXyhhlmQICACOOIWgbo0RcdRtF4/ +5CtWaU1MSKaJpXKhTcXy5JOycwCdfJwkpg2E5v1s26678R9SDh3a3Y8mfY5znDRruH2 PcJhoDukRBA/td2trXBGB0Bd7Cdx8E084ic78ErEBKXkEigOh4ozXzQUQy1BAFZ4TgCaa4

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Processo	3006855-62.2024.8.06.0000
	 CONHECIDOS E DESPROVIDOS. I. 1. Embargos de declaração opostos por Banco Santander (Brasil) S/A e por Norte Nordeste Locação de Impressoras e Copiadoras Ltda. contra acórdão que deu parcial provimento a agravo de instrumento, reformando a decisão de primeiro grau apenas no que concerne à determinação de arresto em contas bancárias da parte agravante, diante da suficiência do depósito judicial realizado pela empresa Selbetti no valor de R\$ 955.748,86. II. 2. Há duas questões em discussão: (i) definir se o acórdão embargado incorreu em omissão ou obscuridade quanto à extensão da reforma da decisão de primeiro grau, em especial no que se refere ao depósito judicial realizado pela Selbetti; (ii) estabelecer se houve erro de premissa fática ao se referir ao arresto em contas bancárias, quando a medida efetivamente implementada no primeiro grau teria sido a constrição sobre créditos da embargante junto à Selbetti. III. RAZÕES DE DECIDIR 3. 4. 5. A referência ao “arresto em contas bancárias” corresponde ao pedido de constrição formulado em duas vertentes: (i) depósito judicial pela Selbetti; e (ii) arresto de ativos financeiros via SISBAJUD. A decisão colegiada afastou apenas a segunda modalidade, não havendo contradição ou erro de premissa. 6. Inexistem omissão, obscuridade ou erro de fato a justificar a integração ou modificação do julgado, sendo incabível utilizar os embargos como meio de rediscutir o mérito da decisão. 7. Embargos de declaração desprovidos.

Processo	3006855-62.2024.8.06.0000
	Tese de julgamento a) A manutenção do depósito judicial realizado por terceiro em favor da execução afasta a necessidade de arresto de ativos financeiros via SISBAJUD. b) c) Os embargos de declaração não se prestam ao reexame do mérito da decisão colegiada. Dispositivos relevantes citados CPC/2015, art. 1.022. Jurisprudência relevante citada TJCE, Súmula nº 18. AC ORDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador EDUARDO DE CASTRO NETO Juiz Convocado Relator

Processo	3006855-62.2024.8.06.0000
	align="center">&#160;</p><p style="font-weight: normal; line-height: 150%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Trata m -se de Embargos de Declaração Cível opostos por Banco Santander (Brasil) S/A (24975667) Norte Nordeste Locação de Impressoras e Copiadoras Ltda (24976264) , contra o acórd ão id. 23881829 que deu parcial provimento ao agravo de instrumento, no sentido de reformar a decisão agravada apenas no que se refere à determinação de arresto nas contas bancárias da agravante no valor de R\$ 955.748,86 (novecentos e cinquenta e cinco mil, setecentos e quarenta e oito reais e oitenta e seis centavos). </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> No recurso id. 24975667 , a parte embargante, Banco Santander (Brasil) S/A ,

Processo	3006855-62.2024.8.06.0000
	transparent;";>sustenta a existência de omissão no referido acórdão alegando , em síntese, Da leitura do voto desse Douto Relator, bem como do dispositivo do Acórdão não restam dúvidas que os depósitos judiciais não foram atingidos, inexistindo qualquer margem para interpretação de que esses deveria ser liberado, haja vista que é de clareza solar que esses foram o fundamento para que fosse aplicado o princípio da proporcionalidade e razoabilidade e, assim, a decisão do Juízo primeiro fosse reformada apenas em relação ao arresto nas constas bancárias, evitando excessos na execução. [...] Ocorre, Éxa., que no âmbito do primeiro grau os Agravantes apresentaram pedido requerendo a liberação dos valores depositados em juízo pela cessionária Selbetti em clara alteração do que realmente foi decidido pelo Tribunal, conforme se infere do trecho da petição de id. 162439843 (execução) O Banco Santander, ora Embargante, já peticionou em primeiro grau apontando os exatos termos do Acórdão, vez que no julgamento do Douto Desembargador, reconheceu a legalidade do arresto, sendo esse perfeitamente possível antes da citação, entendeu que a questão de ausência de fundamentação da decisão Agravada foi superada quando da decisão de retratação/reconsideração e entendeu que, por já existir depósito judicial suficiente para satisfação da execução, seria desproporcional a realização de arrestos nas constas bancárias, motivo pelo qual entendeu por desnecessária única e exclusivamente esta última media. O Acórdão não alcançou os depósitos judiciais realizados pela SELBETTI, muito pelo contrário, estes serviram como fundamento para reformar a ordem de arresto nas contas bancárias das Executadas. Registre-se, inclusive, que na parte dispositiva o Nobre Relator utilizada a expressão “apenas”, o que deixa clara a interpretação de que foi mantido hígida o depósito judicial feito pela Empresa SELBETTI [...] Deste modo, resta demonstrada a necessidade de sanar omissão no Acórdão recorrido, para que fique claro que a reforma da decisão de primeiro se deu exclusivamente em relação aos arrestos em contas bancárias, devendo, pois ser mantidos os depósitos judiciais realizados pela empresa SELBETTI, no valor total de R\$ 955.748,86 (novecentos e cinquenta e cinco mil e setecentos e quarenta e oito reais e oitenta e seis centavos). </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;"; align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;"; align="justify"> Por essas razões requer a Embargante que Vossa Excelência se digne de receber os presentes Embargos para os devidos fins de direito, aclarando o Acórdão para que fique claro que devem ser mantidos os depósitos judiciais realizados pela empresa SELBETTI, no valor total de R\$ 955.748,86 (novecentos e cinquenta e cinco mil e setecentos e quarenta e oito reais e oitenta e seis centavos). </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;"; align="justify">&#160;</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;"; align="justify"> Contrarrazões id. 26612535. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;"; align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;"; align="justify"> No recurso id. 24976264

Processo	3006855-62.2024.8.06.0000
	#000000;"> a parte embargante, Norte Nordeste Locação de Impressoras e Copiadoras Ltda , sustenta a existência de obscuridade e erro de premissa fática no referido acórdão alegando , em síntese, "requer a Embargante que Vossa Excelência se digne de receber os presentes Embargos para os devidos fins de direito, aclarando o Acórdão para que fique claro que devem ser mantidos os depósitos judiciais realizados pela empresa SELBETTI, no valor total de R\$ 955.748,86 (novecentos e cinquenta e cinco mil e setecentos e quarenta e oito reais e oitenta e seis centavos). [...] A obscuridade reside na falta de clareza do comando judicial emanado. O dispositivo do acórdão determina a reforma da decisão agravada no que tange ao "arresto nas contas bancárias da agravante". Ocorre, Excelências, que em nenhum momento do processo de origem houve determinação de arresto ou bloqueio de valores depositados nas contas bancárias da Embargante. A medida constritiva deferida pelo juízo a quo, e que foi objeto de toda a controvérsia recursal, foi o arresto de ativos, consubstanciado na ordem para que um terceiro, a empresa Selbetti Tecnologia S/A, depositasse em juízo os créditos devidos à Embargante. 08.- Ao reformar uma medida que jamais existiu nos autos ("arresto nas contas bancárias"), o dispositivo do acórdão se torna inócuo e, por consequência, obscuro quanto ao seu verdadeiro objeto. Deixa-se de aclarar se a constrição que efetivamente onera a Embargante – o arresto de seus ativos junto à Selbetti – foi ou não alcançada pela reforma. A fundamentação do voto, aliás, corrobora essa percepção, pois analisa a desproporcionalidade da medida à luz da existência do depósito judicial realizado pela empresa Selbetti [...] Ora, se a fundamentação do julgado se debruçou sobre a constrição real e efetiva (o arresto dos créditos pagos via depósito judicial pela Selbetti) para concluir por sua desproporcionalidade, a parte dispositiva deve refletir, com precisão solar, essa mesma realidade, sob pena de restar obscura e inaplicável. 10.- Ademais, o Acórdão incorre em evidente erro de premissa fática, vício previsto no artigo 1.022, III, do CPC. O julgado partiu da premissa equivocada de que a medida impugnada era um bloqueio de contas bancárias, quando a realidade fática dos autos, devidamente documentada e debatida, se trata de penhora/arresto sobre o ativo, ou seja, a penhora/arresto do valor de R\$ 955.748,86 (novecentos e cinquenta e cinco mil setecentos e quarenta e oito reais e oitenta e seis centavos). "</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Complementa que A manutenção da redação atual no dispositivo do acórdão gera um prejuízo concreto e iminente à Embargante, tendo em vista que ao ser comunicado, o Juízo de primeiro grau poderá interpretar, de forma literal, que a reforma se aplica tão somente a um inexistente "arresto nas contas bancárias", mantendo, por conseguinte, a eficácia do arresto sobre os ativos junto à empresa Selbetti. 12.- Tal interpretação esvaziaria por completo o provimento parcial concedido por esta Colenda Câmara, perpetuando a constrição que foi expressamente considerada desproporcional e fazendo com que a empresa Selbetti continue obrigada a realizar os depósitos judiciais, em flagrante contrariedade à ratio decidendi do julgado 13.- Em boa verdade, aqui se está a buscar a completa efetividade ao teor do acórdão proferido, a fim de que seja evitado um prejuízo concreto e iminente à Embargante, traduzido na petição já protocolada pelo Banco embargado nos autos da execução que tramita em primeira instância, onde se busca impedir a liberação dos valores arrestados, pelo Juízo do primeiro grau, sob a justificativa de que o Acórdão se limitou a tratar sobre o desbloqueio das contas bancárias, em clara tentativa de subverter o entendimento deste E. TJ/CE acerca da temática posta em análise no presente recurso. [...] Portanto, para evitar o subterfúgio que já vem sendo explorado pela contraparte, para que a decisão proferida por essa C. Câmara de Direito Privado atinja seu fim precípua (liberação dos valores que se

Processo	3006855-62.2024.8.06.0000
	encontram depositados em conta judicial, após a revogação do arresto determinado pelo D. Juízo a quo), e para que a decisão judicial seja transparente, inequívoca e produza os efeitos jurídicos almejados pelo órgão julgador, é imperativo que o dispositivo seja aclarado e corrigido, alinhando-se à realidade fática do processo e à própria fundamentação que o sustenta."</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Por essas razões requer que "sejam ACOLHIDOS e PROVIDOS os presentes Embargos de Declaração de forma que: i) CONHECER e ACOLHER os presentes Embargos de Declaração, por serem tempestivos e fundados nas hipóteses legais; ii) Sanar a OBSCURIDADE e corrigir o ERRO DE PREMISSA FÁTICA apontados, para que o v. Acórdão embargado passe a espelhar com clareza e precisão a realidade dos autos, conferindo-lhe a necessária eficácia; iii) Por conseguinte, atribuindo-se o devido efeito integrativo ao julgado, requer a alteração da parte dispositiva do Voto (ID 23424174) e do Acórdão (ID 23881829), para que passe a constar, de forma límpida e inequívoca, a seguinte redação ou outra que melhor reflita o entendimento da Turma: "E é assim que, por todo o exposto, conheço do presente recurso, por próprio e tempestivo, para dar-lhe parcial provimento, reformando a decisão agravada para afastar a determinação de arresto e consequente depósito judicial dos ativos e créditos titularizados pela agravante em face da empresa Selbetti Tecnologia S/A, no valor de R\$ 955.748,86 (novecentos e cinquenta e cinco mil, setecentos e quarenta e oito reais e oitenta e seis centavos), assim, autorizando o levantamento dos valores arrestados. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Sem contrarrazões. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> É o relatório. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento d os requisitos intrínsecos e extrínsecos que compõem o referido crivo, levando-o ao qualificativo da positividade e, assim, ao conhecimento dos aclaratórios. </p></p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Cinge <span style="background-image: initial; background-position: initial; background-size: initial; background-repeat: initial; background-

Processo	3006855-62.2024.8.06.0000
	attachment: initial; background-origin: initial; background-clip: initial;">m -se os recursos em saber se o acórdão embargado incorreu em omissão/obscuridade/erro de premissa fática ao determinar a reforma parcial da decisão interlocutória nos autos da ação de execução nº 0245558- 29.2024.8.06.0001. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> Segundo o art. 1.022 do Código de Processo Civil, cabem embargos de declaração contra qualquer decisão judicial para: </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none; page-break-before: auto;" align="justify"> " I - esclarecer obscuridade ou eliminar contradição; </p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text- decoration: none;" align="justify"> II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; </p><p style="font- style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> III - corrigir erro material". </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text- indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Na ensancha, anoto o disposto na Súmula 18 deste egrégio Tribunal de Justiça, style="text-decoration: none;"> in verbis . </p></p>

Processo	3006855-62.2024.8.06.0000
	sans-serif;"> Relator </p><p>&#160;</p>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0273864-08.2024.8.06.0001
Número de ordem	80
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	PASEP
Polo ativo	AFONSO VIEIRA DOS SANTOS
Advogado(s) - Polo ativo	ESTEVAO PEREIRA DE BRITO JUNIOR - (CE47022-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	Não informado

Processo	0273864-08.2024.8.06.0001
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Processo	0273864-08.2024.8.06.0001
	VINCULADA AO PASEP. PRAZO PRESCRICIONAL DECENAL. TERMO INICIAL. CIÊNCIA DOS DESFALQUES. AUSÊNCIA DE OMISSÃO. EMBARGOS CONHECIDOS E DESPROVIDOS I. CASO EM EXAME 1. Embargos de declaração opostos por Banco do Brasil S/A contra acórdão que deu provimento ao recurso de apelação da parte autora para anular a sentença e determinar o retorno dos autos à origem para regular instrução. Alegação de omissão quanto à prescrição, aplicação dos arts. 189 e 205 do Código Civil e jurisprudência do STJ (Tema 1150). II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em saber se o acórdão embargado incorreu em omissão ao não declarar a prescrição da pretensão indenizatória por desfalques em conta vinculada ao PASEP. 3. Ausência de omissão. O acórdão embargado enfrentou a matéria e reconheceu que, conforme o Tema 1150 do STJ, o prazo prescricional é de dez anos, com termo inicial a partir da ciência do extrato completo, e não do saque dos valores. 4. A decisão consignou que o autor obteve o extrato em outubro de 2023 e ajuizou a ação em outubro de 2024, dentro do prazo. Assim, não há falar em prescrição. 5. A pretensão recursal busca rediscutir o mérito da decisão, finalidade para a qual os embargos de declaração não se prestam (CPC, art. 1.022; Súmula 18/TJ). IV. DISPOSITIVO E TESE 6. Embargos de declaração rejeitados. Tese de julgamento: a)

Processo	0273864-08.2024.8.06.0001
	sans-serif;"> O prazo prescricional para o ajuizamento de ação indenizatória por desfalques em conta vinculada ao PASEP é decenal, com termo inicial na data em que o titular tem ciência dos desfalques. b Não configurada omissão quando o acórdão expressamente enfrenta a matéria e aplica a tese firmada no Tema 1150 do STJ. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados: CC, arts. 189 e 205; CPC, arts. 1.013, § 4º, e 1.022. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada: STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022; STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> AC ORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Fortaleza, 10 de setembro de 2025. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">

Processo	0273864-08.2024.8.06.0001
	weight: normal;"> [...] A parte autora apresentou microfilmagens dos extratos do seu benefício e demonstrou que tomou conhecimento do seu saldo PASEP quando sacou na sua aposentadoria, em 26/10/1995 [...] Para a caracterização da prescrição não basta o transcurso do tempo, é necessária a presença concomitante da possibilidade de exercício de uma ação que tutele o direito e a inércia do seu titular (AgInt no AREsp 489.724/RN, Rel. Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, julgado em 18/11/2019, DJe 22/11/2019). Conforme bem pontuado pelo Magistrado a quo, o argumento de que a prescrição deve correr do momento da não realização dos depósitos, ou da subtração indevida (e não do momento da aposentadoria), não pode ser admitido, pois não se pode exigir à parte checar, periodicamente, a retidão das quantias depositadas, pois assim, se a prescrição for contada da emissão do extrato, o feito se torna imprescritível na prática. Destarte, o Superior Tribunal de Justiça firmou no julgamento do REsp nº 1.895.936/TO, sob a égide dos Recursos Repetitivos (Tema 1150), em 13/09/2023, que “a pretensão do ressarcimento dos danos havidos em razão dos desfalques em conta individual se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil” e “o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP”, contudo, ainda configura-se prescrita a pretensão da autora, considerando marco inicial da prescrição a data do saque do PASEP referente à aposentação e da ciência dos desfalques, em 26/10/1995, ou seja, já decorreram mais de dez anos, visto que a ação foi proposta somente em 07/10/2024. [...] Deste modo, para evitar prejuízo futuro, necessário a correção do julgamento sem prejuízo de outras matérias em todo o teor do acórdão. Requer-se, portanto, o acolhimento destes aclaratórios para que seja corrigida a questão apontada. Diante disso, é de rigor o reconhecimento da prescrição do caso posto em tela, já que a presente demanda foi ajuizada tão somente em 07/10/2024. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Por essas razões o embargante, com intuito de esclarecer as questões fáticas que envolvem a presente discussão e a título de prequestionamento, vem requerer sejam sanadas as omissões para reformar o acórdão atacado, ante a prescrição da pretensão veiculada. Não sendo deferido efeito modificativo aos presentes embargos, postula sejam sanados os vícios apontados, com expressa manifestação, para efeito de prequestionamento, acerca dos artigos acima citados e da matéria fática aqui envolvida. De toda sorte, tendo os presentes embargos o intuito de incitar a manifestação desta câmara cível sobre circunstâncias ignoradas (omitidas) no presente julgado, não podem os presentes embargos serem considerados como meramente protelatórios. </p><p style="font-weight: normal; line-height: 150%; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Contrarrazões id. 27210425. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> É o relatório. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" page-break-before: auto;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">

Processo	0273864-08.2024.8.06.0001
	decoration: none;">5. O STJ, no julgamento do Tema Repetitivo 1.150 (REsp 1.895.936/TO), firmou entendimento de que o prazo prescricional em ações que discutem irregularidades na gestão de contas do PASEP inicia-se no momento em que o titular tiver ciência comprovada e inequívoca do prejuízo. 6. No caso concreto, os extratos detalhados da conta foram fornecidos apenas em 2023, impossibilitando o titular de verificar antes a eventual má gestão. [...] Na situação fática posta em deslinde, vejo que o autor afirma ter tomado conhecimento do direito violado em outubro de 2023, quando obteve pela demandante o extrato completo de sua conta PASEP, ingressando com a ação indenizatória em 07 de outubro de 2024, não havendo, portanto, que se falar em prescrição neste momento. </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> Logo, não havendo nenhum dos vícios ensejadores à procedência aclaratória, restando evidenciado o mero inconformismo da Embargante com a solução jurídica prestada por este Sodalício, invocando instrumento processual incabível para a pretensão posta, no caso, a tentativa de rediscutir a matéria já decidida, o presente recurso deve ser rejeitado. </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> A respeito, anoto entendimento perfilhado na ambiência </p><p style="font-style: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 3cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. OMISSÕES INEXISTENTES. REDISCUSSÃO DE MATÉRIA DE MÉRITO. IMPOSSIBILIDADE. </p><p style="color: #1f1f1f;"> 1. A solução correta e integral da controvérsia, com lastro em fundamentos suficientes, não configura omissão. 2. Os Embargos de Declaração não constituem instrumento adequado para a rediscussão da matéria de mérito consubstanciada na decisão recorrida, quando não presentes os vícios de omissão, obscuridade ou contradição, nos termos do art. 1.022 do CPC. 3. Embargos de Declaração rejeitados. </p><p style="color: #1f1f1f;"> (STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022) </p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">

Processo	0273864-08.2024.8.06.0001
	bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-before: auto;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="background-color: transparent; font-size: medium; font-family: Verdana, sans-serif;"> Relator </p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	3000189-37.2025.8.06.0056
Número de ordem	81
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	MARGARIDA MARIA GONCALVES DA SILVA
Advogado(s) - Polo ativo	LORENA SILVA PIANCO - (CE50322-A) RODOLFO PEREIRA TEIXEIRA - (CE45449-A)
Polo passivo	BANCO SANTANDER (BRASIL) S.A.
Advogado(s) - Polo passivo	SUELLEN PONCELL DO NASCIMENTO DUARTE - (PE28490-A)
Terceiros	Não informado

Processo	3000189-37.2025.8.06.0056
Acordão	&#160; EMENTA DIREITO PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. FRACIONAMENTO ABUSIVO DE DEMANDAS. INTERESSE DE AGIR. EXTINÇÃO SEM RESOLUÇÃO DE MÉRITO MANTIDA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. &#160; &#160; CASO EM EXAME 1. Apelação Cível interposta por Margarida Maria Gonçalves da Silva contra sentença que, nos autos da Ação Declaratória de Nulidade de Contrato de Cartão de Crédito com Reserva de Margem Consignável (RMC) e Inexistência de Débito Cumulada com Restituição de Valores em Dobro e Indenização por Dano Moral extinguiu o processo sem resolução de mérito, com fundamento no art. 485, I, do CPC, ante a ausência de interesse de agir, evidenciada pela propositura de múltiplas ações com pedidos e causa de pedir semelhantes contra instituições financeiras distintas. 2. A questão em discussão consiste em verificar se há interesse processual na propositura isolada de ação anulatória de débito referente a contrato de empréstimo consignado, diante da existência de diversas outras ações similares ajuizadas pela mesma parte contra diferentes instituições financeiras. 3. O fracionamento de demandas com causa de pedir e pedidos semelhantes, ainda que fundadas em contratos e instituições financeiras distintas, configura abuso do direito de ação, comprometendo a boa-fé processual e sobrecarregando desnecessariamente o Judiciário. 4. A jurisprudência desta Corte tem rechaçado a multiplicidade de ações semelhantes como forma indevida de acesso à jurisdição, recomendando a reunião dos pedidos em um único feito, conforme o art. 55, §3º, do CPC.

Processo	3000189-37.2025.8.06.0056
	style="color: #000000;"> 6. O ajuizamento de mais de 28 vinte e oito ações pela mesma parte no mesmo mês , com pedidos e causa de pedir praticamente idênticos, revela conduta processual temerária, justificando a extinção do processo sem resolução de mérito. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0.42cm;" align="justify"> &#160; <strong style="font-size: 13pt; font-family: Verdana, serif;">IV. DISPOSITIVO E TESE</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0.42cm;" align="justify"> 7. Recurso conhecido e desprovido. Sentença mantida. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0.42cm;" align="justify"> Tese de julgamento </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0.42cm;" align="justify"> 1. A propositura de múltiplas ações anulatórias de débito fundadas em contratos similares caracteriza abuso do direito de ação e afasta o interesse de agir. <p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0.42cm;" align="justify"> 2. A extinção do processo sem resolução de mérito é medida adequada quando verificado fracionamento indevido de demandas que deveriam tramitar de forma concentrada. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0.42cm;" align="justify"> 3. A boa-fé processual impõe ao autor o dever de formular suas pretensões de forma ética e eficiente, sem onerar desnecessariamente o sistema de justiça. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.28cm;" align="justify"> Dispositivos relevantes citados : CF/1988, arts. 5º, XXXV e 37, caput; CPC, arts. 5º, 55, § 3º e 330, III; CDC, arts. 14 e 42, parágrafo único. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0.42cm;" align="justify"> Jurisprudência relevante citada : TJ-CE, Apelação Cível 0200461-16.2023.8.06.0203, Rel. Des. José Ricardo Vidal Patrocínio, j. 07.08.2024; TJ-CE, Apelação Cível 0200669-77.2024.8.06.0166, Rel. Des. Emanuel Leite Albuquerque, j. 09.04.2025. </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.28cm;" align="justify"> &#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> ACÓRDÃO : Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, por próprio e tempestivo, para negar provimento ao

Processo	3000189-37.2025.8.06.0056
	apelo, nos termos do voto do Relator. Fortaleza, data e hora do sistema. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador EDUARDO DE CASTRO NETO Juiz Convocado Relator RELATÓRIO Trata-se de Apelação Cível interposta por Margarida Maria Gonçalves da Silva contra a sentença proferida pelo douto Juízo da Vara Única da Comarca de Capistrano que, nos autos da Ação Declaratória de Nulidade de Contrato de Crédito com Reserva de Margem Consignável (RMC) e Inexistência de Débito Cumulada com Restituição de Valores em Dobro de Indenização por Dano Moral, extinguiu a ação sem resolução de mérito, por indeferimento da petição inicial, diante da falta de interesse de agir, nos termos do art. 485, I, do CPC. Em sua apelação (ID 27436136), a parte recorrente argui que a decisão prolatada pelo digno magistrado de primeiro grau, foi pelo indeferimento da inicial, extinguindo o feito, sem resolução do mérito, entendendo que os processos colocados pela parte Autora perante a mesma instituição, mas com

Processo	3000189-37.2025.8.06.0056
	CONTRATO DIFERENTES verifica-se a ausência de pressupostos de constituição e de desenvolvimento válido e regular do processo, com fundamentação no artigo 485 inc. IV do CPC. Desta forma, em sentença, foi o pedido inicial extinto sem resolução de mérito, a nosso ver, de forma errônea, tendo em vista que o processo em questão não pode ser conexo a nenhum outro, visto que, cada processo é uma contratação diversa, questão já discutida e pacificada nas Turmas Recursais, podendo ser analisado caso a caso pelo juiz do processo Em continuidade, alega que "(...)" o magistrado de 1º grau aduz em seus fundamentos um apelo pela conexão das ações e exige que a parte autora reúna os contratos divergentes em uma única ação contra a ré, mas, no seu dispositivo final, justifica o indeferimento pela ausência de pressupostos de constituição e de desenvolvimento válido e regular do processo, o que ao nosso entendimento, torna a sentença equivocada e controversa. A ausência de pressupostos processuais está intimamente ligada ao binômio necessidade-adequação. Se o bem jurídico almejado pelo autor da ação não depende de qualquer intervenção judicial, da prestação jurisdicional, é inócuo que o Estado preste assistência. O que não se enquadra no exemplo que se discute na presente lide. O autor escolheu o causídico para ajuizar as ações e buscar a tutela jurisdicional para solucionar um problema recorrente, que vem acontecendo em diversos lugares do estado, e mesmo assim teve seu direito de acessar a justiça cerceado pela justificativa da ausência de pressupostos de constituição e de desenvolvimento válido e regular do processo, o que não é coerente, haja vista sua busca pela tutela estatal Complementa, informando que "analisando detidamente os autos, observa-se que tanto a causa de pedir, quanto os pedidos, nas referidas ações DIVERGEM, tendo em vista que se trata de CONTRATOS DIFERENTES, não sendo, assim, o caso de reuni-las para serem julgadas simultaneamente por não haver conexão entre elas (...)" Desta forma, não restam dúvidas acerca da aplicabilidade do Código de Defesa do Consumidor ao feito, na conformidade da Súmula 297 do STJ, a qual prevê a aplicabilidade do CDC às instituições financeiras. Devendo ao caso ser aplicada a teoria da responsabilidade objetiva no sentido de reparar o dano sofrido pelo Autor, bem como a restituição em dobro dos valores cobrados no contrato nulo, conforme preceitua os art. 14, caput art. 42 e seu Parágrafo Único do CDC Por fim, requer que "se digne esta Colenda Turma Julgadora em dar PROVIMENTO AO RECURSO, reformando a decisão do Juiz de 1ª Grau, no sentido do afastamento da conexão do processo em questão, visto que os processos tratam de contratações diversas, determinando o prosseguimento do processo para a apreciação no juízo de 1º grau, mormente considerando o princípio da inafastabilidade da jurisdição, TUDO POR SER MEDIDA DE MAIS LÍDIMA JUSTIÇA" Devidamente intimada para apresentar contrarrazões (ID 27436137), a parte recorrida se manteve inerte. Remetidos os autos a este tribunal.

Processo	3000189-37.2025.8.06.0056
	style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Este é o relatório em essencial. </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Exercendo o juízo de admissibilidade, constato o atendimento dos requisitos intrínsecos e extrínsecos que o compõem, levando-me ao qualificativo da positividade e, assim, ao conhecimento do recurso apelatório. </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> O cerne da controvérsia recursal consiste em verificar o interesse de agir d a promovente, dado o fracionamento de ações e o suposto abuso no direito de demandar. </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Súmula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista: O Código de Defesa do Consumidor é aplicável às instituições financeiras ". </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Compulsando os fólios processuais, bem como, em consulta realizada no E-Saj e PJE de primeiro grau, verifiquei que, de fato, a parte autora/recorrente ajuizou 28) vinte e oito) ações envolvendo descontos indevidos/empréstimos consignados realizados em seu benefício previdenciário somente neste ano , ou seja, ações similares, em que busca a nulidade de contratos de empréstimos consignados, restituição dos valores descontados, e ainda, a condenação da instituição financeira/apelada ao pagamento de danos morais. </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Como registrado na sentença, apesar de se tratarem de contratos distintos em cada uma das demandas, com instituições financeiras diferentes, é cedido que o fracionamento de ações consiste em um verdadeiro abuso do direito de demandar, ante a propositura de diversas ações e pedido de declaração de inexistência de débito, o que configura conduta processual temerária e abusiva. </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">

Processo	3000189-37.2025.8.06.0056
	family: &quot;Liberation Serif&quot;; serif;"> Ressalte-se que 01 (uma) ação apenas, contra os diversos réus, bastaria para a satisfação da tutela pretendida, a fim de que a demandante alcançasse o objetivo pretendido e assim evitar o verdadeiro bis in idem e a utilização da prerrogativa ao acesso à justiça de forma inadequada, cujo interesse, na hipótese, culmina por atravancar a máquina judiciária. </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Além disso, o processamento de distintos feitos ainda eleva custos financeiros, sobrecarrega os funcionários do Poder Judiciário e, assim, prejudica a consecução dos princípios constitucionais que regem a administração pública, ao qual o Judiciário está vinculado, especialmente o da eficiência (art. 37, caput, da CF). </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Desse modo, o Judiciário deve coibir condutas temerárias que não respeitam a boa-fé processual tão preconizada na atual codificação processual, insculpida logo de início no artigo 5º do CPC, confira: “A rt. 5º Aquele que de qualquer forma participa do processo deve comportar-se de acordo com a boa-fé. ” </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> A respeito, cito decisões deste sodalício, vejamos: </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> DIREITO CIVIL, PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. </p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 1. O cerne da controvérsia consiste em verificar o interesse de agir do Autor, ora Apelante, dado o fracionamento de ações e suposto abuso no direito de demandar. </p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 2. Do exame dos autos, nota-se que a autora ajuizou 4 (quatro) ações anulatórias de débito c/c indenização por danos materiais e morais contra a mesma instituição financeira apelada, alegando, em resumo, não ter firmado os empréstimos consignados e requerendo restituição de valores e indenização correspondente, e que, ao invés de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em diversos processos, como muito bem delimitou o d. Juízo singular, apesar de todas elas terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decisum recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, § 3º, do CPC. </p><p style="line-height: 150%; orphans: 2; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 3. Por último, a sentença recorrida se encontra devidamente fundamentada, com exposição clara do d. Juízo de primeiro grau, em consonância com o art. 93, IX, da CF/1988, não vindo a calhar o argumento sobre carência de fundamentação levantado na apelação. </p><p style="line-height: 150%; orphans: 2; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> 4. De mais a mais, constata-se, nesta egrégia Corte de Justiça, a existência de inúmeras demandas

Processo	3000189-37.2025.8.06.0056
	praticamente idênticas patrocinadas pelo causídico do Autor/Apelante, de modo que é aceitável que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. Precedentes. 5. Recurso conhecido e desprovido. Sentença mantida. (TJ-CE - Apelação Cível: 02004611620238060203 Ocara, Relator: JOSÉ RICARDO VIDAL PATROCÍNIO, Data de Julgamento: 07/08/2024, 1ª Câmara Direito Privado, Data de Publicação: 07/08/2024) DIREITO CIVIL, PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. O cerne da controvérsia consiste em verificar o interesse de agir do Autor, ora Apelante, dado o fracionamento de ações e suposto abuso no direito de demandar. 2. Do exame dos autos, nota-se que a autora ajuizou 4 (quatro) ações anulatórias de débito c/c indenização por danos materiais e morais contra a mesma instituição financeira apelada, alegando, em resumo, não ter firmado os empréstimos consignados e requerendo restituição de valores e indenização correspondente, e que, ao invés de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em diversos processos, como muito bem delimitou o d. Juízo singular, apesar de todas elas terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decisum recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, § 3º, do CPC. 3. Por último, a sentença recorrida se encontra devidamente fundamentada, com exposição clara do d. Juízo de primeiro grau, em consonância com o art. 93, IX, da CF/1988, não vindo a calhar o argumento sobre carência de fundamentação levantado na apelação. 4. De mais a mais, constata-se, nesta egrégia Corte de Justiça, a existência de inúmeras demandas praticamente idênticas patrocinadas pelo causídico do Autor/Apelante, de modo que é aceitável que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. Precedentes. 5. Recurso conhecido e desprovido. Sentença mantida. (TJ-CE - Apelação Cível: 02004611620238060203 Ocara, Relator: JOSÉ RICARDO VIDAL PATROCÍNIO, Data de Julgamento: 07/08/2024, 1ª Câmara Direito Privado, Data de Publicação: 07/08/2024) PROCESSO CIVIL. RECURSO DE APELAÇÃO EM AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MORAIS E MATERIAIS. INDEFERIMENTO DA EXORDIAL E

Processo	3000189-37.2025.8.06.0056
	EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES QUE INDICAM ABÚSO DO DIREITO DE DEMANDAR. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. 1. O cerne da controvérsia recursal consiste em verificar o interesse de agir do promovente/recorrente, dado o fracionamento de ações e o suposto abuso no direito de demandar. 2. Compulsando os fólios processuais, bem como, em consulta realizada no E-Saj de primeiro grau, verifiquei que, de fato, a parte autora/recorrente ajuizou mais de 40 (quarenta) ações envolvendo empréstimos consignados, sendo 23 (vinte e três) delas em desfavor do banco/recorrido, ou seja, ações similares, em que busca a nulidade de contratos de empréstimos consignados, restituição dos valores descontados, e ainda, a condenação da instituição financeira/apelada ao pagamento de danos morais. 3. Como registrado na sentença, apesar de se tratar de contratos distintos em cada uma das demandas, é cedido que o fracionamento de ações consiste em um verdadeiro abuso do direito de demandar, ante a propositura de diversas ações contra a mesma parte e pedido de declaração de inexigibilidade de débito, o que configura conduta processual temerária e abusiva. 4. Desse modo, o Judiciário deve coibir condutas temerárias que não respeitam a boa-fé processual tão preconizada na atual codificação processual, insculpida logo de início no artigo 5º do CPC, confira: ¿Art. 5º Aquele que de qualquer forma participa do processo deve comportar-se de acordo com a boa-fé.¿ 5. Destaco, ainda, que vedar a tramitação desse tipo de ação não significa impedir o acesso à justiça, mas sim velar para que esse direito seja feito de forma eficaz e com padrões éticos adequados. 6. Recurso conhecido e desprovido. Sentença confirmada. (Apelação Cível - 0200669-77.2024.8.06.0166, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 09/04/2025, data da publicação: 09/04/2025) Destaco, ainda, que vedar a tramitação desse tipo de ação não significa impedir o acesso à justiça, mas sim velar para que esse direito seja feito de forma eficaz e com padrões éticos adequados. Por todo o exposto, diante dos fundamentos fáticos e jurídicos acima declinados, conheço do presente recurso, por próprio e tempestivo, para negar-lhe provimento, mantendo os termos da sentença atacada. É como voto.

Processo	3000189-37.2025.8.06.0056
	small;"> Fortaleza, data da assinatura no sistema. </p><p style="line-height: 200%; orphans: 2; widows: 2; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO </p><p style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Juiz Convocado Relator </p><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0200147-10.2023.8.06.0126
Número de ordem	82
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Inclusão Indevida em Cadastro de Inadimplentes
Polo ativo	PEDRO INACIO DE OLIVEIRA NETO
Advogado(s) - Polo ativo	FAUSTINO GONCALVES TORRES JUNIOR - (CE35202-A)
Polo passivo	BANCO MASTER S/A
Advogado(s) - Polo passivo	GIOVANNA BASTOS SAMPAIO CORREIA - (BA42468-A)
Terceiros	Não informado

Processo	0200147-10.2023.8.06.0126
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> </p> </div>

Processo	0200147-10.2023.8.06.0126
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	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant: normal; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> &#160;Banco Master S/A </p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant: normal; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">&#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p style="text-align: justify;"> EMENTA: DIREITO CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. NEGATIVAÇÃO INDEVIDA. INDENIZAÇÃO POR DANO MORAL. MAJORAÇÃO DO QUANTUM INDENIZATÓRIO. RECURSO PARCIALMENTE PROVIDO. </p> <p style="text-align: justify;"> I. CASO EM EXAME </p> <p style="text-align: justify;"> 1. Recurso de Apelação interposto por consumidor contra sentença que julgou parcialmente procedentes os pedidos em ação declaratória de inexistência de débito c/c indenização por dano moral, declarando a nulidade de contrato bancário, determinando a retirada do nome do autor dos cadastros de inadimplentes e fixando indenização por danos morais em R\$ 2.000,00. O apelante pleiteia a majoração do valor indenizatório para R\$ 10.000,00, ou outro que o Tribunal considere proporcional. </p> <p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;"> 2. A questão em discussão consiste em definir se o valor arbitrado a título de indenização por danos morais (R\$ 2.000,00) deve ser majorado, considerando a extensão do dano, as condições das partes e os parâmetros jurisprudenciais. </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 3. A indenização por dano moral deve observar critérios de proporcionalidade e razoabilidade, de modo a compensar a vítima, punir o infrator e evitar enriquecimento sem causa. </p> <p style="text-align: justify;"> 4. O arbitramento deve considerar a gravidade da lesão, a repercussão do dano, a condição socioeconômica das partes e a capacidade financeira da instituição ré. </p> <p style="text-align: justify;"> 5. A jurisprudência do STJ e desta Corte reconhece que a inscrição indevida em cadastro de inadimplentes gera dano moral in re ipsa, sendo cabível indenização em patamar compatível com o caráter pedagógico e reparatório. </p> <p style="text-align: justify;"> 6. O valor fixado pelo juízo singular (R\$ 2.000,00) mostra-se aquém dos parâmetros usualmente adotados em casos análogos, impondo-se a majoração para R\$ 3.000,00, quantia proporcional e suficiente para reparar o dano e desestimular condutas abusivas. </p> <p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p> <p style="text-align: justify;"> 7. Recurso parcialmente provido. </p> <p style="text-align: justify;"> Tese de julgamento: </p> <p style="text-align: justify;"> 1. A inscrição indevida em cadastro de inadimplentes enseja indenização por dano moral, independentemente de prova do prejuízo. </p> <p style="text-align: justify;"> 2. A fixação do quantum indenizatório deve atender aos princípios da razoabilidade e proporcionalidade, considerando as condições das partes e a gravidade da lesão. </p> <p style="text-align: justify;"> 3. Valores arbitrados em montante ínfimo em comparação à jurisprudência dominante podem ser majorados em grau recursal. </p> <p style="text-align: justify;"> Dispositivos relevantes citados: CF/1988, art. 5º, X; CC,

Processo	0200147-10.2023.8.06.0126
	arts. 389, parágrafo único, 398 e 406, §1º; CPC, arts. 85, §2º, 86, parágrafo único, e 487, I. CDC, art. 6º, III. Jurisprudência relevante citada: STJ, Súmulas nº 54 e 362; TJCE, Apelação Cível nº 0200211-96.2024.8.06.0154, Rel. Des. José Ricardo Vidal Patrocínio, j. 27.11.2024; TJCE, Apelação Cível nº 0203177-61.2023.8.06.0091, Rel. Des. Carlos Augusto Gomes Correia, j. 07.05.2025; TJCE, Apelação Cível nº 0918477-16.2014.8.06.0001, Rel. Des. José Ricardo Vidal Patrocínio, j. 26.06.2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso para dar-lhe parcial provimento, nos termos do voto do Relator.

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	Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">Fortaleza, data da assinatura digital </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> JOSE RICARDO VIDAL PATROCINIO &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Presidente do Órgão Julgador &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"></p></div>

Processo	0200147-10.2023.8.06.0126
	center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Exmo. Sr. EDUARDO DE CASTRO NETO </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Juiz Convocado Relator &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-

Processo	0200147-10.2023.8.06.0126
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 20.7px; font-family: Aptos, Aptos_EmbeddedFont, Aptos_MSFontService, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATÓRIO &#160; </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Trata-se de Recurso de Apelação interposto por Pedro Inácio de Oliveira Neto em face da sentença prolatada pelo juízo da 2ª Vara da Comarca de Mombaca, que julgou parcialmente procedentes os pedidos contidos na ação declaratória de inexistência de débito c/c indenização por dano moral, proposta em desfavor do Banco Master S/A., o que fez nos seguintes termos: </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: justify;"> “(…) Diante do exposto, e com fundamento no art. 487, I do CPC,&#160;JULGO PROCEDENTE&#160;o pedido inicial, com resolução do mérito, para: </p> <p style="text-align: justify;"> a) DECLARAR a inexistência da dívida oriunda do contrato nº 2430007308 001, no valor de R\$ 3.175,37; </p> <p style="text-align: justify;"> b) DETERMINAR que a parte demandada proceda à retirada do nome do autor dos cadastros de proteção ao crédito, caso ainda não tenha o feito, no prazo de 5 (cinco) dias, a contar da intimação desta sentença; </p> <p style="text-align: justify;"> c) CONDENAR o requerido ao pagamento de R\$ 2.000,00 (dois mil reais) em favor do autor, a título de indenização por danos morais, acrescido de juros de mora de 1% ao mês, a contar da data da negativação indevida (art. 398 do CC e S. 54 do STJ), e de correção monetária pelo INPC, a contar da data do arbitramento (S. 362 do STJ). </p> <p style="text-align: justify;"> Face à sucumbência, condeno a parte ré, nos termos dos artigos 85, §2º, e 86, parágrafo único, do Código de Processo Civil, ao pagamento das custas, despesas processuais e honorários advocatícios que fixo em 10% (dez por cento) sobre o valor da condenação. ” </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: justify;"> Em suas razões recursais, a autora/recorrente sustenta, em suma, pela “(…) majoração da indenização por danos morais para o valor de R\$ 10.000,00 (dez mil reais), ou outro valor que este Egrégio Tribunal entenda como justo e proporcional.” </p> <p style="text-align: justify;"> Contrarrrazões – id. 27418770. </p> <p style="text-align: justify;"> É o que importa relatar. </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: center;"> VOTO </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Exercendo juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. </p> <p style="text-align: justify;"> No mérito - </p> <p style="text-align: justify;"> Entendeu o juízo de primeiro grau por deferir parcialmente os pedidos autorais para declarar a nulidade do contrato que originou os descontos em questão, bem como, condenar a instituição financeira/requerida na devolução dos valores cobrados indevidamente, retirada do do autor dos cadastros de proteção ao crédito e ao pagamento de dano moral na quantia de R\$2.000,00 (dois mil reais). </p> <p style="text-align: justify;"> O cerne da controvérsia recursal consiste, unicamente, na possibilidade ou não de majoração do dano moral fixado pelo juízo a quo. </p> <p style="text-align: justify;"> Pois bem. </p> <p style="text-align: justify;"> Fixação – Fatores </p> <p style="text-align: justify;">&#160;</p>

Processo	0200147-10.2023.8.06.0126
	justify;"> Para quantificar a indenização por danos morais deve se levar em conta, dentre outros fatores, a extensão do dano, as condições socioeconômicas dos envolvidos e o sofrimento da vítima. </p> <p style="text-align: justify;"> Desse modo, tem-se que a indenização deve se dar de forma equânime e atentar à razoabilidade, a fim de evitar o enriquecimento ilícito da parte autora, mas sem deixar de punir a parte ré pelo cometimento do ato ilegal. </p> <p style="text-align: justify;"> E mais, para evitar excessos e abusos, só se deve reputar como dano moral a dor, o sofrimento, que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. </p> <p style="text-align: justify;"> A propósito: </p> <p style="text-align: justify;"> DIREITO DO CONSUMIDOR. RECURSO DE APELAÇÃO EM AÇÃO AÇÃO DE OBRIGAÇÃO DE FAZER C/C REPARAÇÃO POR DANOS MORAIS. INSCRIÇÃO INDEVIDA EM CADASTRO DE PROTEÇÃO AO CRÉDITO. AUSÊNCIA DE NOTIFICAÇÃO PRÉVIA. DANO MORAL CONFIGURADO. RECURSO CONHECIDO E PROVIDO. I. CASO EM EXAME 1. Apelação interposta por consumidora contra sentença que julgou improcedente pedido de indenização por danos morais, decorrente de negativação de seu nome, sem comprovação de notificação prévia. A recorrente alega que o envio da comunicação para endereço eletrônico não informado viola o art. 43, § 2º, do CDC. II. QUESTÃO EM DISCUSSÃO I ¿ A inscrição em cadastro de inadimplentes sem comprovação de prévia notificação válida ao consumidor. II ¿ A possibilidade de configuração de dano moral por falha na comunicação. III ¿ A fixação do valor da indenização por danos morais. RAZÕES DE DECIDIR 1. O art. 43, § 2º, do CDC exige notificação escrita ao consumidor, o que não foi comprovado pela empresa apelada. 2. A jurisprudência do STJ firmou entendimento de que o envio exclusivo por e-mail ou SMS não supre a exigência legal. 3. A ausência de prova de que o e-mail utilizado foi fornecido pela consumidora configura falha na comunicação e ato ilícito. 4 . A inscrição indevida em cadastro de inadimplentes, sem notificação válida, é apta a ensejar indenização por dano moral. 5. O valor da indenização foi arbitrado em R\$ 3.000,00, considerando critérios de razoabilidade e proporcionalidade. DISPOSITIVO E TESE Dá-se provimento ao recurso para reformar a sentença e condenar a empresa ré ao pagamento de R\$ 3.000,00 (três mil reais) a título de danos morais. Tese 1 ¿ A notificação prevista no art. 43, § 2º, do CDC deve ser comprovadamente enviada ao endereço físico do consumidor, sendo insuficiente o envio exclusivo por meio eletrônico. Dispositivos relevantes citados: Código de Defesa do Consumidor, art. 43, §2º. Jurisprudência relevante citada: STJ, AgInt no REsp 2113886/RS, Rel. Min. Marco Aurélio Bellizze, 3ª Turma, j. 15/04/2024. STJ, AgInt no REsp 2104141/RS, Rel. Min. Humberto Martins, 3ª Turma, j. 04/03/2024; TJCE, Apelação Cível - 0200211-96.2024.8.06.0154, Rel. Desembargador(a) José Ricardo Vidal Patrocínio, 1ª Câmara Direito Privado, data do julgamento: 27/11/2024, data da publicação:27/11/2024. A C Ó R D Ã O Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, para dar-lhe provimento nos termos do voto do Relator, parte integrante desta decisão Fortaleza, 16 de abril de 2025. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator (Apelação Cível&#160;- 0270159-36.2023.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160;16/04/2025, data da publicação:&#160;16/04/2025) </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> CIVIL E PROCESSO CIVIL. APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. COBRANÇA DE DÍVIDA. AUSÊNCIA MARGEM DE EMPRÉSTIMO. CIRCUNSTÂNCIA QUE EXIGIRIA A DEVIDA INFORMAÇÃO AO CONSUMIDOR, OPORTUNIZANDO-LHE O PAGAMENTO DE EVENTUAL PENDÊNCIA. INCLUSÃO DO NOME DO CONSUMIDOR EM CADASTRO DE INADIMPLENTES. RESPONSABILIDADE DA RECORRENTE NÃO AFASTADA. DANOS MORAIS IN RE IPSA. RAZOABILIDADE DO VALOR FIXADO. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. 1 ¿ Trata-se de apelação cível interposta por BANCO PAN S/A em face de sentença prolatada pela MM. Juiz de Direito da 1ª Vara Cível da Comarca de Iguatu/CE, nos autos de Ação de Negativação Indevida c/c Indenização por Dano Moral, interposta por Maria Edileuza Freitas que julgou parcialmente procedente os pedidos, determinando a retirada do nome do autor do SERASA, bem como condenou o recorrente em danos morais no valor de R\$ 3.000,00 (três mil reais). 2 ¿ Se baseia a instituição bancária que foi firmado contrato de empréstimo entre as partes e que a parte autora se tornou inadimplente posteriormente, em razão da redução da margem consignável da mesma, ficando isento de ter praticado ato ilícito. 3 - Por outro lado, mesmo que se levasse em consideração o fato de estar inadimplente o consumidor pela prestação vencida em 07/08/2023, referente a 51ª parcela, a justificar a inclusão do seu nome no cadastro de inadimplentes, persistente é o vício na prestação do serviço da recorrente, que deveria ao menos ter

Processo	0200147-10.2023.8.06.0126
	comunicado o consumidor do ocorrido (transposição da margem de empréstimo consignado), possibilitando-lhe proceder com o pagamento de eventual quantia por outros meios. Pelo contrário, anexada à sua peça contestatória, não se analisa qualquer ato de boa-fé por parte do banco, no sentido de informar ao consumidor acerca do fato, pelo que tomou a medida extremada e danosa de inclusão do nome do recorrido no cadastro de inadimplentes. 4 - O CDC, em seu art. 6º, III, apregoa ser direito do consumidor a informação adequada e clara sobre os diferentes produtos e serviços, com especificação correta de quantidade, características, composição, qualidade, tributos incidentes e preço, bem como sobre os riscos que apresentem. 5 - Trata-se, portanto, de inclusão indevida no cadastro de inadimplentes, já que a conduta da instituição bancária, como intermediadora e concedente do crédito consignado, não comprovou a inadimplência do consumidor por prova idônea, além do que, ciente de eventual extrapolção de margem de crédito, não procedeu com a devida informação ao consumido, simplesmente lhe exigindo uma quantia que, pelo que sabia o recorrido, estava sendo descontada mensalmente dos seus ganhos mensais. 6 Danos morais fixados em valor razoável e proporcional para as circunstâncias do caso. 7 Recurso conhecido e não provido. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, a unanimidade, em conhecer do recurso de apelação para lhe NÉGAR PROVIMENTO, tudo nos termos do voto do Desembargador Relator. Fortaleza, data assinatura eletrônica. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (Apelação Cível - 0203177-61.2023.8.06.0091, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 07/05/2025, data da publicação: 07/05/2025) Nessa ordem de ideias, atento ao cotejo desses fatores: "nível econômico do autor da ação, sofrimento da vítima e o porte econômico da entidade bancária", e ainda, levando em consideração os valores descontados, considero afequeno o quantum fixado pelo douto magistrado singular o que me leva a aumentar para a quantia de R\$ 3.000,00 (três mil reais), porque não se entremostra exagerado nem insignificante, uma vez que razoável e proporcional à ofensa perpetrada, bem como em consonância com a jurisprudência desta egrégia Câmara. E é assim que, por todo o exposto, conheço do recurso interposto, dando-lhe parcial provimento e reformando a sentença objurgada apenas para majorar o valor da condenação por danos morais ao importe de R\$ 3.000,00 (três mil reais), acrescidos de correção monetária pelo IPCA do IBGE desde o arbitramento (STJ, Súmula nº 362; CC, art. 389, parágrafo único) e de juros de mora da data do evento danoso (Súmula n.º 54, STJ) à taxa de 1% ao mês até o dia anterior ao da vigência da Lei nº 14.905/2024 e, a partir daí, à taxa correspondente ao resultado da taxa Selic subtraída do IPCA (CC, arts. 398 e 406, § 1º). É como voto. Fortaleza-CE, data da assinatura digital EDUARDO DE CASTRO NETO Juiz Convocado Relator &#160;

Processo	3000082-95.2025.8.06.0119
Número de ordem	83
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alienação Fiduciária
Polo ativo	AYMORE CREDITO, FINANCIAMENTO E INVESTIMENTO S.A.
Advogado(s) - Polo ativo	RICARDO NEVES COSTA - (SP120394-A) RAPHAEL NEVES COSTA - (SP225061-A) FLAVIO NEVES COSTA - (SP153447-A)
Polo passivo	DEYVID CAVALCANTE DO NASCIMENTO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3000082-95.2025.8.06.0119
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Processo	3000082-95.2025.8.06.0119
	 TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ </p><p style="text-align: center;"> GABINETE DO DES. EMANUEL LEITE ALBUQUERQUE </p><p style="text-align: center;"> &#160; </p><p align="left"> APELAÇÃO CÍVEL Nº 3000082-95.2025.8.06.0119 </p><p align="left"> Apelante: AYMORÉ CRÉDITO, FINANCIAMENTO E INVESTIMENTO S/A </p><p align="justify"> &#160; </p><p align="justify">&#160;</p><p align="justify"> EMENTA: DIREITO PROCESSUAL CIVIL. RECURSO DE APELAÇÃO. AÇÃO DE BUSCA E APREENSÃO. INDEFERIMENTO DA PETIÇÃO INICIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO POR AUSÊNCIA DA JUNTADA DO CONTRATO DE FINANCIAMENTO. RAZÕES RECURSAIS DISSOCIADAS DOS FUNDAMENTOS DA SENTENÇA. VIOLAÇÃO AO PRINCÍPIO DA DIALETICIDADE. NÃO CONHECIMENTO DO RECURSO. </p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> I. CASO EM EXAME </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; 1. Recurso de apelação interposto por Aymoré Crédito, Financiamento e Investimento S/A contra sentença da 1ª Vara Cível da Comarca de Maranguape que extinguiu, sem resolução de mérito, ação de busca e apreensão ajuizada em desfavor de Dayvid Cavalcante do Nascimento, em razão da ausência de juntada do contrato de financiamento. O banco recorrente sustentou que a extinção se deu por suposta falta de recolhimento das custas processuais, as quais teriam sido devidamente pagas.</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> II. QUESTÃO EM DISCUSSÃO </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; 2. A questão em discussão consiste em definir se o recurso de apelação pode ser conhecido, à luz do princípio da dialeticidade, quando as razões apresentadas não impugnam os fundamentos da sentença que extinguiu o processo pela falta de juntada do contrato de financiamento.</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> III. RAZÕES DE DECIDIR </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; 3. O recurso deve observar o princípio da dialeticidade, impondo à parte recorrente o dever de atacar de forma específica os fundamentos da decisão impugnada.</p><p align="justify"> &#160; 4. A sentença de origem indeferiu a petição inicial por ausência de juntada do contrato de financiamento, mas o apelante concentrou sua insurgência apenas na questão do recolhimento de custas, não enfrentando o fundamento determinante da decisão.</p><p align="justify"> &#160; 5. A ausência de impugnação específica inviabiliza o conhecimento do recurso, por ausência de regularidade formal.</p><p align="justify"> &#160; 6. O Superior Tribunal de Justiça possui jurisprudência pacífica no sentido de que a falta de enfrentamento dos fundamentos da decisão recorrida viola o princípio da dialeticidade, atraindo o não conhecimento do recurso (AgInt no REsp 1584953/SE; AgRg no AREsp 463.165/ES; AgRg-REsp 1.346.766/BA; AgRg-Ag 1.409.029/RJ; AgRg-AREsp 276.967; EDcl-AgRg-AREsp 6.709/DF).</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> IV. DISPOSITIVO E TESE </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; <span style="font-family: verdana, geneva;

Processo	3000082-95.2025.8.06.0119
	style="font-size: medium;"/> Sem contrarrazões, haja vista não formada a relação processual. </p><p align="justify">&#160;</p><p align="justify"> É o relatório adotado. </p><p align="justify">&#160;</p><p align="justify"> V O T O - </p><p align="justify"> &#160; </p><p align="justify"> Exercitando o juízo de admissibilidade recursal quanto ao recurso interposto, verifico o não atendimento de todos os requisitos extrínsecos e intrínsecos que compõem o referido crivo, especificamente aquele que diz com a regularidade formal do recurso – o que conduz a um juízo negativo de admissibilidade e, assim, ao não conhecimento do apelo. </p><p align="justify">&#160;</p><p align="justify"> É que o banco apelante absteve-se de impugnar especificamente os fundamentos da sentença vergastada prolatada pelo juízo singular, que indeferiu a petição inicial e extinguiu a ação sem resolução do mérito sob o fundamento de que o ora recorrente, apesar de devidamente intimado, deixou de coligar aos autos o contrato de financiamento com cláusula de alienação fiduciária celebrado entre os litigantes. </p><p align="justify">&#160;</p><p align="justify"> Destaque-se que a decisão que, desatendida, conduziu ao indeferimento da inicial e extinção do feito, ordenou a intimação da apelante para, no prazo de 15 (quinze) dias colacionar aos autos o instrumento contratual, inclusive fazendo menção ao fato de que as custas processuais já haviam sido regularmente recolhidas. </p><p align="justify">&#160;</p><p align="justify"> TODAVIA, a apelante tece suas razões recursais na alegação de que teria o magistrado determinado a sua intimação para proceder ao recolhimento das custas processuais, o que nada condiz com os fundamentos adotados na sentença de extinção. </p><p align="justify">&#160;</p><p align="justify"> Por certo, deveria ter a Recorrente rebatido com argumentação farta a decisão do juízo a quo, levantando, em suas razões recursais, questões jurídicas capazes de alterar o resultado do julgamento da demanda, ou seja, motivos suficientes a afastar a decidida extinção por ausência da juntada do contrato de financiamento com cláusula de alienação fiduciária. </p><p align="justify">&#160;</p><p align="justify"> Neste ponto, pertinente é a lição de FREDIE DIDIER JR.: </p><p align="justify">&#160;</p><p align="justify"> “Para que o recurso seja conhecido, é necessário, também, que preencha determinados requisitos formais que a lei exige; que observe ‘a forma segundo a qual o recurso deve revestir-se’. DIDER JR., FREDIER Aut. cit. in Curso de Direito Processual Civil. V. 3. 2ª ed. Salvador: Jus Podivm, 2006, p. 34. </p><p align="justify">&#160;</p><p align="justify"> Assim, deve o recorrente, por exemplo, sob pena de inadmissibilidade de seu recurso: a) apresentar as suas razões, impugnando especificamente as razões da decisão. </p><p align="justify">&#160;</p><p align="justify"> Trata-se de exigência formal que conduz à necessária observância do princípio da dialética, pelo qual, nas palavras de DIDIER JR.: </p><p align="justify">&#160;</p><p align="justify"> “...exige-se que todo recurso seja formulado por meio de petição na qual a parte, não apenas manifeste sua inconformidade com ato judicial impugnado, mas, também e necessariamente, indique os motivos de fato e de direito pelos quais requer o novo julgamento da questão nele cogitada. Na verdade, trata-se de princípio insito a todo processo, que é essencialmente dialético.” DIDER JR., FREDIER Aut. cit. in Curso de Direito Processual Civil. V. 3. 2ª ed. Salvador: Jus Podivm, 2006, p. 35. </p><p align="justify">&#160;</p><p align="justify"> Neste sentido, é o posicionamento do Superior Tribunal de Justiça: </p><p align="justify">&#160;</p><p align="justify"> AGRAVO

Processo	3000082-95.2025.8.06.0119
	INTERNO NO RECURSO ESPECIAL. CONTRATO DE CONSÓRCIO. 1. TAXA DE ADMINISTRAÇÃO. COBRANÇA MANTIDA PELA SENTENÇA, COM CONFIRMAÇÃO PELO ACÓRDÃO DA APELAÇÃO. FALTA DE INTERESSE RECURSAL. CORREÇÃO MONETÁRIA. ÍNDICE APLICÁVEL. SÚMULA N. 83 DO STJ. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA QUANTO A ESSES DOIS PONTOS DA DECISÃO AGRAVADA. VIOLAÇÃO AO PRINCÍPIO DA DIALETICIDADE. 2. CLÁUSULA PENAL. REEXAME DE PROVAS. SÚMULA N. 7/STJ. 3. AGRAVO INTERNO CONHECIDO EM PARTE E, NESSA EXTENSÃO, DESPROVIDO. 1. Inexistindo impugnação específica dos fundamentos da decisão agravada acerca de determinadas questões, não há como analisar o agravo interno em relação a elas, considerando-se a ofensa ao princípio da dialeticidade (Súmula 182/STJ). 2. Tendo o Tribunal de origem concluído pela abusividade do percentual estipulado no contrato a título de cláusula penal, a revisão de tal entendimento não está ao alcance desta Corte, por demandar o reexame do conjunto fático-probatório dos autos, providência vedada nesta instância especial, nos termos da Súmula 7/STJ. 3. Agravo interno parcialmente conhecido e, nessa extensão, desprovido. (AgInt no REsp 1584953/SE, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 20/09/2016, DJe 04/10/2016) AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. OMISSÃO QUE SE RECONHECE. TESE DE OFENSA AO ART. 535 DO CPC QUE PADECE DE FUNDAMENTAÇÃO. SÚMULA 284 DO STF. APELAÇÃO QUE NÃO IMPUGNOU OS FUNDAMENTOS DA SENTENÇA. DESRESPEITO À REGRA DA DIALETICIDADE. ART. 514, II DO CPC. AGRAVO REGIMENTAL DESPROVIDO. 1. Embora a decisão que examinou o Recurso Especial efetivamente não tenha enfrentado a tese de ofensa ao art. 535 do CPC, o Apelo Nobre ostenta, nesse aspecto, fundamentação deficiente, a teor da Súmula 284 do STF, pois se limitou a invocar genericamente o dever da instância de origem de examinar às inteiras as teses veiculadas na Apelação, sem indicar precisamente as questões cujo exame teria sido sonegado, ou realizado de modo contraditório ou obscuro. 2. A ausência de impugnação específica ao único fundamento do acórdão recorrido, por configurar afronta à regra da dialeticidade recursal, que se extrai do art. 514, II do CPC, efetivamente tornou inviável o exame do Recurso de Apelação. 3. Agravo Regimental do SERVIÇO SOCIAL DO COMÉRCIO - SESC AR/ES desprovido. (AgRg no AREsp 463.165/ES, Rel. Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, julgado em 10/03/2016, DJe 01/04/2016) DIREITO PROCESSUAL CIVIL. RECURSO ESPECIAL. DENEGAÇÃO DE SEGUIMENTO. SÚMULAS 07 E 211 DO STJ. INEXISTÊNCIA DE VIOLAÇÃO AOS ARTS. 128, 458 E 535 DO CPC. AGRAVO REGIMENTAL. ALEGAÇÕES GENÉRICAS. MERA IRRESIGNAÇÃO DA PARTE. FALTA DE DEMONSTRAÇÃO DO DESACERTO DA DECISÃO IMPUGNADA E DE ELABORAÇÃO DE TESE RECURSAL. AUSÊNCIA DE COTEJO COM OS FUNDAMENTOS DO JULGADO. 1. O princípio da dialeticidade orienta o exercício do direito de recorrer da parte, que deve, em sua obediência, apresentar em sua impugnação razões que confrontem a defesa de suas teses com os fundamentos utilizados pelo julgador, a fim de demonstrar o suposto desacerto. 2. Não há regularidade formal no recurso que, não procedendo assim, deixa de infirmar corretamente o julgamento, manejando simples alegações genéricas. 3. Agravo regimental não conhecido. Multa do art. 557, § 2º, do CPC, cominada em um por cento sobre o valor corrigido da causa. (Superior Tribunal de Justiça STJ; AgRg-REsp 1.346.766; Proc. 2012/0206019-4; BA; Segunda Turma; Rel. Min. Mauro Campbell Marques; DJE 27/09/2013; Pág. 727) AGRAVO REGIMENTAL NO AGRAVO DE INSTRUMENTO. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA AOS FUNDAMENTOS DA DECISÃO PROFERIDA PELO TRIBUNAL DE ORIGEM QUE NÃO ADMITIU O RECURSO ESPECIAL. APLICAÇÃO, POR ANALOGIA, DA SÚMULA Nº 182/STJ. PRINCÍPIO DA DIALETICIDADE, QUE IMPÕE O ATAQUE ESPECÍFICO AOS FUNDAMENTOS. INSUFICIÊNCIA DE ALEGAÇÃO GENÉRICA. PRECEDENTES. MANUTENÇÃO DA DECISÃO ORA AGRAVADA. RECURSO MANIFESTAMENTE INFUNDADO E PROCRASTINATÓRIO. APLICAÇÃO DE MULTA. ART. 557, § 2º, CPC. 2. À luz do princípio da dialeticidade, que norteia os recursos, compete à parte agravante, sob pena de não conhecimento do agravo de instrumento, infirmar especificamente os fundamentos adotados pelo tribunal de origem para negar seguimento ao reclamo, sendo insuficiente apresentar alegações genéricas de inaplicabilidade do óbice invocado. Precedentes. 3. O recurso revela-se manifestamente infundado e procrastinatório, devendo ser aplicada a multa prevista no art. 557, § 2º, do CPC. 4. Agravo regimental não provido, com aplicação de multa. (Superior Tribunal de

Processo	3000082-95.2025.8.06.0119
	Justiça STJ; AgRg-Ag 1.409.029; Proc. 2011/0056931-2; RJ; Quarta Turma; Rel. Min. Luis Felipe Salomão; DJE 15/10/2013) AGRAVO REGIMENTAL EM AGRAVO EM RECURSO ESPECIAL. AÇÃO DE REPETIÇÃO DE INDÉBITO. DECISÃO MONOCRÁTICA QUE NÃO CONHECEU DO AGRAVO. IRRESIGNAÇÃO DO AUTOR. 1. Razões do regimental que não impugnaram especificadamente os fundamentos invocados na deliberação monocrática. Em razão do princípio da dialeticidade, deve o agravante demonstrar de modo fundamentado o desacerto da decisão agravada. Incidência da Súmula nº 182/stj: "é inviável o agravo do art. 545 do CPC que deixa de atacar especificamente os fundamentos da decisão agravada". 2. Não cabe agravo contra decisão que nega seguimento a Recurso Especial com base no art. 543-c, § 7º, inciso I, do código de processo civil. Precedentes do STJ. 3. Agravo regimental não conhecido, com aplicação de multa. (Superior Tribunal de Justiça STJ; AgRg-AREsp 276.967; 2012/0273353-4; Quarta Turma; Rel. Min. Marco Buzzi; DJE 21/05/2013; Pág. 587) EMBARGOS DE DECLARAÇÃO RECEBIDOS COMO AGRAVO REGIMENTAL NO AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA AOS FUNDAMENTOS DA DECISÃO PROFERIDA PELO TRIBUNAL DE ORIGEM QUE NÃO ADMITIU O RECURSO ESPECIAL. APLICAÇÃO DO ART. 544, § 4º, I, DO CPC. PRINCÍPIO DA DIALETICIDADE, QUE IMPÕE O ATAQUE ESPECÍFICO AOS FUNDAMENTOS. INSUFICIÊNCIA DE ALEGAÇÃO GENÉRICA. PRECEDENTES. MANUTENÇÃO DA DECISÃO ORA AGRAVADA. RECURSO MANIFESTAMENTE INFUNDADO E PROCRASTINATÓRIO. APLICAÇÃO DE MULTA. ART. 557, § 2º, CPC. 1. O agravo que objetiva conferir trânsito ao Recurso Especial obstado na origem reclama, como requisito objetivo de admissibilidade, a impugnação específica aos fundamentos utilizados para a negativa de seguimento do apelo extremo, consoante expressa previsão contida no art. 544, § 4º, inc. I, do CPC, ônus da qual não se desincumbiu a parte insurgente. 2. À luz do princípio da dialeticidade, que norteia os recursos, compete à parte agravante, sob pena de não conhecimento do agravo, infirmar especificamente os fundamentos adotados pelo Tribunal de origem para negar seguimento ao reclamo, sendo insuficiente alegações genéricas de não aplicabilidade do óbice invocado. Precedentes. 3. O recurso revela-se manifestamente infundado e procrastinatório, devendo ser aplicada a multa prevista no art. 557, § 2º, do CPC. 4. Embargos de declaração recebidos como agravo regimental, ao qual se nega provimento, com aplicação de multa. (Superior Tribunal de Justiça STJ; EDcl-AgRg-AREsp 6.709; Proc. 2011/0089612-9; DF; Quarta Turma; Rel. Min. Luis Felipe Salomão; Julg. 26/02/2013; DJE 06/03/2013) ANTE AO EXPOSTO, VOTO pelo não conhecimento do presente recurso de apelação. É como VOTO. Fortaleza, 10 de setembro de 2025 EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator
Processo	0200518-48.2024.8.06.0090
Número de ordem	84
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL

Processo	0200518-48.2024.8.06.0090
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	DAMIAO ALVES BRASIL
Advogado(s) - Polo ativo	ANDREZZA VIANA DE ANDRADE - (CE33333-A) PATRICIA CAJASEIRA DE SA - (CE25193-A) JOYCE SANDY NOGUEIRA TORRES - (CE42463-A)
Polo passivo	FUNDO DE INVESTIMENTO EM DIREITOS CREDITORIOS MULTSEGMENTOS NPL IPANEMA VI - NAO PADRONIZADO
Advogado(s) - Polo passivo	ROBERTO DOREA PESSOA - (BA12407-A) LARISSA SENTO SE ROSSI - (CE45388-A)
Terceiros	Não informado

Processo	0200518-48.2024.8.06.0090
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAS0AAABiCAYAAAAFmoXjAAAACXBIWXMAAA7DAAAOWwHHb6hkAAArhUIEQVR4nO2dB7hdVZXH1yWBIMrwcCgJBngClkQwD0ILQQhFRrEMYxeUXkRRQYrjH0EFFCRlr0b0QFRqsQABAw1hBQSQhOClCSKpZIASUhyZ/3OXjw5Obe+0695b2zvm/zyL3nnrPPOXv/9yr/tfZAKaSQQnKXIQd8e4D+WW/bRtree21TbUO1rW2fbWCHzre2VNSMbX00zdI2V9vimXf/bGVDO96CMrDZHSikd9EBX+KvDthyje831D+f1baTtrUa2LUkwj08qe1GvZ+ZUX9kz2BHcfe5SYzrva3tYW236PUWxeloGrH+/ou2rbXtrG0PbduLAYze17ra1qlzCp4TwpWWtm5L2L7Qs87Tv9O0Pai3s+yOtcHEL9o1y+lvJ08hffDPd2m9/NGIB8UoNWiooO0d8Nq/AFto7UN0M/Oq5zotoKfrO0/xa3a7SBoCzto30+sN/EqhMI+pbZdElzvGG0der2LagF/FmJA9S5tO2g7UNsB4oAKklq7mHCuda3x+/dq21vb8dpe1XanXu9Hej+zqvRjPf1zjrbPJbhuM+Qobd/QdkWUgwwQahGxAc9g21zb7tr207abti3scyZ3sCJV/HSQuMHcLoCFMJF2FWcuzYv4m05xAJBEBtn1eMaZg5a9O7S/j2g71K7Vkvf1TJizjlnjtD2I7VdVjsHcRLNrB8BC3iHumRWg1epiWtK/anufr207S9Os0LDGIBxOBOjGjDxebsMzrBwf3H6zbFpzJwBKX+/hhhYvVvbp7Qdq2241Df5shSeRy0Qb9cxEUkKOGqg2CBn1cfftJ8D8wGtqlOc/6OQNhf9I7xHFpnTtO0pjQOrsLSyryo3KUArZ9HBzYoHIG2jbZQ4s6+Lr6S9TLpCZNXcW6JzqrbDJD8zsJAaUoBWDmJmH45jTD1ACrB6vziHaprVMTcnciG9iy1AH9J2ljgNuc+aYK0sBWhIJGYubCZOizrAGg7TdTm4PaHvp7W9kMG5Ckkg+n4x/4jGnSHuvRbSJCIAK6GYmUD0C4MkRr8G/ip0LDS+JfQqLq1PaPtiW1jtT2u7ZWU5y0kgei7Jrp1grbvSw8JtJAmSQFaMUQHlZ4oIntEbfYRRzXg/4kgpTUVoDQASpO13SuOEPmsttcLFnTzxAdRW9q+o+2dT e5OIVKAVIOJcac6xXGm0Kbkg8ClekfK0wNEC8RpU4+K06YALiDy/ikQRYSTczk/5oUgNV SUoBWhZgTHc1pO3Ga1GhxDOeNZU3uVfXZlk6bmqtjb9oe0fYpBYsKbaq1xMbB4dq+JwVgtZT0e9AybQpnOWHsEeKAaqQ4X9X6KU+PtkTyK9rUg+LMvie0zYqRvtKbrND2ekbnaqSQB5jVM8hUbEwQ9f2hFPy5RkmkvEOKX4KWha5xqG4rjhhlpl9kXLhTaZ8JCa4ktz6m7e/axovTphbG1aZmj9kh6GdJyu8rAagleXDjQ6ZNrjiMyOJF4kxY/G1RKRX45wDitL44gJkBytG7b7q1XS4OuFpRyPOD1jAk5+uw4LwpbtHh/wFxn/aAeyGPETfEIKn+Xt/MqV+M08XSmEWF8fO ctjFRf9BvQMuc6lPFgRO+KcAKExDwSsOd4gWTP0ceGLmB92mbpm22gtTbcU40a8yO9GMdfY+blVxKyGhxWh9pPpgoZO2vBlr4vvTe7tL/nSluJSjqvaBdf6cz2ZQnH6GhHu/WRxo4p+L6odjkr7SiiXOd5JPT85h9PzfCg1M1Wca4B39qK218RVO1hhxzEvfYoQeYRbiavg0SWO74f2N1vbnTn0kcXnQm1/kPxAMSw8E+5ITtQf9FnQMhUf6gEUBF74QeKlgTjR03KnlosbaJRYu csaHKpFcR3os8Z8kh7qRCIvrg8P8/STOIwhLm4mq1MnagKgTf5XrUuWfUb0eV9xzyeJMN D+R68/JehvW0psZKB1f0GyTZHh/Tyv7Y/afisucVxmhlEyl9Q3bx0ME5enSnT5wQZ76IUf9 6fat6iJ7A2XPGVaoRpGpMygoaBRdcmaAJBEEfoobeKyQaFOTtP1Tog2+1WTmb4brc1+JY3 9YuSwfKpUCrY/BiHnXyHfCSro4xe8xTdvRn1ZL0FShN6T1ZYyFTeodqceBDB0rK3o5vqrY woQ2+4C1vASwiuxfaoa0PWiz2QcAEOfDa0CbwxuDtU6zWqJNUaulQcHOGMFVvr8uAPv leuH0493SqncqX93LUt535KUdIHtagSplIMtlbbgfVqc2yALwR90i7Yzt2RfKyalC1PtWk70LL BxUTHWYyZBVdHf/B1p5iKLwtCpMJ5zmUBFJoL2t7K6429dL1w9HsNtHObqc/3LvkWbQikj 6KtNSJQriX/J2UI8miWgMaEUX4fq3jpi9poi0hbQFaobpTTPR4tjomFNoWGmiX6yGVAKFh gBI4ScgkhFbm/rn9TuVpFzGNMvPqgmBakY7xFeP0oBpITmLLYQf1fbBDE7HlneKtj9ISGsp JCQtCVoh7hS+KLQofFPk98GdeleKU3ttCmACoDD7JokjfC6Nq03NuK6LVXmwdnaHclnU5 AtMC2gUWaT1FNI4YfGjJHPaUkEEZygbfGsbmYntJy0DWhYd6RAX0vV1p9CmAK40gwln MaBEpG+suARKfFML4obcn792J9/HrUvUKi+rNIUKIm9oU1IUcyikOUI0Li3FAX4e/qvbCsDK V5oKWlbuAwlfarnnTqGpYGYIdaJXq5AAAtwmneixt6lrRmgfykHJmVij3IRg8qHxEZ0k/FxoU2 0uFsj5d0nOVUMYU/CartTtTyTjhVSUXoKWqFywwAV5MlPikubGSrpBk2Y4InJd4ckrJDwz DU7B0nSJSkn1ZG4S8kN2sz80oqRuWYgXPXqCZ7JHyHPDjffJLQ19pJClktohcNw+ pGk8Lsg5Wetu4UXBI4MET47hdXKSERwfpPq0fwhIj0DVOTbw/V8QDSZvCmqgmnLcECf HCVKTyFpBfe8+Ypfs9YgzD6RDbdabr4FKKWlVwmpO3ZRwgZ7hRmXxblhtEYyGBPFwdS 99vz4mrkk+/akSwP12JfL1SUGoGs4/99NLSJrlQrzVi3gJU3CcT4tWND5m2tJkd62timj8LaZ oyQ/hLr+1DZiHdzGd9Ng+36j1AlqhTSqZ9JhSfs++tHWnYGyTcGbutf+8u834mpTT165y9ol 9qYrsbKW0aQ8bwogRTN5U9wHZgX3xc7BgBTJ1jO0Ldr00Kkt/ZrY0HTH5HyHHELW2D6i mAB/UBbAzqv8zZ3WYTJXb0/jhsnMWGZdwqfJJS37GMNIeY2d8rn9MFCZ/KiaRD1ey0u6k+ 7cldU3KAccknKkFABKSJEAGmztSmSUvGdKLPnQeoZBdR5gw99oiVxtz4qaP5bpf9k+7 WulnxbSBbWmuEsBP3x8RVQokksUHLsuABgM+ly++DmZ4mFQU0nyHOJ4U2xQsmtEvs nL6pV+zqo5GeNzVSGcCbpc200zFt54qjWhDRBKgAZiKaywYfOqXQppojm1hLKr6gYyHJB SUCWIM+oKWABWmSSo5HSfLiaOEKCUxeak7hm5obl98y5fLdLPO9vFWpJLvrzAeo4E2h 4jaTNwUikb4RNvkm2L8Xb/alAqRaRAi0pCERyXbOzqgv/Vli+bkjg5ZpWAAW9Zfikj3DFRLQp oiCxdamJl2+u6dMvEdNvuEGUpH+qPhpE6TTCuRCvzEFVSDQHfK9Fgz98uTEVIUQTYQJ RiHBBRn0tRanaak2LLZxih8WkoHE0bQAhYmKGMCFZC63iyN4JqqQ8PhluxtSrZQkw+/2 UGqVUFGbTzVsrsjC0uOZnG3NbTH2VscNiIvZpnRRPDH4VcYlC7uhzLCrsa3pTI3lasJC3G ahe7ZYgOSxksk0LJJBmmyo85hYecy2hS+G3L8YhM8J1w6cm2rN7Wt1ZsK86aaGekjmm 1KQqwoTkCzAu2PGxiWm2KCYRtD4eN+yX6CIAR3eT54+xNmxtXiJcBwaPCOMUZEn/dmf SlkFgSVdPCPzS84jNflAwNilpTABWaRbCjrmKb9kpONNIQKn/q5m9hGKRn1P43NIK97/5 ksp06bbZ2+/9/BjVbZUFVvUgZQLgCoUfb+m0rzmfd9XkprBUP/3SIOWSLyWja9KSSORAut AArHMpoG2hQRE0DKb4G1MK6a/MjFI4ONTxWohukP9ym5pFWK90GjaFakj/v0/jd8Ur5Ca eB/2+rwYINASpCmknlrQSk0KYg36Jdpd1DsZDYEGyxNMEaxkpfzq0hUQFLfgop2m7QJzJ F3sLrlcu3INHsVBvauuSIFSLKuOfgoXe7HpTpAMBSgDxfYXIO5+3xET0ph8Pn2pU5zW6HI i+KnwVzUzaFBIOfBYpCkrzPstKns0QSKBlmRz1mLLA9ctCeRmcGqTe0oZaGMC7wueFM dKOhNquzK6kiYGjMPugWmLebfnG2PnJB45QVgVIV30iU9IEUNSKK+VotJeUXwqiPVAFNF vHfSIMIO9zDcRfuGwgXCLbKcJtEareC8qTqW5jybCksmHq8wqR40tOm8KR/rL++63tj5yQ hV/K75BCHpvPCsg6r5N+FuZIVlIOEG/S0EcY6xtl05l+LYzpWLSRVBNr3iV7+XpTtk1XkNNH AjJ+mzTJ0WkFlj075YRz+SB2vr79UY8l3msvtlkGUT3uE23K+6XyMBXoa7e4jAHuY3wO1+j

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Processo	0200518-48.2024.8.06.0090
	align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> "FUNDAMENTAÇÃO </p><p style="padding-left: 210px;" align="justify"> Inicialmente, indefiro os pedidos de prova pericial, para julgar antecipadamente o mérito, nos termos do art. 355, I do CPC.</p><p style="padding-left: 210px;" align="justify"> Isso pois, a prova pericial busca constatar a existência e validade do contrato de nº 20027569926 que já foi declarado inexistente nos autos de Processo nº 3001590-71.2022.8.06.0090. Vejamos trecho do dispositivo. </p><p style="padding-left: 270px;" align="justify"> Diante do exposto, julgo PROCEDENTES os pedidos formulados na exordial, nos seguintes termos: </p><p style="padding-left: 270px;" align="justify"> a)&#160;Declaro inexistente o negócio jurídico que gerou a&#160;negativação indevida do nome do autor junto aos órgãos de proteção ao crédito, referente ao contrato nº&#160;20027569926, devendo a parte requerida cancelar a inscrição do nome do demandante junto aos órgãos de proteção ao crédito, caso ainda não o tenha feito, no prazo de 5 (cinco) dias úteis, a contar da intimação desta sentença, sob pena de multa diária de R\$&#160;500,00 (quinhentos&#160;reais) por dia de atraso, limitada a R\$&#160;5.000,00 (cinco&#160;mil reais). Devendo a requerida, ainda, abster-se de gerar novas dívidas e/ou novas negativações advindas do mesmo negócio jurídico. </p><p style="padding-left: 270px;" align="justify"> Determino a expedição de &#160;mandado de intimação pessoal, o qual deve&#160;especificar a necessidade de cumprimento da liminar, sob pena de incidência de multa diária&#160;(astreintes). </p><p style="padding-left: 270px;" align="justify"> b) Condeno a promovida ao pagamento de R\$ 5.000,00 (cinco mil reais) a título de danos morais, atualizados com correção monetária pelo INPC, a contar da data desta sentença (Súmula 362 do STJ), e juros de mora, a contar da data do evento danoso&#160;(16/04/2021)&#160;(Súmula 54 do STJ), no percentual de 1% ao mês; </p><p style="padding-left: 270px;" align="justify"> Nesta senda, nos termos do art. 502 do CPC, denomina-se coisa julgada material a autoridade que torna imutável e indiscutível a decisão de mérito não mais sujeita a recurso. </p><p style="padding-left: 210px;" align="justify"> Assim, a análise de mérito do pedido de “declarar a inexistência do contrato nº 20027569926 realizado mediante fraude, bem como o débito que ele representa” resta prejudicado pela coisa julgada (art. 485, V do CPC). </p><p style="padding-left: 210px;" align="justify"> Quanto ao pedido de condenação do requerido em danos morais, sob o fundamento de que o requerido promoveu execução de título extrajudicial referente ao contrato nº 20027569926, sendo que este é inexistente, concluo pela improcedência. </p><p style="padding-left: 210px;" align="justify"> Isso pois, a execução que tramita nos autos de nº 0000245-63.2018.8.06.0090 foi proposta em julho de 2018 e o processo de pedido de declaração de inexistência foi apresentado em 2022, com sentença proferida em 2023, ainda que nesta o requerido só venha ter sido citado em momento posterior. </p><p style="padding-left: 210px;" align="justify"> Ademais, da análise daquele processo, verifico que a constrição apenas ocorreu devido a inércia do autor em se manifestar naqueles autos, quando oportunizada sua manifestação, inclusive para informar que sobreveio sentença judicial que declarou a nulidade do título executivo. Ainda nesse ponto, a nulidade da referida execução deve ser objeto daqueles autos e não deste, sendo via inadequada para se discutir a nulidade da execução que ainda está em trâmite naqueles autos. </p><p style="padding-left: 210px;" align="justify"> Assim, não restou configurado dano, nem abalo de ordem moral, pelo requerido em face do autor, apto a configurar o dever de indenizar previsto no Código Civil. </p><p style="padding-left: 210px;" align="justify"> Por fim, é evidente que a parte autora litigou de má-fé quando reproduziu ação anteriormente proposta, na qual já tinha obtido resposta do judiciário sobre a questão, não restando dúvidas de que agiu de má-fé, na tentativa de perceber danos morais por ação o qual foi proposta antes do pedido de nulidade do título, quedando-se inerte nos autos de execução quando deveria ter se manifestado. </p><p style="padding-left: 210px;" align="justify"> Dessa forma, configurada a litigância de má-fé, nos termos do art. 80, I, II, VI do CPC, a aplicação das penalidades

Processo	0200518-48.2024.8.06.0090
	previstas pelo artigo 81 do CPC é medida que se impõe, o qual arbitro de ofício. DISPOSITIVO Ante o exposto, julgo IMPROCEDENTES OS PEDIDOS AUTORAIS, com fulcro no art. 487, I do CPC, extinguindo parcialmente o processo, sem resolução de mérito, por coisa julgada, no que concerne o pedido de “declarar a inexistência do contrato nº 20027569926 realizado mediante fraude, bem como o débito que ele representa”, com fulcro no art. 485, V do CPC. Nada obstante, sustenta o apelante que “ajuizou a presente ação após tomar ciência do processo de execução de nº 0000245-63.2018.8.06.0090, em 21 de março de 2024, quando foi efetivamente citado” e que “ao analisar os elementos constantes nos autos da referida execução, constatou tratar-se do mesmo contrato que ensejou, indevidamente, a restrição de seu nome junto aos órgãos de proteção ao crédito e que foi declarado inexistente por decisão judicial transitada em julgado, proferida no processo nº 3001590-71.2022.8.06.0090”. Sustenta, ainda, que “não obstante, o Apelado deu continuidade à execução de título extrajudicial fundado nesse mesmo contrato, o que resultou, inclusive, na constrição judicial de seu único bem, uma motocicleta, em 15 de setembro de 2024.” Sustenta, também, que “conforme demonstrado na réplica à contestação (Id. 112775509) e na manifestação sobre provas (Id. 141050395), o Apelado tinha plena ciência da existência da sentença que reconhecia a inexistência do contrato” e que “ainda assim, de forma dolosa e reiterada, insistiu em promover constrições com base no mesmo título declarado inexistente, realizando, inclusive, buscas patrimoniais e impondo restrições indevidas. Trata-se, portanto, de flagrante violação à boa-fé objetiva, uma vez que a conduta do Apelado transcende o mero erro administrativo, assumindo contornos de abuso de direito, situação esta passível de severa reprimenda jurídica”. E que “somente tomou ciência do processo de execução em comento em 21 de março de 2024, ocasião em que foi devidamente citado, conforme mandado anexo. Na mesma oportunidade, apresentou, de forma tempestiva, embargos à execução, por meio do processo nº 0200517-63.2024.8.06.0090, os quais foram acolhidos, conforme se observa na sentença também em anexo”. Sustentou, ademais, que “o argumento de que a constrição decorreu de inércia do Recorrente não se sustenta, uma vez que ele somente foi citado no processo de execução em 21 de março de 2024, de forma que não há que se falar em omissão ou desídia, uma vez que opôs tempestivamente embargos à execução” e que “o processo de execução, inclusive, foi impulsionado após a oposição dos embargos à execução, sendo que a constrição do bem do Recorrente ocorreu posteriormente, em 15 de setembro de 2024, ou seja, quando os embargos já tramitavam regularmente. Tal prática causou ao Apelante angústia, constrangimento e abalo psicológico considerável, especialmente diante do fato de tratar-se de seu único bem, atingido por dívida inexistente, já declarada judicialmente”. Sustentou, por fim, que “o dano moral sofrido não se origina da discussão sobre a validade do contrato, mas da persistência deliberada do Apelado em praticar atos executórios com base em título sabidamente inexigível. O dano, portanto, é resultado direto da execução abusiva, promovida mesmo após decisão definitiva, configurando fato novo e autônomo, que não se confunde com o objeto da demanda anterior” e que “a alegação do juízo a quo, no sentido de que o Apelante teria se mantido inerte nos autos da execução, não tem o condão de afastar a ilicitude da conduta do Apelado. Isso porque a obrigação de cessar os atos executórios decorre da ciência inequívoca da inexistência do contrato, e não da provocação da parte contrária. A omissão judicial em reconhecer esse ponto inverte a lógica da proteção ao jurisdicionado, transferindo à vítima a responsabilidade por fazer cessar um ato manifestamente ilícito”. Requeru o provimento do recurso para o fim de reformar a sentença e julgar procedente a ação com a condenação do apelado ao pagamento de danos morais. Alternativamente, caso mantida a sentença que seja afastada a cominação em litigância de má-fé. Contrarrazões ofertadas ao ID 26984637.

Processo	0200518-48.2024.8.06.0090
	size: medium;">É o relatório adotado. </p><p align="justify">&#160;</p><p style="text-align: center;"> V O T O - </p><p align="justify">&#160;</p><p align="justify"> Conheço do recurso, posto vislumbro presentes os requisitos de admissibilidade previstos no CPC. </p><p align="justify">&#160;</p><p align="justify"> Segundo denota-se da peça vestibular deste processo busca o autor a declaração de inexistência de vínculo contratual, bem como a indenização por danos morais contra a demandada, sob o fundamento de que esta "insiste em promover a execução de título executivo extrajudicial que NÃO FORA REALIZADO PELO REQUERENTE, agindo, portanto, com dolo e absoluta má-fé, pois promove execução de título sabidamente inexigível". </p><p align="justify">&#160;</p><p align="justify"> Pois bem. </p><p align="justify">&#160;</p><p align="justify"> De fato, em maio de 2018 o ora apelante foi demandado em ação de busca e apreensão (0000245-63.2018.8.06.0000) ajuizada por Aymoré Crédito, Financiamento e Investimento S/A, a qual teve como fundamento o descumprimento do contrato de financiamento de nº 20027569926. </p><p align="justify">&#160;</p><p align="justify"> No bojo dessa ação, em 1º de junho de 2021, foi comunicada a substituição do polo ativo da demanda, que passou a ser composto pela empresa FUNDO DE INVESTIMENTO EM DIREITO CREDITÓRIOS MULTISEGMENTOS NPL IPANEMA VI – NÃO PADRONIZADOS, o qual adquiriu, mediante cessão, os direitos creditórios da AYMORÉ. </p><p align="justify">&#160;</p><p align="justify"> Referida Ação de Busca e Apreensão restou convertida em ação de Execução na data de 18 de agosto de 2023. </p><p align="justify">&#160;</p><p align="justify"> Em paralelo à tramitação da dita ação de execução, o ora apelante ajuizou uma ação de Declaratória de Inexistência de Débito c/c Danos Morais (processo 3001590-71.2022.8.06.0090) que foi sentenciada em 17 de janeiro de 2023 e cuja parte dispositiva a seguir transcrevo: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> a) Declaro inexistente o negócio jurídico que gerou a negativação indevida do nome do autor junto aos órgãos de proteção ao crédito, referente ao contrato nº 20027569926, devendo a parte requerida cancelar a inscrição do nome do demandante junto aos órgãos de proteção ao crédito, caso ainda não o tenha feito, no prazo de 5 (cinco) dias úteis, a contar da intimação desta sentença, sob pena de multa diária de R\$ 500,00 (quinhentos reais) por dia de atraso, limitada a R\$ 5.000,00 (cinco mil reais). Devendo a requerida, ainda, abster-se de gerar novas dívidas e/ou novas negativações advindas do mesmo negócio jurídico; </p><p style="padding-left: 210px;" align="justify"> Determino a expedição de mandado de intimação pessoal, o qual deve especificar a necessidade de cumprimento da liminar, sob pena de incidência de multa diária (astreintes).</p><p style="padding-left: 210px;" align="justify"> b) Condeno a promovida ao pagamento de R\$ 5.000,00 (cinco mil reais) a título de danos morais, atualizados com correção monetária pelo INPC, a contar da data desta sentença (Súmula 362 do STJ), e juros de mora, a contar da data do evento danoso (16/04/2021) (Súmula 54 do STJ), no percentual de 1% ao mês;</p><p style="padding-left: 210px;" align="justify"> &#160; </p><p align="justify">&#160;</p><p align="justify"> Tal sentença não foi objeto de recurso, tendo o FUNDO DE INVESTIMENTO ali demandado, inclusive, procedido ao pagamento da indenização correspondente em 15 de fevereiro de 2023. </p><p align="justify">&#160;</p><p align="justify"> Ora, o FUNDO DE INVESTIMENTO, desde 1º de junho de 2021, já ocupava o polo passivo da ação de busca e apreensão, posteriormente convertida em execução a pedido do próprio FUNDO DE INVESTIMENTO sendo que a conversão perfectibilizou-se em 18 de agosto de 2023, como dito em linhas pretéritas. </p><p align="justify">&#160;</p><p align="justify"> Naquela data (18/08/2023) o FUNDO credor já tinha ciência e consciência de que aquele contrato que originou a ação de busca e apreensão, que depois veio a ser convertida em execução, estava declarado ineficaz pelo Poder

Processo	0200518-48.2024.8.06.0090
	Judiciário, eis fora declarada a própria inexistência do negócio jurídico. Ressalte-se que, até então, o ora apelante NÃO tinha conhecimento da ação de execução que tramitava contra si, a contrário do credor, que já sabia da declaração de nulidade do contrato, tanto que não recorreu da sentença proferida na ação declaratória e ainda procedeu ao pagamento dos danos morais lhe imposto pela sentença. Não havia como o demandado na ação de execução (ora apelante) comunicar ao juízo respectivo a existência da ação declaratória, porquanto, naquela execução somente foi citado em 21 de março de 2024 (ID 101167119, do processo de execução) e, imediatamente, ajuizou a competente Ação de Embargos à Execução em 12 de abril de 2024 (processo 0200517-63.2024.8.06.0090). Dito tudo isto é preciso que a petição inicial da ação em curso nestes autos (0200518-48.2024.8.06.0090) exora pela declaração de inexistência de contrato a qual já havia sido declarada nos autos do processo nº 3001590-71.2022.8.06.0090, em sede do qual, inclusive, foi o FUNDO DE INVESTIMENTO condenado a pagar dano moral pela negativação do nome do apelante nos cadastros de inadimplentes. Vejamos: No caso, não se observa a comprovação de contratação ou inadimplência de negócio jurídico celebrado entre a parte autora e a parte requerida. O dano moral decorre do próprio fato da inscrição negativa (...) Portanto, há falha na conduta da promovida, consistente em negatar o nome do autor em virtude de suposta dívida que não conseguiu demonstrar a existência, a gerar o dano moral. O dano moral decorre do próprio fato da inscrição negativa (...) Portanto, com relação a este ponto (declaração de nulidade) assiste razão à sentença com relação à extinção deste pleito pela força da coisa julgada eis que, se já havia sido declarado a inexistência do negócio jurídico, era defeso à parte repetir o pedido. Todavia, é de se ver que o fundamento da peça vestibular para requestar o pedido de indenização por danos morais cinge-se ao fato de que, nas palavras do autor, o FUNDO “insiste em promover a execução de título executivo extrajudicial que NÃO FORA REALIZADO PELO REQUERENTE, agindo, portanto, com dolo e absoluta má-fé, pois promove execução de título sabidamente inexigível.” Neste ponto, merece a primeira observação de que a ação de busca e apreensão (depois convertida em execução) fora ajuizada no ano de 2018, portanto, bem anterior à discussão travada acerca da validade do contrato. Contudo, a segunda observação, decorre do fato de que desde o mês de fevereiro de 2023, repito, o FUNDO credor já tinha ciência e consciência de que aquele contrato que originou a ação de busca e apreensão, que depois veio a ser convertida em execução, estava declarado ineficaz pelo Poder Judiciário, eis que fora declarada a própria inexistência do negócio jurídico. E, tendo a continuidade do processo de execução atingido a esfera jurídica do autor, ora apelante, posto que houve o gravame/bloqueio de um veículo (moto) em setembro de 2024, compreendo, neste caso, ser cabível a pleiteada indenização por danos morais a ser paga ao apelante. Dano moral – Sobre o dano moral, enxergo que é evidente a perturbação sofrida pelo autor da demanda, em decorrência do ocorrido, ao ver a continuidade de um processo de execução contra si e ao bloqueio no sistema RENAJUD de veículo de sua propriedade, quando a execução haveria de ter sido interrompida a pedido do exequente diante da declaração de inexistência do negócio jurídico que originou a ação. Fixação

Processo	0200518-48.2024.8.06.0090
	– Fatores Para quantificar a indenização por danos morais deve se levar em conta, dentre outros fatores, a extensão do dano, as condições socioeconômicas dos envolvidos e o sofrimento da vítima. Desse modo, tem-se que a indenização deve se dar de forma equânime e atentar à razoabilidade, a fim de evitar o enriquecimento ilícito da parte autora, mas sem deixar de punir a parte ré pelo cometimento do ato ilegal. E mais, para evitar excessos e abusos, só se deve reputar como dano moral a dor, o sofrimento, que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. Citando os critérios a serem observados no arbitramento judicial do dano moral, Humberto Theodoro Júnior (Dano Moral, 5ª ed. p.43/51), destaca: E, para aproximar-se do arbitramento que seja prudente e equitativo, a orientação maciça da jurisprudência, apoiada na melhor doutrina, exige que o arbitramento judicial seja feito a partir de dois dados relevantes: a) o nível econômico do ofendido; b) o porte econômico do ofensor, ambos cotejados com as condições em que se deu a ofensa. (...) Em suma: a correta estimação da indenização por dano moral jamais poderá ser feita levando em conta apenas o potencial econômico da empresa demandada. É imperioso cotejar-se também a repercussão do ressarcimento sobre a situação social e patrimonial do ofendido, para que lhe seja proporcionada satisfação na justa medida do abalo sofrido sem enriquecimento sem causa. Neste sentido, cito decisões jurisprudenciais do Superior Tribunal de Justiça (STJ), vejamos: “Na fixação do valor da condenação por dano moral, deve o julgador atender a certos critérios, tais como nível cultural do causador do dano; condição socioeconômica do ofensor e do ofendido; intensidade do dolo ou grau da culpa (se for o caso) do autor da ofensa; efeitos do dano no psiquismo do ofendido e as repercussões do fato na comunidade em que vive a vítima”. (REsp 355392 / RJ, rel. Min. Castro Filho) “Na fixação da indenização por danos morais, recomendável que o arbitramento seja feito com moderação, proporcionalmente ao grau de culpa, ao nível socioeconômico dos autores, e ainda, ao porte da empresa recorrida, orientando-se o juiz pelos critérios sugeridos pela doutrina e pela jurisprudência, com razoabilidade, valendo-se de sua experiência e do bom senso, atento à realidade da vida e às peculiaridades de cada caso” (REsp 135.202-0-SP, 4ª Turma. Rel. Min. Sálvio de Figueiredo Teixeira) No caso, considero consentâneo, razoável e proporcional o valor de R\$ 1.000,00 (um mil reais), a título de indenização, frente ao quadro fático delineado nos autos, eis que apesar da existência do gravame, não há provas nos autos, por exemplo, de que o apelante tenha sido impedido de trafegar com o bem. ANTE AO EXPOSTO, conheço e dou parcial provimento ao apelo para reformar a sentença e julgar parcialmente procedente a ação originária, com relação ao pedido de danos morais, fixando-os em R\$ 1.000,00 (um mil reais) corrigidos monetariamente pelo IPCA e juros pela Taxa Legal calculada na forma do art. 406, § 1º do CC/2002, com redação dada pela Lei nº 14.905/2024, a partir da data do desembolso, afastando a litigância de má-fé imposta na sentença. A reforma parcial da sentença impõe a adequação dos ônus sucumbenciais e,

Processo	0200518-48.2024.8.06.0090
	vencidos parte autora/apelante e parte promovida/apelada, as despesas processuais e honorários advocatícios, que ora fixo em R\$ 1.000,00 (um mil reais), devem ser rateados na mesma proporção para ambas as partes, com a observância, no entanto, da disposição do §3º, do art. 98 do CPC em relação ao Recorrente, beneficiário da gratuidade da justiça. É como VOTO. Fortaleza, 10 de setembro de 2025. Relator EDUARDO DE CASTRO NETO Juiz de Direito, convocado
Processo	0200392-09.2022.8.06.0109
Número de ordem	85
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	ERIVAN CICERO DE LIMA
Advogado(s) - Polo ativo	JUNIOR SOUSA AGUIAR - (CE38185-A) ALEANDRO LIMA DE QUEIROZ - (CE33211-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	PAULO EDUARDO PRADO - (CE24314-A)
Terceiros	Não informado

Processo	0200392-09.2022.8.06.0109
	style="text-align: justify;"> Juiz Convocado Relator</p><p style="text-align: justify;"> ¶</p><p style="text-align: justify;"> RELATÓRIO </p><p style="text-align: justify;"> Trata-se de Recurso de Apelação interposto por Erivan Cícero de Lima em face da sentença prolatada pelo juízo da Vara Única da Comarca de Jardim, que julgou parcialmente procedentes os pedidos contidos na ação Anulatória de Tarifas Bancárias c/c Indenização por de Danos Morais e Materiais, proposta em desfavor do Banco Bradesco S/A., o que fez nos seguintes termos:</p><p style="text-align: justify;"> (...) Ante o exposto, com fundamento no art. 487, inciso I, do Código de Processo Civil, julgo parcialmente procedentes os pedidos formulados na presente e, como corolário:</p><p style="text-align: justify;"> a) declaro a nulidade parcial do negócio jurídico gerador dos descontos impugnados na petição inicial, apenas para afastar a cobrança de tarifas, e concedo a tutela provisória de urgência, pela evidência do direito, determinando que a promovida efetue a cessação dos descontos, sob pena de multa que poderá ser fixada em cumprimento de sentença;</p><p style="text-align: justify;"> b) condeno a parte ré a devolver o valor cobrado indevidamente com incidência em simples, monetariamente corrigido, pelo IPCA e acrescido de juros moratórios segundo o referencial da Taxa Selic, devidos a partir de cada cobrança antes do dia 30/03/2021,</p><p style="text-align: justify;"> c) condeno a parte ré a devolver o valor cobrado indevidamente com incidência em dobro, monetariamente corrigido, pelo IPCA e acrescido de juros moratórios segundo o referencial da Taxa Selic, devidos a partir de cada cobrança indevida a partir do dia 30/03/2021,</p><p style="text-align: justify;"> Fica autorizada&#160;a compensação com os valores disponibilizados à parte autora, caso haja comprovação.</p><p style="text-align: justify;"> Em razão da sucumbência recíproca, condeno ambas as partes ao pagamento das custas processuais e dos honorários advocatícios em favor do advogado da parte contrária, no percentual de 10% (dez) por cento incidente sobre o proveito econômico obtido na ação, a ser dividido na proporção de 20% (vinte por cento) para o autor e 80% (oitenta por cento) para o réu</p><p style="text-align: justify;"> Em suas razões recursais, a autora/recorrente sustenta que “no tocante ao dano moral, a r. Sentença deixou de fixar qualquer valor em dano moral, sendo a parte autora vítima da atuação do banco réu, pois o mesmo sequer colacionou nos autos contrato, em nenhum momento há qualquer autorização da requerente”.</p><p style="text-align: justify;"> Argumenta, em seguida, que “necessário se faz a apuração da quantidade dos descontos para calcular o dano moral, pois a parte autora no mínimo já pagou mais de R\$ 1.000,00 de descontos indevidos para o enriquecimento ilícito do réu. Tal conduta afetou com clareza solar a parte autora abalando seu psicológico, pois um senhor idoso, semianalfabeto e de poucos proventos teve seu único sustento afetado em prol da riqueza ilícita do apelado, mediante a prática de crimes tipificados”.</p><p style="text-align: justify;"> Sustenta, ainda, que “a indenização por dano moral possui tripla função, a compensatória, para mitigar os danos sofridos pela vítima; a punitiva, para condenar a parte autora da prática do ato ilícito lesivo, e a preventiva, para dissuadir o cometimento de novos atos ilícitos. Ainda, o valor da indenização deverá ser fixado de forma compatível com a gravidade e a lesividade do ato ilícito e as circunstâncias pessoais dos envolvidos”.</p><p style="text-align: justify;"> Sustenta, em seguida, que “o dano moral sofrido pela parte autora deve ser condenado para o montante de no mínimo de R\$ 10.000,00 (dez mil reais), o qual importará tanto na condenação, punição e prevenção para novos ilícitos, nem menos para fortalecer a reincidência, nem mais para dar causa ao enriquecimento sem causa”.</p><p style="text-align: justify;"> Ao final, requer o conhecimento e provimento do presente recurso para reformar a sentença recorrida, no sentido de condenar o banco/apelado ao pagamento de indenização por danos morais bem como a condenação ao pagamento dos honorários advocatícios nos termos do art. 85 do CPC.</p><p style="text-align: justify;"> Contrarrazões Id. 27014226.</p><p style="text-align: justify;"> É o que importa relatar.</p><p style="text-align: justify;"> ¶</p><p style="text-align: justify;"> VOTO </p><p style="text-align: justify;"> Exercendo juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso.</p><p style="text-align: justify;"></p>

Processo	0200392-09.2022.8.06.0109
	align: justify;">Entendeu o juízo de primeiro grau em acolher parcialmente os pedidos autorais declarando a nulidade parcial do negócio jurídico gerador dos descontos impugnados na petição inicial, afastando a cobrança de tarifas bancárias, condenando o banco/promovido na devolução de forma simples dos valores descontados indevidamente anterior à 30/03/2021 e dobrada dos valores descontados posteriormente, no entanto, indeferiu o pedido de indenização por danos morais, ao fundamento da inexistência de demonstração mínima de abalo à dignidade, à honra, à imagem que tenha sido suportado pela parte autora.</p><p style="text-align: justify;">O cerne da controvérsia recursal consiste na possibilidade do banco/apelado ser condenada a título de danos morais em razão de desconto indevido denominados "tarifa bancária", ocorridos na conta-salário do autor/apelante.</p><p style="text-align: justify;">A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I e II, do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito do autor.</p><p style="text-align: justify;">Desse modo, tendo o autor/apelante comprovado a existência de descontos em sua conta-salário (Id.27013577), recairia sobre o banco/recorrido o ônus de comprovar a regularidade dos descontos, o que não ocorreu.</p><p style="text-align: justify;">No caso, a entidade bancária não logrou êxito em eximir-se de sua responsabilidade, tendo em vista que não apresentou o instrumento contratual referente à conta bancária da parte demandante, com cláusulas que especifiquem a origem e a legitimidade das tarifas cobradas, ou ainda, documentos essenciais à comprovação de suas sustentações defensivas, idôneos a impedir, modificar ou extinguir o direito alegado pela parte autora, nos termos do art. 373, inciso II do Código de Processo Civil.</p><p style="text-align: justify;">Assim, demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, o qual enseja pronta reparação dos danos causados, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro.</p><p style="text-align: justify;">Pois bem. Definida a nulidade dos descontos e o dever de restituição dos valores descontados indevidamente - inclusive não há insurgência nestes pontos, cumpre verificar o pedido de danos morais.</p><p style="text-align: justify;">Dano moral -</p><p style="text-align: justify;">Os descontos indevidos realizados na conta-salário do requerente/apelante, constituem ato ilícito, na medida em a promovida/recorrida deixou de agir com o cuidado necessário para o regular desenvolvimento de sua atividade, causando danos e resultando, por via de consequência, na obrigação de repará-los, na forma dos arts. 186 e 927 do Código Civil.</p><p style="text-align: justify;">É nesta conduta, por certo, censurável, onde se centra o nexo de causa e efeito entre o dano e a ação (conduta), porque causou vexame, constrangimento ao consumidor, caso em que a condenação é devida porque os efeitos de tal prática afetam a pessoa com mais extensão e com repercussão no mundo exterior, não confinados apenas à indignação pessoal ou um mero aborrecimento.</p><p style="text-align: justify;">A respeito:</p><p style="text-align: justify;">APELAÇÕES RECÍPROCAS. SENTENÇA PARCIALMENTE PROCEDENTE DA AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. TARIFA BANCÁRIA. PRELIMINARES REJEITADAS. RESOLUÇÃO Nº 3402/2006. VEDAÇÃO EXPRESSA ÀS INSTITUIÇÕES FINANCEIRAS DA COBRANÇA DE ENCARGOS NA PRESTAÇÃO DE SERVIÇOS EM CONTA PARA PAGAMENTO DE SALÁRIOS, VENCIMENTOS, APOSENTADORIAS RELATIVAS A SAQUES DOS CRÉDITOS E TRANSFERÊNCIAS DOS CRÉDITOS. APREGOADA A GARANTIA DAS FACILIDADES DO PACOTE DE TARIFA ZERO . A CASA BANCÁRIA NÃO APRESENTA O INSTRUMENTO DE CONTRATAÇÃO DO SERVIÇO PERTINENTE. APLICAÇÃO DA SÚMULA Nº 479, STJ. RESPONSABILIDADE OBJETIVA. REPETIÇÃO DO INDÉBITO ESCORREITA. DANOS MORAIS CONFIGURADOS. ARBITRAMENTO REDIMENSIONADO PARA ADEQUAÇÃO AOS PARÂMETROS DA CORTE. PRECEDENTES DO STJ E DO TJCE. DESPROVIMENTO DO APELATÓRIO DA CASA BANCÁRIA E PROVIMENTO DO APELO DO AUTOR. 1. Trata-se de Apelações interpostas por ambas as partes em face de sentença proferida pelo Juízo da Vara única de Chaval que, em sede de Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Morais e Materiais, julgou a demanda parcialmente procedente. 2. Preliminares rejeitadas. 3. A questão recursal é saber se o contrato foi devidamente pactuado com todas as exigências previstas em lei e, em caso negativo, verificar-se-á a possibilidade de reparação por danos morais e materiais. 4. O Banco Central do Brasil, no âmbito de sua competência regulatória, editou a Resolução nº 3402/2006 que vedou às instituições financeiras a cobrança de encargos na prestação de serviços em conta para pagamento de salários, vencimentos, aposentadorias relativas a

Processo	0200392-09.2022.8.06.0109
	saques dos créditos e transferências dos créditos. 5. Contudo, não houve a exibição da avença por parte do banco, documento imprescindível ao deslinde. Ademais, a instituição bancária trouxe para os autos um termo de adesão a CESTA DE SERVIÇOS BRADESCO EXPRESSO 03 (fls. 118/125), contrato este diverso do objeto da lide, visto que se trata de descontos referentes a TARIFA BANCÁRIA CESTA BRADESCO EXPRESSO 4 E TARIFA BANCÁRIA CESTA B.EXPRESSO 4. 6. Sobre entendimento do STJ da repetição do indébito, a parte promovida deve restituir os valores descontados indevidamente na forma simples (os que ocorreram no período compreendido até 30 de março 2021) e a restituição em dobro daqueles ocorridos após 30 de março 2021, ressalvada a prescrição parcial de 5 anos. 7. Em casos desse jaez, a rotina forense arbitra os Danos Morais na órbita de R\$ 5.000,00 (cinco mil reais), por atender aos Princípios da Razoabilidade e da Proporcionalidade, os quais comunicam a Justiça. Portanto, imperioso o redimensionamento da reparação para R\$ 5.000,00 (cinco mil reais) valor consentâneo aos parâmetros da Corte. 8. DESPROVIMENTO do Apelatório da Casa Bancária e PROVIMENTO do Apelo do Autor para redimensionar a Reparação Moral para o importe de R\$ 5.000,00 (cinco mil reais) consagradas as demais disposições sentenciasais, assegurada a majoração os honorários advocatícios em 5% (cinco por cento) sobre o valor fixado na origem, observado o limite do percentual previsto no art. 85, § 2º, CPC/15. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, pelo Desprovemento do Apelatório do Banco e Provimento do Apelo do Autor, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADORA CLEIDE ALVES DE AGUIAR Presidente do Órgão Julgador DESEMBARGADOR PAULO DE TARSO PIRES NOGUEIRA Relator (TJ-CE - Apelação Cível: 02002388320238060067 Chaval, Relator.: PAULO DE TARSO PIRES NOGUEIRA, Data de Julgamento: 30/10/2024, 3ª Câmara Direito Privado, Data de Publicação: 30/10/2024)</p></p><p style="text-align: justify;">#160;</p><p style="text-align: justify;">DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL E RECURSO ADESIVO. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO CUMULADA COM INDENIZAÇÃO POR DANOS MORAIS. COBRANÇA INDEVIDA DE TARIFAS BANCÁRIAS EM CONTA-SALÁRIO. AUSÊNCIA DE COMPROVAÇÃO DA CONTRATAÇÃO. PRÁTICA ABUSIVA. DEVOLUÇÃO EM DOBRO. DANO MORAL CONFIGURADO. MANUTENÇÃO DO QUANTUM INDENIZATÓRIO. INCIDÊNCIA DE CORREÇÃO MONETÁRIA E JUROS DE MORA. PROVIMENTO PARCIAL DO RECURSO ADESIVO. DESPROVIMENTO DA APELAÇÃO . I. CASO EM EXAME 1. Apelação Cível interposta pelo Banco Bradesco S/A e Recurso Adesivo interposto por Antônia Darci Bezerra Soares contra sentença proferida em Ação Declaratória de Inexistência de Débito cumulada com Indenização por Danos Morais. A sentença de primeiro grau declarou a inexistência dos débitos, condenou a instituição financeira à devolução em dobro dos valores descontados e ao pagamento de indenização por danos morais fixada em R\$ 3 .000,00 (três mil reais). II. QUESTÃO EM DISCUSSÃO 2. Há três questões em discussão: (i) verificar a validade da cobrança de tarifas bancárias incidentes sobre conta utilizada para recebimento de benefício previdenciário; (ii) definir a adequação da devolução dos valores descontados em dobro; (iii) analisar a pertinência da indenização por danos morais e o valor fixado . III. RAZÕES DE DECIDIR 3.A relação entre as partes configura-se como consumerista, conforme os artigos 3º e 17 do Código de Defesa do Consumidor, justificando a inversão do ônus da prova em favor do consumidor. 4 . Nos termos das Resoluções nº 3.919/2010 e nº 4.196/2013 do Banco Central do Brasil, a cobrança de tarifas bancárias deve estar expressamente prevista em contrato ou autorizada pelo cliente, sendo vedada em contas exclusivamente destinadas ao recebimento de salário ou benefício previdenciário. 5. O Banco Bradesco S/A não comprovou a contratação do pacote de serviços que ensejaria a cobrança das tarifas, ônus que lhe competia nos termos do art. 373, II, do CPC, configurando prática abusiva vedada pelo art. 39, III, do CDC. 6. A cobrança indevida de tarifas bancárias sem anuência do consumidor impõe a restituição em dobro dos valores descontados, nos termos do art. 42, parágrafo único, do CDC e do entendimento firmado pelo STJ no EAREsp 676608/RS, aplicável a cobranças indevidas realizadas após 30/03/2021. 7. O desconto indevido de valores da conta-salário do consumidor caracteriza dano moral, pois compromete sua subsistência e viola sua dignidade, não se tratando de mero aborrecimento, conforme entendimento consolidado na jurisprudência . 8. O valor de R\$ 3.000,00 fixado a título de danos morais encontra-se dentro dos parâmetros da razoabilidade e proporcionalidade, considerando a extensão do dano, a capacidade financeira das partes e o caráter pedagógico da condenação, não sendo cabível sua majoração ou redução. 9 . A correção monetária dos valores devidos a título de dano material deve incidir desde a data do efetivo prejuízo (Súmula 43/STJ), e os juros moratórios devem ser computados desde o evento danoso (Súmula 54/STJ). Para os danos morais, a correção monetária incide a partir do arbitramento (Súmula 362/STJ), e os juros de mora contam-se desde o evento danoso (Súmula 54/STJ). IV. DISPOSITIVO 10. Apelação desprovida. Recurso adesivo parcialmente provido. Tese de julgamento: A cobrança de tarifas bancárias sobre conta-salário, sem comprovação de autorização

Processo	0200392-09.2022.8.06.0109
	expressa do consumidor, configura prática abusiva e impõe a devolução em dobro dos valores descontados, nos termos do art. 42, parágrafo único, do CDC. O desconto indevido de valores essenciais para a subsistência do consumidor gera dano moral presumido, dispensando a comprovação de sofrimento concreto. A indenização por danos morais deve ser fixada com base na razoabilidade, considerando a gravidade do dano, a capacidade financeira das partes e a função punitiva e pedagógica da condenação. A correção monetária dos danos materiais incide desde a data do efetivo prejuízo (Súmula 43/STJ), enquanto os juros moratórios incidem desde o evento danoso (Súmula 54/STJ). Para danos morais, a correção monetária incide a partir do arbitramento (Súmula 362/STJ), com juros moratórios a partir do evento danoso (Súmula 54/STJ) . Dispositivos relevantes citados: CDC, arts. 14, 39, III, e 42, parágrafo único; CC, art. 186; CPC, art. 373, II; Resoluções do BACEN nº 3.919/2010 e nº 4.196/2013. Jurisprudência relevante citada: STJ, EAREsp 676608/RS, Rel. Min . Og Fernandes, Corte Especial, j. 21.10.2020; STJ, Súmulas 43, 54 e 362; TJ-CE, AC 00554142720208060167, Rel . Carlos Alberto Mendes Forte, 2ª Câmara Direito Privado, j. 27.04.2022 . ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação cível e negar-lhe provimento e conhecer do recurso de apelação adesivo e dar-lhe parcial provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital eletrônica. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (TJ-CE - Apelação Cível: 02002767720238060170 Tamboril, Relator.: CARLOS AUGUSTO GOMES CORREIA, Data de Julgamento: 26/02/2025, 1ª Câmara Direito Privado, Data de Publicação: 27/02/2025)</p><p style="text-align: justify;"> Rest, portanto, claro o dano moral.</p><p style="text-align: justify;"> Fixação – Fatores </p><p style="text-align: justify;"> No tocante ao valor indenizatório, como se sabe, deve representar para o ofendido, uma satisfação psicológica que possa pelo menos diminuir os dissabores que lhe foram acarretados, sem causar, evidentemente, o chamado enriquecimento sem causa, servindo, ainda, para impingir ao causador do dano, um impacto capaz de desestimulá-lo a praticar novos atos que venham a causar danos a outrem.</p><p style="text-align: justify;"> A propósito:</p><p style="text-align: justify;"> PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C DANOS MORAIS. SENTENÇA IMPROCEDENTE. AUSÊNCIA DE CONTESTAÇÃO. REVELIA. EFEITO. PRESUNÇÃO RELATIVA. AO REVEL É GARANTIDA SUA INTERVENÇÃO NO PROCESSO A QUALQUER MOMENTO, RECEBENDO ESTE NO ESTADO EM QUE SE ENCONTRAR. CONTRATAÇÃO DIGITAL. GEOLOCALIZAÇÃO QUE NÃO CONFERE COM A RESIDÊNCIA DA PARTE AUTORA. INSTITUIÇÃO FINANCEIRA QUE NÃO CONSEGUIU COMPROVAR REGULARIDADE DA CONTRATAÇÃO. NEGÓCIO JURÍDICO INEXISTENTE. RESTITUIÇÃO DO INDÉBITO. MODULAÇÃO DOS EFEITOS DO EARESP 676.608. DESNECESSIDADE DE COMPROVAÇÃO DA MÁ-FÉ PARA OS DESCONTOS EFETUADOS EM DATA POSTERIOR AO DIA 30/03/2021. RESTITUIÇÃO EM DOBRO. DANOS MORAIS CONFIGURADOS. INDENIZAÇÃO FIXADA EM R\$ 3.000,00, O QUE SE MOSTRA RAZOÁVEL E PROPORCIONAL, EM CONGRUÊNCIA COM PRECEDENTES DESTA E. TJCE. APELAÇÃO CONHECIDA E PROVIDA. SENTENÇA REFORMADA. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Relator/Presidente do Órgão Julgador (TJ-CE - Apelação Cível: 0200483-42.2022.8.06.0128 Morada Nova, Relator.: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 24/01/2024, 1ª Câmara Direito Privado, Data de Publicação: 24/01/2024)</p><p style="text-align: justify;"> Nessa ordem de ideias, atento ao cotejo desses fatores: nível econômico do autor da ação, sofrimento da vítima e o porte econômico do banco/apelado, e ainda, levando em consideração os valores descontados, arbitro o quantum indenizatório no valor de R\$ 3.000,00 (três mil reais), frente ao quadro fático delineado nos autos, porque não se entremostra exagerado nem insignificante, uma vez que razoável e proporcional à ofensa perpetrada.</p><p style="text-align: justify;"> E é assim que, por todo o exposto conheço do recurso, por próprio e tempestivo, para dar-lhe provimento, reformando a sentença objurgada, para condenar o banco/promovido, ao pagamento de indenização por danos morais no importe de R\$ 3.000,00 (três mil reais), acrescidos de correção monetária pelo IPCA do IBGE desde o arbitramento (STJ, Súmula nº 362; CC, art. 389, parágrafo único) e de juros de mora da data do evento danoso (Súmula n.º 54, STJ) à taxa de 1% ao mês até o dia anterior ao da vigência da Lei nº 14.905/2024 e, a partir daí, à taxa correspondente

Processo	0200392-09.2022.8.06.0109
	ao resultado da taxa Selic subtraída do IPCA (CC, arts. 398 e 406, § 1º). Com o novo resultado, condeno o banco/promovido ao pagamento integral das custas processuais e honorários advocatícios, fixados em 15% (quinze por cento) sobre o valor da condenação, nos termos do art. 85, do Código de Processo Civil. É como voto. Fortaleza-CE, 10 de setembro de 2025. Juiz Convocado Eduardo de Castro Neto Relator Relator
Processo	0050497-54.2021.8.06.0029
Número de ordem	86
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	ANTONIO EVANDO FEITOZA
Advogado(s) - Polo ativo	DOMINGOS MARIA BEZERRA JUNIOR - (CE27346-A)
Polo passivo	BANCO BMG SA
Advogado(s) - Polo passivo	FELIPE GAZOLA VIEIRA MARQUES - (CE30071-A)
Terceiros	Não informado

Processo	0050497-54.2021.8.06.0029
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Processo	0050497-54.2021.8.06.0029
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Processo	0050497-54.2021.8.06.0029
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Processo	0050497-54.2021.8.06.0029
	medium;"> b Os embargos de declaração não constituem meio idôneo para rediscutir matéria de mérito já decidida." </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados : CPC, art. 1.022; CC, art. 368. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada : STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022; STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> AC ÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Fortaleza, 10 de setembro de 2025. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-after: avoid;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; Relator </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="font-weight: normal; line-height: 150%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p></p>

Processo	0050497-54.2021.8.06.0029
	page-break-before: auto;" align="justify"> Trata-se de Embargos de Declaração Cível opostos por Banco BMG S/A contra o acórdão id. 22219251 que de u provimento ao recurso de apelação para: (i) declarar a nulidade do contrato nº 12860053; (ii) determinar que os valores descontados do benefício previdenciário da parte autora após a data da publicação do acórdão em que fixado o precedente (30/03/2021), deverão ser restituídos em dobro, os demais descontos, procedidos anteriormente, deverão ser restituídos de forma simples, acrescido de juros de 1% (um por cento) ao mês, a partir do evento danoso (Súmula n.º 54, STJ) e correção monetária pelo INPC, a partir da data do efetivo prejuízo (Súmula n.º 43, STJ), (iii) condenar o banco/recorrido ao pagamento da quantia de R\$ 5.000,00 (cinco mil reais) a título de danos morais, acrescidos de juros moratórios de 1% (um por cento) ao mês, a partir do evento danoso (Súmula n.º 54, STJ) e correção monetária, com base no INPC, a contar desta data (Súmula n.º 362/STJ). </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> E m suas razões recursais, a parte embargante sustenta a existência de omissão no referido acórdão alegando , em síntese, que a sentença não havia se pronunciado sobre a possibilidade da compensação do valor que foi disponibilizado em favor do embargado e que fora, devidamente comprovados nos autos. Agora, na decisão do recurso, o acórdão também não se manifestou sobre essa possibilidade. Vale ressaltar que o banco comprovou nos autos o depósito do valor do empréstimo, conforme TED abaixo: [...] Cabe destacar que a compensação é prevista no Código Civil, no seu artigo 368, sendo possível em ações nas quais uma parte é credora da outra. Assim, é necessário que essa omissão seja devidamente sanada, para evitar enriquecimento sem causa em favor do embargado. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p>

Processo	0050497-54.2021.8.06.0029
	Por essas razões requer que estes declaratórios sejam primeiramente recebidos, vez que cabíveis e tempestivos. Ato contínuo, o Embargante requer seja sanada a antedita omissão, para que conste que no acórdão a possibilidade de compensação dos valores disponibilizados à parte embargada do valor total da condenação. Sem contrarrazões. &#160; É o relatório. VOTO Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento os requisitos intrínsecos e extrínsecos que compõem o referido crivo, levando-o ao qualificativo da positividade e, assim, ao conhecimento dos aclaratórios. Cinge-se a presente demanda em saber se o acórdão embargado incorreu em omis

[illegible]

Processo	0050497-54.2021.8.06.0029
	150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> Logo, não havendo nenhum dos vícios ensejadores à procedência aclaratória, restando evidenciado o mero inconformismo da Embargante com a solução jurídica prestada por este Sodalício, invocando instrumento processual incabível para a pretensão posta, no caso, a tentativa de rediscutir a matéria já decidida, o presente recurso deve ser rejeitado. </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> A respeito, anoto entendimento perfilhado na ambiência deste Eg. Tribunal , in verbis : </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. OMISSÕES INEXISTENTES. REDISCUSSÃO DE MATÉRIA DE MÉRITO. IMPOSSIBILIDADE. 1. A solução correta e integral da controvérsia, com lastro em fundamentos suficientes, não configura omissão. 2. Os Embargos de Declaração não constituem instrumento adequado para a rediscussão da matéria de mérito consubstanciada na decisão recorrida, quando não presentes os vícios de omissão, obscuridade ou contradição, nos termos do art. 1.022 do CPC. 3. Embargos de Declaração rejeitados. (STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022) </p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; orphans: 2; widows: 2; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. DIREITO EMPRESARIAL. DIREITO DE PROPRIEDADE INDUSTRIAL. DIREITO MARCÁRIO. ALEGAÇÃO DE CONTRADIÇÃO E DE OMISSÃO NO ACÓRDÃO EMBARGADO. INEXISTÊNCIA. PRETENSÃO DE REDISCUSSÃO DE MATÉRIA JÁ DECIDIDA. 1. Não há qualquer contradição ou mesmo omissão no acórdão embargado, que examinou de forma clara e expressa as razões apresentadas pelas partes, tendo apenas decidido de forma contrária à pretensão das ora embargantes. 2. Os

Processo	0050497-54.2021.8.06.0029
	Relator
Processo	0200852-53.2024.8.06.0035
Número de ordem	87
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alienação Fiduciária
Polo ativo	MARIA IVANIRA MONTEIRO DOS SANTOS
Advogado(s) - Polo ativo	MONIQUE RIBEIRO DA COSTA SOARES - (CE19128-A) BRENA DE SOUSA SOARES - (CE52302-A) DEBORA NASCIMENTO DO VALE - (CE53051-A)
Polo passivo	Davi Wellington Batista Valente
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0200852-53.2024.8.06.0035
Acordão	<p style="text-align: center;"> &#160; <img style="text-align: center;" src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAS0AAABICAYAAAAFmoXjAAAACXBIWXMAAA7DAAAOwwHHb6hkAAAgAEIEQVR4nO2dd7wU5b3/33M4HEqkIQNSowJSbAiilVGKSTTFm2JikpumRk1i1Em/uem/JOZeo6uJiTWmV00xlpSyo7IWUEEUgNBpO5BQNrp8/vj84w7LHsOMzuzZ/cc5vN6bSJ7dmeemZ3n83zL5/t9LFKkSFF22I7bA+gHHAAmAIYCI4Ge5r0B5qOvmVcj8DKQAZyB9cCuXDbT1qkDr0JYIR5AigPDDlwlIJfNeO38fRBwPnAiUNOJQysFHRAMuDOXzWwM+yVzD45D1zkkwvmagfnA3blsZmeUgcaBGW9/YawwBTgFmlglaxDQG6jr4BAelq69wHZgHbAEeAxYCKzNZTNNHxZ/JPBBc/5qnufN6JruyWUzu8N8oZov5qCG7bi1aDU+BjgL6AFcXzjRzQr+TeAraNXuCMgDfgZc3tHEC8JMwr8C00o4XyPwBeAn7RF/EjBEQhwLPAWYA4iqkEkt5i0ABuA+4Fv57KZTUXG0Rfd3/cneN5yYi9wRS6bUt3Mh2vLPJgUIWEE+L7AKOBkYBYwHRht3m/CrEgFX+0FOHQdwgJNpJoQu7Q15HeOQARQCnqZ81nlgkkU5rcbArwN+LA518Ckz2NQI56JS4AVwA1FPnMYsuy6AmEB9EH3LCWtaoexkgyD44AzgNnlshqKLKsgLloTk0XXeTiD6EG0cdcQzzPoEfP7+8GQ1aHAe4BPfHgVQscuXJGpon8S76jMRCilpdSLMQ94LBWCnIPfhZGRF9K/cyFJEhe24vdAi80XgNDqPrll4KMM7KWmVGbbj1iBCGgucjty+ycAwupZLI4I3Fp6RKEb2UcrnBqZoBylplQH7RuBXL1ZiKzGo4BsnNWxbEHkFAeGWYBmAFcjC7nbuMDVjJS0EoJxF4YjK2qOeY1Gqe24aARWAI8lcKwUJcB23DqUjse+I1TVAgpaZUI4yb0QzqYU1B8YwqysOLGNzykzVkfZAMEAZ4B1sc8booSYDtuH+BTwDfli0BTVAgpaUWA7bg9UWZvinAmkhpMRBmkuk5CEyKI54ChkSBYnNbAjVUFXDdowPg8F/CmCg8nBSlPdYiAduolpJmajfQko5C2JA7agG3ImnoKWWPleFgUzIFkCnCw8bj8nyElrKpCSloFMEH0Q4EJyJl6CymcbfbXTkVFA7KmFgEPAU8CLwA7U2uquqCeg48BXyclrKrCQU9axprqjdlYUxFRnYpiVf1iHt5Dxa+rgCeQ27cE2BS2fCUEWoEdCR2rM7ETucRVB/NMzAK+Raqf6yyEqjuEg5S0TOp6AHA0EgbOQcW4w4h/T/ai4tYfWfKPA08iaej2qNbXpF+NrgAEW3jgLPmLxxJCPrXqu4GONwE+QCzuU8JJKnoiU48biPPTANUT4znbgNkRc1YgjkaxhWJnP0wrsQYtOKyJxv/KhBtUx9kGC5GK/654yjasN2EXnLCoesAb4bdgvHDSkZYLohyNymo3IaglrzjaqTZUP7cC1QbOBZYCM3PZTHOUA238xQLQANvukWSKLOQ1TCOuSgfrHGVN5DLZjzbcR8AFqOSoLdX0hv4AlrZ9loyzgDagL8g0txGeB3ZDmB9NbrEJvD+FZQJThoeajXzPAoNLAbWAltQt4NW87la9Dseiuolj0ldPCYjvV9/YDMqmk4aDcCnwJ8pHykG4aFryYX9QrcILWPI1yEJwonAuUgYOlR42qkW9KAtAx4wr5dQbCpSAH3DLyZaQB8Lb5TnMRV4I2VxMtJ8BaUT7RKgmfwbzCs0bMd9CZiJ7k8pyAH/L5fNLC7x+1UF88zMAS4g2RKZNUBF1KXidygrvCfEs/JyYGY+dzAJ1anORYGHpLEU+EEumwilyN7p6FakFehhNBZZKLPR6IRIAKXgdfTgPYmsqWeBVwj3802D9T+fVAttNjDJ85hhWZyGhsahdO5vsge5AaWika42sPg5G8IW4wsM4i1wB3I/Xk5l820HuDzRWEWpm3A4+ZVLmwLQnypEujypGXcPhtl+GYia2oCMq3jrJYtqGPKUhrAFxyp0l+L+uCtu2OSBbwJyzsCOMnDm2lhTQNVNgImqpgFrz3orBBEmgC7ga+DywplawggKqX2nQ50jIP15tQsPRkRFRTyPedKhUesqZeQsH2h5AK/VVgb1Rrau0dk+qAIRZM8MCxRKYTUyWirnQIRfI4HLWXSaJbwzbgGuCnuWymO1miVYEuQVqBvIMTUXD6TORO2cTLfjUBG5EM4SEUJ1hDCdbUy3cca+F5/VHQ9GTWzILXdcTxyDRFmWEWwnOA4M43KvA54G/JShrSRFAVZJWQDs1HFIRs1F93xiUBi4VvjW1BhHUWuyg2tR5ojGpNvfizY+qAwy041vOYacm1OJpkynpSdB5s4GLitwraAlwB/L0LuYndDIVDWiY7MhCldP2+U5MQccV5mBoRKS1DpTLzUGxqW9SU+5rbj/XHOMaCaXjeTCxORNZUet0cUIQGZxBf4rAXxa/uSQmrVkgoaZl2H8OQWe5rp45GGcBSg+jFOiQ8h4LqkaypVbcd4HXCxhuWZxgXL5TUHZyAKk11eVhEjnnUbpWdFTM/Rn4WS6baUlkyCnaRaeSVqDd8DAknwXKpsZSbyHJijwfBi4jxl7JKy47TgLGthjfrgmqUHeroZcyVa6gaRruDJYyhaiOJgA3BdLpuJlx9JERJlJ61Au+FxyJKahVTpcftO7UYamGeALoQUUJLAc/mtx9eiTN8kPQ8ULBwqo5sqhkaULJhPgRo+RSKYhATHpcJdgtElyQyn4vBLiKoWZZmQZs++w5F2ajbJtBtuRQrs5Yiksua/c1FN8qW3HG8Bh1hwBBYnldnENOLLJpKAbzWuQkSVRRNiW5CPrWqs5MC6G4zlfxr2gytB37ZjdzC8cAU23HnV+s1JUJagU0qRyNXyt+zL27fqT3ImnoauX1Pm3/vjpmNLbn5Hj4WDMFiEngOed3UYCqrm/KQKn0t2jk4i4qtXwZ2Hv7xlvUv9uvCqEOdPeLgQbTAdBeMAH4DPG47brnd3UZUu5qNEsYpmbSMduowtHnDmeY1nnh9p/yavqVo8s5HWb8tUVI/8c2TazDtkC28kxJTFUFEWmlrgqHFQRA7J6IVIsXWYR9fUZWrWzfFIKSRkXWNSN4QqTC+C+DN5tUZeAwwdtQJJRQik5apgp8BvA/V9x1JvFKUXciqueApZUwtQa5fINX3P3TTZz0b6uqlTsd5wSvyp7cC9UhgMQ8R1VKU0Wwa/vHlqTVVGQwxr1LhN3RMUTpGIVITeUjLdtxDUSfHCym9OVqwQ0IW9ZxaDtRH1bcs+umJpvLdO8qyONmDmZY6FoygsropDxUSB12+hebfu0Z+liWpKsFQ4omVV6G2KinilVKcOzRpGQvr66j/UlSxZ7BDwsMoCxbZmlr40ym+ZGKEhXeClamTkYkft0A6LvaS35hiLrlcXwC2jb5wWclShYBMZChqJLgtgbGmEOJKbZYTrflhigQQxdI6Gfg44QgrKPC8Fwk8S+qQ8PRPphjdfKM9jzOBcy2L46m8bsrz4HVLMosHzWsZsPmli5bGqjkzMPf+KK5qFvL7x6Fdje+Jc+wU+6AP8Ra61ekGJJ2PUKRlJtF5dLwFeDC4/DCK3ayhBIHnUzdO7QmeDRxt+k0FdVOVzPTtIW9NPYEsx1XAtiMvej6uNdUH+fbHlchtdERUG1E8rpn4tXEpfnTUGpJGpalVLcwpOhlLa3eSMEehN+UbCXqNfUwsjQ2EXELrPk/nirdIMWRwEnG7ZuKzPc4MYe48ONvfiVx5BLsAVoHnPx0pJW2UBX1cOR7GI60rJNRMRCaeV9t4dV0wMUUigVzeg5SNHJCEtabSiwwAdZU4sQSflbYL0e1Ux+4kdTewJDLYtJHpxpqWh1ApJRVCrT10Y+/vYU+Q6l64A9Yy9+vmRXwAhuD0W1ldORNXUssq7i7qGJlJqIF6ypo0OWmCnKB/CklY8EXgx8jli7wF1mM/mlYDXn9gjU1FbwzYkQ90v2jmiNSW0RlaHEi4u3jP7k4jsvnlly8dgaxGXyf2ZhSvqmTSIIIXBvHaCteQdvaOCEKRLrGi1phXaGSvn9YLOnyyOA6PmVicigSoA8GqqVBn12aUpl6O5BaPl/cvN+GSxSWvnIGoqqNQ8z+fpMaQ9teqOnhtLRBhB5gi8N37FJ2MRGsP52am1QD9LYuxYJ0S6N45gnip5ThoQxumvujB05asqeeAVz3Ye8wli5OIS/k7pJxGviog6bpOj9QdSQ5eKygmWypqUCgJRTw0E1E2EmtiPZKZ7vebMtt0eQ5wEorbxCMojotdaKecYC3fWmDHSZc+V/Jee4FNNMah65xBPi5VDlehDWWoXkbX8XQZznEww98ktdSM9CtbcWuqcF/GmGhD8ety0JjqA05ECbzQjEXad113koViUGM8z5uDXSxwzitzpVly/uR+DumlHgdWelB/wmXPlizLZ6ypvqgQ/CwUPPf7vpcrq+nLK5H2cpnEWltTztiJo71Kf5bakx1AnoOXk9sRJVHM/BT1NSw3F1FdgMv5bKZSJVChiatB6+dPsiCyR7eDEuT9xiibCO

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	xQFXm2s6G11jE/urzk8E/hfNr4vNWD8AvlpKa06Jcv4Yml2qD/6JrK05iDg3ILX8VUj4uhXtxfgx8/5+MMLYixCJ5YDPImv7HETOzWhBqUELzLVn+d+K3MyjgPclvGppZXiQFiLVZlfrbdtgOSkM2owf6cbM5xELz3l2Y7eHRJqWl4BXgS7lsZqUZx1q0qr8frfZPogI4lbDF9Hj39xzYhCzFYWj1j+liDkcTrh5IXR8LXNs6c22YmDuiYhiJ+nv9H4pX1gM3oU0yzkFb5ZUbfrhFi08K3LZzKLAWHcDlyOi/2sum1kL+BZdIWzU+HAHWsAeLZRB2l67BRF6zpy7J7KGN5l/B6seSkZqaaU4EBYg3VXYeNsKYJH/efP/zyALxUYEUcPWE2ijXP/YjU1IngGmdtG4XfxA0bbjXomyY/9CyYZS6/BGlbJbCDxdcG3PovlkH71RrK4GWS7/RFuZPYAsmxpgqLFcyo0HUTxxDorn3WQ77pSolqbBEea1FFhY7Hkw7vk21E/vi8AfzBi+ToIGUtGDNso/vOtA5UFVl4jrwthBuJR3M/IC58Jga1uR99pDDzSxW4t8ZzcBC8krUmxvRK6fQ9nNPshSXlkm7SUhx1Alv6C5uciYCmtGLXMNfufcYHa1AVkhKwj3bPrzU+f19rneQje7B3kL0v+91gMfR1biBSiOOBO5rFHjejXo2lpo57e0HfcQ4GulrHugONZ8JNn4bMTzdTiQMghGq1zXgX7griBwrHZ4la2s7agbwTiULQtiLFqINwOveq0tmP8GGFZgdYxAMaINSLAZFseg+EwDikH5cbWXXk2nux/3mYx2jQpijHn5aESxKw/1+zoXuYPB1w0htLriWJjoERHq+G5bYg0JhpX1MfhyIrdjeldstmvFw28yoSir4DBdbfDFxg7rm/bV2YzXTXoVjYRGc8yUwW4izkPm9A8c+3AZ9BBJZYt4mwPel90yeombK1qEKaqaXVvydiOVPLfBa4x28qvR67VN1Fs4xrgVdqaQW7LFWjiAW24y5F7uMVKKD7GKU1DjwMTZAVyG2rQTGvr6DJMxg4ynZcP67mme9MtR33uVw2s7HIMdcis+0ic23fRsQ0CvgGltptALns9U22c9XPUO+5K819eRTNnX7ASeba9jMCTKzweNTl4TQ08fcCcwMktxDd17cBH7Qd9zGUftuCGcdQAA6rBnvGIWcgMnqJvPUatAx3lctvCnCu7bgPA6/Ihr3BX1CC2lh+368gErzadyV5vj9Kntol/d4M4pbHoJ+3wvNed9sO+5Y4NVcNIoyvi+KX72l4js5H2xolG0PvR+M/uYOJHeYhfRbc4F7kXziDuDaQKnIfCRN8Mt/5qKq9Syktr+1RE3PUKRYJyHt0lNoJ6n7EFIMRqUpJyCiWYHiVb9DLmWxa2tC2cBHUHzoPjPee5AVGZjkHm1OrrMAAAkQSURBVliQv4MxspvM97LAV5GcY0g7Yz8M3acHgetR4Pp2Rjg+ViGLqQ5JUuaimN2HkXTk2lw202CC6WeZMT5iXl9CZPv7QMEOJoxHx/BC5jOe2cw9aUVbw1yiLe6c591zgf9BCswBZtHNQLO9BRNw3lPnFLDOeCe1cfyhECY6tRRf1iTgn7GSUo/yguxGWn9Xawb4bjCxBk73YLS3NqN4wi1wnAlyg8Sr0sL4duSuPI+K6/w1xqt67l1gsC8xnR6O46VwUawm23n0lV+BGKTeWzftoUZZ4Z5xLz7lrgkyhuMw4F7r+LCHE8ch37IMLaiXRHm1C2b2kH9+kF4CMoX82si6eQWR3Opq0e821NdmOeyOit6NrKeEaEl/gioSimEbEu6eiiy0+4G7Cu5bi+24tyBL7d3mGnejzOld5h5BWwvm3wMQQfv//hMyQPxmGxgcgi+s8ZCW9ZEIrc819XRg49xaT3LgXWYHvRhby31Escxmyqj6BrNCV5nyPo2flM2hOhul22y4i1UrZjnsW8BckLIuKS3PZzK3tHPcStGpExR7gnFw2s3/6uKYW+4zPfgu5JlFay6bubTYH2zH/U8koCsl+9PueK2efTjs1Mtuof1gcTNwQS6b+UsJ5+10mHhLHdB0oELfwGdbgOYkOgqYDFmwwwObWFGNed8LvFeLSiy6XJRMlKkcncjXdf43mmsHLIkxsZeIjw7vBeBa2wNXk875wc1EmzvM3WBMR4o3mYhGckDiKcektmtgX+7v+eb1xv4L5P7Y01LKKmlecjtr6YZItDGylPwWmKCsEQRShLN8pnl5y/ISKJmGkTy8x7oVrKmmKWWs1uPh96izxDgm983pTNHlpaWzcVfLboNUY9v/IMyC4OFkgw+hHkGm8i4r+8fb7PaPet44QibTMfm/XoRhFLL+0AH6AsCuQlp/S73YaN9txhwAn5rKZf0b4Tg3KDB5S8Kd1wdW34Ds9gLSZSVIsjaTgb+EecGj5qemKfckfcpDkqOs4OxmChYP8kdO0voL5iibVvsR13AAq2T0bE8HOqZ6PgQciF3YyC8rnOPHkpgq9VKEbwE5Lfyj5B1G3DjBa6b1bSfxhDkxZyA76K0vK+RMFDwer9yMDUhb4PBcVLATncCzgTBbVLnsRWj1rQTjmri42zPRjCmoyyYq+hiXumOUapSV9GlwspNvQAIAIzQU9UIjoMWRSbEm6z9eBEJm0TPDuTpTp+A7JSPOTJ4J0a7IDItARoR8KxloFf/fLMoowget2rKNW4JY3ykD2PUZfc4xmtCIPQB0A1tuO24L0T6BJ2hsRUb0/Sc0YDzHjBKKAAqlylNxlh6nYB29qLM5kuo7b5Z67gbxZ6lgeac+TamYxjkPTZlTa1Ga+axWcwzLX4XefqC24xpWJqvSgSbz9xYztnqktgfobTtuS7V0DzUWZag9CsuBkqT1JjtyM3oQv0G++2Gp8F2uUvfDSxERZrKfbv7b0b3PYdxe09XgQjTJmhFx3G877n41Z5gt5kz8BfINDQcj3VUD+o3vQvqjE9Gz9wLkvp2Hsne7EanV+m+erCWW+PoQyfZYZYy8zxpUzzgJEVZ/pPn6W6FIYtrbXGqO4bfisQP3Yibalfp1c831tuP+PJfNvB44hoVEmv8AlhaU83i24w5HCnQL8zyb7FwOCVxHBcb5ou24vzb321eL1yLrclyDXeb32UQyvAmac1WZRcd5TLZhptx70V1X59C62eBwPpVFLyKOS5xyDCuga5dn1RSnqAiTi9FOI+7kMENBpwwVCxcJUdiEpn/An+OnJrxqAA7zVm7B6SLixHdWl+zd69yEJqMpbZtxGh7DLjuN2MpRYRnF+/6CCd1/fNZ/1xvEKgBUrgehaR7/s02ZwHRHrnm+OsQ5blh4H32o77iwbJ1yJf+d1FioV7lJdxPpJteEiXd4KpdyHcaabeNV3zHs7kGzhfUR2tSFSe568uPZ85MqmpEXMikZ3v4L3eCPoB96PO33Hm8PyROBNDzlgGtdKXhpdRFXSgptUPGvL4zcbTvuvahGT8ihlsCbtorSMd0DPuT1k5UsuKPrxW5kyuRBXMI0vg9Vz/v5lbT7LAtkA7fDhxpO+4olJEaixbAscHkWW5lotl23leQLgokil03l834k3ub7bj/Nu8H+zYdgryBm3yXz3bcZ8lrkKYCT+ayGb8Yu9F23PuRyrwX+TCDB0EWmzf9ERFul0+qh6CEVU/zfvAaR5KvLtmBfgt/bK+jspxj0Wlxi+J6uYMSsSuvzcO0wXbca5BadgZS1U5FSuM+6MfpyB9vQCZ7VEvNX73bQyOIEUxHx/QoXswbBu2P13vjf4sVG29FquMldC4Kx9renbegjREKKya2mWzzeBR8H8K+6m6/dOXTaOkuRFbKcSHH1162ufB9/9+xYkK5R29osWdcuRI43XbcFwpiZ760YB37yhDmoXl2Gflrnlc8Ex9vFJQbF/RcRIDPIAszkZYu3QWJtYswP+AG4I+24/4ZxTOGI398Ept2WSzEYqRijiojaGXftiCFeArVnEffmg7+toTSxgodjNdrbQJZK48V/KnJfGdpwhmkRcAltum+Qt49PAdNEH8r9tm24wbdw2ORoLAQFtDLdtygXqcFLUKt6J4dAUzHa/sHmqAD7Xw74CEode4hl3WUOeYlKJ41wXbcFeh5PRNZKSA1/bm2476E4j8DUeO5ewwGtxNZbDONBeW7h1ORIGAR8GnjNaxHnsK5KLaUt9Zlvd+DsqWbbcedi4jKt8ZWmv/+d0591nuiBfvgmucjYlVxUi3B7JO7zDnPxLFABcu+exBia6gi0pRBpgYzHmoC+hWNFnWAH1z2cw1tuOOQP2f/GxXfxRl/1fQwjBED5vF5Qz+foU16z1oovZD3Q2W2o57NiL+Jcg69zuQ+qUgl5A7dzWatJcgK8VCZTqHofhTGyoZOQER0yBUMvKbloH40ajHky9y3IO8gB+hxfZc1Ad/u3l/C9pGbXvBcSwzpsvRwlxv7tGPUVzNNf/ea+7JP9BC9B3y7WqWIRexL+rzdTlyXdeZ438E1Q1uNGNdjDpWXJfLZg56N/H/AxVu+9R3A5KCAAAAAEIFTkSuQmCC" alt="" /></p><p align="left">#160;</p><p style="text-align: center;">PODER JUDICIÁRIO</p><p style="text-align: center;">TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ</p></p>

Processo	0200852-53.2024.8.06.0035
	fiduciária. Com o decurso do prazo sem manifestação, autos conclusos. É o sucinto relato. Passo a decidir. A parte autora não apresenta emenda à inicial, conforme determinado, embora intimada através de advogado constituído. Acerca do tema, dispõe o art. 321 do Código de Processo Civil: Art. 321. O juiz, ao verificar que a petição inicial não preenche os requisitos dos arts. 319 e 320 ou que apresenta defeitos e irregularidades capazes de dificultar o julgamento de mérito, determinará que o autor, no prazo de 15 (quinze) dias, a emende ou a complete, indicando com precisão o que deve ser corrigido ou completado. Parágrafo único. Se o autor não cumprir a diligência, o juiz indeferirá a petição inicial. Destaca-se que a intimação da parte para emendar à inicial não tem como pressuposto de validade a sua intimação pessoal, bastando que seja dada ciência ao(a) advogado(a) constituído(a), haja vista que somente ele detém capacidade postulatória para complementá-la. (...) O indeferimento da inicial prescinde de intimação pessoal da parte autora, consoante firme magistério da jurisprudência do Superior Tribunal de Justiça: (...) Desta forma, a parte promovente, ao não proceder com a emenda, providência esta que lhe compete, enquadra-se na hipótese legal de extinção do feito sem análise do mérito. Ante o exposto, com fundamento nos arts. 321, caput, e parágrafo único, e art. 485, inciso I, todos do Código de Processo Civil, INDEFIRO A PETIÇÃO INICIAL; DECLARO EXTINTO O PROCESSO SEM RESOLUÇÃO DE MÉRITO. Nada obstante, sustenta a apelante que o processo “foi extinto porque a autora não apresentou qualificação completa do réu apresentado como DAVI e incluiu no polo passivo a instituição financeira que detém a propriedade do bem por alienação fiduciária” e que “a emenda a inicial não pode ser realizada em tempo hábil por conta da impossibilidade de contato com o supracitado réu a fim de adquirir mais informações sobre o mesmo, o que ocorreu pelo fato do mesmo ter trocado de residência sem informar aos vizinhos para local desconhecido e fora até mesmo do próprio município que residia anteriormente e não responder as mensagens pelas mídias sociais o que tornou inviável qualquer tipo de contato para apuração dos dados necessários ao processo.” Sustenta, ainda, que “com o objetivo de trazer ao processo informações confiáveis e verdadeiras foi-se necessário maior período de tempo, o que impediu a autora de emendar a inicial dentro do prazo legal. Entretanto após os devidos trâmites pode apurar-se na presente data as qualificações verdadeiras e necessárias para a continuidade do processo”, devendo ser aplicado, ao caso, o princípio da instrumentalidade das formas. Requeru o provimento do recurso para o fim de anular a sentença e determinar a continuidade do processo de execução. Sem contrarrazões haja vista não formada a relação processual. É o relatório adotado.

Processo	0200852-53.2024.8.06.0035
	align="justify">&#160;</p><p style="text-align: center;"> V O T O - </p><p align="justify">&#160;</p><p align="justify"> Conheço do recurso, posto vislumbro presentes os requisitos de admissibilidade previstos no CPC. </p><p align="justify">&#160;</p><p align="justify"> Na hipótese, por meio do ID 27020102, foi oportunizada à parte autora, ora apelante, a emenda da petição inicial nos seguintes termos: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> Intime-se&#160; a parte autora, através do patrono constituído,&#160;consoante determina o art. 290, do CPC, para, em até 15 (quinze) dias, emendar a inicial apresentando a qualificação completa do demandado "DAVI" e incluir no polo passivo da demanda, em litisconsórcio passivo necessário, a instituição financeira que detém a propriedade do bem por alienação fiduciária, sob pena de ser cancelada a distribuição do feito. </p><p style="padding-left: 210px;" align="justify"> &#160; </p><p align="justify"> Contudo, apesar de regularmente intimada, a parte quedou-se inerte, não atendendo à determinação judicial a tempo e a modo, o que levou o juiz a indeferir a petição inicial da ação de busca e apreensão extinguindo o processo sem resolução de seu mérito, porquanto descumprida a determinação judicial de emenda à exordial. </p><p align="justify">&#160;</p><p align="justify"> Em que pese a argumentação do apelante pela aplicação do princípio da instrumentalidade das formas, uma vez que providenciou a documentação solicitada em sede recursal, resta patente que o recorrente não praticou o ato determinado dentro do prazo legal, nem mesmo requereu dilação de prazo, impondo-se o indeferimento da inicial, conforme expressamente dispõe o art. 321, do CPC: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> Art. 321. O juiz, ao verificar que a petição inicial não preenche os requisitos dos arts. 319 e 320 ou que apresenta defeitos e irregularidades capazes de dificultar o julgamento de mérito, determinará que o autor, no prazo de 15 (quinze) dias, a emende ou a complete, indicando com precisão o que deve ser corrigido ou completado. </p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> Parágrafo único. Se o autor não cumprir a diligência, o juiz indeferirá a petição inicial. </p><p style="padding-left: 210px;" align="justify"> &#160; </p><p align="justify"> Cabe destacar que os atos processuais têm oportunidade própria para sua realização. Superada a ocasião adequada para tanto, extingue-se o direito de realizá-lo, nos termos do que dispõe o art. 223, caput, do CPC: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> Art. 223. Decorrido o prazo, extingue-se o direito de praticar ou emendar o ato processual, independentemente de declaração judicial, ficando assegurado, porém, à parte provar que o não realizou por justa causa. </p><p style="padding-left: 210px;" align="justify"> &#160; </p><p align="justify"> De tal sorte, ocorreu a hipótese do fenômeno da preclusão temporal, que nada mais é do que a impossibilidade de certo sujeito processual praticar determinado ato em razão de já haver sido esgotado o prazo para sua realização. </p><p align="justify">&#160;</p><p align="justify"> Assim sendo, evidencia-se que a sentença recorrida nada mais fez do que fixar o ônus pelo não atendimento da determinação de emenda à inicial, razão pela qual não merece reforma a decisão combatida. </p><p align="justify">&#160;</p><p align="justify"> Nesse sentido, seguem precedentes jurisprudenciais da Corte Cidadã e desta Corte de Justiça: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> Ementa: AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. PROCESSUAL CIVIL. RECURSO ESPECIAL. ARTIGO 535 DO CÓDIGO DE PROCESSO CIVIL. VIOLAÇÃO. INEXISTÊNCIA. EMENDA À INICIAL. DILIGÊNCIA NÃO CUMPRIDA PELA PARTE AUTORA. EXTINÇÃO DO FEITO SEM APRECIACÃO DO MÉRITO. ART. 284, PARÁGRAFO ÚNICO, DO CPC. 1. Não há falar em negativa de prestação jurisdicional se o tribunal de origem motiva adequadamente sua decisão, solucionando a controvérsia com a aplicação do direito que entende cabível à hipótese, apenas não no

Processo	0200852-53.2024.8.06.0035
	<p>sentido pretendido pela parte. 2. O descumprimento, pela parte autora, de determinação judicial para a emenda da inicial impõe o indeferimento da petição, com a extinção do processo sem a resolução do mérito. Inteligência da regra do art. 284, parágrafo único, do Código de Processo Civil. 3. Agravo regimental não provido. (AgRg no AREsp 814.495/MG, Rel. Ministro RICARDO VILLAS BÔAS CUEVA, TERCEIRA TURMA, julgado em 23/02/2016, Dje11/03/2016).</p> <p justify"="" style="padding-left: 210px; align=">DIREITO CIVIL. APELAÇÃO CÍVEL. AÇÃO REVISIONAL. PREVIAMENTE OPORTUNIZADA A EMENDA DA INICIAL. INÉRCIA DA PARTE. INDEFERIMENTO DA PETIÇÃO INICIAL MANTIDO. DEMANDA EXTINTA SEM RESOLUÇÃO DE MÉRITO. PRECLUSÃO TEMPORAL. APELO CONHECIDO E IMPROVIDO. 1. Inicialmente, insta salientar que o Código de Processo Civil prevê, em seu artigo 330, diversas hipóteses de indeferimento da petição inicial, sendo uma delas motivada pelo não cumprimento de diligência pela parte autora. 2. Há muito o Superior Tribunal de Justiça entende que, antes do indeferimento da inicial, é obrigatória a abertura de prazo para que o autor da demanda proceda à emenda da exordial, quando entender que lhe falta um requisito ou documento obrigatório. 3. Compulsando os autos, denota-se que a decisão interlocutória proferida pelo juiz de primeiro grau, fl. 25, determinou que o recorrente comprovasse a condição de hipossuficiência ou recolhesse as custas judiciais devidas, sob pena de indeferimento da inicial. 4. No entanto, o apelante quedou-se silente, incindindo, assim, a preclusão, porquanto não se manifestou em momento oportuno acerca da diligência requerida. Deste modo, agiu com acerto o juiz a quo ao indeferir a petição inicial, extinguindo a demanda sem resolução de mérito. 5. Assim sendo, não merece prosperar o pedido tardio de concessão da gratuidade judiciária, também requerida em grau de recurso, vez que a recorrente tenta se utilizar deste artifício para elastecer o trâmite processual, quando o próprio deu causa a extinção do pedido em razão da sua inércia. 6. Apelo conhecido e improvido. (Processo: 0123892-42.2016.8.06.0001; Relator (a): CARLOS ALBERTO MENDES FORTE; Órgão julgador: 2ª Câmara de Direito Privado; Data do julgamento: 27/11/2019; Data de registro: 27/11/2019)</p> <p justify"="" style="padding-left: 210px; align=">DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. CÉDULA DE CRÉDITO BANCÁRIO. APLICAÇÃO DO CPC/15 AOS PRESSUPOSTOS DE ADMISSIBILIDADE DO RECURSO. DESPACHO DE EMENDA À INICIAL. CUMPRIMENTO EXTEMPORÂNEO. PRECLUSÃO TEMPORAL. ART. 223, CAPUT, DO CPC/15. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. ART. 321, PARÁGRAFO ÚNICO, DO CPC/15. POSSIBILIDADE. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA EM TODOS OS SEUS TERMOS. 1. Tratam os autos de Apelação Cível interposta por Banco Bradesco S/A, em face de sentença (fls. 104/106) proferida pelo Juízo da Vara Única da Comarca de Frecheirinha, que indeferiu a petição inicial de Execução de Título Extrajudicial, ajuizada pelo apelante em face de F.F. Feitosa ME, Francisco Flávio Feitosa e Adriano Aguiar Lima, uma vez que o exequente, ora apelante, mesmo após intimado, não juntou o original da Cédula de Crédito Bancário n. 006.466.329, o que acarretou a extinção do processo, sem resolução do mérito, nos termos do art. 485, I, do CPC/15. 2. O apelante foi devidamente intimado para emendar a inicial, determinando-se a juntada do original da Cédula de Crédito Bancário n. 006.466.329, dentro do prazo legal, nos do art. 321, caput, do CPC/15. Todavia, verifica-se que o implemento dessa determinação foi extemporâneo, na medida em que realizado 26 (vinte e seis) dias úteis após o término do prazo legal, razão pela qual não há que se falar em reforma ou cassação da sentença que julgou extinto o feito, sem apreciação do mérito. 3. Os atos processuais têm oportunidade própria para sua realização. Superada a ocasião adequada para tanto, extingue-se o direito de realizá-lo, nos moldes do que enuncia o art. 223, caput, do CPC/15. Em outros termos, confirma-se a ocorrência do instituto da preclusão temporal, que nada mais é do que a impossibilidade de certo sujeito processual praticar determinado ato em razão de já haver sido esgotado o prazo para sua realização. 4. Ademais, sabe-se que o descumprimento da ordem de emenda da inicial importa indeferimento da exordial e, conseqüentemente, extinção do processo, sem resolução do mérito, conforme o disposto no parágrafo único do art. 321 do CPC/15. Assim, resta irretocável a decisão impugnada. 5. Recurso conhecido e não provido. Sentença mantida em todos os seus termos. (Relator (a): LIRA RAMOS DE OLIVEIRA; Órgão julgador: 3ª Câmara de Direito Privado; Data do julgamento: 21/02/2018; Data de registro: 21/02/2018)</p> <p justify"="" style="padding-left: 210px; align=">Portanto, se não houve o cumprimento oportuno da determinação judicial, não resta outra saída, senão reconhecer a ocorrência da preclusão temporal e, conseqüentemente, o acerto da sentença, que indeferiu a inicial e extinguiu o</p>

Processo	0200852-53.2024.8.06.0035
	processo, sem resolução de mérito. Destaco, por oportuno, que a intimação pessoal da parte para suprir a falta processual, prevista no art. 485, §1º, do Código de Processo Civil, é referente aos incisos II e III do mesmo artigo, não se relacionando com o caso exposto, pois sua extinção decorreu da ausência da emenda a inicial pela parte, conforme normativo do art. 321 do CPC. Nesse sentido, colaciono entendimento do Superior Tribunal de Justiça. Vejamos: PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ESPECIAL. AÇÃO DE RITO ORDINÁRIO. EMENDA À INICIAL. PRAZO NÃO CUMPRIDO. EXTINÇÃO DO PROCESSO SEM JULGAMENTO DO MÉRITO. INTIMAÇÃO PESSOAL DÁ PARTE. DESNECESSIDADE. 1. O Superior Tribunal de Justiça tem entendimento firme no sentido de que é desnecessária a intimação pessoal da parte prevista no art. 267, § 1º, do CPC/1973 [art. 485, § 1º, do CPC/15], quando o processo é extinto sem julgamento do mérito, em virtude de não ter sido promovida a emenda da petição inicial. Precedentes: Resp 802.055/DF, Rel.Ministro Teori Albino Zavascki, Primeira Turma, DJ 20/3/2006; AgRg no AgRg nos EDcl no Resp 723.432/RJ, Rel. Ministro Luiz Fux, Primeira Turma, Dje 5/5/2008; Resp 1.200.671/RJ, Rel. Ministro Castro Meira, Segunda Turma, Dje 24/9/2010; Resp 1.074.668/MG, Rel. Ministra Eliana Calmon, Segunda Turma, Dje 27/11/2008. Agravo interno não provido. (STJ - AgInt no Resp 1419086/SP, Rel. Ministro BENEDITO GONÇALVES, PRIMEIRA TURMA, julgado em 08/05/2018, Dje 16/05/2018) Ante o exposto, conheço do presente recurso apelatório para negar-lhe provimento, mantendo a sentença extintiva em todos os seus termos. É como VOTO. Fortaleza, CE, 10 de setembro de 2025. EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator
Processo	0201193-92.2024.8.06.0160
Número de ordem	88
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	MARIA LUCIENE LEITAO DOS SANTOS
Advogado(s) - Polo ativo	ANTONIO FABRICIO MARTINS SAMPAIO SILVA - (CE43412-A) FRANCISCO GUSTAVO MUNIZ DE MESQUITA - (CE31449-A)
Polo passivo	ASPECIR PREVIDENCIA
Advogado(s) - Polo passivo	MARCELO NORONHA PEIXOTO - (RS95975-A)
Terceiros	Não informado

Processo	0201193-92.2024.8.06.0160
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> </p> </div>

Processo	0201193-92.2024.8.06.0160
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	Verdana, sans-serif; font-size: 12px;"><p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelado: &#160;Aspecir Previdência </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">&#160;</p> <p style="text-align: justify;"> EMENTA: DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. SEGURO NÃO CONTRATADO. DESCONTOS INDEVIDOS EM CONTA DA AUTORA. INSURGÊNCIA QUANTO A AUSÊNCIA DE CONDENAÇÃO DO BANCO EM DANO EXTRAPATRIMONIAL. DESCONTOS ÍNFIMOS. DANO MORAL NÃO CONFIGURADO. RECURSO DESPROVIDO. SENTENÇA MANTIDA. </p> <p style="text-align: justify;"> I. CASO EM EXAME </p> <p style="text-align: justify;"> 1. Ação declaratória de inexistência de relação contratual cumulada com repetição de indébito e indenização por danos morais. A autora alega que teve valores descontados indevidamente de sua conta bancária a título de seguro não contratado. </p> <p style="text-align: justify;"> 2. Sentença de primeiro grau declarou a nulidade do contrato, determinou a restituição em dobro dos valores cobrados indevidamente, mas afastou a indenização por danos morais, sob o fundamento de que o desconto era de valor irrisório. </p> <p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;"> 3. A controvérsia recursal consiste em verificar: </p> <p style="text-align: justify;"> (i) se a ocorrência de descontos indevidos enseja automaticamente a indenização por danos morais; e </p> <p style="text-align: justify;"> (ii) se a quantia descontada comprometeu significativamente a situação financeira da autora. </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 4. A jurisprudência pátria estabelece que o mero desconto indevido não caracteriza, por si só, dano moral indenizável, sendo necessário que haja abalo significativo à esfera pessoal do consumidor. </p> <p style="text-align: justify;"> 5. No caso concreto, os valores descontados, ainda que indevidos, foram considerados de pequena monta e não configuraram abalo suficiente para justificar indenização por danos morais. </p> <p style="text-align: justify;"> 6. Em razão da ausência de comprovação de prejuízo extrapatrimonial significativo, mantém-se o afastamento da indenização por danos morais. </p> <p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p> <p style="text-align: justify;"> 7. Recurso conhecido e desprovido. </p> <p style="text-align: justify;"> Tese de julgamento: "1. O mero desconto indevido em benefício previdenciário, sem comprovação de prejuízo significativo ao consumidor, não configura dano moral

Processo	0201193-92.2024.8.06.0160
	preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data da assinatura digital &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> JOSE RICARDO VIDAL PATROCINIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Presidente do Órgão Julgador &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text; font-size: 12pt; line-height: 18px; font-family: Aptos, Aptos_EmbeddedFont, Aptos_MSFontService, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Exmo. Sr. EDUARDO DE CASTRO NETO </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Juiz Convocado Relator &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: Aptos,

Processo	0201193-92.2024.8.06.0160
	align: justify;">Em suas razões recursais, a parte apelante sustenta, em suma, que “seja o presente recurso recebido, conhecido e provido, para reformar a sentença no ponto atacado, determinando assim, que a Requerida arque com o pagamento de indenização dos Danos Morais em valor razoável ao transtorno ora sofrido.” </p> <p style="text-align: justify;"> Contrarrazões – id. 27083557. </p> <p style="text-align: justify;"> É o relatório. </p> <p style="text-align: justify;"> ¶ <p style="text-align: center;"> VOTO </p> <p style="text-align: justify;"> ¶ <p style="text-align: justify;"> Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento dos recursos. </p> <p style="text-align: justify;"> Depreendo dos autos que a parte autora ajuizou ação declaratória de inexistência de relação contratual c/c repetição de¶índebito e indenização por danos morais, sob o argumento de que teria sido surpreendida com descontos mensais referentes a cobrança de seguro e/ou adesão de clube de benefícios jamais contratado, totalizando R\$ 179,70¶(cento e setenta e nove reais e setenta centavos). </p> <p style="text-align: justify;"> Como relatado, o Magistrado a quo julgou parcialmente procedentes os pedidos autorais. </p> <p style="text-align: justify;"> Busca, então, a parte autora/apelante a reforma parcial da sentença para julgar procedente o pedido de indenização por danos morais. </p> <p style="text-align: justify;"> Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Súmula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e instituições bancárias devem ser examinadas à luz da lei consumerista: “O Código de Defesa do Consumidor é aplicável às instituições financeiras”. </p> <p style="text-align: justify;"> A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I e II, do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte Ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito da autora. </p> <p style="text-align: justify;"> Desse modo, tendo a autora/apelante comprovado a existência de descontos em sua conta bancária (id. 27083165), recairia sobre a promovida o ônus de comprovar a regularidade do contrato e a legitimidade das cobranças realizadas. </p> <p style="text-align: justify;"> No caso concreto, é forçoso reconhecer que houve falha na prestação do serviço, causando danos de ordem material à promovente, visto que a seguradora/recorrida sequer juntou aos autos instrumento contratual, indispensável para comprovar a anuência da promovente. </p> <p style="text-align: justify;"> Assim, demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, o qual enseja pronta reparação dos danos causados, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. </p> <p style="text-align: justify;"> Definido o dever de indenizar e a restituição dos valores indevidamente descontados do benefício previdenciário da requerente/apelante – inclusive não houve insurgência sobre isso –, cumpre analisar o pleito recursal da parte autora quando a possibilidade de condenação da requerida ao pagamento de indenização por danos morais. </p> <p style="text-align: justify;"> Pois bem. </p> <p style="text-align: justify;"> A existência do dano moral pressupõe a configuração de lesão a um bem jurídico que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, o bom nome etc., com base se infere dos arts. 1º, III, e 5º, V e X, da Constituição Federal. </p> <p style="text-align: justify;"> Desse modo, ainda que tenha ocorrido desconto indevido, tal fato não se mostra suficientemente capaz de ensejar o dano moral alegado, posto que não se traduz em qualquer ofensa aos direitos da personalidade a existência de desconto de valor irrisório ocorrido na conta-salário da demandante. </p> <p style="text-align: justify;"> Nesse sentido, converge a jurisprudência desta Primeira Câmara de Direito Privado, que, em reiterados julgados, reconhece que os descontos em valor ínfimo, ainda que indevidos, não são capazes, por si só, de ensejar a reparação por dano moral. Vejamos: </p> <p style="text-align: justify;"> ¶ <p style="text-align: justify;"> PROCESSIONAL CIVIL. APELAÇÕES CIVEIS. DIREITO DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. DESCONTOS INDEVIDOS EM BENEFÍCIO PREVIDENCIÁRIO. REGULARIDADE DA CONTRATAÇÃO NÃO COMPROVADA. RESTITUIÇÃO DE FORMA SIMPLES. PEDIDO DE MAJORAÇÃO DO QUANTUM INDENIZATÓRIO. DESCONTO ÍNFIMO. DANOS MORAIS AFASTADOS. </p>

Processo	0201193-92.2024.8.06.0160
	AUSÊNCIA DE PREJUÍZO EXTRAPATRIMONIAL SIGNIFICATIVO. RECURSOS CONHECIDOS. NÃO PROVIMENTO DO RECURSO DA PARTE AUTORA. PARCIAL PROVIMENTO DO RECURSO DA SEGURADORA RÉ. 1. Trata-se de apelações cíveis interpostas em face da sentença proferida pelo Juízo da Vara Única da Comarca de Chaval, nos autos da Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Morais e Materiais, ajuizada em face de Bradesco Auto/RE Companhia de Seguros S/A. 2. A seguradora não logrou êxito em demonstrar a regularidade da contratação, pelo que se mantém a sentença no tocante a declaração de nulidade do negócio objeto da presente demanda, reconhecendo a inexistência do débito e determinando a restituição do valor das parcelas descontadas, acrescido de juros de 1% ao mês, a contar do dia em que cada desconto foi efetuado (art. 398 do Código Civil e súmula 54 do STJ) e correção monetária pelo INPC a partir da mesma data (Súmula nº 43 do STJ), sendo a restituição na forma simples. 3. Ausente dano à personalidade da parte autora, eis que os descontos ocorridos em 01/02/2016 e 16/11/2016, no valor de R\$ 116,00 (cento e dezesseis reais) e R\$ 145,90 (cento e quarenta e cinco reais e noventa centavos), respectivamente, somente em dois meses são inexpressivos. Ausência de negativação. Acolhidos os argumentos da seguradora, no sentido de reformar a sentença e afastar a condenação ao pagamento de indenização por danos morais. Precedentes. 4. Considerando a sucumbência recíproca e equivalente, determino que os honorários advocatícios e as despesas processuais sejam rateados na mesma proporção entre as partes, observado o percentual estabelecido na origem. Ressalvo, entretanto, a condição suspensiva da condenação da parte autora, nos termos do artigo 98, § 3 do Código de Processo Civil, tendo em vista que é beneficiária da gratuidade judiciária. 5. Recursos conhecidos, para negar provimento ao interposto pela parte autora e dar parcial provimento ao recurso tirado pela seguradora, apenas para afastar a condenação ao pagamento de indenização a título de danos morais, mantendo-se os demais capítulos da sentença recorrida. ACÓRDÃO ACORDA a PRIMEIRA CÂMARA DE DIREITO PRIVADO DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ, por uma de suas turmas julgadoras, à unanimidade, em conhecer dos recursos, para negar provimento ao apelo da autora e dar parcial provimento ao apelo tirado pela instituição financeira ré, nos termos do voto do relator, parte deste. Fortaleza, 12 de março de 2025. (TJCE - Apelação Cível - 0200585-53.2022.8.06.0067, Rel. Desembargador(a) ANTÔNIO ABELARDO BENEVIDES MORAES, 1ª Câmara Direito Privado, data do julgamento: 12/03/2025, data da publicação: 12/03/2025) Direito do consumidor. Recurso de apelação Cível. Ação de indenização por danos morais e materiais. Sentença procedente. Recurso do autor. Falha na prestação de serviço. Pleito de majoração da indenização por danos morais. Impossibilidade. descontos ínfimos realizados no benefício do promovente. mero aborrecimento. Precedentes desta primeira câmara de direito privado. Recurso conhecido, todavia, desprovido. Sentença mantida. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso, todavia, para NEGAR-LHE PROVIMENTO, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator (TJCE - Apelação Cível - 0202845-52.2024.8.06.0029, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 05/03/2025, data da publicação: 05/03/2025) DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. INEXISTÊNCIA DE CONTRATO BANCÁRIO. COBRANÇA INDEVIDA DE TARIFA BANCÁRIA. RESPONSABILIDADE CIVIL OBJETIVA. RÉPETIÇÃO DE INDÉBITO NA FORMA SIMPLES ATÉ 30.03.2021 E EM DOBRO APÓS ESTÁ DATA. DANO MORAL NÃO CONFIGURADO. DESCONTO IRRISÓRIO. PARCIAL PROVIMENTO DO RECURSO. I. CASO EM EXAME. 1. Apelação cível interposta por instituição bancária contra sentença que condenou o banco ao pagamento de indenização por danos materiais e morais decorrente de cobranças indevidas, após o Juízo Singular reconhecer a inexistência de contrato entre as partes e a falta de comprovação da contratação do serviço bancário "Bradesco Vida e Previdência". II. QUESTÃO EM DISCUSSÃO. 2. Há duas questões em discussão: (i) a responsabilidade objetiva da instituição bancária pelas cobranças indevidas, considerando a ausência de comprovação do contrato; (ii) a configuração do dano moral diante do desconto de valores considerados ínfimos. III. RAZÕES DE DECIDIR. 3. A responsabilidade civil da instituição financeira, em casos de relação de consumo, é objetiva, nos termos do Código de Defesa do Consumidor (CDC), art. 14, § 3º, sendo que a instituição bancária deve comprovar que a contratação dos serviços foi solicitada pelo cliente, o que não ocorreu nos autos. 4. A repetição do indébito, em casos de cobrança indevida, independe da comprovação de má-fé, conforme entendimento consolidado pelo STJ no EAREsp 676.608/RS, mas, para os valores descontados antes de 30.03.2021, aplica-se a restituição simples. 5. O

Processo	0201193-92.2024.8.06.0160
	desconto de valores ínfimos, por si só, não configura dano moral, não sendo caracterizada a lesão a direitos da personalidade que ensejaria reparação por danos morais, conforme entendimento jurisprudencial pacífico. 6. Diante da ausência de demonstração de prejuízo relevante e da devolução dos valores indevidamente descontados, não há fundamento para a condenação ao pagamento de indenização por danos morais. IV. DISPOSITIVO E TESE. 7. Recurso parcialmente provido para excluir a condenação por danos morais, mantendo a repetição do indébito de forma simples até 30.03.2021 e em dobro a partir deste data. Tese de julgamento: Em relação de consumo, a responsabilidade do fornecedor de serviços bancários é objetiva, sendo necessária a comprovação da autorização do cliente para eximir-se da obrigação de indenizar por cobrança indevida. A restituição em dobro do indébito independe da má-fé do fornecedor, aplicando-se a modulação de efeitos do STJ no EAREsp 676.608/RS para valores descontados a partir de 30.03.2021. Descontos de valores ínfimos não configuram, por si só, dano moral, não havendo indenização quando a ofensa aos direitos da personalidade não é configurada. Jurisprudência relevante citada: STJ, EAREsp 676.608/RS, Rel. Min. Og Fernandes, Corte Especial, j. 21.10.2020; TJCE, AC 0000125-43.2018.8.06.0147, Rel. Des. Heráclito Vieira de Sousa Neto, j. 15.12.2021. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, em conhecer do recurso de apelação e dar-lhe parcial provimento, nos termos do voto do Relator. Fortaleza, data da assinatura eletrônica. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (TJCE - Apelação Cível - 0200525-42.2023.8.06.0036, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 05/03/2025, data da publicação: 05/03/2025) </p> <p style="text-align: justify;"> #160; </p> <p style="text-align: justify;"> DIREITO DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. PLEITO RECURSAL CONCERNENTE À FIXAÇÃO DE DANOS MORAIS E MAJORAÇÃO DOS HONORÁRIOS ADVOCATÍCIOS. NÃO ACOLHIMENTO. NUMERÁRIO DESCONTADO QUE AFIGURA-SE ÍNFILO. INSUFICIENTE PARA ENSEJAR DANOS MORAIS. MERO ABORRECIMENTO. HONORÁRIOS ADVOCATÍCIOS FIXADOS EM PATAMAR CONDIZENTE COM OS CRITÉRIOS LEGAIS. RECURSO CONHECIDO E DESPROVIDO. I. Caso em exame 1. Trata-se de recurso de apelação interposta em face da sentença exarada pelo Juízo da Vara Única da Comarca de Lavras da Mangabeira/CE, que julgou parcialmente procedente o pleito autoral para declarar a inexistência de contratação de seguro e condenar o promovido a devolver o valor descontado indevidamente, mas não reconheceu o dano moral. II. Questão em discussão 2. Verificar se é cabível a reforma da sentença em relação à condenação por danos morais e à majoração dos honorários advocatícios. III. Razões de decidir 3. O dano moral não se configura no caso concreto, pois não houve lesão a direitos da personalidade da parte requerente. O valor descontado, de R\$ 37,40, é ínfimo e não comprometeu a subsistência do consumidor, sendo considerado um mero aborrecimento. Esta conclusão está em consonância com o entendimento desta Câmara, que considera que descontos de valores írisórios não configuram dano moral indenizável. 4. Quanto aos honorários advocatícios, a fixação em 10% do valor da causa, conforme o art. 85, § 2º do Código de Processo Civil (CPC), foi adequada e em consonância com os critérios legais, como o grau de zelo do profissional, a natureza da causa e o trabalho realizado. IV. Dispositivo 5. Diante do exposto, conhece-se do recurso de apelação interposto para negar-lhe provimento, nos termos em que fundamentado. V. Dispositivos legais citados Art. 85, § 2º, do Código de Processo Civil (CPC) VI. Jurisprudência relevante citada (TJCE ¿ Apelação Cível 0050861-62.2021.8.06.0114 ¿ Rel. Desembargador JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara de Direito Privado, data de julgamento 14/08/2024, data de publicação 14/08/2024); (TJCE ¿ Apelação Cível 0201559-52.2023.8.06.0133 ¿ Rel. Desembargador JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara de Direito Privado, data de julgamento 13/11/2024, data de publicação 13/11/2024); (TJCE ¿ Apelação Cível 0200206-83.2022.8.06.0109 ¿ Rel. Desembargador CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara de Direito Privado, data de julgamento 06/11/2024, data de publicação 07/11/2024); (TJCE ¿ Apelação Cível 0001087-27.2019.8.06.0084 ¿ Rel. Desembargador EMANUEL LEITE ALBUQUERQUE, 1ª Câmara de Direito Privado, data de julgamento 29/05/2024, data de publicação 29/05/2024); ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso para negar-lhe provimento, nos termos do voto da relatora. Fortaleza, data da assinatura eletrônica DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADORA MARIA REGINA OLIVEIRA CAMARA Relatora (TJCE - Apelação Cível - 0201292-74.2022.8.06.0114, Rel. Desembargador(a) MARIA REGINA OLIVEIRA CAMARA, 1ª Câmara Direito Privado, data do julgamento: 18/12/2024, data da publicação: 18/12/2024) </p> <p style="text-align:

Processo	0201193-92.2024.8.06.0160
	justify;"> &#160; </p> <p style="text-align: justify;"> >Como visto, descontos indevidos, por si só, não configuram dano moral in re ipsa, sendo necessária a análise das circunstâncias do caso. Na hipótese, considerando que houve apenas 3 (três) descontos indevidos na conta da autora, sendo cada um no valor de R\$ 59,90 (cinquenta e nove reais e noventa centavos), totalizando, assim, a quantia de R\$ 179,70 (cento e setenta e nove reais e setenta centavos), não enseja a ocorrência do abalo moral passível de indenização, porquanto, não obstante tal situação traga desconfortos e aborrecimentos à consumidora, não é capaz de atingir valores fundamentais do ser humano, tratando-se, em verdade, de situação rotineira, a que se está sujeito na vida em sociedade. &#160; </p> <p style="text-align: justify;"> >Portanto, a manutenção da sentença combatida é a medida que se impõe. </p> <p style="text-align: justify;"> >E é assim que, por todo o exposto, conheço do presente recurso, por próprio e tempestivo, mas para negar-lhe provimento, mantendo inalterada a sentença atacada. </p> <p style="text-align: justify;"> >Em decorrência da sucumbência recursal, majoro os honorários advocatícios devidos pela autora/apelante de 10% para 12%, na proporção em que definida pelo juízo a quo, nos termos do art. 85, §11, do CPC, devendo ser observada, contudo, a suspensão da exigibilidade, em razão da gratuidade da justiça deferida à autora na origem, nos moldes do art. 98, §3º, do CPC. </p> <p style="text-align: justify;"> >É como voto. </p> <p style="text-align: justify;"> >Fortaleza, data da assinatura digital </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> >Exmo. Sr. Eduardo de Castro Neto </p> <p style="text-align: justify;"> >Juiz Convocado Relator </p> <p style="text-align: justify;"> >&#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> > &#160; </p>
Processo	0297036-47.2022.8.06.0001
Número de ordem	89
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Inventário e Partilha
Polo ativo	ALEX BARROSO BRAZ
Advogado(s) - Polo ativo	MARINA LIMA MAIA RODRIGUES - (CE27150-A)
Polo passivo	RONCALLI DE FREITAS PAIVA
Advogado(s) - Polo passivo	RODRIGO GONDIM CARNEIRO - (CE18973-A)
Terceiros	Não informado

Processo	0297036-47.2022.8.06.0001
Acordão	<p align="left">&#160;</p><p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHeUgAAAS0AAABiCAYAAAAFmoXjAAAACXBIWXMAAA7DAAAOwwHHb6hkAAArhUIEQVR4nO2dB7hdVZXH1yWBIMrwcCgJBngClkQwD0ILQQhFRrEMYxeUXkRRQYrjH0EFFCRlr0b0QFRqsQABAw1hBQSQhOClCSkPZIASUhyZ/3OXjvw5Obe+0695b2zvm/zyL3nnrPPOXv9yr/tfZAKaSQQnKXIQd8e4D+WW/bRtree21TbUO1rW2fbWCHzre2VNSMbX00zdI2V9vimXf/bGVDO96CMrDZHSikd9EBX+KvDthyje831D+f1baTtrUa2LUkwj08qe1GvZ+ZUX9kz2BHcfe5SYzrva3tYW236PUWxeloGrH+/ou2rbXtrG0PbduLAYze17ra1qlzCp4TwpWWtm5tL217Qs87Tv9O0Pai3s+yOtcHEL9o1y+lvJ08hffDPd2m9/NGIB8UoNWiooO0d8Nq/AFto7UN0M/Oq5zotoKfrO0/xa3a7SBoCzto30+sN/EqhMI+pbZdElzvGG0der2LagF/FmJA9S5tO2g7UNsB4oAKklq7mHCuda3x+/dq21vb8dpe1XanXu9Hej+zqvRjPf1zjrPjBhuM+Qobd/QdkWUgwwQahGxAc9g21zb7tr207abti3scyz3sCJV/HSQuMHcLoCFMJF2FWcuzYv4m05xAJBEBtn1eMaZg5a9O7S/j2g71K7Vkvf1TJizjlnjtD2I7VdVjsHcRLNrB8BC3iHumRWg1epiWtK/anuftr207S9Os0LDGIBxOBOjGjDxebsMzrBwf3H6zbFpzJwBKX+/hhhYvVvbp7Qdq2241Df5shSeRy0Qb9cxEUkKOGqg2CBn1cfftgJ8D8wGtqlOc/6OQNhF9I7xHFpnTtO0pjQOrsLSyryo3KUArZ9HBzYoHIG2jbZQ4s6+Lr6S9TLpCZNXcW6JzqrbDJD8zsJAaUoBWDmJmH45jTD1ACrB6vziHaprVMTcnciG9iy1AH9J2ljgNuc+aYK0sBWhIJGYubCZOizrAGg7TdTm4PaHvp7W9kMG5Ckkg+n4x/4jGnSHuvRbSJCIAK6GYmUD0C4MkRr8G/ip0LDS+JfQqLq1PaPtiW1jtT2u7ZWU5y0kgei7Jrp1grbvSw8JtJAmsQFaMUQHlZ4oIntEbfYRRzXg/4kgpTUVoDQASpO13SuOEPmsttcLFnTzxAdRW9q+o+2dT e5OIVKAVIOJcac6xXGm0Kbkg8ClekfK0wNEC8RpU4+K06YALiDy/ikQRYSTczk/5oUgNV SUoBWhZgTHc1pO3Ga1GhxDOeNZU3uVFXZlk6bmqtjb9oe0fYpBYsKbaq1xMbB4dq+JwVgtZT0e9AybQpnOWHsEeKAaqQ4X9X6KU+PtkTyK9rUg+LMvie0zYqRvtKbrND2ekbnaqSQB5jVM8hUbEwQ9f2hFPy5RkmkvEOKX4KWha5xqG4rjhhlPl9kXLhTaZ8JCa4ktz6m7e/axovTphbG1aZmj9kh6GdJyu8rAagleXDjQ6ZNrjiMyOJF4kxY/G1RKRX45wDitL44gJkBytG7b7q1XS4OuFpRyPOD1jAk5+uw4LwpbtHh/wFxn/aeyGPETfEIKn+Xt/MqV+M08XSmEWF8fO ctjFRf9BvQMuc6lPFgRO+KcAKExDwSsOd4gWTP0ceGLmB92mbpm22gtTbcU40a8yO9GMdfY+blVxKyGhxWh9pPpgoZO2vBlr4vvTe7tL/nSluJSjqvaBdf6cz2ZQnH6GhHu/WRxo4p+L6odjkr7SiiXOd5JPt85h9PzfCg1M1Wca4B39qK218RVO1hhxzEvfYoQeYRbiavg0SWO74f2N1vbnTn0kcXnQm1/kPxAMSw8E+5ITtQf9FnQMhUf6gEUBF74QeKlgTjR03KnlosbaJRYu csaHKpFcR3os8Z8kh7qRCIvrg8P8/STOIwhLm4mq1MnagKgTf5XrUuWfUb0eV9xzyeJMN D+R68/JehvW0psZKB1f0GyTZHh/Tyv7Y/afisucVxmhlEyl9Q3bx0ME5enSnT5wQz76IUf9 6fat6iJ7A2XPGVaoRpGpMygoaBRdcmaAJBEFoobeKyQaFOTtP1Tog2+1WTmb4brc1+JY3 9YuSwfKpUCrY/BiHnXyHfCSro4xe8xTdvRn1ZL0FShN6T1ZYyFTeodqceBDB0rK3o5vqrY woQ2+4C1vASwiuxfaoa0PWiz2QcAEOfDa0CbWuxDtU6zWqJNUauliQcHOGMFVvr8uAPv leuH0493SqncqX93LUt535KUdIHtagSplIMtlbbgfVqc2yALwR90i7Yzt2RfKyalC1PtWk70LL BxUTHWYyOZBVDhf/B1p5iKLwtCpMJ5zmUBFJoL2t7K6429dL1w9HsNtHObqc/3LvkWbQikj 6KtNSJQriX/J2UI8miWgMaEUX4fq3jpi9poi0hbQFaobpTTPR4tjomFNoWGmiX6yGVAKFh gBI4ScgkhFbm/rn9TuVpFzGNMvpgmBakY7xFeP0oBpITmLLYQf1fbBDE7HlneKtj9ISGsp JCQtCVoh7hS+KLQofFPk98GdeleKU3ttCmACoDD7JokjfC6Nq03NuK6LVXmwdnaHclnU5 AtMC2gUWaT1FNI4YfGjJHPaUkEEZygbfGsbmYntJy0DWhYd6RAX0vV1p9CmAK40gwln MaBEpG+suARKfFML4obcn792J9/HrUvUKi+rNIUKIm9oU1IUcyikOUI0Li3FAX4e/qvbCsDK V5oKWlbuAwlfarnnTqGpYGYIdaJXq5AAAtwmneixt6lrRmgfykHJmVij3IRg8qHxEZ0k/FxoU2 0uFsj5d0nOVUMYU/CartTtTyTjhVSUXoKWqFywwAV5MlPikubGSrpBk2Y4InJd4ckrJDwz DU7B0nSJSkn1ZG4S8kN6N2sz80oqRuWYgXPXqCZ7JHyHPDjFjLQ19pJClktohcNw+ pGk8Lsg5Wetu4UXBI4MET47hdXKSERwfpPq0fwhIj0DVOTbw/V8QDSZvCmqgmnLcECf HCVKTyFpBfe8+Ypfs9YgzD6RDbdabr4FKKWlVwmpO3ZRwgZ7hRmXxblhtEyYGBPFwdS 99vz4mrkk+/akSwP12JfL1SUGoGs4/99NLSJrIqRzVi3gJU3CcT4tWND5m2tJkd62timj8LaZ oyQ/hLr+1DZiHdzGd9Ng+36j1AlqhTSqZ9JhSfs++tHwNygYjTcGbutf+8u834mpTT165y9ol 9qYrsbKW0aQ8bwoqRTN5U9wHZgX3xc7BgBTJ1jO0Ldr00Kkt/ZrY0HTH5HyHHELW2D6i mAB/UBbAzqv8zZ3WYTJXb0/jhsnMWGZdwqjJ3S37GMNIU2d8rn9MFCZ/KiaRD1ey0u6k+ 7cldU3KAccknKkFABKSJEAGmztSmSUvGDKLPnQeoZBdR5gw99oiVxtz4qaP5bpf9k+7 WulnxbSBbWmuEsBP3x8RVQokksUHLsuABgM+ly++DmZ4mFQU0nyHOJ4U2xQsmtEvs nL6pV+zqo5GeNzVSGcCbpc200zFt54qjWhDRBKgAZiKaywYfOqXQppojm1hLKr6gYyHJB SUCWIM+oKWABWmSSo5HSfLiaOEKCUxeak7hm5obl98y5fLdLPO9vFWpJLvrzAeo4E2h 4jaTNwUikb4RNvkm2L8Xb/alAqRaRAi0pCERyXbOzqgv/Vli+bkig5ZpWAAW9Zfikj3DFRLQp oiCxdamJl2+u6dMvEdNvuEGUpH+qPhpE6TTCuRCvzEFVSDQHfK9Fgz98uTEVIUQTYQJ RiHBBRn0tRanaak2LLZxih8WkoHE0bQAHyMkGmCFCZ63iyN4JqqQ8PhluxtVsrZQkw+/2 UGqVUFGbTZvSrsjC0uOZnG3NbTH2VscNiIvZpnRRPDH4VcYlC7uhzLCrsa3pTI3lasJC3G ahe7ZYgOSxksk0LJJBmmyo85hYecy2hS+G3L8YhM8J1w6cm2rN7Wt1ZsK86aaGekjmum 1KQqwoTkCzAu2PGxiWm2KCYRtD4eN+yX6CIAR3eT54+xNmxtXiJcBwaPCOMUZEn/dmf SlkFgSVdPCPzS84jNflAwNilpTABWaRbCjrmKb9kpONNIQKn/q5m9hGKRn1P43NIK97/5 ksp06bbZ2+/9BjVbZUFVvUgZQLgCoUfb+m0rzmfd9XkprBUP/3SIOWSLyWja9KSSORAut AArHMpoG2hQRE0DKb4G1MK6a/MjFI4ONTxWohukP9ym5pFWK90GjaFakj/v0/jd8Ur5Ca eB/2+rwYINASpCmknlrQSk0KYg36Jdpd1DsZDYEGyxNMEaxkpfzq0hUQFLfgop2m7QJzJ F3sLrlcu3INHsvBvauuSIFSLKuOfgoXe7HpTpAMBSgDxfYXIO5+3xET0ph8Pn2pU5zW6HI i+KnwVzUzaFBIOfBYpCkrzPstKns0QSKBlmRz1mLLA9ctCeRmcGqTe0oZaGMC7wueFM dKOhNquzK6kiYGjMPugWmLebfnG2PnJB45QXVvIV30iU9IEUNSKK+VotJeUXwqiPVAFNF vHfSIMIO9zDcRfuGwgXCLbKcJtEareC8qWq5jybCksmHq8wqR40tOm8KR/rl++63tj5yQ hV/K75BCHpvpCsg6r5N+FuZIVlIOEG/SOEcy6xtl05l+LYzpWLSRVBNr3iV7+XpTtk1XkNNH AjJ+mztJJOwKFlj075YRz+SB2vr79UY8l3msvtlkGUT3uE23K+6XyMBXoa7e4jAHuY3wo1+j

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Processo	0297036-47.2022.8.06.0001
	geneva; font-size: medium;">>é inexigível, para a reserva de bens de que trata o art. 642 do CPC, que a dívida cobrada do espólio seja líquida e certa, sendo suficiente a comprovação documental de sua existência">" (STJ. AgInt no AREsp nº 2.240.484/SP. Rel. Min. João Otávio de Noronha. Quarta Turma. DJe: "> 02/05/2024">.</p><p align="justify">">&#160; ">7. Tribunais pátrios igualmente reconhecem a possibilidade de reserva de bens em hipóteses análogas, ainda que remetida a discussão da dívida às vias ordinárias, por força do art. 643 do CPC.</p><h3> "> ">IV. DISPOSITIVO E TESE </h3><p> "> ">&#160; ">8. Recurso desprovido.</p><p align="justify"> "> "> Tese de julgamento: </p> <p align="justify"> "> ">A reserva de bens no inventário é cabível quando a dívida está documentalmente comprovada, ainda que controversa e remetida às vias ordinárias. </p> <p align="justify"> "> ">A impugnação apresentada pelos herdeiros não impede a reserva se não estiver fundada em quitação. </p> <p align="justify"> "> ">A herança responde pelo pagamento das dívidas do falecido, legitimando a constrição patrimonial cautelar em favor do credor habilitado. </p> <p align="justify"> "> ">&#160;</p><p style="text-align: center;">"> <strong style="font-family: verdana, geneva; font-size: medium;">">A <strong style="font-family: verdana, geneva; font-size: medium;">">CÓRDÃO</p><p align="justify"> "> ">Vistos relatados e discutidos os autos da APELAÇÃO CÍVEL nº 0297036-47.2022.8.06.0001, em que são agravantes ALEX BARROSO BRAZ, e outros, e agravado RONCALLI DE FREITAS PAIVA, acorda o colegiado da 1ª Câmara de Direito Privado do TJCE, por unanimidade de votos, em conhecer e negar provimento ao recurso, nos termos do voto do Relator.</p><p align="justify"> "> ">Fortaleza, 10 de setembro de 2025. </p><p align="center"> "> ">&#160; ">&#160;</p><p align="center"> "> ">JOSE RICARDO VIDAL PATROCÍNIO </p><p align="center"> "> ">Presidente do Órgão Julgador </p><p align="center"> "> ">&#160; ">&#160;</p><p align="center"> "> ">EDUARDO DE CASTRO NETO </p><p align="center"> "> ">Juiz de Direito, convocado </p><p align="center"> "> ">Relator </p><p align="center"> "> ">&#160; </p><p align="center"> "> ">&#160; </p><p align="justify"> "> ">&#160; </p><p align="center"> "> ">R E L A T Ó R I O </p><p align="justify"> "> ">&#160; </p><p align="justify"> "> ">&#160; </p><p align="justify"> "> ">Trata-se de recurso de Agravo Interno (ID 22175025) que ALEX BARROSO BRAZ, ANA MARIA BARROSO BRAZ e ANDRÉ BARROSO VAZ interpuseram em face de decisão monocrática (ID 22174642) por meio da qual esta Relatoria negou provimento ao recurso de apelação que os ora agravantes interpuseram contra a sentença que homologou o inventário cujos herdeiros são os ora agravantes. </p><p align="justify">&#160;</p><p align="justify"> "> ">A sentença

Processo	0297036-47.2022.8.06.0001
	assim decidi, &#160; Tendo em vista a regularidade formal da declaração e dos documentos apresentados, HOMOLOGO, por sentença, para que produza seus jurídicos e efeitos legais, o plano de partilha apresentado às fls. 358/364, dos bens deixados pelo falecimento de Antônio Augusto Braz, salvo erro ou omissão e ressalvados os direitos de terceiros, especialmente das Fazendas Públicas. A sentença proferida homologou o Plano de Partilha apresentado em fls. 358/364, dos bens deixados pelo falecimento de ANTÔNIO AUGUSTO BRAZ, sem levar em consideração a reserva dos bens determinada na Ação de Habilitação de Crédito de nº 0014919-12.2024.8.06.0001. No caso em questão, verifica-se a existência do vício apontado pelo embargante, uma vez que a Sentença determinou que, após o trânsito em julgado, o recolhimento das custas processuais e a apresentação das certidões negativas de débitos fiscais, fosse expedido o formal de partilha e/ou alvará judicial. No entanto, não foi observada a reserva do bem, que, neste caso, era necessária para garantir o eventual pagamento futuro de uma dívida, visto que o credor estava munido de documentos comprobatórios da obrigação na referida Ação mencionada logo acima. Conclui-se que os argumentos trazidos nos declaratórios devem prosperar, assim, diante do exposto, vislumbro a propriedade do manejo dos embargos de declaração, a Sentença passa a ser complementada, com a inclusão a seguir: Deixo de expedir o formal de partilha e/ou Alvará Judicial, devendo os bens aqui arrolados permanecer à disposição deste Juízo, salientando que são inferiores ao crédito apontado na Ação de Habilitação, até que as questões/débitos pendentes sejam resolvidos e o credor tenha recebido satisfatoriamente o seu pagamento. No mais, mantém-se a Sentença. Posto isto, RECEBO e dou PROVIMENTO aos presentes embargos de declaração. Na ambiência deste egrégio Sodalício, por decisão monocrática, rejeitei as razões postas no apelo mantendo a sentença proferida na origem, o que deu ensejo à interposição do presente recurso de agravo interno. Em suas razões recursais, sustentam os agravantes que “o presente processo trata bens deixados por ANTONIO AUGUSTO BRAZ, no qual a meeira e os herdeiros entraram em composição amigável, acerca da partilha dos bens do de cujus, ocasião em que o Plano de Partilha amigável foi homologado por sentença (fls. 370/374). Todavia, irredimido com tal decisão o credor Sr. Roncalli interpôs Embargos de Declaração pugnando pela reserva dos bens para o pagamento da suposta dívida. O N. magistrado a quo ao analisar a questão atendeu ao pedido do credor e determinou a reserva dos bens do espólio o que data máxima vênica, não pode prosperar.” Sustentam, ainda, que “no que concerne ao pedido de reserva de bens, o mesmo não deve prosperar uma vez que o crédito ao qual o Embargante busca a reserva para a satisfação NÃO é líquido, certo e exigível, ante ao fato de o suposto crédito proveniente de Contrato de Locação Comercial, ainda está sendo discutido através da Ação Rescisão Contratual com Despejo - Processo nº 0262469-53.2023.8.06.0001 – atualmente em tramite perante a 17ª Vara Cível da Comarca de Fortaleza”. Requereu o provimento do recurso de agravo interno para o fim de reformar a decisão agravada e dar provimento ao recurso de apelação. Devidamente intimado, o agravado ofertou contrarrazões as quais se encontram alojadas ao ID 22174647. É o relatório adotado. V O T O - Conheço do recurso, eis que vislumbro presentes os requisitos de admissibilidade previstos no CPC. Na hipótese, a discussão posta

Processo	0297036-47.2022.8.06.0001
	nesta recurso cinge-se a apenas um aspecto: se é o caso de manter a reserva ordenada pelo juízo primeiro, do crédito habilitado nos autos da ação de inventário pelo apelado sr. Roncalli de Freitas Paiva. &#160; Cabe destacar que o crédito restou habilitado nos autos de ação de habilitação de crédito e confirmado pela sentença que decidiu o inventário (fls. 370/374 e 423/424, E-Saj). &#160; Pois bem. É fato que, instaurado, por parte dos agravados, o pedido de abertura de inventário dos bens deixados pelo falecimento de seu genitor, senhor ANTÔNIO AUGUSTO BRAZ, o apelado – sr. RONCALLI DE FREITAS PAIVA – ofertou pedido de habilitação de crédito (processo nº 0014919-12.2024.8.06.0001) alegando ser credor do espólio de dívida oriunda de contrato de locação. &#160; Após, os ora apelantes impugnarem a referida habilitação de crédito, o eminente juiz titular da 2ª Vara de Sucessões desta Comarca de Fortaleza, julgou procedente o incidente o que fez ancorado nos seguintes fundamentos, in verbis: &#160; ((...) o contrato de locação é título executivo extrajudicial, conforme inteligência do art. 784, do CPC, portanto a sentença embargada deve ser alterada, para constar que fica determinado a separação de bens prevista no parágrafo único artigo 643, do Código de Processo Civil, tendo em vista que os documentos juntados aos autos e o pedido formulado pelos habilitantes preenchem os requisitos desse dispositivo, a não reserva desses valores, pode gerar sérios prejuízos aos possíveis credores. (...) Isto posto, e com fulcro nos aludidos dispositivos legais, determino que sejam reservados do ESPÓLIO de ANTÔNIO AUGUSTO BRAZ, os numerários e/ou bens suficientes para pagamento do crédito no valor de R\$ 416.357,81 (quatrocentos e dezesseis mil e trezentos e cinquenta e sete reais e oitenta e um centavos), podendo os referidos valores serem liberados, na hipótese do não reconhecimento do crédito nas vias ordinárias, tudo conforme artigo 643, parágrafo único do CPC. &#160; Consoante o artigo 643, § único, do CPC, citado pelo eminente Juiz: “Não havendo concordância de todas as partes sobre o pedido de pagamento feito pelo credor, será o pedido remetido às vias ordinárias. Parágrafo único. O juiz mandará, porém, reservar, em poder do inventariante, bens suficientes para pagar o credor quando a dívida constar de documento que comprove suficientemente a obrigação e a impugnação não se fundar em quitação.” No caso, a dívida cobrada pelo apelante é originária de Contrato de Locação Comercial em que o falecido senhor ANTÔNIO AUGUSTO BRAZ figura na qualidade de fiador (obrigação solidária), sendo certo, a teor do que estabelece o artigo 1.997, do CC “A herança responde pelo pagamento das dívidas do falecido”. &#160; E, segundo a mais moderna jurisprudência do SUPERIOR TRIBUNAL DE JUSTIÇA (STJ) “é inexigível, para a reserva de bens de que trata o art. 642 do CPC, que a dívida cobrada do espólio seja líquida e certa, sendo suficiente a comprovação documental de sua existência” (STJ. AgInt no AREsp nº 2.240.484/SP. Rel. Min. João Otávio de Noronha. Quarta Turma. DJe: 02/05/2024). &#160; Ainda neste sentido: Apelação cível. Direito civil e processual civil. Pedido de habilitação de crédito em inventário. Preliminar de prescrição rejeitada. Ausência de concordância dos herdeiros. Pressuposto de desenvolvimento regular do processo no juízo das sucessões. Envio do pedido às vias ordinárias. Dívida amparada em documento que comprova suficientemente a obrigação. Reserva de bens para pagamento do credor. Recurso conhecido e parcialmente provido. I. Caso em exame 1. Trata o caso de apelação interposta contra sentença que julgou procedente o pedido de habilitação de crédito em inventário e

Processo	0297036-47.2022.8.06.0001
	determinou a separação de bens suficientes para o pagamento, ainda que tenha havido a discordância dos herdeiros, sob o fundamento de que a petição está acompanhada de prova literal da dívida líquida, certa e exigível. II. Questão em discussão 2. A questão em discussão consiste em analisar a eventual prescrição do débito e se a discordância dos herdeiros com o pedido de habilitação de crédito certo e exigível é suficiente para sua remessa às vias ordinárias. III. Razões de decidir 3. Conforme a súmula 150 do STF, prescreve a execução no mesmo prazo de prescrição da ação. Desse modo, tendo o título judicial sido originado de pretensão de reparação civil, aplica-se o prazo de prescrição trienal previsto no art. 206, § 3º, V do Código Civil, cujo termo inicial é a data do trânsito em julgado da ação que constituiu o a obrigação em título executivo judicial. 4. Desse modo, da análise dos autos do processo nº 3903634-25.2010.8.06.0004, é possível concluir que a pretensão executória foi exercida antes do decurso do prazo prescricional, pois a sentença do processo de conhecimento foi proferida em 11/05/2016 e a fase de execução se iniciou no ano de 2017, prosseguindo nos anos posteriores, diante da ausência de cumprimento voluntário da obrigação, através da busca de bens do executado até se chegar ao pedido de habilitação do crédito em ação de inventário, portanto, rejeito a preliminar de prescrição. 5. Segundo dispõe o art. 643 do Código de Processo Civil, não havendo a concordância dos herdeiros, o pedido de habilitação de crédito no inventário deverá ser remetido às vias ordinárias. Contudo, quando a dívida constar de documento que comprove suficientemente a obrigação e a impugnação não se fundar em quitação, o juiz deverá determinar a reserva, em poder do inventariante, de bens suficientes para pagar o credor. 6. Em aplicação à referida norma, o Superior Tribunal de Justiça possui o entendimento consolidado no sentido de que, ainda que se trate de crédito líquido e exigível, a habilitação do crédito no inventário só pode ocorrer se houver a concordância das partes, caso contrário o pedido deverá ser remetido às vias ordinária. Precedentes. 7. Nesse contexto, sendo inequívoca a discordância dos herdeiros quanto ao pedido de habilitação do crédito, a sentença deve ser reformada nesse ponto, para indeferir o pedido e determinar a sua remessa às vias ordinárias. Contudo, verificando-se que a dívida está amparada em documento que comprova suficientemente a obrigação e não estando impugnação fundada em quitação, procedeu com acerto o juízo de primeiro grau ao determinar a reserva dos bens suficientes ao pagamento do credor, por tratar-se da medida expressamente prevista no parágrafo único do referido art. 643 do CPC, devendo, portanto, a sentença ser mantida nesse assunto. IV. Dispositivo e tese 8. Recurso conhecido e parcialmente provido. Tese de julgamento: 1. Inexistência de prescrição. 2. Pedido de habilitação de crédito em inventário. 3. Ausência de concordância dos herdeiros. 4. Remessa do pedido às vias ordinárias. 5. Dívida amparada em documento que comprova suficientemente a obrigação. 6. Reserva de bens para pagamento do credor. _____ Legislação relevante: arts. 206, § 3º, inc. V, CC; art. 643, caput, p.u., CPC. Jurisprudência relevante: STF, súmula 150; (STJ, AgInt no AREsp n. 2.390.466/SC, rel. Min. Raul Araújo, Quarta Turma, j. 12/3/2024, DJe de 18/3/2024); (STJ, AgInt no AgRg no REsp n. 1.293.000/DF, rel. Min. Antonio Carlos Ferreira, Quarta Turma, j. 22/3/2018, DJe de 2/4/2018); (STJ, AgInt no AREsp n. 979.374/PR, rel. Min. Maria Isabel Gallotti, Quarta Turma, j. 22/8/2017, DJe de 29/8/2017); (STJ, REsp n. 703.884/SC, rel. Min. Nancy Andrighi, Terceira Turma, j. 23/10/2007, DJ de 8/11/2007, p. 225). (Apelação Cível - 0204957-49.2022.8.06.0001, Rel. Desembargador(a) EVERARDO LUCENA SEGUNDO, 2ª Câmara Direito Privado, data do julgamento: 18/12/2024, data da publicação: 19/12/2024) &#160; AGRAVO DE INSTRUMENTO. INVENTÁRIO. HABILITAÇÃO DE CRÉDITO. DECISÃO AGRAVADA QUE INDEFERIU A HABILITAÇÃO DE CRÉDITO, REMETENDO A DISCUSSÃO PARA AS VIAS ORDINÁRIAS, MAS DETERMINANDO A RESERVA DE BENS SUFICIENTES PARA PAGAR O CREDOR. DISCORDÂNCIA DOS HERDEIROS. POSSIBILIDADE DE RESERVA DE BENS NOS TERMOS DO ART. 643 DO CPC. INDEVIDO HONORÁRIOS ADVOCATÍCIOS. DECISÃO MANTIDA. RECURSO DESPROVIDO. (TJSP. AI nº 2016570-90.2024.8.26.0000. Rel. Des. Schmitt Corrêa. 3ª Câmara de Direito Privado. DJe: 19/03/2024) &#160; AGRAVO DE INSTRUMENTO. DIREITO DAS SUCESSÕES. INVENTÁRIO. CREDOR. DÍVIDA VENCIDA. DISCORDÂNCIA DOS HERDEIROS. REMESSA ÀS VIAS ORDINÁRIAS. RESERVA DE BENS. ADMISSIBILIDADE. REQUISITOS. ART. 643, CAPUT E PARÁGRAFO ÚNICO DO CPC. RECURSO CONHECIDO E NÃO PROVIDO. 1. Nos termos do artigo 643, caput e parágrafo único, do CPC, em havendo discordância dos herdeiros acerca do pedido de pagamento de dívida formulado pelo credor, a questão será remetida às vias ordinárias, admitindo-se ao juiz do inventário determinar a reserva de bens suficientes para pagar o credor do espólio. 2. A reserva de bens é medida que se impõe quando a dívida constar de documento que comprove suficientemente a obrigação e a impugnação não se fundar em quitação. 3. Recurso conhecido e não provido. (TJPR. AC nº 0055673-25.2021.8.16.0000. Rel. Des. Fábio

Processo	0297036-47.2022.8.06.0001
	Haick Dalla Vechia. 11ª Câmara Cível. DJe: 03/03/2022). ¶ Não vejo, portanto, razões para modificar a decisão ora agravada. ¶ ANTE AO EXPOSTO, conheço e nego provimento ao recurso de agravo interno. ¶ É como VOTO. Fortaleza, 10 de setembro de 2020. ¶ EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator ¶ ¶ ¶ ¶ ¶
Processo	0200900-16.2024.8.06.0066
Número de ordem	90
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	EXPEDITO FERREIRA LIMA
Advogado(s) - Polo ativo	JOSE NEWTON FERREIRA DE MEDEIROS FILHO - (CE24754-A) LAZARO VICTOR DE SOUSA - (CE40334-A)
Polo passivo	BANCO DAYCOVAL S/A
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado

Processo	0200900-16.2024.8.06.0066
	Julgador EDUARDO DE CASTRO NETO Juiz Convocado Relator RELATÓRIO Trata-se de Recurso de Apelação interposto por Expedito Ferreira Lima, com o escopo de adversar a sentença proferida pelo MM. Juízo da Vara Única da Comarca de Cedro, que julgou improcedentes os pedidos formulados na ação Declaratória de Inexistência de Negócio Jurídico c/c Indenização por Danos Morais e Repetição de Indébito, ajuizada em desfavor do Banco Daycoval S/A. Em suas razões recursais o autor/recorrente sustenta, preliminarmente, que “é de conhecimento consolidado que, em demandas que envolvam alegações de fraude ou vício de consentimento, a prova pericial é meio necessário para a formação da convicção do julgador, especialmente quando a parte nega a assinatura de documento eletrônico. O douto juízo a quo julgou a lide antecipadamente, indeferindo de forma imotivada a prova pericial requerida na réplica, apesar dos robustos indícios de fraude documental apresentados pela apelante”. No mérito, sustenta, que “o extrato bancário acostado aos autos (ID 129758912) demonstra a existência do referido contrato de empréstimo, firmado em 29/01/2024, no valor de R\$ 16.805,78 (dezesesseis mil oitocentos e cinco reais e setenta e oito centavos). Contudo, a instituição financeira sustenta que o contrato discutido nos autos não se refere a uma nova operação de crédito, mas sim a um refinanciamento de dois contratos anteriores (nº 55-012761428/23 e nº 55-012761426/23), supostamente firmados ambos em 15/02/2023”. Em continuidade, sustenta, que “tal alegação revela-se absolutamente inverossímil e indicativa de possível fraude praticada pela instituição financeira, eis que não é razoável presumir que o apelante tenha contratado dois empréstimos distintos no mesmo dia, sem qualquer evidência de depósito correspondente em sua conta bancária, tampouco tendo sido juntados aos autos os respectivos instrumentos contratuais originais que comprovem tais operações pretéritas. Além disso, o Banco Apelado realizou uma transferência via TED (ID 129758906), no valor de apenas R\$ 2.744,63 (dois mil setecentos e quarenta e quatro reais e sessenta e três centavos), valor este desproporcional e incompatível com o alegado montante global de R\$ 16.805,78 (dezesesseis mil oitocentos e cinco reais e setenta e oito centavos) que seria objeto do contrato em discussão”. Argumenta, depois, que “a apelada não apresentou qualquer certificado válido de formalização do contrato, tampouco documentos que comprovem o vínculo entre a Apelante e o aparelho usado na contratação, ônus que lhe competia nos termos do art. 373, II, do CPC”. Sustenta, depois, que “em razão da conduta ilícita praticada pela parte recorrida, que realizou descontos indevidos sobre o benefício previdenciário da autora, sem a devida comprovação de contratação regular, é inequívoca a configuração de danos morais”. Em seguida, sustenta, que “em consonância com a jurisprudência dominante e os princípios da proporcionalidade e razoabilidade, é imprescindível que a parte recorrida seja responsabilizada pelo ato ilícito cometido, com a fixação de um valor independente da repetição do indébito, visando compensar a dor e o sofrimento que a recorrente experimentou, não apenas pela conduta da instituição financeira, mas pela ausência de respeito ao consumidor e à legislação que rege os contratos bancários”. Contrarrazões Id.27086682. É o que importa relatar. VOTO Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. Passo, então, ao seu deslinde. Depreende-se da leitura dos fólios processuais, que o autor/recorrente busca através da presente demanda declarar nulo o contrato de empréstimo consignado citado na exordial (nº 55-018099370/24), firmado em seu nome junto à instituição bancária promovida, bem como, a restituição em dobro, dos valores descontados, e ainda, indenização pelos danos morais sofridos. O douto magistrado singular entendeu pela improcedência dos pedidos autorais, uma vez que, não havendo demonstração de ilicitude da contratação, e restando demonstrada a expressa anuência da autora no aperfeiçoamento contratual, incabível se torna a condenação da instituição

Processo	0200900-16.2024.8.06.0066
	financeira/requerida em devolução de valores e em pagamento de danos morais. O cerne da controvérsia recursal consiste em analisar a regularidade da contratação de empréstimo consignado e, por consequência lógica, na possibilidade da restituição de valores, e, por fim, da incidência de indenização a título de danos morais. Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Súmula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista: “ O Código de Defesa do Consumidor é aplicável às instituições financeiras”. Preliminar de cerceamento de defesa - Argumenta o autor/recorrente que o julgamento antecipado da lide sem que fosse procedida a dilação probatória necessária, notadamente a realização de perícia grafotécnica no contrato em discussão, ocasionou cerceamento de defesa, razão pela qual pugna pela anulação da sentença e o retorno dos autos ao juízo de origem para a produção da prova requerida. Na espécie, entendo que não houve cerceamento de defesa, <u>uma vez que o magistrado fundamentou sua decisão levando em consideração o conjunto probatório fornecido nos autos</u>. Ademais, consoante jurisprudência pacífica do STJ “ não há cerceamento de defesa quando o magistrado, com base em suficientes elementos de prova e objetiva fundamentação, julga antecipadamente a lide”. (AgRg no REsp 1206422-TO), exercendo o seu livre convencimento de forma motivada e utilizando, para tanto, dos fatos, provas, jurisprudências, aspectos pertinentes ao tema e legislação que entender aplicável a cada caso, especificamente. Além disso, no caso dos autos, o empréstimo consignado foi realizado por meio eletrônico e a entidade bancária/recorrida juntou o contrato discutido nessa demanda assinado por meio de autenticação eletrônica e fotografia do momento da contratação (Id. 27086645). Daí que, a realização de perícia grafotécnica no contrato impugnado em nada contribuiria para atestar se a assinatura contida neste partiu do promovente, porquanto, o documento foi assinado de forma eletrônica. Desse modo, o pedido de perícia grafotécnica requerida pelo promovente/recorrente não apresenta congruência com o feito, tendo em vista que, como dito, o contrato impugnado é digital com autenticação eletrônica. Logo, não há que se falar em cercamento de defesa. Para reforçar a validade da contratação, a instituição financeira/recorrida, acostou aos autos o protocolo digital (Id. 27086645/7), onde consta dados de localização e IP, dispositivo utilizado, com informação do dia e horário da coleta dos dados. Nesse sentido: APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. JULGAMENTO ANTECIPADO. SENTENÇA IMPROCEDENTE. PARTE AUTORA PUGNA PELA REALIZAÇÃO DE PERÍCIA GRAFOTÉCNICA. IMPOSSIBILIDADE. ASSINATURA ELETRÔNICA DO CONTRATO. DILIGÊNCIA IMPERTINENTE À SOLUÇÃO DA CONTROVÉRSIA. PRELIMINARES DE AUSÊNCIA DE DIALETICIDADE RECURSAL E DE CERCEAMENTO DE DEFESA REJEITADAS. APRESENTAÇÃO DA CÓPIA DO CONTRATO PELO BANCO RÉU. JUNTADA DE COMPROVANTE DE DEPÓSITO DOS VALORES PACTUADOS. CONTRATAÇÃO LÍCITA. DANOS MORAIS E MATERIAIS NÃO CONFIGURADOS. SENTENÇA MANTIDA. RECURSO CONHECIDO E DESPROVIDO. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará em CONHECER do recurso para rejeitar as preliminares suscitadas e, no mérito, NEGAR-LHE PROVIMENTO, nos termos do voto do Relator Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (TJ-CE - Apelação Cível: 0201320-45.2022.8.06.0113 Jucás, Relator.: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 24/01/2024, 1ª Câmara Direito Privado) &#160; DIREITO DO CONSUMIDOR. APELAÇÃO. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C PEDIDO DE DANOS MORAIS E MATERIAIS. SENTENÇA QUE JULGOU IMPROCEDENTE A DEMANDA. PRELIMINAR DE CERCEAMENTO DE DEFESA REJEITADA. EMPRÉSTIMO CONSIGNADO EM BENEFÍCIO PREVIDENCIÁRIO. CONTRATO ASSINADO ELETRONICAMENTE COM CÓPIA DE DOCUMENTO DE IDENTIFICAÇÃO OFICIAL COM FOTO E BIOMETRIA FACIAL. COMPROVAÇÃO DE CRÉDITO EM CONTA DE TITULARIDADE DO APELANTE. REGULARIDADE DO CONTRATO. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. Trata-se de apelação interposta por consumidor em face de sentença que julgou improcedente a ação declaratória de inexistência de débito c/c pedido de danos morais e materiais. No caso, a Sentença declarou a

Processo	0200900-16.2024.8.06.0066
	regularidade de negócio jurídico, referente a realização de um empréstimo consignado de contrato n.º 639344372. 2., Preliminar de cerceamento de defesa. Alegou a apelante que houve cerceamento de defesa em razão do Juízo a quo ter indeferido o seu pedido de produção de prova pericial da assinatura eletrônica por biometria facial do contrato consignado, em virtude da alegativa de indícios de falsidade na assinatura. 3. Quanto a preliminar supracitada, verifico nos autos que a instituição financeira juntou aos autos o contrato (fls. 76/85), devidamente assinado eletronicamente com foto (fls. 87), os documentos pessoais do consumidor (fls. 84/85) e comprovante de transferência do valor tido como contratado (fls. 86). Nesse contexto, não prospera o pleito de cerceamento de defesa, uma vez que trata-se de contrato assinado de forma eletrônica, com validação por biometria facial, podendo o Juiz indeferir as provas inúteis, protelatórias ou desnecessárias, conforme precedentes do STJ, o que é o caso dos autos, uma vez que consta, inclusive, constando geolocalização por meio de latitude e longitude da assinatura, onde tais dados geográficos recaem no município de Iguatu/CE, limítrofe ao município de Quixelô/CE, local de residência do consumidor. 4 - Dessa forma, em razão das alegações postas pelo consumidor não trazerem quaisquer indícios de fraude/falsificação de tal assinatura, além da própria parte, quando intimada do anúncio do julgamento antecipado da lide (fls. 135) nada ter manifestado, entendo que não subsiste o cerceamento de defesa alegado. 5. Nos termos do art. 14, caput e § 3º, do CDC, o dever da instituição financeira em reparar eventuais danos provocados a terceiros, decorrentes de sua atividade no mercado de consumo, pauta-se pela responsabilidade objetiva com fundamento na teoria do risco do empreendimento, sendo, então, despicienda a comprovação da culpa do prestador no caso. 6. Nesse contexto, deve o prestador do serviço envidar todos os esforços para provar a litude das práticas que realizar, apenas revelando possível a exclusão de sua responsabilidade se forem comprovadas quaisquer das hipóteses previstas no § 3º ou caso fortuito externo e força maior. 7. No caso dos autos, conclui-se que a contratação do negócio jurídico, ante a comprovação da assinatura do contrato de forma eletrônica por meio de biometria facial, em conjunto com seu documento pessoal e comprovação do recebimento dos valores, além de geolocalização, endereço de IP e número de telefone, foi devidamente regular, devendo a sentença ser ratificada em todos os seus termos. 8. Apelação conhecida e desprovida. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso, mas negar-lhe provimento. Fortaleza, 29 de maio de 2024 CLEIDE ALVES DE AGUIAR Presidente do Órgão Julgador JUIZA CONVOCADA MARIA REGINA OLIVEIRA CÂMARA PORT. 605/2024 Relatora (TJ-CE - Apelação Cível: 0200473-12.2022.8.06.0091 Iguatu, Relator.: MARIA REGINA OLIVEIRA CÂMARA PORT. 605/2024, Data de Julgamento: 29/05/2024, 3ª Câmara Direito Privado, Data de Publicação: 31/05/2024)</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> APELAÇÃO CIVIL. PROCESSUAL CIVIL E CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA CONTRATO FINANCEIRO, C/C ANTECIPAÇÃO PARCIAL DE TUTELA E AINDA PAGAMENTO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. SENTENÇA DE IMPROCEDÊNCIA MANTIDA. BANCO JUNTOU CÓPIA DE TRÊS CONTRATOS. UM ASSINADO ELETRONICAMENTE COM A SELFIE DA RECORRENTE E DOIS COM ASSINATURA MANUSCRITA. PERÍCIA GRAFOTÉCNICA. DESNECESSIDADE. DOCUMENTO DE IDENTIDADE COM CONFRONTAÇÃO COM O CONTRATO. ASSINATURAS SEMELHANTES. INSTITUIÇÃO FINANCEIRA COMPROVOU O REPASSE DOS SAQUES REALIZADOS MEDIANTE OS CARTÕES DE CRÉDITO CONSIGNADOS. FATO NÃO REFUTADO PELA APELANTE. CÓPIAS DIGITALIZADAS VÁLIDAS. ART. 10º, § 2º, DA RESOLUÇÃO Nº 4474/16 DO BACEN. RUBRICA EM CADA FOLHA DO CONTRATO. REQUISITO NÃO EXIGIDO EM LEI. RECURSO DE APELAÇÃO CONHECIDO E NEGADO PROVIMENTO. ACÓRDÃO: VISTOS, RELATADOS E DISCUTIDOS ESTES AUTOS, ACORDA A 1ª CÂMARA DIREITO PRIVADO do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso interposto pelas partes para negar-lhe provimento, nos termos do relatório e voto do Relator . Fortaleza, data conforme assinatura eletrônica. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (TJ-CE - Apelação Cível: 0201195-49.2022.8.06.0090 Icó, Relator.: CARLOS AUGUSTO GOMES CORREIA, Data de Julgamento: 29/05/2024, 1ª Câmara Direito Privado, Data de Publicação: 29/05/2024).</p><p style="text-align: justify;"> Destaco ainda, que o banco/apelado logrou êxito em comprovar que o contrato objeto da presente demanda em verdade, trata-se de refinanciamento dos contratos nºs 55-012761426/23 e 55-012761428/23, conforme indicado no item V do instrumento contratual, bem como, no histórico de empréstimo consignado do INSS, juntado pelo próprio requerente/recorrente (Id. 27086631/4), sendo liberado o valor (troco) remanescente, como apontado no contrato (IV Características do Contrato), no valor de R\$ 2.744,63 (dois mil, setecentos e quarenta e quatro reais e sessenta e três centavos), consoante comprovante de transferência acostado no Id. 27086658 e extrato bancário da

Processo	0200900-16.2024.8.06.0066
	conta-corrente do autor (Id.27086630). Logo, não procede a argumentação do autor/apelante no sentido de que fora vítima de fraude, a justificar o pleito indenizatório, até porque, pouco crível que fraudadores realizasse financiamento em nome da parte autora para liquidar contratos pretéritos em seu nome. Na verdade, o requerente/recorrente não apresentou nenhuma evidência que elidisse a veracidade das provas apresentadas pela instituição financeira/apelada. Desse modo, a apontada fraude na celebração do contrato não ficou evidenciada, posto que, a instituição financeira não somente apresentou o contrato firmado, assinado eletronicamente pelo autor/apelante, como também comprovou o regular cumprimento do pacto, de modo que, os descontos realizados em seu benefício previdenciário restam albergados pela legalidade, não havendo que se falar em danos materiais e morais. Sobre as operações realizadas por meio eletrônico, é imprescindível, ainda, salientar o entendimento consolidado por esta Egrégia Corte, vejamos: DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C PEDIDO INDENIZATÓRIO. SENTENÇA DE PROCEDÊNCIA. EMPRÉSTIMO CONSIGNADO. CONTRATO ASSINADO DIGITALMENTE. AUTORIZAÇÃO MEDIANTE BIOMETRIA FACIAL. DEPÓSITO DO CRÉDITO NA CONTA BANCÁRIA DA AUTORA. COMPROVADO. REGULARIDADE DA CONTRATAÇÃO CONSTATADA. FALHA NA PRESTAÇÃO DO SERVIÇO INEXISTENTE. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. Trata-se de recurso de apelação cível interposto pelo Banco Santander (Brasil) S/A, objetivando a reforma da sentença proferida às fls. 127/137 pelo Juízo da Vara Única da Comarca de Tamboril/CE, que julgou procedente a presente Ação Declaratória de Inexistência de Débito c/c Pedido Indenizatório, proposta por Maria Lima Paiva contra a instituição financeira recorrente. 2. O cerne da controvérsia consiste em verificar a validade do contrato de empréstimo consignado nº 262387976, conforme delineado na petição inicial, celebrado entre a instituição financeira apelante e a parte autora, bem como o cabimento de restituição em dobro e indenização por danos morais. 3. Sobre o assunto, esta e. Primeira Câmara de Direito Privado firmou entendimento de que a confirmação da regularidade ou irregularidade do negócio depende de provas concretas sobre (a) a anuência da consumidora sobre os descontos realizado e (b) o recebimento do crédito por parte da promovente. 4. E analisando os fólios desta pasta processual, verifico que o banco juntou cópia do contrato de empréstimo consignado questionado, tendo este sido assinado digitalmente (fls. 73/80). Ademais, fora juntado aos autos documento às fls. 81/102, no qual constam a selfie da consumidora, a sua geolocalização no momento da contratação, a identificação do IP e do dispositivo utilizado para o acesso aos endereços eletrônicos do requerido, para fins de validação do acerto contratual. Outrossim, conforme é possível se inferir do extrato bancário anexado aos presentes fólios processuais pela própria requerente, mais especificamente à fl. 28, o valor relativo ao empréstimo contratado fora depositado na conta bancária de titularidade da autora, na data de 20 de janeiro de 2023. 5. À vista das provas documentais apresentadas pelo promovido, ora apelante, confere-se que a instituição financeira se desincumbiu do ônus probante que lhe cabia, o que conduz ao entendimento de validade da contratação em deslinde. Precedentes do TJCE. 6. Nesse contexto, insta salientar que a jurisprudência pátria, inclusive desta e. Corte de Justiça, tem se manifestado pela validade da contratação de empréstimo consignado na via eletrônica. A propósito, ao tratar de contratos formalizados por meio eletrônico, o comum acordo entre as partes, ou apenas o consentimento do contratante, dá-se por intermédio de mecanismos de segurança que buscam validar a aquiescência das partes aos termos do contrato, como a assinatura eletrônica, por meio da qual se permite extrair o aceite entre o emissor e o receptor, a exemplo de senhas, ações específicas, e-mail ou número de telefone. 7. Recurso conhecido e provido. Sentença reformada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso de apelação, para lhe dar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (TJ-CE - Apelação Cível: 0200357-26.2023.8.06.0170 Tamboril, Relator.: JOSÉ RICARDO VIDAL PATROCÍNIO, Data de Julgamento: 05/06/2024, 1ª Câmara Direito Privado, Data de Publicação: 05/06/2024). APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. PRELIMINARES DE CERCEAMENTO DE DEFESA E NÃO CONHECIMENTO DO RECURSO REJEITADAS. CONTRATO DE EMPRÉSTIMO CONSIGNADO CELEBRADO POR MEIO ELETRÔNICO (BIOMETRIA FACIAL). INSTITUIÇÃO FINANCEIRA QUE COMPROVOU A REGULARIDADE DA CONTRATAÇÃO. INEXISTÊNCIA/NULIDADE DO NEGÓCIO JURÍDICO, REPETIÇÃO DE INDÉBITO E CONDENAÇÃO DA PARTE REQUERIDA AO PAGAMENTO DE INDENIZAÇÃO POR DANOS MORAIS PELO BANCO

722

Processo	0265454-58.2024.8.06.0001
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Atualização de Conta
Polo ativo	MARIA HELENA TAUMATURGO FRANCA
Advogado(s) - Polo ativo	OSVALDO OLÍMPIO BEZERRA - (CE38337-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0265454-58.2024.8.06.0001
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Processo	0265454-58.2024.8.06.0001
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	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelado: &#160;Banco do Brasil S/A </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> EMENTA: DIREITO CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER. CONTA VINCULADA AO PASEP. PRESCRIÇÃO DECENAL. TERMO INICIAL A PARTIR DO CONHECIMENTO DO EXTRATO COMPLETO E NÃO DO SAQUE DOS VALORES. SENTENÇA ANULADA. TEORIA DA CAUSA MADURA. INAPLICABILIDADE. NECESSIDADE DE DILAÇÃO PROBATÓRIA. RECURSO CONHECIDO E PROVIDO. RETORNO DOS AUTOS AO JUÍZO A QUO. </p> <p style="text-align: justify;"> I. CASO EM EXAME </p> <p style="text-align: justify;"> 1. Apelação cível interposta contra sentença que julgou liminarmente improcedente ação indenizatória, ao reconhecer a prescrição da pretensão ao ressarcimento de valores supostamente suprimidos de conta vinculada ao PASEP. </p> <p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;"> 2. Definir se a pretensão indenizatória está prescrita, considerando o termo inicial do prazo prescricional. </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 3. A jurisprudência consolidada no Superior Tribunal de Justiça (Tema 1150) estabelece que o prazo prescricional para ressarcimento de danos em conta vinculada ao PASEP é decenal, tendo início na data em que o titular comprovar ciência dos desfalques. </p> <p style="text-align: justify;">4. Na hipótese dos autos, o termo inicial deve ser fixado na data de obtenção do extrato completo da conta PASEP pela autora, ocorrida em 14/03/2024. Como a ação foi ajuizada em 02/09/2024, não há prescrição. </p> <p style="text-align: justify;"> 5. O julgamento da lide nesta instância não se mostra adequado, pois a demanda requer dilação probatória, especialmente a realização de perícia contábil. </p> <p style="text-align: justify;">6. Diante da necessidade de instrução probatória, não se aplica a teoria da causa madura (art. 1.013, § 4º, do CPC). </p> <p style="text-align: justify;"> IV. DISPOSITIVO </p> <p style="text-align: justify;"> 7. Recurso provido para anular a sentença e determinar o retorno dos autos ao juízo de origem para regular prosseguimento do feito. </p> <p style="text-align: justify;"> Dispositivos relevantes citados: Código Civil, arts. 189 e 205; Código de Processo Civil, art. 1.013, § 4º. </p> <p style="text-align: justify;"> Jurisprudência relevante citada: STJ, Tema 1150; STJ, AgInt no AREsp 1500181/SP, Rel. Min. Marco Aurélio Bellizze, 3ª Turma, j. 22/06/2021. </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr

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	SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACORDÃO: &#160;Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso para dar-lhe provimento, nos termos do voto do Relator. &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data da assinatura digital </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px

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Processo	0265454-58.2024.8.06.0001
	Verdana EmbeddedFont, Verdana MSFontService, sans-serif;">&#160; &#160; Cuida-se de recurso de apelação cível interposto por MARIA HELENA TAUMATURGO FRANÇA, contra sentença prolatada pelo douto Juízo da 29ª Vara Cível desta Comarca de Fortaleza, que julgou improcedente a Ação Indenizatória proposta em desfavor do Banco do Brasil S/A, nos seguintes termos: [...] In casu, vejo que o saque do PASEP ocorreu em de que 30-06-2014, conforme documento de fl. 35, que foi a data que a autora tomou ciência do desfalque de sua conta PASEP, surgindo daí, o direito de ajuizar o pleito para correção de tais inconsistências. Dessa forma, sendo o termo inicial do prazo decenal em 30-06-2014, verifica-se que o autor poderia ajuizar a ação até 30-06-2024, porém, somente protocolou a presente demanda em 02/09/2024, quando já havia transcorrido mais de dez anos, da sua ciência, restando prescrita o direito autoral de promover a ação. Assim sendo, vislumbro que estando o direito autoral prescrito, impõe-se o julgamento de improcedência liminar do pedido autoral, nos termos preconizado no artigo 332, § 1º do CPC, por ser norma cogente e matéria de ordem pública, conhecível de ofício e a qualquer tempo. Feitas tais digressões, pelo exposto e por tudo o mais que dos autos consta, JULGO LIMINARMENTE IMPROCEDENTE a presente ação, extinguindo o feito com resolução do mérito, por sentença, em razão do reconhecimento da prescrição do direito autoral, com esteio nos artigos 332, § 1º e 487, II e § único do Digesto Processual Civil, a pronunciando. Sem sucumbência e sem custas pela não formação da relação processual. Gratuidade deferida. &#160; Em razões recursais a autora/apelante sustenta, em suma, que "(...) revisitando os extratos da conta vinculada de nº 1.002.290.103-2, os quais foram recepcionados pela ora Apelante somente em 14/03/2024(...) aplicando-se a teoria da actio nata.(...)" Ao final, postula pelo "conhecimento e provimento do recurso, para que seja reformada a sentença de origem, reconhecendo-se o erro material quanto ao marco inicial da prescrição alterando-se o teor daquele decism ante os fundamentos documentais e de direito constantes da presente Apelação." Sem contrarrazões. É o relatório. VOTO &#160; Exercendo o juízo de admissibilidade, constato o atendimento dos requisitos intrínsecos e extrínsecos que o compõem, levando-me ao qualificativo da positividade e, assim, ao conhecimento do recurso apelatório. Passo, então, ao seu deslinde. O cerne da controvérsia recursal consiste em avaliar se o douto magistrado a quo agiu acertadamente ao julgar improcedente a ação, pelo fundamento da prescrição do direito da autora. Pois bem. Sobre o termo inicial para contagem do prazo prescricional, cumpre destacar a inteligência do artigo 189 do Código Civil, que consagra o princípio da actio nata, o qual assevera que a prescrição só começa a correr após a efetiva lesão do direito, in verbis: &#160; Art. 189. Violado o direito, nasce para o titular a pretensão, a qual se extingue, pela prescrição, nos prazos a que aludem os arts. 205 e 206. &#160; Assim, com base na teoria da actio nata, a prescrição tem início quando o titular do direito subjetivo violado obtém plena ciência da lesão e de toda a sua extensão (STJ. AgInt no AREsp 1500181/SP, 3ª Turma. Rel. Ministro Marco Aurélio Bellizze, J. 22.06.21). Com efeito, embora o magistrado a quo tenha considerado a data do saque como sendo o momento em que a autora tomou ciência dos desfalques, ressalto que a Primeira Câmara de Direito Privado têm inclinado seu entendimento no sentido de que o termo inicial da contagem do prazo prescricional da pretensão autoral se dá quando do recebimento do extrato ou das microfilmagens da conta. A respeito: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. DIFERENÇA DE VALORES NA CONTÁ VINCULADA AO PASEP. PRESCRIÇÃO INOCORRENTE. PRINCÍPIO DA ACTIO NATA. TERMO INICIAL A PARTIR DA CIÊNCIA INEQUÍVOCA SOBRE A OCORRÊNCIA DA IRREGULARIDADE NA CONTA VINCULADA DO PASEP (TEMA Nº 1.150). DATA DO RECEBIMENTO DO EXTRATO OU DAS MICROFILMAGENS. RETORNO DOS AUTOS À VARA DE ORIGEM PARA O DEVIDO PROCESSAMENTO E JULGAMENTO DO LITÍGIO. RECURSO PROVIDO. SENTENÇA ANULADA. I. CASO EM EXAME 1. Trata-se de recurso de Apelação Cível interposto contra sentença proferida pelo Juízo da 1ª Vara Cível da

Processo	0265454-58.2024.8.06.0001
	Comarca de Canindé/CE, que julgou liminarmente improcedente a Ação de Indenização por Danos Materiais e Morais, declarando a prescrição da ação, com fulcro no art. 487, inciso II, c/c art. 332, § 1º, do CPC. II. QUESTÃO EM DISCUSSÃO 2. Cinge-se a controvérsia recursal em aferir se está configurada a prescrição da ação proposta para discutir a suposta irregularidade na gestão e atualização monetária dos valores depositados em conta vinculada ao PASEP. III. RAZÕES DE DECIDIR 3. A matéria em discussão foi objeto de apreciação pelo eg. Superior Tribunal de Justiça, quando afetou ao rito dos recursos repetitivos o Tema nº 1.150, tendo o Tribunal da Cidadania uniformizado a interpretação da legislação infraconstitucional por meio das teses a seguir destacadas: i) o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao PASEP, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa; ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil; e iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP. 4. Com efeito, a fluência do prazo prescricional de dez anos para a parte exercer a pretensão condenatória começa a partir da data em que se tem conhecimento da lesão. Sendo assim, de acordo com o princípio da actio nata, o direito de pleitear a indenização surge quando a lesão e suas consequências são constatadas. Com base nisso, o entendimento mais escorreito é no sentido de que o termo inicial da contagem do prazo prescricional da pretensão autoral se dá quando do recebimento do extrato ou das microfotografias da sua conta. Em exame do caderno processual, tem-se que a autora recebeu os extratos em 19 de junho de 2024, cerca de 4 (quatro) meses antes do ajuizamento da ação (17.10.2024), de modo que não há que falar em prescrição. 5. Assim, revela-se impositiva a anulação da sentença, em vista da falta de decurso do prazo prescricional. IV. DISPOSITIVO 6. Recurso provido. (Apelação Cível&#160;- 0201722-38.2024.8.06.0055, Rel. Desembargador(a) JOSE RICARDÓ VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 05/02/2025, data da publicação:&#160; 05/02/2025) grifo meu </p> <p>&#160;</p> <p> APELAÇÃO CÍVEL. AÇÃO INDENIZATÓRIA POR DANOS MATERIAIS E MORAIS. PROGRAMA DE FORMAÇÃO DO PATRIMÔNIO DO SERVIDOR PÚBLICO - PASEP. ALEGAÇÃO DE DESFALQUES E INCORREÇÃO NA ATUALIZAÇÃO MONETÁRIA. PRELIMINARES: ILEGITIMIDADE PASSIVA DO BANCO DO BRASIL, INCOMPETÊNCIA DA JUSTIÇA ESTADUAL E PRESCRIÇÃO. REJEIÇÃO I) LEGITIMIDADE PASSIVA DO BANCO DO BRASIL PARA FIGURAR NO POLO PASSIVO. TEMA REPETITIVO Nº 1150 DO STJ. II) A LEGITIMIDADE AD CAUSAM DO BANCO DO BRASIL (TEMA 1150), DEFINE A COMPETÊNCIA DA JUSTIÇA COMUM ESTADUAL PARA APRECIAR A CONTROVÉRSIA. PRECEDENTES. III) O STJ PACIFICOU, AINDA, O ENTENDIMENTO DE QUE "A PRETENSÃO AO RESSARCIMENTO DOS DANOS HAVIDOS EM RAZÃO DOS DESFALQUES EM CONTA INDIVIDUAL VINCULADA AO PASEP SE SUBMETE AO PRAZO PRESCRICIONAL DECENAL PREVISTO PELO ARTIGO 205 DO CÓDIGO CIVIL", ALÉM DE QUE "O TERMO INICIAL PARA A CONTAGEM DO PRAZO PRESCRICIONAL É O DIA EM QUE O TITULAR, COMPROVADAMENTE, TOMA CIÊNCIA DOS DESFALQUES REALIZADOS NA CONTA INDIVIDUAL VINCULADA AO PASEP". NO CASO CONCRETO, A RECORRENTE OBTVEU ACESSO AO EXTRATO DA SUA CONTA PASEP EM 21.01.2021 E AJUIZOU A PRESENTE AÇÃO EM 09.06.2021, PORTANTO, NÃO HÁ QUE SE FALAR EM PRESCRIÇÃO. MÉRITO: JULGAMENTO ANTECIPADO DA LIDE. NÃO CABIMENTO. NOTA TÉCNICA Nº 07/2024 DO TJCE. CÁLCULOS COMPLEXOS. NECESSIDADE DE PERÍCIA TÉCNICA. ERROR IN PROCEDENDO. PRECEDENTES DO TJCE. SENTENÇA ANULADA DE OFÍCIO. RETORNO DOS AUTOS AO JUÍZO DE ORIGEM. MÉRITO DO RECURSO PREJUDICADO. (Apelação Cível&#160;- 0052792-56.2021.8.06.0064, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 18/12/2024, data da publicação: 18/12/2024) grifo meu </p> <p>&#160;</p> <p> Na situação fática posta em deslinde, vejo que a autora teve conhecimento do direito violado em 14 de março de 2024, quando obtido pela demandante o extrato completo de sua conta PASEP (id. 27109941, fls. 07), ingressando com a ação indenizatória em 02 de setembro de 2024, não havendo, portanto, que se falar em prescrição. </p> <p> Ressalto, por fim, que não é caso de aplicação da teoria da causa madura, prevista no art. 1.013, § 4º, do CPC, tendo em vista que os autos não se encontram prontos para imediato julgamento, uma vez que sequer houve citação da parte demandada. </p> <p> Ademais, a demanda necessita de dilação probatória, principalmente perícia contábil, para apurar a correção monetária, especialmente quanto aos expurgos inflacionários, aplicação de juros e depósitos não efetuados na conta vinculada ao Programa PASEP. </p> <p> Ante o exposto,

Processo	0265454-58.2024.8.06.0001
	<p>voto pelo conhecimento e provimento do recurso de apelação, no sentido de anular a sentença vergastada e determinar o retorno dos autos à origem para regular prosseguimento do feito.</p> <p>É como voto.</p> <p>Fortaleza, data da assinatura digital.</p> <p>Exmo. Sr. Dr. EDUARDO DE CASTRO NETO</p> <p>Juiz Convocado Relator</p> <p>“Segoe UI Web”, Arial, Verdana, sans-serif;”&#160;</p> <p>Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif;">
 </p> <p>OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: “Segoe UI”, “Segoe UI Web”, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> &#160; <p >="" <="" <span="" &#160;<="" <="" p>="" span><="" strong>="" style="font-size: medium;" td=""></p></p>
Processo	3000846-60.2025.8.06.0126
Número de ordem	92
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	FRANCISCO CALIXTO MARQUES
Advogado(s) - Polo ativo	TULIO ALVES PIANCO - (CE42491-A) ERICLES DE OLINDA BEZERRA - (CE41130-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado

Processo	3000846-60.2025.8.06.0126
Acórdão	<p style="text-align: justify;"> EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. SENTENÇA DE INDEFERIMENTO DA INICIAL POR AUSÊNCIA DE INTERESSE PROCESSUAL POR FRACIONAMENTO DE DEMANDAS. NÃO OCORRÊNCIA. ALEGADA LITIGÂNCIA PREDATÓRIA. NÃO CONFIGURAÇÃO. PRINCÍPIO DA INAFASTABILIDADE DA JURISDIÇÃO. REFORMA DA SENTENÇA. </p><p style="text-align: justify;"> CASO EM EXAME </p><p style="text-align: justify;"> >1. O magistrado de primeiro grau indeferiu a petição inicial, por ausência de interesse de agir, ao fundamento que houve abuso no direito de demandar, visto que, o requerente deveria ter ingressado com uma única demanda a fim de discutir as cobranças realizadas pela instituição financeira e não a interposição de 02 (duas) ações.</p><p style="text-align: justify;"> QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> >2. A questão em discussão consiste em saber se a existência de 02 (duas) ações ajuizadas por uma mesma parte, envolvendo o mesmo réu e alegações similares, configura fracionamento indevido da demanda e autoriza o indeferimento da petição inicial com base em ausência de interesse de agir.</p><p style="text-align: justify;"> RAZÕES DE DECIDIR </p><p style="text-align: justify;"> >3. Embora semelhantes, os objetos das ações são distintos. Não há identidade de causa de pedir, nem se configura conexão obrigatória.</p><p style="text-align: justify;"> >4. A Recomendação CNJ nº 127/2022 define litigância predatória como ajuizamento em massa com objetivo de coagir ou manipular o sistema judicial, o que não se observa no presente caso.</p><p style="text-align: justify;"> >5. O requerente apresentou documentos básicos e relevantes à petição inicial, evidenciando interesse de agir.</p><p style="text-align: justify;"> >6. A extinção do feito sem análise de mérito, nos moldes do art. 330, III, do CPC, violou os princípios da cooperação, da primazia da decisão de mérito e da inafastabilidade da jurisdição.</p><p style="text-align: justify;"> >7. A sentença merece anulação, com devolução dos autos ao juízo de origem.</p><p style="text-align: justify;"> DISPOSITIVO E TESE </p><p style="text-align: justify;"> >8. Recurso conhecido e provido. Sentença anulada, determinando-se o retorno dos autos ao juízo de origem para regular prosseguimento do feito.</p><p style="text-align: justify;"> >9. A extinção do processo sem resolução de mérito, sem observância do princípio da primazia da decisão de mérito, viola o direito fundamental de acesso à justiça.</p><p style="text-align: justify;"> Jurisprudência relevante citada: TJCE, Apelação Cível nº 0201039-18.2024.8.06.0114, Rel. Des. Maria Regina Oliveira Câmara, 1ª Câmara Direito Privado, j. 06/11/2024; TJCE, Apelação Cível nº 0200490-53.2022.8.06.0154, Rel. Des. Carlos Augusto Gomes Correia, 1ª Câmara Direito Privado, j. 26/07/2023.</p><p style="text-align: justify;"> >10. ACÓRDÃO </p><p style="text-align: justify;"> >11. Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso, para dar-lhe provimento nos termos do voto do eminente Relator, parte integrante desta decisão.</p><p style="text-align: justify;"> >12. Fortaleza, 10 de setembro de 2025.</p><p style="text-align: justify;"> >13. RELATÓRIO </p><p style="text-align: justify;"> >14. Trata-se de Recurso de Apelação interposto por Francisco Calixto Marques, com o escopo de adversar a sentença proferida pelo MM. Juízo da 2ª Vara da Comarca de Mombaça, que indeferiu a petição inicial extinguindo o processo sem apreciação de mérito, sob a égide do artigo 330, inciso III, do CPC.</p><p style="text-align: justify;"> >15. Em suas razões recursais a recorrente sustenta, que “ao contrário do que pensou o eminente magistrado, as ações veiculadas tratam não da obtenção de enriquecimento ilícito pelo

Processo	3000846-60.2025.8.06.0126
	autor/apelante, mas sim de minoração de danos causados, enquanto vítima de possível fraude utilizando-se o seu nome, oportunidade que se pretendia provar pelos meios hábeis cabíveis, mas que foi liminarmente ceifada, em grave violação ao princípio da ampla defesa, artigo 5º, LV da Constituição Federal". Argumenta, ainda, que "a decisão fere de morte ainda o próprio Código de Defesa do Consumidor, pois, sendo o ônus da prova invertido para o fornecedor, considerou o Juiz a quo, que o autor se utilizou indevidamente do Poder Judiciário para fins de má-fé, presumindo questão de mérito, sem enfrentá-lo". Ao final, requereu o conhecimento e provimento do presente recurso, e, consequentemente, a anulação da sentença do juízo a quo, devolvendo o processo ao primeiro grau para regular prosseguimento do feito. A parte apelada não apresentou contrarrazões. É o que importa relatar. <u>VOTO</u> Exercendo o juízo de admissibilidade, constato o atendimento dos requisitos intrínsecos e extrínsecos que o compõem, levando-me ao qualificativo da positividade e, assim, ao conhecimento do recurso apelatório. O magistrado de primeiro grau indeferiu a petição inicial, por ausência de interesse de agir, ao fundamento que houve abuso no direito de demandar, visto que, o requerente deveria ter ingressado com uma única demanda a fim de discutir as cobranças realizadas pela instituição financeira e não a interposição de 02 (duas) ações. Após análise, embora tratem de questões semelhantes, ou seja, envolvendo descontos não reconhecidos ocorridos em benefício previdenciário da parte requerente, os objetos são distintos. É imperioso ressaltar que, em diversos julgados, este relator entendeu que o fracionamento de ações consiste em um verdadeiro abuso do direito de demandar, ante a propositura de diversas ações contra a mesma parte e pedido de declaração de inexigibilidade de débito, o que configura conduta processual temerária e abusiva. Entretanto, no presente caso, diversamente do fundamento sentencial, entendo que a conduta do causídico da parte demandante em interpor 02(duas) ações não caracteriza prática de litigiosidade predatória, nos termos parametrizados na Recomendação nº 127 de 15/02/2022 do Conselho Nacional de Justiça (CNJ), que dispõe: Art. 2º Para os fins desta recomendação, entende-se por judicialização predatória o ajuizamento em massa em território nacional de ações com pedido e causa de pedir semelhantes em face de uma pessoa ou de um grupo específico de pessoas, a fim de inibir a plena liberdade de expressão. Assim sendo, considero desarrazoada a conclusão do juízo a quo de que a situação fática posta em deslinde configura fracionamento indevido de ações, caracterizando violação ao princípio da cooperação e evidencie a falta de interesse de agir da parte autora. Entendo, pois, que, não restou evidenciada a ocorrência de demanda temerária. A propósito: DIREITO PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITOS C/C INDENIZAÇÃO. SENTENÇA DE INDEFERIMENTO DA INICIAL POR AUSÊNCIA DE INTERESSE PROCESSUAL. AUSÊNCIA DE INTERESSE PROCESSUAL POR FRACIONAMENTO DE DEMANDAS. NÃO OCORRÊNCIA. OFENSA AO PRINCÍPIO DO ACESSO À JUSTIÇA. PRINCÍPIO DA INAFASTABILIDADE DA TUTELA JURISDICIONAL. PRINCÍPIO DA PRIMAZIA DO JULGAMENTO DE MÉRITO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. I- Cinge-se a controvérsia em perquirir o acerto ou desacerto da sentença impugnada, que indeferiu a petição inicial, sob a fundamentação de existência de três ações, esta e outras duas, ajuizadas pela autora buscando anular descontos, supostamente indevidos, o que configuraria ausência de interesse processual, uma vez que a parte deveria ajuizar somente uma demanda. II- No caso concreto, conquanto os processos versem sobre matéria similar, ou seja, cobranças indevidas; referem-se a descontos de timbres, contratos e períodos diversos; assim, relações jurídicas distintas. Patente, pois, a legitimidade e o interesse processual. III- O fundamento utilizado pelo magistrado sentenciante não se aplica ao caso sub judice, ante a diferenciação entre as ações paradigmas por ostentarem como causa de pedir contratos diversos, o que descaracteriza a multiplicidade de ações; afastando-se, pois, a ocorrência do instituto da conexão e, ainda, a possibilidade de ocorrência do mero risco de decisões conflitantes, a que se refere o art. 55, § 3º do CPC. IV- Em que pese se tratar das mesmas partes, o fato de cada processo ostentar Contratos distintos, já é o suficiente para que se permita o processamento em separado, porquanto, antes de ser uma obrigação, a

Processo	3000846-60.2025.8.06.0126
	reunião dos pedidos em uma só demanda é uma faculdade (art. 327, CPC). V- Em homenagem aos princípios da cooperação, da inafastabilidade da tutela jurisdicional e da primazia do julgamento de mérito; devem os autos retornar ao juízo de origem para que a inicial seja recebida, processada e sentenciada, na forma da lei. VI- Recurso conhecido e provido. Sentença anulada.&#160; ACÓRDÃO &#160; Visto, relatado e discutido o presente recurso, acorda a Primeira Câmara de Direito Privado do Egrégio Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para dar-lhe provimento, nos termos do relatório e voto que passam a integrar o presente acórdão. Fortaleza/CE, data e hora do sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADORA MARIA REGINA OLIVEIRA CÂMARA Relatora (Apelação Cível&#160;- 0201039-18.2024.8.06.0114, Rel. Desembargador(a) MARIA REGINA OLIVEIRA CÂMARA, 1ª Câmara Direito Privado, data do julgamento: 06/11/2024, data da publicação:&#160; 06/11/2024)</p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify;"> APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. INDEFERIMENTO DE INICIAL. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. FALTA DE INTERESSE PROCESSUAL. MULTIPLICIDADE DE DEMANDAS. EXERCÍCIO DO DIREITO DE AÇÃO. CONTRATOS DISTINTOS. CAUSAS DE PEDIR DISTINTAS. VEDAÇÃO À CONDUTA DA PARTE AUTORA - AUSÊNCIA - ERROR IN PROCEDENDO. CONEXÃO. INEXISTENTE. CONTRATOS DIFERENTES. SENTENÇA ANULADA - RECURSO CONHECIDO E PROVIDO. 1. O cerne da demanda se refere se há interesse de agir em uma demanda, quando a autora ingressa com multiplicidade de ações contra o mesmo réu. 2. O entendimento doutrinário dominante em nosso ordenamento jurídico preleciona que o interesse de agir ou processual está intimamente ligado ao binômio necessidade/adequação, não sendo albergado pelo Ordenamento Jurídico o ajuizamento de múltipla ações como causa da falta de interesse de agir. 3. Ausência de conexão, em virtude de as ações terem objetos distintos. 4. Recurso conhecido e dado provimento. Sentença anulada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para dar-lhe provimento, nos termos do voto do relator. Fortaleza, data conforme assinatura eletrônica. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (Apelação Cível&#160;- 0200490-53.2022.8.06.0154, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 26/07/2023, data da publicação: 26/07/2023)</p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify;"> APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. A ÇÃO DE DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SERVIÇO DE SEGURO . TARIFAS. EXTINÇÃO DA AÇÃO POR AUSÊNCIA DE LEGITIMIDADE OU INTERESSE PROCESSUAL. 485, VI, DO CPC. DEMANDA PREDATÓRIA NÃO CONFIGURADA . AUSÊNCIA DE JUSTA CAUSA PARA A EXTINÇÃO DA AÇÃO. INDEFERIMENTO DA INICIAL. VIOLAÇÃO DOS PRINCÍPIOS DO ACESSO À JUSTIÇA E DA PRIMAZIA DO JULGAMENTO DE MÉRITO. CERCEAMENTO DO DIREITO DE DEFESA . SENTENÇA CASSADA. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. 1 . Trata-se de recurso de apelação interposto contra sentença que decretou a extinção do processo, sem julgamento do mérito, por ausência de legitimidade ou de interesse processual, na forma do art. 485, VI, do CPC, sob o fundamento de que o ajuizamento de demandas de massa pelo apelante viola os princípios da razoável duração do processo, eficiência e da cooperação, expondo a falta de interesse de agir, e que o ajuizamento de duas ações contra a mesma parte, sobre o mesmo assunto, configura abuso de direito da autora. 2. Inicialmente, embora a sentença mencione que a autora tenha ajuizado 2 (dois) processos diferentes contra a mesma instituição financeira, devo observar que a configuração de conduta predatória do apelante não ocorre pela simples verificação da quantidade de ações ajuizadas, mas pela presença de outras circunstâncias associadas, como por exemplo, o fracionamento indevidos de pedidos relativos a um mesmo contrato em diferentes ações ou o ajuizamento da mesma ação (parte, pedido e causa de pedir) em diferentes varas ou comarcas, visando escolher o juízo que lhe parece ter o entendimento mais favorável, para depois desistir dos outros processos, burlando o princípio do juiz natural, o que não ocorreu no caso dos autos, visto que uma ação se trata da cobrança de Seguro e a outra de Tarifas bancárias . 3. Além disso, ainda que semelhantes, as ações são diferentes e inexistente conexão entre elas quando tiverem como causa de pedir diferentes contratos, ainda que haja identidade de partes, pois cada contrato envolve diferentes objetos, valores e circunstâncias a serem apreciadas individualmente, razão pela qual não deve haver a reunião dos processos nesses casos. 4. Desse modo, é absolutamente irrazoável a conclusão de que o ajuizamento de diversos processos contra instituições financeiras diversas, em que cada um aborda sobre um contrato diferente do outro, constitua fragmentação indevida de ação . 5. Em ações cuja discussão envolve a existência ou validade de negócios jurídicos relacionados a contratos bancários, em que a

Processo	3000846-60.2025.8.06.0126
	causa de pedir gira em torno da falha na prestação de serviços bancários, a simples evidência da violação do direito da parte, como a demonstração da existência de inclusão de descontos do benefício previdenciários através de extrato do INSS, em razão do contrato que afirma ser fraudulento ou indevido, é suficiente para evidenciar o interesse de agir da parte em fazer cessar a violação de seu direito e a responsabilização civil pelos danos sofridos. 6. No caso dos autos, a parte autora alega estar sendo alvo de cobranças indevidas pelo banco promovido, que estaria descontando de seu benefício previdenciário valores referentes a prestações de um Seguro que afirma não ter contratado, e instruiu a inicial com cópia do documento pessoal de identificação (p. 26); comprovante de residência (p. 27); procuração ad judícia assinada de próprio punho (p. 29); extrato da conta Bradesco em que consta a inclusão dos descontos referentes ao contrato de Seguro, em favor do banco promovido (p. 31/46) estando a petição, portanto, lastreada em documentos que evidenciam minimamente a presença de pressupostos de constituição e de desenvolvimento válido e regular do processo. 7. Ressalto, ainda, que em ações cuja questão controvertida é a negativa da contratação do empréstimo e a existência de descontos indevidos referente ao mesmo, cabe à parte autora a demonstração da existência dos referidos descontos, ao passo que é ônus da prova da instituição financeira comprovar a contratação do serviço e apresentar aos autos o instrumento contratual, a fim de que seja submetido à análise de existência e validade do negócio jurídico, assim como a comprovação da transferência dos recursos oriundos do empréstimo para a conta do consumidor, pois, em se tratando de relação de consumo, deve ser observada a aplicação da inversão do ônus da prova em favor do consumidor, imputando-se à instituição financeira a juntada dos documentos que por ela devem ser mantidos, por serem considerados de posse obrigatória, em decorrência da atividade desempenhada, como é o caso dos instrumentos do contrato. 8. Nesse contexto, estando descaracterizada a existência de demanda predatória e evidenciada a causa de pedir, a legitimidade da parte e o interesse processual, há de se reconhecer a ausência de justa causa para a extinção do feito, por violação dos princípios da inafastabilidade da tutela jurisdicional e do devido processo legal, consagrados pelo art. 5º, XXXV e LIV, da Constituição Federal, comprometendo a finalidade do processo, que é a satisfação do direito material pela primazia da sentença de mérito, nos termos dos arts. 4º e 6º, do CPC. 9. Recurso conhecido e provido. Sentença anulada. Retorno dos autos à origem para o regular processamento do feito. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os Desembargadores integrantes da 2ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para dar-lhe provimento, em conformidade com o voto do Relator. Fortaleza (CE), data indicada no sistema. DESEMBARGADOR EVERARDO LUCENA SEGUNDO Relator (TJ-CE - Apelação Cível: 02007944720248060133 Nova Russas, Relator.: EVERARDO LUCENA SEGUNDO, Data de Julgamento: 23/10/2024, 2ª Câmara Direito Privado, Data de Publicação: 23/10/2024) &#160; APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. AÇÃO DE DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. EMPRÉSTIMO CONSIGNADO&#160; EXTINÇÃO DA AÇÃO POR AUSÊNCIA DE PRESSUPOSTOS DE CONSTITUIÇÃO. 485, IV, DO CPC. DEMANDA PREDATÓRIA NÃO CONFIGURADA. LEGITIMIDADE E INTERESSE PROCESSUAL RECONHECIDO. AUSÊNCIA DE JUSTA CAUSA PARA A EXTINÇÃO DA AÇÃO. VIOLAÇÃO DOS PRINCÍPIOS DO ACESSO À JUSTIÇA E DA PRIMAZIA DO JULGAMENTO DE MÉRITO. CERCEAMENTO DO DIREITO DE DEFESA. SENTENÇA CASSADA. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. 1. Trata-se de recurso de apelação interposto contra sentença que decretou a extinção do processo, sem julgamento do mérito, por ausência de pressupostos de constituição e de desenvolvimento válido e regular do processo, na forma do art. 485, IV, do CPC, sob o fundamento de que o ajuizamento de demandas de massa pelo apelante viola o princípio da Cooperação, expondo a falta de interesse de agir. 2. Inicialmente, embora a sentença mencione que o advogado tenha ajuizado seis processos diferentes contra instituições financeiras, devo observar que a configuração de conduta predatória do advogado não ocorre pela simples verificação da quantidade de ações ajuizadas, mas pela presença de outras circunstâncias associadas, como por exemplo, o fracionamento indevidos de pedidos relativos a um mesmo contrato em diferentes ações ou o ajuizamento da mesma ação (parte, pedido e causa de pedir) em diferentes varas ou comarcas, visando escolher o juízo que lhe parece ter o entendimento mais favorável, para depois desistir dos outros processos, burlando o princípio do juiz natural, o que não ocorreu no caso dos autos. 3. Além disso, ainda que semelhantes, as ações são diferentes e inexistente conexão entre elas quando tiverem como causa de pedir diferentes contratos, ainda que haja identidade de partes, pois cada contrato envolve diferentes objetos, valores e circunstâncias a serem apreciadas individualmente, razão pela qual não deve haver a reunião dos processos nesses casos. 4. Desse modo, é absolutamente irrazoável a conclusão de que o ajuizamento de diversos processos contra instituições financeiras diversas, em que cada um aborda sobre um

Processo	0201290-29.2023.8.06.0160
Número de ordem	93

Processo	0201290-29.2023.8.06.0160
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	RAIMUNDA SOUSA DE OLIVEIRA
Advogado(s) - Polo ativo	FRANCISCO GUSTAVO MUNIZ DE MESQUITA - (CE31449-A)
Polo passivo	BANCO PAN S.A.
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado

Processo	0201290-29.2023.8.06.0160
Acórdão	<p style="text-align: justify;"> EMENTA: PROCESSO CIVIL. RECURSO DE APELAÇÃO EM AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. INSTRUMENTO CONTRATUAL FIRMADO COM PESSOA ANALFABETA. ART. 595 DO CC. AUSÊNCIA DE ASSINATURA A ROGO. VÍCIO DE FORMALIDADE. FALHA NA PRESTAÇÃO DO SERVIÇO. DANO MORAL CONFIGURADO. QUANTUM INDENIZATÓRIO. CRITÉRIOS DA RAZOABILIDADE E DA PROPORCIONALIDADE. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. </p><p style="text-align: justify;"> I. CASO EM EXAME </p><p style="text-align: justify;"> 1. Apelação interposta por consumidora idosa contra sentença que declarou a nulidade de contrato bancário, determinou a restituição simples dos valores descontados, mas indeferiu pedido de indenização por danos morais.</p><p style="text-align: justify;"> 2. O contrato de empréstimo consignado apresentava vício formal, por ausência de assinatura a rogo, e ensejou descontos indevidos no benefício previdenciário da autora, que auferia um salário-mínimo.</p><p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> 3. A questão em discussão consiste em saber se os descontos indevidos no benefício previdenciário da consumidora idosa, decorrentes de contrato bancário nulo, configuram dano moral indenizável.</p><p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p><p style="text-align: justify;"> 4. As instituições financeiras respondem objetivamente por falhas na prestação de serviços (CDC, art. 14; CC, arts. 186 e 927).</p><p style="text-align: justify;"> 5. A ausência de assinatura a rogo invalida o contrato firmado com analfabeto, tornando ilícita a cobrança de parcelas.</p><p style="text-align: justify;"> 6. Os descontos indevidos em benefício previdenciário de idosa caracterizam lesão extrapatrimonial, configurando dano moral in re ipsa.</p><p style="text-align: justify;"> 7. O quantum indenizatório deve observar razoabilidade e proporcionalidade, de modo a compensar o dano e cumprir função pedagógica.</p><p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p><p style="text-align: justify;"> 8. Recurso conhecido e provido para reformar parcialmente a sentença e condenar o banco ao pagamento de indenização por danos morais, fixada em R\$ 2.000,00 (dois mil reais). </p><p style="text-align: justify;"> Tese de julgamento: </p><p style="text-align: justify;"> 1. A ausência de assinatura a rogo invalida contrato firmado com analfabeto, configurando falha na prestação de serviços bancários.</p><p style="text-align: justify;"> 2. Os descontos indevidos em benefício previdenciário de idoso configuram dano moral in re ipsa, gerando dever de indenizar.</p><p style="text-align: justify;"> Dispositivos relevantes citados: CC/2002, arts. 3º, 4º, 186, 187, 595 e 927; CDC, art. 14.</p><p style="text-align: justify;"> Jurisprudência relevante citada: STJ, Súmulas nº 297 e 479; TJ-CE, AC nº 0014238-13.2017.8.06.0090, Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câmara de Direito Privado, j. 08.02.2023; TJ-CE, AC nº 0200103-11.2022.8.06.0066, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara de Direito Privado, j. 24.05.2023; TJ-CE, AC nº 0050573-26.2020.8.06.0090, Rel. Des. Inácio de Alencar Cortez Neto, 2ª Câmara de Direito Privado, j. 06.12.2023.</p><p style="text-align: justify;"> A C Ó R D Ã O </p><p style="text-align: justify;"> Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso, para dar-lhe provimento nos termos do voto do eminente Relator, parte integrante desta decisão.</p><p style="text-align: justify;"> Fortaleza, 10 de setembro de 2025. </p><p style="text-align: justify;"> JOSE RICARDO VIDAL PATROCÍNIO </p><p style="text-align: justify;"> Presidente do Órgão Julgador</p><p style="text-align: justify;"> EDUARDO DE CASTRO NETO </p><p style="text-align: justify;"> Juiz Convocado Relator</p><p style="text-align: justify;"> RELATÓRIO </p><p style="text-align: justify;"> Trata-se </p>

Processo	0201290-29.2023.8.06.0160
	se de Recurso de Apelação interposto por Raimunda Sousa de Oliveira, com o escopo de adversar a sentença proferida pelo MM. Juízo da 2ª Vara Cível da Comarca de Santa Quitéria, que julgou parcialmente procedentes os pedidos formulados na ação Declaratória de Inexistência de Débito c/c Repetição de Indébito e Indenização por Danos Morais, ajuizada em desfavor do Banco Pan S/A., o que fez nos seguintes termos: 1) Declarar a nulidade da cobrança do contrato nº 322836030-5, com descontos no período de novembro de 2018 a agosto de 2020, no valor de R\$ 27,58 cada, na forma do histórico emitido pelo INSS e acostado à inicial; 2) Condenar a parte promovida a restituir os valores indevidamente descontados da parte autora em razão do contrato ora declarado inexistente, de forma simples, visto que os descontos encerraram antes de 30/03/2021; Tais valores deverão ser acrescidos de correção monetária e juros de mora unicamente pela taxa SELIC (REsp 1795982), a partir do efetivo desembolso de cada parcela (Súmulas 43 e 54 do STJ). A partir da produção de efeitos da nova redação dos artigos 389 e 406 do Código Civil, dada pela Lei nº 14.905/24 (30/08/2024), deverá ser aplicada a sistemática lá apontada, substituindo-se a SELIC pelos índices legais, ou seja, corrigindo-se monetariamente o débito pelo IPCA-IBGE e com juros pela taxa legal (diferença da SELIC e do IPCA, pela fórmula estabelecida pela RESOLUÇÃO CMN Nº 5.171, de 29 de agosto de 2024, por força do § 2º do artigo 406 do Código Civil, desconsiderando-se eventuais juros negativos). Ressalto a possibilidade de compensação dos valores sobre os quais houver comprovação de efetiva disponibilização em conta bancária da parte autora com aqueles que se originam da presente condenação em desfavor da parte ré, no caso, o referente ao comprovante id 132195433, no valor de R\$ 300,99, disponibilizado na conta da autora em 23.10.2018 (id 132195468), os quais devem ser corrigidos pelos mesmos índices acima apontados, aplicados a partir da data da disponibilização do crédito. Em face da sucumbência recíproca, carreo às partes o pagamento de custas e despesas processuais, na proporção de 50% (cinquenta por cento) para cada, e fixo os honorários advocatícios de sucumbência a serem suportados por ambas as partes, no montante de 10% sobre o valor da condenação, ficando, no caso da autora, suspensa a exigibilidade, em virtude da gratuidade deferida. Em suas razões recursais a autora/apelante sustenta, que “o art. 5º, inciso V, da Constituição Federal de 1988, faz prever, como direito Fundamental, a indenização pelo dano moral decorrente da violação da intimidade, da vida privada, da honra e da imagem das pessoas”. E que “o dano moral ou extrapatrimonial pode ser conceituado como uma lesão aos direitos da personalidade. Estes são atributos essenciais e inerentes à pessoa. Concernem à sua própria existência e abrangem a sua integridade física, psíquica ou emocional sob múltiplos prismas”. Sustenta, ainda, que “nesse sentido, nobres julgadores, há de se destacar que foi indevidamente descontado da conta da parte recorrente a quantia de 22 (vinte e dois) parcelas no valor de R\$ 27,58 (vinte e sete reais e cinquenta e oito centavos) cada, resultando em um total de R\$ 606,76 (seiscentos e seis reais e setenta e seis centavos) – fls. de ID: 132195471. Dessa maneira, tal valor descontado da conta de uma idosa, pessoa esta que recebe proventos no valor de 1 (um) salário-mínimo, é algo fustigante, colocando em risco inclusive, suas condições mínimas de dignidade, tais como alimentação, saúde, etc.” Ao final, requer o conhecimento e provimento do presente recurso para reformar a sentença no ponto atacado, determinando assim a condenação da recorrida para arcar com a devida indenização a título de danos morais em valor razoável ao transtorno ora sofrido. Contrarrazões no Id. 27137226. É o que importa relatar. VOTO Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. Entendeu o juízo de primeiro grau em acolher parcialmente os pedidos autorais declarando a nulidade do contrato em discussão (nº 322836030-5), condenando o banco/promovido a restituir, de forma simples, os valores indevidamente descontados do benefício previdenciário da parte requerente, autorizando a compensação de valores

Processo	0201290-29.2023.8.06.0160
	comprovadamente disponibilizados à parte autora, no entanto, indeferiu o pedido de indenização por danos morais, ao fundamento de que, ainda que tenha ocorrido descontos indevidos, tal fato não se mostra suficientemente capaz de ensejar o dano moral alegado. Sobre a temática em testilha, cumpre ressaltar que de acordo com a Sumula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista: “O Código de Defesa do Consumidor é aplicável às instituições financeiras”. No caso concreto, é forçoso reconhecer que houve falha na prestação do serviço, causando danos de ordem moral e material a promovente/apelada, visto que, embora o banco/recorrente tenha procedido a juntada do suposto instrumento contratual (Id. 27137173, 27137183/27137187), o pacto está eivado de vício de formalidade, porquanto, não há neste assinatura a rogo, formalidade indispensável à validade do negócio jurídico. Assim, quando demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, conferindo daí ao lesado a devida reparação dos danos sofridos, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. Pois bem. Definida a nulidade do contrato e a restituição dos valores descontados indevidamente - inclusive não há insurgência nestes pontos, cumpre verificar o pedido de danos morais. Dano Moral - Os descontos indevidos realizados no benefício previdenciário da requerente/apelante, constituem ato ilícito, na medida em que a instituição bancária deixou de agir com o cuidado necessário para o regular desenvolvimento de sua atividade, causando danos e resultando, por via de consequência, na obrigação de repará-los, na forma dos arts. 186 e 927 do Código Civil. É nesta conduta, por certo, censurável, onde se centra o nexo de causa e efeito entre o dano e a ação (conduta), porque causou vexame, constrangimento ao consumidor, caso em que a condenação é devida porque os efeitos de tal prática afetam a pessoa com mais extensão e com repercussão no mundo exterior, não confinados apenas à indignação pessoal ou um mero aborrecimento. Neste sentido: APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. INSTRUMENTO CONTRATUAL FIRMADO COM ANALFABETO. ARTIGO 595 DO CPC. AUSÊNCIA DE ASSINATURA A ROGO. CONTRATAÇÃO ILÍCITA. DANOS MORAIS E MATERIAIS CONFIGURADOS. MODULAÇÃO DOS EFEITOS DO EARESP 676.608. RESTITUIÇÃO EM DOBRO. DESNECESSIDADE DE COMPROVAÇÃO DA MÁ-FÉ PARA OS DESCONTOS EFETUADOS EM DATA POSTERIOR AO DIA 30/03/2021. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PARCIAL PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (TJ-CE – AC: 00142381320178060090 Icó, Relator: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 08/02/2023, 1ª Câmara Direito Privado, Data de Publicação: 08/02/2023); Resta, portanto, claro a incidência do dano moral. Fixação – Fatores - No tocante ao valor indenizatório, como se sabe, deve representar para o ofendido, uma satisfação psicológica que possa pelo menos diminuir os dissabores que lhe foram acarretados, sem causar, evidentemente, o chamado enriquecimento sem causa, servindo, ainda, para impingir ao causador do dano, um impacto capaz de desestimulá-lo a praticar novos atos que venham a causar danos a outrem. A respeito: DIREITO PROCESSUAL CIVIL E DO CONSUMIDOR. APELAÇÕES CÍVEIS. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE NEGÓCIO JURÍDICO E INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. CONTRATAÇÃO DE SEGURO. AUSÊNCIA DE COMPROVAÇÃO CONCRETA SOBRE A ANUÊNCIA DO CONSUMIDOR SOBRE OS DESCONTOS EM SUA CONTA BANCÁRIA. INSTITUIÇÃO FINANCEIRA QUE NÃO SE DESINCUMBIU DO SEU ONUS PROBANDI (ART. 373, II, CPC). DANOS MORAIS CONFIGURADOS. QUANTUM MANTIDO. PRECEDENTES. JUROS DE MORA A PARTIR DO EVENTO DANOSO. APELAÇÕES CONHECIDAS E DESPROVIDAS. SENTENÇA MANTIDA. 1. Cuidam os autos de apelações cíveis interpostas por AFONSO DE ALMEIDA SILVA e por BANCO BRADESCO S/A, objetivando a reforma da sentença exarada pelo Juízo da Vara Única da

Processo	0201290-29.2023.8.06.0160
	Comarca de Cedro/CE, que julgou procedente os pedidos autorais em Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Morais e Materiais ajuizada por Afonso de Almeida Silva. 2. Incumbe ressaltar que a relação entre as partes é, de fato, consumerista, uma vez que a parte autora é destinatária final dos serviços oferecidos pelo réu, e a atividade bancária e de seguros é considerada serviço para os fins legais. 3. O réu deixou de apresentar a cópia do contrato impugnado com todos os seus detalhes e número do contrato, como também não demonstrou a contratação por meio de cartão magnético e senha. Não se desincumbiu, portanto, do ônus de comprovar a licitude do negócio jurídico. Destarte, a falta do instrumento particular em discussão impossibilita a verificação da validade dos descontos efetuados, e desse modo não há outro caminho senão reconhecer a inexistência do contrato questionado e os descontos indevidos na conta-corrente do autor, configurando, assim, falha na prestação de serviços do acionado. 4. Nessa toada, o Superior Tribunal de Justiça consagrou entendimento no sentido de que as instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias (Súmula 479 do STJ). 5. Logo, porque o requerido não se incumbiu de demonstrar a ocorrência das excludentes (inexistência de defeito e culpa exclusiva do consumidor ou de terceiro), agiu de forma acertada o d. magistrado a quo ao condenar o apelante ao pagamento de indenização por danos morais e determinar a devolução dos valores indevidamente descontados. Dito isso, a indenização fixada em R\$ 2.000,00 (dois mil reais) não comporta modificação, razão por que mantenho o quantum indenizatório fixado na origem. 6. E no tocante aos juros de mora, não há dúvidas de que estes incidem desde a data do evento danoso, em atenção à Súmula 54 do STJ, por se tratar de responsabilidade civil extracontratual. 7. Em relação ao recurso do autor, em que aduz a desproporcionalidade do quantum indenizatório a título de danos morais e pugna por sua majoração ao patamar de R\$ 5.000,00 (cinco mil reais), com base na argumentação supra e nas peculiaridades do caso concreto, demonstrada na análise do recurso interposto pela parte promovida, entendo que o quantum de R\$ 2.000,00 (dois mil reais) se mostra suficiente in casu, também não havendo que se falar em majoração. E referente ao termo inicial de incidência dos juros de mora sobre o valor indenizatório, conforme exposto acima, estes devem incidir desde a data do evento danoso, com base na Súmula 54 do STJ, não merecendo, portanto, reforma a sentença do juízo a quo. 8. Recursos conhecidos e desprovidos. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer dos presentes recursos, mas para negar-lhes provimento, nos termos do voto do Relator. Fortaleza, data e assinatura digital registradas no sistema processual eletrônico. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (TJ-CE - AC: 02001031120228060066 Cedro, Relator: JOSÉ RICARDO VIDAL PATROCÍNIO, Data de Julgamento: 24/05/2023, 1ª Câmara Direito Privado, Data de Publicação: 24/05/2023)</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> PROCESSUAL CIVIL E CONSUMIDOR. AÇÃO ANULATÓRIA C/C INDENIZAÇÃO POR DANOS MORAIS. RECURSO DE APELAÇÃO. AUSÊNCIA DO CONTRATO DE SEGURO DE VIDA. DESCONTOS INDEVIDOS. DEVOLUÇÃO DOS VALORES DE FORMA SIMPLES. ENTENDIMENTO FIRMADO PELO STJ EM RECURSO REPETITIVO PARADIGMA (EARESP 676.608/RS). DANO MORAL IN RE IPSA. MONTANTE INDENIZATÓRIO REDUÇÃO. POSSIBILIDADE. ATENDIDOS OS PRINCÍPIOS DA RAZOABILIDADE E PROPORCIONALIDADE. APELO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA MODIFICADA EM PARTE. 1-Trata-se de Recurso de Apelação interposto por Sudamerica Clube de Serviços em face de sentença prolatada pelo Juízo da 1ª Vara Cível da Comarca de Icó que julgou parcialmente procedente Ação Anulatória c/c Indenização por Danos Morais ajuizada por Maria de Fátima Pereira em desfavor do apelante. 2-No presente caso, os documentos que instruem a peça de ingresso demonstram que a promovida efetivamente realizou desconto, decorrente do contrato de seguro de vida, consoante comprova a autora ao anexar aos autos extrato bancário de fls.. A empresa apelante, por seu turno, não se desincumbiu do ônus de comprovar fato impeditivo, modificativo ou extintivo do direito autoral, haja vista que deixou de acostar aos autos o instrumento contratual firmado entre as partes. 3 A devolução dos valores indevidamente descontados da conta corrente da requerente é mera consequência da declaração de inexistência do contrato, tendo em vista a responsabilidade objetiva da apelante. 4-No que toca a restituição do valor indevidamente descontado, este deve ocorrer na forma simples, pois as cobranças indevidas referem-se a período anterior a data da publicação do acórdão que modulou os efeitos da decisão a qual firmou a tese jurídica relativa à matéria, devendo a sentença ser reformada nesse ponto. 5-A ausência de contrato válido que justifiquem descontos realizados diretamente da conta corrente da consumidora caracteriza dano moral in re ipsa, ou seja, presumido, decorrente da própria existência do ato. 6- Considerando as peculiaridades do caso concreto, infere-se que o quantum arbitrado em R\$5.000 (cinco mil reais) deve ser reduzido para R\$2.000,00 (dois mil reais), uma vez que razoável e proporcional para compensar o dano sofrido, além de atender o caráter

Processo	0201290-29.2023.8.06.0160
	pedagógico da medida a efeito de permitir reflexão da demandada sobre a necessidade de atentar para critério de organização e métodos no sentido de evitar condutas lesivas aos interesses dos consumidores, devendo a sentença ser reformada neste ponto. 7- Diante do acima exposto, conheço do Recurso de Apelação interposto, para lhe dar parcial provimento, reformando-se a sentença vergastada, tão somente para que a restituição do indébito se dê de forma simples, bem como para que a indenização por danos morais seja reduzida ao patamar de R\$ 2.000,00(dois mil reais), mantendo-se inalteradas as demais disposições da sentença. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do Recurso de Apelação interposto, para lhe dar parcial provimento, nos termos do voto do Relator Fortaleza, data e hora informadas no sistema. INÁCIO DE ALENCAR CORTEZ NETO Presidente do Órgão Julgador Exmo. Sr. INÁCIO DE ALENCAR CORTEZ NETO Relator (TJ-CE - Apelação Criminal: 0050573-26.2020.8.06.0090 Icó, Relator: INÁCIO DE ALENCAR CORTEZ NETO, Data de Julgamento: 06/12/2023, 2ª Câmara Direito Privado, Data de Publicação: 07/12/2023)</p><p style="text-align: justify;"> Nessa ordem de ideias, atento ao cotejo desses fatores: nível econômico da autora da ação, sofrimento da vítima e o porte econômico da entidade bancária, e ainda, levando em consideração os valores dos descontos, arbitro o valor de R\$ 2.000,00 (dois mil reais), a título de indenização por danos morais, frente ao quadro fático delineado nos autos, porque não se entremostra exagerado nem insignificante, uma vez que razoável e proporcional à ofensa perpetrada.</p><p style="text-align: justify;"> E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados, conheço do recurso, por próprio e tempestivo, para dar-lhe provimento reformando a sentença atacada para condenar o banco/promovido, ao pagamento de indenização por danos morais no importe de R\$ 2.000,00 (dois mil reais), acrescidos de correção monetária pelo IPCA do IBGE desde o arbitramento (STJ, Súmula nº 362; CC, art. 389, parágrafo único) e de juros de mora da data do evento danoso (Súmula n.º 54, STJ) à taxa de 1% ao mês até o dia anterior ao da vigência da Lei nº 14.905/2024 e, a partir daí, à taxa correspondente ao resultado da taxa Selic subtraída do IPCA (CC, arts. 398 e 406, § 1º).</p><p style="text-align: justify;"> Com o novo resultado, condeno o banco/promovido ao pagamento integral das custas processuais e honorários advocatícios, fixados em 10% (dez por cento) sobre o valor da condenação, nos termos do art. 85, do Código de Processo Civil.</p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify;"> É como voto.</p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify;"> Fortaleza-CE, 10 de setembro de 2025.</p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify;"> Juiz Convocado&#160;&#160; Eduardo de Castro Neto </p><p style="text-align: justify;"> Relator</p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify;"> &#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	3000775-58.2025.8.06.0126
Número de ordem	94
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	ANTONIA LUCI BRANDAO MENDES
Advogado(s) - Polo ativo	VICTOR ALMEIDA SARAIVA - (CE43606-A)
Polo passivo	PAULISTA - SERVICOS DE RECEBIMENTOS E PAGAMENTOS LTDA BANCO BRADESCO S/A
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3000775-58.2025.8.06.0126
	regular andamento processual para aferir a legalidade ou não da contratação". Argumenta, ainda, que "a extinção do feito sem resolução do mérito afronta o direito constitucional da ação, haja vista a inequívoca demonstração que as demandas possuem contratos distintos, inclusive celebradas por pessoas jurídicas diferentes". Ao final, requereu o conhecimento e provimento do presente recurso, e, conseqüentemente, a anulação da sentença do juízo a quo, devolvendo o processo ao primeiro grau para regular prosseguimento do feito. Contrarrrazões do Banco Bradesco S/A no Id. 27146704. A promovida Paulista Serviços de Recebimentos e Pagamentos (PSERV), não apresentou contrarrrazões. É o que importa relatar. VOTO Exercendo o juízo de admissibilidade, constato o atendimento dos requisitos intrínsecos e extrínsecos que o compõem, levando-me ao qualificativo da positividade e, assim, ao conhecimento do recurso apelatório. O magistrado de primeiro grau indeferiu a petição inicial, por ausência de interesse de agir, ao fundamento que houve abuso no direito de demandar, visto que, a requerente deveria ter ingressado com uma única demanda a fim de discutir os descontos impugnados e não a interposição de 02 (duas) ações. Após análise, embora tratem de questões semelhantes, ou seja, envolvendo descontos supostamente indevidos ocorridos em sua conta-salário, não reconhecidos pela requerente/recorrente, os objetos e as partes são distintos. É imperioso ressaltar que, em diversos julgados, este relator entendeu que o fracionamento de ações consiste em um verdadeiro abuso do direito de demandar, ante a propositura de diversas ações contra a mesma parte e pedido de declaração de inexigibilidade de débito, o que configura conduta processual temerária e abusiva. Entretanto, no presente caso, diversamente do fundamento sentencial, entendo que a conduta do causídico da parte demandante em interpor 02(duas) ações, em desfavor de empresas distintas, não caracteriza prática de litigiosidade predatória, nos termos parametrizados na Recomendação nº 127 de 15/02/2022 do Conselho Nacional de Justiça (CNJ), que dispõe: "Art. 2º Para os fins desta recomendação, entende-se por judicialização predatória o ajuizamento em massa em território nacional de ações com pedido e causa de pedir semelhantes em face de uma pessoa ou de um grupo específico de pessoas, a fim de inibir a plena liberdade de expressão." Assim sendo, considero desarrazoada a conclusão do juízo a quo de que a situação fática posta em deslinde configura fracionamento indevido de ações, caracterizando violação ao princípio da cooperação e evidencie a falta de interesse de agir da parte autora. Entendo, pois, que, não restou evidenciada a ocorrência de demanda temerária. A propósito: DIREITO PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITOS C/C INDENIZAÇÃO. SENTENÇA DE INDEFERIMENTO DA INICIAL POR AUSÊNCIA DE INTERESSE PROCESSUAL. AUSÊNCIA DE INTERESSE PROCESSUAL POR FRACIONAMENTO DE DEMANDAS. NÃO OCORRÊNCIA. OFENSA AO PRINCÍPIO DO ACESSO À JUSTIÇA. PRINCÍPIO DA INAFASTABILIDADE DA TUTELA JURISDICIONAL. PRINCÍPIO DA PRIMAZIA DO JULGAMENTO DE MÉRITO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. I- Cinge-se a controvérsia em perquirir o acerto ou desacerto da sentença impugnada, que indeferiu a petição inicial, sob a fundamentação de existência de três ações, esta e outras duas, ajuizadas pela autora buscando anular descontos, supostamente indevidos, o que configuraria ausência de interesse processual, uma vez que a parte deveria ajuizar somente uma demanda. II- No caso concreto, conquanto os processos versem sobre matéria similar, ou seja, cobranças indevidas; referem-se a descontos de timbres, contratos e períodos diversos; assim, relações jurídicas distintas. Patente, pois, a legitimidade e o interesse processual. III- O fundamento utilizado pelo magistrado sentenciante não se aplica ao caso sub judice, ante a diferenciação entre as ações paradigmas por ostentarem como causa de pedir contratos diversos, o que descaracteriza a multiplicidade de ações; afastando-se, pois, a ocorrência do instituto da conexão e, ainda, a possibilidade de ocorrência do mero risco de decisões conflitantes, a que se refere o art. 55, § 3º do CPC. IV- Em que pese se tratar das mesmas partes, o fato de cada processo ostentar Contratos distintos, já é o suficiente para que se

Processo	3000775-58.2025.8.06.0126
	permita o processamento em separado, porquanto, antes de ser uma obrigação, a reunião dos pedidos em uma só demanda é uma faculdade (art. 327, CPC). V- Em homenagem aos princípios da cooperação, da inafastabilidade da tutela jurisdicional e da primazia do julgamento de mérito; devem os autos retornar ao juízo de origem para que a inicial seja recebida, processada e sentenciada, na forma da lei. VI- Recurso conhecido e provido. Sentença anulada. ACÓRDÃO Visto, relatado e discutido o presente recurso, acorda a Primeira Câmara de Direito Privado do Egrégio Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para dar-lhe provimento, nos termos do relatório e voto que passam a integrar o presente acórdão. Fortaleza/CE, data e hora do sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADORA MARIA REGINA OLIVEIRA CÂMARA Relatora (Apelação Cível&#160;- 0201039-18.2024.8.06.0114, Rel. Desembargador(a) MARIA REGINA OLIVEIRA CÂMARA, 1ª Câmara Direito Privado, data do julgamento: 06/11/2024, data da publicação:&#160; 06/11/2024)</p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify;"> APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. INDEFERIMENTO DE INICIAL. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. FALTA DE INTERESSE PROCESSUAL. MULTIPLICIDADE DE DEMANDAS. EXERCÍCIO DO DIREITO DE AÇÃO. CONTRATOS DISTINTOS. CAUSAS DE PEDIR DISTINTAS. VEDAÇÃO À CONDUTA DA PARTE AUTORA - AUSÊNCIA - ERROR IN PROCEDENDO. CONEXÃO. INEXISTENTE. CONTRATOS DIFERENTES. SENTENÇA ANULADA - RECURSO CONHECIDO E PROVIDO. 1. O cerne da demanda se refere se há interesse de agir em uma demanda, quando a autora ingressa com multiplicidade de ações contra o mesmo réu. 2. O entendimento doutrinário dominante em nosso ordenamento jurídico preleciona que o interesse de agir ou processual está intimamente ligado ao binômio necessidade/adequação, não sendo albergado pelo Ordenamento Jurídico o ajuizamento de múltipla ações como causa da falta de interesse de agir. 3. Ausência de conexão, em virtude de as ações terem objetos distintos. 4. Recurso conhecido e dado provimento. Sentença anulada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para dar-lhe provimento, nos termos do voto do relator. Fortaleza, data conforme assinatura eletrônica. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (Apelação Cível&#160;- 0200490-53.2022.8.06.0154, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 26/07/2023, data da publicação: 26/07/2023)</p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify;"> APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. AÇÃO DE DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SERVIÇO DE SEGURO . TARIFAS. EXTINÇÃO DA AÇÃO POR AUSÊNCIA DE LEGITIMIDADE OU INTERESSE PROCESSUAL. 485, VI, DO CPC. DEMANDA PREDATÓRIA NÃO CONFIGURADA . AUSÊNCIA DE JUSTA CAUSA PARA A EXTINÇÃO DA AÇÃO. INDEFERIMENTO DA INICIAL. VIOLAÇÃO DOS PRINCÍPIOS DO ACESSO À JUSTIÇA E DA PRIMAZIA DO JULGAMENTO DE MÉRITO. CERCEAMENTO DO DIREITO DE DEFESA . SENTENÇA CASSADA. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. 1 . Trata-se de recurso de apelação interposto contra sentença que decretou a extinção do processo, sem julgamento do mérito, por ausência de legitimidade ou de interesse processual, na forma do art. 485, VI, do CPC, sob o fundamento de que o ajuizamento de demandas de massa pelo apelante viola os princípios da razoável duração do processo, eficiência e da cooperação, expondo a falta de interesse de agir, e que o ajuizamento de duas ações contra a mesma parte, sobre o mesmo assunto, configura abuso de direito da autora. 2. Inicialmente, embora a sentença mencione que a autora tenha ajuizado 2 (dois) processos diferentes contra a mesma instituição financeira, devo observar que a configuração de conduta predatória do apelante não ocorre pela simples verificação da quantidade de ações ajuizadas, mas pela presença de outras circunstâncias associadas, como por exemplo, o fracionamento indevidos de pedidos relativos a um mesmo contrato em diferentes ações ou o ajuizamento da mesma ação (parte, pedido e causa de pedir) em diferentes varas ou comarcas, visando escolher o juízo que lhe parece ter o entendimento mais favorável, para depois desistir dos outros processos, burlando o princípio do juiz natural, o que não ocorreu no caso dos autos, visto que uma ação se trata da cobrança de Seguro e a outra de Tarifas bancárias . 3. Além disso, ainda que semelhantes, as ações são diferentes e inexiste conexão entre elas quando tiverem como causa de pedir diferentes contratos, ainda que haja identidade de partes, pois cada contrato envolve diferentes objetos, valores e circunstâncias a serem apreciadas individualmente, razão pela qual não deve haver a reunião dos processos nesses casos. 4. Desse modo, é absolutamente irrazoável a conclusão de que o ajuizamento de diversos processos contra instituições financeiras diversas, em que cada um aborda sobre um contrato diferente do outro, constitua fragmentação indevida de ação

Processo	3000775-58.2025.8.06.0126
	. 5. Em ações cuja discussão envolve a existência ou validade de negócios jurídicos relacionados a contratos bancários, em que a causa de pedir gira em torno da falha na prestação de serviços bancários, a simples evidência da violação do direito da parte, como a demonstração da existência de inclusão de descontos do benefício previdenciários através de extrato do INSS, em razão do contrato que afirma ser fraudulento ou indevido, é suficiente para evidenciar o interesse de agir da parte em fazer cessar a violação de seu direito e a responsabilização civil pelos danos sofridos. 6. No caso dos autos, a parte autora alega estar sendo alvo de cobranças indevidas pelo banco promovido, que estaria descontando de seu benefício previdenciário valores referentes a prestações de um Seguro que afirma não ter contratado, e instruiu a inicial com cópia do documento pessoal de identificação (p. 26); comprovante de residência (p. 27); procuração ad judicium assinada de próprio punho (p. 29); extrato da conta Bradesco em que consta a inclusão dos descontos referentes ao contrato de Seguro, em favor do banco promovido (p. 31/46) estando a petição, portanto, lastreada em documentos que evidenciam minimamente a presença de pressupostos de constituição e de desenvolvimento válido e regular do processo. 7. Ressalto, ainda, que em ações cuja questão controvertida é a negativa da contratação do empréstimo e a existência de descontos indevidos referente ao mesmo, cabe à parte autora a demonstração da existência dos referidos descontos, ao passo que é ônus da prova da instituição financeira comprovar a contratação do serviço e apresentar aos autos o instrumento contratual, a fim de que seja submetido à análise de existência e validade do negócio jurídico, assim como a comprovação da transferência dos recursos oriundos do empréstimo para a conta do consumidor, pois, em se tratando de relação de consumo, deve ser observada a aplicação da inversão do ônus da prova em favor do consumidor, imputando-se à instituição financeira a juntada dos documentos que por ela devem ser mantidos, por serem considerados de posse obrigatória, em decorrência da atividade desempenhada, como é o caso dos instrumentos do contrato. 8. Nesse contexto, estando descaracterizada a existência de demanda predatória e evidenciada a causa de pedir, a legitimidade da parte e o interesse processual, há de se reconhecer a ausência de justa causa para a extinção do feito, por violação dos princípios da inafastabilidade da tutela jurisdicional e do devido processo legal, consagrados pelo art. 5º, XXXV e LIV, da Constituição Federal, comprometendo a finalidade do processo, que é a satisfação do direito material pela primazia da sentença de mérito, nos termos dos arts. 4º e 6º, do CPC. 9. Recurso conhecido e provido. Sentença anulada. Retorno dos autos à origem para o regular processamento do feito. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os Desembargadores integrantes da 2ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para dar-lhe provimento, em conformidade com o voto do Relator. Fortaleza (CE), data indicada no sistema. DESEMBARGADOR EVERARDO LUCENA SEGUNDO Relator (TJ-CE - Apelação Cível: 02007944720248060133 Nova Russas, Relator.: EVERARDO LUCENA SEGUNDO, Data de Julgamento: 23/10/2024, 2ª Câmara Direito Privado, Data de Publicação: 23/10/2024) &#160; APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. AÇÃO DE DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. EMPRÉSTIMO CONSIGNADO&#160; EXTINÇÃO DA AÇÃO POR AUSÊNCIA DE PRESSUPOSTOS DE CONSTITUIÇÃO. 485, IV, DO CPC. DEMANDA PREDATÓRIA NÃO CONFIGURADA. LEGITIMIDADE E INTERESSE PROCESSUAL RECONHECIDO. AUSÊNCIA DE JUSTA CAUSA PARA A EXTINÇÃO DA AÇÃO. VIOLAÇÃO DOS PRINCÍPIOS DO ACESSO À JUSTIÇA E DA PRIMAZIA DO JULGAMENTO DE MÉRITO. CERCEAMENTO DO DIREITO DE DEFESA. SENTENÇA CASSADA. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. 1. Trata-se de recurso de apelação interposto contra sentença que decretou a extinção do processo, sem julgamento do mérito, por ausência de pressupostos de constituição e de desenvolvimento válido e regular do processo, na forma do art. 485, IV, do CPC, sob o fundamento de que o ajuizamento de demandas de massa pelo apelante viola o princípio da Cooperação, expondo a falta de interesse de agir. 2. Inicialmente, embora a sentença mencione que o advogado tenha ajuizado seis processos diferentes contra instituições financeiras, devo observar que a configuração de conduta predatória do advogado não ocorre pela simples verificação da quantidade de ações ajuizadas, mas pela presença de outras circunstâncias associadas, como por exemplo, o fracionamento indevidos de pedidos relativos a um mesmo contrato em diferentes ações ou o ajuizamento da mesma ação (parte, pedido e causa de pedir) em diferentes varas ou comarcas, visando escolher o juízo que lhe parece ter o entendimento mais favorável, para depois desistir dos outros processos, burlando o princípio do juiz natural, o que não ocorreu no caso dos autos. 3. Além disso, ainda que semelhantes, as ações são diferentes e inexistente conexão entre elas quando tiverem como causa de pedir diferentes contratos, ainda que haja identidade de partes, pois cada contrato envolve diferentes objetos, valores e circunstâncias a serem apreciadas individualmente, razão pela qual não deve haver a reunião dos processos nesses casos. 4. Desse modo, é absolutamente irrazoável a conclusão de que o ajuizamento de

Processo	3000775-58.2025.8.06.0126
	diversos processos contra instituições financeiras diversas, em que cada um aborda sobre um contrato diferente do outro, constitua fragmentação indevida de ação. 5 . Em ações cuja discussão envolve a existência ou validade de negócios jurídicos relacionados a contratos bancários, em que a causa de pedir gira em torno da falha na prestação de serviços bancários, a simples evidência da violação do direito da parte, como a demonstração da existência de inclusão de descontos do benefício previdenciários através de extrato do INSS, em razão do contrato que afirma ser fraudulento ou indevido, é suficiente para evidenciar o interesse de agir da parte em fazer cessar a violação de seu direito e a responsabilização civil pelos danos sofridos. 6. No caso dos autos, a parte autora alega estar sendo alvo de cobranças indevidas pelo banco promovido, que estaria descontando de seu benefício previdenciário valores referentes a prestações de um empréstimo consignado que assegura não ter contratado, e instruiu a inicial com procuração ad judicia assinada de próprio punho (p. 15); cópia do documento pessoal de identificação (p. 16); comprovante de residência (p. 17); extrato do INSS em que consta a inclusão dos descontos referentes ao contrato de empréstimo nº 0123325510321, em favor do banco promovido (p. 20/22) estando a petição, portanto, lastreada em documentos que evidenciam minimamente a presença de pressupostos de constituição e de desenvolvimento válido e regular do processo. 7 . Ressalto, ainda, que em ações cuja questão controvertida é a negativa da contratação do empréstimo e a existência de descontos indevidos referente ao mesmo, cabe à parte autora a demonstração da existência dos referidos descontos, ao passo que é ônus da prova da instituição financeira comprovar a contratação do serviço e apresentar aos autos o instrumento contratual, a fim de que seja submetido à análise de existência e validade do negócio jurídico, assim como a comprovação da transferência dos recursos oriundos do empréstimo para a conta do consumidor, pois, em se tratando de relação de consumo, deve ser observada a aplicação da inversão do ônus da prova em favor do consumidor, imputando-se à instituição financeira a juntada dos documentos que por ela devem ser mantidos, por serem considerados de posse obrigatória, em decorrência da atividade desempenhada, como é o caso dos instrumentos do contrato. 8. Nesse contexto, estando descaracterizada a existência de demanda predatória e evidenciada a causa de pedir, a legitimidade da parte e o interesse processual, há de se reconhecer a ausência de justa causa para a extinção do feito, por violação dos princípios da inafastabilidade da tutela jurisdicional e do devido processo legal, consagrados pelo art. 5º, XXXV e LIV, da Constituição Federal, comprometendo a finalidade do processo, que é a satisfação do direito material pela primazia da sentença de mérito, nos termos dos arts. 4º e 6º, do CPC. 9. Recurso conhecido e provido. Sentença anulada . Retorno dos autos à origem para o regular processamento do feito. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os Desembargadores integrantes da 2ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para dar-lhe provimento, em conformidade com o voto da Relatora. Fortaleza (CE), data indicada no sistema. JUÍZA CONVOCADA FRANCISCA FRANCY MARIA DA COSTA FARIAS- PORT . 2075 Relatora (TJ-CE - Apelação Cível: 02004821120248060056 Capistrano, Relator.: FRANCISCA FRANCY MARIA DA COSTA FARIAS- PORT. 2075, Data de Julgamento: 25/09/2024, 2ª Câmara Direito Privado, Data de Publicação: 25/09/2024) Desta feita, enxergo que, para a correta aplicação da norma processual cogente, assim como em observância às garantias constitucionais do acesso a uma tutela jurisdicional efetiva, célere e eficaz, asseguradas pelo legislador constituinte e em observância ao princípio da primazia das decisões de mérito, merece reforma a sentença vergastada. E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados voto pelo conhecimento do presente recurso de apelação, para dar-lhe provimento, a fim de desconstituir a sentença e determinar o retorno dos autos à origem, para que seja dada regular tramitação ao feito. É como voto. Fortaleza-CE, 10 de setembro de 2025. Juiz Convocado Eduardo de Castro Neto Relator
Processo	3000367-67.2025.8.06.0029
Número de ordem	95
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado

Processo	3000367-67.2025.8.06.0029
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Práticas Abusivas
Polo ativo	RAIMUNDO PEREIRA DE SOUZA
Advogado(s) - Polo ativo	FRANCISCO AUGUSTO OLIVEIRA PAES DE ANDRADE - (CE38088-A) FRANCISCO REGIOS PEREIRA NETO - (CE25034-A)
Polo passivo	BANCO AGIBANK S.A
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A) CAUE TAUAN DE SOUZA YAEGASHI - (SP357590-A) PETERSON DOS SANTOS - (SP336353-A)
Terceiros	Não informado

Processo	3000367-67.2025.8.06.0029
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Processo	3000367-67.2025.8.06.0029
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-webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: Aptos, Aptos EmbeddedFont, Aptos_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial,

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	Verdana, sans-serif; font-size: 12px;">< p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> < p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> < p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> < p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelado: &#160;Banco Agibank S/A </p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">&#160;</p> <p> EMENTA: DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. CONTRATAÇÃO DIGITAL. ASSINATURA POR AUTENTICAÇÃO ELETRÔNICA. REGULARIDADE DO NEGÓCIO JURÍDICO. AUSÊNCIA DE FRAUDE. IMPROCEDÊNCIA DOS PEDIDOS. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. </p> <p> I. CASO EM EXAME </p> <p> 1. Recurso de Apelação interposto por consumidor contra sentença que julgou improcedentes os pedidos de declaração de inexistência de débito, repetição de indébito e indenização por danos morais em razão de suposta fraude na contratação de empréstimo consignado digital junto a instituição financeira. </p> <p> II. QUESTÃO EM DISCUSSÃO </p> <p> 2. Há duas questões em discussão: (i) saber se a ausência de assinatura de próprio punho invalida contrato firmado por autenticação digital; e (ii) saber se há responsabilidade da instituição financeira por danos morais e materiais quando há indícios de regularidade do contrato. </p> <p> III. RAZÕES DE DECIDIR </p> <p> 3. Nos termos da Súmula 297 do STJ, o Código de Defesa do Consumidor se aplica às relações entre clientes e instituições financeiras. </p> <p> 4. Conforme entendimento do STJ no REsp 1.197.929/PR, bancos respondem objetivamente por fraudes praticadas por terceiros quando há falha na prestação do serviço. </p> <p> 5. No caso concreto, a instituição financeira comprovou a regularidade do contrato, apresentando assinatura digital, autenticação eletrônica com registro de data, hora e IP, além da efetiva transferência do valor contratado para a conta do consumidor. </p> <p> 6. A contratação digital é prática consolidada no mercado e sua validade deve ser analisada à luz da prova documental apresentada. </p> <p> 7. Não havendo indícios de fraude, inexistente obrigação de indenizar por danos morais ou materiais. </p> <p> IV. DISPOSITIVO E TESE </p> <p> 8. Recurso conhecido e desprovido. </p> <p> Tese de julgamento: "1. A contratação digital de empréstimo consignado por biometria facial é válida quando acompanhada de prova documental suficiente. 2. Inexistindo indícios de fraude, não há obrigação de indenizar por danos morais ou materiais." </p> <p> Dispositivos relevantes citados: Código de Defesa do Consumidor, art. 42, parágrafo único; Código Civil, arts. 186 e 927. </p> <p> Jurisprudência relevante citada: STJ, Súmula 297; STJ, REsp 1.197.929/PR. </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text; font-size: 12pt; line-height: 18px;">&#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO &#160;Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data da assinatura digital </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial,

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	Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> JOSÉ RICARDO VIDAL PATROCÍNIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Presidente do Órgão Julgador &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif; font-weight: bold;"

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	lang="PT-BR" xml:lang="PT-BR">Exmo. Sr. EDUARDO DE CASTRO NETO</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Juiz Convocado Relator &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATÓRIO <span class="EOP SCXW75871393 BCX0" style="-webkit-

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	<p>user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana, EmbeddedFont, Verdana, MSFontService, sans-serif;">&#160;</p> <p>class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">&#160;</p> <p style='font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif;'>&#160;</p> <p style="text-align: justify;">Trata-se de Recurso de Apelação interposto por Raimundo Pereira de Souza com o escopo de adversar a sentença proferida pelo MM. Juízo 1ª Vara Cível da Comarca de Acopiara, que julgou improcedentes os pedidos formulados na ação declaratória de nulidade de empréstimo cumulada com repetição de indébito e condenação em danos morais, ajuizada em desfavor do Banco Agibank S/A.</p> <p style="text-align: justify;">Em suas razões recursais, o recorrente sustenta, que “Em que pese a cultura jurídica do digno juiz prolator da sentença de primeira instância, o suplicante, ora apelante, não pode se conformar com os termos da decisão que julgou improcedente o pedido inicial deixando de condenar o banco apelado a restituir o valor cobrado indevidamente e, pelos danos morais suportados pelo apelante, em razão de ter sido descontado de seu benefício previdenciário por parte do banco apelado, a quantia de R\$402,90 mensalmente, valores referentes a suposto contrato ”.</p> <p style="text-align: justify;">Argumenta, ainda, que “(...) a má-fé da requerida salta aos olhos. Excelência, trata-se a parte recorrente de pessoa idosa, de pouca letra, e que não faz a mínima ideia do que é e como se procede a contratação de empréstimo consignado via meio digital, muito menos sabe efetuar/registrar uma assinatura digital.”</p> <p style="text-align: justify;">Mais adiante pontua que “(...) o suposto contrato de empréstimo não obriga a parte autora, vez que NÃO houve qualquer comprovação de que esta assinou DE FORMA ELETRÔNICA o contrato”.</p> <p style="text-align: justify;">Ao final, requer “seja o presente recurso recebido, conhecido e provido no sentido de reformar a r. sentença para condenar o banco apelado a pagar ao apelante a devida indenização por danos morais, e restituir em dobro o valor cobrado de forma indevida, nos termos da exordial.”</p> <p style="text-align: justify;">Contrarrrazões – id. 27147723.</p> <p style="text-align: justify;">É o que importa relatar –</p> <p style="text-align: center;">VOTO</p> <p style="text-align: justify;">
</p> <p style="text-align: justify;">Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso.</p> <p style="text-align: justify;">Se insurge o autor/apelante contra a sentença prolatada pelo douto juízo a quo, que julgou improcedente os pedidos autorais, alegando, em síntese, fraude na contratação e ausência de comprovação de assinatura digital, bem como, a ocorrência de dano moral e material.</p> <p style="text-align: justify;">Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Súmula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista: “O Código de Defesa do Consumidor é aplicável às instituições financeiras”.</p> <p style="text-align: justify;">Por certo, conforme entendimento firmado pela Segunda Seção do Superior Tribunal de Justiça, quando do julgamento do REsp 1197929 / PR submetido ao rito dos recursos repetitivos, “as instituições bancárias respondem objetivamente pelos danos causados por fraudes ou delitos praticados por terceiros – como, por exemplo, abertura de conta-corrente ou recebimento de empréstimos mediante fraude ou utilização de documentos falsos, porquanto tal responsabilidade decorre do risco do empreendimento, caracterizando-se como fortuito interno”.</p> <p style="text-align: justify;">Ocorre que, cotejando o vertente caderno processual, não verifico causas que maculem a regularidade da celebração do negócio jurídico discutido nestes autos, isto porque, a instituição financeira/apelada juntou o contrato discutido nessa demanda (id. 27147697), assinado por meio de autenticação eletrônica, acompanhado de cópia dos documentos pessoais do autor (ids. 27147700/27147701) e fotografia do momento da contratação(id. 27147698).</p> <p style="text-align: justify;">Saliento que, de fato, não consta a assinatura de próprio punho, visto que se trata de contrato digital, autenticado por biometria facial, o que não pode ser negado, mormente diante do fluxo digital de contratos que ocorre nos dias de hoje.</p> <p style="text-align: justify;">Para reforçar a validade da contratação, a instituição financeira, acostou no respectivo contrato(id. 27147697), autenticação eletrônica, bem como, o Id da sessão do</p>

Processo	3000367-67.2025.8.06.0029
	usuário, com informação do dia e horário da coleta dos dados.: "Autenticação eletrônica: Autenticação eletrônica:AA32952575324EC77DCCCA12EB700582 Data/Hora: 27/05/2022 14:19:41 IP/Terminal: 2804:248:f169:ee00:544a:47b3:3c3f:a37 ". (grifo nosso). Consta, ainda, transferência eletrônica onde comprova que o valor do crédito liberado, conforme apontado no instrumento contratual, na quantia de R\$ 15.000,00 (quinze mil reais), restou depositado em conta-corrente do autor/recorrente – ex vi id. 27147699 dos autos. Sobre as operações realizadas por meio eletrônico, é imprescindível, ainda, salientar o entendimento consolidado por esta Egrégia Corte e outros tribunais pátrios: CIVIL E PROCESSO CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITO C/C REPARAÇÃO DE DANOS MORAIS. INDEFERIDOS. MÉRITO. VÍCIO DE CONSENTIMENTO. CONTRATO COM ASSINATURA ELETRÔNICA. AUTENTICAÇÃO POR BIOMETRIA FACIAL. POSSIBILIDADE. VALORES CREDITADOS NA CONTA DE TITULARIDADE DA PARTE AUTORA. ELEMENTOS NOS AUTOS QUE EVIDENCIAM O CONSENTIMENTO DA PARTE. CONTRATO VÁLIDO. RECURSO CONHECIDO E DESPROVIDO. 1. O cerne da controvérsia reside na existência (ou não) de relação jurídica entre a autora e a Instituição Financeira ré quanto aos descontos referentes ao empréstimo consignado. 2. É cediço, na jurisprudência, que, em se tratando de relação jurídica entre Instituição Financeira e consumidor de serviços bancários, presumem-se verídicos os fatos alegados pela parte autora, desde que ausentes: a) prova do contrato; b) o comprovante de transferência para conta do consumidor dos valores referentes ao negócio jurídico. 3. Compulsando-se os autos, verifico que a instituição financeira apelada comprovou à saciedade a efetiva contratação do referido empréstimo consignado pela consumidora apelante, desincumbindo-se de seu ônus probatório, a teor do art. 373, II, do CPC. Na hipótese, o banco recorrente acosta aos autos o contrato de empréstimo assinado eletronicamente através de biometria facial (fls. 51/59), documento pessoal de identificação (RG e fls. 64), e comprovante do repasse dos créditos contratados para a conta de titularidade da parte demandante (fls. 83). 4. No caso da contratação eletrônica em questão, tanto este modelo de contratação quanto a expressão da vontade pela biometria facial, e ainda confirmada pelo envio de documentos pessoais, além de não serem defesas em lei, têm sido práticas comuns devido aos avanços tecnológicos e demandas da coletividade no tocante ao acesso ao crédito. Tal modalidade, também não encontra óbice nas normas do Banco Central do Brasil e BACEN - ou do Instituto Nacional do Seguro Social INSS, conforme se extrai do termo de autorização de fls. 62/63. Precedentes TJCE. 5. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para negar-lhe provimento, nos termos do voto do relator. Fortaleza, 12 de julho de 2023 DESEMBARGADOR RAIMUNDO NONATO SILVA SANTOS (TJ-CE - Apelação Cível: 0050489-16.2021.8.06.0114 Lavras da Mangabeira, Relator: RAIMUNDO NONATO SILVA SANTOS, Data de Julgamento: 12/07/2023, 1ª Câmara Direito Privado, Data de Publicação: 12/07/2023) CIVIL E PROCESSUAL CIVIL e AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO e EMPRÉSTIMO CONSIGNADO e DESCONTOS EM CONTRACHEQUE DA REQUERENTE e CONTRATAÇÃO COMPROVADA e LICITUDE DOS DESCONTOS e SENTENÇA MANTIDA e RECURSO CONHECIDO E IMPROVIDO. I - Trata-se de Apelação Cível interposta por Francislene Silveira Sucupira objetivando a reforma da sentença prolatada pelo Juízo de Direito da 11ª Vara Cível da Comarca de Fortaleza/CE, o qual julgou improcedente a Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Morais, ajuizada pela recorrente em desfavor do Banco Ole Bonsucesso Consignado S/A. II - In casu, verifica-se que os requisitos necessários para configuração da responsabilidade civil objetiva não estão preenchidos, considerando que não houve dano, tendo em vista que a recorrente de fato contraiu o empréstimo, conforme muito bem constatou o magistrado de piso ao verificar através dos documentos carreados aos autos que houve, em verdade, uma contratação de empréstimo consignado junto ao Banco recorrido, conforme documentos acostados por este, às fls.76/89 e comprovante de liberação de valor (fls. 92/94). III - Ademais a contratação questionada foi celebrada mediante uso de senha pessoal e biometria, por meio de canais virtuais de atendimento, e nesse contexto entendo que o banco se desincumbiu do seu ônus probatório. Não há necessidade de formalização de contratos desta natureza de forma física, sendo a contratação eletrônica uma realidade dos tempos atuais, que facilitam o acesso aos clientes do banco de linhas de crédito. IV - Recurso conhecido e improvido. Sentença mantida. A C Ó R D Ã O Vistos, relatados e discutidos os presentes autos, em que figuram as partes acima referidas, ACORDAM os Senhores Desembargadores da Quarta Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, a unanimidade, em conhecer do recurso de apelação, para, no mérito, NEGAR-LHE PROVIMENTO, tudo nos termos do voto do Desembargador Relator. Fortaleza/CE, DESEMBARGADOR FRANCISCO BEZERRA CAVALCANTE Relator

Processo	3000367-67.2025.8.06.0029
	(TJ-CE - Apelação Cível: 0200495-54.2019.8.06.0001 Fortaleza, Data de Julgamento: 01/08/2023, 4ª Câmara Direito Privado, Data de Publicação: 01/08/2023) AGRAVO INTERNO EM APELAÇÃO. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITOS C/C INDENIZAÇÃO. EMPRÉSTIMO CONSIGNADO. CONTRATO COM ASSINATURA ELETRÔNICA. AUTENTICAÇÃO POR BIOMETRIA FACIAL. VALORES CREDITADOS NA CONTA DO AGRAVADO. DANO MATERIAL E MORAL NÃO CONFIGURADOS. AGRAVO INTERNO CONHECIDO E DESPROVIDO. DECISÃO MANTIDA. 1. Na espécie, insurge-se o recorrente com relação à decisão deste relator que negou provimento ao apelo por ele interposto em que buscava declarar nulo o contrato de empréstimo consignado, firmado em seu nome junto ao banco/agravado, bem como a restituição dos valores descontados, e ainda, indenização pelos danos morais supostamente sofridos. 2. Por certo, conforme entendimento firmado pela Segunda Seção do Superior Tribunal de Justiça, quando do julgamento do REsp 1197929 / PR submetido ao rito dos recursos repetitivos, as instituições bancárias respondem objetivamente pelos danos causados por fraudes ou delitos praticados por terceiros - como, por exemplo, abertura de conta corrente ou recebimento de empréstimos mediante fraude ou utilização de documentos falsos -, porquanto tal responsabilidade decorre do risco do empreendimento, caracterizando-se como fortuito interno. 3. Ocorre que, cotejando o vertente caderno processual, não verifico causas que maculem a regularidade da celebração do negócio jurídico discutido nestes autos, isto porque o banco/agravado juntou o contrato discutido nesta demanda (fls.106/122), assinado por meio de autenticação eletrônica, acompanhado de cópia dos documentos pessoais do autor e fotografia do momento da contratação (fls. 123/125). 4. Consta, ainda, transferência eletrônica onde comprova que o valor do crédito liberado, conforme apontado no instrumento contratual, na quantia de R\$ 234,99 (duzentos e trinta e quatro reais e noventa e nove centavos), foi depositado em conta-corrente do autor/recorrente conforme comprovante constante às fls. 128 dos autos. 5. Além disso, oportunizado ao autor/agravante para manifestar-se acerca do contrato, limitou-se a alegar que não consta sua assinatura no contrato. Ora, de fato não consta a assinatura de próprio punho, visto que se trata de contrato digital, autenticado por biometria facial (fls.125), o que não pode ser negado, mormente diante do fluxo digital de contratos que ocorre nos dias de hoje. 6. Sendo assim, concluo pela regularidade do negócio jurídico celebrado entre as partes, não observando na espécie quaisquer indícios de vício de consentimento ou fraude, não tendo a Instituição Financeira/agravante cometido nenhum ilícito capaz de ensejar indenização por danos morais, bem como a devolução dos valores devidamente descontados. 7. Recurso conhecido e desprovido. Decisão mantida. A C Ó R D A O Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator, parte integrante desta decisão. Fortaleza, 29 de março de 2023. Fortaleza, 24 de março de 2023 FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator (TJ-CE - AGT: 02089945620218060001 Fortaleza, Relator: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 29/03/2023, 1ª Câmara Direito Privado, Data de Publicação: 31/03/2023) APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C PEDIDO DE REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. SENTENÇA IMPROCEDENTE. CONTRATO COM ASSINATURA ELETRÔNICA. AUTENTICAÇÃO POR BIOMETRIA FACIAL. VALORES CREDITADOS NA CONTA DE TITULARIDADE DA PARTE AUTORA. AUSÊNCIA DE FRAUDE E DE DANOS MORAIS. APELO CONHECIDO E IMPROVIDO. SENTENÇA CONFIRMADA. 1. Trata-se de Apelação Cível interposta contra sentença que, nos autos da Ação Declaratória de Inexistência de Débito c/c Pedido de Repetição do Indébito e Indenização por Danos Morais, julgou improcedente a pretensão autoral, extinguindo o feito com resolução do mérito, nos termos do art. 487, I, do Código de Processo Civil. 2. No caso em tela, a controvérsia recursal consiste em saber se o contrato de empréstimo consignado, na modalidade digital, sob o nº 01011442977, supostamente celebrado entre a instituição financeira e a parte autora, ora apelante, é válido ou não, em consonância com as provas produzidas na origem e se, desse contrato, existe dano passível de indenização. 3. Na hipótese, o banco recorrido acosta aos autos o contrato de empréstimo devidamente assinado (fls. 67/68) e com a formalização da assinatura pelo autor/contratante na forma digital, conforme faz prova o protocolo de fls. 50/58, apresentando inclusive selfie realizada pelo próprio recorrente, como modalidade de validação biométrica fácil, e documentação pessoal deste às fls.75/76, bem como comprova o repasse dos créditos contratados para a conta de titularidade dele (fl. 88). Vale ressaltar que, em nenhum momento, a parte demandante nega ser correntista do banco onde o TED foi realizado ou o não recebimento do dinheiro. 4. Assim, os elementos constantes dos autos indicam que o contrato é regular e que o suplicante se beneficiou financeiramente com a transação, de modo que não há respaldo

Processo	3000367-67.2025.8.06.0029
	jurídico e probatório a consubstanciar a pretensão autoral. 5. À vista disso, entendo que a parte requerente não logrou êxito em desconstituir as provas robustas apresentadas pela instituição bancária promovida, sendo devidamente comprovada a contratação em debate. Desse modo, considero que o contrato é regular. 6. Recurso conhecido e improvido. Sentença confirmada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data conforme assinatura digital. DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (TJ-CE - Apelação Cível: 0201357-33.2022.8.06.0029 Acopiara, Relator: CARLOS AUGUSTO GOMES CORREIA, Data de Julgamento: 01/11/2023, 1ª Câmara Direito Privado, Data de Publicação: 02/11/2023) </p> <p style="text-align: justify;"> Sendo assim, concluo pela regularidade do negócio jurídico celebrado entre as partes, não observando na espécie quaisquer indícios de vício de consentimento ou fraude, não tendo a Instituição Financeira cometido nenhum ilícito capaz de ensejar indenização por danos morais, bem como a devolução dos valores devidamente descontados. </p> <p style="text-align: justify;"> E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados, voto pelo conhecimento do presente recurso de apelação, mas para negar-lhe provimento, mantendo inalterada a sentença atacada. </p> <p style="text-align: justify;"> Em decorrência da sucumbência recursal, majoro os honorários advocatícios devidos pelo promovente/recorrente de 10% (dez por cento) para 12% (doze por cento), nos termos do artigo 85, § 11, do Código de Processo Civil/2015, ficando, contudo, suspensa a exigibilidade, por ser o mesmo beneficiário da justiça gratuita (Art. 98, § 3º, do CPC). </p> <p style="text-align: justify;"> É como voto. </p> <p style="text-align: justify;"> Fortaleza, data da assinatura digital </p> <p style="text-align: justify;"> EDUARDO DE CASTRO NETO </p> <p style="text-align: justify;"> Juiz Convocado Relator </p> <p style="text-align: justify;"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><p>&#160;</p></div>
Processo	0151879-19.2017.8.06.0001
Número de ordem	96
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Cédula de Crédito Bancário
Polo ativo	BANCO DO NORDESTE DO BRASIL SA
Advogado(s) - Polo ativo	TARCISIO REBOUCAS PORTO JUNIOR - (CE7216-A) EURIVALDO CARDOSO DE BRITO - (CE16196-A) ISABEL BERNARDO DE OLIVEIRA - (CE6814-A)
Polo passivo	TAMANDARE DISTRIBUIDORA DE ALIMENTOS LTDA JOSE ANTONIO DOS SANTOS
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0151879-19.2017.8.06.0001
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Processo	0151879-19.2017.8.06.0001
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Processo	0151879-19.2017.8.06.0001
	qual, até o presente momento, não houve a citação do executado. Instado a se manifestar acerca da prescrição, o exequente, em petição de ID. 133223724, sustentou a inocorrência. É o sucinto relatório. DECIDO. Observo que o título executivo tinha como data de vencimento 29/11/2019, inobstante a ação ter sido ajuizada em 30/05/2017. Nesse sentido, após o despacho que determinou a citação, decorreram mais de 8 (oito) anos sem que a parte exequente lograsse êxito na localização do executado para fins de promover a sua citação, a compreender está evidenciada a prescrição da demanda. Ressalta-se que a pretensão executiva para haver pagamento de título de crédito, como no presente caso, sujeita-se ao prazo prescricional de 03 (três) anos, estabelecido no art. 206, § 3º, VIII do Código Civil, in verbis: Art. 206. Prescreve: (...) § 3º Em três anos: (...) VIII - a pretensão para haver o pagamento de título de crédito, a contar do vencimento, ressalvadas as disposições de lei especial; Logo, ainda que ajuizada a ação de execução antes do decurso do prazo prescricional, não ocorrendo citação válida do executado não há se falar em causa interruptiva da prescrição pelas sucessivas tentativas infrutíferas de citar o executado. (...) Desse modo, ausente a citação válida, não se cogita de interrupção da prescrição, notadamente quando a falta do ato processual não pode ser atribuída ao mecanismo da Justiça, conforme se verifica in casu. Com efeito, o instituto da prescrição tem por finalidade limitar o exercício de determinado direito no tempo. Em atenção aos princípios da pacificação social bem como da segurança jurídica, não seria crível que determinada pessoa, titular de certo direito, pudesse exercê-lo indefinidamente, a qualquer momento. Destarte, embora o exequente tenha envidado esforços para promover a citação do executado, a atuação desta não foi suficiente para promover a citação válida do devedor antes que a pretensão exequenda fosse alcançada pela prescrição. (...) Cumprido assinalar que a ausência de citação implicou a não interrupção do prazo prescricional, logo, decorrido extenso prazo de tramitação, ainda não se logrou a citação do demandado, muito embora não se possa imputar inércia do credor, nem do Poder Judiciário, o que não afasta do reconhecimento do advento da prescrição. (...) Outrossim, não se cogita de violação aos princípios da não surpresa, cooperação, devido processo legal e do contraditório, porquanto ao exequente restou facultado indicar causa interruptiva da prescrição. DISPOSITIVO

Processo	0151879-19.2017.8.06.0001
	style="font-size: medium;">Diante do exposto, de ofício, reconheço a prescrição do título objeto da presente execução, pelo que JULGO EXTINTO o presente feito com resolução do mérito, reconhecendo a PRESCRIÇÃO, com fulcro no art. 487, II do CPC."/span> </p><p align="justify">&#160;</p><p align="justify"> Nada obstante, sustenta o banco apelante que “não mede esforços para que seja satisfeito o cumprimento da obrigação, visto que, em todos os momentos em que fora intimado para dar andamento ao feito, não deixou de proceder com as medidas que lhe cabiam” e que “sempre se manteve diligente, inclusive requerendo citações, penhoras, pesquisas em sistemas conveniados e intimações em desfavor da devedora."/span> </p><p align="justify">&#160;</p><p align="justify"> Sustentou, ainda, que “não houve qualquer paralisação injustificada do processo cuja responsabilidade possa ser imputada ao Banco, SENDO CERTO QUE O BANCO CREDOR SEMPRE SE PRONTIFICOU PARA DAR PROSSEGUIMENTO AO FEITO."/span> </p><p align="justify">&#160;</p><p align="justify"> Sustentou, também, que “o promovente deveria ficar inerte por 3 (três) ou 5 (cinco) anos, sem dar qualquer prosseguimento ao feito, não se aplicando nenhuma dessas hipóteses ao caso em questão. Nesse sentido, compulsando os autos, vê-se que não há qualquer despacho direcionado ao Exequente que tenha ficado sem resposta, não havendo que se falar em qualquer desídia por parte do Banco, que vem cumprindo todos os atos de diligência que lhes são cabíveis para promover o andamento do feito."/span> </p><p align="justify">&#160;</p><p align="justify"> Requeru o provimento do recurso para o fim de reformar a sentença e determinar a continuidade do processo de execução.</p><p align="justify">&#160;</p><p align="justify"> Sem contrarrazões haja vista não formada a relação processual. </p><p align="justify">&#160;</p><p align="justify"> É o relatório adotado. </p><p align="justify">&#160;</p><p style="text-align: center;"> V O T O - </p><p align="justify">&#160;</p><p align="justify"> Conheço do recurso, posto vislumbro presentes os requisitos de admissibilidade previstos no CPC.</p><p align="justify">&#160;</p><p align="justify"> Na hipótese, reclama a parte apelante que a sentença, erroneamente, decretou a prescrição da pretensão de execução do crédito que faz jus, decorrente de contrato de financiamento celebrado com o apelado. </p><p align="justify">&#160;</p><p align="justify"> Pois bem. </p><p align="justify">&#160;</p><p align="justify"> Comezinho que o despacho ordenatório da citação ostenta o condão de interromper o prazo prescricional, inclusive com efeitos retroativos à data de ajuizamento da ação, mas, com a condição de que o credor adote as providências necessárias à perfectibilização do ato de citação da parte devedora, sendo certo que, uma vez que decorra o prazo prescricional sem que a citação se efetive por fatos imputáveis ao Poder Judiciário, a parte não deve ser penalizada, quando, então, o processo terá seu regular seguimento. </p><p align="justify">&#160;</p><p align="justify"> A este respeito, inclusive, existe Súmula do STJ. </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> Súmula nº 106 do STJ: Proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da Justiça, não justifica o acolhimento da arguição de prescrição ou decadência. </p><p align="justify">&#160;</p><p align="justify"> A interrupção do prazo prescricional também é prevista no CPC, senão vejamos: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> Art. 240. A citação válida, ainda quando ordenada por juízo incompetente, induz litispendência, torna litigiosa a coisa e constitui em mora o devedor, ressalvado o disposto nos arts. 397 e 398 da Lei no 10.406, de 10 de janeiro de 2002 (Código Civil). </p><p style="padding-left: 210px;" align="justify"> § 1º A interrupção da prescrição, operada pelo despacho que ordena a citação, ainda que proferido por juízo incompetente, retroagirá à data de propositura da ação. </p><p style="padding-left: 210px;" align="justify"> § 2º Incumbe ao autor adotar, no

Processo	0151879-19.2017.8.06.0001
	prazo de 10 (dez) dias, as providências necessárias para viabilizar a citação, sob pena de não se aplicar o disposto no § 1º. § 3º A parte não será prejudicada pela demora imputável exclusivamente ao serviço judiciário. § 4º O efeito retroativo a que se refere o § 1º aplica-se à decadência e aos demais prazos extintivos previstos em lei. Cabe então, verificar se houve – ou não – desídia da apelante em providenciar a citação da parte demandada e, por outro lado, se ocorreu demora imputável ao Judiciário ao ponto de justificar a não ocorrência do prazo prescricional. Na espécie, originariamente trata-se de uma ação de execução ajuizada em julho de 2017, sendo que em agosto fora ordenada a citação da parte executada, cuja carta de citação restou expedida no mesmo mês de agosto e o aviso de recebimento, com a informação de que a executada não teria sido citada, juntado ao processo em 09/2017. Somente em 20 de fevereiro de 2020 é que os autos receberam impulso processual intimado o banco apelante para se manifestar acerca da devolução do expediente citatório. Intimado, o banco apelante requereu a expedição de ofícios e a penhora em ativos financeiros da parte executada, isso em maio de 2020. Apenas em fevereiro de 2022 é que o pleito do apelante foi apreciado e indeferido, oportunidade em que fora renovada a intimação do banco apelante para ofertar em juízo o endereço da parte devedora, a qual em, março/2022, cumpriu a determinação judicial indicando endereço para citação. Um ano após, em março de 2023, o pleito foi apreciado com o deferimento de expedição de nova ordem de citação. Em março de 2023, o mandado de um dos executados foi devolvido sem cumprimento da ordem de citação e em julho de 2023 a carta precatória expedida com a finalidade de citar o outro executado também retornou sem o devido cumprimento. Ato seguinte, em julho de 2023, determinou-se a intimação do exequente para se manifestar, o qual indicou novo endereço e pleiteou a renovação da citação, em julho/2023, pedido deferido em agosto/2023, com a expedição de novo mandado de citação cuja diligência restou frustrada e o mandado devolvido em setembro/2023. Em 19 de dezembro de 2023 os autos foram remetidos ao Serviço de Distribuição para serem encaminhados ao então recém-criado Núcleo de Justiça 4.0, vindo a ser despachado em maio de 2024 com a intimação do exequente para dar andamento ao feito, a qual indicou novo endereço para diligência, isso em junho/2024. Em dezembro/2024, sem apreciar o último pleito do banco exequente, o juízo primevo ordenou a intimação do exequente para se manifestar acerca de eventual ocorrência de prescrição e, após manifestação deste último, resolveu extinguir o feito reconhecendo a hipótese de prescrição. TODAVIA, não se vislumbra da análise do trâmite processual, que o banco apelante, exclusivamente, tenha demonstrado desídia não havendo, portanto, conduta capaz de motivar o decreto prescricional levado a efeito pela sentença, pois o exequente atendeu, a tempo e a modo, todas as chamadas do juízo fazendo os requerimentos necessários ao andamento do feito. Pelo contrário, como acima assinalado, o feito ficou paralisado de setembro de 2017 até fevereiro de 2020 e, em uma segunda oportunidade, de maio de 2020 até o mês de fevereiro de 2022, contabilizando um lapso de tempo de quase 4 (quatro) anos sem impulso oficial, a ensejar a aplicação da Súmula 106/STJ. Com efeito, pelo fundamento adotado na sentença não posso reconhecer a ocorrência da prescrição, uma vez ausente desídia ou inércia da parte exequente.

Processo	0151879-19.2017.8.06.0001
	align="justify">&#160;</p><p align="justify"> Neste sentido, anoto os seguintes precedentes, inclusive deste Colegiado, verbis: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> DIREITO CIVIL E PROCESSUAL CIVIL. RECURSO DE APELAÇÃO CÍVEL EM AÇÃO DE EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. SENTENÇA QUE EXTINGUIU O FEITO EM RAZÃO DA PRESCRIÇÃO DA PRETENSÃO EXECUTIVA. RÉ QUE NÃO FOI CITADA POR NÃO TER SIDO LOCALIZADA. DEMANDA PROPOSTA DENTRO DO LAPSO PRESCRICIONAL APLICÁVEL À ESPÉCIE. DEMORA NA CITAÇÃO QUE NÃO PODE SER IMPUTADA À EXEQUENTE, QUE PROVIDENCIOU OS MEIOS NECESSÁRIOS AO REGULAR ANDAMENTO DO PROCESSO. AUSÊNCIA DE CONDUTA NEGLIGENTE. MOROSIDADE DO JUDICIÁRIO NA PRÁTICA DE ATOS PROCESSUAIS. PRECEDENTES DESTE SODALÍCIO. RECURSO CONHECIDO E PROVIDO. SENTENÇA CASSADA PARA QUE O FEITO TENHA REGULAR PROSSEGUIMENTO. 1. Cuida-se de ação de Execução de Título Extrajudicial, &#160;fundada em contrato de prestação de serviços de coleta e transporte de resíduos com utilização de containers (resíduos tratados por incineração), alegando o exequente que a ré se encontra inadimplente da importância de R\$ 9.522,17 (atualizada até setembro/2013), correspondente a 18 (dezoito) duplicatas mercantis. 2. A ação foi protocolizada em 25/11/2013. O despacho inicial que determinou a citação da ré foi proferido em 28/03/2014 (fl. 91). Desde então, inúmeras foram as diligências praticadas no sentido de ser efetivada a citação da requerida, no entanto esta não foi localizada no endereço declinado na exordial, como atesta a certidão de fl. 95, tão pouco em outros informados pela autora no curso da ação. 3. Pelo que se pode extrair dos autos, não há como se concluir pela ocorrência da prescrição por qualquer ponto que se analise a questão. De todo o processado é possível verificar que a autora-exequente promoveu as diligências necessárias para que a citação fosse efetivada. 4. Com efeito, tem-se que não houve&#160;inércia&#160;da exequente-apelante, que realizou as medidas cabíveis e possíveis para a tentativa de&#160;localização&#160;da devedora, a fim de que fosse efetivada a citação, não sendo possível que seja impedida de buscar sua pretensão material através dos meios processuais próprios. 5. Voltando ao caso dos autos, verifica-se que a sentença ora atacada está em descompasso com a realidade dos autos. Como dito alhures, a prescrição intercorrente é instituto jurídico que se traduz em uma sanção em função da inércia e desídia do exequente em promover as diligências necessárias à satisfação de seu débito. 6. No caso, não se verifica qualquer conduta por parte da exequente nesse sentido. Ao contrário, todas as vezes em que foi instada a se manifestar, a exequente deu o necessário andamento ao processo. O que se verifica foi a inércia e demora do próprio Poder Judiciário em promover o devido desenvolvimento da marcha processual, o que era dever de ofício da unidade judiciária como um todo, de modo que não se pode cogitar de punição da exequente, por meio da extinção do feito em função da prescrição, quando a morosidade na marcha processual decorreu do próprio Judiciário. 7. Assim, a culpa pela&#160;ausência&#160;da citação da requerida de modo nenhum pode ser imputada à autora, que, por meio de petições tem&#160;promovido&#160;diligências para localizá-la. 8. Recurso conhecido e provido. Sentença cassada. Retorno dos autos ao Juízo de origem para regular prosseguimento da ação. (Apelação Cível&#160;- 0210455-44.2013.8.06.0001, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160;28/02/2024, data da publicação:&#160;28/02/2024)</p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> PROCESSUAL CIVIL. AGRAVO INTERNO. CITAÇÃO. DEMORA. MECANISMOS DA JUSTIÇA. PRESCRIÇÃO. NÃO OCORRÊNCIA. MATÉRIA FÁTICA. SÚMULA 7/STJ. 1. "Proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da justiça, não justifica o acolhimento da arguição de prescrição ou decadência" (Súmula 106/STJ). 2. Hipótese em que as instâncias de origem, soberanas no exame das provas dos autos, delinearam que a demora na citação decorreu dos mecanismos inerentes do Poder Judiciário e, principalmente, da conduta do próprio réu que contribuiu para dificultar a tramitação do processo. 3. Não cabe, em recurso especial, reexaminar matéria fático-probatória e a interpretação de cláusulas contratuais (Súmulas 5 e 7/STJ). 4. Agravo interno a que se nega provimento. (STJ - AgInt no AREsp: 929024 RJ 2016/0145306-0, Relator: Ministra MARIA ISABEL GALLOTTI, Data de Julgamento: 23/08/2021, T4 - QUARTA TURMA, Data de Publicação: DJe 25/08/2021) </p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> TRIBUTÁRIO E PROCESSUAL CIVIL. EXECUÇÃO FISCAL. EXCEÇÃO DE PRÉ-EXECUTIVIDADE. AUSÊNCIA DE OMISSÃO, ART. 535, II, DO CPC DE 1973. INOCORRÊNCIA DE PRESCRIÇÃO INTERCORRENTE. DEMORA NO ANDAMENTO PROCESSUAL CAUSADA PELO PODER JUDICIÁRIO. SÚMULA 106 DO STJ. 1. Não se configura a

Processo	0151879-19.2017.8.06.0001
	ofensa ao art. 535 do Código de Processo Civil, uma vez que o Tribunal a quo julgou integralmente a lide e solucionou a controvérsia, tal como lhe foi apresentada. 2. A inércia foi causada pelos mecanismos inerentes da justiça, portanto o credor não pode ser responsabilizado pelas suas consequências. 3. O STJ, no julgamento do REsp 1.222.444/RS, julgado no rito dos Recursos Repetitivos, art. 543-C do CPC, pacificou a orientação de que "A configuração da prescrição intercorrente não se faz apenas com a aferição do decurso do lapso quinquenal após a data da citação. Antes, também deve ficar caracterizada a inércia da Fazenda exequente". 4. É firme o entendimento do STJ de que somente a inércia injustificada do credor caracteriza a prescrição intercorrente na execução, o que não se verifica no caso concreto, já que a demora no andamento do feito se deu por motivos inerentes ao próprio mecanismo judiciário (Súmula 106/STJ). 5. Recurso Especial não provido. (STJ - REsp: 1697890 RJ 2017/0207378-8, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 21/11/2017, T2 - SEGUNDA TURMA, Data de Publicação: DJe 19/12/2017) APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. CÉDULA DE CRÉDITO BANCÁRIO. PRESCRIÇÃO. MOROSIDADE JUDICIAL. AUSÊNCIA DE ILEGALIDADE. LIQUIDEZ, CERTÉZA E EXIGIBILIDADE DO TÍTULO. RECURSO CONHECIDO E IMPROVIDO. 1. O presente recurso aborda a tese de ocorrência da prescrição no processo executório em primeira instância proposto aos 12 de março de 2012 para cobrar o saldo devedor de cédula de crédito bancário. 2. Como é cediço, o despacho que ordena a citação tem o condão de interromper o prazo prescricional, com efeitos retroativos à data de ajuizamento da ação, desde que o credor tome as providências necessárias à viabilização do ato citatório. Caso o prazo prescricional decorra sem que a citação se efetive por fatos imputáveis ao Poder Judiciário, não se penaliza a parte, e deve o feito prosseguir. 3. Embora o despacho ordinatório da citação tenha sido determinado aos 24 de maio de 2012, a ausência da citação do réu não se deu em razão da ineficiência da parte apelada, mas sim da morosidade judicial , conforme se verifica nos despachos de fls. 27, 36, 44 do processo executório, já que a citação ocorreu 7 (sete) anos após a realização do primeiro despacho. Assim, a parte apelada não pode ser prejudicada pela demora imputável exclusivamente ao serviço judiciário 4. No que se destina à prática da capitalização de juros, observa-se da cédula de crédito bancário acostada ao processo executório, a contratação dos juros capitalizados, eis que com a mera multiplicação dos juros mensais (2,00%) por seu duodécuplo vislumbra-se não ser equivalente aos juros anuais constantes no pacto (26,82), caracterizando, portanto, a legalidade da cobrança de juros capitalizados na espécie. 5. Em relação a suposta cobrança cumulada de comissão de permanência com juros moratórios e multa moratória não restou evidenciado que existe tal cobrança no contrato. 6. Em relação ao IOF, a Corte Cidadã já se posicionou no sentido de ser legal a cobrança do referido imposto nos contratos de financiamento bancário. 7. Dessa maneira, estando a ação executiva lastreada em cédula de crédito bancário, a qual tem natureza de título executivo extrajudicial, sem indícios de ilegalidade e acompanhada de demonstrativo de débito, não há que se falar em procedência dos embargos à execução, em respeito ao art. 28 da Lei nº 10.931/04. 8. Recurso improvido. (Apelação Cível - 0115799-85.2019.8.06.0001, Rel. Desembargador(a) CARLOS ALBERTO MENDES FORTE, 2ª Câmara Direito Privado, data do julgamento: 09/11/2022, data da publicação: 10/11/2022) APELAÇÃO CÍVEL. EXECUÇÃO FISCAL. PRESCRIÇÃO INTERCORRENTE. DEMORA IMPUTADA AOS SERVIÇOS JUDICIAIS E NÃO AO EXEQUENTE. PRESCRIÇÃO INTERCORRENTE NÃO VERIFICADA. APELAÇÃO CONHECIDA E PROVIDA. 1. O cerne da questão ora em discussão cinge-se na análise da prescrição ou não do direito de o ente público estadual efetuar a cobrança de crédito tributário relativo ao ICMS. 2. A jurisprudência do STJ, em julgados recentes, entende configurar a hipótese do art. 40, § 4º da dita Lei, quando o exequente deixar transcorrer o prazo prescricional sem prestar impulso ao andamento processual, desde que seja oportunizada manifestação à Fazenda Pública. 3. Neste azo, intentada a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da justiça, não justifica o acolhimento da arguição de prescrição ou decadência . Precedentes. 4. Na hipótese dos autos, percebe-se que a execução ficou parada por culpa exclusiva do serviço judiciário entre novembro de 2007 e março de 2014, sem que houvesse intimação do exequente para manifestação a respeito do retorno da carta de citação do ora executado, não podendo a edukudade, desta feita, cumprir a diligência para dar prosseguimento ao feito. Assim, o ente público não poderá sofrer os efeitos de uma inércia que sequer deu causa. 5. Apelação conhecida e provida, anulando a sentença e determinando o retorno dos autos à instância a quo para regular processamento. (Apelação Cível - 0000257-21.2005.8.06.0062, Rel.

Processo	0151879-19.2017.8.06.0001
	Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento: 09/08/2021, data da publicação: 10/08/2021) </p><p style="padding-left: 210px;" align="justify"> #160; </p><p align="justify"> O Provimento do apelo é, por conseguinte, medida de justiça. </p><p align="justify">#160;</p><p align="justify"> Ante ao exposto, conheço e dou provimento ao recurso para cassar a sentença extintiva e determinar o retorno dos autos à origem para o regular seguimento. </p><p align="justify">#160;</p><p align="justify"> É como VOTO. </p><p align="justify">#160;</p><p align="justify"> Fortaleza, 10 de setembro de 2025. </p><p align="justify">#160;</p><p align="justify"> #160; </p><p align="center"> EDUARDO DE CASTRO NETO </p><p align="center"> Juiz de Direito, convocado </p><p align="center"> Relator </p> <p>#160;</p><p>#160;</p><p style="text-align: center;"> #160; </p>
Processo	3000839-47.2025.8.06.0133
Número de ordem	97
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Descontos dos benefícios
Polo ativo	GERALDO ANGELO DE SOUSA
Advogado(s) - Polo ativo	FLAVIO BARBOZA MATOS - (CE28410-A) JESSICA ESTEVAM BARBOSA - (CE47125-A)
Polo passivo	ITAU UNIBANCO S.A.
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	Não informado

Processo	3000839-47.2025.8.06.0133
Acórdão	&#160; 35EMENTA DIREITO PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. FRACIONAMENTO ABUSIVO DE DEMANDAS. INTERESSE DE AGIR. EXTINÇÃO SEM RESOLUÇÃO DE MÉRITO MANTIDA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. VERDANA, SANS-SERIF; I. CASO EM EXAME 1. Apelação Cível interposta por Geraldo Angelo de Sousa contra sentença que, nos autos da Ação Declaratória de Inexistência de Negócio Jurídico c/c Repetição de Indébito, Danos Morais e Tutela de Urgência, extinguiu o processo sem resolução de mérito, com fundamento no art. 485, I, do CPC, ante a ausência de interesse de agir, evidenciada pela propositura de múltiplas ações com pedidos e causa de pedir semelhantes contra instituições financeiras. VERDANA, SANS-SERIF; II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em verificar se há interesse processual na propositura isolada de ação anulatória de débito referente a contrato de empréstimo consignado, diante da existência de diversas outras ações similares ajuizadas pela mesma parte contra diferentes réus. VERDANA, SANS-SERIF; III. RAZÕES DE DECIDIR 3. O fracionamento de demandas com causa de pedir e pedidos semelhantes, ainda que fundadas em contratos e instituições financeiras distintas, configura abuso do direito de ação, comprometendo a boa-fé processual e sobrecarregando desnecessariamente o Judiciário. 4. A jurisprudência desta Corte tem rechaçado a multiplicidade de ações semelhantes como forma indevida de acesso à jurisdição, recomendando a reunião dos pedidos em um único feito, conforme o art. 55, § 3º, do CPC. 6. O ajuizamento de mais de 07 (sete) ações pela mesma parte, com pedidos e causa de pedir praticamente idênticos, revela conduta processual temerária, justificando a extinção do processo sem resolução de mérito. VERDANA, SANS-SERIF; IV. DISPOSITIVO E TESE 7. Recurso conhecido e desprovido. Sentença mantida. Tese de julgamento 1. A propositura de múltiplas ações anulatórias de débito fundadas em contratos similares caracteriza abuso do direito de ação e afasta o interesse de agir. 2. A extinção do processo sem resolução de mérito é medida adequada quando verificado fracionamento indevido de demandas que deveriam tramitar de forma concentrada. 3. A boa-fé processual impõe ao

Processo	3000839-47.2025.8.06.0133
	autor o dever de formular suas pretensões de forma ética e eficiente, sem onerar desnecessariamente o sistema de justiça. Dispositivos relevantes citados CF/1988, arts. 5º, XXXV e 37, caput; CPC, arts. 5º, 55, § 3º e 330, III; CDC, arts. 14 e 42, parágrafo único. Jurisprudência relevante citada TJ-CE, Apelação Cível 0200461-16.2023.8.06.0203, Rel. Des. José Ricardo Vidal Patrocínio, j. 07.08.2024; TJ-CE, Apelação Cível 0200669-77.2024.8.06.0166, Rel. Des. Emanuel Leite Albuquerque, j. 09.04.2025. ACORDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, por próprio e tempestivo, para negar provimento ao apelo, nos termos do voto do Relator. Fortaleza, data e hora do sistema. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador EDUARDO DE CASTRO NETO Juiz Convocado Relator RELATÓRIO Trata-se de Apelação Cível interposta por Francisca Lucas Bezerra contra a sentença proferida pelo douto Juízo da 2ª Vara da Comarca de Senador Pompeu que, nos autos da Ação Anulatória de Débito c/c Danos Materiais e Morais, extinguiu a ação sem resolução de mérito, por indeferimento da petição inicial, diante da falta de interesse de agir, nos termos do art. 330, III do CPC. Em sua apelação (ID 27436136), a parte recorrente argui que “Conforme se preleciona na sentença aqui discutida, o magistrado de 1º grau aduz em seus fundamentos um apelo pela conexão das ações e exige que a parte autora reúna os contratos divergentes em uma única ação contra a ré, mas, no seu dispositivo final, justifica o indeferimento pela ausência de pressupostos de constituição e de desenvolvimento válido e regular do processo, o que ao nosso entendimento, torna a sentença equivocada e controversa. A ausência de pressupostos processuais está intimamente ligada ao binômio necessidade-adequação. Se o bem jurídico almejado pelo autor da ação não depende de qualquer intervenção judicial, da prestação jurisdicional, é inútil que o Estado preste assistência. O que não se enquadra no exemplo que se discute na presente lide. O autor escolheu o causídico para ajuizar as ações e buscar a tutela jurisdicional para solucionar um problema recorrente, que vem acontecendo em diversos lugares do estado, e mesmo assim teve seu direito de acessar a justiça cerceado

Processo	3000839-47.2025.8.06.0133
	pela justificativa da ausência de pressupostos de constituição e de desenvolvimento válido e regular do processo, o que não é coerente, haja vista sua busca pela tutela estatal. Assim, acaso a providência judicial almejada seja incapaz de atender aos propósitos do autor, diz-se que inexistente interesse de agir ou interesse processual, o que ao nosso singelo entendimento não encontra respaldo nesse dispositivo para o indeferimento de plano da inicial. Aqui, a providência judicial se faz inteiramente necessária e capaz de atender os propósitos do autor, já que tem diversos descontos sendo realizados na sua aposentadoria, causando prejuízos no sustento do autor e de sua família". Em continuidade, alega que "(...) analisando detidamente os autos, observa-se que tanto a causa de pedir, quanto os pedidos, nas referidas ações DIVERGEM, tendo em vista que se trata de CONTRATOS DIFERENTES, não sendo, assim, o caso de reuni-las para serem julgadas simultaneamente por não haver conexão entre elas". Complementa, informando que "Desta forma, não restam dúvidas acerca da aplicabilidade do Código de Defesa do Consumidor ao feito, na conformidade da Súmula 297 do STJ, a qual prevê a aplicabilidade do CDC às instituições financeiras. Devendo ao caso ser aplicada a teoria da responsabilidade objetiva no sentido de reparar o dano sofrido pelo Autor, bem como a restituição em dobro dos valores cobrados no contrato nulo, conforme preceitua os art. 14, caput art. 42 e seu Parágrafo Único do CDC". Por fim, requer que "se digne esta Colenda Turma Julgadora em dar PROVIMENTO AO RECURSO, reformando a decisão do Juiz de 1ª Grau, no sentido do afastamento da conexão do processo em questão, visto que os processos tratam de contratações diversas, determinando o prosseguimento do processo para a apreciação no juízo de 1º grau, mormente considerando o princípio da inafastabilidade da jurisdição, TUDO POR SER MEDIDA DE MAIS LÍDIMA JUSTIÇA." Devidamente intimada para apresentar contrarrazões (ID 27436241), a parte recorrida se manteve inerte. Remetidos os autos a este tribunal. Este é o relatório em essencial. VOTO Exercendo o juízo de admissibilidade, constato o atendimento dos requisitos intrínsecos e extrínsecos que o compõem, levando-me ao qualificativo da positividade e, assim, ao conhecimento do recurso apelatório. Passo, então, ao seu deslinde. O cerne da controvérsia recursal consiste em verificar o interesse de agir do promovente, dado o fracionamento de ações e o suposto abuso no direito de demandar. Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Súmula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista. O Código de Defesa do Consumidor é aplicável às instituições financeiras

Processo	3000839-47.2025.8.06.0133
	small;">". </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Compulsando os fólhos processuais, bem como, em consulta realizada no E-Saj e PJE de primeiro grau, verifiquei que, de fato, a parte autora/recorrente ajuizou 7 (quarenta) ações envolvendo descontos indevidos/empréstimos consignados realizados em seu benefício previdenciário, ou seja, ações similares, em que busca a nulidade de contratos de empréstimos consignados, restituição dos valores descontados, e ainda, a condenação da instituição financeira/apelada ao pagamento de danos morais. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Como registrado na sentença, apesar de se tratarem de contratos distintos em cada uma das demandas, com instituições financeiras diferentes, é cedido que o fracionamento de ações consiste em um verdadeiro abuso do direito de demandar, ante a propositura de diversas ações e pedido de declaração de inexigibilidade de débito, o que configura conduta processual temerária e abusiva. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Ressalte-se que 01 (uma) ação apenas, contra os diversos réus, bastaria para a satisfação da tutela pretendida, a fim de que a demandante alcançasse o objetivo pretendido e assim evitar o verdadeiro bis in idem e a utilização da prerrogativa ao acesso à justiça de forma inadequada, cujo interesse, na hipótese, culmina por atravancar a máquina judiciária.</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Além disso, o processamento de distintos feitos ainda eleva custos financeiros, sobrecarrega os funcionários do Poder Judiciário e, assim, prejudica a consecução dos princípios constitucionais que regem a administração pública, ao qual o Judiciário está vinculado, especialmente o da eficiência (art. 37, caput, da CF). </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Desse modo, o Judiciário deve coibir condutas temerárias que não respeitam a boa-fé processual tão preconizada na atual codificação processual, insculpida logo de início no artigo 5º do CPC, confira: “A rt. 5º Aquele que de qualquer forma participa do processo deve comportar-se de acordo com a boa-fé. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> A respeito, cito decisões deste sodalício, vejamos: </p><p style="line-height: 100%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >DIREITO CIVIL, PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >1. O cerne da controvérsia consiste em verificar o interesse de agir do Autor, ora Apelante, dado o fracionamento de ações e suposto abuso no direito de demandar.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >2. Do exame dos autos, nota-se que a autora ajuizou 4 (quatro) ações anulatórias de débito c/c indenização por danos materiais e morais contra a mesma instituição financeira apelada, alegando, em resumo, não ter firmado os empréstimos consignados e requerendo restituição de valores e indenização correspondente, e que, ao invés de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em diversos processos, como muito bem delimitou o d. Juízo singular, apesar de todas elas terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decismum recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, § 3º, do CPC.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >3. Por último, a sentença recorrida se encontra devidamente fundamentada, com

Processo	3000839-47.2025.8.06.0133
	exposição clara do d. Juízo de primeiro grau, em consonância com o art. 93, IX, da CF/1988, não vindo a calhar o argumento sobre carência de fundamentação levantado na apelação. 4. De mais a mais, constata-se, nesta egrégia Corte de Justiça, a existência de inúmeras demandas praticamente idênticas patrocinadas pelo causídico do Autor/Apelante, de modo que é aceitável que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. Precedentes. 5. Recurso conhecido e desprovido. Sentença mantida. Apelação Cível: 02004611620238060203 Ocara, Relator: JOSÉ RICARDO VIDAL PATROCÍNIO, Data de Julgamento: 07/08/2024, 1ª Câmara Direito Privado, Data de Publicação: 07/08/2024 DIREITO CIVIL, PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. O cerne da controvérsia consiste em verificar o interesse de agir do Autor, ora Apelante, dado o fracionamento de ações e suposto abuso no direito de demandar. 2. Do exame dos autos, nota-se que a autora ajuizou 4 (quatro) ações anulatórias de débito c/c indenização por danos materiais e morais contra a mesma instituição financeira apelada, alegando, em resumo, não ter firmado os empréstimos consignados e requerendo restituição de valores e indenização correspondente, e que, ao invés de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em diversos processos, como muito bem delimitou o d. Juízo singular, apesar de todas elas terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decurso recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, § 3º, do CPC. 3. Por último, a sentença recorrida se encontra devidamente fundamentada, com exposição clara do d. Juízo de primeiro grau, em consonância com o art. 93, IX, da CF/1988, não vindo a calhar o argumento sobre carência de fundamentação levantado na apelação. 4. De mais a mais, constata-se, nesta egrégia Corte de Justiça, a existência de inúmeras demandas praticamente idênticas patrocinadas pelo causídico do Autor/Apelante, de modo que é aceitável que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. Precedentes. 5. Recurso conhecido e desprovido. Sentença mantida. PROCESSO CIVIL. RECURSO DE APELAÇÃO EM AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MORAIS E MATERIAIS. INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES QUE INDICAM ABUSO DO DIREITO DE DEMANDAR. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. 1. O cerne da controvérsia recursal consiste em verificar o interesse

Processo	3000839-47.2025.8.06.0133
	de agir do promovente/recorrente, dado o fracionamento de ações e o suposto abuso no direito de demandar. 2. Compulsando os fólhos processuais, bem como, em consulta realizada no E-Saj de primeiro grau, verifiquei que, de fato, a parte autora/recorrente ajuizou mais de 40 (quarenta) ações envolvendo empréstimos consignados, sendo 23 (vinte e três) delas em desfavor do banco/recorrido, ou seja, ações similares, em que busca a nulidade de contratos de empréstimos consignados, restituição dos valores descontados, e ainda, a condenação da instituição financeira/apelada ao pagamento de danos morais. 3. Como registrado na sentença, apesar de se tratar de contratos distintos em cada uma das demandas, é cedido que o fracionamento de ações consiste em um verdadeiro abuso do direito de demandar, ante a propositura de diversas ações contra a mesma parte e pedido de declaração de inexigibilidade de débito, o que configura conduta processual temerária e abusiva. 4. Desse modo, o Judiciário deve coibir condutas temerárias que não respeitam a boa-fé processual tão preconizada na atual codificação processual, insculpida logo de início no artigo 5º do CPC, confira: Art. 5º Aquele que de qualquer forma participa do processo deve comportar-se de acordo com a boa-fé. 5. Destaco, ainda, que vedar a tramitação desse tipo de ação não significa impedir o acesso à justiça, mas sim velar para que esse direito seja feito de forma eficaz e com padrões éticos adequados. 6. Recurso conhecido e desprovido. Sentença confirmada. (Apelação Cível - 0200669-77.2024.8.06.0166, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 09/04/2025, data da publicação: 09/04/2025) &#160; Destaco, ainda, que vedar a tramitação desse tipo de ação não significa impedir o acesso à justiça, mas sim velar para que esse direito seja feito de forma eficaz e com padrões éticos adequados. Por todo o exposto, diante dos fundamentos fáticos e jurídicos acima declinados, conheço do presente recurso, por próprio e tempestivo, para negar-lhe provimento, mantendo os termos da sentença atacada. É como voto. Fortaleza, data da assinatura no sistema. &#160; Exmo. Sr. EDUARDO DE CASTRO NETO Juiz Convocado Relator &#160;
Processo	0201440-40.2024.8.06.0171
Número de ordem	98
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE

Processo	0201440-40.2024.8.06.0171
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Práticas Abusivas
Polo ativo	DEBORAH LOURENCO NORONHA
Advogado(s) - Polo ativo	CAROLINA ROCHA BOTTI - (SP422056-A)
Polo passivo	MENTORE INSTITUICAO DE PAGAMENTO S/A
Advogado(s) - Polo passivo	THIAGO BONAVIDES BORGES DA CUNHA BITAR - (CE19880-A)
Terceiros	Não informado

Processo	0201440-40.2024.8.06.0171
Acórdão	<p style="text-align: justify;"> EMENTA: PROCESSO CIVIL. RECURSO DE APELAÇÃO EM AÇÃO OBRIGAÇÃO DE FAZER C/C REPARAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. CONTRATAÇÃO NÃO COMPROVADA. ALEGAÇÃO DE PACTUAÇÃO ELETRÔNICA. AUSÊNCIA DE BIOMETRIA FACIAL E ASSINATURA ELETRÔNICA. INSTITUIÇÃO BANCÁRIA QUE NÃO SE DESINCUMBIU DO SEU ÔNUS PROBATÓRIO (373, II, DO CPC). DANO MATERIAL CONFIGURADO. DEVOLUÇÃO EM DOBRO. DANO MORAL DEVIDO. QUANTUM INDENIZATÓRIO. CRITÉRIOS DA PROPORCIONALIDADE E DA RAZOABILIDADE. DEVIDA A COMPENSAÇÃO DO PROVEITO OBTIDO PELA PARTE AUTORA E O VALOR CREDITADO PELA INSTITUIÇÃO FINANCEIRA.</p><p style="text-align: justify;"> I. CASO EM EXAME </p><p style="text-align: justify;"> 1. Apelação interposta por consumidora contra sentença da 2ª Vara Cível da Comarca de Tauá que julgou improcedentes pedidos de nulidade de contrato bancário, restituição em dobro de valores e indenização por danos morais.</p><p style="text-align: justify;"> 2. Autora afirma que nunca contratou empréstimo consignado junto ao banco réu, embora tenha sofrido descontos em sua conta-salário e cobranças indevidas.</p><p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> 3. A controvérsia consiste em saber:</p><p style="text-align: justify;"> (i) se houve regular contratação do empréstimo consignado;</p><p style="text-align: justify;"> (ii) se é cabível a restituição em dobro dos valores descontados;</p><p style="text-align: justify;"> (iii) se configurado dano moral indenizável em razão dos descontos indevidos.</p><p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p><p style="text-align: justify;"> 4. Aplicação do Código de Defesa do Consumidor às instituições financeiras (STJ, Súmula nº 297).</p><p style="text-align: justify;"> 5. Banco não comprovou a regularidade do contrato eletrônico, limitando-se a juntar prova unilateral sem validade probatória suficiente.</p><p style="text-align: justify;"> 6. Reconhecida a falha na prestação do serviço, nos termos do art. 14 do CDC e dos arts. 186 e 927 do CC, ensejando nulidade contratual e reparação civil.</p><p style="text-align: justify;"> 7. Descontos indevidos configuram cobrança indevida após 30/03/2021, ataindo restituição em dobro (STJ, EAREsp nº 676.608/RS).</p><p style="text-align: justify;"> 8. Configurado dano moral pela indevida restrição à conta-salário da autora, fixada indenização em R\$ 3.000,00.</p><p style="text-align: justify;"> 9. Com relação às tarifas bancárias, ausente comprovação contratual da origem e legitimidade, mas valores estornados, não havendo, portanto, dano moral ou material.</p><p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p><p style="text-align: justify;"> 10. Recurso parcialmente provido. Sentença reformada para: (i) declarar a nulidade do contrato de empréstimo consignado; (ii) condenar o banco à restituição em dobro dos valores indevidamente descontados, com compensação do montante disponibilizado; (iii) fixar indenização por dano moral em R\$ 3.000,00.</p><p style="text-align: justify;"> Tese de julgamento</p><p style="text-align: justify;"> 1. A ausência de comprovação válida da contratação de empréstimo consignado impõe a nulidade contratual.</p><p style="text-align: justify;"> 2. Valores descontados indevidamente após 30/03/2021 devem ser restituídos em dobro, independentemente de prova de má-fé.</p><p style="text-align: justify;"> 3. Descontos em conta-salário configuram dano moral indenizável.</p><p style="text-align: justify;"> Dispositivos relevantes citados: arts. 186 e 927; CDC, arts. 14 e 42, p.u.; CPC/2015, art. 373, II.</p><p style="text-align: justify;"> Jurisprudência relevante citada: STJ, Súmula nº 297; STJ, Súmula nº 479; TJCE, Apelação Cível nº 0201234-74.2022.8.06.0113, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara Direito Privado, j. 03.04.2024; TJCE, Apelação Cível nº 0201686-11.2023.8.06.0029, Rel. Juiz Convocado Mantovanni Colares Cavalcante, 4ª Câmara Direito Privado, j. 26.03.2024.</p><p style="text-align: justify;"> A C Ó R D Ã O </p><p style="text-align: justify;"> Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, para dar-lhe parcial provimento, nos termos do voto do eminente Relator, parte integrante desta decisão.</p><p></p>

Processo	0201440-40.2024.8.06.0171
	Fortaleza, 10 de setembro de 2025. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador EDUARDO DE CASTRO NETO Juiz Convocado Relator RELATÓRIO Trata-se de Recurso de Apelação interposto por Deborah Lourenço Noronha com o escopo de adversar a sentença proferida pelo douto julgante da 2ª Vara Cível da Comarca de Tauá, que julgou improcedentes os pedidos contidos na ação de Obrigação de Fazer c/c Reparação por Danos Morais ajuizada em desfavor da Mentore Bank Instituição de Pagamento S/A. Em seu recurso, a autora/recorrente sustenta que “em maio de 2024, a autora foi informada pelo seu empregador que utilizaria este banco para recebimento de salário. No dia 29 de maio, ao verificar seu extrato, constatou uma cobrança indevida no valor de R\$ 16,90 em sua conta. Imediatamente, a autora entrou em contato com o banco, gerando o protocolo de atendimento n.º 6161387, e foi informada de que o débito se referia a um empréstimo denominado “crédito fácil” que havia sido depositado na sua conta de aproximadamente R\$800,00. No entanto, a autora destaca que nunca contratou qualquer tipo de empréstimo com o Mentore Bank”. Em continuidade, argumenta, que “a autora comunicou esta situação ao banco e solicitou evidências da contratação do empréstimo, mas não obteve qualquer comprovação. Além disso, o valor referente ao empréstimo permaneceu disponível em sua conta, à disposição do banco, o que reforça a irregularidade da cobrança. Os extratos juntados pela ré em ID 124751520 comprovam que as únicas movimentações realizadas pela autora eram referentes ao seu salário”. Sustenta, ainda, que “a parte requerente teve seu direito violado a partir do momento que não solicitou empréstimo mas teve valor depositado em sua conta e está sendo cobrada indevidamente por este sem qualquer resolução por parte da requerida”. Sobre o dano moral, argumenta, que “a parte autora mesmo tendo feito inúmeras reclamações junto a requerida viu que estas foram em vão, pois absolutamente nada foi resolvido pela requerida até a presente data. Por todo o exposto, a parte ré deve ser condenada a indenizar os danos morais causados a parte requerente, pela perda de seu tempo útil, danos a sua esfera econômica e como forma de punição pedagógica para que a requerida não faça mais isso com nenhum outro consumidor, no valor requerido na inicial ou outro valor a entender deste douto juízo”. Por fim, protesta pelo conhecimento e provimento do apelo, para, consequentemente, reformar parcialmente a sentença vergastada, condenando a instituição financeira apelada ao pagamento de indenização por danos morais, bem como, restituição em dobro, por ser medida de direito. Contrarrazões no Id. 27405574. É o que importa relatar. VOTO Inicialmente, cumpre salientar que a autora, em suas contrarrazões, suscita a preliminar de ofensa ao princípio da dialeticidade recursal, a ensejar o não conhecimento do recurso da parte promovida, ao argumento que o recorrente não impugnou, de maneira específica, os fundamentos da decisão objurgada, reproduzindo exatamente o teor da peça contestatória, não se contrapondo aos argumentos da sentença. No caso, restou comprovado que o recurso interposto enfrentou, de forma satisfatória, expondo, em suas razões, os fundamentos de fato e de direito que embasam o seu inconformismo com o ato judicial combatido, portanto, não há que se falar em ofensa ao princípio da dialeticidade. Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. Depreende-se da leitura dos fólios processuais, que a autora/recorrente busca através da presente demanda declarar a nulidade do contrato de empréstimo consignado (nº 431407243), firmado em seu nome junto à instituição financeira promovida, bem como, dos descontos referentes a tarifa de cestas de serviços efetuados pelo banco na conta-salário da autora, com a restituição em dobro, dos valores descontados indevidamente, e ainda, indenização pelos danos morais sofridos. O douto magistrado singular entendeu pela improcedência dos pedidos autorais, ao fundamento que os descontos efetuados foram

Processo	0201440-40.2024.8.06.0171
	devidos e o empréstimo realizado da maneira correta, portanto, incabível se torna a condenação da instituição financeira/requerida em devolução de valores e em pagamento de danos morais. Inicialmente, cumpre ressaltar que é de rigor a aplicação do Código de Defesa do Consumidor (CDC) no presente caso, uma vez que as instituições se amoldam à definição de fornecedora, prescrita no caput do artigo 3º da Lei nº 8.078/1990, enquanto o autor se qualifica como consumidor, ante o conceito trazido pelo artigo 2º do mesmo diploma legal. Demais disso, segundo a Súmula nº 297 do C. Superior Tribunal de Justiça, "o Código de Defesa do Consumidor é aplicável às instituições financeiras". Com relação ao contrato de empréstimo consignado, é forçoso reconhecer que houve falha na prestação do serviço, causando danos de ordem moral e material a promovente/recorrente, porquanto, embora o banco/apelado argumente que o contrato foi realizado na modalidade eletrônica, anexando os documentos constante no Id. 27405553, como forma de comprovar a efetiva pactuação do negócio jurídico em discussão, trata-se de prova produzida unilateralmente pela instituição financeira, com precário ou nenhum valor probatório, e que, mesmo assim, não comprova, com suficiente convicção, de que foi a autora/apelante quem, de fato, pactuou a referida avença. É cediço que para a contratação eletrônica ter validade jurídica, é preciso o preenchimento dos requisitos essenciais, dentre os quais o consentimento do consumidor mediante assinatura digital por biometria facial, com todas as nuances para garantir a autenticidade e a integridade dos documentos assinados. A instituição financeira/recorrida detentora da tecnologia empregada em seus serviços possuía condições de demonstrar tecnicamente que a autora/recorrente procedeu a suposta contratação, mas de tal ônus não se desincumbiu. Destarte, é obrigação da instituição financeira adotar as cautelas necessárias para a realização de um contrato de empréstimo, tendo o dever de implementar sistemas de fiscalização e segurança que impeçam a ocorrência de uma fraude, sob pena de responder pelos danos causados. Assim, demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, o qual enseja pronta reparação dos danos causados, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. Isso porque, segundo a dicção dos dispositivos legais suso mencionados, notadamente o art. 14 do CDC: "o fornecedor de serviços responde, independentemente da existência de culpa, pela reparação dos danos causados aos consumidores por defeitos relativos à prestação dos serviços, bem como por informações insuficientes ou inadequadas sobre sua fruição e riscos". A responsabilidade objetiva tem por base a teoria do risco, segundo a qual a atividade desenvolvida pelo fornecedor, colocada à disposição no mercado de consumo, destina-se a auferir lucros, estando suscetível aos riscos que lhe são inerentes. Daí é possível deduzir que, as instituições bancárias e em virtude da atividade de risco que exercem, devem responsabilizar-se, independentemente de culpa, pelos danos causados, questão esta inclusive já sumulada no STJ: "As instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias". (Súmula n.º 479). Dano material - Destarte, reconhecida a nulidade do contrato e a necessidade do retorno das partes ao "status quo", faz-se necessário a devolução dos valores descontados indevidamente da conta-salário da promovente/recorrente, lastreado pelo contrato em discussão, contudo, deve haver a compensação do montante que foi, de fato, disponibilizado pela instituição financeira/apelada a requerente/apelante, como faz prova o extrato bancário constante no Id.27405550, a fim de evitar o enriquecimento ilícito da parte autora. Repetição de Indébito - Dispõe o parágrafo único do art. 42 do Código de Defesa do Consumidor: "O consumidor cobrado em quantia indevida tem direito à repetição do indébito, por valor igual ao dobro do que pagou em excesso, acrescido de correção monetária e juros legais, salvo hipótese de engano justificável". O atual posicionamento do Superior Tribunal de Justiça, fixado no recurso repetitivo paradigma (EAREsp nº 676608/RS), é no sentido de que a restituição em dobro depende da natureza volitiva do fornecedor, ou seja, prescinde da comprovação da má-fé quando a cobrança indevida decorrer de serviços não contratados. No entanto, impende registrar que o referido entendimento foi publicado com modulação dos efeitos.

Processo	0201440-40.2024.8.06.0171
	medium;">Na decisão paradigma, o Superior Tribunal de Justiça entendeu que, para demandas que não decorram da prestação de serviços públicos, o acórdão terá eficácia apenas prospectiva, ou seja, a tese fixada somente será aplicável a valores pagos após a sua publicação, ou seja, em 30 de março de 2021, vejamos: Primeira tese: A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva.</p> <p style="text-align: justify;"> (...)</p> <p style="text-align: justify;"> Modulação dos efeitos: Modulam-se os efeitos da presente decisão – somente com relação à primeira tese – para que o entendimento aqui fixado quanto à restituição em dobro do indébito seja aplicado apenas a partir da publicação do presente acórdão. A modulação incide unicamente em relação às cobranças indevidas em contratos de consumo que não envolvam prestação de serviços públicos pelo Estado ou por concessionárias, as quais apenas serão atingidas pelo novo entendimento quando pagas após a data da publicação do acórdão." (STJ. Corte Especial. EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020)</p> <p style="text-align: justify;"> Dessa forma, considerando a modulação temporal dos efeitos da decisão contida no EAREsp nº 676.608/RS, os valores descontados indevidamente da conta-salário da requerente/apelante, deverão ser restituídos na forma dobrada, visto que, conforme extrato (Id.2740550), os descontos ocorreram após publicação do acórdão em que fixado o precedente (30/03/2021).</p> <p style="text-align: justify;"> Dano moral - </p> <p style="text-align: justify;"> Configura-se o dano moral quando há violação a algum dos direitos relativos à personalidade do indivíduo, ou seja, quando há lesão à vida ou à integridade físico-psíquica, ao nome, à imagem, à honra, à intimidade ou, de uma forma mais ampla, à dignidade do indivíduo.</p> <p style="text-align: justify;"> Os descontos indevidos realizados na conta-salário da requerente/apelante constituem ato ilícito, na medida em que a instituição financeira deixou de agir com o cuidado necessário para o regular desenvolvimento de sua atividade, causando danos e resultando, por via de consequência, na obrigação de repará-los, na forma dos arts. 186 e 927 do Código Civil.</p> <p style="text-align: justify;"> É nesta conduta, por certo, censurável, onde se centra o nexo de causa e efeito entre o dano e a ação (conduta), porque causou vexame, constrangimento ao consumidor, caso em que a condenação é devida porque os efeitos de tal prática afetam a pessoa com mais extensão e com repercussão no mundo exterior, não confinados apenas à indignação pessoal.</p> <p style="text-align: justify;"> A respeito:</p> <p style="text-align: justify;"> PROCESSO CIVIL. RECURSO DE APELAÇÃO. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRESTIMO CONSIGNADO. CONTRATO DESPROVIDO DE ASSINATURA OU AUTENTICAÇÃO ELETRÔNICA. MANIFESTAÇÃO DA VONTADE NÃO COMPROVADA. FALHA NA PRESTAÇÃO DE SERVIÇO. DANO MATERIAL CONFIGURADO. REPETIÇÃO DO INDÉBITO. MODULAÇÃO TEMPORAL. ENTENDIMENTO FIRMADO PELO STJ. DANO MORAL DEVIDO. QUANTUM INDENIZATÓRIO. MANUTENÇÃO. CRITÉRIOS DA RAZOABILIDADE E DA PROPORCIONALIDADE. RECURSO CONHECIDO DESPROVIDO. SENTENÇA CONFIRMADA. 1. Depreende-se da leitura dos fólios processuais, que a autora/apelada busca através da presente demanda declarar nulo suposto contrato de empréstimo consignado (nº 403054668), firmado em seu nome junto ao banco/apelado, bem como, a restituição dos valores descontados indevidamente, e ainda, indenização pelos danos morais sofridos. 2. A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I e II, do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte Ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito da autora. 3. Desse modo, tendo a autora comprovado a existência de descontos em seu benefício previdenciário (fls.14), recairia sobre o banco/recorrente o ônus de comprovar a regularidade do contrato e a legitimidade das cobranças realizadas. 4. No caso, o banco/apelante não logrou êxito em eximir-se de sua responsabilidade, tendo em vista que não conseguiu provar a regularidade da contratação em questão, porquanto, apesar de proceder a juntada do suposto instrumento contratual (fls. 50/58), o mesmo não encontra-se assinado ou autenticado eletronicamente. 5. A instituição financeira/recorrente, argumenta que o contrato de empréstimo consignado ora analisado foi requerido e perfectibilizado de forma eletrônica, para tanto, anexa o documento de identidade e uma foto ˆselfieˆ da promovente/apelada, como meio de comprovação da discutida avença (fls.59/61). Contudo, a foto carregada aos autos, não é suficiente para comprovar a

Processo	0201440-40.2024.8.06.0171
	manifestação de vontade por parte da autora/apelada, uma vez que se trata de foto individual, que pode ter sido coletada em outra oportunidade. Além disso, não há no documento anexado a geolocalização ou Id do dispositivo usado no momento da realização do pacto. 6. Na espécie, a instituição financeira/apelante detentora da tecnologia empregada em seus serviços possuía condições de demonstrar tecnicamente que a autora/recorrida procedeu a suposta contratação, mas de tal ônus não se desincumbiu. 7. Assim, quando demonstrada a falha na prestação dos serviços pelo banco, configurado está o ilícito civil, conferindo daí ao lesado a devida reparação dos danos sofridos, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. 8. Dano Moral - Sobre o dano moral, enxergo que é evidente a perturbação sofrida pela autora/apelada, em decorrência do ocorrido, ao ver os descontos no seu benefício previdenciário, uma vez que não houve autorização da prática deste ato e tampouco, conforme os elementos existentes nestes autos, prova de que houve a celebração do instrumento contratual com o banco/apelante. 9. Fixação - Para quantificar a indenização por danos morais deve se levar em conta, dentre outros fatores, a extensão do dano, as condições socioeconômicas dos envolvidos e o sofrimento da vítima. Nessa ordem de ideias, atento ao cotejo desses fatores, e levando em consideração os valores dos descontos, considero consentâneo o quantum indenizatório de R\$ 3.000,00 (três mil reais), arbitrado pelo magistrado a quo, porque não se entremostra exagerado nem insignificante, uma vez que razoável e proporcional à ofensa perpetrada. 10. Recurso conhecido e desprovido. Sentença confirmada. A C Ó R D Ã O Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do eminente Relator, parte integrante desta decisão. Fortaleza, 03 de abril de 2024. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator(TJ-CE - Apelação Cível: 0201234-74.2022.8.06.0113 Jucás, Relator.: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 03/04/2024, 1ª Câmara Direito Privado, Data de Publicação: 04/04/2024)</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> APELAÇÕES RECÍPROCAS. SENTENÇA PARCIALMENTE PROCEDENTE DO PEDIDO DECLARAÇÃO DE INEXISTÊNCIA DE RELAÇÃO JURÍDICA E INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. NO CASO, EMPRÉSTIMO CONTRAÍDO COM FRAUDE À REVELIA DO TITULAR DA CONTA BANCÁRIA. O CONTRATO BANCÁRIO APRESENTADO NÃO ATENDE AOS REQUISITOS MÍNIMOS DE VALIDADE. APLICAÇÃO DA SÚMULA Nº 479, STJ. RESPONSABILIDADE OBJETIVA. REPARAÇÃO DOS DANOS MATERIAIS CONSUBSTANCIADOS NA REPETIÇÃO DOBRADA DO INDÉBITO. INDENIZAÇÃO MORAL CONFIGURADA. ARBITRAMENTO REDIMENSIONADO. ADEQUAÇÃO AOS PARÂMETROS DESTA CORTE. PRECEDENTES DO TJCE E DO STJ. DESPROVIMENTO DO APELO DO BANCO E PROVIMENTO DO APELATÓRIO AUTORAL. 1. Inicialmente, percebe-se que o cerne da questão posta a desate consiste em conferir a verossimilhança das alegações recursais vertidas na existência de empréstimo consignado sem a autorização da Parte Requerente e a sua revelia, porquanto, originado mediante fraude. 2. Após, sucessivamente, a celeuma é saber se o contrato em voga tem as informações consideradas essenciais ao pacto, a saber: data e local, dados da autorização para desconto, declaração de residência, ausência de comprovante de depósito, falta de informações sobre financiamento ou refinanciamento, valor financiado divergente do valor liberado, dentre outras, poderia ser considerado legal para fins de validade do negócio jurídico. A par disso, verificar-se-á a possibilidade de reparação. 3. O CONTRATO BANCÁRIO APRESENTADO NÃO ATENDE AOS REQUISITOS MÍNIMOS DE VALIDADE: Realmente, a Parte Requerente alega que fora vítima da realização de contrato fraudulento. Sendo assim, incumbe ao Adversário provar a existência de Fatos Impeditivo, Modificativo ou Extintivo do Direito do Autor, nos termos do art. 373, II, CPC/15. Ademais, tendo em vista que se cuida de relação consumerista, para tanto, deve ser feita a inversão do ônus da prova para que a Parte Requerida apresente o instrumento contratual que possa por fim a controvérsia acerca da validade ou invalidade do ato jurídico. Contudo, o contato bancário não atende aos requisitos mínimos de validade. 4. RESPONSABILIDADE OBJETIVA DO BANCO: É pacífico que a Responsabilidade da instituição bancária é objetiva na ocorrência de fraude, como no caso dos autos. Confira-se: Súmula 479, STJ - As instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias. (Súmula 479, SEGUNDA SEÇÃO, julgado em 27/06/2012, DJe 01/08/2012). 5. INCIDÊNCIA DA REPETIÇÃO DOBRADA DO INDÉBITO: Antes de 30 de março de 2021, o STJ entendia que a devolução em dobro de indébito, segundo o art 42, parágrafo único, Código de Defesa do Consumidor - CDC é necessário os seguintes pressupostos, de forma cumulativa: (i) cobrança extrajudicial indevida de dívida decorrente de contrato de consumo; (ii) efetivo pagamento do indébito pelo consumidor; e (iii) engano injustificável por parte do fornecedor ou prestador. Admitia-se a repetição de indébito,

Processo	0201440-40.2024.8.06.0171
	independentemente da prova de que o pagamento tenha sido realizado por erro, com o objetivo de vedar o enriquecimento ilícito do banco em detrimento do devedor. Porém, para ocorrer em dobro, deve haver inequívoca prova de má-fé. Precedentes. (STJ, AgRg no REsp 916.008/RS, Rel. Ministra NANCY ANDRIGHI, TERCEIRA TURMA, julgado em 14/06/2007, DJ 29/06/2007, p. 623) Na mesma diretiva, declinam-se mais outros 6 (seis) precedentes do STJ, bom verificar: REsp 871825-RJ, REsp 1032952-SP, AgRg no REsp 734111-PR, REsp 910888-RS, AgRg nos EDcl no Ag 1091227-SP e AgRg no REsp 848916-PR. Acontece que o STJ, depois de 30 de março de 2021, reformulou seu entendimento, de modo permitir a Devolução Dobrada para os processos ajuizados depois da publicação do Acórdão do EARESP N. 676.608/RS, RELATOR MINISTRO OG FERNANDES, CORTE ESPECIAL, JULGADO EM 21/10/2020, DJE DE 30/3/2021. In casu, a demanda foi proposta em 2023, pelo que deve atrair a Devolução DOBRADA. 6. EXISTÊNCIA DE DANOS MORAIS: De fato, evidencia-se que não existe contrato bancário VÁLIDO, de modo que os descontos efetuados são ilícitos, pois operados com fraude. 7. ARBITRAMENTO REDIMENSIONADO: Realmente, o arbitramento da indenização moral não deve ser ínfimo tampouco excessivo e, somente, nestas 2 (duas) hipóteses, se divisa a autorização para o redimensionamento pela Corte. In casu, a quantificação do Dano Moral não responde bem ao Princípio da Razoabilidade e da Proporcionalidade. Por fim, o arbitramento dos Danos Morais em casos desse jaez praticados nesta Corte de Justiça é de R\$ 5.000,00 (cinco mil reais). 8. DESPROVIMENTO do Apelo do Banco e o PROVIMENTO do Apelo do Autoral para determinar a Repetição Dobrada do Indébito e para redimensionar o arbitramento a indenização por Danos para R\$ 5.000,00 (cinco mil reais), consagradas as demais disposições sentenciárias, por irrepreensíveis, assegurada a majoração os honorários advocatícios em 10% (dez por cento) sobre o valor fixado na origem, observado o limite do percentual previsto no art. 85, § 2º, CPC/15. ACÓRDÃO Vistos, relatados e discutidos os autos em que são partes as acima indicadas, acordam os Desembargadores integrantes da 4ª Câmara de Direito Privado do Tribunal de Justiça do Ceará, por unanimidade, pelo Desprovemento do Apelo do Banco e o Provimento do Apelo do Autoral, nos termos do voto do Relator. Fortaleza, de de 2024. JUIZ CONVOCADO MANTOVANNI COLARES CAVALCANTE - PORT. 333/2024 Relator (TJ-CE - Apelação Cível: 0201686-11.2023.8.06.0029 Acopiara, Relator: MANTOVANNI COLARES CAVALCANTE - PORT. 333/2024, Data de Julgamento: 26/03/2024, 4ª Câmara Direito Privado, Data de Publicação: 27/03/2024) PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. AÇÃO ANULATÓRIA DE CONTRATO DE EMPRÉSTIMO C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. SENTENÇA PROCEDENTE. CONTRATAÇÃO ELETRÔNICA. PREPOSTO QUE CAPTURA INDEVIDAMENTE A IMAGEM DO PROMOVENTE, QUE NÃO CONSENTIU COM A CELEBRAÇÃO DO NEGÓCIO. AUTOR IDOSO. PARTE HIPERVULNERÁVEL. INSTITUIÇÃO FINANCEIRA QUE NÃO CONSEGUIU COMPROVAR A REGULARIDADE DA CONTRATAÇÃO. DANOS MORAIS CONFIGURADOS. DESVIO PRODUTIVO DO CONSUMIDOR. TEORIA DA PERDA DO TEMPO ÚTIL. CONDENAÇÃO FIXADA EM SENTENÇA NO VALOR DE R\$ 5000,00, QUE SE MOSTRA RAZOÁVEL E PROPORCIONAL. RECURSO CONHECIDO E IMPROVIDO. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para NEGAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Relator/Presidente do Órgão Julgador (TJ-CE - Apelação Cível: 0239881-23.2021.8.06.0001 Fortaleza, Relator.: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 21/02/2024, 1ª Câmara Direito Privado, Data de Publicação: 21/02/2024) Resta, portanto, claro a incidência do dano moral. Fixação – Fatores No tocante ao valor indenizatório, como se sabe, deve representar para o ofendido, uma satisfação psicológica que possa pelo menos diminuir os dissabores que lhe foram acarretados, sem causar, evidentemente, o chamado enriquecimento sem causa, servindo, ainda, para impingir ao causador do dano, um impacto capaz de desestimulá-lo a praticar novos atos que venham a causar danos a outrem. A respeito: PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C DANOS MORAIS. SENTENÇA IMPROCEDENTE. AUSÊNCIA DE CONTESTAÇÃO. REVELIA. EFEITO. PRESUNÇÃO RELATIVA. AO REVEL É GARANTIDA SUA INTERVENÇÃO NO PROCESSO A QUALQUER MOMENTO, RECEBENDO ESTE NO ESTADO EM QUE SE ENCONTRAR. CONTRATAÇÃO DIGITAL. GEOLOCALIZAÇÃO QUE NÃO CONFERE COM A RESIDÊNCIA DA PARTE AUTORA. INSTITUIÇÃO FINANCEIRA QUE

Processo	0201440-40.2024.8.06.0171
	NÃO CONSEGUIU COMPROVAR REGULARIDADE DA CONTRATAÇÃO. NEGÓCIO JURÍDICO INEXISTENTE. RESTITUIÇÃO DO INDÉBITO. MODULAÇÃO DOS EFEITOS DO EARESP 676.608. DESNECESSIDADE DE COMPROVAÇÃO DA MÁ-FÉ PARA OS DESCONTOS EFETUADOS EM DATA POSTERIOR AO DIA 30/03/2021. RESTITUIÇÃO EM DOBRO. DANOS MORAIS CONFIGURADOS. INDENIZAÇÃO FIXADA EM R\$ 3.000,00, O QUE SE MOSTRA RAZOÁVEL E PROPORCIONAL, EM CONGRUÊNCIA COM PRECEDENTES DESTA E. TJCE. APELAÇÃO CONHECIDA E PROVIDA. SENTENÇA REFORMADA. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Relator/Presidente do Órgão Julgador (TJ-CE - Apelação Cível: 0200483-42.2022.8.06.0128 Morada Nova, Relator.: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 24/01/2024, 1ª Câmara Direito Privado, Data de Publicação: 24/01/2024) Nessa ordem de ideias, atento ao cotejo desses fatores: nível econômico da autora da ação, sofrimento da vítima e o porte econômico da entidade bancária, e ainda, levando em consideração os valores descontados arbitro o quantum referente aos danos morais no valor de R\$ 3.000,00 (quatro mil reais), frente ao quadro fático delineado nos autos. Com relação a cobrança de tarifa de cesta de serviços, a entidade bancária/apelante não logrou êxito em eximir-se de sua responsabilidade, porquanto, não apresentou o instrumento contratual, referente à conta bancária da autora/apelante, com cláusulas que especifiquem a origem e a legitimidade das tarifas cobradas, ou ainda, documentos essenciais à comprovação de suas sustentações defensivas, idôneos a impedir, modificar ou extinguir o direito alegado pela parte autora, nos termos do art. 373, inciso II do Código de Processo Civil. Todavia, com relação as referidas cobranças não há que se falar em danos morais e materiais, visto que, é possível perceber que nos descontos efetuados (tarifa de cesta de serviços) não há representatividade financeira de maior monta, de modo a comprometer de maneira significativa os rendimentos da parte autora ou sua subsistência. Além disso, conforme extrato bancário (Id. 27405550), a instituição financeira procedeu o estorno dos lançamentos do serviço. Desse modo, com relação a cobrança de tarifa bancária não procede o pedido de indenização por danos morais, bem como, devolução dos valores devidamente descontados. E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados, voto pelo conhecimento do presente recurso de apelação, para dar-lhe parcial provimento, reformando a sentença atacada, para: (i) declarar a nulidade do contrato de empréstimo consignado em questão (nº 431407243); (ii) determinar a devolução dos valores devidos a título de danos materiais na forma dobrada, visto que, ocorreram após a publicação do acórdão em que fixado o precedente (30/03/2021); corrigidos monetariamente pelo IPCA/IBGE (art. 389, parágrafo único, CC), a partir do efetivo prejuízo (Súmula n.º 43, STJ), com incidência de juros de mora desde o evento danoso (Súmula n.º 54, STJ), a taxa de 1% ao mês até 28/08/2024 e, a partir daí, pela Taxa SELIC, deduzindo-se o IPCA/IBGE e desconsiderando-se juros negativos (art. 406 do CC), com a compensação entre quantia paga/transferida pela instituição financeira/recorrida, a fim de evitar o enriquecimento ilícito da parte autora; (iii) condenar a instituição financeira/recorrida ao pagamento da quantia de R\$ 3.000,00 (três mil reais) a título de danos morais, acrescidos de correção monetária pelo IPCA do IBGE desde o arbitramento (STJ, Súmula nº 362; CC, art. 389, parágrafo único) e de juros de mora da data do evento danoso (Súmula n.º 54, STJ) à taxa de 1% ao mês até o dia anterior ao da vigência da Lei nº 14.905/2024 e, a partir daí, à taxa correspondente ao resultado da taxa Selic subtraída do IPCA (CC, arts. 398 e 406, § 1º). Com o novo resultado, condeno o banco/promovido ao pagamento integral das custas processuais e honorários advocatícios, fixados em 15% (quize por cento) sobre o valor da condenação, nos termos do art. 85, §2º, do Código de Processo Civil. É como voto. Fortaleza-CE, 10 de setembro de 2025. Juiz Convocado Eduardo de Castro Neto Relator

Processo	0202275-45.2023.8.06.0112
Número de ordem	99
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Cartão de Crédito
Polo ativo	FRANCISCA FERREIRA DA SILVA
Advogado(s) - Polo ativo	JUNIOR SOUSA AGUIAR - (CE38185-A)
Polo passivo	BANCO AGIPLAN S.A.
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A) ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado

Processo	0202275-45.2023.8.06.0112
Acórdão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> </p> </div>

Processo	0202275-45.2023.8.06.0112
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Processo	0202275-45.2023.8.06.0112
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	Verdana, sans-serif; font-size: 12px;"><p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant: normal; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelado: &#160;Banco Agiplan S/A </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant: normal; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <p style="text-align: justify;"> EMENTA:&#160;DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. CARTÃO DE CRÉDITO CONSIGNADO. INEXISTÊNCIA DE RELAÇÃO JURÍDICA. RESPONSABILIDADE CIVIL EXTRACONTRATUAL. TERMO INICIAL DOS JUROS DE MORA E DA CORREÇÃO MONETÁRIA. APLICAÇÃO DAS SÚMULAS 43 E 54 DO STJ. HONORÁRIOS ADVOCATÍCIOS. MANUTENÇÃO. RECURSO PARCIALMENTE PROVIDO. </p> <p style="text-align: justify;"> I. CASO EM EXAME </p> <p style="text-align: justify;"> 1. Recurso de apelação interposto por Francisca Ferreira da Silva contra sentença que declarou a inexistência de relação jurídica referente a cartão de crédito consignado com reserva de margem consignável (RMC), determinou a cessação dos descontos em benefício previdenciário, condenou o Banco Agiplan S/A à devolução em dobro dos valores descontados e ao pagamento de indenização por danos morais no valor de R\$ 5.000,00, além de fixar honorários advocatícios em 10% sobre a condenação. A apelante insurge-se contra o termo inicial dos juros de mora e da correção monetária, bem como requer a majoração da verba honorária. </p> <p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;"> 2. Há duas questões em discussão: </p> <p style="text-align: justify;"> (i) definir o termo inicial dos juros de mora e da correção monetária na indenização fixada, diante da natureza da responsabilidade; </p> <p style="text-align: justify;"> (ii) estabelecer se cabe majoração dos honorários advocatícios já fixados em 10%. </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 3. A ausência de comprovação contratual demonstra que os descontos foram realizados sem vínculo jurídico, configurando ato ilícito e responsabilidade civil extracontratual. </p> <p style="text-align: justify;"> 4. Nos casos de responsabilidade extracontratual, a correção monetária incide a partir do efetivo prejuízo, conforme Súmula 43 do STJ. </p> <p style="text-align: justify;"> 5. Também nesses casos, os juros de mora fluem desde o evento danoso, conforme Súmula 54 do STJ. </p> <p style="text-align: justify;"> 6. A fixação dos honorários advocatícios em 10% da condenação observa os limites do art. 85, §2º, do CPC, atendendo aos critérios de proporcionalidade e razoabilidade, não cabendo majoração. </p> <p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p> <p style="text-align: justify;"> 7. Recurso parcialmente provido. </p> <p style="text-align: justify;"> Tese de julgamento: </p> <p style="text-align: justify;"> 1. A responsabilidade por descontos indevidos em benefício previdenciário, quando não comprovada a contratação, tem natureza

Processo	0202275-45.2023.8.06.0112
	extracontratual. </p> <p style="text-align: justify;"> 2. Na responsabilidade civil extracontratual, os juros de mora incidem desde o evento danoso (Súmula 54 do STJ). </p> <p style="text-align: justify;"> 3. Na responsabilidade civil extracontratual, a correção monetária incide desde o efetivo prejuízo (Súmula 43 do STJ). </p> <p style="text-align: justify;"> 4. A fixação dos honorários advocatícios dentro dos parâmetros legais não comporta majoração. </p> <p style="text-align: justify;"> &#160;</p> <p style="text-align: justify;"> Dispositivos relevantes citados:&#160;CC, arts. 186, 389, 405, 406, §1º, e 927; CPC, art. 85, §2º. </p> <p style="text-align: justify;"> Jurisprudência relevante citada: STJ, Súmula 43; STJ, Súmula 54; STJ, Súmula 362. </p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <p style="text-align: justify;">&#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: &#160;Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso para dar-lhe parcial provimento, nos termos do voto do Relator. &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-

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	variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif;" lang="PT-BR" xml:lang="PT-BR">Fortaleza, data da assinatura digital </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> JOSÉ RICARDO VIDAL PATROCÍNIO &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Presidente do Órgão Julgador &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-

Processo	0202275-45.2023.8.06.0112
	select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> EDUARDO DE CASTRO NETO </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Juiz convocado Relator &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 20.7px; font-family: Aptos,

Processo	0202275-45.2023.8.06.0112
	Aptos_EmbeddedFont, Aptos_MSFontService, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATÓRIO </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Trata-se de Recurso de Apelação interposto por Francisca Ferreira da Silva, em face da sentença prolatada pelo juízo da 3ª Vara Cível da Comarca de Juazeiro do Norte, que julgou procedentes os pedidos contidos na ação declaratória de inexistência de relação jurídica com pedido de repetição de indébito e compensação por dano moral, proposta em desfavor de Banco Agiplan S/A, o que fez nos seguintes termos: </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: justify;"> “(…) Ante o exposto, JULGO PROCEDENTES os pedidos formulados na inicial para: </p> <p style="text-align: justify;"> a) DECLARAR a inexistência de relação jurídica referente ao cartão de crédito consignado com reserva de margem consignável (RMC) entre a autora e o réu; </p> <p style="text-align: justify;"> b) DETERMINAR a cessação definitiva dos descontos referentes a RMC no benefício previdenciário da autora, no prazo de 05 (cinco) dias, sob pena de multa diária de R\$ 100,00 (cem reais), até o limite de R\$ 10.000,00 (dez mil reais); </p> <p style="text-align: justify;"> c) CONDENAR o réu à devolução em dobro das parcelas descontadas indevidamente a título de RMC, que totalizam, até o momento, R\$ 8.234,64, corrigidas monetariamente pelo IPCA (art. 389, parágrafo único, CC) desde a data de cada desembolso até a data citação, momento a partir do qual incidirá apenas a Taxa Selic de forma integral (art. 406, §1º, CC), a qual já engloba a correção monetária e os juros devidos a partir de então; </p> <p style="text-align: justify;"> d) CONDENO as partes promovidas ao pagamento do valor de R\$ 5.000,00 a título de danos morais, acrescido de juros de mora de acordo com a Taxa Selic deduzido o IPCA (art. 406, §1º, CC) a partir da citação (art. 405, CC) até a data da sentença (arbitramento), momento a partir do qual incidirá apenas a Taxa Selic de forma integral, pois já engloba os juros e a correção monetária devida a partir do arbitramento (Sumula 362, STJ). </p> <p style="text-align: justify;"> CONDENO o réu ao pagamento das custas processuais e honorários advocatícios, estes fixados em 10% sobre o valor da condenação, nos termos do art. 85, §2º, do CPC”. </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: justify;"> Em suas razões recursais, a autora/apelante sustenta, em suma, que “(…) Os juros moratórios e a Correção monetária devem incidir desde o evento danoso, por se tratar de responsabilidade civil extracontratual (art. 398 do CC e Súmula 54 do STJ)”. </p> <p style="text-align: justify;"> Ao final, requer “que seja recebido o presente Recurso tendo o seu conhecimento e provimento para reconhecer a relação extracontratual e que seja aplicado as súmulas 43 e 54 do STJ, ao qual indica o TERMO INICIAL DO JUROS A CONTAR DO EVENTO DANOSO, conforme exige o caso concreto;b) Ante o fato do Apelado ter dado causa a Ação e a atuação deste causídico, requer a majoração dos honorários sucumbenciais para 20%.” </p> <p style="text-align: justify;"> Contrarrazões – id. 27401052. </p> <p style="text-align: justify;"> É o que importa relatar. </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: center;"> VOTO </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: justify;"> Exercendo juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. </p> <p style="text-align: justify;"> Trata-se de ação anulatória de contrato de cartão de crédito consignado, em que o juízo a quo acolheu os pedidos iniciais, condenando a instituição financeira ao ressarcimento dos valores descontados, em dobro, bem como ao pagamento de danos morais na quantia de R\$5.000,00 (cinco mil reais). </p> <p style="text-align: justify;">

Processo	0202275-45.2023.8.06.0112
	style="font-size: medium;">O cerne da controvérsia recursal cinge-se exclusivamente na insurgência da promovente quanto ao termo inicial dos juros fixados pelo juízo a quo, que determinou a contagem a partir da citação. Razão assiste a apelante. Explico. Com efeito, do conjunto probatório carreado aos autos, evidencia-se que a controvérsia em análise decorre de ato ilícito, desprovido de vínculo contratual entre as partes, uma vez que não houve comprovação pela entidade bancária da efetiva contratação. Trata-se, pois, de típica responsabilidade extracontratual, atraindo a aplicação da disciplina dos arts. 186 e 927 do Código Civil. Nessa perspectiva, a jurisprudência consolidada do Superior Tribunal de Justiça pacificou entendimento quanto à matéria, editando as Súmulas nº 43 e nº 54. A primeira estabelece que, em se tratando de responsabilidade civil extracontratual, a correção monetária da indenização incide desde a data do efetivo prejuízo ("Incide correção monetária sobre dívida por ato ilícito a partir da data do efetivo prejuízo"). A segunda dispõe que os juros moratórios fluem a partir do evento danoso ("Os juros moratórios fluem a partir do evento danoso, em caso de responsabilidade extracontratual"). Assim, reconhecida a natureza extracontratual da relação jurídica em debate, impõe-se a aplicação das referidas súmulas, de modo que os juros de mora devem incidir desde a data do evento danoso, e a correção monetária, desde a data do efetivo prejuízo, em consonância com o entendimento jurisprudencial consolidado. Destarte, acolho o apelo para reconhecer a relação extracontratual e determinar que os juros de mora incidam desde o evento danoso, nos termos das Súmulas 43 e 54 do STJ. No que se refere ao pleito de majoração dos honorários advocatícios, não há como prosperar. O artigo 85 do Código de Processo Civil estabelece parâmetros objetivos para a fixação da verba honorária, determinando que ela seja arbitrada entre o mínimo de 10% (dez por cento) e o máximo de 20% (vinte por cento) sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa. No caso concreto, observa-se que a verba honorária foi fixada em percentual que respeita os limites previstos em lei, atendendo aos critérios do §2º do referido dispositivo, que incluem o grau de zelo do profissional, o lugar da prestação do serviço, a natureza e importância da causa, bem como o trabalho realizado e o tempo exigido. Assim, tendo sido a fixação dos honorários realizada dentro dos parâmetros legais e em consonância com os princípios da razoabilidade e proporcionalidade, não há margem para nova majoração, sob pena de violação ao art. 85 do CPC e enriquecimento indevido da parte vencedora. Cumprido destacar que a jurisprudência pátria é pacífica no sentido de que a majoração dos honorários só é cabível quando a fixação originária se mostrar aquém do mínimo legal ou flagrantemente desproporcional, hipótese que não se verifica nos presentes autos. Portanto, deve ser mantido o quantum fixado a título de honorários advocatícios, rejeitando-se o pleito de majoração. Diante do exposto, conheço do recurso para dar-lhe parcial provimento, determinando que o termo inicial dos juros de mora quanto ao dano material passe a contar a partir da data do efetivo prejuízo (Súmula n.º 43, STJ) e do dano moral da data do evento danoso (Súmula n.º 54, STJ). Mantenho a sentença em seus demais termos. É como voto. Fortaleza, data da assinatura digital EXMO. SR. DR. EDUARDO DE CASTRO NETO Juiz Convocado Relator

Processo	0202275-45.2023.8.06.0112
	line-height: 20.925px; font-family: Aptos, Aptos_EmbeddedFont, Aptos_MSFontService, sans-serif;"> </p></div> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	0207339-70.2022.8.06.0112
Número de ordem	100
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	BANCO BMG SA
Advogado(s) - Polo ativo	FABIO FRASATO CAIRES - (CE29282-S)
Polo passivo	TOME NUNES DA SILVA
Advogado(s) - Polo passivo	JUNIOR SOUSA AGUIAR - (CE38185-A)
Terceiros	Não informado

Processo	0207339-70.2022.8.06.0112
Acórdão	<p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm; break-before: page; text-align: justify;"> <strong style="font-size: 13pt; font-family: Verdana, sans-serif;">EMENTA: DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. CARTÃO DE CRÉDITO CONSIGNADO. AUSÊNCIA DE COMPROVAÇÃO DA CONTRATAÇÃO. DESCONTOS INDEVIDOS EM BENEFÍCIO PREVIDENCIÁRIO. NULIDADE DO CONTRATO. RESTITUIÇÃO DO INDÉBITO NA FORMA SIMPLES ATÉ 30/03/2021 E EM DOBRO A PARTIR DESTA DATA. DANOS MORAIS CONFIGURADOS. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA.</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm; text-align: justify;"> I. CASO EM EXAME </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >1. Apelação Cível interposta por Banco BMG S/A contra sentença que julgou procedente a Ação Declaratória de Inexistência de Relação Jurídica c/c Repetição de Indébito e Indenização por Danos Morais, ajuizada por Tomé Nunes da Silva. O juízo de origem declarou a nulidade do contrato de cartão de crédito consignado, determinou a restituição dos valores descontados do benefício previdenciário do autor e fixou indenização por danos morais em R\$ 3.000,00 (três mil reais). </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >2. Há três questões em discussão: (i) definir se o contrato de cartão de crédito consignado foi validamente celebrado; (ii) estabelecer se a restituição dos valores indevidamente descontados deve ocorrer em dobro ou na forma simples; (iii) determinar se estão configurados danos morais indenizáveis e se o valor fixado em primeiro grau deve ser mantido. </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >3. Os contratos de empréstimos consignados são de trato sucessivo, razão pela qual o prazo prescricional conta-se da última parcela, afastando-se a alegação de prescrição (CDC, art. 27). </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >4. Cabe à instituição financeira comprovar a validade do contrato e a manifestação de vontade do consumidor (CPC, art. 373, II), ônus do qual o banco não se desincumbiu, pois não apresentou contrato assinado nem elementos técnicos idôneos que comprovassem a contratação eletrônica. </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >5. A ausência de autorização expressa para a constituição de reserva de margem consignável (INSS, IN nº 28/2008, art. 3º, III) torna ilegítimos os descontos efetuados, configurando falha na prestação do serviço (CDC, art. 14; CC, arts. 186 e 927). </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >6. A restituição do indébito deve observar a modulação dos efeitos fixada no EAREsp nº 676.608/RS: valores pagos antes de 30/03/2021 devem ser restituídos de forma simples e, após essa data, em dobro, independentemente de prova da má-fé do fornecedor (CDC, art. 42, parágrafo único). </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >7. Os descontos indevidos em benefício previdenciário, no caso concreto, geraram dano moral, sendo proporcional a indenização fixada em R\$ 3.000,00 (três mil reais), em consonância com a jurisprudência da Corte. </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> IV. DISPOSITIVO E TESE </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >8. Recurso conhecido e desprovido. Sentença mantida. </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >Tese de julgamento > 1. O prazo prescricional em contratos de empréstimos consignados conta-se a partir da última parcela, por se tratar de relação de trato sucessivo. 2. A instituição financeira deve comprovar a validade da contratação, sob pena de nulidade do contrato e reconhecimento da ilicitude dos descontos. 3. A restituição em dobro do indébito aplica-se apenas aos valores pagos a partir de 30/03/2021, conforme modulação do STJ no EAREsp nº 676.608/RS, devendo os pagamentos anteriores serem

Processo	0207339-70.2022.8.06.0112
	restituídos de forma simples. 4. Os descontos indevidos em benefício previdenciário configuram dano moral, sendo cabível a fixação de indenização proporcional à gravidade da ofensa. Dispositivos relevantes citados CF/1988, art. 5º, XXXV; CDC, arts. 14, 27 e 42, parágrafo único; CPC, art. 373, II, e art. 85, §11º; CC, arts. 186 e 927; INSS, IN nº 28/2008, art. 3º, III. Jurisprudência relevante citada STJ, Súmula nº 297; STJ, Súmula nº 479; STJ, EAREsp nº 676.608/RS, Rel. Min. Og Fernandes, Corte Especial, j. 21.10.2020; TJCE, Apelação Cível nº 0201034-68.2023.8.06.0166, Rel. Des. Carlos Augusto Gomes Correia, j. 11.06.2025; TJCE, Apelação Cível nº 0246931-32.2023.8.06.0001, Rel. Des. Carlos Augusto Gomes Correia, j. 23.04.2025. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, por próprios e tempestivo, para negar provimento ao apelo, nos termos do voto do Relator. Fortaleza, data e hora do sistema. JOSE RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador EDUARDO DE CASTRO NETO Juiz Convocado Relator RELATÓRIO Trata-se de Apelação Cível interposta por Banco BMG S/A contra a sentença proferida pelo douto Juízo da 1ª Vara Cível da Comarca de Juazeiro do Norte que, nos autos da Ação Declaratória de Inexistência de Relação Jurídica c/c Pedido de Repetição de Indébito e Compensação por Dano Moral proposta por Tomé Nunes da Silva, julgou procedentes os pedidos autorais, declarando a nulidade do contrato nº 17444666, condenando a restituição dos valores pagamento das custas e despesas processuais, além de honorários advocatícios arbitrados em 10% (dez por cento) sobre o valor atualizado da condenação. Em seu apelo (ID 27445143), a empresa promovido/recorrente pugna que "Até onde o apelante possa constatar, a contratação do cartão foi validamente realizada pelo Recorrido, que expressou sua aquiescência quanto aos termos e condições envolvidos na utilização deste. O banco mostrou nos autos, de forma totalmente inequívoca, que a parte autora tinha plena ciência dos termos do contrato, ao juntar o contrato no processo. Diante do referido, resta totalmente afastada a ocorrência de cobranças indevidas por parte do apelante. Restando clara a tentativa equivocada da parte apelada em obter vantagem indevida perante o Judiciário de uma relação jurídica válida e indene de vícios".

Processo	0207339-70.2022.8.06.0112
	family: Verdana, sans-serif;"> Complementa "A celebração do contrato discutido teve como pilar a livre manifestação de vontade das duas partes, pois a parte apelada não foi coagida a contrair dívida junto ao apelante. Uma vez esclarecido que não houve qualquer vício de vontade, insta ressaltar o dever de cumprimento do que fora avençado, em observância ao Princípio da Boa Fé e do Pacta Sunt Servanda, os quais merecem alguma consideração. (...) Em sede sentencial decidiu o MM. Juiz de direito, pela restituição dos valores descontados da apelada, por entender serem indevidos. Urge esclarecer que, não houve qualquer conduta ilegítima do apelante, haja vista que, os descontos são provenientes da contraprestação do contrato celebrado entre as partes." </p><p style="line-height: 200%; text-indent: 3.02cm; margin-bottom: 0.28cm;" align="justify"> Também aduz que "Urge esclarecer que, não houve qualquer conduta ilegítima do apelante, haja vista que, os descontos são provenientes da contraprestação do contrato celebrado entre as partes. (...) Assim, no presente caso, não há que se falar em restituição, ainda mais em dobro. É certo que a apelada, em momento algum, demonstrou ter o Banco agido de má-fé ao realizar as cobranças. (...) Neste passo, a pretensão da autora/ apelada de receber, os valores pagos não apresentam qualquer lógica e/ou respaldo jurídico, não havendo que se falar, pois, em qualquer conduta consubstanciada na má-fé pelo apelante. Sem sombra de dúvida, também sem razão está a apelada, pois, não há que se falar em "prática ilícita" do Banco apelante, uma vez que a cobrança reclamada constitui exercício regular do direito do Banco".</p><p style="line-height: 200%; text-indent: 3.02cm; margin-bottom: 0.28cm;" align="justify"> Alega que "Ante o exposto, pugna pelo provimento do presente recurso e a consequente improcedência do pedido de devolução das parcelas regularmente descontadas em claro exercício regular de direito. Subsidiariamente, ainda que esta Turma Julgadora entenda pela manutenção da sentença no que toca a devolução dos valores descontados, cumpre impugnar a obrigação de que a devolução ocorra de forma dobrada. (...) É firma a jurisprudência acerca do tema, inclusive junto ao Superior Tribunal de Justiça, exigindo a comprovação de má fé como pressuposto para a devolução em dobro de valores, ainda que se trate de uma cobrança indevida (...)". </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Ao fim, requer "Pugna pelo recebimento e provimento do recurso para que a sentença seja reformada, a fim de julgar totalmente improcedentes os pedidos autorais. Em caso de manutenção da sentença, requer que os hipotéticos danos materiais sejam alterados para a forma simples, vez que não foi demonstrada a má fé do banco. Pede, da mesma forma, que os valores recebidos pela autora e comprovados nos autos sejam decotados de uma eventual condenação, para não qualificar enriquecimento sem causada parte recorrida. Quanto à condenação em danos morais, a apelante requer que a sentença seja reformada para que essa seja julgada improcedente, vez que não há comprovação nesse sentido nos autos. Em caso de manutenção da referida condenação, a apelante requer a sua minoração, vez que o patamar em que foi arbitrado se encontra desproporcional ao caso concreto". </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Parte recorrida, devidamente intimada para apresentar suas contrarrazões (ID 27445152), se manteve inerte (ID 27445157). </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Vieram-me conclusos os autos. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Este é o relatório em essencial. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Exercendo juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Pois bem. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0.42cm;" align="justify"> Trata-se de apelo interposto pela instituição financeira promovida contra sentença que julgou parcialmente os pedidos formulados pela autora em sua exordial para declarar a nulidade do contrato supostamente celebrado, a devolução dos valores descontados

Processo	0207339-70.2022.8.06.0112
	indevidamente do benefício previdenciário da parte autora e o pagamento de indenização a título de danos morais no valor de R\$ 3.000,00 (três mil reais). ¶ Inicialmente, passo a análise das preliminares de mérito arguidas pela promovente em sede de apelação. Da prescrição No que concerne a prescrição, cumpre esclarecer que tendo em vista que o caso é de relação consumerista, no qual a parte autora busca a reparação de danos causados pelo fato do serviço, deve ser aplicado o instituto da prescrição, nos termos do art. 27 do CDC. Os contratos de empréstimos consignados caracterizam-se por ser de trato sucessivo, considerando que, mês a mês, ocorre a violação contínua do direito suscitado, sendo o termo inicial para a contagem do prazo prescricional o vencimento apenas da última parcela. Vejamos: EMENTA: DIREITO CIVIL, PROCESSUAL CIVIL E DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA CONTRATUAL C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. CONTRATO DE EMPRÉSTIMO BANCÁRIO CONSIGNADO. RELAÇÃO DE TRATO SUCESSIVO. TERMO INICIAL DO PRAZO PRESCRICIONAL. ÚLTIMA PARCELA. PRESCRIÇÃO AFASTADA. JULGAMENTO DO PROCESSO PELA APLICABILIDADE DA TEORIA DA CAUSA MADURA. COMPROVAÇÃO DA FORMALIZAÇÃO DO CONTRATO. JUNTADA DA TRANSFERÊNCIA ELETRÔNICA (TED), EM CONTA DE TITULARIDADE DA AUTORA, NO VALOR PACTUADO. INEXISTÊNCIA DE ATO ILÍCITO PASSÍVEL DE REPARAÇÃO POR DANOS MORAIS. RECURSO CONHECIDO E PARCIALMENTE PROVIDO, APENAS PARA AFASTAR A PRESCRIÇÃO. JULGAMENTO DE IMPROCEDÊNCIA DO PLEITO AUTURAL. I – Preliminarmente, passo a analisar se, de fato, houve a prescrição da pretensão autoral, apta a gerar o julgamento de extinção do feito, nos termos do inciso II do art. 487 do Código de Processo Civil de 2015. II - Os contratos de empréstimos consignados tratam-se de trato sucessivo, vez que, mês a mês, ocorre a violação contínua do direito, sendo o termo inicial para a contagem da prescrição o vencimento da última parcela. Desta forma, acolho a preliminar suscitada na apelação, afastando a prescrição da pretensão autoral, momento em que, pela aplicabilidade da Teoria da Causa Madura, passo a analisar o mérito da demanda. III - O Código de Defesa do Consumidor, em seu art. 14, caput, estabelece a responsabilidade objetiva dos fornecedores de serviço pelos danos causados aos consumidores, por defeitos relativos à prestação dos serviços. IV - In casu, nas contrarrazões recursais, primeira oportunidade da Instituição Bancária nos autos do processo, esta apresentou a Cópia da Cédula Bancária formalizada entre as partes (fl. 80), devidamente assinada, inclusive com presença de testemunha (fl. 83). No ato, também juntou a cópia da Transferência Eletrônica Disponível (TED), comprovando depósito no valor de R\$ 2.559,23 (dois mil e quinhentos e cinquenta e nove reais e vinte e três centavos), em conta de titularidade da recorrente, sra. MARIA BERTILHA LEITÃO COSTA. Com a robusta prova acostada nos autos, resta comprovada a efetiva e válida formalização do contrato aqui questionado. V - Quanto aos danos morais, os mesmos são vistos como qualquer ataque ou ofensa à honra, paz, mentalidade ou estado neutro de determinado indivíduo, sendo, por vezes, de difícil caracterização devido ao seu alto grau subjetivo. VI – No caso dos autos, uma vez configurada a formalização do contrato em avença, inexistem quaisquer dos requisitos autorizadores para o deferimento de pagamento de danos morais, vez que não restou comprovada nenhuma conduta ilícita por parte da Instituição Bancária, muito menos resultado danoso para a apelante. VII –Recurso conhecido e

Processo	0207339-70.2022.8.06.0112
	parcialmente provido, apenas para afastar a prescrição. Julgamento de improcedência do feito. (TJCE – Relator (a): MARIA VILAUBA FAUSTO LOPES; Comarca: Acopiara; Órgão julgador: 2ª Vara; Data do julgamento: 05/12/2018; Data de registro: 05/12/2018) &#160; Nesta ordem de ideias, haja vista que os descontos perduraram até o momento, o pleito perseguido na vertente declaratória, proposta em novembro de 2022, não se encontra fulminado pela prescrição. Portanto, rejeito a preliminar suscitada. Passo, portanto, a análise do mérito recursal. Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Súmula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista: O Código de Defesa do Consumidor é aplicável às instituições financeiras Passo, portanto, a análise do mérito recursal. A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I e II, do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte Ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito do autor. A cláusula que prevê a reserva de margem consignável para operações com cartão de crédito está regulada pelo art. 1º da Resolução nº 1.305/2009 do Conselho Nacional de Previdência Social. No entanto, a constituição de Reserva de Margem Consignável (RMC) requer autorização expressa do aposentado, por escrito ou por meio eletrônico, nos termos do que dispõe o art. 3º, III, da Instrução Normativa INSS nº 28/2008, alterada pela Instrução Normativa INSS n. 39/2009, in verbis Artigo 3º Os titulares de benefícios de aposentadoria e pensão por morte, pagos pela Previdência Social, poderão autorizar o desconto no respectivo benefício dos valores referentes ao pagamento de empréstimo pessoal e cartão de crédito concedidos por instituições financeiras, desde que: (...) III - a autorização seja dada de forma expressa, por escrito ou por meio eletrônico e em caráter irrevogável e irretratável, não sendo aceita autorização dada por telefone e nem a gravação de voz reconhecida como meio de prova de ocorrência. Desse modo, tendo o autor/apelado comprovado a existência de descontos em seu benefício previdenciário, com base no contrato em discussão, recairia sobre o banco/apelante o ônus de comprovar a regularidade do contrato e a legitimidade das cobranças realizadas. No caso, o banco/recorrente não logrou êxito em eximir-se de sua responsabilidade, tendo em vista que não conseguiu provar a regularidade da contratação em questão, porquanto, apesar de proceder a juntada do suposto instrumento contratual al (ID

Processo	0207339-70.2022.8.06.0112
	 27445063 mesmo não se encontra assinado ou autenticado eletronicamente. A instituição financeira/apelante, argumenta em sede de contestação que o contrato de cartão de crédito consignado ora analisado foi requerido e perfectibilizado de forma eletrônica, para tanto, anexa uma foto "selfie" do promovente, foto do documento pessoal e uma suposta assinatura eletrônica (fls. 13 a 19 do ID 27445063)), como meios de comprovação da discutida avença. Contudo, a foto carreada aos autos, e os demais elementos em apartado, não são suficientes para comprovar a manifestação de vontade por parte do autor/apelado, uma vez que se trata de foto individual e elementos que podem ter sido coletados em outra oportunidade. Além disso, não há no contrato anexado a geolocalização ou ID do dispositivo usado no momento da realização do pacto. Como visto, o banco/recorrente não comprovou por nenhum meio, a manifestação de vontade por parte da promovente/recorrente, ônus que lhe competia, segundo a regra do art. 373, inc. II, do CPC, não conseguindo demonstrar que agiu com cautela por ocasião da celebração do apontado negócio jurídico. Na espécie, a instituição financeira/apelante detentora da tecnologia empregada em seus serviços possuía condições de demonstrar tecnicamente que o autor/apelado procedeu a suposta contratação, mas de tal ônus não se desincumbiu. Assim, quando demonstrada a falha na prestação dos serviços pelo banco, configurado está o ilícito civil, conferindo daí ao lesado a devida reparação dos danos sofridos, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. Isso porque, segundo a dicção dos dispositivos legais suso mencionados, notadamente o art. 14 do CDC: o fornecedor de serviços responde, independentemente da existência de culpa, pela reparação dos danos causados aos consumidores por defeitos relativos à prestação dos serviços, bem como por informações insuficientes ou inadequadas sobre sua fruição e riscos . Daí é possível deduzir que, as instituições bancárias, em virtude da atividade de risco que exercem, devem responsabilizar-se, independentemente de culpa, pelos danos causados, questão esta inclusive já sumulada no STJ: As instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias . (Súmula n.º 479). Dano material Os valores descontados indevidamente do benefício previdenciário do requerente/apelado, sem que houvesse autorização para o exercício deste ato, indicam sem dúvida a presença do dano material.

Processo	0207339-70.2022.8.06.0112
	200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Repetição de Indébito - </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Dispõe o parágrafo único do art. 42 do Código de Defesa do Consumidor: "O consumidor cobrado em quantia indevida tem direito à repetição do indébito, por valor igual ao dobro do que pagou em excesso, acrescido de correção monetária e juros legais, salvo hipótese de engano justificável". </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> O atual posicionamento do Superior Tribunal de Justiça, fixado no recurso repetitivo paradigma (EAREsp nº 676608/RS), é no sentido de que a restituição em dobro independe da natureza volitiva do fornecedor, ou seja, prescinde da comprovação da má-fé quando a cobrança indevida decorrer de serviços não contratados. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> No entanto, impende registrar que o referido entendimento foi publicado com modulação dos efeitos. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Na decisão paradigma, o Superior Tribunal de Justiça entendeu que, para demandas que não decorram da prestação de serviços públicos, o acórdão terá eficácia apenas prospectiva, ou seja, a tese fixada somente será aplicável a valores pagos após a sua publicação, ou seja, em 30 de março de 2021, vejamos: </p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> "Primeira tese: A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> (...</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Modulação dos efeitos: Modulam-se os efeitos da presente decisão – somente com relação à primeira tese – para que o entendimento aqui fixado quanto à restituição em dobro do indébito seja aplicado apenas a partir da publicação do presente acórdão. A modulação incide unicamente em relação às cobranças indevidas em contratos de consumo que não envolvam prestação de serviços públicos pelo Estado ou por concessionárias, as quais apenas serão atingidas pelo novo entendimento quando pagas após a data da publicação do acórdão."</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> (STJ. Corte Especial. EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020)</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Dessa forma, considerando a modulação temporal dos efeitos da decisão contida no EAREsp nº 676.608/RS, somente os valores descontados após a data da publicação do acórdão em que fixado o precedente (30/03/2021), deverão ser restituídos em dobro, os demais descontos, procedidos anteriormente, deverão ser restituídos de forma simples, visto que não restou demonstrada a má-fé do banco/recorrente. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Dano moral – </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Sobre o dano moral, enxergo que é evidente a perturbação sofrida pelo autor, em decorrência do ocorrido, ao ver os descontos no seu benefício previdenciário, uma vez que não houve autorização da prática deste ato e tampouco, conforme os elementos existentes nestes autos, prova de que houve a correta celebração do instrumento contratual com a instituição financeira. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> É nesta conduta, por certo, censurável, onde se centra o nexo de causa e efeito entre o dano e a ação, porque causou vexame, constrangimento ao consumidor, caso em que a condenação é devida porque os efeitos de tal prática afetam a pessoa com mais extensão e com repercussão no mundo exterior, não confinados apenas à indignação pessoal. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Resta, portanto, claro o dano moral. </p><p style="line-height: 200%; margin-left: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> </p>

Processo	0207339-70.2022.8.06.0112
	sans-serif;"> Fixação - Fatores </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Para quantificar a indenização por danos morais deve se levar em conta, dentre outros fatores, a extensão do dano, as condições socioeconômicas dos envolvidos e o sofrimento da vítima. Desse modo, tem-se que a indenização deve se dar de forma equânime e atentar à razoabilidade, a fim de evitar o enriquecimento ilícito da parte autora, mas sem deixar de punir a parte ré pelo cometimento do ato ilegal.</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> E mais, para evitar excessos e abusos, só se deve reputar como dano moral a dor, o sofrimento, que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> A propósito:</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> APELAÇÃO. DIREITO DO CONSUMIDOR. PROCESSO CIVIL. AÇÃO INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. SENTENÇA PARCIALMENTE PROCEDENTE. PEDIDO DE REFORMA INCABÍVEL. BANCO APELANTE NÃO TEVE ÊXITO EM PROVAR A VALIDADE DO CONTRATO. CONTRATO APRESENTADO COM ASSINATURA NÃO RECONHECIDA. DESCONTOS INDEVIDOS. DANO MORAL IN RE IPSA. CABÍVEL. MONTANTE INDENIZATÓRIO ARBITRADO NO PRIMEIRO GRAU DE FORMA PROPORCIONAL AO DANO SOFRIDO. MANUTENÇÃO DO VALOR. REPETIÇÃO DO INDÉBITO NA FORMA SIMPLES PARA OS DESCONTOS REALIZADOS ANTES DE MARÇO DE 2021 E DEVOLUÇÃO DOS VALORES EM DOBRO EM RELAÇÃO ÀS DEMAIS PARCELAS DESCONTADAS A PARTIR DE 30/03/2021 - ENTENDIMENTO FIRMADO PELO STJ EM RECURSO REPETITIVO PARADIGMA (EARESP 676.608/RS). RECURSO DE APELAÇÃO CONHECIDO E NÃO PROVIDO.</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >1. O cerne da demanda consiste em verificar a validade do Contrato de Empréstimo Consignado em questão, bem como se cabe condenação por danos morais, em caso de ser mantida a nulidade declarada pelo juízo a quo, bem como se a repetição do indébito deve ocorrer na forma simples e não em dobro, como determinou o juiz em sentença e se cabe ser mantida, excluída ou reduzida a quantia arbitrada a título de danos morais.</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >2. O banco apelante não comprovou a relação jurídica discutida entre as partes sem a ocorrência de fraude, sendo acertada a declaração de nulidade do contrato.</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">>3. Descontos indevidos no benefício da apelada, enseja indenização por danos morais, sendo estes danos morais in re ipsa, ou seja, presumido, decorrente da própria existência do ato, diante da ausência do contrato que justifique os descontos. Valor arbitrado em primeiro grau na quantia de R\$ 3.000,00 (três mil reais) está em acordo com o entendimento desta Corte em virtude do pequeno valor da parcela.</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >4. Comprovada a supressão indevida de valores no benefício da apelada, resta configurado o prejuízo financeiro e o dever de ressarcimento, e, de acordo com a jurisprudência do STJ, a restituição deve ser de forma simples em relação aos descontos ocorridos antes de 30/03/2021, e, em dobro, para os descontos ocorridos após essa data.</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> >5. Recurso de apelação conhecido e não provido.</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">
 (TJCE – Apelação Cível&#160;- 0201034-68.2023.8.06.0166, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento:&#160; 11/06/2025, data da publicação:&#160; 12/06/2025)</p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> APELAÇÃO. DIREITO DO CONSUMIDOR. PROCESSO CIVIL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE RELAÇÃO CONTRATUAL C/C INDENIZAÇÃO POR DANOS MORAIS. SENTENÇA PROCEDENTE. PRELIMINAR DE FALTA DE INTERESSE DE AGIR. REQUERIMENTO NA VIA ADMINISTRATIVA DESNECESSÁRIO. REJEITADA. PEDIDO DE REFORMA INCABÍVEL. BANCO APELANTE NÃO TEVE ÊXITO EM PROVAR A VALIDADE DO CONTRATO. DESCONTOS INDEVIDOS. DANO MORAL IN RE IPSA. CABÍVEL. MONTANTE INDENIZATÓRIO ARBITRADO NO PRIMEIRO GRAU DE FORMA DESPROPORCIONAL

Processo	0207339-70.2022.8.06.0112
	AO DANO SOFRIDO. REDUÇÃO DO VALOR. DEFERIDO. PEQUENO VALOR DA PARCELA DESCONTADA MENSALMENTE. DEVOLUÇÃO DO INDEBITO NA FORMA SIMPLES, E EM DOBRO EM RELAÇÃO AOS DESCONTOS EVENTUALMENTE REALIZADOS APÓS 30/03/2021. CONSONÂNCIA COM A TESE FIRMADA NO E A RESP 676.608/RS ; APLICAÇÃO DA MODULAÇÃO DOS EFEITOS. NÃO CONHECIMENTO DO PEDIDO DE COMPENSAÇÃO DOS VALORES. AUSÊNCIA DE COMPROVAÇÃO DEPÓSITO EM CONTA DA AUTORA. RECURSO DE APELAÇÃO CONHECIDO E DADO PARCIAL PROVIMENTO. 1. O cerne da controvérsia consiste em analisar se houve ou não fraude na contratação do Empréstimo Consignado pela consumidora MARIA DO SOCORRO DE FREITAS CANDIDO com a instituição financeira, bem como, se constatada tal circunstância, será devida a condenação do banco ao pagamento da indenização a título de danos morais. 2. Da preliminar. Não há como ser acolhida a preliminar de falta de interesse de agir da parte consumidora, eis que é desnecessário o requerimento na via administrativa como pressuposto ao ingresso da demanda judicial, caso contrário, considerar-se-ia uma afronta à garantia constitucional, assegurada no art. 5º, XXXV da Constituição Federal. 3. O banco apelante não comprovou a relação jurídica discutida entre as partes sem a ocorrência de fraude, sendo acertada a declaração de nulidade do contrato. 4. Descontos indevidos no benefício da apelada, enseja indenização por danos morais, sendo estes danos morais in re ipsa, ou seja, presumido, decorrente da própria existência do ato, diante da ausência da regularidade no contrato que justifique os descontos. Valor arbitrado em primeiro grau na quantia de R\$ 4.000,00 (quatro mil reais) está em desacordo com o entendimento desta Corte em virtude do pequeno valor da parcela. Valor reduzido para a quantia de R\$ 3.000,00 (três mil reais). 5. Comprovada a supressão indevida de valores no benefício da apelada, resta configurado o prejuízo financeiro e o dever de ressarcimento, e, de acordo com a jurisprudência do STJ, a restituição deve ser de forma simples em relação aos descontos ocorrido antes de 30/03/2021 e, em dobro, para os descontos efetuados após essa data. 6. A pretensão recursal de restituição/compensação dos montantes disponibilizados pelo banco na conta da parte autora não deve ser conhecida, por ausência de comprovação da titularidade da conta, notadamente porque não apresentada documentação de titularidade e de depósito na conta da consumidora. 7. Recurso de apelação conhecido e dado parcial provimento. (Apelação Cível&#160;- 0246931-32.2023.8.06.0001, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento:&#160; 23/04/2025, data da publicação:&#160; 23/04/2025) Nessa ordem de ideias, atento ao cotejo desses fatores: "nível econômico do autor da ação, sofrimento da vítima e o porte econômico da entidade bancária", e ainda, levando em consideração os valores descontados, considero razoável e proporcional o quantum de R\$ 3.000,00 (três mil reais) fixado pelo juízo a quo , porque não se entremostra exagerado nem insignificante, uma vez que razoável e proporcional à ofensa perpetrada e consentâneo com a jurisprudência desta Corte, anteriormente citadas. Desta forma, ante aos fundamentos fáticos e jurídicos acima declinados, conheço do presente recurso, por próprio e tempestivo, para negar-lhe provimento, mantendo os termos da sentença ora atacada. Diante da sucumbência recursal, majoro os honorários advocatícios devidos pela recorrente de 10% (dez por cento) para 12% (doze por cento), nos termos dos art. 85, §11º do CPC. É como voto.

Processo	0207339-70.2022.8.06.0112
	style="font-family: Verdana, sans-serif;">Fortaleza, data da assinatura no sistema. </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Juiz Convocado Relator </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0.28cm;">

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<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0200428-84.2024.8.06.0043
Número de ordem	101
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	BANCO AGIPLAN S.A.
Advogado(s) - Polo ativo	DENNER DE BARROS E MASCARENHAS BARBOSA - (CE41218-A)
Polo passivo	JOSEFA FERREIRA DE AQUINO
Advogado(s) - Polo passivo	AMANDA NARA SOARES DAMASCENO - (CE32106-A) AYME HOLANDA GAMA - (CE32271-A)
Terceiros	Não informado

Processo	0200428-84.2024.8.06.0043
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-webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: Aptos, Aptos EmbeddedFont, Aptos_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial,

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	Verdana, sans-serif; font-size: 12px;"><p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelado: &#160;Josefa ferreira de Aquino </p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">&#160;<p style="text-align: justify;">EMENTA: DIREITO DO CONSUMIDOR E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO NÃO COMPROVADO. DESCONTOS INDEVIDOS EM BENEFÍCIO PREVIDENCIÁRIO. ÔNUS DA PROVA. RESPONSABILIDADE DA INSTITUIÇÃO FINANCEIRA. REPETIÇÃO DO INDÉBITO. MODULAÇÃO DOS EFEITOS FIXADA PELO STJ (EAREsp 676608/RS). DANOS MORAIS. VALOR IRRISÓRIO. MEROS ABORRECIMENTOS. AFASTAMENTO. RECURSO PARCIALMENTE PROVIDO.</p> <p style="text-align: justify;">I. CASO EM EXAME </p> <p style="text-align: justify;">1. Recurso de apelação interposto pelo Banco Agiplan S/A contra sentença da 1ª Vara Cível da Comarca de Barbalha que, em ação anulatória de débito cumulada com indenização por dano material e moral, repetição do indébito e obrigação de fazer, ajuizada por Josefa Ferreira de Aquino, julgou parcialmente procedentes os pedidos para declarar a nulidade do contrato impugnado, condenar o banco à devolução dos valores descontados – em dobro a partir de 30/03/2021 e de forma simples para descontos anteriores – e ao pagamento de R\$ 3.000,00 a título de danos morais.</p> <p style="text-align: justify;">II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;">2. Há três questões em discussão:</p> <p style="text-align: justify;">(i) verificar se a instituição financeira comprovou a regularidade do contrato; </p> <p style="text-align: justify;">(ii) definir o regime aplicável à repetição do indébito, diante da modulação dos efeitos fixada pelo STJ;</p> <p style="text-align: justify;">(iii) determinar se os descontos indevidos, no valor global de R\$ 181,26, configuram dano moral indenizável. </p> <p style="text-align: justify;">III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;">3. A relação entre consumidor e instituição financeira sujeita-se ao Código de Defesa do Consumidor, conforme Súmula 297 do STJ. </p> <p style="text-align: justify;">4. Cabe ao banco o ônus de provar a regularidade do contrato e a legitimidade das cobranças, nos termos do art. 373, II, do CPC, ônus do qual não se desincumbiu, caracterizando falha na prestação do serviço. </p> <p style="text-align: justify;">5. Nos termos do art. 42, parágrafo único, do CDC e da tese fixada no EAREsp 676608/RS, a repetição do indébito deve ocorrer em dobro apenas para valores descontados após 30/03/2021, sendo devida a restituição simples quanto aos valores anteriores. </p> <p style="text-align: justify;">6. O desconto indevido de valores irrisórios, ainda que indevido, não configura abalo à honra ou à dignidade do consumidor, constituindo mero aborrecimento, razão pela qual não cabe indenização por danos morais. </p> <p style="text-align: justify;">IV. DISPOSITIVO E TESE </p> <p style="text-align: justify;">7. Recurso parcialmente provido. </p> <p style="text-align: justify;">Tese de julgamento: </p> <p style="text-align: justify;">1. A ausência de comprovação contratual impõe à instituição financeira a responsabilidade de restituição pelos descontos indevidos. </p> <p style="text-align: justify;">2. A repetição do indébito deve observar a modulação dos efeitos fixada no EAREsp 676608/RS: restituição simples até 29/03/2021 e em dobro a partir de 30/03/2021. </p> <p style="text-align: justify;"></p>

Processo	0200428-84.2024.8.06.0043
	medium;">3. Descontos de pequeno valor não ensejam, por si só, dano moral indenizável, configurando meros aborrecimentos. <p> <p style="text-align: justify;"> Dispositivos relevantes citados: CF/1988, arts. 1º, III, e 5º, V e X; CDC, arts. 14 e 42, parágrafo único; CC, arts. 186 e 927; CPC, art. 373, II; CTN, art. 161, §1º. </p> <p style="text-align: justify;"> Jurisprudência relevante citada: STJ, Súmula 297; STJ, Súmula 43; STJ, Súmula 54; STJ, Súmula 362; STJ, EAREsp nº 676608/RS, Rel. Min. Og Fernandes, Corte Especial, j. 21.10.2020; TJCE, Apelação Cível nº 0055820-14.2021.8.06.0167, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara de Direito Privado, j. 22.03.2023; TJCE, Agravo Interno Cível nº 0010329-33.2017.8.06.0099, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara de Direito Privado, j. 16.11.2022; TJCE, Apelação Cível nº 0139410-04.2018.8.06.0001, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara de Direito Privado, j. 15.02.2023. </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO: &#160;Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso para dar-lhe parcial provimento, nos termos do voto do Relator. &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> </p></div></div>

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	baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data da assinatura digital </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> JOSÉ RICARDO VIDAL PATROCÍNIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Presidente do Órgão Julgador &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;

Processo	0200428-84.2024.8.06.0043
	Mais adiante, sustenta que "(...) resta clarividente que o banco ora apelante, desincumbiu o ônus de provar os fatos impeditivos do direito do recorrente, conforme dispõe Art. 373, II do CPC, cumpriu com a transferência do valor contrato por meio do empréstimo celebrado, sendo prova inequívoca nos autos."</p> <p style="text-align: justify;"> Aponta, ainda, que "conforme se depreende da cédula colacionada junto ao presente recurso, o contrato firmado entre partes, ocorreu por meio de teleatendimento aonde a parte apelada convalidou o termo ajustado, enviando sua biometria facial gerando assim a autenticação mecânica do mútuo." </p> <p style="text-align: justify;"> Argumenta, também, que "não há que se falar em repetição de indébito, nem de forma simples, tampouco na forma dobrada, já que as cobranças realizadas se referem ao empréstimo firmado pelo consumidor, sendo tais cobranças plenamente legais, devendo, portanto, a r. Sentença de Primeiro Grau deve ser reformada, não havendo que se falar em restituição em dobro de valores." </p> <p style="text-align: justify;"> Ao final, requer o provimento do recurso e consequente reforma da sentença para sejam julgados improcedentes os pedidos formulados na exordial. Subsidiariamente, postula pela minoração do dano extrapatrimonial fixado. </p> <p style="text-align: justify;"> Contrarrazões – id. 27392526. </p> <p style="text-align: justify;"> É o que importa relatar. </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: center;"> VOTO </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: justify;"> Exercendo juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. </p> <p style="text-align: justify;"> Entendeu o juízo de primeiro grau em acolher parcialmente os pedidos autorais declarando a inexistência do contrato questionado, condenando a instituição financeira na devolução, com modulação temporal, dos valores descontados indevidamente e, ainda, ao pagamento da quantia de R\$ 3.000,00 (três mil reais) a título de danos morais. </p> <p style="text-align: justify;"> Pois bem. </p> <p style="text-align: justify;"> Inicialmente, cumpre ressaltar que de acordo com a Súmula nº 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista, vejamos: "O Código de Defesa do Consumidor é aplicável às instituições financeiras" </p> <p style="text-align: justify;"> A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I e II, do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito da autora. </p> <p style="text-align: justify;"> Desse modo, tendo a autora comprovado a existência de descontos em seu benefício previdenciário (id. 27392424), recairia sobre o Banco o ônus de comprovar a regularidade do contrato, a legitimidade das cobranças realizadas e a regularidade do valor subtraído da conta da apelada. </p> <p style="text-align: justify;"> No caso concreto, é forçoso reconhecer que houve falha na prestação do serviço, causando danos de ordem moral e material a promovente/apelada, visto que, a entidade bancária/recorrente não procedeu sequer a juntada do suposto instrumento contratual ou nenhum outro documento capaz de demonstrar a regularidade da avença, ônus que lhe competia, segundo a regra do art. 373, inc. II, do CPC. Também, não demonstrou que o valor supostamente contratado foi verdadeiramente depositado em conta de titularidade da requerente/apelante. </p> <p style="text-align: justify;"> Destarte, é obrigação da instituição financeira adotar as cautelas necessárias para a realização de um contrato de empréstimo, tendo o dever de implementar sistemas de fiscalização e segurança que impeçam a ocorrência de uma fraude, sob pena de responder pelos danos causados. </p> <p style="text-align: justify;"> Não obstante o argumento de que teria encontrado o contrato eletrônico após a sentença, a entidade bancária não procedeu sua juntada aos autos, deixando de comprovar efetivamente a contratação com a requerente. </p> <p style="text-align: justify;"> Assim, demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, gerando a necessidade de pronta reparação dos danos causados, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. </p> <p style="text-align: justify;"> Isso porque, segundo a dicção dos dispositivos legais suso mencionados, notadamente o art. 14 do CDC: "o fornecedor de serviços responde, independentemente da existência de culpa, pela reparação dos danos causados aos consumidores por defeitos relativos à prestação dos serviços, bem como por informações insuficientes ou

Processo	0200428-84.2024.8.06.0043
	inadequadas sobre sua fruição e riscos". Os valores descontados indevidamente do benefício previdenciário da promovente/apelada, sem que houvesse autorização para o exercício deste ato, indicam sem dúvida a presença do dano material. Repetição de Indébito – Dispõe o parágrafo único do art. 42 do Código de Defesa do Consumidor: “O consumidor cobrado em quantia indevida tem direito à repetição do indébito, por valor igual ao dobro do que pagou em excesso, acrescido de correção monetária e juros legais, salvo hipótese de engano justificável”. O atual posicionamento do Superior Tribunal de Justiça, fixado no recurso repetitivo paradigma (EAREsp nº 676608/RS), é no sentido de que a restituição em dobro independe da natureza volitiva do fornecedor, ou seja, prescinde da comprovação da má-fé quando a cobrança indevida decorrer de serviços não contratados. No entanto, impende registrar que o referido entendimento foi publicado com modulação dos efeitos. Na decisão paradigma, o Superior Tribunal de Justiça entendeu que, para demandas que não decorram da prestação de serviços públicos, o acórdão terá eficácia apenas prospectiva, ou seja, a tese fixada somente será aplicável a valores pagos após a sua publicação, ou seja, em 30 de março de 2021, vejamos: Primeira tese: A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva. (...) Modulação dos efeitos: Modulam-se os efeitos da presente decisão – somente com relação à primeira tese – para que o entendimento aqui fixado quanto à restituição em dobro do indébito seja aplicado apenas a partir da publicação do presente acórdão. A modulação incide unicamente em relação às cobranças indevidas em contratos de consumo que não envolvam prestação de serviços públicos pelo Estado ou por concessionárias, as quais apenas serão atingidas pelo novo entendimento quando pagas após a data da publicação do acórdão.” (STJ. Corte Especial. EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020) No caso, os descontos iniciaram em maio de 2020 e o empréstimo foi excluído em outubro de 2021, conforme consta do extrato de empréstimo consignado no id. 27392424, fls. 04, vejamos: 

Processo	0200428-84.2024.8.06.0043
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	DANOS. INSURGÊNCIA CONTRA JULGAMENTO DE PARCIAL PROCEDÊNCIA. TARIFA MENSALIDADE PACOTE SERVIÇOS. RECURSO DO BANCO PROMOVIDO. MOVIMENTAÇÕES EM CONTA QUE DEMONSTRAM QUE A PROMOVENTE USUFRUÍA DE SERVIÇOS ESPECIAIS OFERTADOS PELO BANCO, INOBTANTE COMPROVAÇÃO DE ADESÃO ANTERIOR AO PERÍODO RECONHECIDO NA SENTENÇA. VALORES DESCONTADOS A MAIOR. DESCONTO DE TARIFA SEGURO CHEQUE PROTEGIDO. NÃO COMPROVAÇÃO DA ADESÃO. AUSÊNCIA DE IMPUGNAÇÃO PRÉVIA E ESPECÍFICA DO BANCO QUANTO A ESSES PONTOS. DEVOLUÇÃO SIMPLES DOS VALORES DESCONTADOS ANTES DA PUBLICAÇÃO DO PRECEDENTE DO STJ. AUSÊNCIA DE COMPROVAÇÃO DE MÁ-FÉ. APELO PARCIALMENTE CONHECIDO E PROVIDO. RECURSO DA PROMOVENTE. PEDIDO DE CONDENAÇÃO DO BANCO EM DANOS MORAIS. DESCONTOS DE REDUZIDO VALOR. DANOS MORAIS AFASTADOS. RECURSO CONHECIDO E NÃO PROVIDO. 1. [...] 12. Do Recurso de Apelação da Promovente: Em seu apelo, argumenta a Demandante que o Juízo originário equivocou-se ao rejeitar o pleito de condenação por danos morais, considerando-se os precedentes jurisprudenciais a respeito da realização de descontos indevidos por parte de instituição bancária. Ressalta o sofrimento que experimentou com a conduta do Banco Apelado, que violou normas consumeristas ao agir da forma relatada. 13. Ainda que casos dessa natureza normalmente revelem presunção quanto à existência do dano, há de se ressaltar que tal presunção não é absoluta, impondo-se que estejam presentes elementos mínimos suficientes à formação da própria presunção, o que não se verificou no caso em comento. O prejuízo mensal que era experimentado pela Apelante equivalia a aproximadamente seis reais, traduzindo quantia ínfima, sem qualquer indício de comprometimento da renda da consumidora. Também não há notícia de realização de cobranças pela Apelada (vexatórias ou não), de inscrição da Recorrente em cadastro restritivo de crédito ou de outra situação dessa natureza. 14. Não se refuta que a situação possa ter trazido algum desconforto, aborrecimento e perda de tempo à consumidora. Contudo, os fatos apontados não indicam impacto sobre valores fundamentais do ser humano, tratando-se de meros aborrecimentos a que se está sujeito na vida em sociedade, o que afasta os danos morais indenizáveis, conforme tem decidido o c. STJ e esta Corte de Justiça. 15. Nesse contexto, como os elementos efetivamente trazidos ao feito induzem à conclusão quanto à inexistência de dano moral indenizável, entendendo pela manutenção da sentença quanto a esse ponto. 16. Recurso do Banco Promovido parcialmente conhecido e, na parte conhecida, provido em parte, para: (i) reconhecer a validade da contratação do Pacote Padronizado de Serviços I desde agosto de 2016, e; (ii) determinar a devolução simples dos valores indevidamente descontados até 29/03/2021 (seja a título de tarifa SEGURO CHEQUE PROTEGIDO ou de desconto a maior da tarifa do Pacote Padronizado de Serviços, mantendo-se a devolução em dobro quanto aos descontos posteriores à referida data. 17. Recurso da Promovente conhecido e improvido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer parcialmente do recurso do Banco promovido para, na parte conhecida, dar-lhe parcial provimento; e conhecer da apelação da Promovente para lhe negar provimento, nos termos do voto do Desembargador Relator. (Apelação Cível&#160;0055820-14.2021.8.06.0167, Rel. Desembargador JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara de Direito Privado, data do julgamento&#160; 22/3/2023, data da publicação 22/3/2023); &#160; <p style="font-size: medium;">"DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO EM APELAÇÃO CIVEL. AÇÃO DECLARATÓRIA DE NULIDADE DE NEGÓCIO JURÍDICO C/C INDENIZAÇÃO POR DANOS MORAIS E REPETIÇÃO DE INDÉBITO. DANOS MORAIS NÃO CONFIGURADOS. DESCONTOS EM VALOR ÍNFILO. MEROS ABORRECIMENTOS. RESTITUIÇÃO NA FORMA SIMPLES. DESCONTOS OCORRIDOS ANTES DE 30/03/2021. AUSÊNCIA DE PROVA DA MÁ-FÉ. RECURSO CONHECIDO E DESPROVIDO. DECISÃO AGRAVADA MANTIDA. 1. Trata-se de Agravo Interno (fls. 01/12) interposto por Maria José Soares da Silva em face de Banco Bradesco Financiamentos S.A., objurgando decisão monocrática de fls. 159/170 dos autos da Ação Declaratória de Nulidade de Negócio Jurídico c/c Reparação por Danos Morais (Processo n. 0010329-33.2017.8.06.0099) que deu parcial provimento ao recurso de apelação do banco requerido para afastar a indenização por danos morais e deu parcial provimento ao apelo autoral tão somente para determinar a restituição simples dos valores descontados indevidamente do benefício da autora. 2. A jurisprudência do Superior Tribunal de Justiça entende que "a caracterização do dano moral exige que a comprovação do dano repercuta na esfera dos direitos da personalidade. A fraude bancária, nessa perspectiva, não pode ser considerada suficiente, por si só, para a caracterização do dano moral" (AgInt no EDcl no AREsp 1.669.683/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 23/11/2020, DJe de 30/11/2020). 3. Ademais, a jurisprudência do Superior Tribunal de Justiça é assente no sentido de que se trata de mero aborrecimento o desconto indevido em benefício previdenciário de valores incapazes de comprometer a

Processo	0200428-84.2024.8.06.0043
	subsistência da parte. 4. Nessa toada, descontos em valor ínfimo - R\$ 8,98 (oito reais e noventa e oito centavos) – não correspondem a um dano à personalidade que enseje o pagamento de indenização por danos morais, sobretudo porque somente foram questionados anos após a ocorrência e não ensejaram maiores consequências negativas, como a inscrição do nome da consumidora nos cadastros de proteção ao crédito. 5. A restituição dos valores na forma simples, tal como determinado na decisão objurgada, revela-se adequada na espécie, haja vista que ausente prova de má-fé da instituição financeira no caso, bem como porque os descontos se deram antes de 30/03/2021, data de publicação do acórdão do STJ no EREsp n. 1.413.542. 6. Agravo interno conhecido e não provido." ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do presente agravo interno para negar-lhe provimento, nos termos do voto do relator. Fortaleza, data e assinatura registradas no sistema processual eletrônico. (Agravo Interno Cível 0010329-33.2017.8.06.0099, Rel. Desembargador JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara de Direito Privado, data do julgamento 16/11/2022, data da publicação 16/11/2022); PELAÇÃO CÍVEL, DIREITO PROCESSUAL CIVIL E DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO E INDENIZAÇÃO POR DANOS MORAIS. SENTENÇA DE PROCEDÊNCIA. EMPRÉSTIMO CONSIGNADO. ALEGAÇÃO DE FRAUDE. Ocorrência. VALOR ÍNFILO DAS PARCELAS DESCONTADAS. DANOS MORAIS NÃO CARACTERIZADOS. DESCONTOS REALIZADOS ANTES DE 30/3/2021. RESTITUIÇÃO SIMPLES DO INDÉBITO (EAREsp 676608/RS). SUCUMBÊNCIA RECÍPROCA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 1. Cuida-se de recurso de apelação cível interposto contra sentença exarada pelo Juízo da 37ª Vara Cível da Comarca de Fortaleza/CE, que julgou procedente a Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Morais, para declarar a inexistência da dívida questionada nos autos e condenar a instituição financeira a restituir, em dobro, o valor de R\$ 105,00 (cento e cinco reais), e o remanescente de uma parcela já paga, bem como indenizar o autor por danos morais fixados no montante 3.000,00 (três mil reais). 2. Por tratar os autos de demanda que versa sobre a validade de empréstimo consignado pactuado com o banco, faz-se necessário averiguar a (in)existência dos requisitos que caracterizam a responsabilidade objetiva do fornecedor do serviço bancário, no sentido de avaliar a higidez da contratação questionada (art. 14, caput, do Código de Defesa do Consumidor). Em ações dessa natureza, este e. Tribunal de Justiça firmou entendimento de que a confirmação da regularidade ou irregularidade do negócio depende de provas concretas sobre i) a anuência do(a) consumido(a) sobre os descontos realizados e ii) o recebimento do crédito por parte do(a) promovente. 3. Ao compulsar os fólhos processuais, observa-se que a instituição financeira admite a ocorrência da fraude no ato da contratação e que providenciou o cancelamento do contrato após receber a comunicação de que o autor desconheceria a celebração da avença e que este procedeu à devolução do valor do empréstimo à própria instituição bancária, conforme documentação anexada aos autos. 4. Dessa forma, a controvérsia recursal limita-se a averiguar o cabimento da restituição em dobro do valor descontado indevidamente e da condenação ao pagamento de indenização por danos morais em razão dos fatos aduzidos na inicial. 5. Na hipótese, a instituição bancária afirma já ter efetuado o cancelamento do contrato (13/03/2018), e que efetuou a devolução da parcela debitada em fevereiro de 2018. Além disso, narra que está disponível para reembolso a quantia de R\$ 35,00 (trinta e cinco reais) descontada em março do mesmo ano. 6. Não se olvida que a jurisprudência deste egrégio Tribunal de Justiça firmou-se no sentido de que os descontos não autorizados nos proventos do consumidor fazem presumir ofensa anormal à personalidade, ensejando direito à reparação por danos morais. Contudo, no caso específico destes autos, a situação narrada não é suficiente para caracterizá-los. A existência do dano moral pressupõe a configuração de lesão a um bem jurídico que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, e o bom nome (arts. 1º, III, e 5º, V e X, da Constituição Federal). A mera constatação do desconto indevido nos proventos de aposentadoria do recorrido, no valor de R\$ 35,00 (trinta e cinco reais) que, conforme o banco, já estava disponível para reembolso, não teria o condão de dar azo à alegada aflição psicológica ou angústia suportada pelo demandante, impondo-se afastar, no caso, a condenação ao pagamento de indenização por danos morais. 5. Quanto à restituição em dobro da parcela descontada, note-se que, via de regra, tal condenação prescinde da comprovação da má-fé quando a cobrança indevida decorre de serviços não contratados, conforme entendimento do Superior Tribunal de Justiça, fixado no recurso repetitivo paradigma (EAREsp 676608/RS). Todavia, essa regra se aplica apenas aos descontos realizados após a data de publicação da referida tese, qual seja 30/03/2021. Na hipótese dos autos, ao verificar que o desconto indevido ocorreu em março de 2018, não há que falar em restituição em dobro do indébito, razão pela qual merece guardada os argumentos ventilados pela recorrente, ao aduzir que a restituição da parcela descontada ocorra na forma simples. 6. Por fim, sabendo-se que a reforma parcial da

Processo	0200428-84.2024.8.06.0043
	sentença implica na sucumbência recíproca das partes envolvidas no litígio, haja vista a manutenção do decismum quanto à restituição do indébito, de forma simples, e a sua modificação no que se refere à exclusão da condenação ao pagamento de indenização por danos morais, as custas processuais e os honorários de sucumbência devem ser fixados adequada e proporcionalmente entre as partes (art. 86, caput, do CPC). 7. Recurso conhecido e parcialmente provido.[...]" Apelação Cível 0139410-04.2018.8.06.0001, Rel. Desembargador JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara de Direito Privado, data do julgamento 15/2/2023, data da publicação 15/2/2023). </p> <p style="text-align: justify;"> ¶ </p> <p style="text-align: justify;"> Como visto, descontos indevidos, por si só, não configuram dano moral in re ipsa, sendo necessária a análise das circunstâncias do caso. </p> <p style="text-align: justify;"> Na hipótese, os desfalques totalizaram a quantia de R\$ R\$181,26 (cento e oitenta e um reais e vinte e seis centavos), impedindo o vislumbre da ocorrência do abalo moral passível de indenização, porquanto, não obstante tal situação traga desconfortos e aborrecimentos ao consumidor, não é capaz de atingir valores fundamentais do ser humano, tratando-se, em verdade, de situação rotineira, a que se está sujeito na vida em sociedade. </p> <p style="text-align: justify;"> Desse modo, ausente a demonstração de que o indébito não ultrapassou meros aborrecimentos, não há que se falar em condenação do banco, ora recorrente, ao pagamento de indenização por danos morais </p> <p style="text-align: justify;"> E é assim que, por todo o exposto conheço do recurso para dar-lhe parcial provimento, reformando a sentença atacada afastar a condenação da instituição financeira ao pagamento de danos morais. No mais, mantenho a sentença. </p> <p style="text-align: justify;"> É como voto. </p> <p style="text-align: justify;"> Fortaleza-CE, data da assinatura digital </p> <p style="text-align: justify;"> EMANUEL LEITE ALBUQUERQUE </p> <p style="text-align: justify;"> Desembargador Relator </p> <p style="text-align: justify;"> ¶ </p> <p style="text-align: justify;"> ¶ <p style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;">¶</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR"> ¶ </p></div>

<p>¶</p><p>¶</p><p style="text-align: center;"> ¶</p></p>
Processo	0229204-26.2024.8.06.0001
Número de ordem	102
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	MARIA APARECIDA BARRETO ALENCAR SABINO
Advogado(s) - Polo ativo	JONATHAS FILIPE DE OLIVEIRA CRUZ - (SP474896-A)
Polo passivo	BANCO BRADESCO FINANCIAMENTOS S.A.
Advogado(s) - Polo passivo	DANIEL NUNES ROMERO - (SP168016-A) FLAVIA DOS REIS SILVA - (SP226657-A)
Terceiros	Não informado

Processo	0229204-26.2024.8.06.0001
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	02h34Qzs60OkVefVXU4tyYAI0yAwAEGMpU4USTY7IA1q9YnhkM6ZPETTCAEzDDkV6Np gBY4R8KaxhkTzDLKU/MRGWS/qr8dhBMQ9MgnQYwQztnop8IPakg9Oub9hnMesw0tBQm uS81wzIJDCfVrT4cwMTiSMrI4+HOhe7nNHF5ccusrwAhAlbZCziTd9gtzjoAyM+vEnTgc8CH 4nmY0nPt/snLY1zg9ztQr8eNAlIANA vRQHvWS+0en7Tn+0txwOe1Np7ZZHs+M62vLBQKR 0+zMdKv5f8BQahnWDpaDisAAAAASUVORK5CYII=" alt=""/> &#160; PODER JUDICIÁRIO </p><p style="text-align: center;"> TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ </p><p style="text-align: center;"> GABINETE DO DES. EMANUEL LEITE ALBUQUERQUE </p><p style="text-align: center;"> &#160; TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ </p><p align="left"> Apelante: MARIA APARECIDA BARRETO ALENCAR SABINO </p><p align="left"> Apelado: BANCO BRADESCO FINANCIAMENTO S/A </p><p align="center"> &#160; </p><p align="justify"> <strong style="font-family: verdana, geneva; font-size: medium;">EMENTA : AÇÃO REVISIONAL. CAPITALIZAÇÃO DE JUROS. DUODÉCUPLO DA TAXA MENSAL INFERIOR À TAXA COBRADA NO CONTRATO. PACTUAÇÃO EXPRESSA. VALIDADE DA COBRANÇA. PRECEDENTES DO STJ. INEXISTÊNCIA DE COBRANÇA DE COMISSÃO DE PERMANÊNCIA A PROSTRAR AO SOLO O ARGUMENTO DE SUA CUMULAÇÃO COM OUTRAS VERBAS MORATÓRIAS. TARIFAS DE REGISTRO DE CONTRATO E DE AVALIAÇÃO DO BEM. COMPROVAÇÃO DA PRESTAÇÃO DO SERVIÇO. MANUTENÇÃO DA COBRANÇA. APELAÇÃO CONHECIDA, PORÉM DESPROVIDA.</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> I. CASO EM EXAME </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; >1. Recurso de apelação interposto por Maria Aparecida Barreto Alencar Sabino contra sentença da 7ª Vara Cível de Fortaleza, que julgou improcedente ação revisional ajuizada em desfavor de Banco Bradesco Financiamentos S/A. A apelante alegou: (i) capitalização indevida de juros; (ii) cumulação indevida de comissão de permanência com outros encargos; (iii) ilegalidade na cobrança de tarifas de registro de contrato e de avaliação do bem; e (iv) necessidade de repetição de indébito.</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> II. QUESTÃO EM DISCUSSÃO </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; >2. Há quatro questões em discussão: (i) definir se houve capitalização indevida de juros remuneratórios; (ii) estabelecer se ocorreu cobrança cumulada de comissão de permanência com encargos moratórios; (iii) verificar a legalidade da cobrança das tarifas de avaliação do bem e de registro do contrato; e (iv) determinar a possibilidade de repetição de indébito.</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> III. RAZÕES DE DECIDIR </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; >3. O STJ, em recurso repetitivo (REsp 973.827/RS) e na Súmula 541, admite a capitalização de juros em periodicidade inferior à anual em contratos celebrados após 31/03/2000, desde que expressamente pactuada, sendo suficiente a taxa anual superar o duodécuplo da mensal. Essa circunstância está presente no contrato em exame.</p><p align="justify"> &#160; >4. A comissão de permanência, segundo a Súmula 472/STJ, é incompatível com a cumulação de juros e multa. Contudo, no caso, não houve previsão contratual de cobrança de comissão de permanência, mas apenas de juros moratórios e multa, afastando a alegação de ilegalidade.</p><p align="justify"> &#160; >5. O Tema 958/STJ (REsp 1.578.553/SP) fixou a

Processo	0229204-26.2024.8.06.0001
	validade da cobrança de tarifa de avaliação do bem e de registro do contrato, desde que efetivamente prestados os serviços e sem onerosidade excessiva. Nos autos, a documentação comprova a efetiva prestação. 6. Inexistindo cobrança indevida, não subsiste fundamento para repetição de indébito. IV. DISPOSITIVO E TESE 7. Recurso desprovido. Tese de julgamento: A capitalização mensal de juros é válida em contratos posteriores a 31/03/2000, quando expressamente pactuada, bastando que a taxa anual supere o duodécuplo da mensal. A cobrança de comissão de permanência não pode ser cumulada com outros encargos moratórios, mas sua inexistência no contrato afasta qualquer ilegalidade. São válidas as tarifas de avaliação do bem e de registro do contrato quando comprovada a efetiva prestação dos serviços e inexistente onerosidade excessiva. A repetição de indébito é inviável na ausência de cobrança indevida. A CÓRDÃO Vistos relatados e discutidos os autos da APELAÇÃO CÍVEL nº 0220914-90.2022.8.06.0001, em que é apelante MARIA APARECIDA BARRETO ALENCAR SABINO e apelado BANCO BRADESCO FINANCIAMENTO S/A, acorda o colegiado da 1ª Câmara de Direito Privado do TJCE, por unanimidade de votos, em conhecer e NEGAR provimento ao recurso, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. JOSE RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Juiz de Direito, convocado Relator R E L A T O R I O Trata-se de recurso de apelação interposto por MARIA APARECIDA BARRETO ALENCAR SABINO em face de sentença proferida pelo juízo da 7ª Vara Cível desta Comarca de Fortaleza, que julgou improcedente a ação revisional que a ora apelante ajuizou em desfavor de BANCO BRADESCO FINANCIAMENTOS S/A. Sustenta a apelante, em síntese, ocorrência de capitalização indevida de juros remuneratórios; (b) cumulação indevida de comissão de permanência com outros encargos de mora; (c) cobrança indevida de tarifa de registro de contrato e de avaliação do bem e (d) necessidade de repetição de indébito do valor cobrado a maior.

Processo	0229204-26.2024.8.06.0001
	align="justify">&#160;</p><p align="justify"> Requeru o provimento do recurso para o fim de reformar a sentença e julgar procedente a ação revisional. </p><p align="justify">&#160;</p><p align="justify"> Contrarrazões alojadas ao ID 27389106. </p><p align="justify">&#160;</p><p align="justify"> É o relatório adotado. </p><p align="justify">&#160;</p><p style="text-align: center;"> V O T O - </p><p align="justify">&#160;</p><p align="justify"> Conheço do recurso, posto vislumbro presentes os requisitos de admissibilidade previstos no CPC, e passo a tratar das insurgências vertidas no recurso. </p><p align="justify">&#160;</p><p align="justify"> Da Capitalização de juros - </p><p align="justify">&#160;</p><p align="justify"> Com relação à capitalização de juros, o Superior Tribunal de Justiça (STJ) assentou, em sede de recurso repetitivo, o entendimento de que a capitalização de juros com periodicidade inferior a um ano é permitida em contratos celebrados após 31.03.2000, data da publicação da Medida Provisória nº 1.963-17/2000 (em vigor como MP 2.170-36/2001), desde que expressamente pactuada, sendo suficiente, para tanto, a mera previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal, in verbis: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> “A capitalização dos juros em periodicidade inferior à anual deve vir pactuada de forma expressa e clara. A previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal é suficiente para permitir a cobrança da taxa efetiva anual contratada”. (STJ, Resp. 973.827/RS, Rel. Ministro Luís Felipe Salomão, Rel. p/ Acórdão, Ministra Maria Isabel Gallotti, Segunda Seção, julgado em 08/08/2012, Dje 24/09/2012). </p><p align="justify">&#160;</p><p align="justify"> A matéria, inclusive, restou sumulada por aquela colenda Corte, nos seguintes termos, in verbis. </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> “ A previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal é suficiente para permitir a cobrança da taxa efetiva anual contratada” Súmula 541, de 10/06/2015. </p><p align="justify">&#160;</p><p align="justify"> No caso específico, segundo o STJ, para cobrá-lo é necessário apenas que a taxa de juros anual seja superior a doze vezes (duodécuplo) a taxa mensal fixada no contrato, circunstância presente aos autos, porquanto, a soma dos juros mensais de 1,79%, totaliza o percentual anual de 21,48%, inferior ao percentual cobrado ao ano de 23,66%. (ID 27389110) </p><p align="justify">&#160;</p><p align="justify"> Vejamos, ainda, diversas decisões a respeito, do STJ e deste Sodalício, in verbis: </p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. CONTRATOS BANCÁRIOS. REVISÃO. 1. A questão da possibilidade de revisão de contratos novados não foi enfrentada pelo Tribunal de origem, carecendo do indispensável prequestionamento (Súmula 282 e 356/STF).&#160; 2. <strong style="font-family: verdana, geneva; font-size: medium;">A previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal é suficiente para permitir a cobrança da taxa efetiva anual contratada (Resp 973.827/RS, Rel. Ministro LUIS FELIPE SALOMÃO, Rel. p/ Acórdão Ministra MARIA ISABEL GALLOTTI, SEGUNDA SEÇÃO, julgado em 08/08/2012, Dje 24/09/2012).&#160;3. Não havendo a necessidade de oposição de embargos de declaração para fins de prequestionamento, afasta-se a incidência da Súmula 98/STJ.&#160;4. Agravo regimental a que se nega provimento.&#160;(AgRg no AREsp 618.183/SC, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 17/12/2015, Dje 01/02/2016)</p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> AGRAVO REGIMENTAL NO RECURSO ESPECIAL. PROCESSUAL CIVIL E BANCÁRIO.

Processo	0229204-26.2024.8.06.0001
	CAPITALIZAÇÃO MENSAL DE JUROS. PACTUAÇÃO EXPRESSA. VERIFICAÇÃO. TAXA ANUAL SUPERA O DUODÉCUPLO DA TAXA MENSAL. GRAU DE SUCUMBÊNCIA. ANÁLISE NESTA INSTÂNCIA. INVIABILIDADE. APURAÇÃO EM LIQUIDAÇÃO. PROVIMENTO NEGADO.&#160;1. Com relação à capitalização mensal dos juros, a jurisprudência desta eg. Corte pacificou-se no sentido de que sua cobrança é admitida nos contratos bancários celebrados a partir da edição da Medida Provisória nº 1.963-17/2000, reeditada sob o nº 2.170-36/2001, qual seja, 31/3/2000, desde que expressamente pactuada.&#160;2. <strong style="font-family: verdana, geneva; font-size: medium;">Esta Corte pacificou o entendimento de que há previsão expressa de cobrança de juros capitalizados em periodicidade mensal quando a taxa de juros anual ultrapassa o duodécuplo da taxa mensal.&#160;3. Em caso de sucumbência recíproca, impõe-se a compensação dos honorários advocatícios e custas processuais, na proporção em que vencidas as partes (CPC, art. 21), cuja apuração será realizada em liquidação, dada a inviabilidade de análise nesta instância.&#160;4. Agravo regimental a que se nega provimento.&#160;(AgRg no REsp 1557040/SC, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em <strong style="font-family: verdana, geneva; font-size: medium;">03/12/2015, DJe 18/12/2015)</p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify">&#160; AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. DIREITO CIVIL. BANCÁRIO. REVISIONAL. 1. VIOLAÇÃO DO ART. 333 DO CPC. DEFERIMENTO DE PROVA. PRINCÍPIO DO LIVRE CONVENCIMENTO MOTIVADO DO JUIZ. INVERSÃO DO JULGADO. NECESSIDADE DE REEXAME DE FATOS E PROVAS.IMPOSSIBILIDADE. SÚMULA N. 7/STJ 2. CAPITALIZAÇÃO MENSAL. PACTUADA. 3. JUROS REMUNERATÓRIOS. LIMITAÇÃO EM 12% A.A. IMPOSSIBILIDADE. 4. AGRAVO REGIMENTAL IMPROVIDO.&#160; 1. É vedado em recurso especial o reexame das circunstâncias fáticas da causa, ante o disposto no enunciado n. 7 da Súmula do STJ: "A pretensão de simples reexame de provas não enseja recurso especial." 2. De acordo com o art. 330, I, do CPC, é facultado ao juízo proferir sentença, desde que não haja necessidade de produzir provas em audiência. No caso dos autos, atacar a conclusão da instância recorrida e analisar a necessidade de produção de prova pericial já julgada como prescindível pelo Tribunal de origem, e entender que o seu indeferimento acarretaria cerceamento de defesa, implicaria reexame do conjunto fático-probatório dos autos, o que é obstado em recurso especial, ante o disposto na Súmula 7/STJ.&#160; 3. É cabível a capitalização dos juros, em periodicidade mensal, desde que pactuada, para os contratos celebrados a partir de 31 de março de 2000, data da publicação da MP n. 2.170-36/2001. A previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal é suficiente para caracterizar a pactuação da capitalização mensal.&#160; 4. As instituições financeiras não se sujeitam à limitação dos juros remuneratórios estipulada na Lei de Usura (Decreto n. 22.626/33), Súmula n. 596/STF e a estipulação de juros remuneratórios superiores a 12% ao ano, por si só, não indica abusividade (REsp n. 1.061.530/RS, representativo da controvérsia, Relatora Ministra Nancy Andrighi, Segunda Seção, julgado em 22/10/2008, DJe 10/3/2009).&#160; 5. Agravo regimental improvido.&#160; (AgRg no AREsp 739.350/DF, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 24/11/2015, DJe 11/12/2015)</p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify">DIREITO CIVIL E CONSUMIDOR. APELAÇÃO CÍVEL. REVISIONAL DE CONTRATO BANCÁRIO. APLICAÇÃO DO CDC. SÚMULA Nº 297, STJ. FLEXIBILIZAÇÃO DO PRINCÍPIO PACTA SUNT SERVANDA. CAPITALIZAÇÃO MENSAL DOS JUROS. POSSIBILIDADE. JUROS REMUNERATÓRIOS SUPERIORES A 12% (DOZE POR CENTO) AO ANO. ADMISSIBILIDADE. FALTA DE INTERESSE RECURSAL QUANTO À REPETIÇÃO DE INDÉBITO, À COBRANÇA DO IOF E À COMISSÃO DE PERMANÊNCIA. MATÉRIA NÃO SUSCITADA NA PETIÇÃO INICIAL. IMPOSSIBILIDADE DE REVISÃO DE OFÍCIO. SÚMULA Nº 381, STJ. APELO NÃO CONHECIDO NESTE PONTO. APELAÇÃO PARCIALMENTE CONHECIDA E, NESTE PONTO, DESPROVIDA. 1. O entendimento, pacificado, de aplicação do Código de Defesa do Consumidor às instituições financeiras (STJ, Súmula nº 297) impõe a flexibilização do princípio da autonomia da vontade, para prestígio dos valores constitucionais da isonomia e da proteção ao hipossuficiente, a justificar a revisão de cláusulas de contrato bancário de

Processo	0229204-26.2024.8.06.0001
	adesão supostamente abusivas. 2. Sob o regime de recursos repetitivos (art. 543C, CPC), o STJ julgou o RESP 973.827/RS (Rel. Ministro Luis Felipe Salomão, Rel. para acórdão Ministra Maria Isabel Gallotti), oportunidade em que, por maioria, consignou que a previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal é suficiente para permitir a cobrança da taxa efetiva anual contratada. 3. A limitação de juros remuneratórios de 12% ao ano, prevista na Lei de Usura, não é aplicável aos contratos bancários, salvo àqueles regidos por Leis especiais, a exemplo das cédulas de crédito rural, industrial e comercial. Súmula nº 596 do STF: "As disposições do Dec. Nº 22.626/1933 não se aplicam às taxas de juros e aos outros encargos cobrados nas operações realizadas por instituições públicas ou privadas que integram o Sistema Financeiro Nacional". No caso, por não restar comprovada a abusividade contratual na cobrança de juros remuneratórios em face da taxa média de mercado, devesse manter a taxa de juros ajustada. 4. Carece de interesse recursal o autor/apelante quanto à ilegalidade da comissão de permanência, à possibilidade de repetição de indébito, à existência de tarifas exorbitantes e à abusividade da cobrança do IOF, pois essa matéria não foi suscitada na petição inicial. Como não houve postulação por parte do recorrente sobre os mencionados assuntos no momento oportuno, este Órgão Fracionário não poderia sobre isto deliberar de ofício, por ir de encontro à Súmula nº 381/STJ, in verbis: "Nos contratos bancários, é vedado ao julgador conhecer, de ofício, da abusividade das cláusulas. 5. Apelo parcialmente conhecido e, neste ponto, desprovido. (TJ-CE; AC 050991066.2011.8.06.0001; Primeira Câmara Cível; Rel. Des. Fernando Luiz Ximenes Rocha; DJCE 16/07/2013; Pág. 31) 160; Dessa forma, estando expressa a cobrança de juros capitalizados na avença, não merece reforma a sentença vergastada. 160; D a cobrança da comissão de permanência cumulada com outros encargos – 160; A comissão de permanência é inacumulável com a correção monetária ou com qualquer outro encargo moratório, a exemplo, da multa e dos juros, conforme decidiu o Superior Tribunal de Justiça (STJ). 160; RECURSO ESPECIAL. CIVIL. CONTRATO BANCÁRIO. ARRENDAMENTO MERCANTIL. REAJUSTE. VARIAÇÃO CAMBIAL. RECURSOS NO EXTERIOR. PROVA DA CAPTAÇÃO. COMPROVAÇÃO ESPECÍFICA. DESNECESSIDADE. COMISSÃO DE PERMANÊNCIA. IMPOSSIBILIDADE DE CUMULAÇÃO. DISPOSITIVO LEGAL VIOLADO. AUSÊNCIA DE INDICAÇÃO. FUNDAMENTAÇÃO DEFICIENTE. SÚMULA Nº 284/STF. DISSÍDIO JURISPRUDENCIAL. AUSÊNCIA DE DEMONSTRAÇÃO. 160; 1. A desvalorização do real frente ao dólar norte-americano ocorrida em janeiro de 1999 representou fato imprevisível que redundou em excessiva onerosidade contratual, motivo pelo qual a jurisprudência desta Corte Superior pacificou-se no sentido de autorizar a repartição do ônus das diferenças resultantes da variação cambial do período entre o arrendatário e a instituição arrendante. 160; 2. A prova da captação de recursos não deve ser exigida individualmente, para cada operação de arrendamento mercantil, pois, em regra, a tomada de recursos no exterior não ocorre de modo vinculado aos contratos celebrados no mercado nacional, o que dificultaria sobremaneira a comprovação desse fato. 160; 3. Conquanto seja a captação de recursos no exterior requisito indispensável à contratação de reajuste vinculado à variação cambial, nos moldes exigidos pelo art. 6º da Lei nº 8.880/1994, é despidienci a sua prova em juízo, tendo em vista a fiscalização realizada pelo Banco Central do Brasil quanto à entrada de moeda estrangeira no País, utilizada para financiamentos em moeda nacional. 160; 4. É válida a cláusula contratual que prevê a cobrança da comissão de permanência, calculada pela taxa média de mercado apurada pelo Banco Central do Brasil, de acordo com a espécie da operação, tendo como limite máximo o percentual contratado, sendo admitida apenas no período de inadimplência, desde que pactuada e não cumulada com os encargos da normalidade (juros remuneratórios e correção monetária) e/ou com os encargos moratórios (juros moratórios e multa contratual). 160; 5. Recurso especial parcialmente conhecido e, nessa parte, parcialmente provido. (REsp 1217057/TO, Rel. Ministro RICARDO VILLAS BÔAS CUEVA, TERCEIRA TURMA, julgado em 19/04/2016, DJe 26/04/2016) 160; A este respeito aquela corte, inclusive, sumulou a

Processo	0229204-26.2024.8.06.0001
	matéria nos seguintes termos: “A cobrança de comissão de permanência - cujo valor não pode ultrapassar a soma dos encargos remuneratórios e moratórios previstos no contrato - exclui a exigibilidade dos juros remuneratórios, moratórios e da multa contratual. – Súmula 472/STJ. “Contudo, é de se ver que o contrato não exige a cobrança de comissão de permanência, mas, apenas juros moratórios e multa contratual, o que prostra ao solo o argumento da existência de cumulação desse encargo (comissão de permanência) com outras verbas moratórias, devendo, do mesmo modo, ser mantida a sentença quanto a este aspecto. (ID 27389110, fl. 1) “D a cobrança da cobrança s arifa s de avaliação do bem e de registro de contrato -” “No tocante à cobrança das tarifas de avaliação do bem e de registro de contrato, vale destacar o julgamento do Tema 958 pelo Superior Tribunal do Justiça, no REsp 1.578.553/SP, em 28.11.2018, de relatoria do Ministro Paulo de Tarso Sanseverino, que fixou as seguintes teses para fins do art. 1.040 do Código de Processo Civil: “2.1. Abusividade da cláusula que prevê a cobrança de ressarcimento de serviços prestados por terceiros, sem a especificação do serviço a ser efetivamente prestado; 2.2. Abusividade da cláusula que prevê o ressarcimento pelo consumidor da comissão do correspondente bancário, em contratos celebrados a partir de 25/02/2011, data de entrada em vigor da Res.-CMN 3.954/2011, sendo válida a cláusula no período anterior a essa resolução, ressalvado o controle da onerosidade excessiva; 2.3. Validade da tarifa de avaliação do bem dado em garantia, bem como da cláusula que prevê o ressarcimento de despesa com o registro do contrato, ressalvadas a: 2.3.1. abusividade da cobrança por serviço não efetivamente prestado; e a 2.3.2. possibilidade de controle da onerosidade excessiva, em cada caso concreto Portanto, restou consolidado o entendimento da validade da contratação das tarifas de avaliação do bem e de registro de contrato, ressalvado o reconhecimento de abusividade da cobrança por serviço não efetivamente prestado e a possibilidade de controle da onerosidade excessiva, em cada caso concreto. Eis o teor da ementa do julgado acima referido: RECURSO ESPECIAL REPETITIVO. TEMA 958/STJ. DIREITO BANCÁRIO. COBRANÇA POR SERVIÇOS DE TERCEIROS, REGISTRO DO CONTRATO E AVALIAÇÃO DO BEM. PREVALÊNCIA DAS NORMAS DO DIREITO CONSUMIDOR SOBRE A REGULAÇÃO BANCÁRIA. EXISTÊNCIA DE NORMA REGULAMENTAR VEDANDO A COBRANÇA A TÍTULO DE COMISSÃO DO CORRESPONDENTE BANCÁRIO. DISTINÇÃO ENTRE O CORRESPONDENTE E O TERCEIRO. DESCABIMENTO DA COBRANÇA POR SERVIÇOS NÃO EFETIVAMENTE PRESTADOS. POSSIBILIDADE DE CONTROLE DA ABUSIVIDADE DE TARIFAS E DESPESAS EM CADA CASO CONCRETO. 1. DELIMITAÇÃO DA CONTROVÉRSIA: Contratos bancários celebrados a partir de 30/04/2008, com instituições financeiras ou equiparadas, seja diretamente, seja por intermédio de correspondente bancário, no âmbito das relações de consumo. 2. TESES FIXADAS PARA OS FINS DO ART. 1.040 DO CPC/2015: 2.1. Abusividade da cláusula que prevê a cobrança de ressarcimento de serviços prestados por terceiros, sem a especificação do serviço a ser efetivamente prestado; 2.2. Abusividade da cláusula que prevê o ressarcimento pelo consumidor da comissão do correspondente bancário, em

Processo	0229204-26.2024.8.06.0001
	contratos celebrados a partir de 25/02/2011, data de entrada em vigor da Res.-CMN 3.954/2011, sendo válida a cláusula no período anterior a essa resolução, ressaltado o controle da onerosidade excessiva; 2.3. Validade da tarifa de avaliação do bem dado em garantia, bem como da cláusula que prevê o ressarcimento de despesa com o registro do contrato, ressalvadas a: 2.3.1. abusividade da cobrança por serviço não efetivamente prestado; e a 2.3.2. possibilidade de controle da onerosidade excessiva, em cada caso concreto. 3. CASO CONCRETO. 3.1. Aplicação da tese 2.2, declarando-se abusiva, por onerosidade excessiva, a cláusula relativa aos serviços de terceiros ("serviços prestados pela revenda"). 3.2. Aplicação da tese 2.3, mantendo-se hígidas a despesa de registro do contrato e a tarifa de avaliação do bem dado em garantia. 4. RECURSO ESPECIAL PARCIALMENTE PROVIDO. (REsp 1578553/SP, Rel. Ministro PAULO DE TARSO SANSEVERINO, SEGUNDA SEÇÃO, julgado em 28/11/2018, DJe 06/12/2018). Por fim, não havendo cobrança indevida, não há como acolher o pedido de devolução de valores. O caso é, portanto, de manutenção in totum, da sentença vergastada. ANTE AO EXPOSTO, conheço e nego provimento ao recurso de apelação. Majoro os honorários advocatícios em 2% (dois por cento), observada a gratuidade deferida na origem. É como VOTO. Fortaleza, 10 de setembro de 2025. EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator Relator
Processo	3000249-69.2025.8.06.0101
Número de ordem	103
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	MARIA VALDENILDA DA SILVA OLIVEIRA
Advogado(s) - Polo ativo	ROGER MADSON SILVEIRA MONTEIRO - (CE16177-A)
Polo passivo	BANCO AGIPLAN S.A.
Advogado(s) - Polo passivo	RODRIGO SCOPEL - (RS40004-A)
Terceiros	Não informado

Processo	3000249-69.2025.8.06.0101
Acordão	<div >="" 485="" 527="" 948="" 965"="" <img="" <p="" <span="" class="SCXW75871393 BCX0" data-label="Page-Footer" lang="PT-BR" src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAJAAADCCAYAAABAFmiAAAAAXNSR0IArs4c6QAAIABJREFUEf7svQmYHVd1Lbz2OTXc23O3JkvWZFuybHnARgZsDH5iCIEkEDI0X14CSVCICTyGR8LzCy/h0fmSPwkWEANhMhD19Ce/leE5fAkPwqBgwMQg22AsT7JsDZY1Dz3doeqc/WufU3X7dqtbfaw+3WrJtz6ak3fXPVW16wzrrL332oTW0bJAywlTC7Qs0LLaFLTATe8pQoW9CIM+cLoIZC8G1MVgvihiw4CpixhLAI4BpUDQYGim2sMYMKcgZoAGARwG8RGA9oCwB6T3gbEPCY7BVo+jUx/HVzaPgojnzla93R2FhjrDmf3/da3WhZoWWAyC/QPRNhfxQCNUBaaBmpCRawqYGKhrCo8gy2fKQmZMFiHEgAEYWosoLoYI4ZFubM5OwCc+UN5E/W8CH8LUPnmhi+dHU/13aTx7fxdCuxjAclizDqwuAeNiEPcB6AGhG0RFMEcAhe6TICK2IZgl/s24/68DOgDDgxaCAdgASAFKAFTdJ5kRWJwA4yiUOqg09tnEPIk0fTy2IUOdQbL/8LKhUWzZIt+d+SF9K007I8NLqsp2ICxlbcottY7GLJANPIIMZRM9hyE7T6CbW+d1lgtNOYVVtntSzQsAWWveCXVgwWen+6ooo3p4iXMQWxm365lv8H2labap043gKp25ErfigC/rGKjh3YOICeLSMtedWb2gflXT9dtcVXWujVIG5TULXLjUEe/6vTUwDy0k9zBiEB81EQHg4D/ILStv+pi2ss2WgGbU7oDo3DvUNpCHFCNqvBOM1QGUVUF0KYxaAuBegdGbtAEIwZGULQHUVlLv+ZHB3HNCZ/j4twAksV2FNBcwIKDVLsMcKVD0A8G5W+tGU9PYosTtHjx04jO1bqtM3e+oZXVf9RI9a7LSROvpp6HBTWwbbqSWLFXWMP5M2ee0tNJYd5z+dhqYd9w0NVIL012ngbanv8FpzlByZ/mFNGA1wCmjdkKEwslDoO6vAG3fxT3vOjzxMVpAZ8bWbzVwlvhgYGBA3fmIfYUTnd1dFRNcVkj0kiiJh+1o72PHH3nHrkafcdmGW9vKbfrvY7fVKXoeakutFuE2pEPVubG5mwKG72fC+o8hmCLEoEPBSz/QMyfq3y7awcw0Pxp9fxwf7Xs628HaD8CUM3eMW2rpjssV06gVWJunTLFvsZvAyFD+jrPI3W0n/BMWH9mPrVgF3F8JB6B8IcbTSiaS8TFNwhWFeD8RXQuIvGfCPd2gpb3Whsj5mWIX+sl5vTMEot6+aQqwBbQGS EELVcTlkri8UhUdNBtTluBhsum9RVv53vA9Hz90Ri9mzWvi9raVL1FB4dc5KP4k66A3BQdGG1hisENs4x+4oedoZBU/Qzuct3TXaOBts/ITIOdTPImQS4oyEvJ+2Kk5RQ6PkYq3KaJP7ycD37n6a1fHLcBasRETbnHViMtC8wrCwh9HD0Zo1TsCgNabJEU51StCFRhbZnC2tDEFwVJYZBs2/9NR6O/G3r0HUcauH9a8sl3rR6Ne263oFcaBD0pxUhV6An1FtBpwISnP0XWAs1WcOPJlug2ozu+jq0DwzNueGIDN2/q1GH3H8OqX2TWF2UekXFNRXoSMsk/+OULe8G9HtQsF/HVz800vRnm8sGN9waoqg7lIVYbghrGMFaMF/OhHVgrCLWS4jEBEx36n6xr0eT099sExgdfxjFj/GvWHs8qApT1nhCjhFTSCcCHTE0VFz5l0SZv8XWT8r7MlWip77js5xZT2813Uxi/HUG8krUWHxqMgkPw8uzSp+obawGdCZ3BvexsX0M5fGFnNClaCZH8sTbDf1361hf21H+zBXSmH0etMy4kC2z89QKSjj5Eaiki0F8qeL0CrpbOli6NOB4sbZRoGyByMRWcfDVkyvPB0o/+P37pjfDgFpy464XDEXdn2ZL1zlpVKillJsnZR5svnkW/T3deGclfncYIXmpxGr6Pesav//sHVgf5OfkNp+4h1LR03bP8CoF5DIYlKJsmIAJ5uwSZ4KQlvpQajggwjCT+MrA0eb/Gxz1BxTz8Y3d4+Yzsst42qo8PkAXc+gtQwsdMsSGIoN/HLPmKRhKABTnZ+kaQjRKNKBTs4wgTnnjdY6crANITLniWyVOHyAO3568ov1BDDTGKMXxvXGN1oXfVkuUWoiM1YR1PPjM1L4KknngACHb0ZzN8Rvlyl7cFdvKHUPf/UwL6Ezfl1tnnK8W6N3Qv9KGBTeO6uKNaYpexEqvA7gNzBpsAzdvjWNV8p2BRPDLJJuBHCWDSnz29j6odDO+/vGGgc4x3fdZpmi9j10VJkc2fMbz0q1j5hblgM5JSDpgZwnoFG95+/JS0HU3rACdRm955kDH9Ua2Qxr2jimpwngCd/n4dPtNzjdH0X5nUz0HpFWSDSEmYi1uEc3dDDnQkZk0WKNmNC4hIHGPiznQunHk0TugATg525f4s6cNQ+u8QD/+PMwE6iILbVKA3haGGLmcVRGFDx+qIC0uy5F2czpmY4LklDj00kmOzcMZHgE6pbtiK4xOC+g0Omu1zpvvFujv1xfvSnnKKI5DRNDZGwz/1eFikfSyiooWWAq6hL3J+Oft7MozsOOeN2dzcn+wwQ+cbMbWxoBO5y3P3Dgc9HyWodd780nmqt8R+jl/ujzN+W70c39/wr4BtNLsnrPmuuq75c3LjwYL7iZD1/tV59SVZ7lsmZlZR9ym8oMhKL7DBnp+u64GBITOL3vXVSP1E4jiVY</div> </td></tr> </table> </div> <div data-bbox=" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; border-width: initial; border-style: none; vertical-align: baseline; text-wrap-mode: nowrap !important; " xml:lang="PT-BR">914</div>

Processo	3000249-69.2025.8.06.0101
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	Verdana, sans-serif; font-size: 12px;"><p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant: normal; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> &#160;Banco Agiplan S/A </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p style="font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; text-align: justify;">&#160;</p> <p style="text-align: justify;"> EMENTA: DIREITO DO CONSUMIDOR E CIVIL. APELAÇÃO CÍVEL. CARTÃO DE CRÉDITO CONSIGNADO NÃO CONTRATADO. DESCONTO INDEVIDO EM BENEFÍCIO PREVIDENCIÁRIO. FALHA NA PRESTAÇÃO DO SERVIÇO. RESPONSABILIDADE DA INSTITUIÇÃO FINANCEIRA. NULIDADE DO CONTRATO. REPETIÇÃO DE INDÉBITO SIMPLES E EM DOBRO, CONFORME MODULAÇÃO DO EAREsp 676.608/RS. DANO MORAL CONFIGURADO. FIXAÇÃO DO QUANTUM INDENIZATÓRIO EM R\$2.000,00. AFASTAMENTO DA LITIGÂNCIA DE MÁ-FÉ. RECURSO PROVIDO. SENTENÇA REFORMADA. </p> <p style="text-align: justify;"> I. CASO EM EXAME </p> <p style="text-align: justify;"> Recurso de Apelação interposto por consumidora contra sentença que julgou improcedente ação de obrigação de fazer cumulada com indenização por danos materiais e morais, em face de instituição financeira, declarando a validade de contrato de cartão de crédito consignado e impondo multa por litigância de má-fé. </p> <p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;"> 2. Há quatro questões em discussão: </p> <p style="text-align: justify;"> (i) definir se houve a contratação válida do cartão de crédito consignado; </p> <p style="text-align: justify;"> (ii) estabelecer se a instituição financeira deve restituir os valores descontados indevidamente, e em que modalidade (simples ou em dobro); </p> <p style="text-align: justify;"> (iii) determinar se a conduta do banco caracteriza dano moral indenizável e qual o quantum devido; </p> <p style="text-align: justify;"> (iv) verificar se subsiste a condenação da autora por litigância de má-fé. </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 3. A relação jurídica entre consumidor e instituição financeira é regida pelo Código de Defesa do Consumidor, conforme Súmula 297 do STJ. </p> <p style="text-align: justify;"> 4. A autora comprova a ocorrência de descontos em seu benefício previdenciário, incumbindo ao banco o ônus de demonstrar a validade da contratação, nos termos do art. 373, II, do CPC. </p> <p style="text-align: justify;"> 5. A instituição financeira não apresenta provas idôneas da contratação eletrônica, limitando-se a documentos unilaterais, sem assinatura digital, registro de IP, geolocalização ou outros elementos que atestem a autenticidade do consentimento. </p> <p style="text-align: justify;"> 6. A ausência de comprovação da contratação e de depósito em favor da autora revela falha na prestação do serviço, atraindo a responsabilidade DO banco, nos termos do art. 14 do CDC. </p> <p style="text-align: justify;"> 7. A restituição do indébito observa o art. 42, parágrafo único, do CDC e o precedente vinculante EAREsp 676.608/RS, de modo que valores descontados após 30/03/2021 devem ser restituídos em dobro, e os anteriores, de forma simples. </p> <p style="text-align: justify;"> 8. Os descontos indevidos em benefício previdenciário, em valor com capacidade de prejudicar sua subsistência, ensejam dano moral, sendo devida indenização, fixada em R\$ 2.000,00, em observância aos princípios da razoabilidade e proporcionalidade. </p> <p style="text-align: justify;"> 9. A condenação por litigância de má-fé é afastada, pois não demonstrada </p> </div>

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	direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data da assinatura digital </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> JOSE RICARDO VIDAL PATROCINIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Presidente do Órgão Julgador <span class="EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text; font-size: 14pt; line-height: 23px; font-family: Verdana, Verdana_EmbeddedFont, Verdana_MSFontService, sans-serif;">&#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Exmo. Sr. EDUARDO DE CASTRO NETO </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Juiz Convocado Relator &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="EOP SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: Aptos,

Processo	3000249-69.2025.8.06.0101
	Aptos_EmbeddedFont, Aptos_MSFontService, sans-serif;">&#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATÓRIO &#160;</p> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">&#160;</p> <p style="text-align: justify;"> Trata-se de Recurso de Apelação interposto por Maria Valdenilsa da Silva Oliveira, com o escopo de adversar a sentença proferida pelo MM. Juízo da 1ª Vara Cível da Comarca de Itapipoca, que julgou improcedentes os pedidos formulados na Ação de Obrigação de Fazer c/c Indenização por Dano Material e Moral, ajuizada em desfavor do Banco Agibank S/A, condenando ainda a promovente ao pagamento de multa por litigância de má-fé. </p> <p style="text-align: justify;"> Em suas razões recursais, a autora/recorrente sustenta que “Seguindo para a análise da documentação apresentada, observamos que a documentação é digital, e que possui diversas irregularidades que foram pontuadas e reforçadas a seguir, sendo toda a documentação devidamente IMPUGNADA dentro do caderno processual, devendo o requerido provar a sua autenticidade(...)”. </p> <p style="text-align: justify;"> Em continuidade, argumenta que “Com a devida vênia, a decisão que impôs ao Apelante a penalidade de litigância de má-fé deve ser reformada, uma vez que não restaram configurados os requisitos legais para tal condenação”. </p> <p style="text-align: justify;"> Argumenta, ainda, que “o consentimento para a realização de qualquer operação financeira deve ser dado de maneira livre, consciente e inequívoca. No presente caso, a apelante não teve ciência nem concordância com os termos do contrato de portabilidade de empréstimo consignado apresentado pelo banco. A mera posse de documentos pessoais não autoriza a instituição financeira a celebrar contratos em nome do cliente sem sua devida autorização”. </p> <p style="text-align: justify;"> Aduz, também, que “Nos termos do artigo 42, parágrafo único, do CDC, é devida a restituição em dobro dos

Processo	3000249-69.2025.8.06.0101
	valores cobrados indevidamente. O banco recorrido, ao descontar valores sem a anuência da autora, causou-lhe prejuízos financeiros e sofrimento psíquico, justificando a indenização por danos morais" /span> </p> <p style="text-align: justify;"> Ao final, protesta pelo "(...) conhecimento e provimento da presente apelação para reformar integralmente a r. sentença de primeiro grau; b) A reforma da sentença para reconhecer a inexistência da dívida e determinar a repetição em dobro dos valores descontados; c) A condenação do banco recorrido ao pagamento de indenização por danos morais; d) Caso não seja este o entendimento, requer-se o reconhecimento do cerceamento de defesa, para que determine a anulação da sentença para reabertura da instrução processual, com a realização das provas periciais requeridas. e) O afastamento da multa por litigância de má-fé, por manifesta ausência dos requisitos legais; f) A condenação do Apelado ao pagamento das custas processuais e honorários advocatícios, nos termos do art. 85 do CPC."/span> </p> <p style="text-align: justify;"> Contrarrrazões – id. 27385708. </p> <p style="text-align: justify;"> É o que importa relatar. </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: center;"> VOTO </p> <p style="text-align: center;"> &#160; </p> <p style="text-align: justify;"> Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. </p> <p style="text-align: justify;"> Depreendo da leitura dos fólios processuais que a autora busca através da presente ação declarar inexistente o negócio jurídico objeto do contrato de cartão de crédito consignado nº 90099788210000000001, citado na exordial, reaver, em dobro, os valores cobrados indevidamente, e ainda, a condenação do banco/requerido ao pagamento de danos morais. </p> <p style="text-align: justify;"> Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Sumula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista: "O Código de Defesa do Consumidor é aplicável às instituições financeiras". </p> <p style="text-align: justify;"> A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I e II, do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte Ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito da autora. </p> <p style="text-align: justify;"> Desse modo, tendo a autora comprovado a existência de descontos em seu benefício previdenciário (ids. 27385626/27385627), recairia sobre o banco o ônus de comprovar a regularidade do contrato e a legitimidade das cobranças realizadas. </p> <p style="text-align: justify;"> No caso concreto, é forçoso reconhecer que houve falha na prestação do serviço, causando danos de ordem moral e material à promovente/recorrente, porquanto, embora o banco/apelado argumente que o contrato foi realizado na modalidade eletrônica, anexando os documentos de ids. 27385640/27385692, como forma de comprovar a efetiva pactuação do negócio jurídico em discussão, trata-se de prova produzida unilateralmente pela entidade bancária, com precário ou nenhum valor probatório, e que, mesmo assim, não comprova, com suficiente convicção, que foi a autora/apelante quem, de fato, pactuou a referida avença. </p> <p style="text-align: justify;"> De igual modo, a entidade bancária/recorrida não conseguiu provar que o valor supostamente contratado foi verdadeiramente depositado em conta de titularidade da requerente/apelante. </p> <p style="text-align: justify;"> É cediço que para a contratação eletrônica ter validade jurídica, é preciso o preenchimento dos requisitos essenciais, dentre os quais o consentimento do consumidor mediante a aposição de assinatura eletrônica ou digital, com todas as nuances para garantir a autenticidade e a integridade dos documentos assinados, como geolocalização, registro do endereço de IP, senha pessoal do usuário, dentre outros, o que não ocorreu no caso. </p> <p style="text-align: justify;"> A instituição financeira/recorrida detentora da tecnologia empregada em seus serviços possuía condições de demonstrar tecnicamente que a autora/recorrente procedeu a suposta contratação, mas de tal ônus não se desincumbiu. </p> <p style="text-align: justify;"> Destarte, é obrigação da instituição financeira adotar as cautelas necessárias para a realização de um contrato de empréstimo, tendo o dever de implementar sistemas de fiscalização e segurança que impeçam a ocorrência de uma fraude, sob pena de responder pelos danos causados. </p> <p style="text-align: justify;"> Assim, demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, o qual enseja pronta reparação dos danos causados, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. </p> <p style="text-align: justify;">

Processo	3000249-69.2025.8.06.0101
	style="font-size: medium;">Isso porque, segundo a dicção dos dispositivos legais suso mencionados, notadamente o art. 14 do CDC: "o fornecedor de serviços responde, independentemente da existência de culpa, pela reparação dos danos causados aos consumidores por defeitos relativos à prestação dos serviços, bem como por informações insuficientes ou inadequadas sobre sua fruição e riscos". Dano material Os valores descontados indevidamente do benefício previdenciário da autora/recorrente, sem que houvesse autorização para o exercício deste ato, indicam sem dúvida a presença do dano material. Repetição de Indébito Dispõe o parágrafo único do art. 42 do Código de Defesa do Consumidor: "O consumidor cobrado em quantia indevida tem direito à repetição do indébito, por valor igual ao dobro do que pagou em excesso, acrescido de correção monetária e juros legais, salvo hipótese de engano justificável". O atual posicionamento do Superior Tribunal de Justiça, fixado no recurso repetitivo paradigma (EAREsp nº 676608/RS), é no sentido de que a restituição em dobro independe da natureza volitiva do fornecedor, ou seja, prescinde da comprovação da má-fé quando a cobrança indevida decorrer de serviços não contratados. No entanto, impende registrar que o referido entendimento foi publicado com modulação dos efeitos. Na decisão paradigma, o Superior Tribunal de Justiça entendeu que, para demandas que não decorram da prestação de serviços públicos, o acórdão terá eficácia apenas prospectiva, ou seja, a tese fixada somente será aplicável a valores pagos após a sua publicação, ou seja, em 30 de março de 2021, vejamos: "Primeira tese: A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva. (...) Modulação dos efeitos: Modulam-se os efeitos da presente decisão – somente com relação à primeira tese – para que o entendimento aqui fixado quanto à restituição em dobro do indébito seja aplicado apenas a partir da publicação do presente acórdão. A modulação incide unicamente em relação às cobranças indevidas em contratos de consumo que não envolvam prestação de serviços públicos pelo Estado ou por concessionárias, as quais apenas serão atingidas pelo novo entendimento quando pagas após a data da publicação do acórdão." (STJ. Corte Especial. EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020) Dessa forma, considerando a modulação temporal dos efeitos da decisão contida no EAREsp nº 676.608/RS, os valores descontados indevidamente do benefício previdenciário da requerente/apelante, deverão ser restituídos em dobro apenas o descontos que ocorreram após a publicação do acórdão em que fixado o precedente (30/03/2021), os demais serão devolvidos de forma simples. Dano moral Os descontos indevidos realizados no benefício previdenciário da requerente/apelante constituem ato ilícito, na medida em que a instituição bancária deixou de agir com o cuidado necessário para o regular desenvolvimento de sua atividade, causando danos e resultando, por via de consequência, na obrigação de repará-los, na forma dos arts. 186 e 927 do Código Civil. É nesta conduta, por certo, censurável, onde se centra o nexo de causa e efeito entre o dano e a ação (conduta), porque causou vexame, constrangimento ao consumidor, caso em que a condenação é devida porque os efeitos de tal prática afetam a pessoa com mais extensão e com repercussão no mundo exterior, não confinados apenas à indignação pessoal. A propósito: APELAÇÕES RECÍPROCAS. SENTENÇA PARCIALMENTE PROCEDENTE DO PEDIDO DECLARAÇÃO DE INEXISTÊNCIA DE RELAÇÃO JURÍDICA E INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. NO CASO, EMPRÉSTIMO CONTRAÍDO COM FRAUDE À REVELIA DO TITULAR DA CONTA BANCÁRIA. O CONTRATO BANCÁRIO APRESENTADO NÃO ATENDE AOS REQUISITOS MÍNIMOS DE VALIDADE. APLICAÇÃO DA SÚMULA Nº 479, STJ. RESPONSABILIDADE OBJETIVA. REPARAÇÃO DOS DANOS MATERIAIS CONSUBSTANCIADOS NA REPETIÇÃO DOBRADA DO INDÉBITO. INDENIZAÇÃO MORAL CONFIGURADA. ARBITRAMENTO REDIMENSIONADO. ADEQUAÇÃO AOS PARÂMETROS DESTA CORTE. PRECEDENTES DO TJCE E DO STJ. DESPROVIMENTO DO APELO DO BANCO E PROVIMENTO DO APELATÓRIO AUTORAL. 1. Inicialmente, percebe-se que o cerne da questão posta a desate consiste

Processo	3000249-69.2025.8.06.0101
	em conferir a verossimilhança das alegações recursais vertidas na existência de empréstimo consignado sem a autorização da Parte Requerente e a sua revelia, porquanto, originado mediante fraude. 2. Após, sucessivamente, a celeuma é saber se o contrato em voga tem as informações consideradas essenciais ao pacto, a saber: data e local, dados da autorização para desconto, declaração de residência, ausência de comprovante de depósito, falta de informações sobre financiamento ou refinanciamento, valor financiado divergente do valor liberado, dentre outras, poderia ser considerado legal para fins de validade do negócio jurídico. A par disso, verificar-se-á a possibilidade de reparação. 3. O CONTRATO BANCÁRIO APRESENTADO NÃO ATENDE AOS REQUISITOS MÍNIMOS DE VALIDADE: Realmente, a Parte Requerente alega que fora vítima da realização de contrato fraudulento. Sendo assim, incumbe ao Adversário provar a existência de Fatos Impeditivo, Modificativo ou Extintivo do Direito do Autor, nos termos do art. 373, II, CPC/15. Ademais, tendo em vista que se cuida de relação consumerista, para tanto, deve ser feita a inversão do ônus da prova para que a Parte Requerida apresente o instrumento contratual que possa por fim a controvérsia acerca da validade ou invalidade do ato jurídico. Contudo, o contrato bancário não atende aos requisitos mínimos de validade. 4. RESPONSABILIDADE OBJETIVA DO BANCO: É pacífico que a Responsabilidade da instituição bancária é objetiva na ocorrência de fraude, como no caso dos autos. Confira-se: Súmula 479, STJ - As instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias. (Súmula 479, SEGUNDA SEÇÃO, julgado em 27/06/2012, DJe 01/08/2012). 5. INCIDÊNCIA DA REPETIÇÃO DOBRADA DO INDÉBITO: Antes de 30 de março de 2021, o STJ entendia que a devolução em dobro de indébito, segundo o art 42, parágrafo único, Código de Defesa do Consumidor - CDC é necessário os seguintes pressupostos, de forma cumulativa: (i) cobrança extrajudicial indevida de dívida decorrente de contrato de consumo; (ii) efetivo pagamento do indébito pelo consumidor; e (iii) engano injustificável por parte do fornecedor ou prestador. Admitia-se a repetição de indébito, independentemente da prova de que o pagamento tenha sido realizado por erro, com o objetivo de vedar o enriquecimento ilícito do banco em detrimento do devedor. Porém, para ocorrer em dobro, deve haver inequívoca prova de má-fé. Precedentes. (STJ, AgRg no REsp 916.008/RS, Rel. Ministra NANCY ANDRIGHI, TERCEIRA TURMA, julgado em 14/06/2007, DJ 29/06/2007, p. 623) Na mesma diretiva, declinam-se mais outros 6 (seis) precedentes do STJ, bom verificar: REsp 871825-RJ, REsp 1032952-SP, AgRg no REsp 734111-PR, REsp 910888-RS, AgRg nos EDcl no Ag 1091227-SP e AgRg no REsp 848916-PR. Acontece que o STJ, depois de 30 de março de 2021, reformulou seu entendimento, de modo permitir a Devolução Dobrada para os processos ajuizados depois da publicação do Acórdão do EARESP N. 676.608/RS, RELATOR MINISTRO OG FERNANDES, CORTE ESPECIAL, JULGADO EM 21/10/2020, DJE DE 30/3/2021. In casu, a demanda foi proposta em 2023, pelo que deve atrair a Devolução DOBRADA. 6. EXISTÊNCIA DE DANOS MORAIS: De fato, evidencia-se que não existe contrato bancário VÁLIDO, de modo que os descontos efetuados são ilícitos, pois operados com fraude. 7. ARBITRAMENTO REDIMENSIONADO: Realmente, o arbitramento da indenização moral não deve ser ínfimo tampouco excessivo e, somente, nestas 2 (duas) hipóteses, se divisa a autorização para o redimensionamento pela Corte. In casu, a quantificação do Dano Moral não responde bem ao Princípio da Razoabilidade e da Proporcionalidade. Por fim, o arbitramento dos Danos Morais em casos desse jaez praticados nesta Corte de Justiça é de R\$ 5.000,00 (cinco mil reais). 8. DESPROVIMENTO do Apelo do Banco e o PROVIMENTO do Apelo do Autor para determinar a Repetição Dobrada do Indébito e para redimensionar o arbitramento a indenização por Danos para R\$ 5.000,00 (cinco mil reais), consagradas as demais disposições sentenciasais, por irrepreensíveis, assegurada a majoração os honorários advocatícios em 10% (dez por cento) sobre o valor fixado na origem, observado o limite do percentual previsto no art. 85, § 2º, CPC/15. ACÓRDÃO Vistos, relatados e discutidos os autos em que são partes as acima indicadas, acordam os Desembargadores integrantes da 4ª Câmara de Direito Privado do Tribunal de Justiça do Ceará, por unanimidade, pelo Desprovemento do Apelo do Banco e o Provimento do Apelo do Autor, nos termos do voto do Relator. Fortaleza, de de 2024. JUIZ CONVOCADO MANTOVANNI COLARES CAVALCANTE - PORT. 333/2024 Relator (TJ-CE - Apelação Cível: 0201686-11.2023.8.06.0029 Acopiara, Relator: MANTOVANNI COLARES CAVALCANTE - PORT. 333/2024, Data de Julgamento: 26/03/2024, 4ª Câmara Direito Privado, Data de Publicação: 27/03/2024)</p> <p style="text-align: justify;"> AGRAVO INTERNO EM APELAÇÃO CÍVEL. A_ ÇÃO DECLARATÓRIA DE NULIDADE DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. DESCONTO BENEFÍCIO PREVIDENCIÁRIO. AUSÊNCIA DE COMPROVAÇÃO DA CONTRATAÇÃO. DANOS MORAIS. CONFIGURADOS. MAJORAÇÃO DEVIDA. JUROS E CORREÇÃO MONETÁRIA. RECURSO CONHECIDO E DESPROVIDO. 1. Busca o agravante a reforma da decisão deste Relator que, ao dar parcial provimento ao apelo da parte contrária, autora da ação declaratória de nulidade de negócio jurídico, majorou a indenização por dano

Processo	3000249-69.2025.8.06.0101
	moral de R\$ 3.000,00 (três mil reais) para R\$ 5.000,00 (cinco mil reais). 2. No caso, a autora/agravada, buscou através da presente demanda declarar nulo o negócio jurídico objeto do contrato de empréstimo consignado nº 0123333442248 firmado em seu nome com a instituição financeira agravante, reaver, em dobro, os valores cobrados indevidamente em decorrência do pacto e, ainda condenação do banco/apelado ao pagamento de indenização pelos danos morais sofridos. Para tanto, alegou que apesar de jamais ter celebrado a aludida avença, viu a instituição financeira realizar descontos diretamente no benefício previdenciário percebido, razão pela qual se dirigiu a uma agência do INSS para obter esclarecimentos, tendo tomado ciência de suposto contrato de empréstimo contratado em seu nome. No entanto, ao notificar o banco recorrente sobre o ocorrido, não obteve qualquer informação a respeito do contrato objeto da lide. 3. Na hipótese, como restou comprovada a falha na prestação dos serviços pelo banco, diante da ausência de apresentação pelo recorrente, do contrato combatido, configurado está o ilícito civil, conferindo daí ao lesado a devida reparação dos danos sofridos, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. 4. Com efeito, para quantificar a indenização por danos morais deve o magistrado observar as condições das partes, o nível social, o grau de escolaridade, o prejuízo sofrido pela vítima, a intensidade da culpa e os demais fatores concorrentes para a fixação do dano. Desse modo, tem-se que a indenização deve se dar de forma equânime e atentar à razoabilidade, a fim de evitar o enriquecimento ilícito da parte autora, mas sem deixar de punir a parte ré pelo cometimento do ato ilegal. E mais, para evitar excessos e abusos, só se deve reputar como dano moral a dor, o sofrimento, que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. 5. Nessa ordem de ideias, atento ao cotejo desses fatores: "nível econômico da autora da ação, sofrimento da vítima e o porte econômico da entidade bancária", considera-se que o valor de R\$5.000,00 (cinco mil reais) devidos a título de danos morais é o que mais atende aos referidos critérios, merecendo, portanto, parcial reformar a sentença do juízo a quo. 6. Quanto ao termo inicial dos juros moratórios, não obstante jurisprudência citada pelo banco, os mesmos devem incidir a partir do evento danoso, por se tratar de responsabilidade extracontratual, conforme disciplina a súmula nº 54 do Superior Tribunal de Justiça, vejamos: "Os juros moratórios fluem a partir do evento danoso, em caso de responsabilidade extracontratual". (Artigo 398 Código Civil c/c súmula 54 do STJ). 7. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e negar-lhe provimento, nos termos do voto do Relator. Fortaleza, 28 de abril de 2021 Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator (TJ-CE - AGT: 00086573520198060126 CE 0008657-35.2019.8.06.0126, Relator: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 28/04/2021, 1ª Câmara Direito Privado, Data de Publicação: 30/04/2021) <p style="text-align: justify;"> Resta, portanto, claro o dano moral. <p style="text-align: justify;"> Dano Moral – Fixação <p style="text-align: justify;"> Para quantificar a indenização por danos morais deve se levar em conta, dentre outros fatores, a extensão do dano, as condições socioeconômicas dos envolvidos e o sofrimento da vítima. <p style="text-align: justify;"> Desse modo, tem-se que a indenização deve se dar de forma equânime e atentar à razoabilidade, a fim de evitar o enriquecimento ilícito da parte autora, mas sem deixar de punir aparte ré pelo cometimento do ato ilegal. <p style="text-align: justify;"> E mais, para evitar excessos e abusos, só se deve reputar como dano moral a dor, o sofrimento, que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. <p style="text-align: justify;"> Nesse sentido: <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> PROCESSIONAL CIVIL E CONSUMIDOR. RECURSOS DE APELAÇÃO. AÇÃO DECLARATÓRIA DE NULIDADE CONTRATUAL. EMPRÉSTIMO CONSIGNADO. AUSÊNCIA DO CONTRATO E DO COMPROVANTE DE TRANSFERÊNCIA DO VALOR EMPRESTADO. FRAUDE VERIFICADA. DANO MORAL IN RE IPSA. MONTANTE INDENIZATÓRIO MANTIDO. ATENDIDOS OS PRINCÍPIOS DA RAZOABILIDADE E PROPORCIONALIDADE. COMPENSAÇÃO. IMPOSSIBILIDADE. AUSÊNCIA DE DEMONSTRAÇÃO DO CRÉDITO NA CONTA DA AUTORA. APELOS CONHECIDOS E IMPROVIDOS. SENTENÇA REFORMADA EMPARTE. 1. Tratam-se de Apelações Cíveis interpostas por Maria Auxiliadora Gonçalves Silva e Banco Bradesco Financiamentos S/A contra a sentença prolatada pelo Juízo da Vara Única da Comarca de Cedro que julgou parcialmente procedente Ação Declaratória de Inexistência de Relação Contratual c/c Repetição de Indébito e Perdas e Danos. 2. O extrato de empréstimos consignados do INSS da promotente colacionado nos autos comprovou os descontos em seu benefício previdenciário decorrentes do contrato questionado na presente lide. 3. O ente financeiro, por seu turno, não se desincumbiu do ônus de comprovar fato impeditivo, modificativo ou

Processo	3000249-69.2025.8.06.0101
	extintivo do direito autoral, haja vista que deixou de acostar aos autos o instrumento contratual, documentos pessoais da autora e o comprovante de pagamento do numerário do empréstimo. 4. A ausência de contrato válido que justifique descontos realizados diretamente nos proventos de aposentadoria do consumidor, caracteriza dano moral in re ipsa, ou seja, presumido, decorrente da própria existência do ato. 5. Avaliando os danos suportados pelo autor e a conduta da instituição financeira, considerando, ainda, os princípios da razoabilidade e proporcionalidade, entendo como acurado o montante indenizatório de R\$2.000,00 (dois mil reais) arbitrado em primeira instância, não merecendo qualquer reparo. 6. Sobre o pedido de compensação do valor supostamente depositado na conta da promovente, normalmente essa ação deveria ocorrer, no entanto, como a instituição financeira ora recorrente não anexou, no decorrer da instrução processual, provas de que efetuara o depósito do valor do empréstimo consignado questionado em favor da promovente, nada tem a ser restituído ou abatido da condenação, não merecendo amparo a irresignação recursal. 7. Recursos conhecidos e improvidos Sentença mantida ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, conhecer e negar provimento aos recursos de apelação, nos termos do voto do Relator. Fortaleza, 28 de junho de 2023. INÁCIO DE ALENCAR CORTEZ NETO Presidente do Órgão Julgador Exmo. Sr. INÁCIO DE ALENCAR CORTEZ NETO Relator (TJ-CE - Apelação Cível: 0050685-33.2021.8.06.0066 Cedro, Relator: INÁCIO DE ALENCAR CORTEZ NETO, Data de Julgamento: 28/06/2023, 2ª Câmara Direito Privado, Data de Publicação: 28/06/2023) </p> <p style="text-align: justify;"> APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANO MORAL. DESCONTO NO BENEFÍCIO PREVIDENCIÁRIO DO AUTOR A TÍTULO DE SEGURO PRESTAMISTA. RELAÇÃO DE CONSUMO. INVERSÃO DO ÔNUS DA PROVA. INSTITUIÇÃO FINANCEIRA QUE NÃO COMPROVOU A LICITUDE DO NEGÓCIO JURÍDICO. D ANO MORAL CONFIGURADO. REDUÇÃO DO QUANTUM FIXADO. REPETIÇÃO INDÉBITO MODULAÇÃO EFEITOS. EARESP Nº 676.608/RS. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. O apelante se insurge contra sentença que julgou procedente os pedidos exordias, declarando a inexigibilidade do Contrato de Seguro Prestamista e condenando o réu à restituição em dobro dos valores indevidamente descontados do benefício previdenciário do autor, corrigidos monetariamente pelo INPC e acrescidos de juros moratórios de 1% ao mês, na forma simples, contados da data de cada desconto indevido; bem como ao pagamento de indenização por danos morais em favor da parte autora no valor de R\$ 3.000,00 (três mil reais), corrigido monetariamente pelo INPC, e com juros de mora de 1% (um por cento) ao mês. 2. A relação abordada nos autos caracteriza-se como de consumo, cabendo a inversão do ônus da prova, nos termos do art. 6º, VIII, do CDC. E no caso, o magistrado singular acolheu o pedido, invertendo o ônus da prova (fl. 21). 3. Em sua defesa (fls. 49/69), o banco demandado se restringe a afirmar a licitude do negócio jurídico, sem trazer qualquer prova aos autos. Assim, tendo sido-lhe imposta a inversão do ônus da prova e não tendo se desincumbido do ônus de comprovar a existência de fatos impeditivos, modificativos ou extintivos do direito da parte autora, na forma do art. 373, inciso II, do Código de Processo Civil, configurada falha na prestação do serviço (art. 14, CDC) e as cobranças indevidas constituem ato ilícito, causando os danos morais e materiais, resultando, por via de consequência, obrigação de repará-los, na forma dos arts. 186 e 927 do Código Civil. 4 . Na hipótese dos autos, o autor apenas supõe que houve vários descontos, porém, não havendo sido comprovado descontos com representatividade financeira de maior monta, de modo comprometer de maneira significativa os seus rendimentos ou sua subsistência, tem-se por justo e razoável o valor de R\$ 1.000,00 (hum mil reais). 5. No que pertine à repetição do indébito, o Superior Tribunal de Justiça, Corte Especial, EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020, firmou entendimento em sede de Recurso Repetitivo de que <math>\lambda</math> a restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva<math>\lambda</math>. E por modulação de efeitos, essa tese somente é aplicável às cobranças realizadas após a data da publicação do referido acórdão, (DJe de 30/3/2021). 6. Apelação cível conhecida e parcialmente provida. Sentença reformada em parte. A C O R D A a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do presente recurso de apelação cível e dar-lhe provimento, reformando-se a sentença em parte, nos termos do voto do eminente Relator. (TJ-CE - AC: 00509445420218060122 Mauriti, Relator: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 22/03/2023, 1ª Câmara Direito Privado, Data de Publicação: 22/03/2023) </p> <p style="text-align: justify;"> Nessa ordem de ideias, atento ao cotejo desses fatores: nível econômico da autora da ação, sofrimento da vítima e o porte econômico da entidade bancária, e ainda, levando em consideração os valores dos descontos, fixo o quantum de R\$ 2.000,00 (dois mil reais), frente ao quadro fático delineado nos autos, porque afinada

Processo	3000249-69.2025.8.06.0101
	com decisões jurisprudenciais deste sodalício. Quanto ao pedido de reforma da condenação da parte requerente/apelante em litigância de má-fé, entendo que tal requerimento merece prosperar, já que, a conduta da parte promovente não se insere nas hipóteses estabelecidas pelo art. 80, do CPC. De modo que, por se tratar de uma punição por atuação contrária à boa-fé objetiva às partes do processo, compreendo que tal situação não restou demonstrada no exercício do direito de ação por parte da requerente. E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados, conheço do recurso, por próprio e tempestivo, para dar-lhe provimento, reformando a sentença atacada para: (i) declarar nulo o contrato de cartão de crédito consignado objeto desta lide (nº 90099788210000000001); (ii) determinar que a devolução dos valores devidos a título de danos materiais devem ser ressarcidos em dobro somente as parcelas alcançadas pela modulação dos efeitos do EAREsp 676.608/RS, as demais na forma simples, sujeitos à Taxa Selic até 31/08/2024, e, após essa data, correção pelo IPCA e juros pela Taxa Legal calculada na forma do art. 406, § 1º do CC/2002, com redação dada pela Lei nº 14.905/2024, a partir da data do efetivo prejuízo (Súmula n.º 43, STJ); (iii) condenar a instituição financeira ao pagamento da quantia de R\$ 2.000,00 (dois mil reais) a título de danos morais, acrescidos de correção monetária pelo IPCA do IBGE desde o arbitramento (STJ, Súmula nº 362; CC, art. 389, parágrafo único) e de juros de mora da data do evento danoso (Súmula n.º 54, STJ) à taxa de 1% ao mês até o dia anterior ao da vigência da Lei nº 14.905/2024 e, a partir daí, à taxa correspondente ao resultado da taxa Selic subtraída do IPCA (CC, arts. 398 e 406, § 1º). Com o novo resultado, inverte os ônus sucumbenciais, a serem suportados pela instituição financeira. É como voto. Fortaleza-CE, data da assinatura digital &#160; EDUARDO DE CASTRO Juiz Convocado Relator &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;&#160; class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">&#160; class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">
</p><p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR">
</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"><p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;" lang="PT-BR" xml:lang="PT-BR">&#160;</p></div>

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Processo	3044196-22.2024.8.06.0001
Número de ordem	104
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alienação Fiduciária
Polo ativo	BANCO C6 S.A.
Advogado(s) - Polo ativo	CRISTIANE BELINATI GARCIA LOPES - (CE23649-A)
Polo passivo	ONECI DE SOUSA LIMA NETO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3044196-22.2024.8.06.0001
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Processo	3044196-22.2024.8.06.0001
	x8/5+MMLYixCJ5YDPImv7HETOzWhBqUELzLvN+d+K3MyjgPclcVGppZXiQFiLVtZlfrbdtY OSkM2owf6cbM5xELz3l2Y7eHRJqWl4BXG57lsZqUZx1q0qr8frfZPogI4bDF9Hj39xzYhCzF YWJ1j+liDkcTrh5IXR8LXNs6c22YMDUiYhiJ+nv9H4pX1gM3oU0yzkFb5ZUbfrhFi08K3LzZK LAWHcDlyOi/2sum1kL+BZdiWzU+HAHWsAeLZRB2l67BRF6zpy7J7KGN5l/B6seSkZqaaU 4EBYg3VXYeNsKYJH/efP/zyALxUYEUcPWE2ijXP/YjU1IngGmdtG4XfXA0bbjXomyY9Cy YZS6/BGlbJbCDxdcG3PovlkH71RrK4GWS7/RFuZPYAsmxpgqLFcyo0HUTxxDorn3WQ77 pSolqbBEea1FFhY7Hkw7vk21E/vi8AfzBi+ToIGUtGDNso/vOtA5UFVl4jrwthBuJR3M/lC58J ga1uR99pDDzSxW4t8ZzcBC8krUmxvRK6fQ9nNPshSXlkm7SUhx1Alv6C5uciYcmtGLXM NfufcYHa1AVkhKwj3bPrzU+f19rneQje7B3kL0v+91gMfR1biBSiOOBO5rFHjeJXo2lpo57e0H fcQ4GulrHugONZ8JNn4bMTzdTiQMgHgq1zXgX7griBwrHZ4Ia2s7agbwTiULQtiLFqINwOv eq0tmP8GGFZgdYxAMaINSLAZFseg+EwDikH5cbWXXb2nux/3mYx2jQpijHn5aESxKw/1+ zoXuYPB1w0htLriWJjoERHq+G5bYg0JhpX1MfhyIrdjeldstmvFw28yoSir4DBdbfDFxg7rm/ bV2YzXTXoVjYRGc8yUwW4izkPm9A8c+3AZ9BBJZYt4mwPel90yeombK1qEkaqaXVydio VPLfBa4x28qvR67VN1Fs4xrgVdqaQW7LFWijIAW24y5F7uMVKKD7GKU1DjwMTZAVyG2r QTGvr6DJMxg4ynZcP67mme9MtR33uVw2s7HIMdcIS+0ic23fRsQ0CvgGltptALns9U22c9X PUO+5K819eRTNnX7ASeba9jMCTKzweNTI4TQ08fcCcwMktxDd17cBH7Qd9zGUftuCGcd dQA6rBnvGIWcgMnqJvPUatAx3lctvCnCu7bgPA6/Ihr3BX1CC2lh+368gErzadtyV5vj9kNtoI/ d4M4pbHoJ+3wvNed9sO+5Y4NVcNIoyvi+KX72l4js5H2xoIG0PvR+M/uYOJHeYhfrBc4F7 kXziDuDaQKnlfCRN8Mt/5qKg9Syktr+1RE3PUkRYJyHtOI0N6Jn7EFIMRqUpJyCiWYHiVb9 DLmWxa2tC2cBHUH8oPjPee5AVGZjkHm1OrrMAAAQOSURBVliQv4MsxpvM97LAV5GcY0 g7Yz8M3acHgetR4Pp2Rjg+ViGLqQ5JUuaimN2HkXTk2lw202CC6WeZMT5iX9CZPv7QM eJOxHx/BC5jOe2cw9aUVbw1yiLe6c591zgf9BCswBZtHNQLO9BRNw3lPnFLDOeCe1cfyh ECY6tRRf1iTgn7GSUo/yguxGWn9Xawb4bjCxBk73YLS3NqN4wi1wnAlyg8Sr0sL4duSuPI+ K6/w1xqT67l1gsC8xnR6O46VwUawm23n0V+BGKTeWzftoUZZ4Z5Lz7lrgkyhuMw4F7r+ LCHE8ch37IMLaiXRhm1C2b2kH9+kF4CMolX82si6eQWR3Opq0e821NdmOexOyit6NrKe eaEl/gioSimEbEu6eiy0+4G7Cu5bi+24tyBL7d3mGnejzOld5HBBWwm3wMQQfv//hMyQPX mgXcgi+s8ZCW9ZEIRc819XRg49xaT3LgXWYHvRhY31Escxmyqj6BrNCV5nyPo2flM2hO hul22y4i1UrZjnsW8BckLUKS3PZzK3tHPcStGpExR7gnFw2s3/6uKYW+4zPfgu5JIFxay6bu bTYH2zH/U8koCsl+9PueK2efTjs1Mtuof1gcTNwQS6b+UsJ5+10mHhLHdB0oELfwGdbgOY kOgqYDFmVwvObWFGNed8LvFeLSIY6XJRMLKcncjXDfr43mmsHLlkxsaZeiJw7vBeBa2w NXk875wc1EmzvM3WBMR4o3mYhGckDiKzekctmtgX+7v+eb1xv4L5Z7Y01LKKmlecjtr6YZ lTDGylPwWmKCsEQRSnL8pni5y/ISKJmGktY8x7oVrKmmKwWWS1uPh96izxDgm983pTN HlpaWzcVfLboNUY9v/IMyC4OFkgw+hHkGm8i4r+8fb7PaPet44QibTMfm/XoRhFLL+0AH6 AsCuQlp/S73YaN9txhwAn5rKZf0b4Tg3KDB5S8Kd1wdW34Ds9gLZSVIsjaTgb+EecGj5qe mKfcfkcPdkQOs4OxmChYP8kdO0voL5iibVvsR13AAq2T0bE8HOqZ6PgQciF3YyC8rnOPH kpgq9VKEbwE5Lfj5BlG3DjBa6b1bSfxhDkxZyA76K0vK+RMFDwer9yMDUHb4PBcVLATn cCzgTBbVLnsRWj1rQTjmri42zPRjCmoyyYq+hiXumOUapSv9iGlwspNvQAlaIZQU9UlijoMW RsbEm6z9eBEJm0TPDuTtP+A7JSPOTJ4J0a7IDArO8KXloFf/FLMOowget2rKNW4JY3 ykD2PUZfc4xmtCIPQB0A1tuO24L0T6BJ2hsRUb0/Sc0YDzHjBKKAAqlylNxlh6nYB29qLM5k uo7b5Z67gbxZ6lgeac+TamYxjkPThZITa1Ga+axWcwzLX4XefqC24xpWJqvSgSbz9xYztnq ktgfobTtuS7V0DzUWZag9CsuBkqT1JjtyM3oQv0G++2Gp8F2uUvfDSxERZrKfbV7b0b3PYd xe09XgQjTJmhFx3G877n41Z5gt5kz8BfINDQcj3VUD+o3vQvqjE9Gz9wLkvp2Hsne7EanV m+erCWW+PoQyZYZYy8zxpUzzgJEVZ/pPn6W6FIYtrbXGqO4bfisQP3Yibalfp1c831tuP+ PJfNvB44hoVEmv8AlhaU83i24w5HCnQ8zYb7FwOCVxHBcb5ou24vzb321eL1yLrcxlyDXe b32UQyvAmacl1WZRcd5TLZhptx70V1X59C62eBwPpVFLyKOS5xyDCuga5dn1RSnqAiTi9 FOI+7kMENBpwkVCxcJUdiEpn/An+OnJrxqAA7zVm7B6SllxHdWl+zd69yEJqMpbZtxGh7D LjuN2MpRYRnF+/6CCd1/fNZ/1xvEKgBUrgehaR7/s02ZwHRHrm+OsQ5blh4H32o77iwBJ1 yJF+d1FioV7lJdxPpJteEiXd4KpdyHcaabeNV3zHs7kGzhfuR2tSFSe568uPZ85MqmpEX MlkZj3v4L3eCPoB96PO33Hm8PyROBNDzl6GtdKXHpdpRXSgpTUPGvL4zcbTvuvahGrT8i hlsCbtorSMd0DPuT1k5UsukPrxW5kyuRBXM0vg9Vz/v5lbT7LATkA7FDhxpO+4olJEaixbAsc hKWW5lotl23leQLgoklL03l834k3ub7bj/Nu8H+zYdgryBm3yXz3bcZ8lrkKYCT+ayGb8Yu9F2 3PuRyrwX+TCDb0EWmzf9ERFul0+qh6CEVU/zfvAaR5KvLtmBfgt/bK+jspxj0Wlxi+J6uYMS sSuvzcO0wXbca5BadgZS1U5FSuM+6MfpyB9vQCZ7VEvNX73bQyOIEUxHx/QoXswbBu2 P13vjf4sVG29FquMldC4Kx9reNbegjREKKya2mWzzeBR8H8K+6m6/dOXTaOKuRFbKcSH H1162ufB9/9+xYkK5R29osWdcuRI43XbcFwpiZ760YB37yhDmoXI2Gflnrlc8Ex9vFJQbF/Rc RIDPIAszkZYU3QWJtYswP+AG4I+24/4ZXTOGI398Ept2WSzEYqRijiojaGXfticFeARVnEfF mg7+toTSxgodjNdrbQJZK48V/KnJfGdpwhmkRcAltum+Qt49PadNEH8r9tm24wbdw2ORoL AQFtDLdygXqcFLUKt6J4dAUzHa/sHmqAD7Xw74CEode4hl3WUOeYlKJ41wXbcFeh5PR NZKSA1/bm2476E4j8DUeO5ewvGtxNZbDONBeW7h1ORIGAR8GnjNaxHnsK5KLaUt9Zlvd +DsQWbbcedi4jKt8ZWmv/+d0591nuiBfwwgmucjYLVxUi3B7JO7zDnPxLFABCu+exBia6gi0p RBpgYzHmoC+hWNFnWAH1z2cw1tuOOQP2f/GxXfxRI/1fQwjBEdSv5FsQ+foUI6z1oovZD 3Q2W2o57NiL+Jcg69zuQ+qUgl5A7dzWwVatJcgK8VCZTqHofhTGyoZQER0yBUMhkbloH4 0ajHky9y3lO8gB+hxfZc1Ad/u3l/C9pGbXvBcSwzpsvRwlv7tGPUVzNNf/ea+7JP9BC9B3y7 WqWIRexL+rzdTlyXdeZ438E1Q1uNGNdjDpWXJfLZg56N/H/AxVu+9R3A5KCAAAAAEIFTk SuQmCC" alt="" /></p><p align="left">#160;</p><p style="text-align: center;"> PODER JUDICIÁRIO </p><p style="text-align: center;"> TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ </p><p style="text-align: center;">

Processo	3044196-22.2024.8.06.0001
	GABINETE DO DES. EMANUEL LEITE ALBUQUERQUE </p><p style="text-align: center;"> #160;</p><p align="left"> APELAÇÃO CÍVEL Nº 3044196-22.2024.8.06.0001</p><p align="left"> Apelante: BANCO C6 S/A </p><p align="left"> #160; #160;</p><p align="justify"> EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE BUSCA E APREENSÃO. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO POR AUSÊNCIA DE RECOLHIMENTO DE CUSTAS. COMPROVAÇÃO NOS AUTOS DO PAGAMENTO ANTES DA SENTENÇA. ERROR IN PROCEDENDO CONFIGURADO. RECURSO PROVIDO. SENTENÇA ANULADA. RETORNO DOS AUTOS À ORIGEM.</p><p align="justify"> #160; <strong style="font-size: 1.17em;"> I. CASO EM EXAME </p><p align="justify"> <strong style="font-size: 1.17em;"> #160; 1. Apelação interposta por Banco C6 S/A contra sentença da 1ª Vara Cível da Comarca de Fortaleza que extinguiu, sem resolução do mérito, ação de busca e apreensão ajuizada em desfavor de Oneci de Sousa Lima Neto, sob o fundamento de ausência de recolhimento das custas da diligência de citação. A instituição apelante sustenta ter comprovado o pagamento dos autos, pleiteando a reforma da decisão para prosseguimento do feito.</p><p align="justify"> #160; <strong style="font-size: 1.17em;"> II. QUESTÃO EM DISCUSSÃO </p><p align="justify"> <strong style="font-size: 1.17em;"> #160; 2. A questão em discussão consiste em definir se a extinção do processo sem resolução do mérito, por ausência de recolhimento das custas de diligência, subsiste diante da comprovação do pagamento juntada aos autos antes da sentença.</p><p align="justify"> #160; <strong style="font-size: 1.17em;"> III. RAZÕES DE DECIDIR </p><p align="justify"> <strong style="font-size: 1.17em;"> #160; 3. O recolhimento das custas constitui pressuposto de constituição e desenvolvimento válido do processo, nos termos do CPC.</p><p align="justify"> #160; #160; 4. A extinção do feito por ausência de recolhimento de custas somente se legitima quando não houver nos autos comprovação da quitação dentro do prazo fixado.</p><p align="justify"> #160; #160; 5. No caso concreto, consta dos autos a <strong style="font-family: verdana, geneva; font-size: medium;">comprovação inequívoca do pagamento das custas de diligência de citação, o qual se efetivou em 23/05/2025, data anterior à sentença, conforme certidão emitida pelo próprio Sistema PJE.</p><p align="justify"> #160; 6. A decisão de origem desconsiderou a prova de recolhimento, configurando error in procedendo que impõe a anulação da sentença.</p><p align="justify"> #160; 7. Precedente do TJ-CE reconhece que, uma vez comprovado o recolhimento das custas processuais, não subsiste a extinção do processo por ausência de pressuposto processual (TJ-CE, AC nº 0254453-18.2020.8.06.0001, Rel. Des. Francisco Bezerra Cavalcante, j. 16/03/2021).</p><h3> IV. DISPOSITIVO E TESE </h3><p> #160; 8. Recurso provido. Sentença anulada. Retorno dos autos à origem para regular prosseguimento.</p><p align="justify">

Processo	3044196-22.2024.8.06.0001
	geneva;">Conheço do recurso, posto vislumbro presentes os requisitos de admissibilidade previstos no CPC. </p><p align="justify">#160;</p><p align="justify"> A insurgência recursal, como visto, cinge-se ao argumento de que recolheu as custas relativas à diligência do oficial de justiça, conforme determinação judicial. </p><p align="justify"> #160; #160;</p><p align="justify"> E, neste caso, efetivamente, assiste razão à parte apelante. </p><p align="justify">#160;</p><p align="justify"> É que, intimada para comprovar o recolhimento das custas referentes à diligência do oficial de justiça (ID 27378514), há nos autos a inequívoca comprovação do respectivo pagamento, conforme certidão emitida pelo próprio sistema PJE (ID 27378517), sendo certo que a a quitação ocorreu em 23/05/2025, anteriormente à prolação da sentença, fato que passou despercebido pelo juízo de origem. </p><p align="justify">#160;</p><p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAA1UAAALBCAYAAACwF4snAAACXBIWXMAAA7DAAAOwwHHb6hkAAAgAEIEQVR4nOzdd3QV173o8e/MnKKj3isgAalbMB2MqW5gjMHYYBzXJE5spzguyb039z3n+I3f927i3MSxU1xixwVTJduuGDCmmF5FER1JSKHLR9KRTpuZ/f4QCAIEMwZM+H3WmsXSOTOzf3tmz2F+Z+/ZR7v66qsVQgghhBBCCCG+Ef1iByCEEEIIYYQqlzJJqoQQQgghhBDiHEhSJYQQQgghhBDnQJlqIYQQQgghhDgHklQJlYQQQgghhDmQpEoIIYQQQgghhzoEkVUllYQQQgghhDiSpEkIIYQQQohziEmVEEIIYYQQQpwDR1VV1QUvVCnV5l8hhBBCCCGE+DZpmmbm3/PJcd5LOi5SqmU5+rcQQgghhBBCfFs0TUMpdCESqwuaVLVOql5ProQQQgghhBDi26Bp2gmJ1PIMrC5aT5VtYilOHdGwIUQQQgghhBBCCPFPrEuXLMiahq43TyFxnunqLuhEfa2H/EkVIRBCCCGEE0J8uNCPHF3w2f9k6J8QQQgghhBDiLrQOcdFnVJdkiohhBBCCCHet+1C5xmSVAkhhBBCCCH+qVxWSZUQQgghhBBCCXookqRJCCCGEEEEKIcyBJIRBCCCGEEEEKcA0mqhBBCCCGEEEOlcSFllhBBCCGEEEOdAkiohhBBCCCGEOAeSVAkhhBBCCCHEOZCkSgghhBBCCCHoGSRVQgghhBBCCHEOJKKSQgghhBBChHmGSZUQQQgghhBBChANJqoQQQgghhBDiHEhSJYQQQgghhBDnQJlqIYQQQgghhDgHklQJlYQQQgghhDmQpEoIIYQQQgghhzoEkVUllYQQQgghhDiSpEkIIYQQQohziEmVEEIIYYQQQpwDSaqEEEEIIYYQQ4hw4LnYAF5vX66WstlTSkhKyc7qw+quFNFTspakihokzHmDVwrl0yYhmf6mfUTfewceZ/kBmRgBGRGb0ZMuoaigoO0LFjJ9lys4iNjb3Y1RFCCCGEEEEJcYFrPnj3VhSrMtu02i2VZFBUVXajiT9DY2Mg/nv0P+neNxFtTR2Wljy7ZafTu0ZHS8moOITbQoVMmmRkplJRUFJxmM7pcaQnJrBl5yEKD1eTnuohJiaSvEL44S9+g8fjuWj1EUllYYQQQKcNtp0wDANd19ss58tl3VPldrtxu134vWU4ggFSIhRVJQdZeHAHtrLRdCelJfsxHC4sK4TTYVNbbOHSDJwON6mRbvRgkKDMjZKqAy6X62JXSQgghhBBCCCHGBXdbPVDkcDKZeP5NtBSalldX4TR8WimBilyM9k44ZKXTrOpElI06vbtIkZ6SRkdqR+kYLnDpNwToOIVaztQCuvM46hmFc7CoJIYQQQgghhDLuqcKoE/ffuwfMJ5A0SJchkVDow2GB9s28Pnr8EQ7McMmoUCQpnofSo9GGR7CtoYnMhrLcNkt/1S69+x1sasihBBCCCGEuAgu654qgKamJsr2riPOrWHYikC9j0ZvLTqKqKgYykrqWL9mKxWINcTHxqPriqqKMky/idPWSlrS2Zu3glAodLGrlOQQQgghhLglLVukasfWzcQ7vGh2CMNhwEB0dSVpqArY0qYwFVX1VfBxXUVZVT1V9ExiKtp0y0TQdlzMCrAARVgn79uy+2FURQgghhBBCXASX7fA/v9+Pz+dj3eqvSE/oQIHXS2JqFka0RoTbgx0RiR00iXfVMy5nGBERkVjx0biiXUQn1hMOMpg0qKouljY5hq+XLYE5NY2YmBiZAVAIYYQQQojLYGWZVG3avImt23aSFB/HkJGjiY6JQouMIGjohE2LoGVFSW6hgmEizSDKMtE0jBbHEHC6iY2IJNLhxmM46K7CaKEAvjo/a9etp6qyilFDBnHFFVeccTw+n49AIABoWLEZ7jVNly4uDofjsjxNZ6WxsZG6ujqKDhXjcdJlysoKLjaWyMjlixKPz+dDKUVMTMxFAKV8IIYYQQQlw4l93dellZGXv27qPX8CtZkreWD7Zv5lBtObW+GnyBEH7LJGwHCVlgRZgAwYfkoHpZw4LYgwdF6BNFONwKxMXSlz6BrYiZTRo1m89qNpKWlkZKSckYxLVmyhGUrV9PgDxEfG4nbYeAPWwSDQX5w1x0MHDjwvB6TS5lpmiz96iuWLV+BYTiJT4insbGRg4eK6dalM7969BcXfZGv9/PH//0HNFRkTz26CMXtGwhhBBCCCHhXVZJVTgc5qMPP+Gq68fzoxd+w3bK8Xs0LBfoLoVyG9iahq5AoYGmo3SanzxTLrA1UDoaFooQhmWB1oRt1+loLcBzwGDZ9vX85b5/Y8GHH3HPvXfjdDpPG9eUKVMIWzYfLFzET2bcw4Arr8Q0TZ7503NHerBEeyzLrVZs9m4aSM//sH3GTBgQM7a9etZ+78tzFN84ImVUopFnz0Mb7GJn50/w8uWLiCCCGEEOLiuaawmqpj71luMum48/2/ui+zXvfhiLEy3hdJ0wMA2NHAobMPAo7mi9UcTVxdLbG0kCbVRxDd5iEBHGRroDjR0bHSUUiinjS/aZL1Vyy98Ppshl4bx/ocfnnFsnolNn87HA6uGT+O6OjoU24XCoXaTbxCoRDhcPiMy78UrV6zLq83bGDc6NFtEiqAYUOH0K1LZzRNu6AxlZWxu1BYyL/+8IEy0tMvaNICCCGEEOLiuGx6qpYtX063Pr14a83nLKvegYqwiCSCJmWhdNWcWGkGHgSi6nRiSKFzcjZJSZ1waybBYJgCbXWH63bj15owo8L4nTYoJyglUwXAUUpGniwWF6+izP5uB6V1Zs2YNw4cPP4MIm3vBmp+rgtKyMuoaGHg3ZJQAgUCAF19+hUOHSgJ4A/T3pWfeynbNu2nVfemEVMDsBUBAbjQinmyafjxm3TWXM6Obtq6qqeOa5v/DIz396wrDE//vb31JaXklMTBTRER4sy6JTdjZTb55MfHx8y3q1tbXMm/8OBQUHMu0Tp8PFDtdcx7ixY05aqz//7Xn2HTil2+0mLjqGcDhMWloqU26+icyMjJb1QqEQc96az65duzBNC6UUY0ZdzY0TJT7T7TJlt2yxZthxNMxg+bGi7ZT/04APouk5dXR1/ff4FDldW4XQ4cTsMgsEQgwZeyV3fu6PNNgs++piiQ4f42U8eavP6osWL+WLUKkMSWJ8HAG/n149ezL91mltJiZJT0sjJ6cz8995j4ce+NFJj4sQQgghhPjnYSQnJz95oQpTSp2wPPProo+e93MLCQvYVF1MZrOe3K+dSFR/GoTtwBjVchpuQrOFhEB2OILEuhgm5V3PDVdPokN2b2lxsoulSiM/oRkaH7nTN6g2hRAIV5ViulCHHkWeudL05H9JsLB1279nLVd374S2vIT42jtjY2FPGuHfvXrbv2ocywxQUHmTpiIVUVdUwYtgQAD77fCFrN

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Processo	3044196-22.2024.8.06.0001
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Processo	3044196-22.2024.8.06.0001
	style="text-align: center;"> #160; </p>
Processo	0200588-83.2024.8.06.0084
Número de ordem	105
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Rescisão do contrato e devolução do dinheiro
Polo ativo	ANTONIO VIEIRA DE SOUZA
Advogado(s) - Polo ativo	WILLIAM KLEBER GOMES DE SOUSA LIMA - (CE28587-A)
Polo passivo	ASPECIR PREVIDENCIA
Advogado(s) - Polo passivo	MARCELO NORONHA PEIXOTO - (RS95975-A)
Terceiros	Não informado

Processo	0200588-83.2024.8.06.0084
Acórdão	<p style="text-align: justify;"> EMENTA: DIREITO DO CONSUMIDOR. RECURSO DE APELAÇÃO. DESCONTOS INDEVIDOS CONTA-SALÁRIO. DANO MORAL. QUANTUM INDENIZATÓRIO. MANUTENÇÃO. CRITÉRIOS DA PROPORCIONALIDADE E DA RAZOABILIDADE. TERMO INICIAL DOS JUROS FIXADO NO EVENTO DANOSO. HONORÁRIOS MAJORADOS. RECURSO PARCIALMENTE PROVIDO. </p><p style="text-align: justify;"> I. CASO EM EXAME </p><p style="text-align: justify;"> >1. Apelação interposta por Antônio Vieira de Souza contra sentença da Vara Única da Comarca de Guaraciaba do Norte que julgou parcialmente procedente ação declaratória de inexistência de negócio jurídico c/c repetição de indébito e indenização por danos morais, proposta em face da Aspecir Previdência S/A.</p><p style="text-align: justify;"> >2. A decisão reconheceu a inexistência do contrato que gerou descontos na conta-salário do autor, condenou a ré à restituição simples dos valores e fixou indenização por danos morais em R\$ 3.000,00.</p><p style="text-align: justify;"> >3. O autor recorreu para majorar o valor da indenização, fixar os juros de mora desde o evento danoso e elevar os honorários advocatícios para 20% da condenação.</p><p style="text-align: justify;"> >II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> >I. Definir se o valor de R\$ 3.000,00 fixado a título de danos morais deve ser majorado.</p><p style="text-align: justify;"> >II. Definir o termo inicial da incidência dos juros de mora.</p><p style="text-align: justify;"> >III. Definir se os honorários sucumbenciais devem ser majorados para 20% da condenação.</p><p style="text-align: justify;"> >III. RAZÕES DE DECIDIR</p><p style="text-align: justify;"> >5. Reconhecida a inexistência de contrato e a falha na prestação do serviço, configurada está a responsabilidade civil da ré (CDC, art. 14; CC, arts. 186 e 927).</p><p style="text-align: justify;"> >6. O valor de R\$ 3.000,00 atende aos critérios de proporcionalidade e razoabilidade, não havendo necessidade de majoração, pois os descontos não comprometeram de forma relevante a subsistência do autor.</p><p style="text-align: justify;"> >7. Tratando-se de responsabilidade civil extracontratual, os juros de mora incidem a partir do evento danoso, conforme Súmula 54 do STJ.</p><p style="text-align: justify;"> >8. Os honorários advocatícios devem ser majorados para 20% do valor da condenação, nos termos do art. 85, § 2º, do CPC, diante do trabalho realizado e do tempo exigido.</p><p style="text-align: justify;"> >IV. DISPOSITIVO E TESE </p><p style="text-align: justify;"> >9. Recurso conhecido e parcialmente provido. >&#160;Sentença reformada em parte para: (i) fixar os juros de mora dos danos morais a partir do evento danoso; (ii) majorar os honorários advocatícios para 20% do valor da condenação.</p><p style="text-align: justify;"> >Tese de julgamento: >"1. O valor de R\$ 3.000,00 a título de danos morais, em razão de descontos indevidos em conta-salário, observa os critérios de proporcionalidade e razoabilidade.</p><p style="text-align: justify;"> >2. Na responsabilidade civil extracontratual, os juros de mora incidem a partir do evento danoso (Súmula 54 do STJ).</p><p style="text-align: justify;"> >3. Os honorários advocatícios devem ser fixados em 20% do valor da condenação quando presentes os critérios do art. 85, § 2º, do CPC."</p><p style="text-align: justify;"> >Dispositivos relevantes citados: CPC, art. 85, § 2º, e art. 373, II; CC, arts. 186 e 927; CDC, art. 14.</p><p style="text-align: justify;"> >Jurisprudência relevante citada: STJ, Súmula nº 54; TJCE, Apelação Cível nº 0200193-16.2022.8.06.0067, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara Direito Privado, j. 24.07.2024.</p><p style="text-align: justify;"> >&#160;</p><p style="text-align: justify;"> ><u>A C Ó R D Ã O</u> </p><p style="text-align: justify;"> >Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, para dar-lhe parcial provimento, nos termos do voto do eminente Relator, parte integrante desta decisão.</p><p style="text-align: justify;"> >&#160;</p><p style="text-align: justify;"> >Fortaleza, 10 de setembro de 2025.</p><p style="text-align: justify;"> >&#160;</p><p style="text-align: justify;"> >JOSÉ RICARDO VIDAL PATROCÍNIO</p><p></p>

Processo	0200588-83.2024.8.06.0084
	Presidente do Órgão Julgador</p><p style="text-align: justify;"> #160;</p><p style="text-align: justify;"> EDUARDO DE CASTRO NETO</p><p style="text-align: justify;"> Juiz Convocado Relator</p><p style="text-align: justify;"> #160;</p><p style="text-align: justify;"> RELATORIO </p><p style="text-align: justify;"> Trata-se de Recurso de Apelação interposto por Antônio Vieira de Souza em face da sentença prolatada pelo juízo da Vara Única da Comarca de Guaraciaba do Norte, que julgou parcialmente procedentes os pedidos contidos na ação Declaratória de Inexistência de Negócio Jurídico c/c Repetição de Indébito e Indenização por Danos Morais, proposta em desfavor da Aspecir Previdência S/A, o que fez nos seguintes termos:</p><p style="text-align: justify;"> “(…) Isto posto, julgo a demanda parcialmente procedente, condenando a Requerida a pagar, de forma simples, o montante descontado ilicitamente da conta do Requerente, corrigido monetariamente pelo IPCA e acrescido de juros moratórios de 1% ao mês a partir da data de cada efetivo desconto em conta, bem como em dano moral no montante de R\$ 3.000,00 (um mil reais), a ser corrigido monetariamente a partir desta data e acrescido de juros de 1% (um por cento) ao mês a partir da citação, extinguindo o processo com resolução de mérito. Condeno a Requerida em custas e honorários advocatícios, os quais fixo em 10% (dez por cento) sobre o valor da condenação.”.</p><p style="text-align: justify;"> Em suas razões recursais, o autor/recorrente sustenta, que “diante da conjuntura apresentada, é possível evidenciar o sentimento de abalo, desespero e tristeza de quem passou a ter sua renda reduzida, não conseguindo quitar suas dívidas, comprar seus remédios e dispor de produtos essenciais à sobrevivência, dada sua fragilidade financeira. Por outro lado, a Seguradora lucrou em virtude de um negócio jurídico fraudulento”.</p><p style="text-align: justify;"> Argumenta, em seguida, que “in casu, podemos verificar a ocorrência de fraude devido à ausência de instrumento contratual, o que pressupõe a inexistência de qualquer relação jurídica entre partes, não existindo de maneira prévia quaisquer obrigações entre as mesmas, restando devidamente caracterizada a responsabilidade extracontratual da parte ré. Dessa forma, os juros moratórios incidem desde o evento dano, qual seja, o primeiro desconto, uma vez que a mora que fundamenta a incidência deste encargo existe desde o fato que levou ao pedido de reparação por danos morais”.</p><p style="text-align: justify;"> Por fim, protesta pelo conhecimento e provimento do apelo, para, consequentemente, reformar a sentença vergastada, para que seja majorada o quantum arbitrado a título de dano moral e que a incidência dos juros de mora seja a partir do evento danoso, conforme súmula 54 STJ. Requer, ainda, a majoração dos honorários sucumbenciais arbitrados em sentença para 20% do valor da condenação.</p><p style="text-align: justify;"> Embora devidamente intimada a parte apelada não apresentou contrarrazões, conforme certidão constante no Id. 27369597.</p><p style="text-align: justify;"> É o que importa relatar. </p><p style="text-align: justify;"> VOTO </p><p style="text-align: justify;"> #160;</p><p style="text-align: justify;"> VOTO </p><p style="text-align: justify;"> #160;</p><p style="text-align: justify;"> Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso.</p><p style="text-align: justify;"> Passo, então, ao seu deslinde.</p><p style="text-align: justify;"> Entendeu o juízo de primeiro grau em acolher parcialmente os pedidos autorais, declarando inexistente do contrato que ensejou as cobranças indevidas na conta-salário do autor, condenando a promovida a restituir, de forma simples, os valores efetivamente descontados, e ainda, ao pagamento da quantia de R\$ 3.000,00 (três reais) a título de indenização por danos morais.</p><p style="text-align: justify;"> O autor, interpôs recurso apelatório buscando a majoração do dano moral, ao argumento de que o montante constante na condenação não coaduna com os princípios basilares da reparação civil, bem como, a majoração dos honorários sucumbenciais.</p><p style="text-align: justify;"> No presente caso, cotejando o vertente caderno processual, é forçoso reconhecer que houve falha na prestação do serviço, causando danos de ordem moral e material ao requerente/apelante, visto que, a seguradora/recorrida não procedeu sequer a juntada do suposto instrumento contratual ou nenhum outro documento capaz de demonstrar a regularidade da avença, ônus que lhe competia, segundo a regra do art. 373, inc. II, do CPC.</p><p style="text-align: justify;"> Assim, quando demonstrada a falha na prestação dos serviços, configurado está o ilícito civil,</p>

Processo	0200588-83.2024.8.06.0084
	conferindo daí ao lesado a devida reparação dos danos sofridos, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. Pois bem. Definida a nulidade dos descontos e o dever de indenizar - inclusive não há insurgência nestes pontos, cumpre verificar o pedido de majoração dos danos morais. Dano Moral – Fixação No tocante ao valor indenizatório, como se sabe, deve representar para o ofendido, uma satisfação psicológica que possa pelo menos diminuir os dissabores que lhe foram acarretados, sem causar, evidentemente, o chamado enriquecimento sem causa, servindo, ainda, para impingir ao causador do dano, um impacto capaz de desestimulá-lo a praticar novos atos que venham a causar danos a outrem. Desse modo, tem-se que a indenização deve se dar de forma equânime e atentar à razoabilidade, a fim de evitar o enriquecimento ilícito da parte autora, mas sem deixar de punir aparte ré pelo cometimento do ato ilegal. Nesse sentido: APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANO MORAL. DESCONTO NO BENEFÍCIO PREVIDENCIÁRIO DO AUTOR A TÍTULO DE SEGURO PRESTAMISTA. RELAÇÃO DE CONSUMO. INVERSÃO DO ÔNUS DA PROVA. INSTITUIÇÃO FINANCEIRA QUE NÃO COMPROVOU A LICITUDE DO NEGÓCIO JURÍDICO. DANO MORAL CONFIGURADO. REDUÇÃO DO QUANTUM FIXADO. REPETIÇÃO INDÉBITO MODULAÇÃO EFEITOS. EARESP Nº 676.608/RS. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. O apelante se insurge contra sentença que julgou procedente os pedidos exordias, declarando a inexigibilidade do Contrato de Seguro Prestamista e condenando o réu à restituição em dobro dos valores indevidamente descontados do benefício previdenciário do autor, corrigidos monetariamente pelo INPC e acrescidos de juros moratórios de 1% ao mês, na forma simples, contados da data de cada desconto indevido; bem como ao pagamento de indenização por danos morais em favor da parte autora no valor de R\$ 3.000,00 (três mil reais), corrigido monetariamente pelo INPC, e com juros de mora de 1% (um por cento) ao mês. 2. A relação abordada nos autos caracteriza-se como de consumo, cabendo a inversão do ônus da prova, nos termos do art. 6º, VIII, do CDC. E no caso, o magistrado singular acolheu o pedido, invertendo o ônus da prova (fl. 21). 3. Em sua defesa (fls. 49/69), o banco demandado se restringe a afirmar a licitude do negócio jurídico, sem trazer qualquer prova aos autos. Assim, tendo sido-lhe imposta a inversão do ônus da prova e não tendo se desincumbido do ônus de comprovar a existência de fatos impeditivos, modificativos ou extintivos do direito da parte autora, na forma do art. 373, inciso II, do Código de Processo Civil, configurada falha na prestação do serviço (art. 14, CDC) e as cobranças indevidas constituem ato ilícito, causando os danos morais e materiais, resultando, por via de consequência, obrigação de repará-los, na forma dos arts. 186 e 927 do Código Civil. 4. Na hipótese dos autos, o autor apenas supõe que houve vários descontos, porém, não havendo sido comprovado descontos com representatividade financeira de maior monta, de modo comprometer de maneira significativa os seus rendimentos ou sua subsistência, tem-se por justo e razoável o valor de R\$ 1.000,00 (hum mil reais). 5. No que pertine à repetição do indébito, o Superior Tribunal de Justiça, Corte Especial, EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020, firmou entendimento em sede de Recurso Repetitivo de que a restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva. E por modulação de efeitos, essa tese somente é aplicável às cobranças realizadas após a data da publicação do referido acórdão, (DJe de 30/3/2021). 6. Apelação cível conhecida e parcialmente provida. Sentença reformada em parte. A C O R D A a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do presente recurso de apelação cível e dar-lhe provimento, reformando-se a sentença em parte, nos termos do voto do eminente Relator. (TJ-CE - AC: 00509445420218060122 Mauriti, Relator: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 22/03/2023, 1ª Câmara Direito Privado, Data de Publicação: 22/03/2023) PROCESSUAL CIVIL. CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C PEDIDO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. ANUIDADE DE CARTÃO DE CRÉDITO. AUSÊNCIA DE CONTRATO A JUSTIFICAR OS DESCONTOS. DESCONTOS INDEVIDOS NOS PROVENTOS DE APOSENTADORIA DO CONSUMIDOR. RECURSO QUE ABRANGE SOMENTE PEDIDO DE MAJORAÇÃO QUANTO AOS DANOS MORAIS E DE ALTERAÇÃO DO TERMO INICIAL DOS JUROS DE MORA. QUANTUM INDENIZATÓRIO NO PATAMAR DE R\$ 3.000,00 (TRÊS MIL REAIS)

986

Processo	3000537-54.2025.8.06.0121
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Processo	3000537-54.2025.8.06.0121
	STJ (REsp 1.061.530/RS). 6. Quanto à repetição do indébito, o STJ fixou, em julgamento da Corte Especial no EAREsp 676.608/RS, que a devolução em dobro do art. 42, parágrafo único, do CDC independe da demonstração de má-fé, sendo cabível quando a cobrança contraria a boa-fé objetiva, aplicando-se apenas às cobranças posteriores a 30/03/2021. 7. O contrato em análise foi firmado em 2022, de modo que incide integralmente a orientação firmada no referido precedente, impondo-se a restituição em dobro dos valores pagos indevidamente. 8. IV. DISPOSITIVO E TESE 9. Recurso desprovido. Tese de julgamento: Juros remuneratórios podem ser revistos judicialmente quando significativamente discrepantes da média de mercado para operações equivalentes, ainda que superiores a 12% ao ano. A cobrança de taxa de juros abusiva caracteriza vantagem exagerada em desfavor do consumidor e autoriza a revisão contratual. A restituição em dobro de valores cobrados indevidamente, nos termos do art. 42, parágrafo único, do CDC, independe de má-fé do fornecedor e aplica-se às cobranças posteriores a 30/03/2021, conforme definido no EAREsp 676.608/RS. Vistos relatados e discutidos os autos da APELAÇÃO CÍVEL nº 3000537-54.2025.8.06.0121, em que é apelante BANCO DO BRASIL S/A e apelado ANTÔNIO RODRIGO MESQUITA DA PENHA, acorda o colegiado da 1ª Câmara de Direito Privado do TJCE, por unanimidade de votos, em conhecer e NEGAR provimento ao recurso, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator Trata-se de recurso de apelação interposto por BANCO DO BRASIL em face de sentença proferida pelo juízo da 2ª Vara Cível da

Processo	3000537-54.2025.8.06.0121
	Comarca de Massapê, que julgou procedente a ação revisional que foi ajuizada por ANTÔNIO RODRIGO MESQUITA DA PENHA, o que fez nos termos do dispositivo a seguir transcrito, verbis: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify">"Ante ao exposto, com arrimo no artigo 487, I, do Código de Processo Civil, JULGO PROCEDENTES EM PARTE os pedidos formulados na inicial para o fim de:</p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> a) DECLARAR a abusividade dos juros praticados nos contratos nº 985452858 (ID. 150095189), devendo incidir a taxa média de 32,52% divulgada pelo BACEN de aquisição de veículo dos períodos de 10/06/2022 a 17/06/2022 (data da contratação – 10/06/2022). </p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> b) CONDENAR a parte promovida à restituição em dobro de quantias pagas a mais, relativas a diferença das taxas de juros praticadas pelo mercado (32,58%) daquelas, devendo tal valor ser apurado em sede de liquidação. </p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> >Ademais, deve a instituição financeira restituir, na modalidade simples, os valores cobrados a título de recálculo das parcelas até 30/03/2021 e, empós, a devolução seja operacionalizada em dobro (EAREsp nº 676.608/RS/STJ), mediante abatimento da dívida ou, se verificada a sua quitação, mediante o reembolso, com correção monetária pelo IGP-M a partir do pagamento a maior de cada parcela. </p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> >Considerando a sucumbência recíproca, porém majoritária do réu, condeno-o ao pagamento de 70% (setenta por cento) das custas e despesas processuais, além do pagamento de honorários de sucumbência arbitrados em 10% (dez por cento) do valor da condenação. Por outro lado, condeno a parte autora ao pagamento das custas remanescentes, além de honorários de sucumbência de 10% (dez por cento) do valor da condenação, cuja exigibilidade, no entanto, suspenso, eis que a autora é beneficiária da gratuidade judiciária." </p><p align="justify"> &#160; </p><p align="justify"> Nada obstante, sustenta o banco apelante, em síntese, a regularidade das taxas de juros exigidas contratualmente, bem como ser inaplicável a repetição do indébito haja vista a inexistência de cobrança abusiva e de má-fé.</p><p align="justify">&#160;</p><p align="justify"> Requeru o provimento do recurso para o fim de reformar a sentença e julgar improcedente a ação. </p><p align="justify">&#160;</p><p align="justify"> Contrarrazões alojadas ao ID 27361003. </p><p align="justify">&#160;</p><p align="justify"> É o relatório adotado. </p><p align="justify">&#160;</p><p style="text-align: center;"> V O T O </p><p align="justify">&#160;</p><p align="justify"> Conheço do recurso, posto vislumbro presentes os requisitos de admissibilidade previstos no CPC. </p><p align="justify">&#160;</p><p align="justify"> Na hipótese, a insurgência primordial levantada pelo banco recorrente diz respeito à inexistência de cobrança de juros abusivos inserta no instrumento contratual. </p><p align="justify">&#160;</p><p align="justify"> Pois bem. </p><p align="justify">&#160;</p><p align="justify"> A princípio, convém destacar a errônea da sentença ao apontar que a modalidade do contrato teria sido de financiamento para aquisição de veículos. Vejamos o trecho da sentença: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> "Na hipótese dos autos, o pacto previu a cobrança de juros remuneratórios nos percentuais de 109,81% ao ano, em contrapartida, a tabela divulgada pelo BACEN informa que do período de 10/06/2022 a 17/06/2022, data da celebração da avença (10/06/2022), a taxa média de mercado para contratos destinados à aquisição de veículos por pessoa física era de 21,68% ao ano. Assim, para a taxa de juros não ser abusiva, esta deveria ser de, no máximo, 32,52% (uma vez e meia da taxa média), porém a taxa anual prevista no contrato objeto da lide é de 109,81%, de modo que resta configurada a abusividade da taxa de

Processo	3000537-54.2025.8.06.0121
	juros utilizada, devendo portanto ser devolvido os valores pagos em excesso em dobro." </p><p align="justify">&#160;</p><p align="justify"> Na verdade, conforme posto no instrumento contratual (ID 27360867) o contrato entabulado é de Crédito Direto ao Consumidor, não consignado, com débito das parcelas diretamente na conta-corrente do correntista. </p><p align="justify">&#160;</p><p align="justify"> Dito isto, passo a análise dos pontos vertidos no apelo. </p><p align="justify">&#160;</p><p align="justify"> Dos juros remuneratórios - </p><p align="justify">&#160;</p><p align="justify"> Importante ressaltar que o Superior Tribunal de Justiça tem entendimento de que os juros remuneratórios superiores a 12% (doze por cento), por si só, não indica abusividade e que são devidos à taxa contratada, salvo se comprovado, in concreto, que são abusivos, assim entendidos aqueles que discrepem significativamente da média de mercado, senão vejamos: </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> Ementa: CIVIL E PROCESSUAL CIVIL. BANCÁRIO. AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. CPC/1973. VIOLAÇÃO DO ART. 535 DO CPC/1973. NÃO OCORRÊNCIA. TAXA DE JUROS REMUNERATÓRIOS. CAPITALIZAÇÃO MENSAL. TARIFA DE CADASTRO. COMISSÃO DE PERMANÊNCIA. MORA. ACÓRDÃO RECORRIDO EM CONFORMIDADE COM A JURISPRUDÊNCIA DO STJ. ART. 543-C DO CPC/1973. DECISÃO MANTIDA. 1. Não há afronta ao art. 535 do CPC quando o acórdão recorrido analisa todas as questões pertinentes para a solução da lide, pronunciando-se, de forma clara e suficiente, sobre a controvérsia estabelecida nos autos. 2. De acordo com os parâmetros adotados por esta Corte, a revisão da taxa de juros remuneratórios exige significativa discrepância e m relação à média praticada pelo mercado financeiro , circunstância não verificada na espécie, sendo insuficiente o simples fato de a estipulação ultrapassar 12% (doze por cento) ao ano, conforme dispõe a Súmula n. 382/STJ. (...) (STJ, AgRg no AREsp 783.809/RS, Rel. Ministro ANTONIO CARLOS FERREIRA, QUARTA TURMA, julgado em 13/12/2016, DJe 19/12/2016) GN. </p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> Ementa: AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO DE REVISÃO DE CONTRATO DE FINANCIAMENTO. JUROS REMUNERATÓRIOS. ABUSIVIDADE. ORIGEM. NÃO CONSTATAÇÃO. CAPITALIZAÇÃO MENSAL DE JUROS. PACTUAÇÃO EXPRESSA. MATÉRIA FÁTICO-PROBATÓRIA. REEXAME. SÚMULA Nº 7/STJ. 1. As instituições financeiras não se sujeitam à limitação dos juros remuneratórios que foi estipulada pela Lei de Usura (Decreto nº 22.626/1933), em consonância com a Súmula nº 596/STF, sendo também inaplicável o disposto no art. 591, c/c o art. 406, do Código Civil para esse fim, salvo nas hipóteses previstas em legislação específica. A redução dos juros dependerá de comprovação da onerosidade excessiva - capaz de colocar o consumidor em desvantagem exagerada - em cada caso concreto, tendo como parâmetro a taxa média de mercado para as operações equivalentes, de modo que a simples estipulação de juros remuneratórios superiores a 12% (doze por cento) ao ano, por si só, não indica abusividade, nos termos da Súmula nº 382/STJ (REsp nº 1.061.530/RS). 2. Agravo interno não provido. (STJ, AgInt no AREsp 914.634/SP, Rel. Ministro RICARDO VILLAS BÔAS CUEVA, TERCEIRA TURMA, julgado em 06/12/2016, DJe 19/12/2016) </p><p align="justify">&#160;</p><p align="justify"> Ocorre que, os juros no percentual apontado no contrato, de 109,81 % ao ano, ostentam caráter de abusividade, na medida em que significativamente discrepantes da taxa média de mercado para o caso de contratação de empréstimo similar no período da contratação (junho/2022), consoante extraí do site do Banco Central do Brasil, que apontou o percentual de 87,41 % ao ano para aquele interregno. (www.bcb.gov.br - Série 20742) </p><p align="justify">&#160;</p><p align="justify"> Neste particular, é bom lembrar que a jurisprudência do STJ proclama que "É admitida a revisão das taxas de juros remuneratórios em situações excepcionais, desde que caracterizada a relação de consumo e que a abusividade (capaz de colocar o consumidor em desvantagem exagerada - art. 51, § 1º, do CDC) fique cabalmente demonstrada, ante às peculiaridades do julgamento em concreto (REsp n. 1.061.530/RS, submetido ao rito do art. 543-C do CPC, Relatora Ministra NANCY ANDRIGHI, SEGUNDA SEÇÃO, julgado em 22/10/2008, DJe 10/03/2009)", assim como que a estipulação de juros remuneratórios superiores a

Processo	3000537-54.2025.8.06.0121
	12% ao ano, por si só, não indica abusividade (Súmula 382/STJ). Cito, ainda, da colenda Corte, o seguinte precedente, in verbis: “AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. AÇÃO DE REVISÃO DE CONTRATO. REEXAME DE MATÉRIA FÁTICO-PROBATÓRIA. SÚMULA Nº 7/STJ. JUNTADA DE CÓPIA DO CONTRATO. OBRIGATORIEDADE. FALTA DE PREQUESTIONAMENTO. SÚMULA Nº 282/STF. JUROS REMUNERATÓRIOS. ABUSIVIDADE AFASTADA NA ORIGEM. REEXAME DE PROVAS. ANTECIPAÇÃO DOS EFEITOS DA TUTELA. PEDIDO INDEFERIDO. REVERSÃO DA DECISÃO. IMPOSSIBILIDADE. INCIDÊNCIA DA SÚMULA Nº 7/STJ. 1. Ausente o prequestionamento, até mesmo de modo implícito, de dispositivos apontados como violados no recurso especial, incide o disposto na Súmula nº 282/STF. 2. As instituições financeiras não se sujeitam à limitação dos juros remuneratórios que foi estipulada pela Lei de Usura (Decreto nº 22.626/1933), em consonância com a Súmula nº 596/STF, sendo também inaplicável o disposto no art. 591, c/c o art. 406, do Código Civil para esse fim, salvo nas hipóteses previstas em legislação específica. A redução dos juros dependerá de comprovação da onerosidade excessiva - capaz de colocar o consumidor em desvantagem exagerada - em cada caso concreto, tendo como parâmetro a taxa média de mercado para as operações equivalentes, de modo que a simples estipulação de juros remuneratórios superiores a 12% (doze por cento) ao ano, por si só, não indica abusividade, nos termos da Súmula nº 382/STJ (REsp nº 1.061.530/RS). 3. A verificação dos requisitos necessários para o deferimento do pedido de antecipação dos efeitos da tutela demanda o reexame de matéria fática, o que não é cabível no âmbito do recurso especial (Súmula nº 7/STJ). 4. Agravo regimental não provido. (AgRg no AREsp 825.883/RS, Rel. Ministro RICARDO VILLAS BÔAS CUEVA, TERCEIRA TURMA, julgado em 26/04/2016, DJe 13/05/2016) Por conseguinte, não merece reproche a sentença. STJ, por ocasião do julgamento, pela Corte Especial, do EAREsp 676608/RS, de relatoria do Ministro Og Fernandes, definiu que “a restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que cobrou valor indevido, revelando-se cabível quando a cobrança indevida consubstanciar conduta contrária à boa-fé objetiva” e que a restituição em dobro do indébito seja aplicada apenas às cobranças indevidas realizadas a partir da publicação daquele acórdão, ou seja, 30/03/2021. Confirma-se, a ementa do julgamento, “EMBARGOS DE DIVERGÊNCIA EM AGRAVO EM RECURSO ESPECIAL. CIVIL. PROCESSUAL CIVIL. TELEFONIA FIXA. COBRANÇA INDEVIDA. AÇÃO DE REPETIÇÃO DE INDÉBITO DE TARIFAS. 1) RESTITUIÇÃO EM DOBRO DO INDÉBITO (PARÁGRAFO ÚNICO DO ARTIGO 42 DO CDC) DESINFLUÊNCIA DA NATUREZA DO ELEMENTO VOLITIVO DO FORNECEDOR QUE REALIZOU A COBRANÇA INDEVIDA. DOBRA CABÍVEL QUANDO A REFERIDA COBRANÇA CONSUBSTANCIAR CONDUTA CONTRÁRIA À BOA-FÉ OBJETIVA. 2) APLICAÇÃO DO PRAZO PRESCRICIONAL DECENAL DO CÓDIGO CIVIL (ART. 205 DO CÓDIGO CIVIL). APLICAÇÃO ANALÓGICA DA SÚMULA 412/STJ. 3) MODULAÇÃO PARCIAL DOS EFEITOS DA DECISÃO. CONHECIMENTO E PROVIMENTO INTEGRAL DO RECURSO. (...) Fixação das seguintes teses. Primeira tese: A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva. Segunda tese: A ação de repetição de indébito por cobrança de valores referentes a serviços não contratados promovida por empresa de telefonia deve seguir a norma geral do prazo prescricional decenal, consoante previsto no artigo 205 do Código Civil, a exemplo do que decidido e sumulado no que diz respeito ao lapso prescricional para repetição de tarifas de água e esgoto (Súmula 412/STJ). Modulação dos efeitos: Modulam-se os efeitos da presente

Processo	3000537-54.2025.8.06.0121
	decisão - somente com relação à primeira tese - para que o entendimento aqui fixado quanto à restituição em dobro do indébito seja aplicado apenas a partir da publicação do presente acórdão. A modulação incide unicamente em relação às cobranças indevidas em contratos de consumo que não envolvam prestação de serviços públicos pelo Estado ou por concessionárias, as quais apenas serão atingidas pelo novo entendimento quando pagas após a data da publicação do acórdão. (EAREsp 676.608/RS, Rel. Ministro OG FERNANDES, CORTE ESPECIAL, julgado em 21/10/2020, DJe 30/03/2021). Dessa forma, há de se reconhecer, no caso concreto, que a devolução deverá ser efetivada em dobro, pois o contrato objeto do pleito revisional restou celebrado no ano de 2022, vale dizer, após o precedente do STJ, definidor da questão, cabendo destacar que a sentença assim dispôs, ou seja, que a devolução em dobro somente deveria ocorrer para cobrança realizada após 30 de março de 2021, que é o caso dos autos. O caso é, portanto, de manutenção in totum, da sentença vergastada. ANTE AO EXPOSTO, conheço e nego provimento ao recurso de apelação. Majoro os honorários advocatícios em 2% (dois por cento), acorde à norma do artigo 85, § 11, do CPC. É como VOTO. Fortaleza, 10 de setembro de 2025. EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator IZAIAS ALVES RODRIGUES ANTONIO RODRIGUES DE SOUZA - (CE39497-A) FACTA FINANCEIRA S.A. CREDITO, FINANCIAMENTO E INVESTIMENTO ANTONIO DE MORAES DOURADO NETO - (PE23255-A) Não informado
Processo	0200038-24.2024.8.06.0073
Número de ordem	107
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Inclusão Indevida em Cadastro de Inadimplentes
Polo ativo	IZAIAS ALVES RODRIGUES
Advogado(s) - Polo ativo	ANTONIO RODRIGUES DE SOUZA - (CE39497-A)
Polo passivo	FACTA FINANCEIRA S.A. CREDITO, FINANCIAMENTO E INVESTIMENTO
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado

Processo	0200038-24.2024.8.06.0073
Acórdão	<p style="text-align: justify;"> EMENTA: PROCESSO CIVIL. RECURSO DE APELAÇÃO EM AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. SENTENÇA DE IMPROCEDÊNCIA. PRELIMINAR DE CERCEAMENTO DE DEFESA. INOCORRÊNCIA. CONTRATO CARTÃO DE CRÉDITO CONSIGNADO. CONTRATAÇÃO ELETRÔNICA. AUTORIZAÇÃO MEDIANTE BIOMETRIA FACIAL. BANCO PROMOVIDO QUE SE DESINCUMBIU DO ÔNUS PROBANTE. AUSÊNCIA DE FALHA NA PRESTAÇÃO DE SERVIÇO OU ATO ILÍCITO. AUSÊNCIA DE DESCONTOS EFETIVOS. IMPROCEDÊNCIA MANTIDA. DANOS MATERIAIS E MORAIS NÃO CONFIGURADOS. RECURSO DESPROVIDO. SENTENÇA MANTIDA. </p><p style="text-align: justify;"> I. CASO EM EXAME </p><p style="text-align: justify;"> 1. Apelação interposta por consumidor contra sentença que julgou improcedente ação declaratória de inexistência de débito cumulada com repetição de indébito e indenização por danos morais.</p><p style="text-align: justify;"> 2. Autor alegou fraude em contrato eletrônico de cartão de crédito consignado e pleiteou realização de perícia, bem como indenização por danos morais.</p><p style="text-align: justify;"> 3. O juízo de origem entendeu comprovada a regularidade da contratação e afastou a restituição e indenização.</p><p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> 4. As questões em discussão consistem em:</p><p style="text-align: justify;"> (i) saber se houve cerceamento de defesa diante da ausência de perícia;</p><p style="text-align: justify;"> (ii) saber se o contrato eletrônico de empréstimo consignado é válido e eficaz;</p><p style="text-align: justify;"> (iii) verificar se há direito à repetição de indébito e indenização por danos morais.</p><p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p><p style="text-align: justify;"> 5. Não há cerceamento de defesa quando o magistrado decide com base em provas suficientes, em consonância com a jurisprudência do STJ.</p><p style="text-align: justify;"> 6. A instituição financeira comprovou a regularidade da contratação por meio eletrônico, juntando contrato assinado digitalmente, biometria facial e dados de geolocalização.</p><p style="text-align: justify;"> 7. O autor não produziu prova capaz de infirmar a documentação apresentada pelo banco.</p><p style="text-align: justify;"> 8. Os descontos sequer chegaram a ocorrer no benefício previdenciário, sendo excluído o contrato antes da efetivação da cobrança.</p><p style="text-align: justify;"> 9. Ausente ato ilícito ou dano, não há que se falar em restituição de valores ou em indenização por danos morais.</p><p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p><p style="text-align: justify;"> 10. Recurso conhecido e desprovido. Sentença mantida. </p><p style="text-align: justify;"> Tese de julgamento: </p><p style="text-align: justify;"> "1. Não configura cerceamento de defesa a ausência de perícia quando o conjunto probatório é suficiente para julgamento."</p><p style="text-align: justify;"> "2. Comprovada a regularidade da contratação eletrônica, inexistente nulidade do contrato e responsabilidade do banco."</p><p style="text-align: justify;"> "3. A inexistência de descontos no benefício previdenciário afasta pedido de repetição de indébito e indenização por danos morais."</p><p style="text-align: justify;"> Dispositivos relevantes citados: CPC/2015, art. 373, II; CDC, arts. 3º, §1º, e 39, III; CPC/2015, art. 370.</p><p style="text-align: justify;"> Jurisprudência relevante citada: STJ, AgRg no REsp 1.206.422/TO, Rel. Min. Sidnei Beneti, 3ª Turma, j. 19.10.2010; TJCE, Apelação Cível nº 0202038-03.2022.8.06.0029, Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câmara de Direito Privado, j. 20.09.2023; TJCE, Apelação Cível nº 0230355-95.2022.8.06.0001, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara de Direito Privado, j. 02.08.2023.</p><p style="text-align: justify;"> A C Ó R D Ã O </p><p style="text-align: justify;"> Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do eminente Relator, parte integrante desta decisão.</p><p style="text-align: justify;"> Fortaleza, 10 de setembro de 2025.</p><p style="text-align: justify;"> JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="text-align: justify;"> Presidente do</p>

Processo	0200038-24.2024.8.06.0073
	Órgão Julgador EDUARDO DE CASTRO NETO Juiz Convocado Relator RELATÓRIO Trata-se de Recurso de Apelação interposto por Izaías Alves Rodrigues com o escopo de adversar a sentença proferida pelo douto julgante da Vara Única da Comarca de Crotatá, que julgou improcedente os pedidos contidos na ação Declaratória de Inexistência de Débito c/c Repetição do Indébito e Indenização por Danos Morais ajuizada em desfavor do Banco Facta Financeira S/A. Em seu recurso, o autor/recorrente sustenta que “não detendo o juízo singular conhecimentos técnicos para mensurar com a precisão necessária a autenticidade da assinatura contratual, enquanto à firme alegação da parte autora de não reconhecer referida avença, faz-se imprescindível a realização de perícia digital a fim de dirimir a controvérsia acerca da ocorrência ou não de fraude no contrato em discussão, em observância ao direito à ampla defesa e contraditória, razão pela qual a referida perícia refuta-se como fundamental”. Sustenta, ainda, que “a controvérsia a ser dirimida gravita em torno do envio de produto e serviço não solicitado pela requerente. É inegável que atividade exercida pela parte ré envolve fornecimento de produtos, tendo em vista que se enquadra no art. 3º, § 1º do Código do Direito do Consumidor”. Argumenta, depois, que “deve ser observado, pelo fornecedor de produto, o princípio da boa-fé objetiva, que impõe às partes da relação jurídica um padrão normativo de conduta do qual são sinais externos a transparência, a honestidade, a probidade, a lealdade recíproca e a cooperação mútua, todos esses quebrados pela parte requerida”. Sustenta, ainda, que “o Superior Tribunal de Justiça (STJ) confirmou que o envio de cartão de crédito não solicitado pelo consumidor configura prática abusiva”. E que “como não foi requerido pelo consumidor, qualquer dano sofrido em decorrência do envio do produto ou do fornecimento de serviço, o fornecedor deverá ser responsabilizado”. Por fim, protesta pelo conhecimento e provimento do apelo, para, consequentemente, reformar parcialmente a sentença vergastada, condenando a instituição financeira apelada ao pagamento de indenização por danos morais. Embora devidamente intimada a parte apelada não apresentou contrarrazões, conforme certidão constante no Id. 27357510. É o que importa relatar. VOTO Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. Depreende-se da leitura dos fólios processuais, que o autor/recorrente busca através da presente demanda declarar nulo o contrato de cartão de crédito consignado citado na exordial (nº 0064441292), firmado em seu nome junto à instituição bancária promovida, bem como, a restituição em dobro, dos valores descontados, e ainda, indenização pelos danos morais sofridos. O douto magistrado singular entendeu pela improcedência dos pedidos autorais, uma vez que, não havendo demonstração de ilicitude da contratação, e restando demonstrada a expressa anuência da autora no aperfeiçoamento contratual, incabível se torna a condenação da instituição financeira/requerida em devolução de valores e em pagamento de danos morais. O cerne da controvérsia recursal consiste em analisar a regularidade da contratação de empréstimo consignado e, por consequência lógica, na possibilidade da restituição de valores, e, por fim, da incidência de indenização a título de danos morais. Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Súmula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista: “O Código de Defesa do Consumidor é aplicável às instituições financeiras”. Preliminar de cerceamento de defesa - Argumenta o autor/recorrente que o julgamento antecipado da lide sem que fosse procedida a dilação probatória necessária, notadamente a realização de perícia no contrato em discussão, ocasionou cerceamento de defesa, razão pela qual pugna pela anulação da sentença e o

Processo	0200038-24.2024.8.06.0073
	retorno dos autos ao juízo de origem para a produção da prova requerida. Na espécie, entendo que não houve cerceamento de defesa, uma vez que o magistrado fundamentou sua decisão levando em consideração o conjunto probatório fornecido nos autos. Ademais, consoante jurisprudência pacífica do STJ “ não há cerceamento de defesa quando o magistrado, com base em suficientes elementos de prova e objetiva fundamentação, julga antecipadamente a lide”. (AgRg no REsp 1206422-TO), exercendo o seu livre convencimento de forma motivada e utilizando, para tanto, dos fatos, provas, jurisprudências, aspectos pertinentes ao tema e legislação que entender aplicável a cada caso, especificamente. Portanto, rejeito a preliminar suscitada. No mérito - No presente caso, não verifico causas que maculem a regularidade da celebração do contrato em questão, isto porque, a instituição financeira/apelada juntou o instrumento contratual (Id.27356886), assinado por meio de autenticação eletrônica e fotografia do momento da contratação. Para reforçar a validade da contratação, a instituição financeira/recorrida, acostou aos autos o dossiê de contratação (Id. 27356886/6), onde consta dados de localização e Id da sessão do usuário, com informação do dia e horário da coleta dos dados. APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. PRELIMINARES DE CERCEAMENTO DE DEFESA E NÃO CONHECIMENTO DO RECURSO REJEITADAS. CONTRATO DE EMPRÉSTIMO CONSIGNADO CELEBRADO POR MEIO ELETRÔNICO (BIOMETRIA FACIAL). INSTITUIÇÃO FINANCEIRA QUE COMPROVOU A REGULARIDADE DA CONTRATAÇÃO. INEXISTÊNCIA/NULIDADE DO NEGÓCIO JURÍDICO, REPETIÇÃO DE INDÉBITO E CONDENÇÃO DA PARTE REQUERIDA AO PAGAMENTO DE INDENIZAÇÃO POR DANOS MORAIS PELO BANCO AFASTADAS. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PROVIMENTO nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (TJ-CE - Apelação Cível: 0202038-03.2022.8.06.0029 Acopiara, Relator: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 20/09/2023, Data de Publicação: 20/09/2023) &#160; DIREITO DO CONSUMIDOR. DIREITO CIVIL E PROCESSUAL CIVIL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. RESERVA DE MARGEM CONSIGNADA. <u>CONTRATO ELETRÔNICO. AUTORIZAÇÃO MEDIANTE BIOMETRIA FACIAL. PESSOA IDOSA E ALFABETIZADA.</u> COMPROVAÇÃO DE VALOR CREDITADO EM CONTA DE TITULARIDADE DA APELANTE. REGULARIDADE DO CONTRATO. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. A apelante alega, em suas razões recursais, que os contratos assinados eletronicamente não teriam contado com a sua anuência, em razão de ser idosa e não deter conhecimento do que se trata o contrato de empréstimo consignado. No entanto, os argumentos não prosperam, pois se percebe que o banco apelado trouxe prova da existência do contrato na modalidade eletrônica, colacionando vasta documentação em sua peça contestatória, que comprova a validade dos empréstimos. No caso, a contratação do empréstimo fora realizada pela apelante por meio eletrônico, mediante leitura da biometria facial da consumidora e de confirmações através de tokens e links de validação (fls. 142/144; 149; 154/155; 159; 166/168), afastando a hipótese alegada pela recorrente de contratação mediante fraude de terceiros. A instituição financeira, por sua vez, colacionou cópias de transferências bancárias (fl. 171/172) e dos contratos de empréstimos assinados eletronicamente (fls. 145/156;159/168), bem como RG e CPF (fls. 157/158; 169/170) e biometria facial (fls. 116/222). Os documentos colacionados pelo apelado não demonstram ilegalidade nas tratativas contratuais. Tem-se que a autora manifestou seu pleno consentimento em relação às cláusulas presentes no contrato, não sendo crível que, após ter seguido todos os passos para validação e confirmação da transação, como tokens e links (fls. 142/144; 149; 154/155; 159; 166/168), a apelante não tenha tomado conhecimento de que estava formalizando contrato de empréstimo consignado, até mesmo porque não é necessário vasto conhecimento tecnológico para a sua pactuação.

Processo	0200038-24.2024.8.06.0073
	Dessarte, entende-se pela validade do negócio jurídico celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, do seu ônus probante acerca de fato impeditivo, modificativo ou extintivo do direito autoral (art. 373, II, CPC), produzindo prova pertinente à regularidade da contratação. Ante a regularidade dos descontos nos proventos de aposentadoria da parte recorrente, não há que falar na ocorrência de ato ilícito por parte do recorrido e, por consequência, em dano moral capaz de ensejar o pagamento de indenização, nos termos do artigo 5º, inciso X, da Constituição Federal. Recurso conhecido e desprovido. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (TJ-CE - Apelação Cível: 0230355-95.2022.8.06.0001 Fortaleza, Relator: JOSÉ RICARDO VIDAL PATROCÍNIO, Data de Julgamento: 02/08/2023, 1ª Câmara Direito Privado, Data de Publicação: 02/08/2023)</p><p style="text-align: justify;"> #160;</p><p style="text-align: justify;"> CONSUMIDOR E PROCESSUAL CÍVEL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. CARTÃO DE CRÉDITO CONSIGNADO. ASSINATURA COM AUTENTICAÇÃO ELETRÔNICA E RECONHECIMENTO BIOMÉTRICO (SELFIE). VALIDADE. COMPROVAÇÃO DA REGULARIDADE DA AVENÇA PELA INSTITUIÇÃO FINANCEIRA APELANTE. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. O cerne da controvérsia reside em analisar a existência de relação jurídica entre as partes, no que diz respeito ao cartão de crédito consignado (Contrato n. 17016597), bem como analisar se, constatada a irregularidade da operação, a instituição financeira apelante responde pelos prejuízos (materiais e/ou morais) supostamente experimentados pelo autor apelado. 2. Nesse contexto, observa-se que o banco apelante se desincumbiu do ônus de comprovar a regularidade do Contrato n. 17016597, nos moldes do art. 373, II, do CPC e art. 14, § 3º, I, do CDC, mediante a apresentação do Termo de Adesão do Cartão de Crédito Consignado, da Cédula de Crédito Bancário (CCB) e do Termo de Consentimento Esclarecido (TCE), todos assinados eletronicamente pelo requerente recorrido (IP 177.56.191.243), em 15.06.2021, na cidade de Lavras da Mangabeira, onde reside, acompanhados do comprovante de transferência eletrônica do saque solicitado (TED), do seu documento de identificação (RG), válido e com foto, e da sua selfie, a qual é semelhante à fotografia encontrada no seu RG. 3. Desse modo, demonstrada a regularidade da contratação do cartão de crédito (Contrato n. 17016597) livremente pactuado entre as partes, não há que se falar em repetição do indébito nem em dano moral indenizável, pois ausentes os pressupostos da responsabilidade civil, visto que o banco apelante apenas efetuou as cobranças amparado no exercício regular do seu direito. 4. Recurso conhecido e provido para declarar a existência de relação jurídica entre as partes, no que diz respeito à regularidade do Contrato de Cartão de Crédito Consignado n. 17016597 e, via de consequência, afastar a condenação do banco recorrente ao pagamento dos danos materiais e morais fixados na sentença. ACÓRDÃO: Vistos, relatados e discutidos estes autos em que litigam as partes acima nominadas, acordam os Desembargadores integrantes da e. 3ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e dar provimento ao recurso interposto, nos termos do voto da eminente Relatora. Fortaleza, data e hora da assinatura digital. Jane Ruth Maia de Queiroga Desembargadora Presidente e Relatora (TJ-CE - AC: 00509490320218060114 Lavras da Mangabeira, Relator: JANE RUTH MAIA DE QUEIROGA, Data de Julgamento: 26/04/2023, 3ª Câmara Direito Privado, Data de Publicação: 26/04/2023)</p><p style="text-align: justify;"> #160;</p><p style="text-align: justify;"> Além disso, em análise detida ao demonstrativo do INSS, colacionado no Id. 27356876/6, percebe-se que o contrato de cartão de crédito consignado discutido nessa ação de nº 0064441292, foi incluído para desconto em 05 de setembro de 2023 e excluído dias depois, em 21 de setembro daquele mesmo ano, ou seja, antes mesmo de qualquer desconto no benefício previdenciário do autor, conforme documentação acostada aos autos.</p><p style="text-align: justify;"> Ainda, sobre a matéria, a jurisprudência do STJ (Súmula nº 532), consolidou entendimento de que o envio de cartão de crédito sem solicitação caracteriza ato ilícito, mas não gera dano moral presumido, devendo este comprovar a ocorrência de algum fato excepcional que implique em ofensa ao direito de personalidade, como o desconto indevido no seu benefício previdenciário ou conta-corrente, ou ainda, a inscrição de seu nome em cadastro restritivo por conta de débito decorrente de anuidade de cartão de crédito enviado sem anuência. Vejamos:</p><p style="text-align: justify;"> #160;</p><p style="text-align: justify;"> AGRAVO INTERNO NO RECURSO ESPECIAL. DIREITO DO CONSUMIDOR. CARTÃO DE CRÉDITO. ENVIO NÃO SOLICITADO. DANO MORAL. INTERPRETAÇÃO TEMPERADA

Processo	0200038-24.2024.8.06.0073
	DA SÚMULA 532/STJ. NECESSÁRIA DEMONSTRAÇÃO DE FATO EXTRAORDINÁRIO QUE TENHA CAUSADO MAIS DO QUE UM MERO ÁBORRECIMENTO AO CONSUMIDOR . SÚMULAS 7 E 83/STJ. AGRAVO INTERNO DESPROVIDO. (STJ. AgInt no REsp nº 1.781.345/RS. Rel. Min. Paulo de Tarso Sanseverino. Terceira Turma. DJe: 27/10/2020)</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> Desse modo, ainda que se considerasse inválido o referido contrato, o que não é o caso dos autos, evidenciada a ausência de descontos no benefício previdenciário não há que se falar em restituição de valores, bem como não se vislumbra a caracterização de danos morais.</p><p style="text-align: justify;"> E é assim que, por todo o exposto conheço do recurso, por próprio e tempestivo, mas para negar -lhe provimento mantendo inalterada a sentença atacada.</p><p style="text-align: justify;"> Em decorrência da sucumbência recursal, majoro os honorários advocatícios devidos pela parte promovente/apelante, de 10% (dez por cento) para 11% (onze por cento), nos termos do artigo 85, § 11, do Código de Processo Civil/2015, ficando, contudo, suspensa a exigibilidade, por ser a autora/recorrente beneficiária da justiça gratuita (Art. 98, § 3º, do CPC).</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> É como voto.</p><p> Fortaleza-CE, 10 de setembro de 2025.</p><p> &#160;</p><p> Juiz Convocado Eduardo de Castro Neto </p><p> Relator</p><p> &#160;</p><p> &#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>
Processo	0624685-09.2025.8.06.0000
Número de ordem	108
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Guarda
Polo ativo	FRANCISCO RUBENS CAVALCANTE DA SILVA
Advogado(s) - Polo ativo	Não informado
Polo passivo	INGRID ARAUJO DE SOUZA
Advogado(s) - Polo passivo	LYCYA REJANE MOREIRA NUNES - (CE48607-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0624685-09.2025.8.06.0000
	align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em não conhecer do presente recurso, diante da manifesta intempestividade, nos termos do voto do Relator. </p><p style="line-height: 200%; orphans: 2; widows: 2;">

</p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2;"> Fortaleza, data e hora do sistema.</p><p style="line-height: 200%; orphans: 2; widows: 2;">

</p><p style="line-height: 200%; orphans: 2; widows: 2;" align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="font-variant: normal; letter-spacing: normal; font-style: normal; font-weight: normal; line-height: 200%; orphans: 2; widows: 2;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 200%; orphans: 2; widows: 2;" align="center">
</p><p style="line-height: 200%; orphans: 2; widows: 2;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 200%; orphans: 2; widows: 2;" align="center"> Re </p><p style="font-variant: normal; color: #000000;"> RELATÓRIO </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; text-indent: 3.1cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.1cm; margin-bottom: 0cm;" align="justify"> Vistos e examinados estes autos. </p><p style="line-height: 200%; text-indent: 3.1cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.1cm; margin-bottom: 0cm;" align="justify"> Trata a presente espécie recursal de Agravado de Instrumento, manejado por Francisco Rubens Cavalcante da Silva contra a r. decisão interlocutória do Juízo da Vara Única da Comarca de Jaguaruana (Processo n. 0200115-59.2023.8.06.0108), que nos autos da Ação Revisional de Alimentos e Guarda, que deferiu o pedido de suspensão temporária de visitas ao filho menor requeridos pela autora, o que fez nos seguintes termos: </p><p style="line-height: 150%; text-indent: 3.1cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm;" align="justify">Isso posto, considerando que há que se perseguir o que melhor proporcione e garanta o bem estar e os interesses da criança, DEFIRO A SUSPENSÃO TEMPORÁRIA DA VISITA do genitor Francisco Rubens Cavalcante da Silva a criança RUAN ARAÚJO CAVALCANTE, concedendo o pedido de antecipação da tutela formulado pela genitora. Permanecem as outras deliberações da decisão de fls. 46/47, quanto aos alimentos provisórios. (...)</p><p style="line-height: 150%; text-indent: 3.1cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.1cm; margin-bottom: 0cm;" align="justify">

Processo	0624685-09.2025.8.06.0000
	margin-bottom: 0cm;" align="justify"> É O RELATÓRIO NO ESSENCIAL. </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> De início, observo o teor do inciso III do art. 932 do Código de Processo Civil, in verbis </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin- bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Art. 932. Incumbe ao relator:</p><p style="line-height: 150%; margin-left: 4cm; margin- bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> III – não conhecer de recurso inadmissível, prejudicado ou que não tenha impugnado especificamente os fundamentos da decisão recorrida" </p><p style="line-height: 150%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Segundo hei de expor nas linhas subsequentes, o caso veiculado nestes autos subsume-se perfeitamente na hipótese legal do transcrito dispositivo, porquanto manifestamente intempestivo o recurso de agravo de instrumento processado neste feito. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> É que, da análise detalhada dos autos, nota-se que a intimação para conhecimento e cumprimento da decisão hostilizada operou-se mediante intimação do advogado constituído nos autos do promovido/agravante, conforme certidão de ID 151147962, datada em 11 de outubro de 2025. </p><p style="line-height: 100%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 100%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> Segue o trecho pertinente da certidão: </p><p style="line-height: 100%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 100%; text- indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAIQAAAFDCAYAAAAK6h UPAAAACXBIWXMAAA7DAAAOwwHHb6hkAAAgAEIEQVR4nOydd1RUV9fGH2YQsMWK goKAoNgFHURFQbEjdoldAYOa+AVLLDHGgjH2rrGAJSZqUGMDNGqCDbulSvDAUGDob ZDp+/tjhjbcGQaiQfOe31quhcO95+6z9znnrrnMPI8BEREYDAaDwWAwKhFeZQfAYDAYD AaDwTYkDAaDwWAwKh22IWEwGAWGg1HpsA0Jg8FgMBiMSodtSBgMBoPBYFQ6bEPC YDAYDAajOmEbEgaDwWAwGJUO25AwGAWGg8GodNiGhMFgMBgMRqXDNiQMBBoPBY DAqHbYhYTAYDAaDUemwDQmDwWAwGlxKh21IGAwGg8FgVDPsQ8JgMBgMBqPSYRs SBBoPYDAYIQ7bkDAYDAaDwah0DCs7AAbjkyTvKUIP3YBBh1aQxfHRe7gTalZ2TJ8UeXg aegg3DDqglSwO/N7D4fS/lkA2hhiMErAnJlxPCrlyDHlIBwFA+vAyHrUQJ9Nyxg/gb9VQc1Auhv 8E5aGZF9WCqUf7kYYs2TpA9x+aEBasQdw8G/gXqlE4h3/6EEcuXtf3UMMRjaYBsSxieAE onnAjC8U1siXF0haOUer7URyFACkktz0aFpK3QUCCBQ/+s8NRjJ+eGY1a4pWnVUv+7QD gLPhTidKMPrvZPQWSCAoF0zWDRpAUeBAIKusxGW+wqbb/XF6kdySM75o3XTVqpzOzp A4O6LLTcyoFRHZNTZB64x67E2yhqjhzQFvyDSIEtYNVIA+3YucOvSB079ZuG3Z+KS3ZG cg3/rpmglEEAg6AgHgTt8t9xAhhKA5BLmdigWt0AAQeepCE5WajnfCYKONTF4YRgSIBKEz xJg0uG8oszF78Dw3isAiBEyxR62bVRtduzYFcOWnlNQCYhDpqHT/51BiSgVRbnQlX91QLj 6nTOs+6/HU0WxqiWeQ8DwTmgrclWroBWcwnYiouAko87wcY3B+rVRsB49BE2LEohLq0Z CYN8OLm5d0MaxH2b99gwaGdRZH61jongKw2ehXbFjHNoJ4LnwNBj1jal3IzjW6f9wrJMY AJBcxXfO1ui//imKUqA7b/9oDDEY/0WlwflkcfslA97T9r6KE/1Qs41WiCwp2lnRSQ+O4Xshv 5MuZon5Z+mydZD6efCX2TS5VntyWHBbZKpX5Fcm0Nt3TdSnKLgQk9phYuAft2Tuf4pb7l afoBUV1RQ8qXvqGvzcXQkRX2w6AxNcRpBEwY40dztEtVrinjaN6w9Vt1k9IVREQyivvd9l0 6zqer+cVjO0XeVsPpgLo7iuRL9F3X5jTuSAopxGdpil3xuDNQJOJ9E2mqhwJ78L2XT6mWNL TYyfkYddSz40liyqMjY5rShBPqQPL/piXOHen7SBnlHRIDTSecoOlHFs+FrvxrzYU8hnZ42JP n1kfqHObQtQUcsp92lIRnejMFCcaMWEAOc29ThJ1nuP3DaOW/VbRTVUCSRb3O/m2da T5JRJIQuujdUwUP//0ZLlufkzmZrV3oEW3JZpPz/vCI1pOoFO5Gv+gkh0Zgo5jZhAA5zmUI EKKpA3fccQg/EfhD0hYXzkKPE25Che9ZoFv9bqh9o1u+L70xfxY8/q+jejkEL0Tg7DKkYvIlG HBm7fyMbHG/g9XPX0lFPMQUQ6+mL5WGJuc3XMeIgDKhJM4+LQX5s90RI0eABiiybCI8Kt 3HL9GSL533sAN387siBu/hyNP61E6qG0JpSiHKVZRxlklrSkZqagsRXz/DWwBJWpmlUa WXnnzMXb0Nw9FUvzPJrrf5TRE10/f40Lv7YE9VVJ+FgpCN8l4+F9dk9OK9KIE4eflpe82fC WZVAGDYZhqV+9XD81wgdMZauT3IRSEV4JzdEhYYHMnHmYCCqfZdjrpVZ7FF1pmJ5q+

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	BVcpIIlRKJ4GKzIwJL+8MfLloDDXwa1AUrzbwxUhtT3sKXXI5AtO4E5RTNF4XA4/2NwL5v/O Urlu4XzHqDG8+NhikS6CoOauEAaFYKA6H64ENYDXLSaw+GUNNZL5n+QEvFu4bwHOK BCuTRsG9MZv3qUR3qSM0Zv7Mg3IwxO572AS8dzOP9rqHKR9IKOMpU+RmluoMHhcN4 T+IaEw+FwOBxOicPfuOdWOBwOh1Pi8A0Jh8PhcDicEodvSDgcDofD4ZQ4fEPC4XA4HA6 nxOEBeg6Hw+FwOCUO35BwOBwOh8MpcfiGhMPhcDgcTonDNyQcDofD4XBKHL4h4XA4 HA6HU+LwDQmHw+FwOJwSh29IOBwOh8PhlDh8Q8LhcDgcDqfE4RsSDofD4XA4JQ7fkH A4HA6Hwylx+IaEw+FwOBxOicM3JBwOh8PhcEocviHhcDgcDodT4vANCYfD4XA4nBKHB0 g4HA6Hw+GUOHxDwuFwOBwOp8ThGxIOh8PhcDglDt+QcDgcDofDKXH4h0TD4XA4HE6 JwzckHA6Hw+FwShy+IeFwOBwOh1Pi8A0Jh8PhcDicEodvSDgcDofD4ZQ4fEPC4XA4HA6 nxOEBeg6Hw+FwOCUO35BwOBwOh8MpcfiGhMPhcDgcTonDNyQcDofD4XBKHL4h4XA4 HA6HU+LwDQmHw+FwOJwSh29IOBwOh8PhlDj/+RsSxSXM8x+A8BRNSfekmNEg9fQSD OwUiMCAzgjZfAN5Ig5VXMb8zuMQKXuX/bOR9J0Y0n0F/IYXz+UUI+ej87hIFD7UXFzdFIL O/h0Q4BelUT8nIeAJvkoZvXugPbt/NF7/h8QawDkXsWmkM7w///27T0q6jKP4/ib34zDZRB FuTgoqQmSuVaW5qYSZmlm2E1LM5dAN8s6ZW53LfVluSKbolsWKSJpFt5aiotkWZaVsZtJ Wl6yJUZDYmAEbhwhrr/ZP0bFuFR7anfU/b7+4vB7vs/zfH8zh/nM8ztcl8Cl0cm8/Lm1ZRq3k XWTr+bBonPx5gohxIXj/A8kOLHWWjh5Jo84sJh+wNx09iegSnNtLVa3m3pTFY2qm0ZTJRa X96q9toLpg7q1UaqTI3YrfU0ORsxVVRwltmprahuCQOC6YfzJxZVrVSZWRE7ajHXGfJR3G p9dj2NO1g0bwwGL92Bzsl5hH+90y217Ue5Ka5phqLw0ITXQP204s4LJhMFhxtJIWxVplodD uoN9dhU388I9VcRb2j5Z5UWU8POLtXBxaTccvpyU/3abdQvDs7dNeh+nUz6r7JPV1Tbic VixW15I9NFaZaLRbqW9S212/DXczNdUWHM4m6hrstLRqwmRpw+Q2rmXuujBSiz9gV/F8 Oq+Zx7pjDRQvSuXYII3s/HA94/fNJ+2Joxr57luLJXiD3ZRPL8za+at45gK4OLl6sd4/qNKGu wd7EsllcRvQuvrDfyWXEdySJmxljPDBNZDRwifU8CmZA1b7p/M89/1olffSczInfjix1k4k+/Ckr GL+Ze6+XxJlisH72bjkM1t6nMn7CB5+Cs4Y3vR+7rLqSgKJGPXfC51f86SxJUM3r2RIZtTm LG2DkOEIUNHwplTslkZ3TZx3+gc/PqEobEdpSzqcQrW341tQztj+2na9OlofYfSfjdwV8kqlh4 P5dYNLzM89KwBbiO5M6ewzBhJD78ajCd6MRQVU9GTTE3dS0hPqGgYQZrGdMZHns6d 9WY6bzQ5fn0I09g4WhbF4wXrmcpbPHpvGI+FGHCV1zM0dRNPW+cw/tOZ7F51Pbrvs5k2r Ya03Cv5W1lqe72TMyR1I+nXFHLfqHV4+oah1vyL+rhriW4w01BxGPXPaomg1qRx+xbPq ezowLzpQt444WRFCYP5xVnLL363E7+gvA26y+/JepMWnYbc5k5ZrNgYB741Rg50Wsoq CaKnpK6t4QelJBw5BUNqaP53SrGsMUMrfquDgYsAcSqHhQ7Qf4+luLuPH5HigalQlju5Oz qWzDA5Is1V2Md2ggikfFAzgOvMC894fz6C1Gdv+X3rNCCCG8LoAtktNUGqqdjFycT8HWP AqXDmNfcQkNJS+SUTOtbe/IU7z1fi5xeP6jehuAMown8ovISjK0U9ZAtXmki/ML2JpXyNjh+ ygu8R7vq82xTN+cT97bK4j/opDdJzse22baqit+3/kqubV9dGnMcS5/B+Y8t1R8kqlptSKHy vgKJNDzFIAVylrErdQ8LKBdIylsKRX8KzmQdaTdxM7PTN5Oe9zYr4Ljyc3cgnGc9RNjmPn QWF7Np6K/sX/ZWYVMVMY9M832NXs5mheAY4Jk7C9ksqehJVkZ2SQvSKekmczOeAC9W QsM7YUULDhD3j2BjJrSx75qydyYscn1AP4D+WxrUUUvL+Z2w+ls/pLF6Aw7lI8irKnt7v+Z2c OPRyUrFqOKaWQ9wqK2PTQILyriJ1TwlrSzPlyF5BfMmzZB5wtfQZEEIM71AUtZLiJ+fwYfw TJEXXU+cMoUsAgEKXLS011slilyhd6iCwInMk3M+JP6JJC5y7mP5M/9gTNosYi6o2C6EE Oem8/ZPrWqzYusUTNCZ3ygEdQvI8ILJfFnScb2nAmtwAvbvjDj7TaS7AnQZyK9255GeF RPh/UeQAK3Yghzpx4y4LoFnSYBZPHsKSTHk+FlaEB+hRwqPpFQioevT+Lpx0PLYNnQ 7N4BT+/OCthJNATXE8BaUOrk/QAeAqP469782EKaCEDmRadBG4jmKsNFO7ZJFHYA4 ho1sNb8STrR3U+j1/ricNo6Vu4id2MOBtqMHEuso5bh+LJOv+gt5Ow8SU6zltqw+ID9dibl2D Yu9kxM3bCQePCgrOUQHgl9QEEHhPYjUgl9gAP6qG5cKmuHlGBAMaC4irq+Vt753EaW EYzBogQ7WdwE6ABflx+30vTkMBYXQgQPwtmqk0lzLmsVHvXVxw2jdKs2HeHVMvmv0T 7HlhRvppu4iULGfeVRIO+Iapw86NfRVZiWvQf/UFi64sQvFLPsTrzqGMnNbJm8dPMER5wY +/P0MRvVs+/4RQgjx652nJyQWNtw9gmc+dYBaT4O9M12DHWxPX4AxMZcd725j9dS+oHr oFNcf3Vd7OO4C1byXvWUuUAI9K/HbHaBeoKwv6nCa3d+rM/45SAQPzrzXJlvuabKjfytpO +wEhi7g7e3bYab9mpKr9WN/inxrbSadBI9K8uo8wOuE1UnuhKZETLh6GufxzBBz+jzAFqdS n7j7IBG0tMrxCGPwSOTnZLBxnIDQsrNXMTellzGx/6Sb3EAtkMlfKmPIVanz/Tdv+fwS/M oDr6DSdE6YmN6ETL0YV7KySF74TgMoWGEKYCf30++kdzGfZTWqND8FZ8dimBAXKdfs H7L9f5xwRz8rAwHKTWl+/G2GkOvkkE8/FIOODKLGWclJZsrf24jpA17R5y+6+ganVE+mg B7SVc1ruM0v12wMqe0h+lu6w/riNZTLsnl/4rilg1sQ9a/Ai5OoVHxkej02rRKH4oGi2Kn99PdC mEEOLXOE9PSEK4/s5BPD/zBm7qZsY0egmLO+twJo4IPW0St23vSfdwDQZLFTVXPsqiK 6Yx6Zo36Rapp1GrRavtyrikBNbPGcWoruFEaSLQoOOQduor3V1alu06jqSE9cwZNYqu4VF oljSgu4rEsemkTbqN7T27E64xYKmqbH/bHYx1Hcxk/KMeMt5+it+dekU0fVNYePNEHrjuDvr rv6fiykXkxbUEEU3g2aSNSuLeUUX4B2iw6gygHcQjSxNjMRXPsl0/7oArzM1q5zHTjzFswM ftSZiezPBCHYoawR3LshmkBeWaKQwvv4WypzfQQ9SE8chSEINmET9Sj787gBFzszAo7/ zsq+UXWM5rU67jxWYPUfcsJytOw+u/YP1TnTJ4dhqjku5IRJE/ARor3IYfYWliCrPiR6L3dxM wYi5ZhpZA0rQtjYXbk+lybDZj3wQ0/UjJeZ2kx25iwqyTLrYzXe2u1k7QWHbAwwZXtmFY7P H4h2aQs7rD/HQtQB23v96PbWjp3Jtllevl9/Eg7al7Hzm8p/tWwghx/n5/F08BX9PGCrLuPY yW706x3aYbJyl28na7eB5CmXE9CYz/SEliZ+msXNAf/Trf40x0GWL/qEOxfz0WtjhqaTWUc d0fQr2dn5GHBB8Pd+ANGs4aoiyPPeuQnhBDCI87rQPKLNO3mudtn825gX7rWHMD/ciavP XwF51leofFbDtdGM6C3v693loQQvqFhR9IAHBhNZ/Arg+ne5CmWghhBDnmv+TQCKEE EKlc9I5+I82QgghhLiQSCARQgghhM9JIBFCCCCGEz0kgEUIIIYTPSSARQgghhM9JIBFCCC GEz0kgEUIIIYTPSSARQgghhM9JIBFCCCCGEz0kgEUIIIYTPSSARQgghhM9JIBFCCCCGEz 0kgEUIIIYTPSSARQgghhM9JIBFCCCCGEz0kgEUIIIYTP/RvutEzDog65ugAAAABJRu5ErkJ ggg==" alt="" /></p><p style="line-height: 100%; text-indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 100%; text- indent: 3cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.1cm; margin-bottom: 0cm; background: transparent;" align="justify"> <span

Processo	0624685-09.2025.8.06.0000
	style="font-size: small;"/>Assim sendo, conforme certidão de publicação juntada em 06 de novembro de 2024 (quarta-feira), iniciou-se a contagem do prazo para a interposição do recurso no primeiro dia útil seguinte, ou seja, no dia 07 de novembro de 2024 (quinta-feira). align="justify">¶ align="justify">Ocorre que, embora o prazo final para a interposição do presente agravo de instrumento expirasse na data de 29 de novembro de 2024 (sexta-feira), a parte agravante somente protocolou o recurso em 07 de maio de 2025, ou seja, total intempestividade. align="justify">¶ align="justify">E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados, não conheço do recurso de agravo de instrumento, porque manifestamente intempestivo. align="justify">¶ align="justify">¶ align="justify">É como voto. align="justify">¶ align="center">EDUARDO DE CASTRO NETO align="center">Juiz Convocado Relator ¶ ¶ ¶
Processo	0621493-68.2025.8.06.0000
Número de ordem	109
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Revisão
Polo ativo	M. R. M. D. R. M.
Advogado(s) - Polo ativo	LUIZ FERNANDO FIUZA VIEIRA - (CE23881-A) HENRICO PERSEU BENICIO RODRIGUES - (CE22845) LUCAS PINTO BARBOSA - (CE24621-A)
Polo passivo	LUIZ CARLOS DE ARAUJO E MELO
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0621493-68.2025.8.06.0000
Acórdão	<p style="line-height: 200%; margin-bottom: 0cm; page-break-before: always;" align="justify"> EMENTA: DIREITO DE FAMÍLIA. AGRAVO DE INSTRUMENTO. AÇÃO REVISIONAL DE ALIMENTOS. CUMULAÇÃO DE PEDIDOS DE COBRANÇA DE ALIMENTOS PRETÉRITOS E DE CONSTRIÇÃO PATRIMONIAL. IMPOSSIBILIDADE. EXISTÊNCIA DE RITO PRÓPRIO PARA EXECUÇÃO DE ALIMENTOS E PARTILHA DE BENS. RECURSO PARCIALMENTE CONHECIDO E DESPROVIDO. DECISÃO MANTIDA. <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> I. CASO EM EXAME <p style="line-height: 200%; margin-left: 0.64cm; margin-bottom: 0cm;" align="justify"> 1. Agravo de Instrumento interposto por D.R.M. e M.R.M., representados por sua genitora, contra decisão da 15ª Vara de Família da Comarca de Fortaleza que, nos autos da Ação Revisional de Alimentos c/c Tutela Provisória, indeferiu pedidos de cumulação relativos a alimentos em atraso, constrição patrimonial e divisão de bens, restringindo a demanda à majoração da pensão. <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> II. QUESTÃO EM DISCUSSÃO <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 2. Há duas questões em discussão: (i) definir se é cabível a cumulação, em ação revisional de alimentos, de pedidos referentes à cobrança de prestações pretéritas inadimplidas; (ii) estabelecer se é admissível, na mesma ação, pedido de constrição ou partilha patrimonial. <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> III. RAZÕES DE DECIDIR <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 3. O Código de Processo Civil, em seu art. 327, admite a cumulação de pedidos em regra geral, mas essa faculdade não prevalece quando há procedimento especial regulando determinada matéria. <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 4. A cobrança de alimentos pretéritos deve seguir o regime próprio de cumprimento de sentença previsto nos arts. 528 e seguintes do CPC, que estabelecem medidas específicas como intimação em três dias, prisão civil e outras técnicas executivas, inviabilizando sua cumulação em ação revisional. <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 5. A constrição e a divisão patrimonial não guardam pertinência com o objeto da revisão de alimentos, devendo ser manejadas por ações autônomas, como partilha ou sobrepartilha, sob pena de tumulto processual e violação ao devido procedimento. <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 6. O pedido de tutela provisória recursal resta prejudicado com a apreciação do mérito do agravo, conforme jurisprudência pacífica deste Tribunal. <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 7. A análise de majoração do valor dos alimentos não pode ser conhecida pelo Tribunal, sob pena de supressão de instância, pois o juízo de origem ainda não se manifestou sobre o tema. <p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> IV. DISPOSITIVO E TESE

Processo	0621493-68.2025.8.06.0000
	bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> 8. Recurso parcialmente conhecido e desprovido. Decisão interlocutória mantida. </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> Tese de julgamento : 1. A cobrança de alimentos pretéritos deve observar o procedimento de cumprimento de sentença previsto no CPC, não sendo admissível sua cumulação em ação revisional. 2. A revisão de alimentos possui objeto restrito à alteração da obrigação alimentar, não comportando pedido incidental de constrição ou partilha patrimonial. 3. A cumulação de pedidos em ação revisional de alimentos deve respeitar os limites impostos pelo rito especial aplicável, sob pena de violação à regularidade processual. </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">

</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados : CPC, arts. 327, 489, §1º, 528, 531. </p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">
 Jurisprudência relevante citada : TJCE, Apelação Cível nº 0059934-29.2009.8.06.0001, Rel. Des. Francisco Mauro Ferreira Liberato, j. 03.04.2024; TJCE, Apelação Cível nº 0914442-13.2014.8.06.0001, Rel. Desa. Cleide Alves de Aguiar, j. 07.08.2024. </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer parcialmente do presente recurso, por próprio e tempestivo, para desprover o agravo, nos termos do voto do Relator. </p><p style="line-height: 200%; margin-bottom: 0cm;">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify"> Fortaleza, data e hora do sistema. </p><p style="line-height: 200%; margin-bottom: 0cm;">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> Juiz Convocado Relator </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Vistos e examinados estes autos. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Trata a presente espécie recursal de Agravo de

Processo	0621493-68.2025.8.06.0000
	Instrumento, manejado por D.R.M e M.R.M, representados por sua genitora, Thaiza Garcia Ribeiro, contra a r. decisão interlocutória do Juízo da 15ª Vara de Família da Comarca de Fortaleza (Processo n. 0204668-14.2025.8.06.0001), que nos autos da Ação Revisional de Alimentos c/c Tutela Provisória de Urgência, que indeferiu os alimentos compensatórios requeridos pela autora, o que fez nos seguintes termos: Trata-se de Ação Revisional de Alimentos proposta por Davi Ribeiro Melo e Mariana Ribeiro Melo, representados por Thaiza Garcia Ribeiro, em face de Luiz Carlos de Araújo e Melo, já qualificados nos autos, cujo processamento há de seguir o rito especial previsto na Lei nº 5.478/68, em razão do disposto em seu art. 13. em que os autores pugnam pela antecipação de tutela, apreciação essa que se dará em momento oportuno, após o aperfeiçoamento da presente relação processual. Por oportuno, convém esclarecer que a presente ação tratará tão somente das questões relativas aos alimentos dos menores, tendo como objeto específico a pretensão de majoração da obrigação alimentar originária. Dessa forma, qualquer postulação referente à cobrança de alimentos anteriormente acordados e homologados, porém eventualmente inadimplidos, deverá ocorrer por meio de ação de cumprimento de sentença, nos termos do art. 531 do CPC, ficando o pedido restrito à sentença paradigma. Em relação a pedidos atinentes ao patrimônio, ou mesmo de constrição patrimonial, devem estes ser pleiteados em sede de ação de partilha ou mesmo em processo que almeje o cumprimento de obrigação alimentícia inadimplida. Inicialmente, sustenta que Foram carreados aos autos novos elementos que demonstram cabalmente que o demandado possui plena capacidade financeira de arcar com uma pensão alimentícia digna a seus filhos, mormente quando se considera seu poderio econômico oriundo das atividades de médico e empresário. (...) É assentado tanto na doutrina quanto na jurisprudência que a pensão alimentícia devida do genitor para os filhos deve ser suficiente não só para a aquisição de comida, mas, igualmente, para o custeio de escola, de curso de línguas, de plano de saúde, de material escolar, de remédios, de lazer, entre outros. Nesse ponto, frisa-se que a Sra. Thaiza não possui genitores vivos, eis que ambos cometeram suicídio. Além disso, sendo natural do Estado do Goiás, somente veio a residir em Fortaleza/CE ao começo do relacionamento com o réu, por imposição deste. Não possui parentes capazes de lhe assistir na criação de seus dois filhos, portanto. Justamente por isso, a genitora dos demandantes não consegue desenvolver uma atividade remunerada, na medida em que tem que cuidar das duas crianças. O valor atualmente pago não é o suficiente para a contratação de uma babá ou para matrícula em escola de período integral. Em seguida, alega que No ponto é válida a lembrança de que, de acordo com a regra da adstrição ou congruência, cabe à parte autora (e não ao Juízo) delimitar o objeto da demanda. Se a parte, no gozo de seu direito potestativo, optou pelo procedimento comum, assim a demanda deve tramitar. A despeito disso, substituindo a vontade dos autores, o douto Juízo a quo, no bojo da decisão recorrida, determinou, sem qualquer requerimento nesse sentido, que o feito fosse convertido ao rito especial da Lei nº 5.478 de 1986, excluindo da demanda tudo o que não fosse exclusivamente o pedido revisional: (...)

Processo	0621493-68.2025.8.06.0000
	small;">Note-se que há manifesta recusa à prestação jurisdicional, eis que o douto Juízo invoca argumento sem respaldo jurídico para justificar a não apreciação dos pedidos autorais. De fato, a par do permissivo do art. 327, §2º, do CPC, a jurisprudência é pacífica a admitir a cumulação desses pedidos em um só processo". &#160; Complementa, ao aduzir que No ponto, sobreleva ressaltar que, na esteira da orientação jurisdicional, o ato judicial que posterga a análise de tutelas provisórias para momento posterior à formação do contraditório possui natureza decisório. E, assim sendo, é recorrível por agravo de instrumento. À luz do que já foi exposto no tópico antecedente, o Juízo não admitiu a cumulação de pedidos, excluindo tudo o que não fosse exclusivamente o pedido revisional de alimentos. Ocorre que, nem mesmo o pedido revisional de alimentos chegou a ser apreciado pelo douto Juízo. Em vez de deferir ou indeferir as tutelas provisórias requeridas pelos ora recorrente no petitório inaugural, o douto Juízo limitou-se a afirmar que "apreciação essa que se dará em momento oportuno, após o aperfeiçoamento da presente relação processual". (...) Em relação à exposição desses fundamentos, o §1º desse mesmo dispositivo prevê situações em que não se pode ser considerada devidamente fundamentada uma decisão. Entre essas, o CPC prevê que não é fundamentada a decisão que não enfrentar todos os argumentos deduzidos no processo capazes de, em tese, infirmar a conclusão adotada pelo julgador. De modo ainda mais gravoso, o que se extrai da decisão agravada é, simplesmente, não há fundamentação". &#160; Adiante, sustenta que "(...) Em atenção aos requisitos processuais, observa-se que a probabilidade do direito é visualizada quando se considera as necessidades das crianças (o valor dos alimentos continua exatamente R\$ 4.400,00 desde o ano de 2016) e a capacidade do agravado (que é médico e empresário, tendo firmado no final de 2024 contratos milionários com a Administração Pública). No que tange ao perigo de dano, além da inequívoca insuficiência do valor atual da pensão alimentícia, há no caso concreto a peculiaridade de que o imóvel onde os alimentandos residem se encontra em vias de ser arrematado em leilão (i.e., se é que já não o foi, na medida em que já foram realizadas sessões de leilão em novembro e em dezembro de 2024). Certo é que o valor de R\$ 4.400,00 já não é suficiente para custear alimentação e educação das duas crianças e muito menos será para possibilitar o aluguel de um novo imóvel caso sejam despejados da atual residência . &#160; Por fim, pleiteia que (a) Em tutela recursal, suspender os efeitos jurídicos emanados da decisão ora recorrida. a fim de possibilitar a cumulação de todos os pedidos no mesmo processo; (b) Ainda em tutela recursal, impor ao réu/agravado: b.1- a obrigação de pagar alimentos no montante de R\$ 10.000,00 (dez mil reais) para cada filho, no total de R\$ 20.000,00 (vinte mil reais), sob pena do pagamento de multa diária no valor de R\$ 1.000,00 (mil reais), a título de astreintes; b.2 - obrigação consistente no pagamento das prestações vencidas do imóvel onde os autores residem, com a expressa ordem de que o demandante garanta o direito de posse e habitação daqueles sobre o bem, sob pena de pagamento de astreintes em valor não inferior a R\$ 4.000,00 (quatro mil reais), a fim de que a multa seja revertida nas despesas necessárias ao aluguel de outra residência, considerando a iminência do despejo; Subsidiariamente, requer-se a imposição direta ao promovido do pagamento de R\$ 4.000,00 (quatro mil reais), para que os autores consigam de imediato alugar outro apartamento, afastando-se, com isso, o risco iminente de despejo. (c) Também em tutela recursal, gravar a matrícula do imóvel que serve de residência para os agravantes com restrição de alienação e indicação da existência desta demanda. Para viabilizar a medida, deve-se considerar que a respectiva matrícula é a de nº 85.351 do Registro de Imóveis da 2ª Zona da Comarca de Fortaleza/CE; (d) Como derradeira tutela recursal, determinar ao Juízo a quo a realização de pesquisa via Sisbajud com base no CPF do recorrido, qual seja, o de nº 434.913.591-04, com a ordem de restrição de ativos financeiros da pessoa natural do réu, no valor de R\$ 859.549,13 (oitocentos e cinquenta e nove mil quinhentos e quarenta e nove reais e treze centavos), pelos motivos acima especificados (e) Determinar

Processo	0621493-68.2025.8.06.0000
	a intimação do agravado, a fim de, querendo, responder a este recurso; e (f) Ao final, submeter a julgamento do órgão colegiado, com o acolhimento e provimento definitivo do presente recurso, de modo que seja ratificada a tutela recursal e anulada a decisão interlocutória agravada". Determinada a intimação da parte agravada para contraminutar o recurso (ID 27266503), a parte se quedou inerte (ID 27266508). Parecer da Procuradoria Geral de Justiça no ID 27266512, manifestando-se pelo conhecimento e desprovemento do recurso. Nesse contexto, os autos vieram-me conclusos. É O RELATÓRIO NO ESSENCIAL. VOTO Antes do estudo dos argumentos deste agravo, compete a este e. Relator exercer em análise perfunctória o Juízo de Admissibilidade, pelo qual declaro que o recurso ora sub examine atende a todos os requisitos intrínsecos e extrínsecos que compõem aquele crivo, levando-me, enfim, a concluir pelo seu conhecimento. A jurisprudência deste egrégio Tribunal é pacificada neste tema, veja-se: APELAÇÃO CÍVEL AÇÃO REVISIONAL DE CONTRATO. CÉDULAS DE CRÉDITO BANCÁRIO. EMPRÉSTIMO PARA CAPITAL DE GIRO. I) PEDIDO DE EFEITO SUSPENSIVO PREJUDICADO EM FACE DO JULGAMENTO DE MÉRITO DO RECURSO. II) PRINCÍPIO DA PACTA SUNT SERVANDA. RELATIVIZAÇÃO. POSSIBILIDADE. PRECEDENTES DO STJ. III) JUROS REMUNERATÓRIOS. AUSENTE COMBATE AOS FUNDAMENTOS ESPECÍFICOS DA SENTENÇA. AFRONTA AO PRINCÍPIO DA DIALETICIDADE RECURSAL. RECURSO NÃO CONHECIDO NESTE PONTO. IV) HONORÁRIOS ADVOCATÍCIOS SUCUMBENCIAIS. PRINCÍPIO DA CAUSALIDADE. BANCO DEMANDADO QUE DEU CAUSA AO AJUIZAMENTO DA AÇÃO. SUCUMBÊNCIA RECÍPROCA. DIVISÃO PROPORCIONAL. ART. 86, CAPUT, DO CPC.

Processo	0621493-68.2025.8.06.0000
	style="color: #000000;"/> V) RECURSO PARCIALMENTE CONHECIDO E, NESTA EXTENSÃO, NÃO PROVIDO. SENTENÇA CONFIRMADA. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.26cm;" align="justify"> (Apelação Cível nº 0059934-29.2009.8.06.0001, Rel. Des. FRANCISCO MAURO FERREIRA LIBÉRATO, 1ª Câmara Direito Privado, data do julgamento: 03/04/2024, data da publicação: 03/04/2024) </p><p style="line-height: 150%; margin-bottom: 0.26cm;" align="justify">

</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.26cm;" align="justify"> PROCESSO CIVIL. APELAÇÕES CÍVEIS. AÇÃO ORDINÁRIA DE RESCISÃO CONTRATUAL C/C PEDIDO LIMINAR DE REÍNTegração DE POSSE E PERDA E DANOS, PEDIDO DE EFEITO SUSPENSIVO PREJUDICADO. GRATUIDADE JUDICIÁRIA. PESSOA JURÍDICA. CONDOMÍNIO EDILÍCIO. COMPROVAÇÃO DE INSUFICIÊNCIA FINANCEIRA. DEFERIMENTO. NULIDADE DE CITAÇÃO. INEXISTÊNCIA. AVISO DE RECEBIMENTO RECEBIDO PELA CÔNJUGE/COMPANHEIRA. REGULARIDADE. PRECEDENTE DO STJ. TESE DE CONEXÃO/CONTINÊNCIA NÃO APRECIADA PELO JUÍZO DE ORIGEM. MATÉRIAS RELEVANTES NÃO ENFRENTADAS NA SENTENÇA. NULIDADE DA SENTENÇA POR VÍCIO DE FUNDAMENTAÇÃO. RETORNO DOS AUTOS À INSTÂNCIA DE ORIGEM. RECURSO DO CONDOMÍNIO APELANTE CONHECIDO E PROVIDO. RECURSO DA PARTE AUTORA CONHECIDO, PORÉM PREJUDICADO. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.26cm;" align="justify"> 01. Prima facie, importa destacar que o pedido de atribuição de efeito suspensivo à apelação resta prejudicado, por ocasião da apreciação do recurso por esta Relatoria. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.26cm;" align="justify"> 02. Para fins de concessão do benefício da gratuidade judiciária, equipara-se o condomínio à pessoa jurídica. Comprovada a hipossuficiência financeira por meio de documentação hábil, deve ser concedida a benesse ao condomínio. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.26cm;" align="justify"> 03. Recebida a citação por companhia/cônjuge do réu, também parte no processo, não se verifica irregularidade. O ato se mostra regular, uma vez que o Col. Superior Tribunal de Justiça vem entendendo ser válida a citação postal encaminhada ao domicílio do réu, quando o recebedor é o consorte do destinatário. Precedente do STJ. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.26cm;" align="justify"> 04. Não tendo o juízo de origem apreciado o argumento de conexão/continência manejado pelo condomínio apelante, o qual, em tese, é capaz de infirmar a conclusão adotada pelo magistrado, a nulidade da sentença é medida que se impõe, por força do art. 93, IX, da CF e art. 489, II e § 1º, III e IV, do CPC. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.26cm;" align="justify"> 05. Recurso do condomínio apelante conhecido e provido. Recurso da parte autora conhecido, porém prejudicado a análise do mérito. Sentença anulada. Retorno dos autos à origem, para a prolação de nova decisão.

 (Apelação Cível – 0914442-13.2014.8.06.0001, Rel. Desa. CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento: 07/08/2024, data da publicação: 07/08/2024) </p><p style="line-height: 150%; margin-bottom: 0.26cm;" align="justify">

</p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0.26cm;" align="justify"> Desta forma, não conheço sobre o pedido de efeito ativo (tutela antecipada), por ocasião do julgamento do recurso. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Em relação aos pedidos de majorar o valor arbitrado a título de alimentos dos menores, verifico que o juízo de origem não se manifestou sobre os requerimentos, apenas optou por apreciá-los após o contraditório. </p><p style="line-height: 200%; text-indent: 3cm; margin-bottom: 0cm;" align="justify"> Desta forma, não me conhecerei sobre tais pedidos, sob pena de supressão de instância e violação ao princípio do duplo grau de jurisdição. </p><p>

Processo	0621493-68.2025.8.06.0000
	divisão de bens deve ser deduzida em ações autônomas e próprias, tais como a ação de partilha ou de sobrepartilha, quando cabível, não sendo admissível sua cumulação com a revisão de alimentos. Admitir o contrário implicaria desvirtuar a finalidade da ação revisional, comprometendo a regularidade procedimental e criando indevida sobreposição de ritos, com risco de insegurança jurídica e tumulto processual. Assim, entendo não ser cabível, neste caso, a cumulação dos pedidos conforme requer a autora em sua exordial, devendo optar por ações autônomas para cobrar os valores em aberto a título de alimentos e ação de partilha para discutir o patrimônio do casal e/ou dos filhos em comum. E é assim que voto pelo conhecimento e desprovemento do recurso, mantendo-se inalterada a decisão interlocutória objurgada. É como voto. Fortaleza, data da assinatura no sistema. Exmo. Sr. EDUARDO DE CASTRO NETO Juiz Convocado Relator
Processo	0621922-35.2025.8.06.0000
Número de ordem	110
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Tutela de Evidência
Polo ativo	EMANUELA FARIAS
Advogado(s) - Polo ativo	ERIC DA ROCHA DE MENEZES - (CE46506-A)
Polo passivo	ANTONIO AMAURI DA SILVA
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0621922-35.2025.8.06.0000
	Verdana, sans-serif;"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 162%; margin-bottom: 0.26cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 122%; margin-bottom: 0.26cm;" align="center">

</p><p style="line-height: 162%; margin-bottom: 0.26cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 162%; margin-bottom: 0.26cm;" align="center"> Juiz Convocado Relator </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Vistos e examinados estes autos. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Trata a presente espécie recursal de Agravo de Instrumento, manejado por EMANUELA FARIAS, contra a r. decisão interlocutória do Juízo da 2ª Vara de Família e Sucessões da Comarca da Caucaia/CE (Processo nº 0200036-47.2025.8.06.0064), que nos autos da Ação de Divórcio indeferiu o pedido de decretação de divórcio por tutela de evidência, o que fez nos seguintes termos: </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Inicialmente, sustenta que “A possibilidade de decretar-se o divórcio mediante tutela de evidência (art. 311, II e IV, do CPC), é uma forma de fazer valer o direito fundamental a um processo sem dilações indevidas. A Convenção Americana de Direito Humanos, Pacto de San José da Costa Rica, que foi aprovado pelo Congresso Nacional em 1992, no seu art. 8, I, prevê que todas as pessoas têm direito de serem ouvidas dentro de prazo razoável, com todas as garantias devidas. Considerando que os tratados internacionais são recepcionados pela Constituição Federal, estamos diante de uma norma constitucional. (...) Sendo o divórcio um direito potestativo dos cônjuges, não é razoável exigir que, para conseguirem esse direito, precisem passar por um longo processo judicial. Indeferir o pedido de tutela de evidência, na verdade, com o devido respeito ao juízo a quo e aos Desembargadores, é colocar mais obstáculos para o exercício de um direito constitucionalmente protegido.”. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Em seguinte, “O deferimento do pedido de decretação do divórcio é um caso claro de aplicação da tutela de evidência conforme art. 311, II e IV, do CPC. A cópia da certidão de casamento da agravante já é prova suficiente para permitir-lhe o exercício desse direito potestativo. Não há razões para obrigar a agravante, MULHER VÍTIMA DE VIOLÊNCIA DOMÉSTICA, CONFORME MEDIDAS PROTETIVAS DE URGÊNCIA EM ANEXO, a esperar um longo período até que o juízo decida pelo divórcio, sendo que este é um direito potestativo dela, um direito que não aceita contestação, cabendo ao agravado apenas aceitar que o seu cônjuge não tem mais interesse em permanecer casado.”. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Por fim, pleiteou que “a) CONHEÇA o presente recurso, uma vez que atendidos todos os requisitos de admissibilidade; b) Conceda à parte agravante a JUSTIÇA GRATUITA, nos termos do art. 98 e ss. do CPC; c) Conceda a TUTELA ANTECIPADA ao recurso; d) No MÉRITO, seja dado provimento ao presente Agravo de Instrumento, REFORMANDO A DECISÃO RECORRIDA e concedendo o DIVÓRCIO LIMINAR;”. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Vieram-me os autos conclusos. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> É O RELATÓRIO NO ESSENCIAL. </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> De início, anoto o teor do inciso III, do art. 932 do Código de Processo Civil: </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0cm;" align="justify">&#160;</p>

Processo	0621922-35.2025.8.06.0000
	0.42cm; margin-bottom: 0cm;" align="justify">Art. 932. Incumbe ao relator:</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> (</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> III - não conhecer de recurso inadmissível, prejudicado ou que não tenha impugnado especificamente os fundamentos da decisão recorrida".</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Confrontando o dispositivo em referência com o caso dos autos, o presente recurso não pode ser conhecido, como demonstrarei pelas razões a seguir expostas, por perda superveniente do seu objeto. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> É que, após a análise detalhada dos autos de origem, verifico que após a interposição do presente Agravo de Instrumento, as partes entabularam acordo no qual requereram o divórcio consensual e a partilha de seus bens, o qual restou devidamente homologado por sentença, o que fez nos seguintes termos: </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">Considerando a inovação trazida pela Emenda Constitucional nº 66/2010 que suprimiu o requisito de prévia separação judicial por mais de um ano ou de comprovada separação de fato por mais de dois anos para a decretação do divórcio, exigindo, a partir de então, apenas o requerimento do cônjuge e, considerando, ainda, estarem presentes os requisitos legais necessários à decretação do divórcio, JULGO PROCEDENTE o pedido autoral e decreto O DIVÓRCIO do casal, o que faço POR SENTENÇA, com resolução do mérito, nos termos do artigo 226, § 6º, da Constituição Federal e 487, inciso I do Código de Processo Civil. HOMOLOGO o acordo a que chegaram as partes na fls. 42/55, nas matérias referentes ao divórcio e a partilha dos bens em comum do casal, fazendo parte integrante desta sentença. Nas matérias referentes a guarda, alimentos e regulamentação de visitas será analisado nos autos do processo 0200089-28.2025.8.06.0064.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> (</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Publique-se, registre-se e intime-se. Certificado o trânsito, arquivem-se com a devida baixa.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Desta feita, outro caminho não há senão decretar a perda superveniente de objeto do presente recurso, já que não mais subsiste o interesse recursal da parte Agravante em seu prosseguimento. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> E é assim que, por todo o exposto e na linha da jurisprudência pátria, voto por negar seguimento ao presente recurso, por perda superveniente do seu objeto. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> É como voto. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Fortaleza, data da assinatura no sistema.</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Juiz Convocado Relator </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0.28cm;">

</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>

Processo	0621923-20.2025.8.06.0000
Número de ordem	111
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Revisão
Polo ativo	Joao Guilerme Farias da Silva, rep. por Emanuela Farias
Advogado(s) - Polo ativo	ERIC DA ROCHA DE MENEZES - (CE46506-A)
Polo passivo	ANTONIO AMAURI DA SILVA
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0621923-20.2025.8.06.0000
	Verdana, sans-serif;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em não conhecer do presente recurso, por perda superveniente do objeto, nos termos do voto do Relator. </p><p style="line-height: 122%; margin-bottom: 0.26cm;" align="justify">

</p><p style="line-height: 162%; margin-bottom: 0.26cm;" align="justify"> Fortaleza, data e hora do sistema. </p><p style="line-height: 122%; margin-bottom: 0.26cm;" align="justify">

</p><p style="line-height: 122%; margin-bottom: 0.26cm;" align="justify">

</p><p style="line-height: 162%; margin-bottom: 0.26cm;" align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 162%; margin-bottom: 0.26cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 122%; margin-bottom: 0.26cm;" align="center">

</p><p style="line-height: 162%; margin-bottom: 0.26cm;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Juiz Convocado Relator </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> RELATÓRIO </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Vistos e examinados estes autos. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Trata a presente espécie recursal de Agravo de Instrumento, manejado por J.G.F.D.S, menor impúbere representado por sua genitora, EMANUELA FARIAS, contra a r. decisão interlocutória do Juízo da 2ª Vara de Família e Sucessões da Comarca da Caucaia/CE (Processo nº 0200036-47.2025.8.06.0064), que nos autos da Ação de de Alimentos c/c Guarda arbitrou o valor dos alimentos a serem pagos pelo genitor em 80% (oitenta por cento) do salário mínimo, o que fez nos seguintes termos: </p><p style="line-height: 150%; margin-left: 4cm; margin-top: 0.42cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> Comprovado o parentesco entre alimentante e a parte alimentanda, conforme certidão de nascimento de fls. 24. A promovente informar, na petição inicial, que o alimentante é empresário, trabalhando com turismo, especificamente com agências de viagens, junta ainda o cadastro nacional da pessoa jurídica (fls. 27) e consulta de quadro de sócios e administradores, possuindo capital social da referida empresa (fls. 28).Isto posto, considerando os fatos e informações trazidas pela promovente e respeitando o trinômio necessidade/possibilidade/ proporcionalidade, DEFIRO PARCIALMENTE O PEDIDO LIMINAR E ARBITRO OS ALIMENTOS PROVISÓRIOS NO PERCENTUAL DE 80% (OITENTA POR CENTO) DO SALÁRIO MÍNIMO VIGENTE, devidos a partir da citação do promovido. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Inicialmente, sustenta que “A decisão recorrida peca gravemente ao desconsiderar a real dimensão das necessidades do agravante, subestimando os gastos imprescindíveis à sua digna manutenção. O valor fixado pelo juízo de primeiro grau, correspondente a meros 80% do salário-mínimo vigente, revela-se não apenas irrisório, mas também incompatível com a realidade concreta das despesas do alimentando, expressamente demonstradas na planilha anexada à inicial. (...) O magistrado de primeiro grau adotou um critério genérico e padronizado para a fixação dos alimentos, sem qualquer relação com os elementos concretos do caso. Os alimentos, porém, devem proporcionar ao menor um padrão de vida condizente com a realidade econômica do genitor e não meramente assegurar sua sobrevivência básica”. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">

Processo	0621923-20.2025.8.06.0000
	style="font-size: small;">Em seguinte, "O recorrido é dono de uma agência de viagens, conforme documentos anexados à inicial. O setor de turismo, mesmo em face das oscilações econômicas, representa uma atividade altamente lucrativa, o que permite inferir que seus ganhos mensais superam expressivamente o salário-mínimo nacional. Ainda que o juízo de primeiro grau tenha reconhecido a existência dessa atividade empresarial, limitou-se a arbitrar os alimentos com base em um critério subjetivo e abstrato, ignorando completamente a documentação que demonstra a capacidade econômica do agravado. (...) A fixação dos alimentos em 80% do salário-mínimo não observa qualquer critério objetivo de proporcionalidade. Ao contrário, representa uma distorção da realidade, pois não leva em consideração a renda presumida do alimentante, nem as despesas comprovadas do alimentando. Como já afirmado anteriormente, os alimentos devem ser fixados de maneira proporcional, considerando-se o padrão de vida do alimentante e as reais necessidades do alimentado. No caso em análise, o menor possui despesas comprovadas de R\$ 3.870,71, ao passo que o alimentante, empresário, tem condições de suportar o encargo da pensão alimentícia. Ao fixar os alimentos provisórios em um patamar excessivamente reduzido, o magistrado afronta diretamente o princípio da proporcionalidade, transferindo o ônus da subsistência da criança exclusivamente à genitora, o que é inaceitável do ponto de vista jurídico e moral". </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Por fim, pleiteou que "a) CONHEÇA o presente recurso, uma vez que atendidos todos os requisitos de admissibilidade; b) Conceda à parte agravante a JUSTIÇA GRATUITA, nos termos do art. 98 e ss. do CPC; a) Conceda a TUTELA ANTECIPADA ao recurso, com fulcro no princípio constitucional do melhor interesse da criança e observados os elementos essenciais do art. 300 do CPC, para fixar a pensão no valor de R\$ 3.870,71(três mil, oitocentos e setenta reais e setenta e um centavos), correspondente a 2,5 salários-mínimos vigentes; b) Determine a INTIMAÇÃO DO MINISTÉRIO PÚBLICO, nos termos do art. 1.019, III, CPC. c) No MÉRITO, seja dado PROVIMENTO AO PRESENTE AGRAVO DE INSTRUMENTO, reformando parcialmente a decisão recorrida, para fixar a pensão no valor de R\$ 3.870,71(três mil, oitocentos e setenta reais e setenta e um centavos), correspondente a 2,5 salários-mínimos vigentes;" </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Vieram-me os autos conclusos. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> É O RELATÓRIO NO ESSENCIAL. </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> De início, anoto o teor do inciso III, do art. 932 do Código de Processo Civil: </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">Art. 932. Incumbe ao relator:</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> (</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">III - não conhecer de recurso inadmissível, prejudicado ou que não tenha impugnado especificamente os fundamentos da decisão recorrida"</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Confrontando o dispositivo em referência com o caso dos autos, o presente recurso não pode ser conhecido, como demonstrarei pelas razões a seguir expostas, por perda superveniente do seu objeto. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> É que, após a análise detalhada dos autos de origem, verifico que após a interposição do presente Agravo de Instrumento, as partes entabularam acordo em relação aos alimentos devidos ao menor, o qual restou devidamente homologado por sentença, o que fez nos seguintes termos: </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">
 </p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> </p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Traça-se de acordo de guarda judicial e direito de visitas e alimentos em prol do menor JOÃO GUILHERME FARIAS DA SILVA.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"></p>

Processo	0621923-20.2025.8.06.0000
	margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> A guarda do menor será na forma compartilhada, com o infante residindo no endereço de seu pai.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Os alimentos e direito de visitas serão na forma do acordo entabulado pelas partes às fls. 92/105.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> (</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Considerando que se encontram preservados os direitos dos acordantes, homologo por sentença, para que surta seus jurídicos e legais efeitos, o acordo perfectibilizado pelas partes, nos exatos termos constantes nas folhas 92 a 105, e determino a extinção do processo com resolução do mérito, com supedâneo nas disposições contidas na alínea b do inciso III do artigo 487 do CPC/2015.</p><p style="line-height: 150%; margin-left: 3.81cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Desta feita, outro caminho não há senão decretar a perda superveniente de objeto do presente recurso, já que não mais subsiste o interesse recursal da parte Agravante em seu prosseguimento. </p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> E é assim que, por todo o exposto e na linha da jurisprudência pátria, voto por negar seguimento ao presente recurso, por perda superveniente do seu objeto.</p><p style="line-height: 200%; text-indent: 3.02cm; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> Fortaleza, data da assinatura no sistema. </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Exmo. Sr. EDUARDO DE CASTRO NETO </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Juiz Convocado Relator </p><p style="line-height: 200%; margin-top: 0.42cm; margin-bottom: 0.28cm;">

</p>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p></td>
Processo	0624971-84.2025.8.06.0000
Número de ordem	112
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Remoção
Polo ativo	HELIO ARAUJO MEIRELES NETO
Advogado(s) - Polo ativo	MARCUS VINICIUS ALBUQUERQUE ALCANFOR - (CE14484-A)
Polo passivo	ELDA BRAGA MEIRELES HELIO ARAUJO MEIRELES JUNIOR
Advogado(s) - Polo passivo	MARCELO MONTEIRO DE MIRANDA SA - (CE8640-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado
Processo	0270164-24.2024.8.06.0001
Número de ordem	113
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL

Processo	0270164-24.2024.8.06.0001
Assunto principal	Indenização por Dano Moral
Polo ativo	BANCO INTERMEDIUM SA
Advogado(s) - Polo ativo	ANDRE JACQUES LUCIANO UCHOA COSTA - (MG80055-A) LEONARDO FIALHO PINTO - (MG108654-A)
Polo passivo	FILIPPE MALVEIRA DE OLIVEIRA
Advogado(s) - Polo passivo	IARA MOREIRA OSTERNO - (CE13742-A)
Terceiros	Não informado

Processo	0270164-24.2024.8.06.0001
Acordão	<div class="OutlineElement Ltr SCXW75871393 BCX0" style='-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;'> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> </p> </div>

Processo	0270164-24.2024.8.06.0001
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width: 100%; height: 100%;"><div style="position: absolute; top: 0; left: 0; width: 100%; height: 100%; background-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px; font-family: Aptos, Aptos_EmbeddedFont, Aptos_MSFontService, sans-serif;">&#160;</div><div 479="" 531="" 947="" 964"="" data-label="Page-Footer" style='position: absolute; top: 0; left: 0; width: 100%; height: 100%; background-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI"; "Segoe UI Web";, Arial,</div></div> </div> </div> </td></tr> </table> </div> <div data-bbox='>1058</div></div></div></p>

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	Verdana, sans-serif; font-size: 12px;"><p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> ESTADO DO CEARÁ &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> PODER JUDICIÁRIO &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> TRIBUNAL DE JUSTIÇA &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> GABINETE DESEMBARGADOR EMANUEL LEITE ALBUQUERQUE &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-

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	visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Apelado: &#160;Filipe Malveira de Oliveira </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI";, "Segoe UI Web";, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> <p style="text-align: justify;"> EMENTA: DIREITO CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. ENCERRAMENTO UNILATERAL DE CONTA-CORRENTE. NOTIFICAÇÃO PRÉVIA COMPROVADA. LICITUDE DA CONDUTA. DANO MORAL NÃO CONFIGURADO. RECURSO PROVIDO. </p> <p style="text-align: justify;"> I. CASO EM EXAME </p> <p style="text-align: justify;"> 1. Apelação Cível interposta por Banco Intermedium S/A contra sentença que julgou procedente ação de indenização por danos morais ajuizada por Filipe Malveira de Oliveira, determinando a liberação de valores bloqueados, condenando a instituição ao pagamento de R\$ 5.000,00 a título de indenização extrapatrimonial e fixando honorários advocatícios. </p> <p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p> <p style="text-align: justify;"> 2. Há duas questões em discussão: (i) definir se o encerramento unilateral da conta-corrente pelo banco foi ilícito; (ii) estabelecer se a conduta da instituição financeira gera direito à indenização por danos morais. </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 3. A Resolução nº 4.753/2019 do BACEN autoriza o encerramento unilateral de conta de depósitos por qualquer das partes, desde que precedido de comunicação prévia ao correntista. </p> <p style="text-align: justify;"> 4. O autor foi devidamente notificado sobre a intenção de encerramento da conta, não havendo demonstração de bloqueio imediato ou descumprimento dos prazos regulamentares. </p> <p style="text-align: justify;"> 5. O contrato de conta-corrente, de duração indeterminada e natureza intuitu personae, pode ser rescindido unilateralmente sem necessidade de justo motivo, bastando a notificação. </p> <p style="text-align: justify;"> 6. A jurisprudência consolidada do STJ e deste Tribunal reconhece a licitude do encerramento unilateral, quando precedido de notificação, afastando a configuração de dano moral. </p> <p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p> <p style="text-align: justify;"> 7. Recurso provido. </p> <p style="text-align: justify;"> Tese de julgamento: </p> <p style="text-align: justify;"> 1. O encerramento unilateral de conta-corrente é lícito, desde que precedido de notificação prévia ao correntista. </p> <p style="text-align: justify;"> 2. A mera rescisão contratual de conta bancária, observados os requisitos normativos, não caracteriza dano moral indenizável. </p> <p style="text-align: justify;"> Dispositivos relevantes citados: CPC, art. 487, I; CC, art. 406, § 1º; Resolução BACEN nº 4.753/2019, arts. 5º e 6º; Lei nº 4.595/1964, art. 4º, VIII. </p> <p style="text-align: justify;"> Jurisprudência relevante citada: </p>

Processo	0270164-24.2024.8.06.0001
	STJ, REsp 1.696.214/SP, Rel. Min. Marco Aurélio Bellizze, 3ª T., j. 09.10.2018, DJe 16.10.2018; STJ, AgInt no AREsp 1.478.859/SP, Rel. Min. Marco Aurélio Bellizze, 3ª T., j. 01.03.2021, DJe 03.03.2021; TJCE, Apelação Cível nº 0257121-25.2021.8.06.0001, Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câm. Dir. Privado, j. 06.03.2024; TJCE, Apelação Cível nº 0240911-30.2020.8.06.0001, Rel. Des. Emanuel Leite Albuquerque, 1ª Câm. Dir. Privado, j. 05.06.2024; TJCE, AgInt Cível nº 0241813-80.2020.8.06.0001, Rel. Des. Paulo de Tarso Pires Nogueira, 3ª Câm. Dir. Privado, j. 22.05.2024; TJCE, Apelação Cível nº 0200753-51.2023.8.06.0154, Rel. Des. Francisco Bezerra Cavalcante, 4ª Câm. Dir. Privado, j. 13.08.2024. SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 4.53333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> ACÓRDÃO &#160;Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso para dar-lhe provimento, nos termos do voto do Relator. &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: "Segoe UI", "Segoe UI Web", Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 15.8667px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian:

Processo	0270164-24.2024.8.06.0001
	preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Exmo. Sr. EDUARDO DE CASTRO NETO </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> Relator &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 2.66667px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;; &quot;Segoe UI Web&quot;; Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"

Processo	0270164-24.2024.8.06.0001
	lang="PT-BR" xml:lang="PT-BR"> &#160;</p></div><div class="OutlineElement Ltr SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif; font-size: 12px;"> <p class="Paragraph SCXW75871393 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> RELATÓRIO &#160; <p style="text-align: justify;"> Trata-se de Apelação Cível interposta por Banco Intermedium S/A, objetivando a reforma da sentença prolatada pelo douto juízo da 19ª Vara Cível da Comarca de Fortaleza, que julgou procedentes os pedidos formulados na ação de indenização por danos morais, ajuizada por Filipe Malveira de Oliveira, o que fez nos seguintes termos: </p> <p style="text-align: justify;"> [...] Diante do exposto, julgo PROCEDENTE, declarando resolvido o mérito do processo, nos termos do artigo 487, inciso I, do CPC, e assim o faço para:&#160; </p> <p style="text-align: justify;"> Determinar que o banco réu libere os ativos do Autor que estão em seu poder, depositando na conta do Mercado Pago, Agência 0001, Conta 5054383217-2. </p> <p style="text-align: justify;"> Condenar o promovido ao pagamento, a título de dano moral, que, por arbitramento e atento às condições do caso concreto anteriormente expostas, bem como ao princípio da razoabilidade, fixo em R\$ 5.000,00 (cinco mil reais), acrescido de correção monetária pelo IPCA desde o arbitramento (súmula 362 do STJ) e com incidência de juros pela taxa SELIC, com a dedução prevista no art. 406, § 1º, do CC desde a citação. </p> <p style="text-align: justify;"> Arbitro nos termos do artigo 85, § 8º, do Código de Processo Civil, a condenação da requerida ao pagamento das custas e honorários advocatícios ao causídico do autor, que arbitro em R\$ 2.000,00 (dois mil reais). </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Em suas razões recursais, o apelante sustenta que "fica claro que o Banco RECORRENTE efetuou a notificação prévia ao cliente em 16/09/2024. Contudo, o recorrido ignorou a notificação enviada e esperou que sua conta fosse encerrada para vir ao judiciário pugnar por indenizações relativas a situações que ela mesmo deu causa." </p> <p style="text-align: justify;"> Mais adiante argumenta que "(...) a parte Recorrida não juntou qualquer prova de que tivesse de fato sofrido algum prejuízo ou transtorno em decorrência da operação realizada que, frisa-se, foi efetuada licitamente pela parte Recorrente." </p> <p style="text-align: justify;"> Ao final, postula pelo provimento da apelo e consequentemente a reforma da sentença para julgar improcedentes os pedidos formulados na exordial. Subsidiariamente, requer a minoração do dano moral fixado. </p> <p style="text-align: justify;"> Contrarrazões – id. 27182825. </p> <p style="text-align: justify;"> É o que importa relatar – decido. </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: center;"> VOTO </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: justify;"> Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento dos recursos. </p> <p style="text-align: justify;"> Pois bem. </p> <p style="text-align: justify;"> A questão recursal reside em saber se houve ilicitude na conduta da instituição financeira ao encerrar unilateralmente a conta-corrente titularizada pela parte promotente e, consequentemente, se subsistem danos morais indenizáveis. </p> <p style="text-align: justify;"> Acerca do cancelamento unilateral de contas bancárias, dispõe o art. 5º, inciso I, da Resolução nº 4.753 de 2019 do BACEN, o qual atualizou a Resolução nº 2.025 de 1993, do BACEN, que, para o

Processo	0270164-24.2024.8.06.0001
	encerramento da conta, deve haver comunicação entre as partes da intenção de rescindir o contrato, informando os motivos da decisão caso o encerramento ocorra por irregularidade nas informações prestadas quando da contratação, consideradas de natureza grave, sendo desnecessária a referida justificação quando não for este o caso, conforme disposto no seu art. 6º. Vejamos: Art. 5º Para o encerramento de conta devem ser adotadas, no mínimo, as seguintes providências: I - comunicação entre as partes da intenção de rescindir o contrato, informando os motivos da rescisão, caso se refiram à hipótese prevista no art. 6º ou a outra prevista na legislação ou na regulamentação vigente; II - indicação pelo cliente da destinação do eventual saldo credor na conta, que deve abranger a transferência dos recursos para conta diversa na própria ou em outra instituição ou a colocação dos recursos a sua disposição para posterior retirada em espécie; III - devolução pelo cliente das folhas de cheque não utilizadas ou a realização do seu cancelamento pela instituição; IV - prestação de informações pela instituição ao titular da conta sobre: a) o prazo para adoção das providências relativas à rescisão do contrato, limitado a trinta dias corridos, contado do cumprimento da exigência de trata o inciso I; b) os procedimentos para pagamento de compromissos assumidos com a instituição ou decorrentes de disposições legais; c) os produtos e serviços eventualmente contratados pelo titular na instituição que permanecem ativos ou que se encerram juntamente com a conta de depósitos; V - comunicação ao titular sobre a data de encerramento da conta ou sobre os motivos que impossibilitam o encerramento, após o decurso do prazo de que trata a alínea "a" do inciso IV. § 1º O encerramento de conta de depósitos pode ser providenciado mesmo na hipótese de existência de cheques sustados, revogados ou cancelados por qualquer causa. § 2º Deve ser assegurada ao titular da conta de depósitos a possibilidade de solicitar o seu encerramento pelo mesmo canal utilizado quando da solicitação de sua abertura, se ainda disponível. Art. 6º As instituições devem encerrar conta de depósitos em relação a qual verificarem irregularidades nas informações prestadas, consideradas de natureza grave É possível depreender do aludido dispositivo que não há exigência de um justo motivo para a rescisão unilateral, salvo no caso do art. 6º, desde que sejam observadas as determinações mencionadas, com o intuito de conferir transparência e resguardar o contratante de eventual rompimento abrupto do pacto. Ademais, o próprio autor informou ter sido comunicado pela instituição demandada sobre o encerramento de sua conta, tendo, inclusive, anexado a referida notificação prévia exigida (id. 27182410). Desse modo, não restou demonstrada a falha na prestação do serviço da instituição financeira/recorrida, não havendo ilícito ensejador do dano moral. Destarte, não há no comunicado nenhuma informação sobre bloqueio imediato da conta, mas apenas o desinteresse comercial da entidade bancária e que o processo de encerramento poderia levar até 30 dias, com informações adicionais. Outrossim, sendo o contrato de conta-corrente de modalidade de tempo indeterminada, a entidade bancária pode, quando de seu interesse, encerrá-lo, sem que, para tanto, deva apresentar razões ou proceda à denúncia do contrato. Basta que notifique o correntista previamente, como ocorreu no caso dos autos. Nesse sentido: RECURSO ESPECIAL. AÇÃO DE OBRIGAÇÃO DE FAZER. PRETENSÃO EXARADA POR EMPRESA QUE EFETUA INTERMEDIÇÃO DE COMPRA E VENDA DE MOEDA VIRTUAL (NO CASO, BITCOIN) DE OBRIGAR A INSTITUIÇÃO FINANCEIRA A MANTER CONTRATO DE CONTA-CORRENTE. ENCERRAMENTO DE CONTRATO, ANTECEDIDO POR REGULAR NOTIFICAÇÃO. LICITUDE. RECURSO ESPECIAL IMPROVIDO. [...] 3. O encerramento do contrato de conta-corrente, como corolário da autonomia privada, consiste em um direito subjetivo exercitável por qualquer das partes contratantes, desde que observada a prévia e regular notificação. 3.1 A esse propósito, destaca-se que a Lei n. 4.595/1964, recepcionada pela Constituição Federal de 1988 com status de lei complementar e regente do Sistema Financeiro Nacional, atribui ao Conselho Monetário Nacional competência

Processo	0270164-24.2024.8.06.0001
	exclusiva para regular o funcionamento das instituições financeiras (art. 4º, VIII). E, no exercício dessa competência, o Conselho Monetário Nacional, por meio da edição de Resoluções do Banco Central do Brasil que se seguiram, destinadas a regulamentar a atividade bancária, expressamente possibilitou o encerramento do contrato de conta de depósitos, por iniciativa de qualquer das partes contratantes, desde que observada a comunicação prévia. A dicção do art. 12 da Resolução BACEN/CMN n. 2.025/1993, com a redação conferida pela Resolução BACEN/CMN n. 2.747/2000, é clara nesse sentido. 4. Atendo-se à natureza do contrato bancário, notadamente o de conta-corrente, o qual se afigura intuitu personae, bilateral, oneroso, de execução continuada, prorrogando-se no tempo por prazo indeterminado, não se impõe às instituições financeiras a obrigação de contratar ou de manter em vigor específica contratação, a elas não se aplicando o art. 39, II e IX, do Código de Defesa do Consumidor. Revela-se, pois, de todo incompatível com a natureza do serviço bancário fornecido, que conta com regulamentação específica, impor-se às instituições financeiras o dever legal de contratar, quando delas se exige, para atuação em determinado seguimento do mercado financeiro, profunda análise de aspectos mercadológico e institucional, além da adoção de inúmeras medidas de segurança que lhes demandam o conhecimento do cliente bancário e de reiterada atualização do seu cadastro de clientes, a fim de minorar os riscos próprios da atividade bancária. [...] (STJ - REsp: 1696214 SP 2017/0224433-4, Relator: Ministro MARCO AURÉLIO BELLIZZE, Data de Julgamento: 09/10/2018, T3 - TERCEIRA TURMA, Data de Publicação: DJe 16/10/2018) <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO INDENIZATÓRIA POR DANOS MORAIS. 1. VIOLAÇÃO DO ART. 1.022 DO CPC/2015. INEXISTÊNCIA. 2. ENCERRAMENTO DE CONTA BANCÁRIA. RESCISÃO UNILATERAL DE CONTRATO. NOTIFICAÇÃO PRÉVIA. ATO ILÍCITO E DANOS MORAIS NÃO CARACTERIZADOS. SÚMULAS N. 5 E 7/STJ. 3. DISSÍDIO JURISPRUDENCIAL PREJUDICADO. 4. CABIMENTO DA MEDIDA ADOTADA PELA INSTITUIÇÃO FINANCEIRA. SÚMULA 83/STJ. 5. AGRAVO IMPROVIDO. 1. Não ficou configurada a violação do art. 1.022 do CPC/2015, uma vez que o Tribunal de origem se manifestou de forma fundamentada sobre todas as questões necessárias para o deslinde da controvérsia. O mero inconformismo da parte com o julgamento contrário à sua pretensão não caracteriza falta de prestação jurisdicional. 2. A alteração da conclusão adotada pela Corte de origem (acerca da possibilidade da rescisão unilateral do contrato, bem como da inexistência de dano moral indenizável) demandaria, necessariamente, a interpretação de cláusulas contratuais e novo exame do acervo fático probatório constante dos autos, providências vedadas no âmbito do recurso especial, conforme os óbices previstos nas Súmulas 5 e 7 deste Tribunal Superior. 3. A incidência da Súmula n. 7/STJ impede o conhecimento do recurso lastreado, também, pela alínea c do permissivo constitucional, dado que falta identidade entre os paradigmas apresentados e os fundamentos do acórdão, tendo em vista a situação fática de cada caso. 4. O encerramento do contrato de conta-corrente, como corolário da autonomia privada, consiste em um direito subjetivo exercitável por qualquer das partes contratantes, desde que observada a prévia e regular notificação. 4.1. A esse propósito, destaca-se que a Lei n. 4.595/1964, recepcionada pela Constituição Federal de 1988 com status de lei complementar e regente do Sistema Financeiro Nacional, atribui ao Conselho Monetário Nacional competência exclusiva para regular o funcionamento das instituições financeiras (art. 4º, VIII). Ademais, no exercício dessa competência, o Conselho Monetário Nacional, por meio da edição de resoluções do Banco Central do Brasil que se seguiram, destinadas a regulamentar a atividade bancária, expressamente possibilitou o encerramento do contrato de conta de depósitos, por iniciativa de qualquer das partes contratantes, desde que observada a comunicação prévia. A dicção do art. 12 da Resolução BACEN/CMN n. 2.025/1993, com a redação conferida pela Resolução BACEN/CMN n. 2.747/2000, é clara nesse sentido. 4.2. Atendo-se à natureza do contrato bancário, notadamente o de conta-corrente, o qual se afigura intuitu personae, bilateral, oneroso, de execução continuada, prorrogando-se no tempo por prazo indeterminado, não se impõe às instituições financeiras a obrigação de contratar ou de manter em vigor específica contratação, a elas não se aplicando o art. 39, II e IX, do Código de Defesa do Consumidor. Revela-se, pois, de todo incompatível com a natureza do serviço bancário fornecido, que conta com regulamentação específica, impor-se às instituições financeiras o dever legal de contratar, quando delas se exige, para atuação em determinado segmento do mercado financeiro, profunda análise de aspectos mercadológico e institucional, além da adoção de inúmeras medidas de segurança que lhes demandam o conhecimento do cliente bancário e de reiterada atualização do seu cadastro de clientes, a fim de minorar os riscos próprios da atividade bancária. 5. Agravo interno a que se nega provimento. (STJ - AgInt no AREsp: 1478859 SP 2019/0091051-9, Relator: Ministro MARCO AURÉLIO BELLIZZE, Data de Julgamento: 01/03/2021, T3 - TERCEIRA TURMA, Data de Publicação: DJe 03/03/2021). </p> <p style="text-align: justify;"> Cito ainda, jurisprudências recentes deste Sodalício, vejamos: </p> <p style="text-align: justify;">

Processo	0270164-24.2024.8.06.0001
	justify;"> PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER. SENTENÇA IMPROCEDENTE. ENCERRAMENTO INTERNO EM APELAÇÃO. RAMENTO UNILATERAL DA CONTA CORRENTE DA PARTE AUTORA. IRRESIGNAÇÃO. CERCEAMENTO DA DEFESA NÃO CONFIGURADO. DESNECESSIDADE DE MOTIVAÇÃO. DANO MORAL NÃO CARACTERIZADO. PRECEDENTES DO STJ E DESTE EGRÉGIO TRIBUNAL DE JUSTIÇA. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. 1. Trata-se de Apelação Cível interposta por R C MENDES PAMPLONA em face da sentença prolatada pelo juízo da 1ª Vara Cível da Comarca de Sobral/CE, que julgou improcedente a Ação de Obrigação de Fazer c/c Indenização por Danos Morais ajuizada. 2. A controvérsia se dá sobre a existência ou não de regularidade do encerramento unilateral de contas bancárias de titularidade do autor por parte da instituição financeira acionada e de cerceamento da defesa. 3. O Superior Tribunal de Justiça, no julgamento do REsp 1.696.214/SP, posicionou-se sobre a licitude do encerramento unilateral de conta bancária, concluindo pela ausência de abusividade no cancelamento, desde que precedido de notificação. Precedentes do c. STJ e deste e. Tribunal de Justiça. 4. Afastado a alegação de cerceamento de defesa, não tendo a demandante demonstrado em que a prova testemunhal ou depoimento pessoal, requeridas de modo genérico na peça de defesa, influiriam em eventual modificação do decisum atacado. 5. A ser assim, deve-se reconhecer que o Banco Apelado agiu no exercício regular de seu direito, uma vez que notificou a autora/apelante em tempo razoável, conforme lhe incumbia, cumprindo o disposto no art. 5º, inciso I, da Resolução nº 4.753/19, do BACEN. 6. Recurso de apelação conhecido e desprovido. Sentença Mantida. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em CONHECER do presente recurso para NEGAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/ Relator (Apelação Cível- 0257121-25.2021.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 06/03/2024, data da publicação: 06/03/2024) </p> <p style="text-align: justify;"> #160;</p> <p style="text-align: justify;"> PROCESSO CIVIL. RECURSOS DE APELAÇÃO. AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS C/C PEDIDO DE TUTELA DE URGÊNCIA. ENCERRAMENTO UNILATERAL DE CONTA-CORRENTE. PRÉVIA NOTIFICAÇÃO AO CORRENTISTA. AUSÊNCIA DE ILÍCITO CIVIL. OBSERVÂNCIA DO ART. 5º, INCISO I, DA RESOLUÇÃO Nº 4.753/2019 DO BACEN. DANO MORAL NÃO CARACTERIZADO. PRECEDENTES DO STJ E DESTE EGRÉGIO TRIBUNAL DE JUSTIÇA. RECURSO DA INSTITUIÇÃO FINANCEIRA CONHECIDO E PROVIDO. RECURSO DO AUTOR PREJUDICADO. SENTENÇA REFORMADA. 1. O douto magistrado de primeiro grau julgou procedentes os pedidos autorais, ratificando a liminar outrora deferida, determinando a manutenção da conta bancária do requerente junto ao banco/requerido, bem como, condenando a instituição financeira ao pagamento da quantia de R\$ 3.000,00 (três mil reais) a título de dano moral. 2. A questão recursal reside em saber se houve ilicitude na conduta da instituição financeira ao encerrar unilateralmente a conta-corrente titularizada pela parte promovente e, conseqüentemente, se subsistem danos morais indenizáveis. 3. O artigo 5º, inciso I da Resolução nº 4.753, de 26 de setembro de 2019, do BACEN, que dispõe sobre a abertura, a manutenção e o encerramento de conta de depósitos, determina que a instituição financeira expeça notificação ao titular da conta com intuito de informar sobre o seu encerramento. 4. No caso, a própria parte autora informou ter sido previamente informada acerca do encerramento da sua conta-corrente, tendo acostado aos autos a referida notificação (fls. 14). 5. Portanto, não restou demonstrada a falha na prestação do serviço da instituição financeira/recorrente, na verdade, a conduta do banco/apelante não é tipificadora de dano moral, pois, conforme já pacificou o Superior Tribunal de Justiça (STJ), o encerramento de conta-corrente de forma unilateral, com prévia notificação ao consumidor, não gera dano moral indenizável. 6. Recurso da entidade bancária conhecido e provido. Recurso do autor prejudicado. Sentença reformada. A C Ó R D Ã O Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso do Itaú Unibanco S/A, para dar-lhe provimento e declarar prejudicado o apelo do autor, nos termos do voto do Relator, parte integrante desta decisão. Fortaleza, 05 de junho de 2024. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator (Apelação Cível - 0240911-30.2020.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 05/06/2024, data da publicação: 05/06/2024) </p> <p style="text-align: justify;"> #160;</p> <p style="text-align: justify;"> PROCESSUAL CIVIL. AGRAVO INTERNO EM APELAÇÃO CÍVEL. TUTELA PROVISÓRIA DE URGÊNCIA EM CARÁTER ANTECEDENTE. SERVIÇO BANCÁRIO. PRETENSÃO DE

Processo	0270164-24.2024.8.06.0001
	IMPEDIR O BANCO PROMOVIDO DE ENCERRAR, DE FORMA UNILATERAL, CONTA CORRENTE DE TITULARIDADE DA AUTORA. SERVIÇO UTILIZADO NA EXPLORAÇÃO DE ATIVIDADE EMPRESARIAL. NOTIFICAÇÃO PRÉVIA REALIZADA. DESNECESSIDADE DE JUSTO MOTIVO, SEGUNDO A ATUAL JURISPRUDÊNCIA DO STJ. CONTRATO VOLUNTÁRIO. AUTONOMIA PRIVADA DE VONTADE. RECURSO CONHECIDO E DESPROVIDO. 1. A controvérsia recursal cinge sobre a revisão da decisão monocrática que manteve a sentença que negou o pleito de reabertura da conta-corrente nº 35360 da Agência 1379, após o encerramento unilateral da conta bancária de titularidade do autor por parte da instituição financeira. 2. A parte agravante alega a impossibilidade de julgamento monocrático, entretanto, pela simples leitura dos fundamentos invocados na decisão monocrática, verifica-se que houve menção ao entendimento consolidado pelo STJ, no julgamento do REsp 1696214/SP, que se posicionou sobre a licitude do encerramento unilateral de conta bancária em caso semelhante ao versado nos presentes autos, concluindo pela ausência de abusividade no cancelamento, desde que precedido de notificação. Além disso, o posicionamento do Superior Tribunal de Justiça é no sentido de que eventual inadequação da forma unipessoal de julgamento não é causa de nulidade por ofensa ao princípio da colegialidade, diante da possibilidade de interposição de recurso ao órgão colegiado, onde serão discutidas as questões apreciadas na decisão monocrática. 3. É incontroverso, no caso dos autos, que a relação jurídica existente entre as partes possui caráter consumerista, motivo pelo qual a análise ocorre sob a ótica do Código de Defesa do Consumidor. Contudo, a regência da matéria também se faz pelas normas do Código Civil. 4. Assim, a instituição financeira não está obrigada a manter contrato de conta corrente com os seus clientes e vice-versa, mas, na hipótese de pretender pela rescisão do vínculo contratual, deve ela notificar o correntista a respeito de sua intenção, a teor do que estabelece o artigo 12, inciso I da Resolução do BACEN n. 2.025/199. 5. Com efeito, na espécie, ocorreu a prévia notificação à correntista (fl. 29), com o informe de ser intenção do banco encerrar suas contas bancárias. Nesse sentido, a simples alegação de desinteresse comercial, por si só, é motivo para justificar o encerramento de conta-corrente. 6. Frisa-se, ainda, que embora a agravante alegue que as jurisprudências utilizadas não se aplicam ao presente caso, por se tratar a conta bancária citada na decisão do REsp. nº 1.696.214 ¿ SP de conta-corrente que intermediava bitcoins, objeto à época não regulamentado no Brasil, e, portanto, caracterizando justo motivo para o encerramento, esta tese não merece prosperar. Põe-se em evidência que o atual entendimento do STJ é de que o encerramento do contrato de conta-corrente, como corolário da autonomia privada, consiste em um direito subjetivo exercitável por qualquer das partes contratantes, desde que observada a prévia e regular notificação. 7. Agravo Interno conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em CONHECER do recurso para NEGAR-LHE PROVIMENTO. Fortaleza, data registrada no sistema. DESEMBARGADORA CLEIDE ALVES DE AGUIAR Presidente do Órgão Julgador JUIZ CONVOCADO PAULO DE TARSO PIRES NOGUEIRA - PORT. 2696/2023 Relator (Agravo Interno Cível - 0241813-80.2020.8.06.0001, Rel. Desembargador(a) PAULO DE TARSO PIRES NOGUEIRA - PORT. 2696/2023, 3ª Câmara Direito Privado, data do julgamento: 22/05/2024, data da publicação: 22/05/2024) <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Sendo assim, concluo pela inexistência de conduta abusiva ou ilegal por parte da instituição financeira, visto que, observou o procedimento estabelecido pelo art. 5º, inciso I, da Resolução nº 4.753 de 2019 do BACEN, logo, não há que se falar em danos morais indenizáveis. <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> E assim é que, ante aos fundamentos fáticos e jurídicos acima declinados, voto pelo conhecimento do recurso para dar-lhe provimento, reformando a sentença apenas para excluir a condenação da instituição financeira ao pagamento de dano extrapatrimonial. <p style="text-align: justify;"> Diante do novo resultado, considerando a sucumbência recíproca evidenciada nos autos, impõe-se a redistribuição dos ônus sucumbenciais, fixando-se que cada parte arque com 50% (cinquenta por cento), ficando suspensa a exigibilidade para o autor, visto que é beneficiário da gratuidade judiciária. <p style="text-align: justify;"> É como voto. <p style="text-align: justify;"> Fortaleza-CE, data da assinatura digital</p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> EDUARDO DE CASTRO NETO <p style="text-align: justify;"> Juiz Convocado Relator <p style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;">&#160;</p> <p style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;">&#160;</p> <p style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;">&#160;</p> <p style="font-family: &quot;Segoe UI&quot;, &quot;Segoe UI Web&quot;, Arial, Verdana, sans-serif;">&#160;</p></div><div>

Processo	0220361-72.2024.8.06.0001
Número de ordem	114
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alimentos
Polo ativo	LAIS D ALVA PINHEIRO
Advogado(s) - Polo ativo	INGRID THAYNA DE FREITAS ACACIO - (CE39815-A) HANNA NOGUEIRA MAIA - (CE38927-A)
Polo passivo	GABRIEL NOGUEIRA EUFRASIO
Advogado(s) - Polo passivo	HILARIA NAQUEL DE SOUSA DA SILVA ORIA - (CE28932) YARA DE SOUSA DA SILVA - (CE22518-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0220361-72.2024.8.06.0001
Acórdão	&#160; EMENTA : DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE DIVÓRCIO E PARTILHA DE BENS. CELEBRAÇÃO DE ACORDO EXTRAJUDICIAL ENTRE AS PARTES. HOMOLOGAÇÃO. EXTINÇÃO DO PROCESSO COM RESOLUÇÃO DO MÉRITO. PERDA SUPERVENIENTE DO INTERESSE RECURSAL. RECURSO PREJUDICADO. I. CASO EM EXAME 1. Apelação cível interposta por Laís D'Alva Pinheiro contra sentença da 11ª Vara de Família da Comarca de Fortaleza que extinguiu a ação de divórcio e partilha de bens com fundamento no art. 485, IV, do CPC. No curso do processo recursal, as partes celebraram acordo extrajudicial dispondo sobre a divisão dos bens do casal, requerendo sua homologação judicial. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se a celebração de acordo extrajudicial entre as partes, com pedido de homologação, acarreta a perda do interesse recursal e a consequente extinção do processo com resolução do mérito. III. RAZÕES DE DECIDIR 3. A celebração de acordo entre as partes pode ocorrer em qualquer fase do processo ou instância, prevalecendo a solução consensual sobre a controvérsia judicializada. 4. O pedido conjunto de homologação do acordo demonstra a perda superveniente do interesse recursal, pois não subsiste controvérsia a ser decidida pelo tribunal. 5. A homologação do acordo implica a extinção do processo com resolução de mérito, nos termos do art. 487, III, "b", do CPC. IV. DISPOSITIVO E TESE 6. Recurso prejudicado. Tese de julgamento 1. A homologação de acordo extrajudicial celebrado pelas partes em sede recursal acarreta a extinção do processo com resolução do mérito. 2. A celebração de acordo torna prejudicado o recurso interposto, por ausência superveniente de interesse recursal. Dispositivos relevantes citados CPC, arts. 485, IV, e 487, III, "b". ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em HOMOLOGAR o acordo celebrado entre os litigantes e julgar PREJUDICADA a análise de mérito do recurso de apelação, nos termos do voto do Relator. Fortaleza, data da assinatura no sistema.

Processo	0220361-72.2024.8.06.0001
	3cm; margin-bottom: 0.28cm;" align="justify"> Decorrido o prazo recursal, certifique-se o trânsito em julgado e remetam-se os autos à origem. </p><p class="western" style="line-height: 200%; text-indent: 3cm; margin-bottom: 0.28cm;" align="justify">

</p><p class="western" style="line-height: 200%; text-indent: 3cm; margin-bottom: 0.28cm;" align="justify"> É como voto. </p><p class="western" style="line-height: 200%; text-indent: 3cm; margin-bottom: 0.28cm;" align="justify">

</p><p class="western" style="line-height: 200%; margin-bottom: 0.28cm;" align="justify">

</p><p class="western" style="line-height: 200%; margin-bottom: 0.28cm;" align="center"> EDUARDO DE CASTRO NETO </p><p class="western" style="line-height: 200%; margin-bottom: 0.28cm;" align="center"> Juiz Convocado Relator </p><p>&#160;</p><p>&#160;</p>
</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0201880-56.2024.8.06.0035
Número de ordem	115
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	BANCO BRADESCO S/A
Advogado(s) - Polo ativo	THIAGO BARREIRA ROMCY - (CE23900-A)
Polo passivo	OSVALDO FERREIRA DA COSTA
Advogado(s) - Polo passivo	LIVIO MARTINS ALVES - (CE15942-A)
Terceiros	Não informado

Processo	0201880-56.2024.8.06.0035
Acórdão	<p style="text-align: justify;"> EMENTA: PROCESSO CIVIL. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. DIREITO DO CONSUMIDOR. DESCONTOS INDEVIDOS EM BENEFÍCIO PREVIDENCIÁRIO. CONTRATAÇÃO NÃO COMPROVADA. INSTITUIÇÃO FINANCEIRA QUE NÃO SE DESINCUMBIU DE SEU ÔNUS PROBATÓRIO (ART. 373, II, DO CPC). DANO MORAL CONFIGURADO. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. </p><p style="text-align: justify;"> I. CASO EM EXAME </p><p style="text-align: justify;"> 1. Apelação interposta pelo Banco Bradesco S/A contra sentença da 2ª Vara Cível da Comarca de Aracati que julgou parcialmente procedente a ação anulatória de débito c/c indenização por danos materiais e morais ajuizada por Osvaldo Ferreira da Costa.</p><p style="text-align: justify;"> 2. O juízo de origem declarou a nulidade do contrato eletrônico, determinou a devolução em dobro dos valores descontados do benefício previdenciário e fixou indenização por danos morais no valor de R\$ 4.000,00, com compensação da quantia recebida.</p><p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> 3. A questão em discussão consiste em saber se (i) a instituição financeira comprovou a regularidade da contratação eletrônica do empréstimo consignado; e (ii) se, diante da ausência de prova da anuência do consumidor, subsiste a responsabilidade objetiva do banco pelos danos materiais e morais.</p><p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p><p style="text-align: justify;"> 4. Aplica-se o Código de Defesa do Consumidor às relações entre correntistas e instituições financeiras (Súmula 297 do STJ).</p><p style="text-align: justify;"> 5. Cabe ao fornecedor comprovar a contratação, nos termos do art. 373, II, do CPC e art. 6º, VIII, do CDC. O banco não apresentou contrato eletrônico válido nem elementos mínimos de autenticação (assinatura digital, biometria facial)</p><p style="text-align: justify;"> 6. A ausência de manifestação de vontade inviabiliza a validade do negócio jurídico (CC, art. 104, II).</p><p style="text-align: justify;"> 7. Configurada falha na prestação de serviços, subsiste a responsabilidade objetiva da instituição financeira, inclusive em hipóteses de fraude interna (Súmula 479 do STJ).</p><p style="text-align: justify;"> 8. Os descontos indevidos em benefício previdenciário configuram dano moral in re ipsa, sendo devida a indenização fixada na origem.</p><p style="text-align: justify;"> IV. DISPOSITIVO E TESE </p><p style="text-align: justify;"> 9. Recurso conhecido e desprovido. Mantida a sentença em todos os seus termos.</p><p style="text-align: justify;"> Tese de julgamento: 1. A instituição financeira responde objetivamente por descontos indevidos em benefício previdenciário quando não comprova a regularidade da contratação eletrônica de empréstimo consignado.</p><p style="text-align: justify;"> 2. A ausência de anuência expressa do consumidor invalida o contrato eletrônico e enseja a devolução em dobro dos valores descontados e indenização por dano moral.</p><p style="text-align: justify;"> Dispositivos relevantes citados: CC, arts. 104, II, 186 e 927; CPC, art. 373, II; CDC, arts. 6º, VIII, e 14.</p><p style="text-align: justify;"> Jurisprudência relevante citada: STJ, Súmula 297; STJ, Súmula 479; TJ-CE, Apelação Cível nº 0200610-69.2022.8.06.0066, Rel. Des. Maria de Fátima de Melo Loureiro, 2ª Câmara de Direito Privado, j. 06.12.2023; TJ-CE, Apelação Cível nº 0239881-23.2021.8.06.0001, Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câmara de Direito Privado, j. 21.02.2024.</p><p style="text-align: justify;"> A C Ó R D Ã O </p><p style="text-align: justify;"> Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer de do recurso, mas para negar-lhe provimento, nos termos do voto do Relator, parte integrante desta decisão</p><p style="text-align: justify;"> Fortaleza, 10 de setembro de 2025.</p><p style="text-align: justify;"> JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="text-align: justify;"> Presidente do Órgão Julgador</p><p style="text-align: justify;"> EDUARDO DE CASTRO NETO</p><p style="text-align: justify;"> Juiz Convocado Relator</p><p style="text-align: justify;"> </p>

Processo	0201880-56.2024.8.06.0035
	 RELATÓRIO Trata-se de Recurso de Apelação interposto pelo Banco Bradesco S/A., com o escopo de adversar a sentença proferida pelo MM. Juízo da 2ª Vara Cível da Comarca de Aracati, que julgou parcialmente procedentes os pedidos feitos na ação Anulatória de Débito c/c Danos Materiais e Morais, ajuizada por Osvaldo Ferreira da Costa, o que fez nos seguintes termos: Ante todo o exposto e o que mais dos autos consta, JULGO PARCIALMENTE PROCEDENTE a pretensão autoral, para que produza seus jurídicos e legais efeitos, extinguindo o feito com resolução do mérito, com fulcro no artigo 487, inciso I, do Código de Processo Civil, e assim o faço para: a) Declarar a inexistência do contrato aqui discutido; b) Condenar o requerido à devolução em dobro dos valores efetivamente descontados quanto ao contrato, corrigida monetariamente pelo INPC e com juros de mora de 1% (um por cento) ao mês, a partir dos descontos indevidos feitos no benefício do(a) promovente (evento danoso), consoante Súmulas nº 43 e 54 do STJ, a qual está limitada aos últimos 05 (cinco) anos anteriores à data do ajuizamento da presente demanda; c) Condenar o promovido ao pagamento de indenização por danos morais, no valor de R\$ 4.000,00 (quatro mil reais), com juros de 1% ao mês desde o evento danoso e correção monetária pelo INPC desde o arbitramento. Frise-se que os valores comprovadamente recebidos/levantados pelo autor devem ser descontados da condenação, em vedação ao enriquecimento ilícito. Considerando que a parte autora sucumbiu em parte mínima, condeno a parte ré, ainda, no pagamento das custas, das despesas processuais e de honorários advocatícios, os quais arbitro em 10% (dez por cento) sobre o valor da condenação, conforme art. 85, §2º, CPC. Em suas razões recursais, o banco/recorrente sustenta, que “não se pode exigir do apelante um papel que outorgue fidedignidade às transações quando elas se convalidam de maneira eletrônica. Ademais, é de meridiano conhecimento, além de público e notório (independendo de prova, portanto; ex vi artigo 374, inciso I, do CPC), a metodologia de contratação de empréstimos eletrônicos/virtuais de correntista com o banco mantenedor de sua conta corrente, que tem, como seu único e possível comprovante impresso, o extrato da conta correlata pela qual se viabilizou o pedido e o crédito do mútuo”. Argumenta, também, que “o que verdadeiramente se tem, Excelências, é que não há mínimo lastro para a manutenção da sentença. Primeiro, pela ausência de plausibilidade/verossimilhança no direito pelo apelado invocado, não havendo o que indique, nem mesmo por discricionariedade e livre convencimento, que ele, o recorrido, não tenha contratado e se beneficiado do empréstimo objurgado. Segundo, porque a realidade dos fatos, colimada ao coevo entendimento jurisprudencial demonstrado, coaduna-se na total e absoluta ausência de responsabilidade do recorrente, na qualidade de prestador/fornecedor de serviços, com relação aos supostos danos suportados pelo apelado, ocasionados por sua culpa exclusiva (ausência do devido cuidado com os seus documentos pessoais). Imperioso, portanto, que seja observada a regra entabulada no artigo 14, §3º, incisos I e II da Lei nº. 8.078/90, o Código de Defesa do Consumidor”. Mais adiante, sustenta, que “frente à inexistência de ilícito, ou, ainda, diante da excludente de ilicitude preconizada na verba legal acima invocada, bem como pela clarividente ausência de nexo de causalidade entre as supostas lesões experimentadas pelo apelado e as providências de segurança que são de responsabilidade do apelante, cogente se mostra a reforma integral da decisão recorrida, culminando na integral rejeição da postulação indenizatória aforada”. Por fim, protesta pelo conhecimento e provimento do apelo, para, consequentemente, reformar a sentença vergastada, com o reconhecimento da validade do contrato em questão. Sem contrarrazões. É o que importa relatar. VOTO Exercendo o juízo de admissibilidade, verifico o atendimento de todos os requisitos intrínsecos e extrínsecos que o compõem, levando-o ao qualificativo da positividade e, assim, ao conhecimento do recurso. Entendeu o juízo de primeiro grau em acolher os pedidos autorais, declarando nulo o contrato em questão (nº0123458209172), condenando o banco/requerido na

Processo	0201880-56.2024.8.06.0035
	devolução em dobro dos valores descontados indevidamente do benefício previdenciário do autor, e ainda, ao pagamento de R\$ 4.000,00 (quatro mil reais), a título de danos morais, com a compensação entre a quantia comprovadamente recebida pelo autor, a fim de evitar o enriquecimento ilícito. Sobre a temática em testilha, inicialmente, cumpre ressaltar que de acordo com a Súmula n.º 297, do Superior Tribunal de Justiça, as relações existentes entre correntistas e bancos devem ser examinadas à luz da lei consumerista: “O Código de Defesa do Consumidor é aplicável às instituições financeiras”. A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I e II, do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte Ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito da autora. Desse modo, tendo o autor/apelado comprovado a existência de descontos realizados em seu benefício previdenciário pelo banco/recorrente (Id.27160457/4), recairia sobre a entidade bancária o ônus de comprovar a regularidade do contrato. No caso concreto, é forçoso reconhecer que houve falha na prestação do serviço, causando danos de ordem moral e material ao promovente/recorrido, visto que, embora a instituição financeira/apelante argumente que o contrato foi realizado de forma eletrônica não procedeu a juntada do suposto instrumento contratual ou nenhum outro documento capaz de demonstrar a regularidade da avença, ônus que lhe competia, segundo a regra do art. 373, inc. II, do CPC. É cediço que para a contratação eletrônica ter validade jurídica, é preciso o preenchimento dos requisitos essenciais, dentre os quais o consentimento do consumidor mediante assinatura digital por biometria facial, com todas as nuances para garantir a autenticidade e a integridade dos documentos assinados, o que não ocorreu no caso. A entidade bancária/recorrente não comprovou a anuência expressa do requerente/apelado para a contratação em questão, tampouco concordância com o valor e as condições informadas, evidenciando a ausência de manifestação de vontade, requisito essencial para a validade do negócio jurídico, conforme disposto no art. 104, II, do Código Civil. A instituição financeira/recorrida detentora da tecnologia empregada em seus serviços possuía condições de demonstrar tecnicamente que o autor/recorrido procedeu a suposta contratação, mas de tal ônus não se desincumbiu. Assim, demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, o qual enseja pronta reparação dos danos causados, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. Isso porque, segundo a dicção dos dispositivos legais suso mencionados, notadamente o art. 14 do CDC: “o fornecedor de serviços responde, independentemente da existência de culpa, pela reparação dos danos causados aos consumidores por defeitos relativos à prestação dos serviços, bem como por informações insuficientes ou inadequadas sobre sua fruição e riscos”. A responsabilidade objetiva tem por base a teoria do risco, segundo a qual a atividade desenvolvida pelo fornecedor, colocada à disposição no mercado de consumo, destina-se a auferir lucros, estando suscetível aos riscos que lhe são inerentes. Daí é possível deduzir que, as instituições bancárias, em virtude da atividade de risco que exercem, devem responsabilizar-se, independentemente de culpa, pelos danos causados, questão esta inclusive já sumulada no STJ: “As instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias”. (Súmula n.º 479). Dano material Os valores descontados indevidamente do benefício previdenciário do autor/recorrente, sem que houvesse autorização para o exercício deste ato, indicam sem dúvida a presença do dano material. Dano moral Os descontos indevidos realizados no benefício previdenciário do requerente/apelado constituem ato ilícito, na medida em que a instituição bancária deixou de agir com o cuidado necessário para o regular desenvolvimento de sua atividade, causando danos e resultando, por via de consequência, na obrigação de repará-los, na forma dos arts. 186 e 927 do Código Civil. É nesta conduta, por certo, censurável, onde se centra o nexo de causa e efeito entre o dano e a ação (conduta), porque causou vexame, constrangimento ao consumidor, caso em que a condenação é devida porque os efeitos de

Processo	0201880-56.2024.8.06.0035
	tal prática afetam a pessoa com mais extensão e com repercussão no mundo exterior, não confinados apenas à indignação pessoal. A propósito: PROCESSO CIVIL. RECURSO DE APELAÇÃO. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. CONTRATO DESPROVIDO DE ASSINATURA OU AUTENTICAÇÃO ELETRÔNICA. MANIFESTAÇÃO DA VONTADE NÃO COMPROVADA. FALHA NA PRESTAÇÃO DE SERVIÇO. DANO MATERIAL CONFIGURADO. REPETIÇÃO DO INDÉBITO. MODULAÇÃO TEMPORAL. ENTENDIMENTO FIRMADO PELO STJ. DANO MORAL DEVIDO. QUANTUM INDENIZATÓRIO. MANUTENÇÃO. CRITÉRIOS DA RAZOABILIDADE E DA PROPORCIONALIDADE. RECURSO CONHECIDO DESPROVIDO. SENTENÇA CONFIRMADA. 1. Depreende-se da leitura dos fólios processuais, que a autora/apelada busca através da presente demanda declarar nulo suposto contrato de empréstimo consignado (nº 403054668), firmado em seu nome junto ao banco/apelado, bem como, a restituição dos valores descontados indevidamente, e ainda, indenização pelos danos morais sofridos. 2. A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I e II, do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte Ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito da autora. 3. Desse modo, tendo a autora comprovado a existência de descontos em seu benefício previdenciário (fls.14), recairia sobre o banco/recorrente o ônus de comprovar a regularidade do contrato e a legitimidade das cobranças realizadas. 4. No caso, o banco/apelante não logrou êxito em eximir-se de sua responsabilidade, tendo em vista que não conseguiu provar a regularidade da contratação em questão, porquanto, apesar de proceder a juntada do suposto instrumento contratual (fls. 50/58), o mesmo não encontra-se assinado ou autenticado eletronicamente. 5. A instituição financeira/recorrente, argumenta que o contrato de empréstimo consignado ora analisado foi requerido e perfectibilizado de forma eletrônica, para tanto, anexa o documento de identidade e uma foto selfie da promovente/apelada, como meio de comprovação da discutida avena (fls.59/61). Contudo, a foto carregada aos autos, não é suficiente para comprovar a manifestação de vontade por parte da autora/apelada, uma vez que se trata de foto individual, que pode ter sido coletada em outra oportunidade. Além disso, não há no documento anexado a geolocalização ou Id do dispositivo usado no momento da realização do pacto. 6. Na espécie, a instituição financeira/apelante detentora da tecnologia empregada em seus serviços possuía condições de demonstrar tecnicamente que a autora/recorrida procedeu a suposta contratação, mas de tal ônus não se desincumbiu. 7. Assim, quando demonstrada a falha na prestação dos serviços pelo banco, configurado está o ilícito civil, conferindo daí ao lesado a devida reparação dos danos sofridos, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. 8. Dano Moral - Sobre o dano moral, enxergo que é evidente a perturbação sofrida pela autora/apelada, em decorrência do ocorrido, ao ver os descontos no seu benefício previdenciário, uma vez que não houve autorização da prática deste ato e tampouco, conforme os elementos existentes nestes autos, prova de que houve a celebração do instrumento contratual com o banco/apelante. 9. Fixação - Para quantificar a indenização por danos morais deve se levar em conta, dentre outros fatores, a extensão do dano, as condições socioeconômicas dos envolvidos e o sofrimento da vítima. Nessa ordem de ideias, atento ao cotejo desses fatores, e levando em consideração os valores dos descontos, considero consentâneo o quantum indenizatório de R\$ 3 .000,00 (três mil reais), arbitrado pelo magistrado a quo, porque não se entremostra exagerado nem insignificante, uma vez que razoável e proporcional à ofensa perpetrada. 10. Recurso conhecido e desprovido. Sentença confirmada . A C Ó R D Ã O Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do eminente Relator, parte integrante desta decisão. Fortaleza, 03 de abril de 2024. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator(TJ-CE - Apelação Cível: 0201234-74.2022.8.06 .0113 Jucás, Relator.: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 03/04/2024, 1ª Câmara Direito Privado, Data de Publicação: 04/04/2024) &#160; APELAÇÃO CÍVEL. DIREITO DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE EMPRÉSTIMO CONSIGNADO C/C PEDIDO DE INDENIZAÇÃO. DESCONTOS EM BENEFÍCIO PREVIDENCIÁRIO . PARCIAL PROCEDÊNCIA NA ORIGEM. IRRESIGNAÇÃO DO ENTE FINANCEIRO. VALIDADE DE CONTRATAÇÃO NÃO DEMONSTRADA. SUPOSTO CONTRATO FIRMADO EM AMBIENTE DIGITAL COM CAPTAÇÃO FACIAL. AUSÊNCIA DE ASSINATURA FÍSICA OU DIGITAL. CASO CONCRETO QUE DEMONSTRA INDÍCIOS DE FRAUDE. UTILIZAÇÃO DA MESMA SELFIE PARA MÚLTIPLOS CONTRATOS EM DATAS DISTINTAS.

Processo	0201880-56.2024.8.06.0035
	NEGLIGÊNCIA DA INSTITUIÇÃO FINANCEIRA. DEFEITO NA PRESTAÇÃO DO SERVIÇO. RISCO DA ATIVIDADE QUE GERA RESPONSABILIDADE OBJETIVA. DANO MORAL IN RE IPSA. CONFIGURADO. QUANTUM MANTIDO. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. 1. Cuidam os autos de APELAÇÃO CÍVEL interposta por BANCO SANTANDER BRASIL S/A, objetivando a reforma da sentença de parcial procedência exarada nos autos da Ação Declaratória de Inexistência de Negócio Jurídico c/c Repetição do Indébito e Danos Morais, ocasião em que se declarou como inexistente a relação jurídica entre as partes, bem como condenou a ora apelante à restituição dobrada dos descontos indevidos, bem como em danos morais no montante de R\$ 5.000,00 (cinco mil reais). 2. Em análise, tem-se que a contratação de empréstimo consignado é regida pelas normas da Lei Consumerista (arts. 2º e 3º do CDC e Súmula 297 do STJ), devendo-se assegurar a facilitação da defesa dos direitos do consumidor, mediante a inversão do ônus da prova (art. 6º, VIII, do CDC). 3. Em que pese a inversão do ônus da prova, a instituição financeira não se desincumbiu do seu dever de comprovar que a autora firmou o empréstimo, mediante indubitável manifestação de vontade, limitando-se a narrar referida versão, sem, contudo, respaldar sua tese em conjunto probatório que a robusteça. Às fls. 32-44 e 45-54, o agente bancário anexou os contratos, contudo, estes não possuem credibilidade suficiente para infirmar as alegações autorais. Como ressaltado, sendo hipótese de operação digital mediante o envio de "selfie" e formalizada por meio digital, cumpria ao Banco-réu demonstrar a manifestação cabal de vontade da parte autora, seja por meio de identificação do IP ou por meio de geolocalização ou quaisquer outras provas que indicassem a manifesta vontade em contratar. 4. Em face da especificidade da operação (aceite da proposta por biometria), seja pela simples imagem da autora capturada pela ré, seja porque não é possível identificar o titular do aparelho móvel utilizado para a realização da operação, tenho que não há elementos suficientes que corroborem a contratação do empréstimo pela autora, notadamente a sua manifestação de vontade em contratar, observando-se, ainda, a utilização, como meio de prova, de selfies idênticas para ambos contratos firmados com 5 (cinco) meses de lapso temporal. Assim, ante a minuciosa análise do conjunto probatório, é forçoso reconhecer que as provas constantes dos fólios são indicativas de fraude na contratação do referido empréstimo, o qual, provavelmente, foi firmado por terceiro, com o uso de documentação falsificada. 5. Em casos como o relatado nos autos, a debitação direta na conta da consumidora, reduzindo seus proventos, sem contrato válido a amparar tais descontos, caracteriza dano moral in re ipsa, ou seja, presumido, decorrente da própria existência do ato, não exigindo a prova do prejuízo. Não obstante, a privação do uso de determinada importância, reduzida dos proventos de aposentadoria, recebida mensalmente para o sustento da requerente, gera ofensa à sua honra e viola seus direitos da personalidade, na medida em que a indisponibilidade do número reduz ainda mais suas condições de sobrevivência, não se classificando como mero aborrecimento, de modo que a hipótese merece indenização por dano moral. Nesse compasso, atenta às particularidades do presente caso, entendo que o quantum indenizatório fixado no montante de R\$ 5.000,00 (seis mil reais) não merece reparo e não destoam dos julgados desta Eg. Corte em demandas análogas. Logo, mantenho o montante indenizatório. 6. Recurso conhecido e não provido. Sentença mantida. ACÓRDÃO ACORDAM os e. Desembargadores integrantes da Segunda Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer do Recurso de Apelação interposto, mas para negar-lhe provimento, nos termos do voto da e. Relatora. (TJ-CE - Apelação Cível: 0200610-69.2022.8.06.0066 Cedro, Relator.: MARIA DE FÁTIMA DE MELO LOUREIRO, Data de Julgamento: 06/12/2023, 2ª Câmara Direito Privado, Data de Publicação: 06/12/2023) PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. AÇÃO ANULATÓRIA DE CONTRATO DE EMPRÉSTIMO C/C REPETIÇÃO DE ÍNDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. SENTENÇA PROCEDENTE. CONTRATAÇÃO ELETRÔNICA. PREPOSTO QUE CAPTURA INDEVIDAMENTE A IMAGEM DO PROMOVENTE, QUE NÃO CONSENTIU COM A CELEBRAÇÃO DO NEGÓCIO. AUTOR IDOSO. PARTE HIPERVULNERÁVEL. INSTITUIÇÃO FINANCEIRA QUE NÃO CONSEGUIU COMPROVAR A REGULARIDADE DA CONTRATAÇÃO. DANOS MORAIS CONFIGURADOS. DESVIO PRODUTIVO DO CONSUMIDOR. TEORIA DA PERDA DO TEMPO ÚTIL. CONDENAÇÃO FIXADA EM SENTENÇA NO VALOR DE R\$ 5000,00, QUE SE MOSTRA RAZOÁVEL E PROPORCIONAL. RECURSO CONHECIDO E IMPROVIDO. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para NEGAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Relator/Presidente do Órgão Julgador (TJ-CE - Apelação Cível: 0239881-23.2021.8.06.0001 Fortaleza, Relator.: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 21/02/2024, 1ª Câmara Direito Privado, Data de Publicação: 21/02/2024)

1079

Processo	0201899-36.2024.8.06.0173
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Processo	0201899-36.2024.8.06.0173
	CIÊNCIA DOS DESFALQUES. AUSÊNCIA DE OMISSÃO. EMBARGOS CONHECIDOS E DESPROVIDOS I. CASO EM EXAME Alegação de omissão quanto à prescrição, aplicação dos arts. 189 e 205 do Código Civil e jurisprudência do STJ (Tema 1150). II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em saber se o acórdão embargado incorreu em omissão ao não declarar a prescrição da pretensão indenizatória por desfalques em conta vinculada ao PASEP. III. RAZÕES DE DECIDIR 3. Ausência de omissão. O acórdão embargado enfrentou a matéria e reconheceu que, conforme o Tema 1150 do STJ, o prazo prescricional é de dez anos, com termo inicial a partir da ciência do extrato completo, e não do saque dos valores. 4. A decisão consignou que a autora obteve o extrato em 03/09/2024 e ajuizou a ação em 17/09/2024, dentro do prazo. Assim, não há falar em prescrição. 5. A pretensão recursal busca rediscutir o mérito da decisão, finalidade para a qual os embargos de declaração não se prestam (CPC, art. 1.022; Súmula 18/TJ). IV. DISPOSITIVO E TESE 6. Embargos de declaração rejeitados. Tese de julgamento: “Tese de julgamento: Embargos de declaração rejeitados.”

Processo	0201899-36.2024.8.06.0173
	transparent;";O prazo prescricional para o ajuizamento de ação indenizatória por desfalques em conta vinculada ao PASEP é decenal, com termo inicial na data em que o titular tem ciência dos desfalques. b Não configurada omissão quando o acórdão expressamente enfrenta a matéria e aplica a tese firmada no Tema 1150 do STJ." </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Dispositivos relevantes citados: CC, arts. 189 e 205; CPC, arts. 1.013, § 4º, e 1.022. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify"> Jurisprudência relevante citada: STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022; STJ - EDcl no REsp: 1847987 MS 2019/0216666-4, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 29/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/04/2022. </p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.12cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify"> AC ORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="center"> Fortaleza, 10 de setembro de 2025. </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> EDUARDO DE CASTRO

Processo	0201899-36.2024.8.06.0173
	NETO Juiz Convocado Relator RELATÓRIO Banco do Brasil S/A contra o acórdão 24745112 que deu providimento do recurso de apelação, no sentido de anular a sentença vergastada e determinar o retorno dos autos à origem para regular prosseguimento do feito. E m suas razões recursais, a parte embargante sustenta a existência de omissão no referido acórdão alegando em síntese, A Primeira Câmara decidiu, por votação unânime, deu provimento ao recurso da parte autora. Entretanto, incorreu em omissão [...] A parte autora apresentou microfilmagens dos extratos do seu benefício e demonstrou que tomou conhecimento do seu saldo PASEP quando sacou na sua aposentadoria, em 30/04/2012 [...] Para a caracterização da prescrição não basta o transcurso do tempo, é necessária a presença concomitante da possibilidade de exercício de uma ação que tutele o direito e a inércia do seu titular (AgInt no AREsp 489.724/RN, Rel. Ministro NAPOLEÃO NUNES MAIA FILHO, PRIMEIRA TURMA, julgado em 18/11/2019, DJe 22/11/2019). Conforme bem pontuado pelo Magistado a quo, o argumento de que a prescrição deve correr do momento da não realização dos depósitos, ou da subtração indevida (e não do momento da aposentadoria), não pode ser admitido, pois não se pode exigir à parte checar, periodicamente, a retidão das quantias depositadas, pois assim, se a prescrição for contada da emissão do extrato, o feito se torna imprescritível na prática. Destarte, o Superior Tribunal de Justiça firmou no

Processo	0201899-36.2024.8.06.0173
	julgamento do REsp nº 1.895.936/TO, sob a égide dos Recursos Repetitivos (Tema 1150), em 13/09/2023, que “a pretensão do ressarcimento dos danos havidos em razão dos desfalques em conta individual se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil” e “o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP”, contudo, ainda configura-se prescrita a pretensão da autora, considerando marco inicial da prescrição a data do saque do PASEP referente à aposentação e da ciência dos desfalques, em 30/04/2012, ou seja, já decorreram mais de dez anos, visto que a ação foi proposta somente em 17/09/2024. [...] Deste modo, para evitar prejuízo futuro, necessário a correção do julgamento sem prejuízo de outras matérias em todo o teor do acórdão. Requer-se, portanto, o acolhimento destes aclaratórios para que seja corrigida a questão apontada. Diante disso, é de rigor o reconhecimento da prescrição do caso posto em tela, já que a presente demanda foi ajuizada tão somente em 17/09/2024.” </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Por essas razões requer que “ sejam sanadas as omissões para reformar o acórdão atacado, ante a prescrição da pretensão veiculada. Não sendo deferido efeito modificativo aos presentes embargos, postula sejam sanados os vícios apontados, com expressa manifestação, para efeito de prequestionamento, acerca dos artigos acima citados e da matéria fática aqui envolvida. ” </p><p style="font-weight: normal; line-height: 150%; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Contrarrazões id. 27097945. </p><p style="font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> É o relatório. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-bottom: 0cm;" align="center"> VOTO </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Exercitando juízo de admissibilidade recursal quanto aos embargos de declaração em curso nestes autos, verifico o atendimento d os requisitos intrínsecos e extrínsecos que compõem o referido crivo, levando-o ao qualificativo da positividade e, assim, ao conhecimento dos aclaratórios. </p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> <span style="background-image: initial; background-position: initial; background-size:

Processo	0201899-36.2024.8.06.0173
	align="justify"> III - corrigir erro material. </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Na ensanचा, anoto o disposto na Súmula 18 deste egrégio Tribunal de Justiça, in verbis </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="font-style: normal; font-weight: normal; line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify"> São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. <p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify"> Com efeito, no tocante a suposta omissão sobre a prescrição da ação , assim restou acertadamente decidido quando do julgamento: </p></p>

Processo	0201899-36.2024.8.06.0173
	style="line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent;" align="justify">&#160;</p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent; page-break-before: auto;" align="justify"> DIREITO CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER. CONTA VINCULADA AO PASEP. PRESCRIÇÃO DECENAL. TERMO INICIAL A PARTIR DO CONHECIMENTO DO EXTRATO COMPLETO E NÃO DO SAQUE DOS VALORES. SENTENÇA ANULADA. TEORIA DA CAUSA MADURA. INAPLICABILIDADE. NECESSIDADE DE DILAÇÃO PROBATÓRIA. RECURSO CONHECIDO E PROVIDO. RETORNO DOS AUTOS AO JUÍZO A QUO. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> I. CASO EM EXAME </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> 1. Apelação cível interposta contra sentença que julgou liminarmente improcedente ação de indenização por danos morais, ao reconhecer a prescrição da pretensão ao ressarcimento de valores supostamente suprimidos de conta vinculada ao PASEP. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> 2. Definir se a pretensão indenizatória está prescrita, considerando o termo inicial do prazo prescricional. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> III. RAZÕES DE DECIDIR </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> 3. A jurisprudência consolidada no Superior Tribunal de Justiça (Tema 1150) estabelece que o prazo prescricional para ressarcimento de danos em conta vinculada ao PASEP é decenal, tendo início na data em que o titular comprovar ciência dos desfalques. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> 4. Na hipótese dos autos, o termo inicial deve ser fixado na data de obtenção do extrato completo da conta PASEP pela autora, ocorrida em 03/09/2024. Como a ação foi ajuizada em 17/09/2024, não há prescrição. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> 5. O julgamento da lide nesta instância não se mostra adequado, pois a demanda requer dilação probatória, especialmente a realização de perícia contábil. </p><p style="line-height: 150%; margin-left: 4cm; margin-bottom: 0cm; background: transparent;" align="justify"> 6. Diante da necessidade de instrução probatória, não se aplica a teoria da causa madura (art. 1.013, § 4º, do

Processo	0201899-36.2024.8.06.0173
	CPC). IV. DISPOSITIVO 7. Recurso provido para anular a sentença e determinar o retorno dos autos ao juízo de origem para regular prosseguimento do feito. Logo, não havendo nenhum dos vícios ensejadores à procedência aclaratória, restando evidenciado o mero inconformismo da Embargante com a solução jurídica prestada por este Sodalício, invocando instrumento processual incabível para a pretensão posta, no caso, a tentativa de rediscutir a matéria já decidida, o presente recurso deve ser rejeitado. A respeito, anoto entendimento perfilhado na ambiência deste Eg. Tribunal in verbis 1. A solução correta e integral da controvérsia, com lastro em fundamentos suficientes, não configura omissão. 2. Os Embargos de Declaração não constituem instrumento adequado para a rediscussão da matéria de mérito consubstanciada na decisão recorrida, quando não presentes os vícios de omissão, obscuridade ou contradição, nos termos do art. 1.022 do CPC. 3. Embargos de Declaração rejeitados. (STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022) 1.

Processo	0201899-36.2024.8.06.0173
	 </p><p style="font-style: normal; font-weight: normal; line-height: 150%; text-indent: 2cm; margin-bottom: 0cm; background: transparent; text-decoration: none;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; page-break-before: auto;" align="center"> EDUARDO DE CASTRO NETO </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Juiz Convocado&#160; <strong style="background-color: transparent; font-size: medium; font-family: Verdana, sans-serif;"> Relator </p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0533715-34.2000.8.06.0001
Número de ordem	117
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Pagamento em Consignação
Polo ativo	BANCO BRADESCO S/A
Advogado(s) - Polo ativo	WILSON SALES BELCHIOR - (CE17314-A)
Polo passivo	RITA DA PONTE RANDAL POMPEU JOAO POMPEU LOPES RANDAL
Advogado(s) - Polo passivo	FRANCISCO REGIS AGUIAR MOTA - (CE6684-A)
Terceiros	JOAO HILDO PONTE RANDAL POMPEU

Processo	0533715-34.2000.8.06.0001
Acordão	35684815 <img style="font-family: verdana, geneva; font-size: medium;" src="data:image/png;base64,iVBORw0KGgoAAAANSUHeUgAAAS0AAABiCAYAAAAFmoXjAAAACXBIWXMAAA7DAAAOwwHHb6hkAAArhUIEQVR4nO2dB7hdVZXH1yWBIMrwcCgJBngClkQwD0ILQQhFRrEMyxeUXkRRQYrjH0EFFCRir0b0QFRqsQABAw1hBQSQhOCI CSKpZIASUhyZ/3OXjvv5Obe+0695b2zvm/zyL3nnrPPOXv/9yr/tfZAKaSQQnKXIQd8e4D+VW/bRtreo21TbUO1rW2fbWCHzre2VNsmBxO0zdI2V9vimXf/bGVDO96CMrDZHSikd9EBX+KvDthyje831D+f1baTtrUa2LUkwj08qe1GvZ+ZUX9kz2BHcfe5SYzra3tYW236PUWxeloGrH+/ou2rbXtrG0PbduLAYze17ra1qlzCp4TwPWWtm5tL2I7Qs87Tv9O0Pai3s+yOtcHEL9o1y+lvJ08hffDPd2m9/NGIB8UoNWiooOod8Nq/AFto7UN0M/Oq5zotoKfrO0/xa3a7SBoCzto30+sN/EqhMI+pbZdElzvGG0der2LagF/FmJA9S5tO2g7UNsB4oAKklq7mHCuda3x+/dq21vb8dpe1XanXu9Hej+qzqRjPf1zjrbPJbhuM+Qobd/QdkWUgwwQahGxAc9g21zb7tr207abti3scyZ3sCJV/HSQuMHcLoCFMJF2FWcuzYv4m05xAJBEBtn1eMaZg5a9O7S/j2g71K7VkfV1TJizjlnjtd2I7VdVjsHcRLNrB8BC3iHumRWG1epiWtk/anuftr207S9Os0LDGIBxOBOjGjDxebsMzrBwF3H6zbFpzJwBKX+/hhhYvVvbp7Qdq2241Df5shSeRy0Qb9cxEuK0Ggg2CBn1cfftgJ8D8wGtqlOc/6OQNhF9I7xHFpnTtO0pjQOrsLSyryo3KUArZ9HBzYoHIG2jbZQ4s6+Lr6S9TLpCZNXCW6JzqrbDJD8zsJAaUoBWDmJmH45JTD1ACrB6vziHaprVMTcnciG9iy1AH9J2ljgNuc+aYK0sBWHLJGYubCZOizrAGg7TdTMT4PaHvp7W9kMG5Ckkg+n4x/4jGnSHuvRbSJCIaK6GYmUD0Cx4MkRr8G/ip0LDS+jfQqLq1PaPtIW1jt2u7ZWU5y0kgei7Jrp1grbvSw8JtJAmSQFaMUQHLLz4oIntEbfYRRzXg/4kgpTUVoDQASp013SuOEPmsttcLFnTzxAdrW9g+o+2dT e5OIVKAVI0Jcac6xXGm0Kbgbk8ClekfK0wNEC8RpU4+K06YALiDiY/lkQRYSTczk/5oUgNV SUoBWhZgTHc1pO3Ga1GhxDOeNZU3uVfXZlk6bmqtj9oe0fYpBysKbaq1xMbB4dq+JwVgtZT0e9AybQpnOWHS EeKAAqQ4X9X6KU+PtkTyK9Ug+LMvie0zYqRvtKbrND2ekbnaqSQB5jVM8hUbEwQ9f2hFPy5RkmkvEOKX4KWha5xqG4rjhhlPl9kXLhTaZ8JCa4ktz6m7e/axovTphbG1aZmj9kh6GdJyu8rAagleXDjQ6ZNrjiMyOJF4kxY/G1RKRX45wDltL44gJkByTGb7q1XS4OuFpRyPOD1jAk5+uw4LwpbtHh/wFxn/nAeyGPETfEIKn+Xt/MqV+M08XSMEWF8fO ctjFRf9BvQMuc6lPFgRO+KcAKExDwSsOd4gWTP0ceGLmB92mbpm22gtTbcU40a8yO9GMdfY+blVxKyGhxWh9pPpgoZO2vBlr4vvTe7tL/nSluJSjqvabdf6cz2ZQnH6GhHu/WRxo4p+L6odjkr7SiiXOd5JpT85h9PzfCg1M1Wca4B39qK218RVO1hhxzEvYyoQeYRbiavg0SWO74f2N1vbnTn0kcXnQm1/kPxAMSw8E+5tTqf9FnmHuf6gEUBF74QeKlgTjR03KnlosbaJRYu csaHKpFcR3os8Z8kh7qRClvrrq8P8/STOlwhLm4mq1MnagKgTf5XrUWVuf0eV9xzeJMN D+R68/JeHvW0pszkB1f0GyTZHh/Tyv7Y/afisuKvxxmhLEyl9HtGMDi5EsenSt5wQZ76lUF9 6fat6iJ7A2XPgVaoRpGpMygoaBRdcmaAJBEFoobeKyQaFOTtP1Tog2+1WTmb4brc1+JY3 9YuSwfKpUCrY/BiHnXyHfCSro4xe8xTdvRn1ZL0FShN6T1ZYyFteogcebPDB0rK3o5vqrY woQ2+4C1vASwiuxfaa0PWiz2QcAEOfDa0CbwxuDtU6zWqJNUauliQcHOGMFVvr8uAPv leuH0493SqnccqX93LUt535KUdlHtagsplIMtlbbgfVqc2yALwR90i7Yzt2TRFKyalC1PtWk70LL BxUTHWYozBVDhf/B1p5IKLwtCpMJ5zmUBFjoL2t7K6429dL1w9HsNtHobqc/3LvkWbQikj 6KtNSJQriX/J2U8miWgMaEUx4fq3jpi9poi0hbQFaobpTTPR4tjomFNoWGMiX6yGvAKFh gBI4ScgkhFbm/rn9TuVpFzGNMVpqmBaBky7xFeP0oBpITmLLYQf1fbBDE7HlneKtj9ISGsp JCQtCVoh7hS+KLQoffPk98GdeleKU3ttCmACoDD7JokjfC6Nq03Nuk6LVXmwdnaHclnU5 AtMC2gUWaT1FNI4YfGjJHPaUkEEZygbfGsbmYntJyODWhYd6RAXOvV1p9CmAK40gwln MaBEpG+suArkfFML4obcn792J9/HrUvUKi+rNIUKIm9oU1IUcykiOUI0Li3FAX4e/qvbCsDK V5oKWlbuAwlfarnnTqGpYGYldaJXq5AAtmwneixt6lrRmgfykHJmVIJ3IRg8qHxEZ0k/FxoU2 0uFsj5d0nOVUMYU/CartTtTyTjhVSUxokWqFywwwAV5MlPikubGSrpBk2Y4InJd4ckrJDWz DU7B0nSJSkN1ZG4S8kN6N2sz80oqRuWYgXPXqCZ7JHyHPDjfqFjLQ19pJCikjtohcNw+ pGk8Lsg5Wetu4UXBI4MET47hdXKSERwfpPq0fwHlj0DVOtbw/V8QDSZvCmqgnmLcECf HCVKTyFpBfe8+Ypfs9YgzD6RDbdabr4FKKWVwmpO3ZRwgZ7hRmXxblhtEyYGBPFwdS 99v/z4mrkk+/akSwP12JfL1SUGoGs4/99NLSJrIqzVi3gJU3CcT4tWND5m2tJkd62timj8LaZ oyQ/hLr+1DZiHdzGd9Ng+36j1AlqhTSqZ9Hsfs++tHWNyGyjTcGbutf+8u834mpTt165y9ol 9qYrsbKW0aQ8bwodRTN5U9wHZgX3c7BgBTJ1jO0Ldr00KktT/ZrY0H0dH0HyHtHLW2D6i mAB/UbbAzqv8zZ3WYTJXb0/jhsnMWgZdwqiJJs37GMNIE5T8rn9MFCZ/KiaRD1ey0u6k+ 7cldU3KAccknKkFABKSJEAGmztSmSUvGDkLPnQeoZBdR5gw99oiVXtz4qaP5bpfg9k+7 WulnxbSBbWmuEsBP3x8RVQokksUHLsuABgM+ly++DmZ4mFQUOnyHOJ4U2xQSmtEvs nL6pV+zqo5GeNzVSGcCbpc200zFt54qjWhDRBKgAZiKaywYfOqXQppojm1hLKr6gYyHJB SUCWIM+oKWABWmSSo5HSfLiaOEKCUxek47hm5obl98y5fLdLP09vFWpJLvrzAeo4E2h 4jaTNwUIkb4RNvkm2L8Xb/alAqRaAiOpCErYxbOzqgv/Vli+bkjg5ZrpWAAW9Zfik3DFRLQp oiCxdamJl2+u6dMvEdNvuEGUph+qPhpE6TTCuRCvzEFVSDQHfK9Fgz98uTEVIUQTYQJ RiHBBRn0tRanaak2LLZxih8WkoHE0bQAhyMkGmCFCZ63iyN4JqqQ8PhluxtvSrZQkw+/2 UGqVUFGbTzVzSrsjC0uOZnG3NbTH2VscNilVzpnRRPDH4VcYLc7uhzLCrsa3pTl3lasJC3G ahe7ZYgOSxksk0LJJBmmyo85hYecy2hS+G3L8YhM8J1w6cm2rN7Wt1ZsK86aaGekjmm 1KQqwoTkCzAu2PGxiWm2KCYrTD4eN+yX6CIAR3eT54+xNmxtXiJcBwaPCOMUZeN/dmf SIKFgSVdPCPzS84jNfAwNilpTABWaRuBcjrMkCjbn9kpONNIQKnfG5m9hGKRn1P43NIK97/5 ksp06bbZ2+/9BJiVbZUFVvUgZQLgCoUfb/m0rzmfd9XkprBUP/3SiOWSLyWja9KSSORAUt AArHMpoG2hQRE0DKb4G1MK6a/MjFI4ONTxWohukP9ym5pFWK90GjaFakj/v0/jd8Ur5Ca eB/2+rwIYNASPCmknrQSK0KYg36Jdpd1DsZDYEGyxNMEaxkpfozq0hUQFLfgop2m7QJzJ F3sLrlcu3INHsvBvauuSIFSLKuOfgoXe7HpTpAMBSgDxffyXIO5+3xET0ph8Pn2pU5zW6Hl i+KnwVzUzaFBIOFByPckrzPstKns0QSKBlm4Rz1mLLA9ctCeRmcGqTe0oZaGMC7wueFM dKOhNquzK6kiYGjMPugWmLefbnG2PnJB45QXVVIV30iU9IEUNsKK+VotJeUXwqjPvAFNF vHlfSIMI09zDcRfuGWgXCLbKcjtEareCW8qTWg5jbCksmHq8wqR40tOm8KR/rL++63tj5yQ hV/K75BCHpvPCsg6r5N+FuZIVlIOEG/S0EcY6xti05l+LYzpWLSRVBNr3lV7+XpTtk1XKNNH

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Processo	0533715-34.2000.8.06.0001
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 </div><div style="text-align: center;"> PODER JUDICIÁRIO </div><div style="text-align: center;"> <p> TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ </p> <p> GABINETE DO DES. EMANUEL LEITE ALBUQUERQUE </p> <p style="text-align: center;"> ¶ </p> <p align="left"> APELAÇÃO CÍVEL Nº 0533715-34.2000.8.06.0001 </p> <p align="left"> Apelante: BANCO BRADESCO S/A </p> <p align="left"> Apelada: RITA DA PONTE RANDAL POMPEU </p> <p align="center"> ¶ </p> <p align="justify"> <strong style="font-family: verdana, geneva; font-size: medium; text-align: center;">EMENTA : DIREITO CIVIL. APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO. FINANCIAMENTO IMOBILIÁRIO PELO SISTEMA FINANCEIRO DA HABITAÇÃO. CONTRATO CELEBRADO EM 1989. CAPITALIZAÇÃO MENSAL DE JUROS. IMPOSSIBILIDADE. INCIDÊNCIA DA SÚMULA 121/STF. CONTRATO ANTERIOR À MP 2.170-36/2001. RECURSO DESPROVIDO. </p> <p align="justify"> <strong style="font-size: 1.17em;"> I. CASO EM EXAME </p> <p align="justify"> <strong style="font-size: 1.17em;"> ¶ 1. Apelação cível interposta por BANCO BRADESCO S/A contra sentença da 28ª Vara Cível de Fortaleza que julgou parcialmente procedente a ação revisional ajuizada por RITA DA PONTE RANDAL POMPEU, declarando nula a cláusula de capitalização de juros. O recurso limita-se a impugnar o afastamento da capitalização mensal de juros. </p> <p align="justify"> <strong style="font-size: 1.17em;"> II. QUESTÃO EM DISCUSSÃO </p> <p align="justify"> <strong style="font-size: 1.17em;"> ¶ 2. A questão em discussão consiste em definir a possibilidade de cobrança de juros capitalizados mensalmente em contrato de financiamento imobiliário firmado no âmbito do SFH em 1989, antes da edição da Medida Provisória nº 2.170-36/2001. </p> <p align="justify"> <strong style="font-size: 1.17em;"> III. RAZÕES DE DECIDIR </p> <p align="justify"> <strong style="font-size: 1.17em;"> ¶ 3. A jurisprudência do Supremo Tribunal Federal, consolidada na Súmula 121, veda a capitalização de juros, ainda que expressamente convencionada. </p> <p align="justify"> <strong style="font-size: 1.17em;"> 4. A Medida Provisória nº 2.170-36/2001, que admite a capitalização mensal desde que pactuada, não alcança contratos celebrados anteriormente à sua edição. </p> <p align="justify"> <strong style="font-size: 1.17em;"> 5. No caso concreto, o contrato foi firmado em 1989, de modo que incide a vedação da capitalização mensal de juros, admitindo-se apenas a incidência em periodicidade anual. </p> <p align="justify"> <strong style="font-size: 1.17em;"> 6. A manutenção da sentença encontra respaldo em precedentes do Superior Tribunal de Justiça e do próprio Tribunal de

Processo	0533715-34.2000.8.06.0001
	Justiça do Ceará em hipóteses idênticas. IV. DISPOSITIVO E TESE 7. Recurso desprovido. Tese de julgamento: - É vedada a capitalização mensal de juros em contratos vinculados ao Sistema Financeiro da Habitação celebrados antes da edição da MP 2.170-36/2001. - A Súmula 121 do STF impede a incidência de juros compostos mesmo quando pactuada cláusula expressa. Fortaleza, 10 de setembro de 2025. &#160; A CÓRDÃO Vistos relatados e discutidos os autos da APELAÇÃO CÍVEL nº 0533715-34.2000.8.06.0001, em que é apelante BANCO BRADESCO S/a e apelada RITA DA PONTE RANDAL POMPEU, acorda o colegiado da 1ª Câmara de Direito Privado do TJCE, por unanimidade de votos, em conhecer e NEGAR provimento ao recurso, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. &#160; JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador &#160; &#160; EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator &#160; R E L A T Ó R I O &#160; Trata-se de recurso de apelação interposto por BANCO BRADESCO S/A em face de sentença proferida pelo juízo da 28ª Vara Cível desta Comarca de Fortaleza, que julgou parcialmente procedente a ação revisional que lhe foi ajuizada por RITA DA PONTE RANDAL POMPEU, o que fez nos termos do dispositivo a seguir transcrito: verbis: &#160; Ante o exposto, Considerando os elementos do processo e as provas produzidas nos autos, atenta ao disposto na legislação aplicável e nos entendimentos jurisprudenciais acima invocados, JULGO PARCIALMENTE PROCEDENTE os pedidos iniciais, com resolução do mérito, na forma do artigo 487, I do CPC, para que surta seus jurídicos e legais efeitos, nos seguintes termos: a) RECONHECER DECLARAR a nulidade da cláusula que autoriza a capitalização dos

Processo	0533715-34.2000.8.06.0001
	juros; RECONHECER e DECLARAR a nulidade da cláusula-mandato; DECLARAR a quitação parcial do débito e afastar a incidência dos consectários da mora; d DETERMINAR a apuração, em sede de liquidação de sentença, do saldo devedor advindo do contrato, nos moldes ora decididos, e, em havendo valores a serem restituídos aos autores, decorrentes da cobrança porventura realizada a maior, a sua devolução dar-se-á de forma simples, por aplicação do disposto no art. 42 do CDC, acrescidos de atualização monetária pelo INPC/IBGE, a partir dos pagamentos realizados e acrescidos dos juros legais, a partir da data da citação até à data do efetivo pagamento. Dada a sucumbência recíproca, condeno os litigantes nas custas e despesas processuais na proporção de 50% (cinquenta por cento) para a parte autora e ré, o que faço com fundamento no art. 85, § 2º e art. 86, ambos do CPC. Já com relação aos honorários advocatícios, os promoventes responderão pelo percentual de 10% (dez por cento) sobre a diferença entre a quantia pretendida e a que efetivamente restou condenada a parte promovida, enquanto que esta responderá pelo pagamento no importe de 10% (dez por cento) sobre o valor da condenação, vedada a compensação, na forma do §14 do art. 85 do CPC. Nada obstante, sustenta a instituição financeira apelante que “a capitalização mensal encontra-se regularmente prevista em contrato” e que “no que se refere à legalidade da capitalização, a discussão está superada desde a edição da Medida Provisória nº 1.963-17/2000, de 30/03/2000, que a admite com periodicidade inferior a um ano e desde que expressamente pactuada.” Sustentou, ainda, que “improcede a pretensão de afastamento da capitalização, não havendo assim que se falar em nulidade de cláusula contratual nesse sentido, merecendo reforma a decisão apelada.” Requeru o provimento do recurso para o fim de reformar a sentença. Contrarrrazões alojadas no ID 19025471. É o relatório adotado. V O T O - Conheço do recurso, posto vislumbro presentes os requisitos de admissibilidade previstos no CPC. Como visto, é única a insurgência vertida no apelo, qual seja, o afastamento da cobrança dos juros capitalizados levados a efeito pela sentença. No caso, registro, a princípio, que o contrato objeto do pleito de revisão foi celebrado no ano de 1989 e é vinculado aos financiamentos regidos pela Lei nº 4.380/1964. Da capitalização de juros Com relação à capitalização de juros, no caso incide a Súmula 121, do excelso Supremo Tribunal Federal – STF que reza: “É vedada a capitalização de juros, ainda que expressamente convencionada”. Além disso, considerando que o contrato restou celebrado no ano de 1989, ou seja, anteriormente à edição da Medida Provisória nº 2.170-36/2001, a capitalização mensal de juros deve ser afastada.

Processo	0533715-34.2000.8.06.0001
	2.170-36/2001, a capitalização mensal de juros deve ser afastada. Precedentes do STJ e deste Sodalício. 2. No tocante aos juros remuneratórios, contudo, a sentença incorreu em equívoco ao limitar os juros remuneratórios com base na taxa média de mercado. Isso porque, segundo a jurisprudência dominante do STJ, Não há falar em limitação dos juros remuneratórios a 10% ao ano, pois esta Corte Superior de Justiça, no julgamento do REsp 1.070.297/PR, de relatoria do Ministro Luis Felipe Salomão, julgado em 09/09/2009 nos moldes do artigo 543-C do CPC, entendeu que o artigo 6º, "e", da Lei 4.380/64 não estabelece a limitação da taxa de juros, dispondo apenas sobre as condições para a aplicação do reajuste previsto no artigo 5º da mesma lei. Neste sentido é que a corte editou a Súmula 422: O art. 6º, e, da Lei nº. 4.380/64 não estabelece limitação aos juros remuneratórios nos contratos vinculados ao SFH. 3. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. (Apelação Cível - 0436700-65.2000.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 09/10/2024, data da publicação: 13/10/2024). APELAÇÃO CÍVEL – REVISÃO DE CONTRATO DE FINANCIAMENTO IMOBILIÁRIO – SISTEMA FINANCEIRO DE HABITAÇÃO – CÓDIGO DE DEFESA DO CONSUMIDOR – INCIDÊNCIA – CONTRATO FIRMADO APÓS A EDIÇÃO DA LEI Nº 9.298/96 - UTILIZAÇÃO DA TR PARA REAJUSTE DO SALDO DEVEDOR – POSSIBILIDADE – CAPITALIZAÇÃO MENSAL DE JUROS – VEDAÇÃO – CONTRATO CELEBRADO ANTES DA MP 2.170-36/2001 – COBRANÇA ABUSIVA – USO DA TABELA PRICE – CABIMENTO – RECURSO CONHECIDO E PARCIALMENTE PROVIDO – SENTENÇA REFORMADA EM PARTE. 1. A sentença de origem julgou procedente o pedido autoral nos autos da Ação Revisional de Contrato de Financiamento Imobiliário vinculado ao Sistema Financeiro de Habitação, afastando a capitalização mensal de juros, a Taxa Referencial e a Tabela Price, e limitando os juros remuneratórios e moratórios a 12% ao ano e a multa a 2%, possibilitando ainda a repetição em dobro do indébito. 2. INCIDÊNCIA DO CDC: Mostra-se possível a revisão judicial do contrato, com base no CDC, visando adequá-lo ao ordenamento jurídico vigente e afastar eventual abusividade e onerosidade excessiva, vez que o instrumento foi firmado após sua vigência, bem assim a teor da Súmula n.º 297 do STJ: "O Código de Defesa do Consumidor é aplicável às instituições financeiras." Sentença mantida. 3. REAJUSTE DO SALDO DEVEDOR PELA TR: Restou permitida a utilização da TR para corrigir o saldo devedor de contratos vinculados ao Sistema Financeiro de Habitação firmados após a edição da Lei nº 8.177/91, consoante decidiu o Superior Tribunal de Justiça no Recurso Especial n. 969.129/MG, de relatoria do Min. Luis Felipe Salomão. E ainda, a Súmula n.º 454 daquela Corte de Justiça diz: "Pactuada a correção monetária nos contratos do SFH pelo mesmo índice aplicável à caderneta de poupança, incide a taxa referencial (TR) a partir da vigência da Lei n. 8.177/1991". In casu, se a cláusula contratual prevê, para a atualização do saldo devedor do financiamento, a utilização do mesmo índice aplicável às cadernetas de poupança, não há nenhuma ilegalidade na adoção do referido coeficiente, sendo perfeitamente válida a TR na espécie. 4. CAPITALIZAÇÃO DE JUROS E TABELA PRICE: Conforme a Súmula 121 do STJ: "É vedada a capitalização de juros, ainda que expressamente convencionada". De forma subsidiária, incide também a vedação que obsta a prática da capitalização mensal nos mútuos hipotecários sujeitos ao SFH em razão da destinação do importe mutuado, ainda mais quando o contrato é firmado antes da regulação genérica que legitimou a prática exclusivamente nos mútuos bancários, mediante a Medida Provisória nº 2.170-36/2001, art. 5º. Na espécie, considerando que o contrato em comento foi celebrado em 06/05/1996, ou seja, antes da MP 2.170-36/2001, a capitalização mensal de juros deve ser afastada, permitindo-se, porém, a sua incidência na periodicidade anual. Por sua vez, a utilização do Sistema Francês de Amortização, Tabela Price, para o cálculo das prestações da casa própria, não é ilegal e não enseja, por si só, a incidência de juros sobre juros. Sentença reformada em parte, para permitir a utilização da Tabela Price. 5. REPETIÇÃO DO INDÉBITO. Firmou-se o entendimento de que, em face da abusividade de cláusulas contratuais, admite-se a compensação ou repetição do indébito de forma simples, ante o princípio da vedação do enriquecimento sem causa, independentemente da prova de erro no pagamento. 6. Apelo conhecido e parcialmente provido. Sentença reformada em parte. (Apelação Cível - 0474965-39.2000.8.06.0001, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 07/11/2018, data da publicação: 07/11/2018). Sendo esta a única insurgência do banco apelante, o caso é, portanto, de desprovimento de seu recurso com a consequente manutenção da sentença.

Processo	0533715-34.2000.8.06.0001
	size: medium;"> ANTE AO EXPOSTO, conheço e nego provimento ao apelo. </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Majoro os honorários em 2% (dois por cento), acorde à norma do artigo 85, § 11, do CPC. da. </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> É como VOTO. </p> <p style="text-align: justify;">&#160;</p> <p style="text-align: justify;"> Fortaleza, 10 de setembro de 2025. </p> <p style="text-align: justify;"> &#160; </p> <p style="text-align: center;"> EDUARDO DE CASTRO NETO </p> <p style="text-align: center;"> Juiz de Direito, convocado </p> <p style="text-align: center;"> Relator </p> <p style="text-align: center;"> &#160; </p> <p style="text-align: justify;"> &#160; </p></div>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0200138-76.2024.8.06.0073
Número de ordem	118
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Tarifas
Polo ativo	BANCO BRADESCO S/A
Advogado(s) - Polo ativo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Polo passivo	FRANCISCO ALVES DE LIMA
Advogado(s) - Polo passivo	DIEGO DE CARVALHO RODRIGUES - (CE19646-A)
Terceiros	Não informado

Processo	0200138-76.2024.8.06.0073
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Processo	0200138-76.2024.8.06.0073
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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;0200138-76.2024.8.06.0073 - EMBARGOS DE DECLARAÇÃO&#160;</p><p> EMBARGANTE: BANCO BRADESCO S/A</p><p> EMBARGADO: FRANCISCO ALVES DE LIMA</p><p>&#160;</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; align="justify"> Ementa: Direito processual civil. Embargos de declaração em recurso de apelação cível. Acordo extrajudicial. Pedido de homologação em sede recursal. Possibilidade. Pressupostos presentes. Autonomia da vontade das partes. Recurso prejudicado. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; align="center">&#160;</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; align="justify"> Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em HOMOLOGAR O ACORDO FIRMADO ENTRE AS PARTES, restando PREJUDICADO o recurso, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p></p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; align="center"> Presidente/Relator </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; align="center">

</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; align="center"> RELATÓRIO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; align="center"> </p></td></tr></table>

Processo	0200138-76.2024.8.06.0073
	background: transparent;" align="justify"> Trata-se de Embargos de Declaração opostos pelo BANCO BRADESCO S/A, adversando acórdão da Primeira Câmara de Direito Privado deste Tribunal que, nos autos do Recurso de Apelação Cível nº 0200138-76.2024.8.06.0073 , deu parcial provimento ao recurso da instituição bancária, reformando a sentença recorrida tão somente para excluir a condenação por danos morais (id. 20559193).</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Em suas razões, o embargante aponta vício de contradição no julgado, pugnando pelo acolhimento dos aclaratórios, para que esta Corte se pronuncie sobre os pontos suscitados, inclusive para fins de prequestionamento perante as instâncias superiores. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Petição apresentada pelas partes informando que transigiram requerendo a homologação do acordo (id. 26971117).</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É o relatório.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> VOTO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Verifico que as partes chegaram a uma composição, conforme termo de acordo juntado (id. 26971117). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É cediço que a transação constitui negócio jurídico bilateral no qual as partes, com o escopo de prevenir ou terminar o litígio, realizam concessões mútuas, nos termos do art. 840 e seguintes do Código Civil; l</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Assim, por constituir um negócio jurídico por excelência, sua validade se submete aos requisitos do art. 104 do referido diploma.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Observa-se, da referida transação, que as partes, por meio de instrumento particular, estão devidamente representadas e que os advogados que as representam possuem poderes para transigir (id's. 17974501 e 17974519), sendo, ainda, relevante destacar que o próprio autor firmou sua concordância na avença, apondo sua digital, havendo autorizado terceiro a assinar a rogo na presença de duas testemunhas. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Tem como objeto o processo de número 0200138-76.2024.8.06.0073, que deverá ser extinto, definindo-se, para tanto, obrigação de pagar e as suas condições, sendo, assim, lícito, possível e determinado. Por fim, o acordo está livre de qualquer vício de vontade. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Dessa forma, considerando que a jurisdição visa a solução do litígio, manifestando as partes nítido interesse em compor a lide, mediante concessões mútuas, uma vez observados os pressupostos de validade do art. 104 do Código Civil, nada obsta que o acordo realizado seja convalidado em grau de recurso.&#160; O próprio Código de Processo Civil prevê que ao magistrado cabe, a qualquer tempo, promover a autocomposição.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Em relação a sua homologação em juízo, explica Nelson Nery Júnior (in Código Civil Comentado [versão digital]. Ed. 2017. Revista dos Tribunais. Art. 840) que ela pode

Processo	0200138-76.2024.8.06.0073
	se dar por meio de simples apresentação em juízo do instrumento do acordo, como é o presente caso: A homologação de acordo extrajudicial em juízo pode ser feita: a) no curso de ação pendente, por comunicação da parte, que junta o acordo e requer sua homologação (CPC 487 III b; CPC/1973 269 III), que caracteriza o título executivo descrito no CPC 515 II (CPC/1973 475-N III); ou b) por meio de simples apresentação ao juízo do instrumento do acordo, para que possa ser homologado. Somente a hipótese b é que caracteriza o título executivo judicial previsto no CPC 515 III (CPC/1973 475-N V), aqui comentado. A esse respeito, ressalte-se ainda que, mesmo sendo celebrado acordo extrajudicial entre as partes, o interesse de agir permanece, no sentido de se obter a homologação da transação pelo juízo, com a consequente criação de título executivo judicial apto a embasar eventual fase de execução, na hipótese de descumprimento do avençado entre as partes. Entretanto, em relação ao recurso, uma vez celebrado acordo entre as partes, resta prejudicado o seu julgamento em razão da perda superveniente do seu objeto, nos termos do art. 932, III, do CPC. Diante do exposto, HOMOLOGO , para que surtam seus jurídicos e regulares efeitos, a composição realizada , nos termos do instrumento de transação (id. 26971117), ao tempo em que EXTINGO o processo com resolução de mérito, nos termos do art. 487, III, “b” do CPC, restando, dessa forma, prejudicado o presente recurso. É o voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator &#160; &#160; &#160;
Processo	3002178-52.2025.8.06.0000
Número de ordem	119
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Chamamento ao Processo
Polo ativo	HITACHI ENERGY BRASIL LTDA.
Advogado(s) - Polo ativo	MARIANE CATALDI DE PAULA - (SP385026) CARLOS EDUARDO LEME ROMEIRO - (SP138927) JOAO PAULO FRIEDRICH - (SP492752)

Processo	3002178-52.2025.8.06.0000
Polo passivo	PORTO SEGURO COMPANHIA DE SEGUROS GERAIS COSAMPA PROJETOS E CONSTRUCOES LTDA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3002178-52.2025.8.06.0000
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Processo	3002178-52.2025.8.06.0000
	Instrumento contra a mesma decisão ora adversada, distribuído sob o nº 0637286-81.2024.8.06.0000, em que a pretensão recursal foi acolhida por esta Relatoria, tendo sido reformada a decisão agravada, com exame de mérito, para se reconhecer a impossibilidade de chamamento ao processo da empresa ora agravante. 4. Dessa forma, é inequívoco o esvaziamento da controvérsia submetida à apreciação, pois não subsiste qualquer utilidade no exame de mérito ou eventual provimento jurisdicional buscado na presente irresignação, o que caracteriza, portanto, a perda superveniente de seu objeto, tendo em vista o desaparecimento do interesse de agir da parte ora recorrente, que já obteve resultado favorável no recurso anteriormente interposto. III. DISPOSITIVO 5. Recurso prejudicado. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em julgar prejudicado o exame de mérito da presente irresignação, nos termos do voto do Desembargador Relator. Fortaleza, data e assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO RELATÓRIO Cuida-se de Agravado de Instrumento interposto por Hitachi Energy Brasil Ltda. contra decisão proferida pelo MM. Juiz de Direito Josias Nunes Vidal, da 18ª Vara Cível da Comarca de Fortaleza, que, nos autos da Ação de Cobrança proposta pela Porto Seguro Companhia de Seguros Gerais, acolheu parcialmente o pedido de chamamento ao processo, para incluir a empresa ora agravante no polo passivo da demanda originária. Na decisão agravada, o d. magistrado fundamentou que as obrigações contidas no contrato objeto da lide foram assumidas em conjunto pelas partes constantes do processo, além de a empresa ABB Power Grids Brasil Ltda. (atual Hitachi Energy Brasil Ltda.), que, embora com obrigações específicas, teria responsabilidade solidária. Ademais, foi considerado necessário apurar a responsabilidade da referida integrante do consórcio que não figurava como parte no processo, para evitar ônus demasiados à empresa que já integra o polo passivo da demanda. Irresignada, a empresa Hitachi Energy Brasil Ltda. alega, em síntese, que não estão presentes os requisitos autorizadores para o chamamento ao processo previsto no art. 130 do Código de Processo Civil, pois não há responsabilidade solidária em relação à Porto Seguro, mas sim apenas em relação ao Parque Eólico Ventos da Bahia IX S.A. Argumenta que a decisão agravada embasou-se em premissas equivocadas ao apontar descumprimento contratual por parte ora agravante, e que a solidariedade constante no consórcio não tem relação direta com o pedido formulado na ação de ressarcimento, de modo que ora recorrente seira parte indiferente nesta demanda. Como fundamento jurídico, sustenta que a relação jurídica processual discutida nos autos principais não demanda a formação obrigatória de litisconsórcio, fazendo referência a julgados que tratam sobre a responsabilidade solidária, indicando que o litisconsórcio, nesses casos, é facultativo.

Processo	3002178-52.2025.8.06.0000
	align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Ao final, requer o provimento do recurso, para que seja reformada a decisão, com consequente exclusão da ora agravante polo passivo da demanda originária, ou, subsidiariamente, que se reconheça a nulidade da decisão por deficiência de fundamentação, à luz dos arts. 11 e 489, § 1º, do Código de Processo Civil. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Preparo recolhido (ID 18021008). </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> A parte agravada, por sua vez, defende a manutenção da decisão de primeiro grau, sustentando que detém responsabilidade solidária com ora agravante no que concerne à relação contratual firmada com a Porto Seguro, justificando o chamamento ao processo. Aduz que as cláusulas do contrato de consórcio preveem solidariedade entre as partes quanto à execução do contrato, ressaltando que tal inclusão é essencial para assegurar que todas as partes que poderiam ser consideradas devedoras solidárias na presente questão sejam ouvidas, evitando quaisquer prejuízos injustos em caso de procedência do pedido. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> É o relatório. </p><p align="justify"> &#160;</p><p align="justify"> &#160;</p><p align="center"> VOTO </p><p align="justify"> &#160;</p><p style="text-indent: 8%;" align="justify"> É cediço que, antes de analisar o mérito da irresignação, é preciso averiguar a presença dos pressupostos intrínsecos e extrínsecos de admissibilidade da espécie recursal, sem os quais não é possível dirimir a controvérsia retratada. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> No caso concreto, verifica-se a existência de óbice quanto ao regular processamento e julgamento de mérito deste agravo de instrumento, tendo em vista que a matéria objeto do recurso já foi apreciada e decidida em agravo anterior. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Conforme relatado, o presente recurso tem como objetivo reexaminar a decisão que acolheu parcialmente o pleito de chamamento ao processo, determinando a inclusão da parte ora agravante no polo passivo da demanda originária. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Ocorre que, em consulta ao Sistema de Automação da Justiça de Segundo Grau, e atento à petição juntada ao ID 18463083 destes autos, observa-se que a Porto Seguro Companhia de Seguros Gerais interpôs Agravo de Instrumento contra a mesma decisão ora adversada, distribuído sob o nº 0637286-81.2024.8.06.0000, em que a pretensão recursal foi acolhida por esta Relatoria, tendo sido reformada a decisão agravada, com exame de mérito, para se reconhecer a impossibilidade de chamamento ao processo da empresa ora agravante (ABB Ltda., atual Hitachi Energy Brasil Ltda.). </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Dessa forma, é inequívoco o esvaziamento da controvérsia submetida à apreciação, pois não subsiste qualquer utilidade no exame de mérito ou eventual provimento jurisdicional buscado na presente irresignação, o que caracteriza, portanto, a perda superveniente de seu objeto, tendo em vista o desaparecimento do

Processo	3002178-52.2025.8.06.0000
	interesse de agir da parte ora recorrente, que já obteve resultado favorável no recurso anteriormente interposto. &#160; A respeito do tema, a doutrina de Daniel Amorim Assumpção Neves evidencia, com perspicácia, a concepção do interesse de recorrer enquanto requisito de admissibilidade, cuja dimensão pragmática deve sobressair no exame dos interesses contrapostos [grifou-se]: Conforme já foi afirmado, existe uma proximidade evidente entre os pressupostos processuais e as condições da ação e os requisitos de admissibilidade recursal, sendo unânime na doutrina o entendimento de que o interesse recursal deve ser analisado à luz do interesse de agir. A mesma ideia de utilidade da prestação jurisdicional presente no interesse de agir verifica-se no interesse recursal, entendendo-se que somente será julgado em seu mérito o recurso que possa ser útil ao recorrente. Essa utilidade deve ser analisada sob a perspectiva prática, sendo imperioso observar no caso concreto se o recurso reúne condições de gerar uma melhora na situação fá Quase todos os problemas referentes ao interesse recursal se resumem a esse aspecto, sendo certo que, não havendo qualquer possibilidade de obtenção de uma situação mais vantajosa sob o aspecto prático, não haverá interesse recursal. É por essa razão que, em regra, não se admite recurso somente com o objetivo de modificar a fundamentação da decisão, porque nesse caso a situação prática do recorrente se mantém inalterada. (NEVES, Daniel Amorim Assumpção. Manual de Direito Processual Civil. Volume Único. 10. ed. Salvador: JusPoivm, 2018, p. 1.613). De forma complementar, a doutrina de Cássio Scarpinella Bueno esclarece que: O interesse recursal precisa ser analisado a partir de uma visão retrospectiva (a sua posição processual antes do proferimento da decisão) e prospectiva (a posição processual que poderá alcançar com a modificação da decisão que lhe causa algum gravame). É da vantagem processual resultante da comparação desses dois momentos processuais que decorre o interesse recursal. (BUENO, Cassio Scarpinella. Curso Sistematizado de Direito Processual Civil: procedimento comum, processos nos Tribunais e recursos. 8. ed. São Paulo: Saraiva, 2019, p. 819). Logo, ao vislumbrar que eventual acolhimento da tese recursal não possui aptidão para produzir qualquer efeito prático em favor da empresa recorrente, uma vez que já foi acolhido, em recurso anterior, o pleito referente à impossibilidade de seu chamamento ao processo, revela-se inócuo o provimento judicial apenas para reafirmar conclusão exarada no recurso anteriormente analisado. o exame de mérito da irresignação, nos termos do art. 932, inciso III, Código de Processo Civil. É como voto.

Processo	3002178-52.2025.8.06.0000
	times;">Comunique-se ao d. juízo de primeiro grau sobre os termos deste julgado, para os devidos fins. </p><p align="justify">
 </p><p style="text-align: justify; text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Relator </p><p> </p><p>
 </p><p>&#160;</p>

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Processo	3002551-83.2025.8.06.0000
Número de ordem	120
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Liminar
Polo ativo	HAPVIDA ASSISTENCIA MEDICA LTDA
Advogado(s) - Polo ativo	ANDRE MENESCAL GUEDES - (CE23931-A) IGOR MACEDO FACO - (CE16470-A)
Polo passivo	CICERO YCARO PEREIRA AMARAL
Advogado(s) - Polo passivo	PAOLO GIORGIO QUEZADO GURGEL E SILVA - (CE16629-A)
Terceiros	Não informado

Processo	3002551-83.2025.8.06.0000
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRAgxGqGaoIMhseU4RDl82dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKSrLz8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmJFYQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LTl9z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsPOONGNYVgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeeZ02Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvlqRLkiu3cCAWl2fn5FHghjY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOG E pw1t9ofclZHE21NneWVeWBxJJElVfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQdqdNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznXDKa2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkIx410JEZMRU0ZDIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	3002551-83.2025.8.06.0000
	'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">II. QUESTÃO EM DISCUSSÃO: A questão em discussão consiste em verificar se o acórdão embargado incorreu em contradição ou omissão ao julgar o mérito do agravo, quando deveria apenas reconhecer a perda superveniente do objeto, segundo alega o Embargante. III. RAZÕES DE DECIDIR (i) Os embargos de declaração possuem finalidade restrita, cabendo apenas para sanar obscuridade, contradição, omissão ou erro material (CPC, art. 1.022). (ii) O acórdão embargado fundamentou-se de forma clara ao concluir que a tutela deferida era inviável desde a origem, haja vista que o procedimento médico objeto da tutela já havia sido realizado pelo Embargante na rede pública de saúde antes da decisão concessiva. (iii) Não se trata de perda superveniente do objeto do agravo instrumental (como defende o Embargante), mas da concessão de uma obrigação de urgência inviável de ser cumprida, evidenciando a nulidade da decisão agravada em razão da impossibilidade do seu objeto. (iv) Inexistindo decisão do Juízo a quo revogando a tutela impossível, revelou-se pertinente o provimento do recurso. Assim, não obstante a perda superveniente do interesse processual do Autor/Agravado quanto à obrigação de fazer perseguida na ação, subsistia o interesse recursal da Promovida/Agravante, em face da ainda vigente decisão proferida pelo Juízo a quo.

Processo	3002551-83.2025.8.06.0000
	font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(v) Os argumentos deduzidos nos embargos revelam mera tentativa de reabrir o debate já solucionado, finalidade incompatível com a via estreita dos embargos de declaração.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">IV. DISPOSITIVO: Embargos de declaração rejeitados.</h3><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer dos embargos de declaração para lhes negar provimento, nos termos do voto do Desembargador Relator.</p><p style="line-height: 1.2; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e assinatura digital registradas no sistema processual eletrônico.</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">

</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Presidente/Relator</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">

</p><p style="line-height: 1.296; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 21pt 0pt 12pt 0pt;" dir="ltr">Trata-se de Embargos Declaratórios opostos por Cícero Ycaro Pereira Amaral em face do acórdão da Primeira Câmara de Direito Privado deste egrégio Tribunal que deu provimento ao Agravo de Instrumento interposto pela ora Embargada, cassando a tutela de urgência deferida pelo Juízo de Primeiro Grau sob o fundamento da inviabilidade do cumprimento da tutela de urgência desde a sua origem.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr"></p>

Processo	3002551-83.2025.8.06.0000
	#1a202c; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">O agravo originário fora interposto por Hapvida Assistência Médica S/A contra decisão interlocutória proferida nos autos da Ação de Obrigação de Fazer nº 3002719-74.2024.8.06.0112, promovida pelo ora Embargante em face da Agravante. Na decisão objurgada (ID nº 18184959), restou concedida tutela de urgência antecipada postulada na exordial, obrigando a operadora de plano de saúde a providenciar, em benefício do Autor, cobertura para o procedimento cirúrgico de reparação de fratura da diáfise da tíbia, no prazo de 48 horas, sob pena de multa diária. A magistrada afirmou a presença dos requisitos previstos no artigo 300 do Código de Processo Civil e destacou que o Autor sofreu fratura consequente de um acidente motociclístico, sendo inequívoca a necessidade de intervenção cirúrgica. Considerou, ainda, a situação de urgência, sustentada pelo artigo 35-C da Lei nº 9.656/98, que regula a obrigatoriedade de cobertura nos casos de urgência e emergência. Ademais, constatou que as cláusulas do contrato de plano de saúde do Autor não excluía essa cobertura.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">Irresignada, a promovida Hapvida interpôs o agravo de instrumento em tela, alegando que o contrato de plano de saúde do autor é exclusivamente ambulatorial, sem previsão para internação hospitalar ou cirurgias. Sustenta que a decisão viola os termos e a natureza do contrato firmado e que a negativa foi baseada na exclusão contratual desses procedimentos, valendo-se de dispositivos legais, incluindo o artigo 12 da Lei nº 9.656/98, que versa sobre segmentações dos planos de saúde e suas coberturas. Destaca ainda que a cirurgia foi realizada em um hospital público, configurando, segundo seu entendimento, perda do objeto da demanda, conforme artigos 485, IV e VI do CPC.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr"> Ao final, pleiteia a concessão de efeito suspensivo ao agravo e, no mérito, o seu provimento, reformando-se a decisão objurgada. Subsidiariamente, pleiteia a revogação ou diminuição da multa diária arbitrada.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 12pt; padding: 9pt 0pt 0pt 0pt;" dir="ltr">Na sessão de julgamento realizada em 18 de junho de 2025, este Colegiado deu provimento ao agravo de instrumento, cassando a tutela de urgência, porquanto manifestamente inviável desde a origem, já que a situação fática ensejadora da medida restou satisfeita antes da decisão que concedeu a tutela objurgada. Decidiu-se, portanto, nos seguintes termos

Processo	3002551-83.2025.8.06.0000
	pre-wrap;">ementa e acórdão no ID 23881248)</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">EMENTA: DIREITO CIVIL E PROCESSUAL CIVIL. PLANO DE SAÚDE. AGRAVO DE INSTRUMENTO EM AÇÃO DE OBRIGAÇÃO DE FAZER C/C REPARAÇÃO DE DANOS. PROCEDIMENTO MÉDICO REALIZADO PELO SUS ANTES DA DECISÃO AGRAVADA. OBRIGAÇÃO DE CUMPRIMENTO INVIÁVEL. PERDA DO OBJETO DA OBRIGAÇÃO DE FAZER. TUTELA CASSADA. RECURSO CONHECIDO E PROVIDO.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">I. CASO EM EXAME: Agravo de instrumento interposto contra decisão que, a título de tutela de urgência, obrigou a operadora de plano de saúde a efetuar a cobertura do procedimento cirúrgico de reparação de fratura da diáfise da tíbia em favor da parte promotente, sob pena de multa diária de R\$ 1.000,00 (mil reais), até o limite de R\$ 100.000,00 (cem mil reais), além da eventual responsabilização criminal que possa incidir no caso.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">II. QUESTÃO EM DISCUSSÃO: O cerne da controvérsia recursal consiste em examinar se é cabível, na situação em apreço, tutela de urgência antecipada voltada a obrigar a operadora de plano de saúde agravante à cobertura do procedimento cirúrgico prescrito ao Agravado.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">III. RAZÕES DE DECIDIR:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(i) Conforme informado nas razões recursais, o Agravado veio a realizar a cirurgia em questão por meio do Sistema Único de Saúde, no Hospital Regional do Cariri, em dezembro de 2024, ou seja, bem antes da data da decisão que concedeu a tutela ora combatida.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(ii) É inequívoca e incontroversa a ocorrência da perda do objeto da pretensão relativa à obrigação de fazer objeto da demanda, sem prejuízo, contudo, do prosseguimento do feito no que pertine à reparação por danos morais e materiais eventualmente sofridos pelo Autor/Agravado em razão da negativa de cobertura, caso confirmada a ilicitude desta com o exame do mérito da ação.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(iii) A tutela de urgência combatida consubstancia a antecipação dos efeitos da tutela relativa à obrigação de fazer, do que se infere o seu prejuízo como resultado da perda do objeto desta. Diante disso, observa-se que odecisumagravado impôs tutela inviável de ser cumprida desde sua origem, circunstância que impõe a cassação do provimento.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify;

Processo	3002551-83.2025.8.06.0000
	margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> (iv) Inexiste, nos autos, provimento posterior reformando ou anulando a dita decisão e suprimindo os efeitos desde a prolação desta, o que evidencia a continuidade do interesse recursal da ora Recorrente.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(v) A decisão agravada baseou-se em premissa equivocada ao concluir pela necessidade de concessão da tutela requestada, vindo a impor à ora Agravante obrigação incompatível com o cenário fático então vigente. Como consequência disso, a cassação do decisum agravado é medida que se impõe, restando prejudicada a matéria de mérito da presente insurgência.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> IV. DISPOSITIVO: Recurso conhecido e provido.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do agravo de instrumento para lhe dar provimento, nos termos do voto do Desembargador Relator.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 21pt; margin-bottom: 0pt; padding: 0pt 0pt 12pt 0pt;" dir="ltr">Inconformado, o Agravado opôs os Embargos de Declaração em tela (ID 24990503), argumentando, em síntese, que a decisão foi contraditória ao julgar o mérito do recurso em vez reputá-lo prejudicado, pela perda superveniente do interesse processual no que pertine a obrigação de fazer e a tutela de urgência em questão. Postula, diante disso, que a Corte se digne a dar provimento aos Embargos de Declaração, sanando a contradição apontada.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr"> Sem contrarrazões.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.3800000000000001; text-align: center; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">VOTO Em matéria de processo civil, os embargos de declaração constituem um instrumento recursal manejável pela parte sempre que esta sentir a necessidade de um aperfeiçoamento formal da decisão judicial, desde que a situação se enquadre em pelo menos uma das hipóteses de cabimento previstas no art. 1.022 da Lei Adjetiva.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; direction: rtl"> Diz-se, por essa razão, que os embargos declaratórios são dotados de finalidade específica (cognição restrita), não tendo como objeto a reforma ou a anulação da decisão impugnada, mas sim o esclarecimento de obscuridade, a eliminação de uma contradição, a integração de eventual omissão ou a correção de um erro material, como se pode observar a partir da previsão normativa constante no dispositivo acima apontado [grifo nosso]:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; direction: rtl"> Art. 1.022 . Cabem embargos de declaração contra qualquer decisão judicial para:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt; direction: rtl">I - esclarecer obscuridade ou eliminar contradição</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt; direction: rtl">II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt; direction: rtl">III -

Processo	3002551-83.2025.8.06.0000
	wrap;">corrigir erro material.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Parágrafo único. Considera-se omissa a decisão que:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> I - deixe de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicável ao caso sob julgamento;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> II - incorra em qualquer das condutas descritas no art. 489, § 1º.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">O objetivo do recurso em questão é, em outras palavras, o aperfeiçoamento da própria jurisdictio, de modo que a essencial função de dizer o direito seja concretizada de forma clara, precisa e completa, corrigindo-se eventual error in procedendo decorrente de obscuridade, contradição, omissão ou erro material.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No caso em apreço, sustenta-se que a Corte deixou de observar que o agravo de instrumento encontrava-se prejudicado, uma vez que o próprio agravado peticionou informando a perda de utilidade da medida liminar deferida. Tal circunstância, segundo o Embargante, implicaria o reconhecimento da prejudicialidade do recurso, afastando a possibilidade de apreciação do seu mérito.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Em breve leitura dos termos do decisum embargado, é possível constatar que a Embargante apresenta argumentos voltados à reanálise de questão já apreciada sob outra ótica, pretendendo-se que esta Corte mude o seu posicionamento quanto a perda do objeto do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 13.999999999999998pt; font-

Processo	3002551-83.2025.8.06.0000
	family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">O pedido de tutela de urgência pleiteado no agravo de instrumento proposto pelo ora Embargado teve por finalidade suspender os efeitos da decisão agravada quanto à obrigação de fazer, consistente na internação do Embargante para a realização do procedimento cirúrgico, bem como, no mérito, obter a cassação do decisum recorrido.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> O Embargante sustenta a tese de que o recurso se tornou prejudicado ante a perda do objeto, pois a obrigação de fazer fora cumprida em face da realização de procedimento cirúrgico pelo Sistema Único de Saúde – SUS.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> No caso em tela, é certo que a obrigação de fazer consistente na cobertura do procedimento cirúrgico restou inviabilizada com a realização do ato médico pela rede pública de saúde. Todavia, o prosseguimento do feito no processo de origem não se limita ao adimplemento da obrigação de fazer, mas abrange também a análise da licitude da conduta da operadora em negar a cobertura contratual, podendo ensejar danos morais e materiais.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No exame do agravo, observou-se que a tutela de urgência foi concedida pelo Juízo a quo após a realização do procedimento cirúrgico pelo SUS. Não se trata, portanto, de perda superveniente do objeto do agravo instrumental (como defende o Embargante), mas da concessão de uma obrigação de urgência inviável de ser cumprida, evidenciando a nulidade da decisão agravada em razão da impossibilidade do seu objeto.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Inexistindo decisão do Juízo a quo revogando a tutela impossível, revelou-se pertinente o provimento do recurso. Assim, não obstante a perda superveniente do interesse processual do Autor/Agravado quanto à obrigação de fazer perseguida na ação, subsistia o <span style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000;

Processo	3002551-83.2025.8.06.0000
	background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">interesse recursal da Promovida/Agravante da Promovida/Agravante , em face da ainda vigente decisão proferida pelo Juízo a quo. Conforme se lê nos termos do acórdão, esse foi o entendimento adotado por esta Corte, o que resta explícita e devidamente explanado na decisão. A linha argumentativa apresentada nos embargos, em verdade, é voltada a persuadir o Colegiado a adotar entendimento diverso sobre essa questão. 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">o que não é admitido por meio desta via recursal. Diante disso, é possível constatar que inexistente qualquer vício decisório a ser suprido por meio de embargos declaratórios. Como dito, os argumentos trazidos pela Recorrente se voltam para a 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">mera rediscussão do que já foi decidido, do que se denota a intenção indevida de mera reforma ou anulação da decisão por via inadequada 1.7999999999999998pt; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;">Este e. Tribunal tem entendimento consolidado pela impossibilidade de manejo de embargos declaratórios para o exclusivo fim de se obter a reapreciação de matéria já julgada, consoante o disposto no enunciado 18 da súmula da jurisprudência desta Corte. Súmula 18 São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. [Grifei]. Neste mesmo sentido, assim já se manifestou a jurisprudência pátria [grifo nosso]: 1.38000000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;">EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE

Processo	3002551-83.2025.8.06.0000
	FAZER. PLANO DE SAÚDE. PRELIMINAR. INAPLICABILIDADE DO CÓDIGO DE DEFESA DO CONSUMIDOR. DENUNCIAÇÃO À LIDE. NÃO CABIMENTO. INTERNAÇÃO DOMICILIAR. HOME CARE. MODALIDADE DE TRATAMENTO. OBRIGATORIEDADE DE COBERTURA INDISTINTAMENTE CONSIDERADA. IMPOSSIBILIDADE. NECESSIDADE DE AVALIAÇÃO DO CASO CONCRETO. DIGNIDADE DA PESSOA HUMANA E GARANTIA À SAÚDE. PRINCÍPIOS VIOLADOS. NECESSIDADE DE AMPLIAÇÃO DO TRATAMENTO DEMONSTRADA. NEGATIVA DE CONCESSÃO DO SERVIÇO. ABUSIVIDADE. CARACTERIZAÇÃO. OMISSÃO. INEXISTÊNCIA. JULGAMENTO QUE CONTRARIA A TESE DEFENDIDA PELA PARTE. REDISSCUSSÃO. IMPOSSIBILIDADE. MERO INCONFORMISMO 1. O recurso de embargos de declaração possui seus limites desenhados a partir do designio de integrar a decisão atacada diante da existência de vícios de omissão, obscuridade, contradição ou para corrigir erro material, haja vista que, até para fins de prequestionamento, a parte embargante deve observar as hipóteses de cabimento estabelecidas no artigo 1.022 do Código de Processo Civil/2015 2. Apreciados os temas discutidos no processo e lançados os fundamentos que embasaram a decisão para a manutenção da sentença recorrida, 3. Embora a parte embargante se esforce em fazer crer que as perspectivas jurídicas buscadas configuram vício suscetível de integração, certo é que não passam de manifestação de insurgência quanto à inteligência eleita, o que ultrapassa os limites da via dos aclaratórios 4. Embargos de Declaração conhecidos e não providos. TJ-DF 07062676120178070007 DF 0706267-61.2017.8.07.0007, Relator: SIMONE LUCINDO, Data de Julgamento: 11/04/2018, 1ª Turma Cível, Data de Publicação: Publicado no DJE : 17/04/2018 . Pág.: Sem Página Cadastrada.) PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. OPERAÇÃO EUTERPE. PROCESSO ADMINISTRATIVO DISCIPLINAR. PENALIDADE DE DEMISSÃO. PRETENSÃO DE REDISSCUSSÃO DA LIDE. DESCABIMENTO. PREQUESTIONAMENTO. DESNECESSIDADE DIANTE DO CABIMENTO DE RECURSO ORDINÁRIO PARA O SUPREMO TRIBUNAL FEDERAL. Os Embargos de Declaração são recurso de conhecimento estrito, não se prestando à rediscussão da lide, sendo cabíveis apenas para esclarecer obscuridade, eliminar contradição, suprir omissão ou corrigir erro material (art. 1.022 do CPC/2015). O embargante não aponta verdadeiramente nenhum desses vícios, indicando apenas o que, no seu entender, seriam erros de julgamento, pretendendo a rediscussão da lide

Processo	3002551-83.2025.8.06.0000
	font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">, em especial quanto à sua tese de parcialidade do Procurador Federal Elielson Ayres de Souza para atuar no PAD que culminou em sua demissão. Assim, os Embargos de Declaração não se mostram cabíveis. 3. Os Embargos afirmam buscar o prequestionamento de determinados temas para recurso ao Supremo Tribunal Federal, mas, tratando-se de acórdão de competência originária do Superior Tribunal de Justiça em que foi denegada a segurança, caberá Recurso Ordinário para a Suprema Corte e nessa modalidade de recurso não se exige o requisito do prequestionamento. 4. Embargos de Declaração rejeitados. (STJ - EDcl no MS: 15322 DF 2010/0094231-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 23/08/2017, S1 - PRIMEIRA SEÇÃO, Data de Publicação: DJe 21/09/2017).</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Diante do exposto, CONHEÇO dos presentes embargos declaratórios para lhes NEGAR PROVIMENTO, haja vista o não enquadramento dos pontos suscitados em quaisquer das hipóteses de cabimento dessa espécie recursal, bem como a impossibilidade do manejo destes para a mera rediscussão do julgado.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data da assinatura digital.</p><p style="line-height: 1.2; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">
 </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Relator </p><p>
 </p><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	0109450-37.2017.8.06.0001
Número de ordem	121
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	Renato Pontes Arruda
Advogado(s) - Polo ativo	RENAN REBOUCAS DE OLIVEIRA - (CE24499-A)
Polo passivo	MARILLIA ARRUDA COUCEIRO
Advogado(s) - Polo passivo	CELSO RICARDO FREDERICO BALDAN - (CE15642-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0109450-37.2017.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNHEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmCl3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsPOONGNYVgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQm+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOW1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fnsFHHqjeh3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y9ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOGPE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41gnkUvsnXNkIx410JEZMRU0ZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	size: 13.99999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">4. O depoimento firme e coerente da vítima, corroborado por testemunhas e confirmado por sentença e acórdão criminal, constitui prova suficiente para configurar a responsabilidade civil. 5. O valor fixado observa os princípios da razoabilidade e proporcionalidade, considerando a gravidade do crime, a vulnerabilidade da vítima, os reflexos psicológicos e o caráter pedagógico da condenação. IV. DISPOSITIVO: Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação para lhe negar provimento, nos termos do voto do Desembargador Relator. docs-internal-guid-2a86756e-7fff-8ebf-35a6-b904e3e4a253 DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator 1.3090909090909089; RELATÓRIO Trata-se de recurso de Apelação interposto por Renato Pontes Arruda contra a sentença prolatada pelo Juízo da 5ª Vara Cível de Fortaleza nos autos de

Processo	0109450-37.2017.8.06.0001
	13.999999999999998pt; font-family: 'Times New Roman',serif; color: #1a202c; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Ação de Indenização por Danos Morais proposta por Marillia Arruda Couceiro em desfavor do ora Apelante. No feito originário, relatou a parte autora que, quando tinha 13 (treze) anos de idade, foi abusada sexualmente pelo Réu, seu primo, enquanto ficava em sua casa sob os cuidados dos pais deste. Argumenta que houve toques inadequados por parte do Promovido e exposição da então menor a vídeos pornográficos. Em face disso, o Réu respondeu a uma ação criminal e foi condenado em pelo crime de estupro de vulnerável, recebendo a pena de nove anos e quatro meses de reclusão. Diante de tais fatos, a Autora postulou a reparação pelos danos morais resultantes do crime de que foi vítima, postulando indenização no valor de R\$ 150.000,00 (cento e cinquenta mil reais). Na sentença (ID 18259558), julgou-se procedente a pretensão autoral, condenando-se o Promovido ao pagamento da quantia de R\$ 80.000,00 (oitenta mil reais) como indenização pelos danos morais sofridos pela Promovente. O magistrado considerou os elementos apresentados nos autos, principalmente as provas recolhidas na esfera penal, e concluiu pela ocorrência de ato ilícito, culpa e nexo de causalidade, confirmados na decisão penal condenatória. (ID 18259558), julgou-se procedente a pretensão autoral, condenando-se o Promovido ao pagamento da quantia de R\$ 80.000,00 (oitenta mil reais) como indenização pelos danos morais sofridos pela Promovente. O magistrado considerou os elementos apresentados nos autos, principalmente as provas recolhidas na esfera penal, e concluiu pela ocorrência de ato ilícito, culpa e nexo de causalidade, confirmados na decisão penal condenatória. Irresignado, o Promovido interpôs recurso de apelação (ID 18259561), alegando a inexistência de provas robustas que sustentem a tese de ocorrência de ato criminoso. Destaca a ausência de trânsito em julgado da decisão penal, argumentando que a condenação ocorreu com base em presunções, e não em evidências robustas, o que violaria o princípio da presunção de inocência e o devido processo legal. Cita o art. 5º, LVII, da Constituição Federal, que estabelece que “ninguém será considerado culpado até o trânsito em julgado de sentença penal condenatória”, e solicita a reforma da sentença, para julgar improcedente a ação. Subsidiariamente, pugna pela redução do valor da condenação. Em contrarrazões (ID 18259565), a Promovida defende que a sentença de

Processo	0109450-37.2017.8.06.0001
	primeira instância foi acertada, afirmando que as provas produzidas no processo criminal são suficientes para comprovar a prática do crime e, consequentemente, o ato ilícito capaz de gerar compensação por danos morais. Ressalta que o Tribunal de Justiça já ratificou a condenação penal do réu em outra oportunidade, refutando a alegada fragilidade da prova. Enfatiza que o dano moral é presumido, diante da gravidade do crime de estupro de vulnerável, citando jurisprudência sobre a presunção de danos morais em casos de agressão sexual contra pessoas menores de idade. Por fim, a recorrida solicita a manutenção da sentença, assim como a majoração dos honorários advocatícios em razão do recurso apresentado, conforme previsto na legislação processual. Manifestação do Ministério Público no ID 24786425, em que afirma o Parquet não ser caso de intervenção ministerial obrigatória. É o relatório. 1.38; text-align: center; margin-top: 21pt; margin-bottom: 0pt; VOTO Consoante relatado, o presente recurso configura insurgência contra o decisum do juízo de primeiro grau que julgou procedente a ação indenizatória originária, condenando o Promovido, ora Apelante, ao pagamento de indenização por danos morais no importe de R\$ 80.000,00 (oitenta mil reais) a título de reparação pelo abalo moral sofrido pela Autora como vítima do crime de estupro de vulnerável. O cerne da controvérsia consiste em definir se: (i) restaram comprovados os elementos da responsabilidade civil no caso examinado; (ii)

Processo	0109450-37.2017.8.06.0001
	o quantum indenizatório estipulado em sentença se mostra razoável e proporcional às circunstâncias deste.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Sobre o assunto, recorde-se que, nos termos dos artigos 186 e 927 do Código Civil, aquele que causar dano a outrem em razão da prática de ato ilícito é obrigado a repará-lo. Trata-se da previsão da responsabilidade civil subjetiva, que constitui a regra na legislação civil.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Assim prevêm os referidos dispositivos legais [grifo nosso]:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 186. Aquele que, por ação ou omissão voluntária, negligência ou imprudência, violar direito e causar dano a outrem, ainda que exclusivamente moral, comete ato ilícito.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Art. 927 . Aquele que, por ato ilícito (arts. 186 e 187), causar dano a outrem, fica obrigado a repará-lo.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Depreende-se, de tais previsões normativas, os elementos configuradores da responsabilização civil, constituídos por: a <span

Processo	0109450-37.2017.8.06.0001
	style="font-size: 13.99999999999998pt; font-family: 'Times New Roman', serif; color: #1a202c; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">conduta ilícita (ato ou omissão); b elemento subjetivo (culpa ou dolo); c d nexo de causalidade entre a conduta e o prejuízo em questão.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> No caso de violência sexual, a ilicitude é evidente, pois o estupro configura crime previsto no Código Penal, atingindo, inequivocamente, a integridade física e a dignidade sexual da vítima. No caso do estupro de vulnerável, a previsão normativa do tipo reside no art. 217-A do referido diploma legal, que assim dispõe:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 217-A.Ter conjunção carnal ou praticar outro ato libidinoso com menor de 14 (catorze) anos:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> Pena - reclusão, de 8 (oito) a 15 (quinze) anos.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> § 1º Incorre na mesma pena quem pratica as ações descritas no caput com alguém que, por enfermidade ou deficiência mental, não tem o necessário discernimento para a prática do ato, ou que, por qualquer outra causa, não pode oferecer resistência.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> § 3º Se da conduta resulta lesão corporal de natureza grave:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> Pena - reclusão, de 10 (dez) a 20 (vinte) anos.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> § 4º

Processo	0109450-37.2017.8.06.0001
	Se da conduta resulta morte: Pena - reclusão, de 12 (doze) a 30 (trinta) anos. § 5º As penas previstas no caput e nos §§ 1º, 3º e 4º deste artigo aplicam-se independentemente do consentimento da vítima ou do fato de ela ter mantido relações sexuais anteriormente ao crime. [Grifo nosso]. Ressalte-se que a violação da liberdade sexual de uma pessoa traduz uma das formas mais graves de ofensa à personalidade humana. Isso se mostra ainda mais contundente em casos de estupro de vulnerável, por ter como vítima um ser humano em formação, ocasionando-se traumas passíveis de prejudicar o seu próprio desenvolvimento a curto, médio e longo prazo, bem como sequelas psicológicas irreparáveis ou de difícil reparação. in re ipsa Nessa toada, entende-se que o abalo sofrido pela vítima em razão desse crime configura dano moral presumido), não se exigindo, portanto, a sua comprovação. Configurada a prática do delito, exsurge o dever de indenizar. No feito sub examine a Autora afirma ter sido vítima do delito supracitado, trazendo os seguintes relatos na exordial: Aos 13 (treze) anos de idade, a Autora era deixada juntamente com o seu irmão na casa dos pais do Réu, seus tios, durante o período em que sua mãe estava trabalhando. A Autora e o seu irmão tinham o costume de ficar no quarto do Réu, onde lá podiam usar o computador e jogar vídeo game, enquanto este geralmente estava estudando. Ocorre que o Réu se aproveitou de um momento em que o irmão da Autora não estava no quarto para abusar – lá [sic] sexualmente, ao t

Processo	0109450-37.2017.8.06.0001
	pre-wrap;">ocar em suas partes íntimas sem o seu consentimento, retirando seu calção e colocando a mão da menor impúbere em seu órgão sexual, bem como mostrando vídeos pornográficos e lhe pedindo para não contar para ninguém .</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Os atos de assédio sexual se repetiram no dia seguinte, tendo a Autora se afastado desde então do Réu, ficando até mesmo sem falar com ele, que depois de um tempo lhe procurou na rede social Facebook pedindo desculpas, e em seguida lhe enviou uma conversa de vídeo, ocasião em que estava se masturbando.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> O sofrimento da Autora era solitário e diário, uma vez que tentava esquecer os atos desumanos do Réu, porém, a dor e o trauma passaram a ser tão grande que a mesma acabou lesionando o próprio corpo, conforme demonstram os documentos anexos.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">Diante do ocorrido, a Autora, sendo representada pelo seu genitor, fez um boletim de ocorrência no dia 15 de maio de 2014, sendo a denúncia de n. 0375/14 realizada pelo Ministério Público, no processo de n. 0772144-95.2014.8.06.0001, em que foi considerado comprovada a autoria do delito de estupro de vulnerável, sendo fixada a pena concreta e definitiva em 09 (nove) anos e 04 quatro meses de reclusão em regime fechadoconforme sentença em anexo. [Grifo nosso].</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Os elementos probatórios produzidos em seu favor são constituídos por peças do inquérito policial e do processo criminal que culminou com a condenação do ora Apelante (ação penal nº 0772144-95.2014.8.06.0001) - IDs 18259435 e seguintes -, procedendo o juízo singular ao aproveitamento dos elementos colhidos no juízo criminal a título de prova emprestada, bem como oitiva de testemunhas em audiência cível.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No depoimento realizado em sede do juízo criminal, a vítima afirmou, dentre outros pontos, que: a) <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-

Processo	0109450-37.2017.8.06.0001
	decoration: none; vertical-align: baseline; white-space: pre-wrap;">Facebook e pediu-lhe desculpas, momento em que ambos ligaram a webcam, e ela o viu se masturbando; h o acusado pediu desculpas e disse que isso não iria mais acontecer, mas a então menor não aceitou mais ligar a câmera; i os abusos ocorreram em dois dias; j) nos dias em que o acusado a tocou, colocou um travesseiro por cima; k tempos depois do que aconteceu, a depoente estava em um casamento no qual o acusado também estava presente, e este lhe deu um docinho com um coração; l O pai da depoente (Marco Antônio Carvalho Couceiro) também foi ouvido, relatando, inicialmente, diversos problemas da menor como decorrência do vazamento de mídia íntima dela na internet (depressão, intento suicida, bullying, etc.). Afirmou haver tomado medidas visando a retirar a mídia do ar, mas constatou que havia algo mais além dessa situação

Processo	0109450-37.2017.8.06.0001
	<p>13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">". Nesse contexto, a menor confessou o ocorrido na casa do primo, oportunidade em que o genitor lavrou o boletim de ocorrência que deu ensejo à investigação.</p> <p>1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr"> "A confissão da adolescente ao pai foi por ela narrado em sede policial, quando novamente ouvida (fl. 2 do ID 18259439).</p> <p ltr"><span="" style="font-size: 12pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">"Na presença da psicologia da Rede Aquarels/DCECA - Alexandra Braga Farias de Oliveira, perguntado na "reafirma as suas declarações prestadas anteriormente, assegura que sim e que de forma alguma sofreu coação ou influencia por parte da seu genitor, para incriminar RENATO"; QUE, acrescenta que "o que ensejou a conversa de ter sido vítima de abuso sexual com seu pai, foi após a exibição do vídeo e quando foi tratar do assunto com ele, seu pai perguntou se ela tinha sido vítima de algum abuso, ocasião em que a declarante começou a chorar e mencionou o nome de seu primo RENATO"; QUE, "depois disso seu pai apenas trouxe-a a esta delegacia, QUE, acrescenta que depois da separação de seus pais, seu pai mantinha um relacionamento respeitoso com o RENATO, sem problemas entre eles; "QUE,"perguntado "> s"e já tinha contado sobre esse abuso para alguém, diz que ">apenas para sua amiga Lyrisse"; QUE, inclusive ontem estava conversando com a mesma e ela disse que depois que esteve aqui nesta delegacia para prestar depoimento, ela lembrou de uma coisa que ela não tinha lembrado quando esteve aqui, QUE, a declarante perguntou o que era e Lyrisse disse que 'uma vez quando elas duas estavam na casa de seu tio, a declarante foi falar com RENATO no quarto e pediu a ela que ficasse segurando a porta do quarto, enquanto ela falava com o mesmo. [Grifo nosso].</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr">"A testemunha Lyrisse Rodrigues Melo, amiga da vítima, afirmou que sua ciência sobre os</p>

Processo	0109450-37.2017.8.06.0001
	fatos se deu por meio da vítima, que relatou o ocorrido reportando à época em que contava com apenas treze anos de idade. A reprodução fática apresentada pela testemunha coaduna com a versão de Marília em detalhes. A testemunha afirmou já haver indagado à vítima o porquê de ela se cortar, ocasião em que esta respondeu que merecia, pois "era imunda", e aquilo a fazia se sentir melhor. O irmão da vítima (Geraldo Meira Freire Couceiro Neto), em seu depoimento, não afirmou ciência dos abusos à época do ocorrido. Relatou, porém, que viu a vítima e o acusado deitados na mesma cama cobertos por lençol em diferentes ocasiões, quando a menor contava com apenas treze anos de idade. Afirmou, também, que a vítima acabou confessando os fatos após o vazamento do vídeo íntimo não autorizado. Registrou que nunca chegou a ser impedido de entrar no quarto onde estavam acusado e vítima, mas que a porta às vezes era fechada, razão pela qual o depoente batia para entrar. A linha de defesa do réu se orienta na tese de que tudo não teria passado de influência do pai da vítima, que teria forjado a situação em um cenário de disputa familiar com a genitora da então menor. De fato, outras testemunhas apontaram não perceber nada de estranho entre as partes e admitiram a possibilidade de haver uma tentativa de retaliação do genitor da vítima contra o Réu, uma vez que este representou juridicamente a mãe de Marília em processos judiciais envolvendo o divórcio desta. A presunção de tal intento retaliativo, contudo, não é suficiente para evidenciar uma suposta forja dos fatos, considerando-se os demais elementos apurados e o comportamento da própria vítima durante todo o processo de persecução penal. Não se olvide que as vítimas de estupro usualmente se esquivam de responsabilizar seus agressores em razão da vergonha e da humilhação inerentes ao crime em si e ao processo de apuração dos fatos. No caso, há como agravante a circunstância de que a Promovente frequentava diariamente a residência do primo e possuía um bom relacionamento com a família deste, sendo-lhe prejudicial acusá-lo de um crime tão grave. Não há qualquer notícia de desentendimento prévio entre Marília e o Réu ou sua família. Pelo contrário, abstrai-se dos autos que a então menor se sentia à vontade, acolhida, do que se infere a ausência de interesse de sua parte em romper com essa boa rotina de convivência. A acusação em desfavor do primo promoveu, por certo, conflitos familiares provavelmente irreparáveis e mais instabilidade à Promovente. Nesse contexto, não é verossímil que a Recorrida, adolescente já tão conturbada emocionalmente, optasse por se submeter a todo esse processo - com as humilhações, julgamentos e conflitos a ele inerentes - com lastro em uma mera mentira supostamente forjada pelo genitor para atendimento de interesses exclusivos deste. Em síntese, não se vislumbra qualquer motivo para uma acusação falsa por parte da Apelada Com efeito, a análise dos elementos produzidos em sede de instrução criminal redundaram na conclusão quanto à condenação do ora Apelante, havendo-se proferido sentença condenatória nos seguintes termos [grifo nosso]:

Processo	0109450-37.2017.8.06.0001
	Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">[...] Nos crimes de natureza sexual, devido à sua clandestinidade, tem se emprestado valor preponderante às declarações das vítimas, diante da dificuldade da obtenção de prova direta. A vítima foi incisiva e segura ao afirmar ter sido abusada sexualmente pelo denunciado. Conforme já salientado, a palavra da vítima é o que há de mais decisivo no esclarecimento dos crimes sexuais, uma vez que, em sua esmagadora maioria, os delitos são cometido às ocultas. É através da análise da palavra da vítima que o julgador obtém a certeza da culpabilidade do acusado ou os indícios mais veementes de sua inocência. A análise circunstanciada de cada caso determinará o valor da palavra da vítima no contexto submetido à apreciação, exigindo-se para sua prevalência que esteja corroborada por uma série de elementos de convicção que encontram ressonância na prova produzida. De outro giro, assim como não podem ser as declarações das vítimas tidas como verdades absolutas, devendo-se substituir a presunção de veracidade pela presença de um fato indiscutível que lhe confira maior valoração em relação às declarações do acusado, também não podem ser elas desprezadas e tidas como inválidas somente em virtude da tenra idade do ofendido. Corroborando ao depoimento da menor, têm-se os depoimentos de outras testemunhas ouvidas em Juízo. Acrescente-se que nenhuma real razão teria a menor para fazer contra o acusado uma acusação indevida, apesar de o acusado e algumas testemunhas afirmarem que as acusações foram forjadas pelo pai da ofendida. Analisadas todas as variáveis do problema, mediante a lente da lógica jurídica, conclui-se pela inexistência de fatores que poderiam justificar o descrédito à palavra da vítima. Nessas circunstâncias, pode e deve ela ser tomada expressão da verdade, uma vez que corroborada por demais provas colhidas. Considerando que o acusado, mediante mais de uma ação, praticou mais de um crime da mesma espécie, em semelhantes condições de tempo, lugar, maneira de execução e aproveitando-se das mesmas oportunidades, os delitos subsequentes devem ser havidos como continuação do primeiro, atendidos que foram os requisitos objetivos dispostos no art. 71 do CPB. Diante de todo o exposto, considero comprovada a autoria do delito de estupro de vulnerável, imputada ao acusado Renato Pontes Arruda, pelo que declaro procedente a preambular acusatória de fls. 01/02. [...]

Processo	0109450-37.2017.8.06.0001
	feito criminal, observado o direito ao contraditório do réu.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nessa toada, registro que a apuração efetuada na esfera criminal tende a ser mais profunda e minuciosa do que a formação do convencimento na esfera privada, por tratar de valores mais caros e essenciais aos indivíduos. Sob tal premissa, considerando a aparente ausência de nulidades na instrução criminal - cujos elementos foram regularmente reproduzidos no presente feito - vislumbro pleno aproveitamento de sua conclusão.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">A par disso, observa-se que a sentença condenatória foi confirmada em segunda instância,o que corrobora o acerto do julgamento e a validade dos atos processuais praticados na persecução criminal. As decisões de inadmissibilidade dos recursos excepcionais interpostos pelo Réu confirmam a não probabilidade de alteração do julgado no que pertine às suas questões fáticas, dentre as quais se inserem a materialidade do delito e sua autoria.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Quanto ao juízo efetuado pela Câmara Criminal no julgamento da apelação do Réu, é pertinente a transcrição dos seguintes trechos do voto do il. relator - ID 18259523 [grifo nosso]:</p><p style="line-height: 1.38; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">[...] Sem incursão ao menos superficial no arcabouço probatório remanescente, já aqui se observa que cai por terra o frágil argumento de que o réu não poderia ter praticado o crime, porque não estaria em casa, quando a vítima lá se encontrava. Deveras, assumiu o apelante, expressamente, que chegara a ficar a sós com a ofendida no interior de seu quarto, ainda que ressaltando o caráter temporário, rápido e excepcional dessas situações.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> Ademais, nem o histórico estudantil (fls. 43/45), nem a declaração de estágio na Procuradoria da Fazenda Nacional (fl. 42), revelam-se capazes de infirmar a acusação, quer porque não veiculam informações acerca da assiduidade do recorrente no período respectivo, quer porque não comportam situações excepcionais como a redução de carga

Processo	0109450-37.2017.8.06.0001
	horária de estágio em períodos de avaliação universitária. Aliás, importa consignar que, quando Maríllia contava com idade aproximada entre 12 (doze) e 13 (treze) anos de idade, de modo a inexistirem dúvidas também quanto à subsunção da conduta ao tipo penal descrito no art. 217-A, c/c o art. 71, do Código Penal. Cumprando, outrossim, destacar que a fixação desse lapso de tempo permitiu ao acusado desenvolver plenamente o contraditório, inclusive, como visto, juntando documentação relativa às atividades por ele desenvolvidas no período, não se vislumbrando motivos para reputá-lo prejudicado no tocante à ampla defesa. [...] Noutra toada, se por um lado, os documentos acostados às fls. 87/130 evidenciam que o acusado foi constituído pela sua tia, Anne Jaqueline Arruda Barroso, mãe da vítima, para representa-la no litígio de cunho cível travado contra Marco Antonio Carvalho Couceiro, pai da menor, tais fólios não explicam, de tais fólios não explicam, de per si , o motivo pelo qual o ódio e o desejo de vingança imputados ao último se voltariam exatamente contra o increpado, isso cerca de dois anos depois do protocolo da primeira peça assinada por Renato Pontes Arruda, cujo afastamento do feito não geraria qualquer malefício ou obstáculo à marcha do procedimento judicial respectivo A fragilidade do argumento se torna ainda mais patente, quando se observa que Anne Jaqueline Arruda Barroso, à época havia tido/tinha um relacionamento amoroso com Edilailson Rodrigues de Azevedo, de molde a se afigurar compreensível e até mais esperado que Marco Antonio voltasse sua pretensa ira contra este último, mormente quando seria muito mais fácil convencer ou coagir a filha a mentir sobre ele, do que sobre o increpado, com quem a menor tinha não apenas laços de sangue, como também de amizade, desde a mais tenra idade. Sob enfoque diverso, também não se sustenta a tese de que Marco Antonio obrigasse a ofendida a mentir sobre a imputação, apenas no afã de responsabilizar a mãe da mesma por esse fato, e, assim, evitar a perda da guarda dos filhos, e, por conseguinte, o pagamento de pensão à ex-companheira. Isso porque não emerge dos autos, nem mesmo dos depoimentos dos familiares do increpado, qualquer ato concreto do genitor de Maríllia hábil a refletir a suposta preocupação com a repercussão judicial do episódio envolvendo o delito cibernético de que fora vítima a sua filha, muito pelo contrário: levou-o ao conhecimento das autoridades competentes, inclusive entregando o computador da

Processo	0109450-37.2017.8.06.0001
	adolescente para perícia, ao passo em que buscava minimizar os efeitos psicológicos do ocorrido sobre a mesma. Em verdade, conforme pontuado pelo próprio recorrente, Anne Jaqueline Arruda Barroso foi quem, ao ser cientificada da questão envolvendo a divulgação do vídeo íntimo da filha, veio a advertir Marco Antonio de que levaria o assunto à instância cível, visando a reverter a decisão acerca da guarda dos filhos, os quais já haviam declarado em Juízo, a preferência por ficarem sob a guarda paterna. Note-se que, ao ser ouvida em Juízo, a vítima declarou não ter contado sobre o crime para a genitora, porque sabia que a própria mãe não acreditaria em sua palavra, o que vai ao encontro dos relatos de TODAS as testemunhas originárias do núcleo materno da ofendida, as quais não apenas destacaram a boa reputação do acoimado, como atribuíram a acusação a uma falácea da menor, esta pretensamente induzida pelo próprio pai, a cuja postura social dirigiram robusta adjetivação negativa. Nessa senda, sobressai o depoimento de Tainá Arruda de Lima, prima do réu e da vítima. Em Juízo, a testemunha, verberou que, por ocasião do aniversário de Maríllia, organizara uma festa surpresa, em cujo decorrer conseguira ficar a sós com a menor, passando a rememora-la da relação de carinho que possuíam e, em seguida, a insistir para que lhe contasse o que havia ocorrido. Ressaltou que a ofendida negou-se a dar a versão dela acerca do crime, ocasião em que pediu à adolescente que imaginasse um “desfecho muito ruim dessa estória”, porque se isso “lhe trouxesse paz, segurança”, a declarante passaria a apoiá-la. Perfilhou que Maríllia continuou a dizer que não falaria sobre isso com a depoente, porque não confiava mais nela, azo em que Tainá desabafou, verberando “eu acho que isso tudo é culpa do seu pai! eu acho que quem fez isso com você foi seu pai”. Relembrou que, durante a conversa, Maríllia mexeu no celular, a pretexto de ver uma ligação que havia recebido do pai, razão pela qual, ao contar da conversa para a sua mãe, concluíram que, orientada por Marco Antonio, a menina poderia ter gravado a conversa. Acrecentou que, em reuniões familiares posteriores, a ofendida não mais lhe dirigiu a palavra, chegando a explicar que não o fazia, porque a depoente havia traído sua confiança ao depor em favor do acoimado. Questionada do motivo pelo qual a menor dirigia a mágoa apenas à declarante, mencionou ela que Tainá havia magoado muito o seu pai. 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr"> Sobre tais pontos, vale ressaltar que andou bem o Juízo Criminal de Segunda Instância ao observar a fragilidade da alegação não minimamente demonstrada de que tudo seria fruto exclusivamente de uma retaliação do genitor da vítima, bem como ao registrar, por meio de citações do depoimento da testemunha sobredita, o ambiente de desconfiança em que restou inserida a ora Apelada em meio a seus familiares maternos. Nenhum deles trouxe qualquer elemento diretamente ligado aos fatos e passível de contribuir de forma relevante para a instrução, mas apenas expressaram opinião no sentido de que a narrativa da então menor era inverídica – sobretudo diante da conduta normalmente ilibada do réu e do bom relacionamento entre ambos – e atribuíram ao ocorrido a natureza de dano colateral e manipulação do genitor da Apelada no âmbito da disputa entre famílias. 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top:

Processo	0109450-37.2017.8.06.0001
	21pt; margin-bottom: 0pt;" dir="ltr"> Registrou bem, ainda, o juízo colegiado o fato de que a primeira confissão da vítima sobre o ocorrido não foi para qualquer um de seus genitores, mas para uma amiga (Lyrisse Rodrigues Melo, também ouvida em sede de instrução cível e criminal), terceira desinteressada em favorecer ou beneficiar o Réu ou qualquer das famílias envolvidas. A época dessa confissão, não havia notícia de intento no que diz respeito à deflagração de uma ação penal ou cível para apuração do ocorrido, mas apenas um desabafo da menor.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> É oportuno ressaltar que os fatos relatados nas ações em comento são de difícil comprovação pela vítima, uma vez que os atos libidinosos em questão, como regra, não deixam vestígios passíveis de apuração em um exame de corpo de delito. Além disso, crimes contra a dignidade sexual são usualmente praticados sem testemunhas, o que tende a ser o caso em apreço.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Em cenários como tal, a análise necessária exige do julgador uma aferição detida dos indícios e provas apresentados, bem como sua adequada valoração, imprimindo um exame técnico-racional do conjunto de elementos apurados sob a perspectiva da relevância da palavra da vítima.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Nesse raciocínio, leia-se jurisprudência exemplificativa do STJ [grifo nosso]:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">PENAL. AGRAVO REGIMENTAL NO RECURSO ESPECIAL. ESTUPRO DE VULNERÁVEL. CONDENAÇÃO . PALAVRA DA VÍTIMA. SÚMULA N. 7/STJ. TRIBUNAL . ACERVO FÁTICO PROBATORIO CONTRÁRIO À PALAVRA DA VÍTIMA. AGRAVO NÃO PROVIDO. 1. “Nos crimes contra os costumes, a palavra da vítima é de suma importância para o esclarecimento dos fatos, considerando a maneira como tais delitos são cometidos, ou seja, de forma obscura e na clandestinidade .” (AgRg no AREsp 652.144/SP, Rel. Ministro REYNALDO SOARES DA FONSECA, QUINTA TURMA, julgado em 11/06/2015, DJe 17/06/2015). 2 . De todo modo, se as instâncias de origem, a partir do exame dos fatos e das provas, concluírem que a palavra da vítima contraria os demais elementos, não é dado reverter tal entendimento neste Superior Tribunal de Justiça. Incidência da Súmula n. 7/STJ. 3 . Agravo regimental não provido. (STJ- AgRg no REsp: 1688284 MG 2017/0197287-0, Relator.: Ministro RIBEIRO DANTAS, Data de Julgamento: 24/10/2017, T5 - QUINTA TURMA, Data de Publicação: DJe 31/10/2017).</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">PENAL E PROCESSUAL PENAL. AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. ESTUPRO DE VULNERÁVEL. FRAGILIDADE PROBATORIA . SÚMULA 7/STJ. DESCLASSIFICAÇÃO PARA O DELITO DE IMPORTUNAÇÃO SEXUAL. IMPOSSIBILIDADE. TEMA 1 .121/STJ. AGRAVO REGIMENTAL DESPROVIDO. 1.

Processo	0109450-37.2017.8.06.0001
	color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">A jurisprudência é pacífica no sentido de que, nos delitos contra a liberdade sexual, por frequentemente não deixarem vestígios, a palavra da vítima tem valor probante diferenciado . 2. O acórdão recorrido concluiu, de forma fundamentada, pela presença de provas suficientes para comprovar a autoria e a materialidade do delito, uma vez que o relato da vítima se mostrou firme e coerente com as demais provas coligidas. Destacou, ainda, ser implausível que o agravante não tivesse conhecimento da idade da menor, pois foi comprovado que ele era muito amigo da família, frequentava regularmente a casa da vítima e participava com ela de acampamentos promovidos pela igreja. A modificação deste entendimento encontra óbice na Súmula 7/STJ . 3. A Terceira Seção do STJ, ao julgar o Tema 1.121/STJ, fixou o entendimento de que, presente o dolo específico de satisfazer à lascívia, própria ou de terceiro, a prática de ato libidinoso com menor de 14 anos configura o crime de estupro de vulnerável (art. 217-A do CP), independentemente da ligeireza ou superficialidade da conduta, não sendo possível a desclassificação para o delito de importunação sexual (art. 215-A do CP). (REsp n. 1.954.997/SC, Rel. Ministro Ribeiro Dantas, 3ª S., DJe 1º/7/2022). 4 . Agravado regimental desprovido. (STJ AgRg no AREsp: 2554620 SP 2024/0022928-0, Relator.: Ministro RIBEIRO DANTAS, Data de Julgamento: 11/06/2024, T5 - QUINTA TURMA, Data de Publicação: DJe 17/06/2024).</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. PROCESSO PENAL. ESTUPRO DE VULNERÁVEL. PROVAS SUFICIENTES PARA A CONDENAÇÃO . PALAVRA DA VÍTIMA CORROBORADA POR OUTRAS PROVAS. ALTERAÇÃO QUE DEMANDA REANÁLISE FÁTICO-PROBATÓRIA. SÚMULA N. 7 DO SUPERIOR TRIBUNAL DE JUSTIÇA - STJ . DESCLASSIFICAÇÃO PARA IMPORTUNAÇÃO SEXUAL. TEMA N. 1121. IMPOSSIBILIDADE . DOSIMETRIA. PENA-BASE. CONDUTA SOCIAL. VALORAÇÃO NEGATIVA COM BASE EM ELEMENTOS CONCRETOS E IDÔNEOS . REGIME FECHADO. ART. 33, §§ 2º E 3º, DO CÓDIGO PENAL - CP. DISSÍDIO JURISPRUDENCIAL NÃO DEMONSTRADO . AGRAVO REGIMENTAL DESPROVIDO. 1. A jurisprudência desta Corte Superior posicionou-se no sentido de que, em crimes de natureza sexual, à palavra da vítima deve ser atribuído especial valor probatório, pois, geralmente, são cometidos de forma clandestina, sem testemunhas e sem deixar vestígios. Na hipótese, a condenação foi respaldada em provas suficientes, tendo em vista que a palavra da vítima não se encontra isolada nos autos, uma vez que corroborada pelos depoimentos testemunhais colhidos em juízo, possuindo peso preponderante sobre demais elementos de prova . 2. Nesse contexto, para se concluir de modo diverso, afastando a conclusão das instâncias ordinárias acerca da prática delitiva, seria necessário o revolvimento fático-probatório, vedado conforme Súmula n. 7 do Superior Tribunal de Justiça - STJ. 3 . Sobre o pleito desclassificatório, a questão foi pacificada nesta Corte em julgamento de recurso especial repetitivo, REsp n. 1.954.997/SC, no qual se firmou a tese (Tema n . 1121) de que “presente o dolo específico de satisfazer à lascívia, própria ou de terceiro, a prática de ato libidinoso com menor de 14 anos configura o crime de estupro de vulnerável (art. 217-A do CP), independentemente da ligeireza ou da superficialidade da conduta, não sendo possível a desclassificação para o delito de importunação sexual (art. 215-A do CP)”. 4 . Arrolados elementos concretos e não inerentes ao tipo penal para elevação da pena-base, não há se falar em ilegalidade da dosimetria.O magistrado a quo

Processo	0109450-37.2017.8.06.0001
	considerou negativa a circunstância judicial da conduta social, pois de acordo com o testemunho de familiares teria cometido outros abusos sexuais com pessoas da família, fundamento que se revela idôneo para o aumento da pena na primeira fase do cálculo. 5. Diante do quantum de pena, o regime fechado é o correto nos termos do art. 33, §§ 2º e 3º, do CP. 6. Inviável o recurso especial pela alínea c do permissivo constitucional, pois, além da incidência das Súmulas n. 83 e n. 7 deste Pretório, não foi realizado o cotejo analítico e não comprovada a similitude fática entre o aresto recorrido e os trazidos à colação, nos termos dos arts. 1.029, § 1º, do Código de Processo Civil/2015 - NCPC e 255, § 1º, do Regimento Interno do Superior Tribunal de Justiça - RISTJ. 7. Agravo regimental desprovido. STJ AgRg no AREsp: 2317583 SP 2023/0081591-8, Relator.: Ministro JOEL ILAN PACIORNIK, Data de Julgamento: 11/03/2024, T5 - QUINTA TURMA, Data de Publicação: DJe 13/03/2024. In casu observa-se que 13.99999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">a instrução processual não revelou elemento apto a infirmar a versão apresentada pela vítima. Não foi comprovado fato obstativo da consumação do fato segundo a narração da ora Apelada, os quais, por sua vez, coadunam com as circunstâncias apontadas na decisão criminal. Ganha especial relevo o depoimento do irmão da vítima, Geraldo Meira Freire Couceiro Neto, que costumeiramente estava por perto enquanto a Autora permanecia no quarto do Réu. Afirmou a testemunha, em sede criminal, que viu a vítima e o acusado deitados na mesma cama cobertos por um lençol em diferentes ocasiões quando a menor contava com apenas treze anos de idade e que, ao retornar ao referido quarto após breve saída, constatava a porta fechada, tanto que o depoente batia antes de entrar. Tais afirmações vão de encontro à negativa geral do ora Apelante em relação aos fatos, considerando-se que o Réu jamais explicou as situações em que estava deitado sob lençóis com a menor de idade e refutou que a porta do seu quarto ficasse fechada, ainda que ocasionalmente. Por fim, conforme registrado pelo d. juízo sentenciante - o qual detém maior proximidade com a instrução criminal - o relato da vítima se mostrou firme e coerente com as demais provas coligidas aos autos. Diante de todas essas premissas, entendo que há elementos suficientes à configuração da responsabilidade civil sub examine

Processo	0109450-37.2017.8.06.0001
	13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">>. Como dito, apesar de o juízo cível não se vincular ao criminal antes do trânsito em julgado da sentença condenatória, poderá acompanhar as conclusões tecidas no âmbito da persecução criminal a partir de valoração própria dos elementos nesta produzidos, os quais foram regularmente incluídos na instrução cível.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Nesse cenário, deve-se recordar que o processo penal possui ainda mais rigidez no que pertine à busca da verdade real e às garantias do contraditório e da ampla defesa, o que evidencia a especial relevância da apuração realizada pelo juízo criminal, especialmente em caso de confirmação pela segunda instância.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No que diz respeito ao valor da indenização por danos morais, considerada a inexistência de parâmetros legais, impõe-se que o julgador se atenha aos princípios da razoabilidade e da proporcionalidade, não podendo a indenização servir para o enriquecimento ilícito do beneficiado. Por outro lado, tampouco poderá a reparação ser insignificante, a ponto de não efetivamente recompor os prejuízos sofridos, ou deixar de atender ao seu caráter eminentemente pedagógico, essencial ao balizamento das condutas sociais.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">O valor da indenização por dano moral sujeita-se ao controle do Superior Tribunal de Justiça, sendo certo que, na fixação da indenização a esse título, é recomendável que o arbitramento seja feito com moderação, proporcionalmente ao grau de culpa, ao nível socioeconômico do autor e ao porte econômico do réu, orientando-se o juiz pelos critérios sugeridos pela doutrina e pela jurisprudência e valendo-se de sua experiência e bom senso, atento à realidade da vida e às peculiaridades de cada caso.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> A esse respeito, vale trazer a lição de Sérgio Cavalieri Filho [grifo nosso]:</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Para que a decisão seja razoável, é necessário que a conclusão nela estabelecida seja adequada aos motivos que a determinaram; que os meios escolhidos sejam compatíveis com os fins visados; que a sanção seja proporcional ao dano. Importa dizer que o juiz, ao valorar o dano moral, deve arbitrar uma quantia que, de acordo com o seu prudente arbítrio, seja compatível com a reprovabilidade da conduta ilícita, a intensidade e duração do sofrimento experimentado pela vítima, a capacidade econômica do causador do dano, as condições sociais do ofendido, e outras circunstâncias mais que se fizerem presentes. <span style="font-size: 11pt; font-

Processo	0109450-37.2017.8.06.0001
	family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(CAVALIERI FILHO, Sérgio. Programa de Responsabilidade Civil. 8 ed. Atlas, 2009, p. 91/93). Na caso concreto, é inequívoca a gravidade do abalo sofrido pela vítima ao ter violada a sua dignidade sexual em ambiente outrora considerado seguro, pela prática de crime grave perpetrado por familiar seu, de confiança da família. O prejuízo de tal abalo é agravado pela vulnerabilidade da condição de menor absolutamente incapaz da vítima ao tempo do ocorrido, alastrando-se sobre o desenvolvimento psíquico da Autora. Um dos problemas constatados foi a prática de automutilação pela Autora, distúrbio associado a dores emocionais e intenso sofrimento psicológico. As fotografias acostadas às fls. 5/7 do ID 18259439 evidenciam inúmeros e profundos cortes realizados pela própria Promovente em suas pernas. Considerando-se que vítimas de estupro - especialmente menores de idade - costumam apresentar isolamento, tristeza, culpa e outros problemas congêneres, o trauma causado por esse tipo de crime é compatível com a prática de autolesão, que pode ser observada em vítimas de abuso sexual. Dessa forma, ainda que se possa admitir que as referidas lesões não tenham resultado exclusivamente dos atos tipificados como estupro, mas também de todo um contexto difícil pelo qual a adolescente estaria passando - tese essa defendida pelo Apelante -, é razoável a presunção de que a vitimização da então menor tenha ensejado uma fragilidade emocional que permitiu o surgimento da doença psíquica, considerando-se os elementos dos autos e a compatibilidade da autolesão com os danos sofridos por vítimas desse tipo de crime. Ressalte-se que, ao ser ouvida pelo juízo criminal, a ora Apelada afirmou que, depois dos fatos, entrou em um estado de depressão e passou a se cortar com frequência. sentindo-se suja, “uma vagabunda” Afirmou que utilizava instrumentos como gilete, apontador e chave. Ela veio a mencionar outras circunstâncias apontados pelo réu em sua defesa, tais como o suicídio de um amigo e o vazamento de mídia íntima de webcam

Processo	0109450-37.2017.8.06.0001
	<p>13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">sem o seu consentimento, o que também teria agravado a situação. Porém,</p> <p >o="" a="" autolesão,<="" constante="" de="" depoimento="" e="" ensejou="" entre="" evidencia="" fatos="" ligação="" na="" o="" os="" p="" psíquico="" que="" realização="" sofrimento="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <p >conclusão="" coaduna="" com="" da="" depoimento="" lyrisse.<="" o="" p="" que="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;" testemunha=""> <p ><span="" >assim,="" atento="" caso="" concluo="" concreto,="" dir="ltr" do="" o<="" p="" peculiaridades="" que="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;" às=""> <p >quantum<="" p="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <p >indenizatório="" (oitenta="" -="" 80.000,00="" abalo="" apurado.<="" arbitrado="" as="" como="" compensar="" comporta="" consequências="" crime="" de="" do="" e="" em="" estipulado="" experimentados="" forma="" mil="" negativas="" no="" não="" o="" p="" pela="" proporcional="" psíquico="" r\$="" reais)="" recorrida="" redução,="" representando="" resultado="" sentença="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;" uma="" valor=""> <p ><span="" >ex="" dir="ltr" p="" positis,<="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <p >conheço<="" p="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <p >do="" apelação="" de="" lhe<="" p="" para="" recurso="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <p >negar="" p="" provimento<="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <p >,="" a="" apelada.<="" decisão="" incólume="" mantendo="" p="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <p ><span="" >em="" (art.="" (cinco="" 5%="" 98.="" ao="" apelante="" arbitrados="" cento)="" concessão="" cpc).<="" da="" de="" dir="ltr" do="" em="" exigibilidade="" face="" gratuidade="" honorários="" judiciária="" majoro="" oriunda="" os="" p="" por="" prejuízo="" recursal,="" sem="" sentença,="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;" sucumbenciais="" sucumbência="" suspensão="" §3º,=""> <p ><span="" >é="" como="" dir="ltr" p="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;" voto.<=""> <p ><span="" >fortaleza,="" assinatura="" data="" digital="" dir="ltr" e="" eletrônico.<="" no="" p="" processual="" registradas="" sistema="" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> <p ><span="" 480="" 532="" 948="" 964"="" data-label="Page-Footer" dir="ltr" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-</p> </td></tr> </table> </div> <div data-bbox=">1174</p></p></p></p></p></p></p></p></p></p></p></p></p></p>

Processo	0109450-37.2017.8.06.0001
	wrap;">DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p align="justify"> </p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relator</p><div> </div> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	0204169-51.2024.8.06.0167
Número de ordem	122
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	PASEP
Polo ativo	NEUMA PEREIRA DE ARAUJO SANTOS
Advogado(s) - Polo ativo	DAVI PORTELA MUNIZ - (CE32573-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	Não informado

Processo	0204169-51.2024.8.06.0167
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRSrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJFwCwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNhEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDvGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlXZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3lxi UG4LT19z2wZ6B+iP9WeVlWtYJQMh0z2DdvrYIz8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWj+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOe1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvlgRLkiu3cCAWl2fn5FHgkY3WVfUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfn1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjpg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41gnkUvsnXNkX410JEZMRUZOZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	style="font-size: medium;"/> 1. Recurso de apelação cível interposto contra a sentença proferida no Id 27400658, que julgou liminarmente improcedente a Ação de Obrigação de Fazer c/c Indenização por Danos Materiais e Morais, por prescrição, com fulcro no art. 487, inciso II, do CPC. </p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"/> II. QUESTÃO EM DISCUSSÃO</p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"/> 2. Cinge-se a controvérsia recursal em aferir se está configurada a prescrição da ação proposta para discutir a suposta irregularidade na gestão e atualização monetária dos valores depositados em conta vinculada ao PASEP.</p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"/> III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"/> 3. Preliminarmente, suscitou o apelado as seguintes questões: violação ao princípio da dialeticidade, impugnação à justiça gratuita, ilegitimidade passiva e incompetência do juízo estadual, as quais não comportam acolhimento. Preliminares rejeitadas. </p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"/> 4. No mérito, a matéria em discussão foi objeto de apreciação pelo c. Superior Tribunal de Justiça, quando afetou ao rito dos recursos repetitivos o Tema nº 1.150, tendo o Tribunal da Cidadania uniformizado a interpretação da legislação infraconstitucional por meio das teses a seguir destacadas: i) o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa; ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil; e iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. </p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"/> 5. Com efeito, a fluência do prazo prescricional de dez anos para a parte exercer a pretensão condenatória começa a partir da data em que se tem conhecimento da lesão. Sendo assim, de acordo com o princípio da actio nata, o direito de pleitear a indenização surge quando a lesão e suas consequências são constatadas. Com base nisso, o entendimento mais escorreito é no sentido de que o termo inicial da contagem do prazo prescricional da pretensão autoral se dá quando do recebimento do extrato ou das microfilmagens da sua conta. Em exame do caderno processual, tem-se que a autora recebeu os extratos em 03.06.2024, pouco dias antes do ajuizamento da ação (24.07.2024), de modo que não há falar em prescrição.</p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"/> IV. DISPOSITIVO </p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"/> 6. Recurso provido. Sentença cassada. </p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"/> &#160; </p><p class="EmentadoAcrdo" style="text-align: justify;"/><strong style="font-family: &quot;times new roman&quot;, times; font-size: medium;"/>ACÓRDÃO:</p><p style="font-family: &quot;times new roman&quot;, times; font-size: medium;"/>1ª Câmara Direito Privado</p><p style="font-family: &quot;times new roman&quot;, times; font-size: medium;"/>do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação, para lhe dar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital.</p><p align="center"> &#160; </p><p align="center"> &#160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> </p>

Processo	0204169-51.2024.8.06.0167
	indent: 8%; line-height: 115%;"> Cinge-se a controvérsia recursal em aferir se está configurada a prescrição da ação proposta para discutir a suposta irregularidade na gestão e atualização monetária dos valores depositados em conta vinculada ao PASEP. </p><p class="Standard" style="text-align: justify; text-indent: 8%; line-height: 115%;"> ¶ </p><p class="Standard" style="text-align: justify; text-indent: 8%; line-height: 115%;"> Antes, convém enfrentar as matérias suscitadas pelo apelado, em sua contraminuta, conforme tópicos que seguem. </p><p class="Standard" style="text-align: justify; text-indent: 70.85pt; line-height: 115%;"> ¶ </p><p class="Standard" style="text-align: justify; line-height: 115%; text-indent: 8%;"> Da alegada violação à dialeticidade recursal </p><p class="Standard" style="text-align: justify; line-height: 115%; text-indent: 8%;">
<p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> D e acordo com o recorrido, a apelante se limita a reproduzir argumentação anteriormente desenvolvida, configurando ofensa ao princípio da dialeticidade.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Todavia, a irresignação do banco não prospera, pois, em exame à peça recursal, confere-se que as alegações da apelante estão voltadas aos fundamentos da sentença, no intuito de convencer este juízo ad quem de que não houve prescrição de sua pretensão reparatória.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Portanto, a intenção de reverter o resultado do julgamento que lhe foi desfavorável é nítida e deve ser considerada. E ainda que houvesse repetição de argumentos lançados na exordial, isso não prejudicaria o conhecimento do apelo, conforme entendimento pacificado do c. STJ.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Veamos por este aresto da Corte da Cidadania:</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">
<p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> ¶</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">PROCESSUAL CIVIL E ADMINISTRATIVO. ART. 535 DO CPC/1973. VIOLAÇÃO. INEXISTÊNCIA. APELAÇÃO. INÉPCIA. AUSÊNCIA. PRECLUSÃO. FUNDAMENTO INATACADO E DEFICIÊNCIA RECURSAL. CONTRATO ADMINISTRATIVO. DESCUMPRIMENTO. PERDA SUPERVENIENTE DO OBJETO RECURSAL. VERIFICAÇÃO. REEXAME DE FATOS E PROVAS. INVIABILIDADE. FATO SUPERVENIENTE. CONSIDERAÇÃO PELO JULGADOR. JULGAMENTO EXTRA PETITA. INOCORRÊNCIA. PRINCÍPIO DA PERSUASÃO RACIONAL. AFRONTA. SÚMULA 7 DO STJ. INCIDÊNCIA.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 1. (...)</p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 3. A rejeição da alegada ofensa ao art. 514, II, do CPC/1973 (inépcia

Processo	0204169-51.2024.8.06.0167
	&quot;times new roman&quot;, times;">&#160; </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> A propósito, colho precedentes jurisprudenciais: </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> &#160;</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> EMENTA: APELAÇÃO CÍVEL - REVOGAÇÃO DO BENEFÍCIO DA JUSTIÇA GRATUITA NA SENTENÇA - RESPONSABILIDADE CÍVEL - INCLUSÃO NOS CADASTROS DE PROTEÇÃO AO CRÉDITO - CONTRATAÇÃO COMPROVADA - EXERCÍCIO REGULAR DE UM DIREITO - LITIGÂNCIA DE MÁ -FÉ A revogação da justiça gratuita deve vir acompanhada de prova da superveniência de capacidade financeira da parte para arcar com as custas e despesas processuais. Ausente nos autos a comprovação da alteração da situação de carência de recursos observada quando do deferimento da gratuidade de justiça, o benefício não pode ser revogado ex officio. Presente nos autos documentos que comprovem o vínculo jurídico entre as partes, mostra-se devida, em razão de débito, a inscrição do nome do devedor nos cadastros de órgãos de proteção ao crédito. Restando comprovado que a parte autora agiu de má-fé, alterando a verdade dos fatos, deve ser mantida a condenação ao pagamento de multa. </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> (TJ-MG - AC: 10000190622738001 MG, Relator: Luiz Artur Hilário, Data de Julgamento: 29/09/0019, Data de Publicação: 07/10/2019). </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. JUSTIÇA GRATUITA. IMPUGNAÇÃO. PROVA DA CAPACIDADE DO BENEFICIÁRIO. ÔNUS DO IMPUGNANTE. APLICAÇÃO DAS SÚMULAS NºS 7 E 83/STJ. RECURSO NÃO PROVIDO. 1. O Tribunal de origem, apreciando as peculiaridades fáticas da causa, deferiu o benefício da assistência judiciária gratuita. A modificação de tal entendimento lançado no v. acórdão recorrido, como ora perseguida, demandaria a análise do acervo fático-probatório dos autos, o que é vedado pela Súmula 7 do STJ. 2. Além disso, na hipótese de impugnação do deferimento da assistência judiciária gratuita, cabe ao impugnante comprovar a ausência dos requisitos legais para a concessão do benefício, ônus do qual não se incumbiu a parte ora agravante, segundo assentado pelo acórdão recorrido. Incidência da Súmula 83 do STJ. 3. Agravo interno não provido. </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> (STJ - AgInt no AREsp: 1023791 SP 2016/0304627-6, Relator: Ministro LUIS FELIPE SALOMÃO, Data de Julgamento: 16/03/2017, T4 - QUARTA TURMA, Data de Publicação: DJe 29/03/2017, G.N.) </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> N o caso, o apelado se limita a dizer que a declaração de hipossuficiência econômica não é suficiente para dar respaldo ao pedido da gratuidade e que parte autora/apelante não comprovou sua alegada falta de condições de arcar com as despesas processuais, sem trazer qualquer prova de que a situação da recorrente não é a declarada. Desse modo, não há como se acolher o pedido de revogação da benesse concedida em observância aos preceitos legais. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Logo, há de se rejeitar a impugnação. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160; Da alegada ilegitimidade passiva </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p>

Processo	0204169-51.2024.8.06.0167
	<p>style="font-size: 12pt; font-family: "Times New Roman"; serif;">Cumprir frisar que o c. STJ pacificou, no Tema 1150, com trânsito em julgado em 17 de outubro de 2023, as seguintes teses:</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">¶</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> i) o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa;</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil; e</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. [Grifei].</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> ¶</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Portanto, irrefutável a legitimidade do Banco do Brasil S/A para compor o polo passivo da presente lide, dispensando o tema de maior debate.</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Ademais, da simples leitura da peça inicial, não se vislumbra que o intuito da promovente é questionar os índices aplicados na sua conta vinculada, mas sim as movimentações e a correta aplicação dos índices legais sobre o saldo principal. Nesse passo, não extrai interesse da União em participar do feito. A preliminar deve ser rejeitada.</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Da alegada incompetência da Justiça Estadual</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> A legitimidade passiva ad causam do Banco do Brasil "para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada aoPasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa", atrai a competência da Justiça Comum para processar e julgar o litígio, não se aplicando o disposto no art. 109, I, da Constituição Federal, eis que ausente o interesse da União no feito.</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Nesse sentido, é vasta a jurisprudência pátria, sendo oportuno transcrever o seguinte aresto do c. Superior Tribunal de Justiça, a título exemplificativo:</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> ¶</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> ¶</p> </p>

Processo	0204169-51.2024.8.06.0167
	size: 10pt; font-family: "Times New Roman"; serif;">PROCESSUAL CIVIL. RESPONSABILIDADE DECORRENTE DA MÁ GESTÃO DOS VALORES DEPOSITADOS. AUSÊNCIA DE ATUALIZAÇÃO MONETÁRIA DA CONTA DO PASEP. LEGITIMIDADE PASSIVA. COMPETÊNCIA DA JUSTIÇA COMUM ESTADUAL. SÚMULA N. 42/STJ. I - Na origem, trata-se de ação de indenização por danos morais e materiais contra o Banco do Brasil alegando, em suma, que sua conta do Programa de Formação do Patrimônio do Servidor Público - PASEP, administrada pelo réu, deixou de receber a devida atualização monetária. II - O Tribunal de Justiça do Estado do Mato Grosso do Sul manteve a sentença que extinguiu o processo sem resolução do mérito, diante da ilegitimidade do Banco do Brasil S.A. (fls. 75-78). III - Na hipótese dos autos, o entendimento do Superior Tribunal de Justiça é de que, em ações nas quais se pleiteia a recomposição do saldo existente em conta vinculada ao PASEP, em virtude da não ocorrência dos devidos depósitos, a União deve figurar no polo passivo da demanda. IV - No entanto, a presente lide versa sobre responsabilidade decorrente da má gestão dos valores depositados, a exemplo da ausência de atualização monetária da conta do PASEP. V - Nessas situações, o STJ conclui que a legitimidade passiva é do Banco do Brasil e, por consequência, a competência é da justiça comum estadual, em atenção à Súmula n. 42/STJ.. No mesmo sentido: REsp n. 1.874.404, relatora Ministra Assusete Magalhães, DJe 1/6/2020; no REsp n. 1.869.872, relator Ministro Herman Benjamin, DJe 29/5/2020 e no REsp n. 1.852.193, relator Ministro Sérgio Kukina, DJe 5/2/2020. VI - Outrossim, não se aplica a Súmula n. 77/STJ, uma vez que a hipótese da referida Súmula não se enquadra à vexata quaestio, e nem se dirige ao Banco do Brasil. VII - Agravo interno improvido.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">(STJ - AgInt no REsp: 1890323 MS 2020/0209117-6, Relator.: Ministro FRANCISCO FALCÃO, Data de Julgamento: 01/03/2021, T2 - SEGUNDA TURMA, Data de Publicação: DJe 15/03/2021). [Grifei].</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: 105%; mso-layout-grid-align: none; text-autospace: none;">&#160;<p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">Preliminares rejeitadas.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">&#160;&#160;Da prescrição</p><p class="Standard" style="text-align: justify; text-indent: 8%;">&#160;</p><p class="Standard" style="text-align: justify; text-indent: 8%;">Quanto ao tema, pertinente transcrever a fundamentação da sentença recorrida, na parte que reconheceu a prescrição. Verbis:</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">&#160;&#160;</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify;">No que concerne à prescrição, o Superior Tribunal de Justiça, por meio dos Recursos Especiais nº 1.895.936/TO, 1.895.941/TO e 1.951.931/DF, ao dirimir os paradigmas do Tema 1150, aplicou a teoria da actio nata para fixar o prazo prescricional de 10 anos, previsto no artigo 205 do Código Civil, definindo como termo a quo a data do saque do benefício, e fixou a tese em sede de recursos repetitivos:</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify;">[...]</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify;">Na presente hipótese, da análise do extrato de movimentação da conta vinculada ao Programa de Formação do Patrimônio do Servidor Público PASEP às fls. 11/14, verifica-se que a parte autora recebeu o pagamento de sua aposentadoria em 08/12/2011, ou seja, tem-se essa data de saque como termo inicial da prescrição. Não obstante, a presente demanda foi protocolada em 14/08/2024, quando já extrapolado o prazo de prescrição decenal, de modo que a improcedência liminar é medida salutar que se impõe.</p><p class="Standard" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify;">&#160;</p><p>

Processo	0204169-51.2024.8.06.0167
	class="Standard" style="margin-left: 70.9pt; text-align: justify;">&#160;</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Pois bem. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Como citado na r. sentença objurgada, a matéria em discussão foi objeto de apreciação pelo c. Superior Tribunal de Justiça, no recurso especial repetitivo afetado ao Tema nº 1.150, sendo conveniente citar mais uma vez as teses fixadas pelo Tribunal da Cidadania. &#160; </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;<p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 115%;"> i) o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 115%;"> ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 115%;"> iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep.</p><p class="Standard" style="text-align: justify; text-indent: 70.85pt; line-height: 115%;"> &#160;<p class="Standard" style="text-align: justify; text-indent: 8%;"> Com efeito, a fluência do prazo prescricional de dez anos para a parte exercer a pretensão condenatória começa a partir da data em que se tem conhecimento da lesão. Sendo assim, de acordo com o princípio da actio nata, o direito de pleitear a indenização surge quando a lesão e suas consequências são constatadas. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> No caso em análise, verifica-se que o saque do PASEP pela promovente ocorreu com sua aposentadoria, em 10.04.2013 (vide Id 27400618), momento em que o Juízo a quo considerou que ela tomou conhecimento do saldo de sua conta vinculada, surgindo, a partir dessa data, a pretensão para questionar possíveis inconsistências e desvios. Todavia, o precedente vinculante mencionado firmou o entendimento de que o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP.</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Assim, a interpretação mais escorreita é no sentido de que o termo inicial da contagem do prazo prescricional da pretensão autoral se dá quando do recebimento do extrato ou das microfilmagens da sua conta, que, no caso concreto, ocorreu em 03.06.2024 (Id 27400618), pouco dias antes do ajuizamento da ação (24.07.2024), de modo que não há falar em prescrição. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160;<p class="Standard" style="text-align: justify; text-indent: 8%;"> Em casos análogos, para fins persuasivos, colaciono precedentes deste e. Tribunal de Justiça, cuja jurisprudência tem se consolidado no sentido de que o termo inicial da prescrição decenal é a partir do recebimento dos extratos (grifos nossos): </p><p class="Standard" style="margin-left: 4cm; text-align: justify; line-height: 115%; text-indent: 8%;"> &#160;</p><p class="Standard" style="margin-left: 4cm; text-align: justify; line-height: 115%;"> <span style="font-family:

Processo	0204169-51.2024.8.06.0167
REITO CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER. PRELIMINAR DE IMPUGNAÇÃO À JUSTIÇA GRATUITA. REJEITADA. PRELIMINAR DE AUSÊNCIA DE DIALETICIDADE. DESACOLHIDA. PRELIMINAR DE ILEGITIMIDADE PASSIVA. REJEITADA. CONTA VINCULADA AO PASEP. PRESCRIÇÃO DECENAL. TERMO INICIAL. CONHECIMENTO DO EXTRATO COMPLETO. SENTENÇA ANULADA. TEORIA DA CAUSA MADURA. INAPLICABILIDADE. NECESSIDADE DE DILAÇÃO PROBATÓRIA. I. CASO EM EXAME 1. Apelação cível interposta contra sentença que julgou liminarmente improcedente ação indenizatória, ao reconhecer a prescrição da pretensão ao ressarcimento de valores supostamente suprimidos de conta vinculada ao PASEP. II. QUESTÃO EM DISCUSSÃO 2. Definir se a pretensão indenizatória está prescrita, considerando o termo inicial do prazo prescricional. III. RAZÕES DE DECIDIR 3. A jurisprudência consolidada no Superior Tribunal de Justiça (Tema 1150) estabelece que o prazo prescricional para ressarcimento de danos em conta vinculada ao PASEP é decenal, tendo início na data em que o titular comprovar ciência dos desfalques. 4. Na hipótese dos autos, o termo inicial deve ser fixado na data de obtenção do extrato completo da conta PASEP pela autora, ocorrida em 16/11/2023. Como a ação foi ajuizada em 14/08/2024, não há prescrição. 5. O julgamento da lide nesta instância não se mostra adequado, pois a demanda requer dilação probatória, especialmente a realização de perícia contábil. 6. Diante da necessidade de instrução probatória, não se aplica a teoria da causa madura (art. 1.013, § 4º, do CPC). IV. DISPOSITIVO 7. Recurso parcialmente provido para anular a sentença e determinar o retorno dos autos ao juízo de origem para regular prosseguimento do feito. Dispositivos relevantes citados: Código Civil, arts. 189 e 205; Código de Processo Civil, art. 1.013, § 4º. Jurisprudência relevante citada: STJ, Tema 1150; STJ, AgInt no AREsp 1500181/SP, Rel. Min. Marco Aurélio Bellizze, 3ª Turma, j. 22/06/2021. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso e dar-lhe parcial provimento, nos termos do voto do relator. Fortaleza, 26 de março de 2025 JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 115%;">(TJ-CE - Apelação Cível - 0260252-03.2024.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160;26/03/2025, data da publicação:&#160; 26/03/2025).</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; line-height: 115%;">&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER C/C INDENIZATÓRIA POR DANOS MATERIAIS E MORAIS. PROGRAMA DE FORMAÇÃO DO PATRIMÔNIO DO SERVIDOR PÚBLICO - PASEP. PRESCRIÇÃO. PRAZO DECENAL. O STJ PACIFICOU, AINDA, O ENTENDIMENTO DE QUE "A PRÉTENSÃO AO RESSARCIMENTO DOS DANOS HAVIDOS EM RAZÃO DOS DESFALQUES EM CONTA INDIVIDUAL VINCULADA AO PASEP SE SUBMETE AO PRAZO PRESCRICIONAL DECENAL PREVISTO PELO ARTIGO 205 DO CÓDIGO CIVIL", ALÉM DE QUE " O TERMO INICIAL PARA A CONTAGEM DO PRAZO PRESCRICIONAL É O DIA EM QUE O TITULAR, COMPROVADAMENTE, TOMA CIÊNCIA DOS DESFALQUES REALIZADOS NA CONTA INDIVIDUAL VINCULADA AO PASEP. NO CASO CONCRETO, A RECORRENTE OBTEVE ACESSO AO EXTRATO DA SUA CONTA PASEP AOS 23.05.2024 (FLS. 25/27), E AJUIZOU A PRESENTE AÇÃO EM 20.06.2024, PORTANTO, NÃO HÁ QUE SE FALAR EM PRESCRIÇÃO. RÉCURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">(TJ-CE - Apelação Cível&#160;- 0244421-12.2024.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160; 27/11/2024, data da publicação:&#160; 28/11/2024).</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 70.85pt;">&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 70.85pt;">&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">APELAÇÃO EM AÇÃO DE INDENIZAÇÃO QUE EXTINGUIU O FEITO COM RESOLUÇÃO DO MÉRITO, ANTE O RECONHECIMENTO DA	

Processo	0204169-51.2024.8.06.0167
	PRESCRIÇÃO. PASEP.&#160; PRESCRIÇÃO DECENAL. PRINCÍPIO DA ACTIO NATA. TEORIA DA CIÊNCIA INEQUÍVOCA. PRESCRIÇÃO NÃO CONFIGURADA. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. I- CASO EM EXAME 1. Trata-se de Apelação Cível interposta, adversando sentença proferida nos autos da Ação de Indenização por Danos Morais e Materiais em epígrafe, que julgou extinta a ação, pelo reconhecimento da prescrição, com apreciação do mérito, II ¿ QUESTÃO EM DISCUSSÃO 2. Cinge-se a controvérsia recursal em aferir se a pretensão deduzida na exordial encontra-se atingida pela prescrição. III ¿ RAZÕES DE DECIDIR 3. O Tema nº 1.150 /STJ dispôs sobre o prazo prescricional para os casos em análise, o qual restou consolidado o prazo decenal, na forma do artigo 205 do Código Civil, assim como a aplicação da&#160;teoria da actio nata. Com isso, o&#160;termo&#160;inicial&#160;para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep.&#160; 4. Isto posto, entendo que a prescrição reconhecida pelo Juízo de primeiro grau há de ser afastada, uma vez que restou suficientemente explicitado, diante da descrição fática narrada na petição inicial, que a parte promovente somente teve ciência acerca dos desfalques em seus rendimentos na data de emissão dos extratos microfilmados de sua conta PASEP em 2019. IV ¿ DISPOSITIVO 5. Recurso conhecido e provido. Sentença anulada. Retorno dos autos à origem, para regular seguimento.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">(TJ-CE - Apelação Cível&#160;- 0193590-33.2019.8.06.0001, Rel. Desembargador(a) CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento:&#160; 27/11/2024, data da publicação:&#160; 28/11/2024).</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 70.85pt;">&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">APELAÇÃO. AÇÃO ORDINÁRIA DE INDENIZAÇÃO RELACIONADA AOS SALDOS, ACRÉSCIMOS ILEGAIS, SAQUES E À DIFERENÇA DE VALORES NA CONTA VINCULADA DO PASEP DO AUTOR/RECORRENTE. SENTENÇA QUE RECONHECEU A PRESCRIÇÃO E EXTINGUIU O FEITO COM ANÁLISE DO MÉRITO. QUESTIONAMENTO SOLUCIONADO NO JULGAMENTO DO TEMA REPETITIVO Nº 1.150 QUE UNIFORMIZOU A INTERPRETAÇÃO DA LEGISLAÇÃO INFRACONSTITUCIONAL. PRAZO PRESCRICIONAL QUE NÃO FULMINA O DIREITO DE AÇÃO. PRINCÍPIO DA ACTIO NATA. LAPSO QUE FLUI A PARTIR DO MOMENTO EM QUE A PARTE TOMA CONHECIMENTO DA OCORRÊNCIA DE IRREGULARIDADE NA SUA CONTA VINCULADA DO PASEP. SENTENÇA ANULADA. REMESSA DO FEITO PARA A VARA DE ORIGEM PARA O DEVIDO PROCESSAMENTO E JULGAMENTO DO LITÍGIO. - A petição inicial remete à apreciação do Judiciário litígio que envolve a responsabilidade do Banco do Brasil S/A quanto à má gestão dos valores depositados pela União do programa PIS/PASEP. - O Tribunal da Cidadania uniformizou a interpretação da legislação infraconstitucional no julgamento do tema repetitivo nº 1.150 para reconhecer, dentre outras teses não devolvidas na via apelatória, que "ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil"; e que "iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. - Em relação à prescrição, a jurisprudência entende ser aplicável o princípio da actio nata, iniciando-se o prazo prescricional a partir do momento em que a parte tem conhecimento da violação do seu direito e, aplicando a tese repetitiva nº 1.150 firmada pelo Tribunal da Cidadania, tem-se que: "A pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil ou ao prazo quinquenal estipulado pelo artigo 1º do Decreto nº 20.910/32" e que "O termo inicial para a contagem do prazo prescricional é o dia em que o titular toma ciência dos desfalques ou a data do último depósito efetuado na conta individual vinculada ao PASEP". Desta forma, o lapso da prescrição teve início quando o autor teve acesso à microfilmagem dos extratos da sua conta vinculada ao PASEP, requisitada em 09/02/2024 e com previsão de entrega no dia 08/06/2024, não fulminando o direito de ação exercitado em 27/06/2024. RECURSO CONHECIDO E PROVIDO EM PARTE. (TJ- CE - Apelação Cível- 0246192-25.2024.8.06.0001, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 2ª Câmara Direito Privado, data do julgamento: 02/10/2024, data da publicação: 02/10/2024).</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify; text-indent: 70.85pt;">&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">APELAÇÃO CÍVEL ¿ AÇÃO INDENIZATÓRIA ¿ PASEP ¿ ALEGADA AUSÊNCIA DE CORRETA APLICAÇÃO DE CORREÇÃO MONETÁRIA NA

Processo	0204169-51.2024.8.06.0167
	CONTA VINCULADA AO PASEP DA PARTE AUTORA ¿ JULGAMENTO DE IMPROCEDÊNCIA NA ORIGEM ¿ PRETENSÃO DE REFORMA ¿ PRELIMINARES CONTRARRECURSAIS ¿ ILEGITIMIDADE PASSIVA DO BANCO DO BRASIL S/A ¿ AFASTADA ¿ TEMA REPETITIVO 1150 DO STJ, QUE DECIDIU PELA LEGITIMIDADE DO ENTE BANCÁRIO ¿ COMPETÊNCIA DA JUSTIÇA COMUM ¿ RECONHECIDA ¿ PRESCRIÇÃO ¿ AFASTADA ¿ RAZÕES RECURSAIS ¿ PRELIMINAR DE CERCEAMENTO DE DEFESA ¿ NECESSIDADE DE PRODUÇÃO DE PROVA PERICIAL ¿ ACOLHIMENTO ¿ SENTENÇA ANULADA PARA A REALIZAÇÃO DA PROVA ¿ RECURSO CONHECIDO E PROVIDO ¿ SENTENÇA DESCONSTITUÍDA. 1. O presente recurso visa à reforma da sentença que julgou improcedente o pedido autoral nos autos da Ação de Indenização por Danos Morais e Materiais, decorrentes de suposta má gestão, por parte do BANCO DO BRASIL, de valores depositados na conta PASEP da parte autora. 2. Preliminares contrarrecursais ¿ Ilegitimidade passiva do Banco do Brasil S/A e incompetência absoluta da Justiça Comum ¿ No recente julgamento do Repetitivo 1150, o Superior Tribunal de Justiça estabeleceu que o Banco do Brasil é parte legítima para ser incluído como réu em ações que discutem a gestão dos valores depositados no PASEP, seja no que tange à correção de valores depositados, como a saques efetuados. (REsp n. 1.895.936/TO, relator Ministro Herman Benjamin, Primeira Seção, julgado em 13/9/2023, DJe de 21/9/2023). À vista disso, e em atenção ao enunciado da Súmula 42 do STJ, não há dúvidas de que a competência para conhecer e julgar a ação é a da Justiça Comum. Preliminares rejeitadas. 3. Prejudicial de mérito ¿ Prescrição ¿ Sobre o tema da prescrição, o Superior Tribunal de Justiça, no julgamento do Recurso Especial Repetitivo n.º 1.951.931/DF (Tema n.º 1.150), de 13/09/2023, firmou as seguintes teses vinculantes: ¿ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil;¿ ¿iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep.¿ 4. Portanto, segundo a tese fixada, é decenal o prazo prescricional para se questionar, em juízo, eventuais danos causados, em razão de desfalques na conta individual vinculada ao PASEP. 5. Por seu turno, o termo a quo do lapso prescricional, segundo a teoria da actio nata, é a data em que o titular da conta toma ciência, comprovadamente, dos desfalques, que, em casos tais, acontece quando tem acesso aos extratos da conta PASEP, pois só então passa a conhecer o fato e a extensão de suas consequências. Precedentes da Câmara. No caso concreto, o demandante obteve acesso ao extrato da sua conta PASEP aos 25/10/2023, e ajuizou a presente ação em 26/03/2024, portanto, não há que se falar em prescrição. 6. Razões recursais ¿ Preliminar de cerceamento de defesa ¿ O apelante pugna pela nulidade da sentença, por cerceamento de defesa, defendendo a necessidade de perícia contábil a fim de apurar eventual erro na atualização dos valores depositados na sua conta PASEP. 7. No caso vertente, houve o julgamento antecipado da lide, concluindo-se por sua improcedência, tendo como fundamento a não satisfação do ônus probatório da parte apelante. 8. In casu, observa-se da prova coligida aos autos que, diante da natureza complexa do caso, que envolve mudanças de moeda e incidência de diversos índices de correção monetária, necessária a realização de perícia contábil. 9. Verifica-se, portanto, que é nítido o cerceamento de defesa e error in procedendo no caso concreto, uma vez que o feito de origem foi sentenciado sem que fosse realizada a produção de provas necessárias ao julgamento do mérito. 10. Nessa perspectiva, acolhe-se a preliminar de cerceamento de defesa, diante do não cabimento do julgamento antecipado da lide, haja vista a necessidade de produção de prova pericial no caso em apreço, impondo-se a desconstituição da sentença e o retorno à origem para que a demanda prossiga com a instauração da fase instrutória, ficando as demais questões recursais prejudicadas. 11. Recurso conhecido e provido. Sentença desconstituída.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> (TJ-CE - Apelação Cível - 0200701-83.2024.8.06.0101, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 02/10/2024, data da publicação: 02/10/2024).</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> #160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> #160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS. PROGRAMA DE FORMAÇÃO DO PATRIMÔNIO DO SERVIDOR (PASEP). MÁ GESTÃO DOS VALORES DEPOSITADOS. PRESCRIÇÃO. NÃO INCIDÊNCIA. PRAZO DECENAL. A PARTIR DA CIÊNCIA DOS DESFALQUES. APLICAÇÃO DO TEMA REPETITIVO Nº 1.150 DO STJ. PRECEDENTES DO TJCE. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA.&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> I. CASO EM

Processo	0204169-51.2024.8.06.0167
	</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> É como voto. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt;">
 </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt;">
 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Relator </p><p>
 </p><p>&#160;</p>

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Processo	0200420-46.2024.8.06.0031
Número de ordem	123
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos de Consumo
Polo ativo	IDELZUIE NOGUEIRA BALTAZAR FERREIRA
Advogado(s) - Polo ativo	FRANCISCO REGIOS PEREIRA NETO - (CE25034-A)
Polo passivo	BANCO ITAU BMG CONSIGNADO S.A.
Advogado(s) - Polo passivo	ENY ANGE SOLEDADE BITTENCOURT DE ARAUJO - (BA29442-A)
Terceiros	Não informado

Processo	0200420-46.2024.8.06.0031
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNohzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUJZReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlx8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBl4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacnJfWCSwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBttau2dl/XHeucKd7Upljdzg72jpb67snTSt2uMX3X MxjXcQHMQU6JT0upJjAhrRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPldjdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwcnODHQM+5 PxxH6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMKCAKMg2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEkikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJElVfDrTECR2H3TDT2lZmS6fc3tLV1D/CfYwcnODHQM+5 qWo3WcjW850dTZ1mu3M6qikym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssADLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGd425NbR9LZQW6GZT9CdPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkIX410JEZmRSDZIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWlREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0200420-46.2024.8.06.0031
	Danos Morais e Materiais, ajuizada pela ora apelante. II. QUESTÕES EM DISCUSSÃO 2. As questões em discussão são: (i) possível cerceamento de defesa por não ter sido realizada prova pericial grafotécnica; (ii) a alegada irregularidade do contrato de empréstimo consignável; e (iii) se há responsabilidade civil da instituição financeira por eventual falha na prestação do serviço, à luz das normas do Código de Defesa do Consumidor. III. RAZÕES DE DECIDIR 3. A respeito do tema, este e. Tribunal de Justiça firmou entendimento de que a confirmação da regularidade ou irregularidade do negócio depende de provas concretas sobre i) a anuência do(a) consumidor(a) sobre os descontos realizados e ii) o recebimento do crédito por parte do(a) beneficiário(a). 4. A instituição financeira ré defendeu a legitimidade da contratação e anexou aos autos a cópia do instrumento impugnado, devidamente assinado pela parte autora/apelante, além da cópia dos documentos pessoais e comprovante de pagamento do numerário líquido. No curso do trâmite processual, a parte autora/apelante não impugnou expressamente os documentos juntados pelo banco nem pleiteou por perícia grafotécnica, e, muito embora tenha sido intimada para apresentar réplica, deixou transcorrer o prazo sem manifestação. Ademais, fora intimada para dizer se desejava produzir outras provas, mas não se insurgiu sobre a assinatura do contrato nem requereu a prova pericial. 5. Nesse contexto, verifica-se que a parte autora/apelante se manteve inerte com relação aos documentos comprobatórios da relação jurídica firmada com o banco, caracterizando-se, assim, o fenômeno da preclusão. Dessa forma, não há que falar em cerceamento de defesa nem em irregularidade da contratação, uma vez que a instituição financeira se desincumbiu do seu ônus probatório ao juntar aos autos o instrumento contratual devidamente assinado pela autora, acompanhado dos seus documentos pessoais e do comprovante de repasse do numerário. 6. Diante a regularidade da contratação, não há que falar em ato ilícito cometido pela instituição financeira, e, por consequência, inexistente dever de reparação civil. IV. DISPOSITIVO 7. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso interposto, para lhe negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR

Processo	0200420-46.2024.8.06.0031
	JOSÉ RICARDO VIDAL PATROCÍNIO PRESIDENTE/RELATOR RELATÓRIO Trata-se de recurso de apelação interposto por Idelzuite Nogueira Baltazar Ferreira, objetivando a reforma total da sentença proferida no Id 27391216, pelo MM. Juiz Isaac Dantas Bezerra Braga, da Vara Única da Comarca de Alto Santo, que julgou improcedente a Ação Declaratória Negativa de Débito c/c Pedido de Indenização por Danos Morais e Materiais, ajuizada pela ora apelante em desfavor do Banco Itaú Consignado S.A. Nas razões do presente recurso (Id 27391220), a apelante alega que: (i) não reconhece a assinatura aposta no contrato e o juízo de origem não oportunizou a realização de perícia grafotécnica, configurando cerceamento de defesa; (ii) o promovido não juntou provas de que o contrato foi celebrado legalmente, como uma filmagem do autor no estabelecimento bancário ou a apresentação de um contrato revestido das formalidades legais; e (iii) os descontos em seu benefício, oriundos do contrato irregular, devem ser restituídos em dobro. Sem preparo recursal por ser a apelante beneficiária da justiça gratuita, conforme dispositivo sentencial. Contrarrrazões no Id 27413141. É o relatório. VOTO 1 – Admissibilidade Registre-se que os pressupostos recursais – cabimento, legitimidade e interesse de recorrer, tempestividade, regularidade formal, preparo/gratuidade judiciária, inexistência de fato impeditivo ou extintivo do poder de recorrer – estão devidamente preenchidos no caso concreto, inexistindo quaisquer vícios graves que obstem o conhecimento do recurso.

Processo	0200420-46.2024.8.06.0031
	2 – Mérito As questões em discussão são: (i) possível cerceamento de defesa por não ter sido realizada prova pericial grafotécnica; (ii) a alegada irregularidade do contrato de empréstimo consignável; e (iii) se há responsabilidade civil da instituição financeira por eventual falha na prestação do serviço, à luz das normas do Código de Defesa do Consumidor. Segundo consta dos autos, a autora/apelante narra que foi surpreendida com descontos indevidos em seu benefício previdenciário referentes a um contrato de empréstimo consignado (nº 626054640), alegando jamais ter aderido. A instituição financeira, por seu turno, advoga a legitimidade da contratação, ao anexar aos autos a cópia do instrumento impugnado, devidamente assinado pela parte autora/apelante, além da cópia dos documentos pessoais e comprovante de pagamento do numerário líquido contratado (vide Ids 27391199 e 27391200). No curso do trâmite processual, a parte autora/apelante não impugnou expressamente os documentos juntados pelo banco nem pleiteou por perícia grafotécnica, e, muito embora tenha sido intimada para apresentar réplica (Id 27391207), deixou transcorrer o prazo sem manifestação. Ademais, observa-se que a autora/apelante fora intimada para dizer se desejava produzir outras provas, mas não se insurgiu sobre a assinatura do contrato nem requereu a prova pericial (Id 27391210). Nesse contexto, ao verificar que a parte autora / apelante se manteve inerte com relação aos documentos comprobatórios da relação jurídica firmada com o banco, caracterizando-se, assim, o fenômeno da preclusão, não há que falar em cerceamento de defesa ou em irregularidade da contratação, uma vez que a instituição financeira se desincumbiu do seu ônus probatório ao juntar aos autos o instrumento contratual devidamente assinado pela autora, acompanhado dos seus documentos pessoais, bem como do comprovante de repasse do numerário contratado. A propósito, a legislação processual civil estatui que é a réplica consiste no momento adequado para que o autor impugne

Processo	0200420-46.2024.8.06.0031
	quaisquer das alegações feitas pelo demandado, inclusive para requerer a dilação probatória. Vejamos: 350. Se o réu alegar fato impeditivo, modificativo ou extintivo do direito do autor, este será ouvido no prazo de 15 (quinze) dias, permitindo-lhe o juiz a produção de prova. Na espécie, consumou-se a preclusão temporal em relação à produção de provas a esse respeito, de vez que a autora / recorrente deixou de impugnar, em momento oportuno, os documentos juntados pelo banco e a assinatura posta no contrato. Sobre o tema, para efeito de argumentação, colho da fonte jurisprudencial alguns precedentes desta e. Corte de Justiça: Sobre o tema, para efeito de argumentação, colho da fonte jurisprudencial alguns precedentes desta e. Corte de Justiça: PELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. CONSUMIDORA APOSENTADA. OBRIGAÇÕES DE TRATO SUCESSIVO. DESCONTOS EM BENEFÍCIO PREVIDENCIÁRIO. PRECLUSÃO QUANTO À IMPUGNAÇÃO SOBRE A ASSINATURA POSTA NO CONTRATO, POIS SOMENTE ALEGADA NA APELAÇÃO. INSTITUIÇÃO FINANCEIRA QUE SE DESINCUMBIU DO ÔNUS PROBATÓRIO. JUNTADA DE CÓPIA DO CONTRATO, DOS DOCUMENTOS PESSOAIS DO CONTRATANTE E DO COMPROVANTE DE TRANSFERÊNCIA BANCÁRIA. REGULARIDADE CONTRATUAL. JULGAMENTO DE IMPROCEDÊNCIA NA ORIGEM. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. O cerne da controvérsia recursal consiste em examinar se é ou não válido o contrato questionado, bem como se os descontos efetuados no benefício previdenciário da apelante configuraram ato ilícito por parte da instituição financeira. Além disso, é de se verificar se é devida a restituição dos valores descontados da consumidora, e se deve ocorrer na forma simples ou em dobro. Ademais, deve-se verificar se é cabível a fixação de indenização por danos morais. Sobre o assunto, este e. Tribunal de Justiça firmou entendimento de que a confirmação da regularidade ou irregularidade do negócio depende de provas concretas sobre: (i) a anuência do consumidor sobre os descontos realizados e (ii) o recebimento do crédito por parte do beneficiário. Da análise dos autos, tem-se que a parte promovida, ora apelada, colacionou, às fls. 131/321, cópia do termo de adesão ao cartão de crédito consignado e autorização para desconto em folha de pagamento devidamente assinado pela autora, da proposta de contratação de saque mediante a utilização do cartão de crédito consignado, da cédula de crédito bancário devidamente assinada pela autora, cópia da proposta de adesão ao seguro, cópia dos documentos pessoais da autora, cópia do comprovante de residência, cópias das faturas e, por fim, o comprovante de transferência bancária de valores em conta de titularidade da consumidora (TED). Quando da tramitação do feito na origem, a requerente não impugnou expressamente os documentos juntados pelo banco nem pleiteou perícia grafotécnica, e, muito embora sua representante processual tenha sido intimada para o oferecimento de réplica em audiência (fl. 322), deixou transcorrer o prazo sem manifestação. Nesse passo, a impugnação quanto à assinatura posta no contrato está preclusa, uma vez que alegada somente na apelação, sendo a réplica o momento oportuno para tanto, de acordo com o art. 350 do CPC. Note-se, portanto, que a preclusão temporal se consumou na espécie, sendo manifestamente incabível que a requerente apresente o pedido de perícia grafotécnica tão somente neste recurso, que, por esse motivo, não deve ser aceito. Diante de todo o arcabouço probatório existente nos autos, e considerando a preclusão temporal quanto a pedido de perícia grafotécnica, entendo que a parte promovida se desincumbiu do ônus probatório que lhe cabia, nos termos do art. 373, II, do CPC, demonstrando a regularidade da contratação. Recurso conhecido e desprovido. (Apelação Cível- 0200667-67.2023.8.06.0029, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 25/10/2023, data da publicação: 25/10/2023). [Grifei].

Processo	0200420-46.2024.8.06.0031
	class="Standard" style="margin-left: 4.0cm; text-align: justify;">&#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. CARTÃO DE CRÉDITO CONSIGNADO. REGULARIDADE DA CONTRATAÇÃO. ÔNUS PROBATÓRIO. PRECLUSÃO. AUSÊNCIA DE RESPONSABILIDADE CIVIL DA INSTITUIÇÃO FINANCEIRA. RECURSO DESPROVIDO. I. CASO EM EXAME Apelação cível interposta em ação declaratória de inexistência de negócio jurídico c/c reparação de danos, na qual o autor alegou a irregularidade na contratação de cartão de crédito com margem consignável e pleiteou a devolução de valores descontados, bem como indenização por danos morais. A sentença de primeiro grau julgou improcedentes os pedidos. Há duas questões em discussão: (i) verificar a regularidade da contratação do cartão de crédito consignado; e (ii) aferir a responsabilidade civil da instituição financeira por eventual falha na prestação do serviço. A instituição financeira se desincumbe do seu ônus probatório ao apresentar o termo de adesão ao cartão de crédito consignado devidamente assinado pelo consumidor, acompanhado dos documentos pessoais e do comprovante de transferência do valor para a conta do contratante. Os serviços contratados são apresentados de maneira clara, legível e de fácil compreensão no termo de adesão, não havendo impugnação válida quanto à assinatura aposta ao contrato. A parte autora, intimada a especificar provas adicionais, manteve-se inerte, caracterizando o fenômeno da preclusão, não podendo posteriormente alegar ausência de comprovação do vínculo contratual. O contrato celebrado atende aos requisitos legais de validade do negócio jurídico previstos no art. 104 do Código Civil, estando formalizado entre partes capazes, com objeto lícito e de acordo com a forma exigida pela legislação. Diante da regularidade da contratação, inexistente ato ilícito praticado pela instituição financeira, afastando-se o dever de reparação civil. Recurso desprovido. A instituição financeira comprova a regularidade da contratação ao apresentar termo de adesão assinado pelo consumidor, acompanhado dos documentos pessoais e comprovante de transferência. A inércia da parte autora quanto à produção de provas adicionais configura preclusão, impossibilitando posterior alegação de irregularidade contratual. A validade do contrato firmado entre as partes deve observar os requisitos do art. 104 do Código Civil, sendo válido o negócio jurídico celebrado entre partes capazes e com objeto lícito. Não há responsabilidade civil da instituição financeira quando demonstrada a regularidade da contratação, afastando-se a obrigação de indenizar. Jurisprudência relevante citada: TJCE, Apelação Cível nº 0292715-66.2022.8.06.0001, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara Direito Privado, j. 13.11.2024; TJCE, Apelação Cível nº 0201257-12.2022.8.06.0051, Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câmara Direito Privado, j. 20.03.2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para, no mérito, negar-lhe provimento nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> (Apelação Cível - 0244577-34.2023.8.06.0001, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento:&#160;19/02/2025, data da publicação:&#160;19/02/2025) [Grifei]</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> DIREITO DO CONSUMIDOR. AGRAVO INTERNO. AÇÃO DECLARATÓRIA DE NULIDADE DE CONTRATAÇÃO C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. SENTENÇA QUE JULGOU IMPROCEDENTE A DEMANDA. MANUTENÇÃO DA DECISÃO EM SEDE DE DECISÃO MONOCRÁTICA. IRRESIGNAÇÃO DA CONSUMIDORA. EMPRÉSTIMO CONSIGNADO EM BENEFÍCIO PREVIDENCIÁRIO. RESPONSABILIDADE OBJETIVA. ÔNUS DA PROVA DA INSTITUIÇÃO FINANCEIRA EM ELIDIR SUA RESPONSABILIDADE NO CASO. REALIZADA A JUNTADA DO CONTRATO DE EMPRÉSTIMO NO MOMENTO DA APRESENTAÇÃO DA CONTESTAÇÃO. AUSÊNCIA DE IMPUGNAÇÃO DA PARTE AUTORA QUANTO À AUTENTICIDADE DA ASSINATURA APOSTA NO CONTRATO. ALEGAÇÃO DE SUA IRREGULARIDADE SOMENTE NAS RAZÕES DO APELO. INOVAÇÃO RECURSAL. ÓBICE PREVISTO NO ART. 1.014, DO CPC. INEXISTÊNCIA DE CERCEAMENTO DO DIREITO DE DEFESA. CONTRATAÇÃO REGULAR. AGRAVO INTERNO CONHECIDO E DESPROVIDO. 1 ¿ Trata-se de Agravo Interno interposto por consumidora em face de Decisão Monocrática que desproveu a apelação interposta, que visava a declaração de nulidade do contrato de nº 016622315, além da repetição de indébito e indenização por danos morais. No caso, o Juízo a quo julgou improcedente a demanda por não verificar qualquer irregularidade quanto à celebração do contrato impugnado, tendo sido

Processo	0200420-46.2024.8.06.0031
	acompanhado pelo então relator, que proferiu a Decisão adversada. 2 - Nos termos do art. 14, caput e §3º, do CDC, o dever da instituição financeira em reparar eventuais danos provocados a terceiros, decorrentes de sua atividade no mercado de consumo, pauta-se pela responsabilidade objetiva com fundamento na teoria do risco do empreendimento, sendo então despicienda a comprovação da culpa do prestador no caso. 3 - Nesse contexto, deve o prestador do serviço envidar todos os esforços para provar a licitude das práticas que realizar, apenas revelando possível a exclusão de sua responsabilidade se forem comprovadas quaisquer das hipóteses previstas no §3º ou caso fortuito externo e força maior. 4 - Observa-se que a recorrente, em sua peça inicial, juntou aos autos o extrato do seu benefício pelo INSS, provando a ocorrência dos descontos alegados em seu benefício previdenciário e o desfalque em seu patrimônio, cuja origem decorre da anotação de um empréstimo consignado realizado pela instituição financeira. 5 - Diante desse cenário, posto ter sido refutada a prévia aquiescência da recorrente, incumbia à instituição financeira comprovar a licitude do negócio jurídico, sobretudo, porque também foi deferida a inversão do ônus da prova em favor da consumidora pelo Juízo a quo. 6 - Diante de tal ônus, o banco então acostou aos autos, na oportunidade em que contestou a petição inicial, cópia do contrato impugnado, com o documento de identificação oficial do promovente (fls. 205/211). No mesmo ensejo, também colacionou comprovante idôneo de transferência dos créditos (fls. 212). 7 - Em seguida, a requerente foi intimada para apresentar réplica à contestação (fls. 225), mas se manteve silente a partir de então. Isto é, não se opôs, em nenhum momento, às alegações da instituição financeira, tampouco suscitou possível falsidade na assinatura aposta no contrato. Somente após a prolação da sentença manifestou-se, em sua peça recursal, no sentido de refutar a sua autenticidade no campo em que a subscrevera, requerendo a nulidade da decisão final de mérito para que fosse realizada perícia grafotécnica. 8 - Nesses casos, é firme o entendimento de que o ônus de provar a regularidade da assinatura, quando controvertida pelo consumidor, é da instituição financeira, conforme Tema Repetitivo nº 1.061, julgado pelo STJ. Contudo, a apelante, no caso, não envidou o mínimo esforço para arguir a falsidade de sua assinatura, apenas cogitando-a após o julgamento na origem. 9 - A consumidora, mesmo regularmente intimada, deixou então de alegar a suposta falsidade de sua assinatura, ao tempo em que a demanda tramitava em 1ª instância, descaracterizando-se eventual cerceamento de seu direito de defesa. Somente a alegou em seu apelo, sem justificar o motivo de provocar tardiamente o exame da matéria, violando o disposto na norma processual. 10 - Agravo Interno conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso interposto e negar-lhe provimento, nos termos do voto da relatora. Fortaleza, data da assinatura digital. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADORA MARIA REGINA OLIVEIRA CAMARA Relatora 4.0cm; text-align: justify;">(Agravo Interno Cível - 0200267-26.2022.8.06.0114, Rel. Desembargador(a) MARIA REGINA OLIVEIRA CAMARA, 1ª Câmara Direito Privado, data do julgamento:&#160; 09/10/2024, data da publicação:&#160; 09/10/2024) [Grifei]</p> <p class="Standard" style="margin-left: 4.0cm; text-align: justify;">&#160;</p> <p class="Standard" style="margin-left: 4.0cm; text-align: justify;">PROCESSO CIVIL. APELAÇÃO CÍVEL. AÇÃO DE REPARAÇÃO DE DANO MATERIAIS C/C DANOS MORAIS E ANTECIPAÇÃO DE TUTELA. NULIDADE DA SENTENÇA. CERCEAMENTO DE DEFESA. NÃO OCORRÊNCIA. INTIMAÇÃO DAS PARTES PARA ESPECIFICAÇÃO DE PROVAS. INÉRCIA DA PARTE AUTORA. PRECLUSÃO. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 01. Cinge-se a controvérsia recursal em definir se houve, ou não, cerceamento de defesa diante da não produção de prova pericial requerida pela autora apelante na petição inicial e réplica. 02. Analisando detidamente os autos, evidencia-se decisão saneadora à fl. 120 intimando <as partes para que indiquem a necessidade de produção de provas, no prazo de 5 (cinco) dias, admitindo-se o julgamento antecipado da lide, em virtude de eventual indicação de que a matéria dispensa outras provas (art. 355, I, do CPC).</p> <p>03. Devidamente intimada por intermédio do seu causídico, a autora apelante não se manifestou expressamente quanto ao seu interesse pela produção de provas, limitando-se a apresentar a petição às fls. 124/125, requerendo ao juiz singular que <autorize o pagamento do valor de R\$ 737,00 (setecentos e trinta e sete reais), referente ao pagamento da indenização de 01 micro-ondas e um televisor 32</p> <p>Philco, em nome da Autora, dona dos equipamentos danificados.</p> <p>04. Consoante entendimento do Superior Tribunal de Justiça, em análise sistemática dos dispositivos do Código de Processo Civil, o requerimento, pelo autor, de produção de provas divide-se em duas fases: i) em sede de petição inicial, quando ainda não estabelecida a controvérsia nos autos do processo, há o pedido genérico de produção de provas (art. 319, VI, do CPC); ii) após a contestação, evidenciados os pontos controversos, há a fase de

Processo	0200420-46.2024.8.06.0031
	especificação das provas anteriormente requeridas de forma genérica (art. 348, do CPC). 05. E, ainda avançando sobre o tema, a Corte Cidadã assentou que se opera a preclusão do direito à prova se a parte, intimada a especificar as que pretende produzir, não se manifesta oportunamente, ainda que exista pedido expresso na petição inicial ou contestação. 06. No caso ora analisado, mostra-se incabível a tese de cerceamento de defesa, eis que, quando intimada para especificação de provas, a autora apelante manteve-se inerte, avocando, assim, o fenômeno da preclusão. 07. Assim, considerando a inércia da autora apelante na fase de especificação de provas, não há se falar em nulidade da sentença por cerceamento de defesa. 08. Recurso conhecido e desprovido. Sentença mantida.
 (Apelação Cível&#160;- 0250616-52.2020.8.06.0001, Rel. Desembargador(a) CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento:&#160; 22/05/2024, data da publicação:&#160; 22/05/2024). [Grifei]</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Ainda no sentido da validade do contrato, saliente-se que a assinatura da consumidora na cédula bancária representa a expressa declaração de vontade em adquirir o serviço, bem como a aceitação aos seus termos e condições, vinculando-o ao compromisso ali celebrado. Vale ressaltar, também, o que estatuem os arts. 104 e 107 do Código Civil: </p><p class="Standarduser" style="text-align: justify; text-indent: 70.85pt;"> &#160; </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> Art. 104. A validade do negócio jurídico requer:</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> I – agente capaz;</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> II - objeto lícito, possível, determinado ou determinável;</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> III – forma prescrita ou não defesa em lei.</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> (</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> Art. 107. A validade da declaração de vontade não dependerá de forma especial, senão quando a lei expressamente a exigir.</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> &#160; </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Por isso, dos requisitos impostos pela norma civil, depreende-se que o contrato celebrado entre as partes é plenamente válido, vez que firmado entre pessoas plenamente capazes, com objeto lícito, possível e determinado, e ainda formalizado em conformidade com a lei vigente, isto é, sem previsão legislativa específica ou contrária. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160; </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Desse modo, vislumbro que a instituição financeira se desincumbiu plena e satisfatoriamente do encargo de rechaçar as alegações autorais, comprovando fato impeditivo, modificativo ou extintivo do direito do requerente (art. 373, II, do CPC), uma vez que produziu prova robusta quanto à regularidade da contratação. </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> No mesmo sentido, e para fins exemplificativos, colho da jurisprudência deste órgão fracionário: </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> APELAÇÃO CÍVEL. DIREITO DO CONSUMIDOR E PROCESSO CIVIL. AÇÃO ANULATÓRIA DE NEGÓCIO JURÍDICO C/C PEDIDO DE REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. SENTENÇA DE PROCEDÊNCIA. IRRESIGNAÇÃO DO BANCO. APRESENTAÇÃO DO CONTRATO ASSINADO PELA PARTE AUTORA E COMPROVAÇÃO DE REPASSE DO CRÉDITO PARA A CONTA BANCÁRIA.

Processo	0200420-46.2024.8.06.0031
	CORRESPONDÊNCIA ENTRE AS ASSINATURAS CONSTANTES NO CONTRATO E NOS DOCUMENTOS APRESENTADOS PELO PRÓPRIO AUTOR. PARTE AUTORA ALFABETIZADA. INAPLICABILIDADE DA TESE FIXADA NO IRDR Nº 0630366-67.2019.8.06.0000. VALIDADE DO CONTRATO. FALHA NA PRESTAÇÃO DE SERVIÇOS NÃO DEMONSTRADA. RECURSO CONHECIDO PROVIDO. SENTENÇA REFORMADA. 1. Trata-se de RECURSO DE APELAÇÃO interposto pelo BANCO ITAÚ CONSIGNADO S/A em face de sentença proferido pelo Juízo da 2ª Vara Cível da Comarca de Boa Viagem/CE, que julgou procedente ação declaratória de nulidade /inexistência contratual c/c pedido de repetição de indébito e indenização por danos morais, ajuizada por PEDRO RODRIGUES PAÉ, em face do banco apelante. 2. Inicialmente, diversamente dos fundamentos apontados na sentença impugnada, a matéria debatida nestes autos não se vincula ao IRDR nº 0630366-67.2019.8.06.0000 deste TJCE, julgado pela Seção de Direito Privado em 21/09/2020, que fixou a seguinte tese: <i>“É considerado legal o instrumento particular assinado a rogo e subscrito por duas testemunhas para a contratação de empréstimos consignados entre pessoas analfabetas e instituições financeiras, nos ditames do art. 595 do CC, não sendo necessário instrumento público para a validade da manifestação de vontade do analfabeto nem procuração pública daquele que assina a seu rogo, cabendo ao Poder Judiciário o controle do efetivo cumprimento das disposições do artigo 595 do Código Civil.”</i> 3. Na presente ação, a parte autora é alfabetizada, conforme se observa de sua documentação juntada à petição inicial, em especial a procuração (pág. 35) e documento de identificação (pág. 36), todos assinados pelo promovente. 4. Depreende-se dos autos que o analfabetismo funcional foi suscitado pelo próprio requerente, porém não restou constatado pelos documentos acostados. Observa-se que o autor apenas alegou essa condição, e assim o fez para tentar se enquadrar na situação que exige o preenchimento de requisitos especiais para a contratação, específicos para pessoas que não sabem ler. 5. Ademais, sobre a não validade do contrato estabelecidos entre as partes, devido à suposta condição da autora como analfabeta funcional, é crucial destacar que isto, por si, não impede a sua capacidade para realizar atos no âmbito da vida civil, incluindo a celebração de contratos. 6. Dos documentos carreados nos autos em primeira instância, avista-se o instrumento contratual nº 54348839 (págs. 117/119), acompanhado dos documentos pessoais (págs. 120/122), devidamente assinados pelo autor, além de apresentar comprovante de transferência (pág. 124), não impugnados pelo autor em sua réplica à contestação de págs. 263/265, onde se verifica que há semelhança das assinaturas do autor no contrato celebrado, no instrumento procuratório e no documento de identidade do mesmo. 7. Destarte, os elementos constantes dos autos indicam que a parte autora efetivamente contratou o empréstimo objurgado, o qual está perfeito e acabado, de modo que não há respaldo jurídico e probatório a consubstanciar a pretensão autoral. 8. Deveria a parte autora comprovar, ainda que de forma ínfima, a inexistência de contrato firmado e o não recebimento do valor do empréstimo, por meio de extratos bancários da data em que teria sido transferido o montante pelo banco, ou mesmo pela demonstração de que a conta bancária em que foi depositado o valor não seria de sua titularidade, o que não restou comprovado no caso dos autos, vez que, mesmo após o banco juntar o contrato celebrado e o comprovante de depósito bancário do empréstimo, por ocasião da contestação, a parte autora sequer impugnou tais documentos em sua réplica ou mesmo quando intimado para produzir novas provas. 9. Acerca da inversão do ônus probatório, nos moldes do art. 6º, VIII, do CDC, este não é direito absoluto da parte, mas uma faculdade do Juiz, determinada quando, a seu critério, for verossímil a alegação ou quando for a parte hipossuficiente, segundo as regras ordinárias de experiência. Além disso, a inversão do ônus da prova não exime a responsabilidade da parte reclamante de fazer prova, ainda que minimamente, da existência do fato constitutivo do seu direito, conforme impõe o art. 373, I, do CPC. 10. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. (Apelação Cível - 0200135-27.2023.8.06.0051, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 13/12/2023, data da publicação: 14/12/2023). [Grifei]. PROCESSUAL CIVIL. CONSUMIDOR. AÇÃO DECLARATÓRIA DE NULIDADE DE RELAÇÃO CONTRATUAL C/C REPETIÇÃO DE INDÉBITO E DANOS MORAIS. CONTRATOS DE EMPRÉSTIMOS BANCÁRIOS CONSIGNADOS. COMPROVAÇÃO DA FORMALIZAÇÃO DOS CONTRATOS. JUNTADA DAS TRANSFERÊNCIAS ELETRÔNICAS EM CONTA DE TITULARIDADE DA AUTORA NOS VALORES PACTUADOS. INEXISTÊNCIA DE ATO ILÍCITO PASSÍVEL DE REPARAÇÃO POR DANOS MORAIS. PEDIDO DE REALIZAÇÃO DE PERÍCIA GRAFOTÉCNICA. DESNECESSIDADE. RECURSO CONHECIDO E IMPROVIDO. SENTENÇA MANTIDA. 1 - Trata-se de

Processo	0200420-46.2024.8.06.0031
	Apelação Cível interposta por MARIA CORREIA DA SILVA OLIVEIRA em face de sentença proferida pelo Juízo da Vara Única da Comarca de Lavras da Mangabeira, que julgou improcedente Ação Declaratória de Nulidade Contratual c/c Repetição de Indébito e Reparação por Danos Morais ajuizada pela apelante em desfavor do Banco Itaú Consignado S/A. 2 - O recurso visa modificar sentença exarada pelo juízo a quo, a qual julgou improcedentes os pedidos de declaração de nulidade dos contratos de empréstimo consignado nº 611424551, 614275733 e 633003399, a repetição em dobro dos valores descontados e a condenação do réu ao pagamento de indenização por danos morais no valor de R\$ 30.000,00. 3 - O Código de Defesa do Consumidor, em seu art. 14, caput, estabelece a responsabilidade objetiva dos fornecedores de serviço pelos danos causados aos consumidores, por defeitos relativos à prestação dos serviços. 4 - In casu, em sede de contestação, o banco recorrido apresentou cópia dos instrumentos contratuais nº 611424551, 614275733 e 633003399, bem como comprovante de Transferência TED, em benefício da autora, reforçando a realização da contratação. Da análise dos autos, verifica-se que a assinatura constante na cópia dos contratos incluídos pelo banco requerido de fato guarda rigorosa semelhança com a do documento de identidade da parte apelante com a robusta prova acostada nos autos, resta comprovada a efetiva e válida formalização dos contratos aqui questionados. 5 - Quanto aos danos morais, estes são vistos como qualquer ataque ou ofensa à honra, paz, mentalidade ou estado neutro de determinado indivíduo, sendo, por vezes, de difícil caracterização devido ao seu alto grau subjetivo. É imperioso ressaltar que, para que este se configure, é necessário que efetivamente tenha existido ato ilícito passível de reparação moral e que este seja devidamente comprovado, acompanhado do nexo de causalidade. 6 - No caso dos autos, uma vez configurada a formalização dos contratos em avença, inexistem quaisquer dos requisitos autorizadores para o deferimento de pagamento de danos morais, vez que não restou comprovada qualquer conduta ilícita por parte da Instituição Bancária, muito menos resultado danoso para a apelante, razão pela qual, correto foi o entendimento do magistrado ao indeferir o pleito. 7 - Acrescento que, apesar de afirmar a recorrente que não reconhece a assinatura, entendo que julgou com acerto o Juízo a quo dada a similaridade da assinatura constante nos contratos apresentados pelo ente financeiro com as assinaturas dos documentos juntados pelo autor na exordial, quais sejam procuração, declaração de hipossuficiência e documento de identidade. Desse modo, diante do robusto conjunto probatório carreado aos fôlios, tenho que não se faz necessária a realização de exame grafotécnico no presente caso 8 - Apelação conhecida e improvida. Sentença mantida.
 (Apelação Cível&#160;- 0200118-30.2022.8.06.0114, Rel. Desembargador(a) INÁCIO DE ALENCAR CORTEZ NETO, 2ª Câmara Direito Privado, data do julgamento: 31/05/2023, data da publicação: 31/05/2023). [Grifei].</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;">&#160;</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;">&#160;</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;">DIREITO CIVIL, PROCESSUAL CÍVEL E DO CONSUMIDOR. AGRAVO INTERNO EM APELAÇÃO CÍVEL. REPARAÇÃO MORAL E MATERIAL. CONTRATO BANCÁRIO. NULIDADE DA AVENÇA ANTE A FALTA DE REQUISITOS ATINENTES À ASSINATURA À ROGO E INSTRUMENTO PÚBLICO. NÃO OCORRÊNCIA. A PROVA DOS AUTOS AFASTA A TESE DA INICIAL. A AUTORA/RECORRENTE APRESENTOU RG DEVIDAMENTE ASSINADA, EM LETRA CURSIVA, CLARA E LEGÍVEL. NÃO FOI IMPUGNADA A ASSINATURA DO CONTRATO, TAMPOUCO ALEGOU-SE A FALTA DO REPASSE DE VALORES, QUESTÃO SEQUER REBATIDA ESPECIFICAMENTE EM RÉPLICA. INSUBSISTENTES MOTIVOS À NULIDADE DO COMPROMISSO. RECURSO CONHECIDO E DESPROVIDO. 1. O cerne da controvérsia consiste em verificar a ocorrência de dano moral e material em decorrência do contrato realizado pelos litigantes. No caso, aduziu a apelante não ser satisfatória a demonstração do depósito, bem como haver no negócio irregularidades intransponíveis, por entender que não poderia o requerido firmar contrato com analfabeto, ainda que funcional, sem a devida procuração pública, ou assinatura a rogo, com a presença de testemunhas instrumentárias para a formação do negócio. Situação que, inviabiliza à autora a compreensão das particularidades da avença. 2. Na inicial não houve questionamento ao repasse de valores, apenas alegou-se a invalidade do contrato realizado por pessoa analfabeta, apontando-se ausência de formalidades exigidas em lei, a teor da assinatura a rogo subscrita por duas testemunhas ou por instrumento público; nesse contexto, caberia ao banco o ônus de comprovar os fatos articulados na inicial, ou seja, a ausência do analfabetismo, sinalizando a contratação idônea entre as partes, fato que ocorreu satisfatoriamente, nos termos expostos na inicial. 3. Em réplica a recorrente não impugnou a prova apresentada em contestação quanto ao repasse remuneratório em seu favor; argumentou a autora, in verbis, à fl. 174, : "Tal(is) documento(s) poderia(m) até comprovar a efetivação do(s) depósito(s) ou transferência(s) na conta do(a) demandante, jamais a formação do(s) contrato(s) com a observância de todas as suas indispensáveis formalidades". Ao final

Processo	0200420-46.2024.8.06.0031
	disse ser uma prova unilateral, mas não atacou expressamente sua validade, persistindo a tese da ocorrência do dano pelos motivos elencados na inicial. 4. No que concerne à alegada ausência de capacidade cognitiva, não se constata a prova de que a autora seja beneficiária dos atributos inerentes à interdição ou curatela, e em seu documento de identificação (RG) o que se vê é uma assinatura grafada com letra cursiva, clara e legível. 5. Inexiste motivo à reparação patrimonial e extrapatrimonial pretendida. Desse modo, em consonância com o parecer da Procuradoria Geral de Justiça, deve ser confirmada a decisão recorrida; razão pela qual conhece-se do recurso, mas para desprovê-lo.</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Cabe frisar que os serviços contratados estão postos de forma clara, legível e de boa visualização, evidenciado a concordância da contratante com relação às cláusulas contratuais, que foram redigidas com informações de fácil compreensão, conforme determinam as normas do CDC.</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> &#160;</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Logo, diante a regularidade da contratação, não há que falar em ato ilícito cometido pela instituição financeira, e, por consequência, inexistem danos materiais ou morais capazes de ensejar o pagamento de indenização.</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> &#160;</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Por isso, a sentença não merece reforma, ante a comprovação da regular adesão ao contrato de empréstimo consignável.</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> 3 – Dispositivo </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Ante o exposto, CONHEÇO do recurso de apelação, para lhe NEGAR PROVIMENTO, mantendo inalterada a sentença recorrida. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: normal; text-indent: 8%;"> Considerando a sucumbência recursal, majoro os honorários advocatícios para 12% (doze por cento) do valor atualizado da causa, cuja exigibilidade ficará suspensa em razão dos benefícios da justiça gratuita concedida à parte autora (art. 98, § 3º, do CPC).</p><p class="Standard" style="text-align: justify; line-height: 120%; text-indent: 8%;"> &#160;</p><p class="Standard" style="text-align: justify; line-height: 120%; text-indent: 8%;"> É como voto. </p><p class="Standard" style="text-align: justify; line-height: 120%; text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: center;">

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Processo	3001999-31.2025.8.06.0029
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Processo	3001999-31.2025.8.06.0029
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Processo	3001999-31.2025.8.06.0029
	roman", times; font-size: large; text-indent: 8%;">, com <strong style="font-family: &quot;times new roman&quot;, times; font-size: large; text-indent: 8%;">&#160; fundamento no art. 485, inciso I, do Código de Processo Civil.&#160; &#160;</p><p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;" lang="pt-PT"> 2.&#160; O cerne da questão consiste em examinar o acerto ou desacerto da sentença que extinguiu o feito sem resolução de mérito, com fulcro no artigo 485, inciso I, do CPC,&#160;em razão da&#160; ausência de comparecimento da parte autora à secretaria judicial &#160;para apresentar os&#160; documentos originais de identidade &#160;e&#160; comprovante de residência recente em seu nome , bem como para&#160; ratificar os termos da procuração outorgada ao advogado &#160;e o&#160; pedido de declaração de nulidade do contrato &#160;objeto da presente demanda.</p><p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p><p style="text-align: justify;" lang="pt-PT"> 3.&#160; Ao compulsar os autos, observa-se que a autora / recorrente apresentou os seguintes documentos no ato de protocolo da inicial: procuração pública e declaração de hipossuficiência ; documentos de identificação ; comprovante de residência &#160; e histórico de empréstimo consignado do INSS .</p><p style="text-align: justify;" lang="pt-PT"> 4. Como se observa, &#160;os requisitos legais para a propositura da ação estão devidamente atendidos, nos termos do que dispõe o Código de Processo Civil. O comparecimento pessoal da parte autora à Secretaria da Vara para apresentação de documento de identificação, comprovante de residência, bem como para ratificar a procuração outorgada ao advogado e os pedidos formulados na inicial, com fundamento na Recomendação nº 01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação nº 01/2021/NUMOPEDE/CGJCE, de 10/03/2021, não configura exigência legal e, portanto, não pode ser erigido como condição de admissibilidade da petição inicial ou de regular processamento da demanda.&#160; Trata-se de providência administrativa que não encontra respaldo no ordenamento jurídico vigente, podendo, se necessário, ser suprida no curso da instrução processual, por meio da produção de prova adequada.</p><p style="text-align: justify;" lang="pt-PT"> &#160; 5. Assim, a extinção do feito com base na ausência de tal comparecimento viola os princípios do devido processo legal e do acesso à justiça, especialmente quando não há indícios concretos de vício na representação ou na regularidade da documentação apresentada.</p><p style="text-align: justify;"> IV. DISPOSITIVO </p><p style="text-align: justify;"> <span

Processo	3001999-31.2025.8.06.0029
	style="font-size: large;"/> 6. Recurso provido. </p><p style="text-align: justify;" lang="pt-PT"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer do recurso interposto para, no mérito, dar-lhe provimento,&#160; no sentido de anular a sentença recorrida e determinar o reprocessamento do feito, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p style="text-align: justify;"/> &#160; </p><p lang="pt-PT" align="center"> >DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p lang="pt-PT" align="center"> >Relator </p><p align="center">&#160;</p><p align="center"> &#160; </p><p style="text-align: center;" lang="pt-PT"> >RELATÓRIO </p><p lang="pt-PT" align="center"> >
 </p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> >Trata-se de recurso de Apelação Cível interposto por Antônia Jurandir de Oliveira Furtado&#160;contra sentença proferida pelo MMº. Juiz de Direito Paulo Lacerda Júnior, da 1ª Vara Cível da Comarca de&#160;Acopiara/CE, que julgou extinta, sem resolução de mérito, a Ação Declaratória de Negativa de Débito cumulada com pedido de Indenização por Danos Morais e Materiais ajuizada em desfavor do Banco Bradesco S/A, com fundamento no art. 485, inciso I, do Código de Processo Civil.&#160;&#160;&#160;</p><p style="text-align: justify; text-indent: 8;"/> &#160; </p><p style="text-align: justify; text-indent: 8;" lang="pt-PT"> >Eis o dispositivo da sentença: </p><p style="text-align: justify; text-indent: 8;" lang="pt-PT"> &#160; </p><p style="text-align: justify; padding-left: 240px;" lang="pt-PT"> >"Pelo exposto, EXTINGO O PRESENTE FEITO SEM JULGAMENTO DE MÉRITO, o que faço com amparo no art. 485, "I", do Código de Processo Civil. </p><p style="text-align: justify; padding-left: 240px;" lang="pt-PT"> >Sem custas ante a gratuidade judiciária que defiro nos autos. </p><p style="text-align: justify; padding-left: 240px;" lang="pt-PT"> >Empós o trânsito em julgado desta decisão, arquivem-se os autos com a devida baixa na distribuição. </p><p style="text-align: justify; padding-left: 240px;" lang="pt-PT"> >Publique-se. Registre-se. Intimem-se. </p><p lang="pt-PT"> &#160; </p><p style="text-align: justify; text-indent: 8;" lang="pt-PT"> >Nas razões recursais, a parte apelante alega, em síntese, que não se exige sua presença física em todos os atos processuais com o propósito de legitimar a atuação do advogado, uma vez que a procuração regularmente assinada e juntada aos autos é suficiente para demonstrar sua vontade. Argumenta, ainda, que seu deslocamento, enquanto pessoa idosa e com dificuldades de locomoção,&#160;apenas para confirmar o que já foi expressamente declarado em instrumento válido e legal, revela-se medida desnecessária e excessiva. Ao final, requer a anulação da sentença e o retorno dos autos à origem para regular prosseguimento do feito. </p><p style="text-align: justify; text-indent: 8;"/> &#160; </p><p style="text-align: justify; text-indent: 8;" lang="pt-PT"> >Contrarrazões apresentadas pela instituição financeira (ID 27383435), requerendo a manutenção da sentença. </p><p style="text-align: justify; text-indent: 8;"/> &#160; </p><p style="text-align: justify; text-indent: 8;" lang="pt-PT"> >É o relatório. </p><p style="text-align: justify; text-indent: 8;" lang="pt-PT"> >
 </p>

Processo	3001999-31.2025.8.06.0029
	</p><p style="text-align: center;" lang="pt-PT"> VOTO </p><p align="justify"> &#160;</p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> Preliminarmente, conheço do recurso de apelação, eis que presentes os requisitos intrínsecos e extrínsecos ao transpasse para o juízo de mérito. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> O cerne da questão consiste em examinar o acerto ou desacerto da sentença que extinguiu o feito sem resolução de mérito, com fulcro no artigo 485, inciso I, do CPC,&#160;em razão da ausência de comparecimento da parte autora à secretaria judicial para apresentar os documentos originais de identidade e comprovante de residência recente em seu nome, bem como para ratificar os termos da procuração outorgada ao advogado e o pedido de declaração de nulidade do contrato objeto da presente demanda. </p><p style="text-align: justify; text-indent: 8%;"> &#160; <p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> Compulsando os autos, vê-se que o juízo de primeiro grau, suspeitando tratar-se de possível demanda apta a configurar litigância de massa, determinou a intimação da parte autora para o cumprimento das seguintes determinações: "no prazo de 15 (quinze) dias, emendar a inicial comparecendo em Secretaria para apresentar seus documentos originais de identidade e comprovante de residência recente em seu nome, bem como ratificar os termos da procuração e o pedido de declaração de nulidade do contrato objeto da presente ação, sob pena de indeferimento da exordial". </p><p style="text-align: justify; text-indent: 8%;"> &#160; <p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> Embora intimada, a autora / apelante deixou de proceder com a determinação judicial, o que levou à extinção do feito, sem resolução de mérito. </p><p style="text-align: justify; text-indent: 8%;"> &#160; <p style="text-align: justify; text-indent: 8%;"> Pois bem. </p><p style="text-align: justify; text-indent: 8%;"> &#160; <p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> Ao compulsar os autos, observa-se que a autora / recorrente apresentou os seguintes documentos no ato de protocolo da inicial: procuração pública e declaração de hipossuficiência&#160;(ID27383416); documentos de identificação (ID 27383417); comprovante de residência (ID 27383418); e histórico de empréstimo consignado do INSS (ID 27383419). </p><p style="text-align: justify; text-indent: 8%;"> &#160; <p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> Nessa toada, conforme disposto nos arts. 319 e 320 do CPC, a petição inicial deve estar acompanhada da documentação e das informações a seguir descritas: </p><p> &#160;</p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> Art. 319. A petição inicial indicará: </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> I - o juízo a que é dirigida; </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> II - os nomes, os prenomes, o estado civil, a existência de união estável, a profissão, o número de inscrição no Cadastro de Pessoas Físicas ou no Cadastro Nacional da Pessoa Jurídica, o endereço eletrônico, o domicílio e a residência do autor e do réu; </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> III - o fato e os fundamentos jurídicos do pedido; </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> &#160; </p>

Processo	3001999-31.2025.8.06.0029
	roman"times;">IV - o pedido com as suas especificações; </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> V - o valor da causa; </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> VI - as provas com que o autor pretende demonstrar a verdade dos fatos alegados; </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> VII - a opção do autor pela realização ou não de audiência de conciliação ou de mediação. </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> § 1º Caso não disponha das informações previstas no inciso II, poderá o autor, na petição inicial, requerer ao juiz diligências necessárias a sua obtenção. </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> § 2º A petição inicial não será indeferida se, a despeito da falta de informações a que se refere o inciso II, for possível a citação do réu. </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> § 3º A petição inicial não será indeferida pelo não atendimento ao disposto no inciso II deste artigo se a obtenção de tais informações tornar impossível ou excessivamente oneroso o acesso à justiça. </p><p style="padding-left: 240px; text-align: justify;" lang="pt-PT"> Art. 320. A petição inicial será instruída com os documentos indispensáveis à propositura da ação. </p><p> &#160;</p><p style="text-align: justify; text-indent: 8%;"> Conforme se extrai dos autos, os requisitos legais para a propositura da ação estão devidamente atendidos, nos termos do que dispõe o Código de Processo Civil. O comparecimento pessoal da parte autora à Secretaria da Vara para apresentação de documento de identificação, comprovante de residência, bem como para ratificar a procuração outorgada ao advogado e os pedidos formulados na inicial, com fundamento na Recomendação nº 01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação nº 01/2021/NUMOPEDE/CGJCE, de 10/03/2021, não configura exigência legal e, portanto, não pode ser erigido como condição de admissibilidade da petição inicial ou de regular processamento da demanda.&#160; font-size: large;">Trata-se de providência administrativa que não encontra respaldo no ordenamento jurídico vigente, podendo, se necessário, ser suprida no curso da instrução processual, por meio da produção de prova adequada.</p><p style="text-align: justify; text-indent: 8%;">&#160;</p><p style="text-align: justify; text-indent: 8%;"> font-size: large;">Assim, a extinção do feito com base na ausência de tal comparecimento viola os princípios do devido processo legal e do acesso à justiça, especialmente quando não há indícios concretos de vício na representação ou na regularidade da documentação apresentada.</p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> A propósito, para ilustrar, é tranquila a jurisprudência deste egrégio Tribunal de Justiça, mormente desta 1ª Câmara de Direito Privado, como se extrai dos julgamentos abaixo ementados: </p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT">
 </p><p style="text-align: justify; padding-left: 240px;" lang="pt-PT"> APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE EMPRÉSTIMO C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO SOB O FUNDAMENTO DE AUSÊNCIA DE DOCUMENTO INDISPENSÁVEL À PROPOSITURA DA AÇÃO. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTIGOS 319 E 320 DO CPC/15. DOCUMENTOS REPUTADOS RELEVANTES ANEXADOS AO FEITO. OCORRÊNCIA. SENTENÇA ANULADA. RECURSO CONHECIDO E PROVIDO. 1 - O cerne da controvérsia reside na verificação da imprescindibilidade de juntada de extratos bancários pela promovente à propositura da ação de Declaratória de Inexistência de Empréstimo, a configurar requisito da petição inicial (arts. 319 e 320 do CPC). 2 - Na hipótese, a requerente anexou aos autos o extrato de consignação emitido pelo órgão de previdência, do qual é possível extrair a indicação do contrato em observação e os respectivos descontos; ademais, realizou requerimento administrativo perante o banco/demandado, visando obtenção de cópia do contrato do

Processo	3001999-31.2025.8.06.0029
	empréstimo questionado e não foi atendido, motivando o ajuizamento da presente ação. 3 - A demandante narrou a sua pretensão de forma clara e objetiva, descreveu causa de pedir próxima e remota, além de juntar os documentos reputados relevantes e indicar a prova que pretendia produzir, de modo a preencher todos os requisitos da petição inicial. Enquanto os extratos bancários são meios de prova, de modo que, sua ausência, eventualmente, ocasionaria a improcedência do pedido, não constituindo requisito indispensável à inicial. 4 - O indeferimento da inicial sob este fundamento, configura formalismo exacerbado e desnecessário, em nítido prejuízo aos princípios da primazia de julgamento de mérito e de acesso à justiça, razão pela qual deve a sentença ser anulada com retorno dos autos à origem. 5. Recurso conhecido e provido.
 (Apelação Cível&#160;- 0000034-13.2019.8.06.0148, Rel. Desembargador(a) HERACLITO VIEIRA DE SOUSA NETO, 1ª Câmara Direito Privado, data do julgamento:&#160; 16/06/2021, data da publicação:&#160; 16/06/2021). [Grifou-se]. </p><p style="text-align: justify; padding-left: 240px;"> &#160; </p><p style="text-align: justify; padding-left: 240px;" lang="pt-PT"> APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE EMPRÉSTIMO C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. ALEGAÇÃO DE AUSÊNCIA DE DOCUMENTO INDISPENSÁVEL À PROPOSITURA DA AÇÃO. INOCORRÊNCIA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTIGOS 319 E 320 DO CPC/15. SENTENÇA ANULADA. RECURSO CONHECIDO E PROVIDO. 1. Na hipótese, busca o Apelante a reforma da sentença que extinguiu, sem resolução do mérito, a ação declaratória de nulidade/inexistência contratual c/c repetição do indébito e indenização por danos morais ajuizada contra o Apelado, ao deixar de emendar a inicial, mediante a juntada da cópia do contrato impugnado e seus extratos bancários. 2. Quanto à juntada do contrato objeto da relação jurídica posta em análise, em que pese a essencialidade de tal documento para o exame da validade do pacto, entendo que não andou bem o magistrado a quo ao extinguir a ação sem resolução do mérito da forma como foi determinada. Isso porque, ao assim proceder, o judicante violou os princípios da inafastabilidade da jurisdição e da economia processual. 3. Segundo o posicionamento predominante no âmbito do Superior Tribunal de Justiça, o deferimento da inversão do ônus da prova decorrente de relação consumerista é condicionado à constatação da verossimilhança da alegação do autor e de sua condição de hipossuficiência, nos termos expressamente estabelecidos no Código de Defesa do Consumidor (art. 6º, VIII), regra que se caracteriza de índole instrutória, posto que deve ser determinada "preferencialmente na fase de saneamento do processo ou, pelo menos, assegurando-se à parte a quem não incumbia inicialmente o encargo, a reabertura de oportunidade para apresentação de provas" (REsp nº 802.832, STJ - 2ª Seção, DJ 21.9.2011) 4. Ora, não são necessários maiores esforços intelectivos para se afirmar que a instituição financeira provém de melhores condições de exibir o instrumento contratual na oportunidade que lhe for concedida, sobretudo, quando é rotineira a prática das instituições financeiras de tolher o acesso do consumidor à segunda via do contrato. 5. Com relação aos extratos bancários da conta-corrente da autora/recorrente, em que pese o magistrado de primeiro grau ter compreendido que também é documento indispensável à propositura da ação, em exame mais acurado dos autos, entendo que o referido histórico de empréstimos bancários extraído do INSS mostra-se suficiente à comprovação da relação jurídica havida entre as partes, de sorte que os extratos bancários, por se tratarem de meio de prova (cujo ônus poderá ser invertido em favor do consumidor), podem refletir tão somente em improcedência do pedido, não traduzindo em condição à propositura da ação onde se questiona a própria existência/validade do contrato que ensejou a realização dos descontos. 6. Desta feita, enxergo que, para a correta aplicação da norma processual cogente, assim como em observância às garantias constitucionais do acesso a uma tutela jurisdicional efetiva, célere e eficaz, asseguradas pelo legislador constituinte, deve a sentença ora em vergaste ser anulada, ao tempo em que os autos deverão retornar à origem a fim de que o magistrado a quo dê regular tramitação ao processo. 7. Recurso conhecido e provido.
 (Apelação Cível&#160;- 0006559-88.2018.8.06.0166, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160; 17/03/2021, data da publicação:&#160; 18/03/2021). [Grifou-se]. </p><p style="text-align: justify; padding-left: 240px;"> &#160; </p><p style="text-align: justify; padding-left: 240px;" lang="pt-PT"> PROCESSUAL CIVIL. AÇÃO DECLARATÓRIA DE PRESCRIÇÃO DE DÉBITO C/C OBRIGAÇÃO DE FAZER. DETERMINAÇÃO DE EMENDA À INICIAL NÃO ATENDIDA. EXTINÇÃO DA AÇÃO SEM RESOLUÇÃO DE MÉRITO. AUSÊNCIA DE INTIMAÇÃO PRÉVIA DO PATRONO PARA DAR PROSSEGUIMENTO AO FEITO. ERROR IN PROCEDENDO. DESNECESSIDADE DE

Processo	3001999-31.2025.8.06.0029
	COMPARECIMENTO PRESENCIAL DA PARTE À SECRETARIA DA VARA PARA MOSTRAR COMPROVANTE DE ENDEREÇO E RATIFICAR A PROCURAÇÃO. EXCESSO DE FORMALISMO. VIOLAÇÃO AO PRINCÍPIO DO LIVRE ACESSO À JUSTIÇA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTS. 319 E 320 DO CPC. SENTENÇA ANULADA. RECURSO CONHECIDO E PROVIDO.
 (Apelação Cível&#160;- 0200165-67.2023.8.06.0114, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 24/01/2024, data da publicação:&#160; 24/01/2024). [Grifou-se]. </p><p> &#160;</p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> É oportuno destacar que, embora o juízo singular tenha fundamentado sua decisão com base na Recomendação nº 01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação nº 01/2021/NUMOPEDE/CGJCE, no intuito de adotar medidas cabíveis diante de eventuais demandas temerárias, nos termos do art. 139, inciso IX, do CPC, a extinção da ação com fundamento no indeferimento da petição inicial não se mostra adequada ao caso concreto.
 </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> Em conclusão, não há justificativa plausível para a extinção do feito pelas razões apontadas pelo juízo de origem, uma vez que a exigência de comparecimento pessoal da parte para ratificação de documentos e pedidos não encontra respaldo legal expresso e configura formalismo excessivo, incompatível com os princípios do acesso à justiça e da instrumentalidade do processo. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> Ante o exposto, pelos motivos acima delineados, CONHEÇO do recurso interposto para DAR-LHE PROVIMENTO, e, por conseguinte, anular a sentença e determinar o retorno dos autos ao d. juízo de primeiro grau para o regular processamento do feito. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> É como voto. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> Fortaleza, data da assinatura digital. </p><p> &#160;</p><p lang="pt-PT" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p lang="pt-PT" align="center"> Relator </p><p align="justify"> &#160;</p><p align="justify">
 </p><p align="justify">&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	3003114-87.2025.8.06.0029
Número de ordem	125
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Práticas Abusivas
Polo ativo	ANTONIA PEREIRA DE SOUZA
Advogado(s) - Polo ativo	FRANCISCO AUGUSTO OLIVEIRA PAES DE ANDRADE - (CE38088-A)
Polo passivo	BANCO AGIBANK S.A

Processo	3003114-87.2025.8.06.0029
Advogado(s) - Polo passivo	PETERSON DOS SANTOS - (SP336353-A) RODRIGO SCOPEL - (RS40004-A)
Terceiros	Não informado

Processo	3003114-87.2025.8.06.0029
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Processo	3003114-87.2025.8.06.0029
	font-family: &quot;times new roman&quot;; times; font-size: large;">CPC. RECURSO CONHECIDO E PROVIDO. SENTENÇA CASSADA. I) CASO EM EXAME 1.&#160; &quot;times new roman&quot;; times; font-size: large; text-indent: 8%;">Trata-se de Apelação Cível interposta por Antônia Pereira de Souza com o objetivo de reformar a sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Acopiara, que, com base nos arts. 321 e 485, I do CPC, indeferiu a inicial e extinguiu, sem resolução do mérito, a Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Materiais e Morais ajuizada pela ora apelante em desfavor do Banco Agibank S.A. II. QUESTÃO EM DISCUSSÃO 2.&#160; &quot;times new roman&quot;; times; font-size: large; text-indent: 8%;">Cinge-se a controvérsia recursal a examinar o acerto ou desacerto da sentença que extinguiu o feito, sem resolução de mérito, em razão do não comparecimento da parte autora para ratificar a procuração e apresentar seus documentos originais de identificação e comprovante de residência recente em seu nome. III. RAZÕES DE DECIDIR 3.&#160; &quot;times new roman&quot;; times; font-size: large; text-indent: 8%;">Ao compulsar os autos, verifica-se que a autora, ora recorrente, apresentou os seguintes documentos no ato de protocolo da inicial: procuração e declaração de hipossuficiência (ID. n.º 27375567); documentos de identificação (ID. n.º 27375568); comprovante de residência (ID. n.º 27375569) e extrato de empréstimos consignados do INSS (ID. n.º 27375570).&#160; &quot;times new roman&quot;; times; font-size: large; text-indent: 8%;">Com base nisso, entendo que a petição inicial cumpriu, ao menos em tese, os requisitos indispensáveis à propositura da ação judicial, conforme disposto nos arts. 319 e 320 do CPC. 4.&#160; &quot;times new roman&quot;; times; font-size: large;">O&#160; &quot;times new roman&quot;; times; font-size: large; text-indent: 8%;">comparecimento pessoal da parte autora à Secretaria da Vara para apresentar documento pessoal de identificação, comprovante de residência e para ratificar a outorga de procuração ao advogado, com fundamento na Recomendação n.º 01/2019/NUMOPEDE/CGJCE – atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE –, não configura exigência indispensável ao regular processamento da ação, seja porque não constitui exigência prevista em lei, seja porque tais providências podem ser averiguadas em eventual e futura instrução da causa, se for o caso. 5.&#160; &quot;times new roman&quot;; times; font-size: large; text-indent: 8%;">É &quot;times new roman&quot;; times; font-size: large; text-indent: 8%;">&#160;desnecessário determinar o comparecimento presencial obrigatório da parte autora à unidade jurisdicional onde o processo tramita, vez que já fora anexada documentação suficiente ao processamento da demanda, como documentos pessoais e a procuração outorgada ao causídico. Isto é, as informações e o acervo documental que instruem a inicial são suficientes ao trâmite regular da ação, sobretudo em demandas que versam sobre matérias de cunho consumerista, em que foi postulada a inversão dos ônus probatório e a facilitação dos direitos do consumidor em juízo.&#160; 6. E &quot;times new roman&quot;; times; font-size: large; text-indent: 8%;">mbora o juízo singular faça menção à incidência da Recomendação n.º 01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE, providenciando as medidas cabíveis quando constatada uma suposta demanda temerária (art. 139, inciso IX, do CPC), o indeferimento da inicial com a extinção da ação sob o fundamento de falha de representação processual não se revela plausível no caso concreto. 7. Portanto, não há que falar em extinção do feito pelas razões levantadas pelo juízo primevo, sob pena de inviabilizar o acesso à justiça em decorrência de formalismo

Processo	3003114-87.2025.8.06.0029
	times;">[...]. </p><p style="text-align: justify; text-indent: 8%; padding-left: 150px;"> , times;">&#160; , times; font-size: medium; text-indent: 70.85pt;">Diante do exposto, com fundamento no artigo 321 e 485, inciso I, todos do Código de Processo Civil,&#160; <strong style="font-family: &quot;times new roman&quot;">, times; font-size: medium; text-indent: 70.85pt;">INDEFIRO A PETIÇÃO INICIAL E DECLARO EXTINTO O PROCESSO SEM RESOLUÇÃO DE MÉRITO, com fulcro no art. 485, inc. I, do Código de Processo Civil.</p><p style="text-align: justify; text-indent: 8%; padding-left: 150px;"> <strong style="font-family: &quot;times new roman&quot;">, times; font-size: medium; text-indent: 70.85pt;">&#160; , times;"> Sem custas. , times; font-size: medium;">"</p><p style="text-align: justify; padding-left: 150px;">
 </p><p style="text-align: justify; text-indent: 8%;"> Irresignada, nas razões recursais de ID. n.º 27375577, a autora/apelante aduz, em síntese, que foi equivocada a extinção do feito, sustentando que cumpriu todos os requisitos de uma peça inicial, não havendo sentido na exigência de documentos adicionais. Ademais, alega que é pessoa idosa e depende de " carros de aluguel" para se deslocar da zona rural até o fórum, e que " há diversos momentos processuais onde seriam oportunizados à Apelante o comparecimento ao fórum local, como, por exemplo, a própria audiência de instrução". </p><p style="text-align: justify; text-indent: 8%;"> &#160; , times; font-size: large;">Ao final, requer o conhecimento do recurso e, no mérito, o seu provimento, para anular a sentença e determinar o retorno dos autos ao Juízo de origem para o regular processamento do feito.</p><p style="text-align: justify; text-indent: 8%;"> , times; font-size: large;">&#160; , times; font-size: large;">Contrarrazões apresentadas no ID. n.º 27375584.</p><p style="text-align: justify; text-indent: 8%;"> , times; font-size: large;">&#160; , times; font-size: large;">É o relatório.</p><p style="text-align: center;"> VOTO </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;"> 1– Admissibilidade </p><p style="text-align: justify; text-indent: 8%;"> &#160; , times;">Satisfeitos os pressupostos intrínsecos ou subjetivos – cabimento, interesse e legitimidade, inexistência de súmula impeditiva – e extrínsecos ou objetivos – tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer – de admissibilidade recursal, conheço do recurso interposto pelo promovido.</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-family: &quot;times new roman&quot;">, times; font-size: large;"> 2 - Mérito recursal </p><p style="text-align: justify; text-indent: 8%;"> , times; font-size: large;">&#160; , times; font-size: large;">Ao compulsar os autos, verifica-se que a autora, ora recorrente, apresentou os seguintes documentos no ato de protocolo da inicial: procuração e declaração de hipossuficiência (ID. n.º 27375567); documentos de identificação (ID. n.º 27375568); comprovante de residência (ID. n.º 27375569) e extrato de empréstimos consignados do INSS (ID. n.º 27375570).</p><p style="text-align: justify; text-indent: 8%;"> , times; font-size: large;">&#160; , times; font-size: large;">Com base nisso,

Processo	3003114-87.2025.8.06.0029
	entendo que a petição inicial cumpriu, ao menos em tese, os requisitos indispensáveis à propositura da ação judicial, conforme disposto nos arts. 319 e 320 do CPC, in verbis Art. 319. A petição inicial indicará: I - o juízo a que é dirigida; II - os nomes, os prenomes, o estado civil, a existência de união estável, a profissão, o número de inscrição no Cadastro de Pessoas Físicas ou no Cadastro Nacional da Pessoa Jurídica, o endereço eletrônico, o domicílio e a residência do autor e do réu; III - o fato e os fundamentos jurídicos do pedido; IV - o pedido com as suas especificações; V - o valor da causa; VI - as provas com que o autor pretende demonstrar a verdade dos fatos alegados; VII - a opção do autor pela realização ou não de audiência de conciliação ou de mediação. § 1º Caso não disponha das informações previstas no inciso II, poderá o autor, na petição inicial, requerer ao juiz diligências necessárias a sua obtenção. § 2º A petição inicial não será indeferida se, a despeito da falta de informações a que se refere o inciso II, for possível a citação do réu. § 3º A petição inicial não será indeferida pelo não atendimento ao disposto no inciso II deste artigo se a obtenção de tais informações tornar impossível ou excessivamente oneroso o acesso à justiça. Art. 320. A petição inicial será instruída com os documentos indispensáveis à propositura da ação. Ora, o comparecimento pessoal da parte autora à Secretaria da Vara para apresentar documento pessoal de identificação, comprovante de residência e para ratificar a outorga de procuração ao advogado, com fundamento na Recomendação n.º 01/2019/NUMOPEDE/CGJCE – atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE –, não configura exigência indispensável ao regular processamento da ação, seja porque não constitui exigência prevista em lei, seja porque tais providências podem ser averiguadas em eventual e futura instrução da causa, se for o caso. Ora, o comparecimento pessoal da parte autora à Secretaria da Vara para apresentar documento pessoal de identificação, comprovante de residência e para ratificar a outorga de procuração ao advogado, com fundamento na Recomendação n.º 01/2019/NUMOPEDE/CGJCE – atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE –, não configura exigência indispensável ao regular processamento da ação, seja porque não constitui exigência prevista em lei, seja porque tais providências podem ser averiguadas em eventual e futura instrução da causa, se for o caso. Dito isso, é desnecessário determinar o comparecimento presencial obrigatório da parte autora à unidade jurisdicional onde o processo tramita, vez que já fora anexada documentação suficiente ao processamento da demanda, como documentos pessoais e a procuração outorgada ao causídico. Isto é, as informações e o acervo documental que instruem a inicial são suficientes ao trâmite regular da ação, sobretudo em demandas que versam sobre matérias de cunho consumerista, em que foi postulada a inversão dos ônus probatório e a facilitação dos direitos do consumidor em juízo. Nessa

Processo	3003114-87.2025.8.06.0029
	toada,&#160;o indeferimento da inicial caracteriza formalismo exacerbado e desnecessário, em nítido prejuízo aos princípios da primazia de julgamento de mérito e de acesso à justiça.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> &#160; Para ilustrar, seguindo essa linha de raciocínio, é tranquila a jurisprudência deste egrégio Tribunal de Justiça, mormente desta 1ª Câmara de Direito Privado, como se extrai dos julgamentos abaixo ementados:</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;">
 </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> >PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA NEGATIVA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS.&#160;DETERMINAÇÃO DE EMENDA À INICIAL NÃO ATENDIDA. DESNECESSIDADE DE COMPARECIMENTO PRESENCIAL DA PARTE À SECRETARIA DA VARA. EXCESSO DE FORMALISMO. VIOLAÇÃO AO PRINCÍPIO DO LIVRE ACESSO À JUSTIÇA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTS. 319 E 320 DO CPC.&#160;RECURSO CONHECIDO E PROVIDO. SENTENÇA CASSADA. 1. Cinge-se a controvérsia recursal em examinar o acerto ou desacerto da sentença que extinguiu o feito sem resolução de mérito, ao reconhecer a inépcia da petição inicial ante a ausência de comparecimento prévio da parte em juízo para apresentar seus documentos originais de identificação e ratificar os termos da procuração outorgada. 2. Ao compulsar os autos, verifica-se que a autora, ora recorrente, apresentou os seguintes documentos no ato de protocolo da inicial: procuração; documentos de identificação; comprovante de endereço, em nome de terceiro; extrato de empréstimo consignado junto ao INSS; e requerimento da cópia do contrato e do comprovante de transferência, por via administrativa.&#160;3. Nesse contexto, diversamente da fundamentação apresentada pelo d. juízo singular, é desnecessário e inapropriado determinar de antemão o comparecimento presencial da parte autora à Secretaria da Vara para apresentação de documentos pessoais originais, como uma condição de procedibilidade da demanda judicial.&#160;4.&#160;É válido ressaltar que, embora o juízo singular faça menção à incidência da Recomendação n.º 01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE, providenciando as medidas cabíveis quando constatada a existência de demanda temerária (art. 139, inciso IX, do CPC), a extinção da ação sob o fundamento da inépcia da petição inicial não se revela plausível no caso concreto.&#160;5. A circunstância que ensejou o indeferimento da inicial não diz respeito à falta de documentos indispensáveis ao regular processamento da ação, mas, na realidade, foi motivada pelo não cumprimento de diligências pela parte autora / apelante, que, se fosse o caso, deveria ser intimada pessoalmente para suprir a falta no prazo de 5 (cinco) dias, e desde que o processo ficasse parado por mais de 30 (trinta) dias, conforme determina o art. 485, inciso III e §1º, do CPC. 6. Recurso conhecido e provido. Sentença cassada. ACÓRDÃO Vistos, relatados e discutidos estes autos, acordam os membros da Primeira Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso interposto, para DAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data da assinatura digital.&#160;(Apelação Cível&#160;TJ-CE&#160;0204280-95.2023.8.06.0029, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO,&#160;1ª Câmara Direito Privado, data do julgamento:&#160;29/05/2024, data da publicação:&#160;&#160;29/05/2024). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXTINÇÃO DO PROCESSO SEM JULGAMENTO DO MÉRITO. ART. 485, IV, DO CPC. LITIGÂNCIA PREDATÓRIA NÃO CONFIGURADA. VIOLAÇÃO AO DEVIDO PROCESSO LEGAL. NULIDADE DA SENTENÇA.&#160;RECURSO&#160; PROVIDO. I. CASO EM EXAME. 1. Apelação cível interposta contra sentença que extinguiu o processo sem julgamento de mérito, com fundamento no art. 485, IV, do CPC, em razão de suposta irregularidade de representação e suspeita de litigância predatória.&#160;O juízo de primeiro grau determinou a intimação da parte autora para comparecer pessoalmente à Secretaria da Vara para apresentar documento de identificação, comprovante de residência e ratificar a outorga da procuração ao advogado, baseando-se na Recomendação nº&#160;

Processo	3003114-87.2025.8.06.0029
	01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação nº 01/2021/NUMOPEDE/CGJCE.&#160;A parte autora havia instruído a inicial com os documentos necessários, incluindo procuração, documento de identificação e comprovante de residência. II. QUESTÃO EM DISCUSSÃO. 2. Há duas questões em discussão: (i) definir se houve regularidade na representação processual e apresentação de documentos; (ii) estabelecer se a sentença que extinguiu o processo sem resolução do mérito, baseada em suposta litigância predatória, viola o devido processo legal e o princípio da inafastabilidade da tutela jurisdicional. III. RAZÕES DE DECIDIR. 3. A parte autora instrui adequadamente a inicial com procuração conferida ao advogado, documento de identificação e comprovante de residência, conforme exigido pelos arts. 319 e 320 do CPC, de modo que não há irregularidade na representação processual ou elementos que justifiquem a presunção de litigância predatória.&#160;4. O ato de extinção do processo sem determinar a intimação pessoal do autor, conforme o art. 485, §1º, do CPC, viola o devido processo legal e o direito de defesa, uma vez que o juízo deveria ter oportunizado à parte a regularização de eventuais pendências antes de extinguir a demanda. 5. A invocação da Recomendação nº 01/2019/NUMOPEDE/CGJCE como fundamento para extinção do feito sem comprovação de litigância predatória configura cerceamento de defesa e violação ao princípio da inafastabilidade da tutela jurisdicional, garantido pelo art. 5º, XXXV, da CF.&#160;IV. DISPOSITIVO E TESE. 6. Recurso conhecido e provido. Sentença anulada. Tese de julgamento: A extinção do processo sem resolução de mérito, fundada em suposta irregularidade de representação sem intimação prévia da parte para suprir a falta, viola o devido processo legal e constitui nulidade da sentença. A simples suspeita de litigância predatória, sem evidências concretas, não justifica a extinção da demanda quando a inicial está devidamente instruída, e a aplicação da Recomendação nº 01/2019/NUMOPEDE/CGJCE não pode servir de obstáculo ao acesso à justiça. Jurisprudência relevante citada: TJCE, Apelação Cível nº 0200234-65.2024.8.06.0114, Rel. Des. Maria Regina Oliveira Câmara, j. 09.10.2024; TJCE, Apelação Cível nº 0200312-19.2023.8.06.0171, Rel. Des.&#160;Francisco Jaime Medeiros Neto, j. 17.12.2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, em conhecer do recurso para dar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura eletrônica. (Apelação Cível&#160;TJ-CE&#160;0200062-77.2024.8.06.0097, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA,&#160;1ª Câmara Direito Privado, data do julgamento: 05/02/2025, data da publicação:&#160;05/02/2025). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">PROCESSUAL CIVIL. AÇÃO DECLARATÓRIA DE PRESCRIÇÃO DE DÉBITO C/C OBRIGAÇÃO DE FAZER.&#160;DETERMINAÇÃO DE EMENDA À INICIAL NÃO ATENDIDA. EXTINÇÃO DA AÇÃO SEM RESOLUÇÃO DE&#160;MÉRITO. AUSÊNCIA DE INTIMAÇÃO PRÉVIA DO PATRONO PARA DAR PROSSEGUIMENTO AO FEITO. ERROR IN PROCEDENDO. DESNECESSIDADE DE COMPARECIMENTO PRESENCIAL DA PARTE À SECRETARIA DA VARA PARA MOSTRAR COMPROVANTE DE ENDEREÇO E RATIFICAR A PROCURAÇÃO. EXCESSO DE FORMALISMO. VIOLAÇÃO AO PRINCÍPIO DO LIVRE ACESSO À JUSTIÇA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTS. 319 E 320 DO CPC. SENTENÇA ANULADA.&#160;RECURSO CONHECIDO E PROVIDO. (TJ-CE&#160;- Apelação Cível - 0200165-67.2023.8.06.0114, Rel. Desembargador(a) JOSÉ RICARDO VIDAL&#160;PATROCÍNIO,&#160;1ª Câmara Direito Privado, data do julgamento: 24/01/2024, data da publicação:&#160;24/01/2024). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">
</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. DESPACHO DETERMINANDO A EMENDA DA INICIAL.&#160;INDEFERIMENTO DA PETIÇÃO EXORDIAL E EXTINÇÃO DO FEITO SEM ANÁLISE DO MÉRITO. PEÇA QUE ATENDE AOS REQUISITOS DOS ARTS. 319 E 320 DO CPC. DOCUMENTOS INDISPENSÁVEIS AO AJUIZAMENTO DA AÇÃO JUNTADOS AOS AUTOS. DESNECESSIDADE DE COMPARECIMENTO DO

Processo	3003114-87.2025.8.06.0029
	AUTOR À SEDE DO JUÍZO PARA APRESENTAÇÃO DOS ORIGINAIS DO DOCUMENTO DE IDENTIDADE E DO COMPROVANTE DE ENDEREÇO E RATIFICAR OS PODERES CONFERIDOS NA PROCURAÇÃO AO ADVOGADO (Nº01/2019/NUMOPEDE/CGJCE.) EXCESSO DE FORMALISMO. ATENDIMENTO AO PRECEITUADO PELOS ARTIGOS 319 E 320 DO CPC. NULIDADE DA SENTENÇA.&#160;RECURSO CONHECIDO E PROVIDO.&#160; ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do presente recurso para DAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. (Apelação Cível&#160; TJ-CE&#160;0202604-78.2024.8.06.0029, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO,&#160; 1ª Câmara Direito Privado, data do julgamento: 06/11/2024, data da publicação:&#160;07/11/2024). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 120px;">
 </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> É válido ressaltar que, embora o juízo singular faça menção à incidência da Recomendação n.º 01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE, providenciando as medidas cabíveis quando constatada uma suposta demanda temerária (art. 139, inciso IX, do CPC), o indeferimento da inicial com a extinção da ação sob o fundamento de falha de representação processual não se revela plausível no caso concreto.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> &#160; Portanto, não há que falar em extinção do feito pelas razões levantadas pelo d. juízo primevo, sob pena de inviabilizar o acesso à justiça em decorrência de formalismo exacerbado e desnecessário, comprometendo a finalidade do processo, que é a satisfação do direito material.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> 3- Dispositivo </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Ante o exposto, pelos motivos acima delineados,&#160; <strong style="font-family: &quot;times new roman&quot;; times; font-size: large;">CONHEÇO &#160;do recurso interposto para&#160; <strong style="font-family: &quot;times new roman&quot;; times; font-size: large;">DAR-LHE PROVIMENTO , e, por conseguinte, anular a sentença e determinar o retorno dos autos ao d. Juízo de primeiro grau para regular processamento do feito.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> É como voto.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Fortaleza, data da assinatura digital.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;">&#160;</p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Presidente/Relator </p>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p></p>
Processo	0200823-16.2024.8.06.0160
Número de ordem	126
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO

Processo	0200823-16.2024.8.06.0160
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	RAIMUNDA TOME DE SOUZA
Advogado(s) - Polo ativo	FRANCISCO VINICIUS XIMENES PAIVA - (CE51597-A)
Polo passivo	BANCO SANTANDER (BRASIL) S.A.
Advogado(s) - Polo passivo	DIEGO MONTEIRO BAPTISTA - (RJ153999-A)
Terceiros	Não informado

Processo	0200823-16.2024.8.06.0160
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSY0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNohzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRSrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6hMDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKSrLz8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmCl3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmWFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qk6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsquaxatW0YlaGYnMWb Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxxH6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAGMg2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjpg6TU8mS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41gnkUvsnXNkIx410JEZMRU0ZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

Processo	0200823-16.2024.8.06.0160
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	Cinge-se a controvérsia a examinar se os descontos indevidos no benefício previdenciário da autora/apelante ensejaram a ocorrência de dano moral indenizável.</p> <p align="justify"> &#160; III) RAZÕES DE DECIDIR</p> <p align="justify"> 3.O dano moral só se revela quando há lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem e o bom nome, com base no que se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal. Nessa perspectiva, “a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante.” (AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014).</p> <p align="justify"> 4. No caso em tela, os descontos foram de R\$ 44,94 (quarenta e quatro reais e noventa e quatro centavos), conforme planilha à fl. 02 do ID. n.º 27370264.Nesse cenário, não se olvida que a situação possa eventualmente ter trazido algum aborrecimento à consumidora, contudo, não foi capaz de atingir valores fundamentais do ser humano, tratando-se de meros aborrecimentos a que se está sujeito na vida em sociedade.</p> <p align="justify"> 5. Desse modo, entende-se que os descontos em valor que não é capaz de comprometer a subsistência não correspondem a um dano à personalidade que enseje o pagamento de indenização por danos morais, posto que não ensejaram maiores consequências negativas. Assim, agiu de forma acertada o douto magistrado</p> <em style="background-color: transparent; text-indent: 8%; font-family: "times new roman";, times; font-size: large;">a &#160;ao julgar improcedente o pleito autoral de condenação da instituição requerida ao pagamento de indenização por danos morais.</p> <p align="justify"> IV) DISPOSITIVO</p> <p align="justify"> 6. Recurso conhecido e desprovido.</p> <p align="justify"> &#160;ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direita Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso interposto, para, no mérito, negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital.</p> <p align="center"> </p> <p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p> <p align="center"> </p> <p align="center">
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	times;">RELATÓRIO </p><p align="center">&#160;</p><p style="text-align: justify; text-indent: 8%;"> &#160; Trata-se de Apelação Cível interposta por Raimunda Tomé de Souza com o objetivo de reformar a sentença proferida pelo MM. Juiz de Direito João Luiz Chaves Júnior, da 1ª Vara Cível da Comarca de Santa Quitéria, que julgou parcialmente procedente a Ação Declaratória de Inexistência de Débito c/c Repetição do Indébito e Indenização por Danos Morais ajuizada pela ora apelante em desfavor do Banco Santander (Brasil) S.A.</p><p style="text-align: justify; text-indent: 8%;"> &#160; A referida ação visa à declaração de inexistência de relação contratual entre as partes, à fixação de indenização a título de danos morais e à devolução em dobro de parcelas indevidamente descontadas do benefício previdenciário da autora/apelante, decorrentes de contrato de empréstimo consignado que esta alega não ter celebrado.</p><p style="text-align: justify; text-indent: 8%;"> &#160;Ao analisar o conjunto probatório acostado aos autos, o juízo singular destacou que "[...] a nalizando a contestação do requerido, verifico que não se desincumbiu de seu ônus probatório, pois não apresentou contrato devidamente assinado e documentação pessoal da autora (identidade, CPF, comprovante de residência etc.), nem tampouco documento capaz de justificar os descontos realizados a qualquer título. [...].</p><p style="text-align: justify; text-indent: 8%;"> &#160; Assim, a ação foi julgada parcialmente procedente &#160;com indeferimento &#160;da indenização por danos morais pleiteada, conforme sentença de ID. n.º 27370954:</p><p style="text-align: justify; text-indent: 8%;">&#160;</p><p style="text-align: justify; text-indent: 8%; padding-left: 150px;"> "Ante o exposto, JULGO PARCIALMENTE PROCEDENTE a pretensão autoral, resolvendo o mérito da demanda, com fulcro no art. 487, I, do CPC, para: </p><p style="text-align: justify; text-indent: 8%; padding-left: 150px;"> &#160; I) declarar a inexistência do negócio jurídico controvertido na exordial (contrato nº 680853641) e do débito que lhe é correspondente;</p><p style="text-align: justify; text-indent: 8%; padding-left: 150px;"> &#160; II) condenar o requerido na obrigação de restituir à parte requerente, de forma dobrada, o valor descontado no benefício da requerente em razão do contrato ora declarado inexistente, 5 parcelas no valor de R\$ 44,98 cada, ocorridos entre fevereiro e julho de 2024, bem como daqueles que foram descontados no curso do processo, devidamente comprovados, (EAREsp 676.608/RS), com correção monetária pelo IPCA, desde o efetivo prejuízo (súmula 43 do STJ); e com juros de mora, a partir do evento danoso (súmula 54 do STJ) pela SELIC, devendo ser deduzido o IPCA do período, mediante as mudanças introduzidas pela Lei nº 14.905/2024; devendo ser compensada a quantia de R\$ 1.889,00 (mil oitocentos e oitenta e nove reais), depositada em 22/01/2024, devidamente corrigida pelo IPCA, tendo como limite máximo de compensação o crédito devido à parte autora.</p><p style="text-align: justify; text-indent: 8%; padding-left: 150px;"> &#160; Em face da sucumbência recíproca e proporcional, condeno ambas as partes ao pagamento das despesas processuais e honorários de advogado, estes fixados em 10% (dez por cento) sobre o valor da condenação, devendo ser rateados entre as partes na proporção de 50% (cinquenta por cento) para cada uma, observando-se a condição suspensiva de exigibilidade concedida à parte autora em razão da gratuidade de justiça".&#160;</p><p style="text-align: justify; text-indent: 8%; padding-left: 150px;">&#160;</p><p style="text-align: justify; text-indent: 8%;"> <span style="font-family:

Processo	0200823-16.2024.8.06.0160
	&quot;times new roman&quot;, times;">Embargos de Declaração opostos pelo banco requerido no ID. n.º 27370962 e desprovidos na sentença de ID. n.º 27370966.</p><p style="text-align: justify; text-indent: 8%;"> #160; Irresignada, a Autora interpôs o recurso de apelação de ID. n.º 27370970,&#160;no qual alegou, em síntese, a necessidade de reforma da sentença para que seja fixada indenização a título de danos morais no importe&#160;de&#160;R\$ 6.000,00 (seis mil reais).&#160;Para tanto, sustenta&#160;que " a #160;conduta da instituição financeira afronta os deveres de segurança e transparência previstos no art. 14 do Código de Defesa do Consumidor, sendo o dano moral uma consequência natural e esperada da falha de serviço em questão". <p> #160; Sem preparo recursal, por ser beneficiária da justiça gratuita.</p><p style="text-align: justify; text-indent: 8%;">Contrarrrazões apresentadas no ID. n.º 27370974.</p><p style="text-align: justify; text-indent: 8%;"> #160; É o relatório.</p><p align="center">&#160;</p><p align="center"> V OT O </p><p align="center">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> 1 – Admissibilidade </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Satisfeitos os pressupostos intrínsecos ou subjetivos – cabimento, interesse e legitimidade, inexistência de súmula impeditiva – e extrínsecos ou objetivos – tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer – de admissibilidade recursal, conheço do recurso interposto.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> #160; 2 – Mérito recursal </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Cinge-se a controvérsia a examinar se os descontos indevidos no benefício previdenciário da autora/apelante ensejaram a ocorrência de dano moral indenizável.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> #160; A avaliação pecuniária do dano moral ainda é objeto de discussões doutrinárias, vez que inexistem dispositivos legais que estabeleçam critérios objetivos em razão da sua própria natureza, que, por definição, independe de qualquer vinculação com o prejuízo material.&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> #160; Sabe-se que o dano moral somente ocorre quando houver lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, e o bom nome, com base no que se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> <span style="font-family: &quot;times new roman&quot;, times; font-

Processo	0200823-16.2024.8.06.0160
	size: large;">&#160; Sobre o tema leciona Sérgio Cavalieri Filho:
 (...) só deve ser reputado como dano moral a dor, vexame, sofrimento ou humilhação que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. Mero dissabor, aborrecimento, mágoa, irritação ou sensibilidade exacerbada estão fora da órbita do dano moral, porquanto, além de fazerem parte da normalidade do nosso dia a dia, no trabalho, no trânsito, entre os amigos e até no ambiente familiar, tais situações não são intensas e duradouras, aponta de romper o equilíbrio psicológico do indivíduo. Se assim não se entender, acabaremos por banalizar o dano moral, ensejando ações judiciais em busca de indenizações pelos mais triviais aborrecimentos. (CAVALIERI FILHO, Sérgio. Programa de Responsabilidade Civil. 11ª ed. São Paulo: Atlas, 2014, p.111). Nessa perspectiva, “a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante.” (AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014). [Grifou-se]. Nesse ponto, a jurisprudência do Superior Tribunal de Justiça é assente no sentido de que configura mero aborrecimento o desconto indevido em benefício previdenciário de valores incapazes de comprometer a subsistência da parte. A propósito, confira-se: “AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL.&#160; AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITOS. RESTITUIÇÃO DE VALORES E INDENIZAÇÃO POR DANOS MORAIS. DESCONTO INDEVIDO. VALOR ÍNFINO. DANO MORAL INEXISTENTE. MERO ABORRECIMENTO. CONSONÂNCIA COM A JURISPRUDÊNCIA DESTA CORTE SUPERIOR.&#160;RECURSO DESPROVIDO. 1. Esta Corte Superior entende que a caracterização do dano moral exige que a comprovação do dano repercuta na esfera dos direitos da personalidade. A fraude bancária, nessa perspectiva, não pode ser considerada suficiente, por si só, para a caracterização do dano moral (AgInt nos EDcl no AREsp 1.669.683/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 23/11/2020, DJe de 30/11/2020). 2. O Tribunal de origem concluiu que o desconto indevido de R\$ 70,00 (setenta reais) no benefício previdenciário da agravante não acarretou danos morais, considerando que foi determinada a restituição do valor, que a instituição financeira também foi vítima de fraude e que não houve inscrição do nome da agravante em cadastros de proteção ao crédito, de modo que ficou configurado mero aborrecimento. 3. “A jurisprudência desta Corte entende que, quando a situação experimentada não tem o condão de expor a parte a dor, vexame, sofrimento ou constrangimento perante terceiros, não há falar em dano moral, uma vez que se trata de mero aborrecimento ou dissabor, mormente quando a falha na prestação de serviços, embora tenha acarretado aborrecimentos, não gerou maiores danos ao recorrente, como ocorreu na presente hipótese”. (STJ - AgInt no AREsp 1.354.773/MS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 02/04/2019, DJe de 24/04/2019). 4. Agravo interno desprovido. (AgInt nos EDcl no REsp n. 1.948.000/SP, relator Ministro Raul Araújo, Quarta Turma, julgado em 23/5/2022, DJe de 23/6/2022). [Grifou-se].

Processo	0200823-16.2024.8.06.0160
	background-color: transparent;"> No mesmo sentido tem decidido este egrégio Tribunal de Justiça, inclusive esta colenda Primeira Câmara de Direito Privado, em casos análogos ao dos autos: </p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent;" lang="PT-BR" xml:lang="PT-BR">&#160;</p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding: 0px 0px 0px 150px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent;" lang="PT-BR" xml:lang="PT-BR"> DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA/NULIDADE DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DE INDÉBITO E PEDIDO DE REPARAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. INSTITUIÇÃO FINANCIERA NÃO COMPROVOU A REGULARIDADE DA CONTRATAÇÃO.&#160; DANOS MORAIS NÃO CONFIGURADOS. DESCONTOS EM VALORES IRRISÓRIOS.&#160;RESTITUIÇÃO DO INDÉBITO, NA FORMA SIMPLES E EM DOBRO (EAREsp 676.608/RS). SENTENÇA REFORMADA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para lhe dar parcial provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital. (Apelação Cível&#160; TJ-CE&#160;0013083-17.2017.8.06.0173, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO,&#160; 1ª Câmara Direito Privado, data do julgamento:&#160; 14/02/2024, data da publicação:&#160;&#160;&#160;</p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding: 0px 0px 0px 150px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent;" lang="PT-BR" xml:lang="PT-BR">
 </p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding: 0px 0px 0px 150px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent;" lang="PT-BR" xml:lang="PT-BR"> CIVIL. PROCESSUAL CIVIL. APELAÇÃO CÍVEL. RMC RESERVA DE MARGEM CONSIGNÁVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C REPETIÇÃO DE INDÉBITO E PEDIDO DE REPARAÇÃO POR DANOS MORAIS E TUTELA DE URGÊNCIA ANTECIPADA COM PEDIDO LIMINAR. SENTENÇA PROCEDENTE. IRRESIGNAÇÃO DO BANCO RÉU. AUSÊNCIA DE PROVA DA CONTRATAÇÃO. ILICITUDE DOS DESCONTOS NO BENEFÍCIO DA AUTORA. RESTITUIÇÃO SIMPLES MANTIDA EM ATENÇÃO AO ART. 42 DO CDC E A MODULAÇÃO DE EFEITOS DO EARESP 676.608/RS.&#160; DANOS MORAIS. NÃO CONFIGURADOS. VALORES DOS DESCONTOS IRRISÓRIOS. MERO ABORRECIMENTO.&#160;APELO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PARCIAL PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. (Apelação Cível&#160; TJ-CE&#160;0295598-83.2022.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO,&#160; 1ª Câmara Direito Privado, data do julgamento: 06/09/2023, data da publicação:&#160; 06/09/2023). [Grifou-se]. </p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding: 0px 0px 0px 150px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent;" lang="PT-BR" xml:lang="PT-BR">

Processo	0200823-16.2024.8.06.0160
	
 </p> <p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: "Times New Roman"; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding: 0px 0px 0px 150px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent;" lang="PT-BR" xml:lang="PT-BR"> APELAÇÃO CÍVEL. CONTRATOS DE EMPRÉSTIMO CONSIGNADO. ALEGAÇÃO DE CONEXÃO. PROCESSOS FUNDADOS EM CONTRATOS DISTINTOS. DESNECESSIDADE DE PRÉVIO REQUERIMENTO ADMINISTRATIVO. PRELIMINARES REJEITADAS. INEXISTÊNCIA DE DOCUMENTOS APTOS A COMPROVAR A REGULARIDADE DOS NEGÓCIOS JURÍDICOS. AUSÊNCIA DE COMPROVANTE DE REPASSE DOS VALORES SUPOSTAMENTE PACTUADOS. CONTRATAÇÕES ILÍCITAS. DANOS PATRIMONIAIS CONFIGURADOS.&#160; DANOS MORAIS. PARCELAS CORRESPONDENTES AO VALOR DE R\$ 66,15. QUANTIA IRRISÓRIA SE COMPARADA AO VALOR DO BENEFÍCIO PREVIDENCIÁRIO DA PARTE PROMOVENTE. DESCONTOS INEXPRESSIVOS. MERO ABORRECIMENTO.&#160;RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DARLHE PARCIAL PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. (Apelação Cível&#160; TJ-CE&#160;0050276-84.2020.8.06.0036, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO,&#160; 1ª Câmara Direito Privado, data do julgamento: 30/08/2023, data da publicação:&#160; 31/08/2023). [Grifou-se]. </p> <p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: "Times New Roman"; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding: 0px 0px 0px 150px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent;" lang="PT-BR" xml:lang="PT-BR">
 </p> <p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: "Times New Roman"; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding: 0px 0px 0px 150px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent;" lang="PT-BR" xml:lang="PT-BR"> Direito do Consumidor e Processual Civil. Apelação cível. Descontos indevidos em benefício previdenciário. Contratação não comprovada. Pleito de majoração de danos morais e Restituição dos descontos na forma dobrada. Devido restituição em dobro apenas dos descontos ocorridos após 30/03/2021. EAREsp 676608/RS.&#160; Danos Morais indevidos.&#160;Vedação a Reformatio in Pejus. Recurso Parcialmente Provido. I. Caso em exame 1. Apelação Cível interposta em Ação de Cancelamento de Descontos Indevidos c/c Reparação por Danos Materiais e Morais, ajuizada em face de instituição bancária, pleiteando a reforma da sentença para majorar os danos morais fixados na sentença e a restituição dos valores na forma dobrada. II. Questão em discussão 2. Há duas questões em discussão: (i) verificar se é cabível a restituição dos valores descontados de forma dobrada; (ii) examinar a possibilidade de majoração da indenização fixada a título de danos morais. III. Razões de decidir 3. O banco apelado não comprovou a regularidade da contratação, descumprindo o ônus da prova previsto no art. 373, II, do CPC, o que justifica a nulidade dos descontos efetuados e, uma vez caracterizado a falha na prestação do serviço, impõe-se o dever de reparar civilmente o consumidor. 4. A restituição dos valores descontados de forma dobrada encontra amparo no art. 42, parágrafo único, do Código de Defesa do Consumidor (CDC), mas conforme entendimento do STJ firmado em recurso repetitivo (EAREsp 676608/RS), os efeitos foram modulados para alcançar apenas descontos realizados após 30/03/2021. Assim, os valores descontados após essa data devem ser restituídos em dobro, corrigidos monetariamente pelo INPC e acrescidos de juros moratórios de 1% ao mês desde a citação.&#160; 5. No tocante aos danos morais, a jurisprudência do STJ entende que descontos indevidos em benefício previdenciário, quando de valores ínfimos e sem repercussão significativa na subsistência do consumidor, caracterizam mero aborrecimento, insuficiente para configurar dano extrapatrimonial. Precedentes.&#160;6.&#160; No caso concreto, os valores descontados variaram entre R\$ 0,04 e R\$ 34,13, não comprometendo a subsistência do apelante nem evidenciando ofensa à sua dignidade.&#160;A condenação por

Processo	0200823-16.2024.8.06.0160
	danos morais foi mantida, mas o quantum indenizatório de R\$ 1.000,00 (um mil reais) não comporta majoração, em respeito ao princípio da proibição da reformatio in pejus. IV. Dispositivo 7. Recurso parcialmente provido. Dispositivos relevantes citados: CF/1988, arts. 1º, III, e 5º, V e X; CDC, art. 42, parágrafo único; CPC, art. 373, II; STJ, Súmulas nº 43 e nº 54. Jurisprudência relevante citada: STJ, EAREsp 676608/RS, Rel. Min. Paulo de Tarso Sanseverino, Segunda Seção, DJe 30/03/2021; STJ, AgRg no REsp 1.269.246/RS, Rel. Min. Luis Felipe Salomão, Quarta Turma, DJe 27/05/2014. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para, no mérito, parcial provimento nos termos do voto do Relator. Fortaleza, data constante no sistema.&#160; (Apelação Cível&#160;TJ-CE&#160;0202582-54.2023.8.06.0029, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA,&#160;1ª Câmara Direito Privado, data do julgamento:&#160;22/01/2025, data da publicação:&#160;&#160;22/01/2025). [Grifou-se]. </p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding: 0px 0px 0px 120px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent;" lang="PT-BR" xml:lang="PT-BR">
 </p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent; text-indent: 8%;" lang="PT-BR" xml:lang="PT-BR"> No caso em tela, os descontos foram de R\$ 44,94 (quarenta e quatro reais e noventa e quatro centavos), &#160;conforme planilha à fl. 02 do ID. nº 27370264.&#160;Nesse cenário, não se olvida que a situação possa eventualmente ter trazido algum aborrecimento à consumidora, contudo, não foi capaz de atingir valores fundamentais do ser humano, tratando-se de meros aborrecimentos a que se está sujeito na vida em sociedade. </p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent; text-indent: 8%;" lang="PT-BR" xml:lang="PT-BR"> &#160; Vale lembrar, por oportuno, que a parte autora será devidamente restituída dos valores indevidamente descontados, os quais serão corrigidos monetariamente e acrescidos de juros de mora de 1% (um por cento) ao mês.&#160;</p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent; text-indent: 8%;" lang="PT-BR" xml:lang="PT-BR"> &#160; Desse modo, entendo que os descontos em valor que não é capaz de comprometer a subsistência não correspondem a um dano à personalidade que enseje o pagamento de indenização por danos morais, posto que não ensejaram maiores consequências negativas.</p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent; text-indent: 8%;" lang="PT-BR" xml:lang="PT-BR"> &#160; Assim, agiu de forma acertada o douto magistrado&#160; <em

Processo	0200823-16.2024.8.06.0160
	style="background-color: transparent; font-family: &quot;times new roman&quot;; font-size: large;">a quo &#160;ao julgar improcedente o pleito autoral de condenação da instituição requerida ao pagamento de indenização por danos morais.</p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent; text-indent: 8%;" lang="PT-BR" xml:lang="PT-BR"> <strong style="font-family: &quot;times new roman&quot;; font-size: large;"> 3 - Dispositivo</p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent; text-indent: 8%;" lang="PT-BR" xml:lang="PT-BR"> <strong style="font-family: &quot;times new roman&quot;; font-size: large;">&#160; &#160;<strong style="background-color: transparent; font-family: &quot;times new roman&quot;; font-size: large;">&#160;CONHEÇO &#160; do recurso de apelação para &#160; <strong style="background-color: transparent; font-family: &quot;times new roman&quot;; font-size: large;">NEGAR-LHE PROVIMENTO , mantendo hígida a sentença recorrida.</p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent; text-indent: 8%;" lang="PT-BR" xml:lang="PT-BR"> É como voto.</p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent; text-indent: 8%;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data da assinatura digital.</p><p style="text-align: justify; text-indent: 8%;">
</p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="text-align: center;"> Presidente/Relator</p><p>
</p><p>&#160;</p><p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>
Processo	3034898-06.2024.8.06.0001
Número de ordem	127
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO

Processo	3034898-06.2024.8.06.0001
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alienação Fiduciária
Polo ativo	BANCO DAYCOVAL S/A
Advogado(s) - Polo ativo	HIRAN LEO DUARTE - (CE10422-A)
Polo passivo	ADRIANO SANTOS DE FREITAS
Advogado(s) - Polo passivo	ANGELO MATHEUS FREITAS BRAUNA - (CE51485-A)
Terceiros	Não informado

Processo	3034898-06.2024.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUJZReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRAgxGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBl4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacnJfWcWwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNHEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBttau2dl/XHeucKd7W0vVrDwGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ Nwrl0RjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxxH6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WYOGE pw1t9ofclZHE21NneWVeWBxJJ1VfDrTECR2H3TDT2lZmS6fc3tLV1D/CfYwCnODHQM+5 qWo3WcjW850dTZ1mu3M6qikym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfn1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssADLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGAD425NbR9LZQW6GZT9CdPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznXDKa2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TU8mS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY4nkdUvsnXNkIX410JEZmRSDZIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	line-height: normal; mso-layout-grid-align: none; text-autospace: none;">II. QUESTÕES EM DISCUSSÃO</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">2. As questões em discussão são (i) possível abusividade da taxa de juros remuneratórios prevista no contrato de financiamento; e (ii) se a mora está caracterizada.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">III. RAZÕES DE DECIDIR</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">3. Conforme orientação firmada pelo c. STJ no Tema Repetitivo nº 25, “é admitida a revisão das taxas de juros remuneratórios em situações excepcionais, desde que caracterizada a relação de consumo e que a abusividade (capaz de colocar o consumidor em desvantagem exagerada – art. 51, § 1º, do CDC) fique cabalmente demonstrada, ante as peculiaridades do julgamento em concreto”. Portanto, o simples fato de a taxa de juros remuneratórios praticada pela instituição financeira exceder a taxa média de mercado divulgada pelo Banco Central do Brasil, por si só, não indica abusividade.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">4. No caso concreto, a cédula de crédito bancário foi celebrada com taxa de juros remuneratórios de 42,08% ao ano, enquanto a taxa média divulgada pelo BACEN, para as operações de crédito para pessoas físicas vinculado à aquisição de veículos (série 20749), no período do contrato (julho de 2024), era de 25,45% ao ano. Como é possível constatar, a taxa de juros pactuada supera a referida taxa média de mercado, gerando, a priori, uma desvantagem ao consumidor. Entretanto, analisando as particularidades do caso, constata-se que o contrato possui previsão de pagamento por carnê, havendo, assim, um maior risco de inadimplemento se comparado a contratos albergados com pagamento mediante débito em conta, situação que justifica a cobrança de juros remuneratórios mais elevados do que a taxa média do BACEN</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">5. Nesse contexto, a reforma da sentença é medida que se impõe, para que se afaste a determinação de revisão da cláusula contratual e o reconhecimento de sua abusividade, ao passo que, caracterizada a mora do devedor e não tendo sido paga a dívida, a ação deve ser julgada procedente.</p><p class="MsoNormal" style="margin-bottom: 6.0pt; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">IV. DISPOSITIVO</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">6. Recurso conhecido e provido.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">ACÓRDÃO:Vistos, relatados e discutidos estes autos, acorda a<!--[if supportFields]>MERGEFIELD &quot;&Oacute;rg&atilde;o Julgador#Retorna o nome da vara onde est&aacute; o processo=8@PROC&quot;1ª Câmara Direito Privado<!--[if supportFields]><!--do Tribunal de Justiça do Estado do Ceará, em conhecer e dar provimento do recurso de apelação, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital.</p><p align="center"><span style="font-

Processo	3034898-06.2024.8.06.0001
	layout-grid-align: none; text-autospace: none;">Sem mais custas porque já recolhidas no ID. 125927410.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> Condeno o banco promovente a honorários de advogado por sucumbência em 10% do valor da causa.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Nas razões do recurso (Id 27368725), o autor/apelante alegou que: (i) é incontroverso que não há limitação de juros, consoante jurisprudência do egrégio STF e STJ; (ii) não há que se falar em revisão dos encargos contratuais, haja vista que todos foram conhecidos e discutidos previamente pelas partes contraentes; (iii) não estão presentes os pressupostos para a revisão contratual, que são a ausência de mora e a ocorrência de um evento extraordinário e imprevisível; (iv) o contrato não conta com obrigações excessivas para nenhuma das partes e as taxas ajustadas estão de pleno acordo com as diretrizes econômicas nacionais; e (v) não há abusividade nas cláusulas contratuais em relação à capitalização de juros, taxa dos juros remuneratórios e encargos de mora.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Face ao narrado, pugnou pela reforma da sentença.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Preparo recursal comprovado no Id 27368726.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Contrarrazões no Id 27368732.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> É o relatório.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> align="center"> VOTO </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-indent: 8%; line-height: normal;"> 1 – Admissibilidade </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Os pressupostos recursais – cabimento, legitimidade e interesse de recorrer, tempestividade, regularidade formal, preparo, inexistência de fato impeditivo ou extintivo do poder de recorrer – estão devidamente preenchidos no caso concreto, inexistindo quaisquer vícios graves que obstem o conhecimento do recurso.</p></td></tr></table>

Processo	3034898-06.2024.8.06.0001
	class="MsoNormal" style="margin-bottom: 0cm; text-indent: 8%; line-height: normal; "> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-indent: 8%; line-height: normal; "> 2 – Mérito recursal </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: normal; text-indent: 8%; "> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> As questões em discussão são (i) possível abusividade da taxa de juros remuneratórios prevista no contrato de financiamento; e (ii) se a mora está caracterizada.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> Contextualizando o caso dos autos, o banco apelante ajuizou a presente ação requerendo a busca e apreensão do veículo dado em garantia no contrato de nº 14-2334584/24, celebrado entre as partes para pagamento em 48 parcelas de R\$ 1.381,05. De acordo com o banco, o requerido/apelado está inadimplente desde a primeira parcela, vencida em agosto de 2024.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> Pois bem.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> Sabe-se que o ajuizamento da ação de busca e apreensão nos contratos com alienação fiduciária em garantia demanda a comprovação da mora do devedor, segundo a exegese do caput, do art. 3º, do Decreto-Lei nº 911/69. Vejamos:</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; tab-stops: 2.0pt; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; tab-stops: 2.0pt; mso-layout-grid-align: none; text-autospace: none;"> O proprietário fiduciário ou credor poderá, desde que comprovada a mora, na forma estabelecida pelo § 2 <sup>o</sup> do art. 2 <sup>o</sup> do art. 2 <sup>o</sup> , ou o inadimplemento, requerer contra o devedor ou terceiro a busca e apreensão do bem alienado fiduciariamente, a qual será concedida liminarmente, podendo ser apreciada em plantão judiciário [Grifou-se].</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 42.6pt; line-height: normal; tab-stops: 2.0pt; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> O mesmo entendimento é consignado pelo Superior Tribunal de Justiça em seu verbete sumular nº 72: “A comprovação da mora é imprescindível à busca e apreensão do bem alienado fiduciariamente”.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> A comprovação da mora do devedor, nos termos do § 2º, do art. 2º, do referido Decreto-Lei, se dá através de sua notificação extrajudicial, sendo prescindível que ele receba a notificação diretamente ou que conste sua assinatura no respectivo aviso de recebimento.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal; "> No caso concreto, o d. juízo a quo entendeu que o promovente comprovou a mora do devedor e, por isso, deferiu o pedido liminar de busca e apreensão do veículo, que foi cumprido no Id 27368713. Porém, em contestação, o devedor arguiu abusividade no contrato em relação à taxa de juros

Processo	3034898-06.2024.8.06.0001
	de juros reais a 12% ao ano da seguinte forma: Enunciado da Súmula Vinculante nº 7: A norma do parágrafo 3º do artigo 192 da Constituição, revogada pela Emenda Constitucional 40/2003, que limitava a taxa de juros reais a 12% ao ano, tinha sua aplicabilidade condicionada à edição de lei complementar. Ainda sobre a matéria, dispõe o enunciado nº 596 da Excelsa Corte que “As disposições do Dec. nº 22.626/33 não se aplicam às taxas de juros e aos outros encargos cobrados nas operações realizadas por instituições públicas ou privadas que integram o Sistema Financeiro Nacional”. Já no âmbito do STJ, aprovou-se a Súmula nº 382, segundo a qual “A estipulação de juros remuneratórios superiores a 12% ao ano, por si só não indica abusividade”. Aliás, a Corte Uniformizadora de Jurisprudências analisou a matéria dos juros remuneratórios em contratos bancários em sede de incidente de recurso repetitivo (Tema de nº 25), resultando a orientação nº 1, adiante transcrita (G. N.): “São inaplicáveis aos juros remuneratórios dos contratos de mútuo bancário as disposições do art. 591 c/c o art. 406 do CC/02; d) É admitida a revisão das taxas de juros remuneratórios em situações excepcionais, desde que caracterizada a relação de consumo e que a abusividade (capaz de colocar o consumidor em desvantagem exagerada – art. 51, § 1º, do CDC) fique cabalmente demonstrada, ante as peculiaridades do julgamento em concreto. (...) (Recurso Especial n. 1.061.530 – RS (2008/011992-4,) Relatora Ministra NANCY ANDRIGHI, SEGUNDA SEÇÃO, julgado em 22/10/2008) Portanto, é entendimento pacificado da Corte Superior que os contratos de financiamento bancário não se submetem à limitação dos juros remuneratórios da Lei de Usura. Também com base nessa orientação, vê-se que se estabeleceu uma tolerância na admissão do percentual contratado, que pode ser revisto em caso de flagrante abusividade. Porém, importante ressaltar que prevaleceu, nesse julgamento, a impossibilidade de se estipular um patamar máximo além do qual os juros seriam presumivelmente abusivos, como a média do Banco Central, que, apesar de constituir “um valioso referencial, mas cabe somente ao juiz, no exame das peculiaridades do caso concreto, avaliar se os juros contratados foram ou não abusivos” (REsp n. 1.061.530/RS, Segunda Seção, julgado em 22/10/2008, DJe de 10/3/2009, grifei).

Processo	3034898-06.2024.8.06.0001
	&quot;times new roman&quot;, times;">&#160; </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Nesse sentido, "ficou assentado no julgamento do recurso repetitivo (REsp. 1.061.530/RS) que a alteração das taxas de juros remuneratórios pactuadas em contratos bancários depende da demonstração cabal de abuso, o qual deve ser apurado pelo juiz em face do caso concreto, tendo em conta a situação da economia na época da contratação, o custo da captação dos recursos pela instituição financeira credora (esse custo varia entre os agentes do mercado financeiro), e sobretudo o risco envolvido na operação, aqui considerado histórico de crédito do devedor, o relacionamento mantido com o banco, as garantias da operação, entre outras peculiaridades do caso em julgamento" (STJ, REsp n. 1.821.182/RS, Quarta Turma, julgado em 23/6/2022, DJe de 29/6/2022, grifei). </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Ademais, no julgamento do REsp n. 1.821.182/RS <!--[if !supportFootnotes]--> [1] <!--[endif]--> <a>, a Quarta Turma do c. STJ sintetizou uma série de fatores que podem impactar na definição da taxa de juros remuneratórios, verbis: </p><p class="Standarduser" style="text-align: justify; text-indent: 70.85pt; line-height: 115%;">&#160;</p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> Conforme explicado pelo Banco Central do Brasil, a taxa de juros varia de acordo com cada cliente, sendo relevantes, exemplificativamente, as seguintes características: valor requerido pelo cliente; rating do cliente/risco; valor e fontes de renda do cliente; histórico de negativação/protesto em nome do cliente; relacionamento com a instituição financeira; prazo de amortização da dívida; existência ou não de garantias para a operação; qualidade (recuperabilidade) das garantias eventualmente aportadas; existência ou não de pagamento de parcela do bem a ser financiado (entrada) e em qual proporção; forma de pagamento da operação [...]. </p><p class="Standarduser" style="text-align: justify; text-indent: 70.85pt; line-height: 115%;">&#160;</p><p class="Standard" style="text-align: justify; text-indent: 8%; line-height: 115%;"> No mesmo sentido: &#160; </p><p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-autospace: ideograph-numeric;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; text-autospace: ideograph-numeric;"> AGRAVO INTERNO. AGRAVO EM RECURSO ESPECIAL. AÇÃO REVISIONAL. CONTRATO DE MÚTUO. TAXA DE JUROS REMUNERATÓRIOS CONTRATADA. ABUSIVIDADE. AUSÊNCIA. ORIENTAÇÃO FIRMADA NO RESP N. 1.061.530/RS. 1. A eventual redução da taxa de juros, somente pelo fato de estar acima da média de mercado, sem que seja mencionada circunstância relacionada ao custo da captação dos recursos, à análise do perfil de risco de crédito do tomador e ao spread da operação, apenas cotejando, de um lado, a taxa contratada e, de outro, o limite aprioristicamente adotado pelo julgador em relação à taxa média divulgada pelo Bacen - está em confronto com a orientação firmada na Segunda Seção desta Corte, nos autos do REsp. 1.061.530/RS. 2. O parâmetro abstratamente eleito pela Corte de origem não vincula o STJ nem deve prevalecer sobre o pactuado, especialmente em caso como o presente, em que as prestações do mútuo foram prefixadas, de modo que não havia como o consumidor alegar desconhecimento da dívida assumida 3. Agravo interno a que se nega provimento.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; text-autospace: ideograph-numeric;"> (STJ - AgInt no AREsp: 2159094 RS 2022/020222-6, Relator: MARIA ISABEL GALLOTTI, Data de Julgamento: 15/05/2023, T4 - QUARTA TURMA, Data de Publicação: DJe 18/05/2023). [Grifou-se].</p><p class="Standard" style="text-align: justify; text-indent: 70.85pt; line-height: 115%;">&#160;</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Nesse contexto, sobreleva filiar-me à jurisprudência consolidada da Corte Superior, de que o simples fato de a taxa de juros remuneratórios praticada pela

Processo	3034898-06.2024.8.06.0001
	instituição financeira exceder a taxa média de mercado divulgada pelo Banco Central do Brasil, por si só, não indica abusividade. No caso concreto, a cédula de crédito bancário foi celebrada com taxa de juros remuneratórios de 42,08% ao ano, enquanto a taxa média divulgada pelo BACEN, para as operações de crédito para pessoas físicas vinculado à aquisição de veículos (série 20749), no período do contrato (julho de 2024), era de 25,45% ao ano. Como é possível constatar, a taxa de juros pactuada supera a referida taxa média de mercado, gerando, <i>a priori</i>, uma desvantagem ao consumidor. Entretanto, analisando as particularidades do caso, constata-se que o contrato possui previsão de pagamento por carnê (conforme cláusula 4, constante no Id 27368486), havendo, assim, um maior risco de inadimplemento se comparado a contratos albergados com pagamento mediante débito em conta, situação que justifica a cobrança de juros remuneratórios mais elevados do que a taxa média do BACEN. Diante disso, considerando que o réu/apelado não trouxe elementos úteis para amparar sua tese de abusividade na cláusula que fixou a taxa de juros remuneratórios – tais como baixo risco da operação, seu histórico positivo de crédito, situação favorável da economia na época da contratação etc. – não há como deferir seu pedido de limitação da taxa de juros remuneratórios à média de mercado, interferindo inadequadamente nos termos pactuados entre as partes, quando há indícios de que o crédito foi concedido com maior risco de inadimplemento. Logo, a reforma da sentença é medida que se impõe, para que se afaste a determinação de revisão da cláusula contratual e o reconhecimento de sua abusividade, ao passo que, caracterizada a mora do devedor e não tendo sido paga a dívida, a ação deve ser julgada procedente. Logo, a reforma da sentença é medida que se impõe, para que se afaste a determinação de revisão da cláusula contratual e o reconhecimento de sua abusividade, ao passo que, caracterizada a mora do devedor e não tendo sido paga a dívida, a ação deve ser julgada procedente. 3 – Dispositivo Isto posto, conheço do recurso de apelação interposto e a ele DOU provido para reformar a sentença objurgada e julgar procedente a ação de busca e apreensão, consolidando a propriedade e posse do veículo em nome do requerente. Com o resultado, inverte a condenação aos ônus da sucumbência, que será de responsabilidade do réu/apelado, restando suspensa a exigibilidade por ser o vencido beneficiário da justiça gratuita (art. 98, § 3º, do CPC). MsoNormal

Processo	3034898-06.2024.8.06.0001
	</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> É como voto.</p><p class="MsoNormal" style="margin: 2pt 0cm 0cm; text-align: center; line-height: normal; text-indent: 8%;" align="center"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Fortaleza, data da assinatura digital.</p><p class="MsoNormal" style="margin-top: 2.0pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 0cm; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p align="center">&#160;</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Relator </p><p>
 </p><p>&#160;</p><p><hr size="1" /><div id="ftn1"> <p class="Footnote"> [1] <a> Relatora Ministra Maria Isabel Gallotti, julgado em 23 de junho de 2022. </p></div>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p></p>

Processo	3002749-89.2024.8.06.0151
Número de ordem	128
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	MARIA FRAUZINA DE LIMA
Advogado(s) - Polo ativo	JOSE IDEMBERG NOBRE DE SENA - (CE14260-A) MARLA ISEUDA DA SILVA BARROS - (CE34912-A) LAILA KELLY DE SENA RABELO - (CE50530-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	THIAGO BARREIRA ROMCY - (CE23900-A)
Terceiros	Não informado

Processo	3002749-89.2024.8.06.0151
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	roman" >, times;">PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> &quot;times new roman&quot;, times;">GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> </p><p> </p><p> PROCESSO: 3002749-89.2024.8.06.0151 </p><p style="text-align: justify;"> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"> APELANTE: MARIA FRAUZINA DE LIMA. </p><p style="text-align: justify;"> APELADO: BANCO BRADESCO S/A. </p><p style="text-align: justify;">
 </p><p style="text-align: justify;"> EMENTA:&#160; &quot;times new roman&quot;, times;">APELAÇÃO CÍVEL. DIREITO DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C REPARAÇÃO POR DANOS MORAIS E REPETIÇÃO DO DÉBITO. EMPRÉSTIMO CONSIGNADO. AUSÊNCIA DE CONTRATO. DESCONTOS INDEVIDOS. PEDIDO DE MAJORAÇÃO DA INDENIZAÇÃO POR DANOS MORAIS. IMPOSSIBILIDADE.&#160;DESCONTOS EM VALOR INEXPRESSIVO QUE DESAUTORIZA O RECONHECIMENTO DE DANOS MORAIS INDENIZÁVEIS.&#160;<em style="font-family: &quot;times new roman&quot;, times; font-size: large;">NON REFORMATIO IN PEJUS.&#160;CORRETA A AUTORIZAÇÃO DE COMPENSAÇÃO DO VALOR DISPONIBILIZADO PELO BANCO, EM SEDE DE CUMPRIMENTO DE SENTENÇA.&#160;SUCUMBÊNCIA RECÍPROCA AFASTADA. CRITÉRIO DE APURAÇÃO DOS ÔNUS DA SUCUMBÊNCIA COM BASE NO QUANTITATIVO DE PÉDIDOS. ÔNUS A SER SUPORTADO INTEGRALMENTE PELA INSTITUIÇÃO FINANCEIRA DEMANDADA.&#160;RECURSO CONHECIDO E PARCIALMENTE PROVIDO. </p><p align="justify">)>I) CASO EM EXAME</p><p align="justify"> 1.&#160; Trata-se de Apelação Cível interposta por Maria Frauzina de Lima com o objetivo de reformar a sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Quixadá, que julgou parcialmente procedente a Ação Declaratória de Inexistência de Débito c/c Repetição do indébito e Indenização por Danos Morais ajuizada pela ora apelante em desfavor do Banco

Processo	3002749-89.2024.8.06.0151
	Bradesco S/A. II) QUESTÕES EM DISCUSSÃO 2. O cerne da controvérsia recursal consiste em examinar a pertinência da majoração do quantum indenizatório a título de danos morais estabelecido em R\$ 3.000,00 (três mil reais) pela sentença de origem, bem como se é cabível o afastamento da compensação de valores e da sucumbência recíproca. III) RAZÕES DE DECIDIR 3. O dano moral só se revela quando há lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem e o bom nome, com base no que se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal. Nessa perspectiva, “a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante.” (AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014). 4. In casu, vê-se que os descontos questionados não revelaram valor expressivo (R\$ 23,26 - vinte e três reais e vinte e seis centavos), conforme se observa da análise dos extratos bancários de ID. n.º 27364682 (contrato n.º 389986984). Dessa forma, entende-se que as subtrações foram em valores ínfimos, eis que não foram capazes de deixar a autora/apelante desprovida de recursos financeiros para solver suas despesas ordinárias. 5. Não se olvida que a situação possa eventualmente ter trazido algum aborrecimento à consumidora, contudo, não foi capaz de atingir valores fundamentais do ser humano, tratando-se de meros aborrecimentos a que se está sujeito na vida em sociedade. Assim, não há motivação idônea para a majoração do valor da indenização discutida, estabelecida na origem em R\$ 3.000,00 (três mil reais). A míngua de recurso da parte Requerida/Apelada quanto a isso, deve ser mantida a conclusão exposta pelo il. juízo de primeiro grau, porquanto vedada a reformatio in pejus. 6. Da análise dos autos, observa-se que a instituição financeira promovida apresentou cópia do extrato bancário da consumidora em que se constata o recebimento do crédito, na data de 03 de fevereiro de 2020, no montante de R\$ 837,79 (oitocentos e trinta e sete reais e setenta e nove centavos), sem qualquer indício de devolução, conforme se observa à fl. 22 do ID. n.º 27364753. Dessa forma, tendo em vista que a instituição financeira demonstrou que houve disponibilização de valores em benefício e proveito da consumidora, é pertinente a compensação entre a quantia por esta recebida e o valor arbitrado na condenação, em sede de cumprimento de sentença, vedado o enriquecimento ilícito. Desse modo, correta a determinação do juízo a quo, a quantia recebida pela autora/apelante e o

Processo	3002749-89.2024.8.06.0151
	valor da condenação. 7. A sucumbência recíproca não está associada à quantia da pretensão indenizatória estimada na exordial, mas sim à quantidade de pedidos deferidos e indeferidos pelo órgão judicante. Segundo entendimento jurisprudencial sedimentado pela e. Corte Superior, o fato de a condenação ser arbitrada em montante inferior ao postulado na inicial, por si só, não implica em sucumbência recíproca ou mínima, aplicando-se, por analogia, o enunciado n. 326 da súmula da jurisprudência do STJ, segundo o qual: “na ação de indenização por dano moral, a condenação em montante inferior ao postulado na inicial não implica sucumbência recíproca”. Nessa perspectiva, a condenação da instituição financeira em valor menor do que se pretendia na inicial não importa em sucumbência recíproca, razão pela qual deve a sentença ser reformada para que a parte ré/apelada arque integralmente com o encargo. IV DISPOSITIVO 8. Recurso conhecido e parcialmente provido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso interposto, para, no mérito, dar-lhe parcial provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p> <p align="center"> Presidente/Relator</p> <p align="center"> RELATÓRIO</p> <p align="center"> Trata-se de Apelação Cível interposta por Maria Frauzina de Lima com o objetivo de reformar a sentença proferida pelo MM. Juiz de Direito Wallton Pereira de Souza Paiva, da 1ª Vara Cível da Comarca de Quixadá, que julgou parcialmente procedente a Ação Declaratória de Inexistência de Débito c/c Repetição do indébito e Indenização por Danos Morais ajuizada pela ora apelante em desfavor do Banco Bradesco S/A.</p> <p align="center"> Ao analisar o conjunto probatório acostado aos autos, o juízo singular destacou que</p> <p align="center"> requerida não trouxe documentação comprobatória da existência do contrato que supostamente teria sido firmado com a parte requerente.</p>

Processo	3002749-89.2024.8.06.0151
	para: i) que seja majorado; ii) o valor da indenização arbitrada a título de danos morais; iii) que seja afastada a compensação entre os valores da condenação e os valores eventualmente depositados pelo requerido/apelado em seu favor; e iii) que seja afastada a sucumbência recíproca. Con trarrações apresentadas no ID. n.º 27364794. É o relatório. class="western" style="text-align: justify; font-size: medium; margin-bottom: 0cm; line-height: 24px; text-indent: 8%; align="justify"> Con VOTO 1 – Admissibilidade Satisfeitos os pressupostos intrínsecos ou subjetivos – cabimento, interesse e legitimidade, inexistência de súmula impeditiva – e extrínsecos ou objetivos – tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer – de admissibilidade recursal, conheço do recurso interposto. 2 – Mérito recursal O cerne da controvérsia recursal consiste em examinar a pertinência da majoração do quantum indenizatório a título de danos morais estabelecido em R\$ 3.000,00 (três mil reais) pela sentença de origem, bem como se é cabível o afastamento da compensação de valores e da sucumbência recíproca. 2.1- Do pedido de majoração dos danos morais A avaliação pecuniária do dano moral ainda é objeto de discussões doutrinárias, vez que inexiste dispositivos legais que estabeleçam critérios objetivos em razão da sua própria natureza, que, por definição, independe de qualquer vinculação com o prejuízo material. Sabe-se que o dano moral somente ocorre quando houver lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, e o bom nome, com base no que se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal. Sobre o tema leciona Sérgio Cavalieri Filho:

Processo	3002749-89.2024.8.06.0151
	font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> (…) só deve ser reputado como dano moral a dor, vexame, sofrimento ou humilhação que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. Mero dissabor, aborrecimento, mágoa, irritação ou sensibilidade exacerbada estão fora da órbita do dano moral, porquanto, além de fazerem parte da normalidade do nosso dia a dia, no trabalho, no trânsito, entre os amigos e até no ambiente familiar, tais situações não são intensas e duradouras, aponta de romper o equilíbrio psicológico do indivíduo. Se assim não se entender, acabaremos por banalizar o dano moral, ensejando ações judiciais em busca de indenizações pelos mais triviais aborrecimentos. (CAVALIERI FILHO, Sérgio. Programa de Responsabilidade Civil. 11ª ed. São Paulo: Atlas, 2014, p.111).</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 30px;">
<p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;">Nessa perspectiva, “a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante.” (AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014). [Grifou-se].<p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;">#160;<p style="font-family: &quot;times new roman&quot;; times;">Nesse ponto, a jurisprudência do Superior Tribunal de Justiça é assente no sentido de que configura mero aborrecimento o desconto indevido em benefício previdenciário de valores incapazes de comprometer a subsistência da parte. A propósito, confira-se:</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium;">#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL.AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITOS. RESTITUIÇÃO DE VALORES E INDENIZAÇÃO POR DANOS MORAIS. DESCONTO INDEVIDO. VALOR ÍNFIIMO. DANO MORAL INEXISTENTE. MERO ABORRECIMENTO. CONSONÂNCIA COM A JURISPRUDÊNCIA DESTA CORTE SUPERIOR.#160;RECURSO DESPROVIDO.</p><p style="text-align: justify; font-family: &quot;times new roman&quot;; times;">1. Esta Corte Superior entende que a caracterização do dano moral exige que a comprovação do dano repercuta na esfera dos direitos da personalidade. A fraude bancária, nessa perspectiva, não pode ser considerada suficiente, por si só, para a caracterização do dano moral (AgInt nos EDcl no AREsp 1.669.683/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 23/11/2020, DJe de 30/11/2020).#160;2. O Tribunal de origem concluiu que o desconto indevido de R\$ 70,00 (setenta reais) no benefício previdenciário da agravante não acarretou danos morais, considerando que foi determinada a restituição do valor, que a instituição financeira também foi vítima de fraude e que não houve inscrição do nome da agravante em cadastros de proteção ao crédito, de modo que ficou configurado mero aborrecimento.#160;3.</p><p style="text-align: justify; font-family: &quot;times new roman&quot;; times;">A jurisprudência desta Corte entende que, quando a situação experimentada não tem o condão de expor a parte a dor, vexame, sofrimento ou constrangimento perante terceiros, não há falar em dano moral, uma vez que se trata de mero aborrecimento ou dissabor, mormente quando a falha na prestação de serviços, embora tenha acarretado aborrecimentos, não gerou maiores danos ao recorrente, como ocorreu na presente hipótese". (STJ - AgInt no AREsp 1.354.773/MS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 02/04/2019, DJe de 24/04/2019). 4. Agravo interno desprovido. (AgInt nos EDcl no REsp n. 1.948.000/SP, relator Ministro Raul Araújo, Quarta Turma, julgado em 23/5/2022, DJe de</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 120px;">#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"><em style="font-family: &quot;times new roman&quot;; times;">In casuvê-se que os descontos questionados não revelaram valor expressivo (R\$ 23,26 - vinte e três reais e vinte e seis centavos), conforme se observa da análise dos extratos bancários de ID. n.º 27364682 (contrato n.º 389986984). Dessa forma, entende-se que as subtrações foram em valores ínfimos, eis que não foram capazes de deixar a autora/apelante desprovida de recursos financeiros para solver suas despesas ordinárias.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;">#160;</p>

Processo	3002749-89.2024.8.06.0151
	Não se olvida que a situação possa eventualmente ter trazido algum aborrecimento à consumidora, contudo, não foi capaz de atingir valores fundamentais do ser humano, tratando-se de meros aborrecimentos a que se está sujeito na vida em sociedade.</p> <p style="text-align: justify; font-family: "Times New Roman"; font-size: medium; text-indent: 8%;"> #160; Vale lembrar, por oportuno, que a parte autora será devidamente restituída dos valores indevidamente descontados, os quais serão corrigidos monetariamente e acrescidos de juros de mora de 1% (um por cento) ao mês.</p> <p style="text-align: justify; font-family: "Times New Roman"; font-size: medium; text-indent: 8%;"> #160; Em casos semelhantes, a jurisprudência desta 1ª Câmara de Direito Privado tem entendimento consolidado no sentido de que os descontos em valores inexpressivos, embora indevidos, são insuscetíveis de causar danos morais. Vejamos:</p> <p style="text-align: justify; font-family: "Times New Roman"; font-size: medium; text-indent: 8%;">#160;</p> <p style="text-align: justify; font-family: "Times New Roman"; font-size: medium; padding-left: 150px;"> #160; APELAÇÕES CÍVEIS. DIREITO DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE RELAÇÃO JURÍDICA C/C REPETIÇÃO DE INDÉBITO E PEDIDO DE INDENIZAÇÃO POR DANOS MORAIS. PRELIMINAR DE AUSÊNCIA DE DIALETICIDADE RECURSAL REJEITADA. PREJUDICIAIS DE PRESCRIÇÃO E DECADÊNCIA AFASTADAS.#160;</p> TARIFA DE CESTA DE SERVIÇOS BANCÁRIOS. NÃO APRESENTAÇÃO DO INSTRUMENTO CONTRATUAL. AUSÊNCIA DE COMPROVAÇÃO DE ANUÊNCIA DO CONSUMIDOR. INSTITUIÇÃO FINANCEIRA QUE NÃO SE DESINCUMBIU DE SEU ÔNUS PROBATÓRIO.#160;</p> FALHA NA PRESTAÇÃO DE SERVIÇO CONFIGURADA. RESTITUIÇÃO SIMPLES E EM DOBRO DOS DESCONTOS.#160;</p> DANOS MORAIS NÃO CONFIGURADOS. DESCONTOS INEXPRESSIVOS. AUSÊNCIA DE ABALO AOS DIREITOS DA PERSONALIDADE. MERO ABORRECIMENTO. PRECEDENTES DO STJ E DESTA PRIMEIRA CÂMARA DE DIREITO PRIVADO.#160;</p> RECURSO DO BANCO PARCIALMENTE CONHECIDO E, NA PARTE CONHECIDA, PARCIALMENTE PROVIDO. RECURSO DO AUTOR PREJUDICADO. I. CASO EM EXAME 1. Trata-se de Apelações Cíveis interpostas por Banco Bradesco S/A e José Lopes da Silva, objetivando a reforma da sentença proferida pelo Juízo da Vara Única da Comarca de Pereiro, nos autos da presente Ação Declaratória de Inexistência de Relação Jurídica c/c Repetição de Indébito e Pedido de Indenização por Danos Morais. II. QUESTÃO EM DISCUSSÃO 2. O cerne da controvérsia recursal consiste em avaliar a regularidade da cobrança de tarifas bancárias referentes à contratação de cesta de serviços. III. RAZÕES DE DECIDIR 3. Quanto aos descontos tarifários, vislumbro a existência de prática abusiva, dado que ausente a comprovação de que a parte consumidora assentiu com a utilização dos serviços, tendo em vista que a instituição financeira não apresentou qualquer documento capaz de demonstrar a anuência da contratante com relação ao negócio jurídico, quedando-se silente quanto ao ajuste contratual que deu origem aos descontos tarifários. Logo, não merece reforma a sentença quanto à declaração de nulidade contratual em comento, mostrando-se cabível, por conseguinte, a restituição das quantias descontadas indevidamente da conta corrente da consumidora. 4. Sobre a restituição do indébito, o atual entendimento do Superior Tribunal de Justiça é no sentido de que a restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que cobrou valor indevido, revelando-se cabível quando a cobrança indevida consubstanciar conduta contrária à boa-fé objetiva (STJ. Corte Especial. EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020). A discussão quanto às hipóteses de aplicação da repetição em dobro prevista no art. 42, parágrafo único, do CDC, foi apaziguada e decidida pelo c. STJ no julgamento dos embargos de divergência em agravo em recurso especial (EAREsp 676.608/RS), do qual resultou o entendimento de que a restituição em dobro do indébito seja aplicado apenas às cobranças indevidas realizadas a partir da publicação daquele acórdão, ou seja, 30/03/2021. 5. No presente caso, com base no entendimento do Superior Tribunal de Justiça, deve-se proceder com a restituição simples dos valores descontados antes de 30 de março de 2021, e, após essa data, as deduções devem ser restituídas em dobro, de modo que a sentença não merece reproche, nesse ponto. 6. Com relação ao dano moral, tem-se que ele somente ocorre quando houver lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, o bom nome etc., como se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da CF/1988.#160;</p> 7. No caso em tela, houve descontos inexpressivos na conta bancária do promovente, de valores entre R\$ 0,21 (vinte e um centavos) e R\$ 33,70 (trinta e três reais e setenta centavos), conforme extratos bancários juntados às fls.26/56 dos autos. Nesse contexto, entende-se que o consumidor não ficou desprovido de recursos</p>

Processo	3002749-89.2024.8.06.0151
	financeiros para solver suas despesas ordinárias, inclusive é de se observar que não houve nenhuma comprovação nesse sentido, de sorte que a existência de descontos no valor acima referido não caracteriza dor, sofrimento ou humilhação, tampouco representa violação à honra, à imagem ou à vida privada, ainda mais na situação dos autos, em que o autor passou largo espaço temporal para questionar esses descontos. Com efeito, não se vislumbra dano à personalidade que possa ensejar o pagamento de indenização por danos morais, notadamente porque referidos descontos não foram capazes de causar maiores consequências negativas, como a inscrição do nome do consumidor nos cadastros de proteção ao crédito ou o comprometimento do mínimo existencial, sendo o caso, portanto, de acolher os argumentos da instituição financeira apelante, no sentido de que os descontos não causaram lesão de ordem moral. 8. Ademais, não merece amparo o requerimento de exclusão ou minoração das astreintes fixadas na origem em caso de descumprimento da obrigação de fazer, tendo em vista que a multa arbitrada não padece de ilegalidade ou vício capaz de motivar sua revogação ou modificação. 9. Por fim, quanto ao pleito de reforma da sentença para que haja compensação de valores, observo que não há motivo para tal irresignação, haja vista que não houve a disponibilização de valores ao autor, nem a sentença faz menção a valor a ser ressarcido. A ação não questiona contrato de empréstimo, mas cesta cesta de serviços bancários. Verifica-se, portanto, ausência de interesse recursal quanto a esse ponto. IV. DISPOSITIVO 10. Recurso do banco parcialmente conhecido e, na parte conhecida, parcialmente provido. Recurso da parte autora prejudicado. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer parcialmente do recurso de apelação interposto pelo banco, para, na parte conhecida, dar-lhe parcial provimento, ficando prejudicado o exame de mérito do recurso interposto pela parte autora, nos termos do voto do Relator. Fortaleza, data da assinatura digital. (Apelação Cível TJ-CE 0200395-16.2023.8.06.0145, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 19/02/2025, data da publicação: 19/02/2025). [Grifou-se]. APELAÇÃO CÍVEL. CONTRATOS DE EMPRÉSTIMO CONSIGNADO. ALEGAÇÃO DE CONEXÃO. PROCESSOS FUNDADOS EM CONTRATOS DISTINTOS. DESNECESSIDADE DE PRÉVIO REQUERIMENTO ADMINISTRATIVO. PRELIMINARES REJEITADAS. INEXISTÊNCIA DE DOCUMENTOS APTOS A COMPROVAR A REGULARIDADE DOS NEGÓCIOS JURÍDICOS. AUSÊNCIA DE COMPROVANTE DE REPASSE DOS VALORES SUPOSTAMENTE PACTUADOS. CONTRATAÇÕES ILÍCITAS. DANOS PATRIMONIAIS CONFIGURADOS. DANOS MORAIS. PARCELAS CORRESPONDENTES AO VALOR DE R\$ 66,15. QUANTIA IRRISÓRIA SE COMPARADA AO VALOR DO BENEFÍCIO PREVIDENCIÁRIO DA PARTE PROMOVENTE. DESCONTOS INEXPRESSIVOS. MERO ABORRECIMENTO. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DARLHE PARCIAL PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. (Apelação Cível TJ-CE 0050276-84.2020.8.06.0036, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 30/08/2023, data da publicação: 31/08/2023). [Grifou-se]. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA/NULIDADE DE RELAÇÃO JURÍDICA C/C REPETIÇÃO DE INDÉBITO E PEDIDO DE REPARAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. DECLARAÇÃO DE NULIDADE DO NEGÓCIO JURÍDICO DECLARADA NA ORIGEM. RECURSO QUE ABRANGE SOMENTE PEDIDO DE MAJORAÇÃO QUANTOS AOS DANOS MORAIS. DESCONTOS EM VALOR INEXPRESSIVO. AUSÊNCIA DE RECURSO DA INSTITUIÇÃO FINANCEIRA. MANUTENÇÃO DO QUANTUM, POIS VEDADA A REFORMATIO IN PEJUS. RECURSO CONHECIDO E DESPROVIDO.

Processo	3002749-89.2024.8.06.0151
	data constante no sistema.&#160; (Apelação Cível&#160; TJ-CE&#160;0202582-54.2023.8.06.0029, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA,&#160; 1ª Câmara Direito Privado, data do julgamento:&#160; 22/01/2025, data da publicação:&#160;&#160; 22/01/2025). [Grifou-se].&#160;</div><div style="font-family: &quot;Times New Roman&quot;; font-size: medium; text-align: justify; padding-left: 150px;">
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 </div><div style="font-family: &quot;Times New Roman&quot;; font-size: medium; text-align: justify;"> <div style="text-align: justify;"> &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; &#160; Assim, não há motivação idônea para a majoração do valor da indenização discutida, estabelecida na origem em R\$ 3.000,00 (três mil reais). À míngua de recurso da parte Requerida/Apelada quanto a isso, deve ser mantida a conclusão exposta pelo il. juízo de primeiro grau, porquanto vedada a&#160; reformatio in pejus. </div> <div style="text-align: justify;"> <p style="font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> 2.2 - Do pedido de afastamento da compensação de valores </p> <p style="text-indent: 8%;"> &#160;Quanto ao pleito de afastamento da compensação de valores depositados pelo banco requerido, em sede de cumprimento de sentença, vejo que este não prospera, em nome do princípio da vedação ao enriquecimento ilícito. Explico, a seguir. </p> <p style="text-indent: 8%;"> &#160; Da análise dos autos, observa-se&#160; que a instituição financeira promovida apresentou cópia do extrato bancário da consumidora em que se constata o recebimento do crédito, na data de 03 de fevereiro de 2020, no montante de R\$ 837,79 (oitocentos e trinta e sete reais e setenta e nove centavos),&#160; sem qualquer indício de devolução,&#160; conforme se observa à fl. 22 do ID. n.º 27364753. </p> <p style="text-indent: 8%;"> &#160; Dessa forma, tendo em vista que a instituição financeira demonstrou que houve disponibilização de valores em benefício e proveito da consumidora, é pertinente a compensação entre a quantia por esta recebida e o valor arbitrado na condenação, em sede de cumprimento de sentença, vedado o enriquecimento ilícito. Nesse sentido: </p> <p style="text-indent: 8%;">&#160;</p> <p style="padding-left: 150px;"> RECURSO ESPECIAL. CIVIL E PROCESSUAL CIVIL. AÇÃO DE RESCISÃO DE CONTRATO DE PROMESSA DE COMPRA E VENDA DE IMÓVEL C.C. REINTEGRAÇÃO DE POSSE. INADIMPLEMENTO DO PROMISSÁRIO COMPRADOR. PAGAMENTO DE ALUGUEL PELO LONGO PERÍODO DE USO DO IMÓVEL SEM QUALQUER CONTRAPRESTAÇÃO. DESNECESSIDADE DE PEDIDO EXPRESSO. CONSECTÁRIO LÓGICO DO RETORNO AO STATUS QUO. QUANTIA QUE DEVERÁ SER APURADA EM LIQUIDAÇÃO DE SENTENÇA. OBSERVÂNCIA, SE APLICÁVEL, DO DISPOSTO NO ART. 509, § 2º, DO CPC/2015, FICANDO AUTORIZADA A POSTERIOR COMPENSAÇÃO COM O VALOR RESTITUÍDO PELA RECORRENTE. RECURSO ESPECIAL PARCIALMENTE CONHECIDO E, NESSA EXTENSÃO, PROVIDO EM PARTE. 1. Cinge-se a controvérsia a definir: i) se houve negativa de prestação jurisdicional; ii) se é possível decretar a perda das prestações pagas pelos promitentes compradores, como forma de compensação pelo longo tempo de ocupação do imóvel, mesmo sem haver pedido expresso na petição inicial; e iii) se a sentença proferida foi extra petita em relação à condenação da recorrente/autora à devolução das parcelas pagas aos recorridos/réus. 2. O Tribunal de origem analisou todas as questões suscitadas pela recorrente, ressaltando que a devolução das parcelas pagas seria decorrência natural do pedido de rescisão contratual, diferente do pleito de compensação pela ocupação do imóvel de forma gratuita. Por essa razão, afasta-se a apontada negativa de prestação jurisdicional. 3. A rescisão do contrato de promessa de compra e venda de imóvel impõe o retorno das partes contratantes ao status quo ante, determinando-se, de um lado, a

Processo	3002749-89.2024.8.06.0151
	devolução do preço pago, ainda que parcialmente, e, de outro, a restituição do imóvel cumulada com a compensação pela ocupação do bem. 4. Com efeito, o ressarcimento pela ocupação do imóvel trata-se de consectário lógico do retorno das partes ao estado anterior, pois cabe ao magistrado, ao determinar a rescisão contratual, dispor acerca da forma como as partes deverão ser restituídas à condição original, sendo desnecessário, portanto, pedido expresso na petição inicial, reconvenção ou ação própria para essa finalidade, à luz do princípio restituito in integrum. 5. No caso, os réus ocuparam o imóvel por mais de 13 (treze) anos sem qualquer contraprestação. Dessa forma, o Juízo a quo, ao julgar procedente a ação de rescisão contratual c.c. reintegração de posse, determinando a restituição das partes ao estado anterior, deveria dispor sobre a compensação entre os valores eventualmente devidos aos compradores com as verbas devidas à vendedora, independentemente de pedido expresso, sob pena de se chancelar notório enriquecimento ilícito dos recorridos em virtude da moradia gratuita por mais de uma década. 6. Por essas razões, impõe-se a reforma do acórdão recorrido para determinar que os recorridos paguem à recorrente os aluguéis devidos pelo tempo em que ocuparam o imóvel, em quantia a ser apurada em liquidação de sentença, observado, se aplicável, o disposto no art. 509, § 2º, do CPC/2015, ficando autorizada a posterior compensação com o valor a ser restituído pela recorrente. 7. Nos termos da pacífica jurisprudência do Superior Tribunal de Justiça, "Rescindido o contrato, deve ser assegurado o retorno ao status quo ante, com a determinação de devolução dos valores eventuais pagos, circunstância em que não se configura a existência de julgamento extra petita pela decisão do magistrado que assim se pronuncia" (REsp 1.471.838/PR, Relator o Ministro Ricardo Villas Bôas Cueva, DJe de 26/6/2015). 8. Recurso especial parcialmente conhecido e, nessa extensão, provido em parte. (STJ - Resp: 1731753 SP 2017/0271035-5, Relator: MARCO AURÉLIO BELLIZZE, Data de Julgamento: 09/05/2023, T3 - TERCEIRA TURMA, Data de Publicação: DJe 12/05/2023). [Grifou-se]. Desse modo, correta a determinação do juízo a quo no sentido de que haja a compensação entre a quantia recebida pela autora/apelante e o valor da condenação. Do pedido de afastamento da sucumbência recíproca No que se refere à caracterização da sucumbência, "a jurisprudência do STJ está pacificada no sentido de adotar, como critério norteador para a distribuição das verbas de sucumbência, o número de pedidos formulados e atendidos" (EDcl no REsp 953.460/MG, Rel. Ministra NANCY ANDRIGHI, TERCEIRA TURMA, julgado em 09/08/2011, DJe de 19/08/2011). [Grifou-se]. Nesse sentido, para fins persuasivos, colho da fonte jurisprudencial: PROCESSUAL CIVIL. DIREITO ADMINISTRATIVO. RESPONSABILIDADE CIVIL DO ESTADO. AGRAVO INTERNO NO RECURSO ESPECIAL. CÓDIGO DE PROCESSO CIVIL DE 2015. APLICABILIDADE. HONORÁRIOS ADVOCATÍCIOS. SUCUMBÊNCIA RECÍPROCA. APURAÇÃO MEDIANTE O QUANTITATIVO DE PEDIDOS. ARGUMENTOS INSUFICIENTES PARA DESCONSTITUIR A DECISÃO ATACADA. APLICAÇÃO DE MULTA. ART. 1.021, § 4º, DO CÓDIGO DE PROCESSO CIVIL DE 2015. DESCABIMENTO. I - Consoante o decidido pelo Plenário desta Corte na sessão realizada em 09.03.2016, o regime recursal será determinado pela data da publicação do provimento jurisdicional impugnado. In casu, aplica-se o Código de Processo Civil de 2015. II - A fixação de indenização à título de danos morais em valor inferior ao requerido não representa indeferimento. Assim, verifico que o acórdão recorrido adotou entendimento consolidado nesta Corte, segundo o qual a apuração da sucumbência recíproca deve levar em conta o quantitativo de pedidos (isoladamente considerados) que foram deferidos em contraposição aos indeferidos. III - O Agravante não apresenta, no agravo, argumentos suficientes para desconstituir a decisão recorrida. IV - Em regra, descabe a imposição da multa prevista no art. 1.021, § 4º, do Código de Processo Civil de 2015 em razão do mero desprovimento do Agravo Interno em votação unânime, sendo necessária a configuração da manifesta inadmissibilidade ou improcedência do recurso a autorizar sua aplicação, o que não ocorreu no caso. V – Agravo Interno improvido. (STJ - AgInt no REsp: 1902427 DF

Processo	3002749-89.2024.8.06.0151
	2020/0278849-7, Relator: Ministra REGINA HELENA COSTA, Data de Julgamento: 30/08/2021, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 02/09/2021). [Grifou-se]. </p> <p style="padding-left: 150px;">&#160;</p> <p style="padding-left: 150px;"> AGRAVO INTERNO NO RECURSO ESPECIAL. DIREITO CIVIL E PROCESSUAL CIVIL. AÇÃO DE COBRANÇA. SEGURO OBRIGATÓRIO DPVAT. SUCUMBÊNCIA RECÍPROCA. INEXISTÊNCIA. CRITÉRIO DE APURAÇÃO: QUANTIDADE DE PEDIDOS. PRECEDENTES DO STJ. INOVAÇÃO RECURSAL. IMPOSSIBILIDADE. RECURSO ESPECIAL&#160;PROVIDO. DECISÃO AGRAVADA MANTIDA. AGRAVO INTERNO DESPROVIDO. (STJ - AgInt no Resp: 1892190 MT 2020/0220634-0, Relator: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 08/02/2021, T3 - TERCEIRA TURMA, Data de Publicação: DJe 11/02/2021). [Grifou-se]. </p> <p style="padding-left: 150px;">
 </p> <p style="text-indent: 8%;"> Isso significa que a sucumbência recíproca não está associada à quantia da pretensão indenizatória estimada na exordial, mas sim à quantidade de pedidos deferidos e indeferidos pelo órgão judicante. A propósito, segundo entendimento jurisprudencial sedimentado pela e. Corte Superior, o fato de a condenação ser arbitrada em montante inferior ao postulado na inicial, por si só, não implica em sucumbência recíproca ou mínima, aplicando-se, por analogia, o enunciado n. 326 da súmula da jurisprudência do STJ, segundo o qual: "na ação de indenização por dano moral, a condenação em montante inferior ao postulado na inicial não implica sucumbência recíproca". </p> <p style="text-indent: 8%;"> &#160; Nessa perspectiva, a condenação da instituição financeira em valor menor do que se pretendia na inicial não importa em sucumbência recíproca, razão pela qual deve a sentença ser reformada para que a parte ré/apelada arque integralmente com o encargo. </p> <p style="text-indent: 8%;"> <strong style="font-family: &quot;times new roman&quot;; times; font-size: large;">&#160; 3- Dispositivo </p> <p style="text-indent: 8%;"> Ante o exposto, com base nas razões de fato e de direito acima delineadas, <strong style="font-family: &quot;times new roman&quot;; times; font-size: large;">CONHEÇO do recurso de apelação, para, no mérito, <strong style="font-family: &quot;times new roman&quot;; times; font-size: large;">DAR-LHE PARCIAL PROVIMENTO , reformando a sentença exclusivamente para determinar que o ônus sucumbencial seja integralmente suportado pela instituição financeira ré/apelada.</p> <p style="text-indent: 8%;"> &#160; Sem honorários recursais. </p> <p style="text-indent: 8%;"> &#160; É como voto. </p> <p style="text-indent: 8%;"> &#160; Fortaleza, data da assinatura digital. </p></div></div><p style="text-align: justify; text-indent: 8%;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> </p></div>

Processo	3002749-89.2024.8.06.0151
	medium;"> Presidente/Relator </p><p> </p><p> </p> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	3001018-02.2025.8.06.0029
Número de ordem	129
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Tarifas
Polo ativo	EXPEDITA SOUZA DE SILVA
Advogado(s) - Polo ativo	ANTONIO SERGIO ALVES GONCALVES - (CE52027-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	THIAGO BARREIRA ROMCY - (CE23900-A)
Terceiros	Não informado

Processo	3001018-02.2025.8.06.0029
Acordão	<p style="text-align: center;">&#160;</p><p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCIQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUJZReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ/+jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRSrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6hMDY3bKspomopGk4 aq0AxDM4glkvEtCPFTaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBl4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNhEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtTASGWRBttau2dl/XHeucbKdTWpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeeZ02Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxBG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hLzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKYOVMmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvlgRLkiu3cCAWl2fnsFHHqjeh3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEkikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOGPE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfn1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssADLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGAD425NbR9LZQW6Gz7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjpg6TU8mS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY410kUvsnXNkIX410JEZMRUZOZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	3001018-02.2025.8.06.0029
	Indenização por Danos Morais ajuizada pela ora apelante em desfavor do Banco Bradesco S/A. II) QUESTÃO EM DISCUSSÃO Cinge-se a controvérsia a examinar se os descontos indevidos no benefício previdenciário da autora/apelante ensejaram a ocorrência de dano moral indenizável e a forma de restituição dos valores descontados. III) RAZÕES DE DECIDIR O dano moral somente ocorre quando houver lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, e o bom nome, com base no que se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal. Nessa perspectiva, “a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante.” (AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014). 4. No caso em tela, os descontos se deram em valores inexpressivos, não ultrapassando R\$ 15,95 (quinze reais e noventa e cinco centavos), conforme extrato bancário de ID. n.º 27355460. Nesse cenário, não se olvida que a situação possa eventualmente ter trazido algum aborrecimento à consumidora, contudo, não foi capaz de atingir valores fundamentais do ser humano, tratando-se de meros aborrecimentos a que se está sujeito na vida em sociedade. 5. Desse modo, entende-se que os descontos em valor que não é capaz de comprometer a subsistência não correspondem a um dano à personalidade que enseje o pagamento de indenização por danos morais, dado que não ensejaram maiores consequências negativas. Assim, agiu de forma acertada o douto magistrado de primeiro grau ao julgar improcedente o pleito de condenação da instituição requerida ao pagamento de indenização por danos morais. 6. A discussão quanto às hipóteses de aplicação da repetição em dobro prevista no art. 42, parágrafo único, do CDC, foi apaziguada e decidida pelo c. STJ no julgamento dos embargos de divergência em agravo em recurso especial. (EAREsp 676.608/RS) do qual resultou o entendimento de que a restituição em dobro do indébito seja aplicado apenas às cobranças indevidas realizadas. a partir da publicação daquele acórdão ou seja, 30/03/2021 No presente caso, com base no entendimento do Tribunal Superior, deve-se proceder com a restituição simples dos valores descontados antes de 30 de março de 2021, e, após essa data, as deduções devem ser restituídas em dobro, de modo que a sentença não merece reproche. IV) DISPOSITIVO Recurso conhecido e desprovido.

Processo	3001018-02.2025.8.06.0029
	ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade,&#160;em&#160;conhecer do recurso interposto, para, no mérito, negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital.</p><p class="MsoNormal" style="text-align: center;">
 </p><p class="MsoNormal" style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="MsoNormal" style="text-align: center;"> Presidente/Relator</p><p class="MsoNormal" style="text-align: justify;">
 </p><p class="MsoNormal" style="text-align: justify;">
 </p><p class="MsoNormal" style="text-align: center;"> RELATÓRIO </p><p class="MsoNormal" style="text-align: justify;">
 </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> Trata-se de Apelação Cível interposta por Expedita Souza de Silva com o objetivo de reformar a sentença proferida pelo MM. Juiz de Direito Daniel de Menezes Figueiredo Couto Bem, da 2ª Vara Cível da Comarca de Acopiara, que julgou parcialmente procedente a&#160;Ação Declaratória de Inexistência de Débito c/c Repetição do Indébito e Indenização por Danos Morais ajuizada pela ora apelante em desfavor do Banco Bradesco S/A. </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; A referida ação visa à declaração de inexistência de relação contratual entre as partes, à fixação de indenização a título de danos morais e à devolução em dobro de parcelas indevidamente descontadas do benefício previdenciário da autora/apelante, decorrentes de contrato de tarifas bancárias que esta alega não ter celebrado.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Ao analisar o conjunto probatório acostado aos autos, o juízo singular destacou que "[...]"&#160; no caso concreto, compulsando a prova dos autos, percebo que a instituição demandada não juntou instrumento contratual, não se desincumbindo assim do seu ônus, afastando, portanto, a tese defensiva . &#160; [...]. </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Assim, a ação foi julgada parcialmente procedente com o indeferimento da indenização a título de danos morais pleiteada, decidindo-se nos seguintes termos (sentença de ID. n.º 27355483):</p><p class="MsoNormal" style="text-align: justify; padding-left: 120px;">
 </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px; text-indent: 8%;"> Ante tudo o que foi acima exposto, julgo parcialmente procedente o pedido inicial, com resolução do mérito, nos termos do art. 487, I, do CPC, para: </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px; text-indent: 8%;"> a </p>

Processo	3001018-02.2025.8.06.0029
	background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;">declarar nulas as cobranças de serviços vinculados ao benefício previdenciário da requerente; &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; line-height: normal; text-align: justify; padding-left: 150px; text-indent: 8%;"> b) condenar a promovida na obrigação de fazer, qual seja, cessar os descontos oriundos do contrato discutido nos autos, no prazo de 30 dias contados da intimação da presente sentença, sob pena de multa diária de R\$ 100,00 reais limitadas ao valor da causa; </p><p class="MsoNormal" style="margin-bottom: 0cm; line-height: normal; text-align: justify; padding-left: 150px; text-indent: 8%;"> c) determinar que a instituição requerida proceda à restituição simples dos valores efetivamente descontados a título de serviços bancários e em dobro em relação ao(s) desconto(s) eventualmente realizado(s) no benefício da parte autora somente se ocorridos após 30/03/2021, corrigida monetariamente pelo INPC e juros de mora de 1% (um por cento) ao mês em relação a cada desconto indevido, consoante Súmulas nº 43 e 54 do STJ, até 30/08/2024, observando-se, a partir de então, o disposto na Lei 14.905/2024, de modo que a correção monetária será pelo IPCA e juros de mora pela taxa Selic, deduzido o índice de correção monetária (art. 406 do CC), a qual está limitada aos últimos 05 (cinco) anos anteriores à data do ajuizamento da presente demanda; </p><p class="MsoNormal" style="margin-bottom: 0cm; line-height: normal; text-align: justify; padding-left: 150px; text-indent: 8%;"> Por fim, condeno o réu ao pagamento de custas processuais e honorários advocatícios, fixados em 10% (dez por cento) sobre o valor da condenação, nos termos do art. 85, caput e §§ 2º e 3º, do Código de Processo Civil. </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;">
 </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px; text-indent: 8%;"> Irresignada, a Autora interpôs o recurso de apelação de ID. n.º 27355484, alegando, em síntese,&#160;a necessidade de reforma da sentença para: i) que&#160;seja fixada indenização a título de danos morais; e ii) que a devolução de todos os valores indevidamente descontados se dê em dobro. Para tanto, sustenta que " o juízo monocrático não se valeu da análise minuciosa das circunstâncias fáticas narradas, pois por meio de construção doutrinária, se tem defendido que não há como se cogitar de prova do dano moral, já que a dor física e o sofrimento emocional são indemonstráveis", e que " a obrigação de devolver os valores em dobro não depende do elemento volitivo do fornecedor que os cobrou indevidamente". </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> Sem preparo recursal, por ser beneficiária da justiça gratuita. </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Contrarrrazões apresentadas no ID. n.º 27355493.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; É o relatório.</p><p class="MsoNormal" style="text-align: justify;">
 </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;">
 </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> VOTO </p><p class="MsoNormal" style="text-align: justify;">
 </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> <u>1 – Admissibilidade</u> </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; <span style="font-family: "times new

Processo	3001018-02.2025.8.06.0029
	romano", times; font-size: large;"/>Satisfeitos os pressupostos intrínsecos ou subjetivos – cabimento, interesse e legitimidade, inexistência de sùmula impeditiva – e extrínsecos ou objetivos – tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer – de admissibilidade recursal, conheço do recurso interposto. ¶ <strong style="font-size: large; font-family: "times new roman", times;"/>2 – Mérito recursal</p> <p class="MsoNormal" style="text-align: justify; text-indent: 8%;"/> Cinge-se a controvérsia a examinar se os descontos indevidos no benefício previdenciário da autora/apelante ensejaram a ocorrência de dano moral indenizável e¶ a forma de restituição dos valores descontados. </p> <p class="MsoNormal" style="text-align: justify; text-indent: 8%;"/> ¶ <strong style="font-size: large; font-family: "times new roman", times;"/>2.1 - Do dano moral</p> <p class="MsoNormal" style="text-align: justify; text-indent: 8%;"/> <strong style="font-size: large; font-family: "times new roman", times;"/>¶ A avaliação pecuniária do dano moral ainda é objeto de discussões doutrinárias, vez que inexiste dispositivos legais que estabeleçam critérios objetivos em razão da sua própria natureza, que, por definição, independe de qualquer vinculação com o prejuízo material.¶</p> <p class="MsoNormal" style="text-align: justify; text-indent: 8%;"/> ¶ Sabe-se que o dano moral somente ocorre quando houver lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, e o bom nome, com base no que se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal.</p> <p class="MsoNormal" style="text-align: justify; text-indent: 8%;"/> ¶ Sobre o tema leciona Sérgio Cavalieri Filho:</p> <p class="MsoNormal" style="text-align: justify;"/>
 </p> <p class="MsoNormal" style="text-align: justify; padding-left: 150px;"/> (...) só deve ser reputado como dano moral a dor, vexame, sofrimento ou humilhação que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. Mero dissabor, aborrecimento, mágoa, irritação ou sensibilidade exacerbada estão fora da órbita do dano moral, porquanto, além de fazerem parte da normalidade do nosso dia a dia, no trabalho, no trânsito, entre os amigos e até no ambiente familiar, tais situações não são intensas e duradouras, aponta de romper o equilíbrio psicológico do indivíduo. Se assim não se entender, acabaremos por banalizar o dano moral, ensejando ações judiciais em busca de indenizações pelos mais triviais aborrecimentos. (CAVALIERI FILHO, Sérgio. Programa de Responsabilidade Civil. 11ª ed. São Paulo: Atlas, 2014, p.111). </p> <p class="MsoNormal" style="text-align: justify; padding-left: 150px;"/>
 </p> <p class="MsoNormal" style="text-align: justify; text-indent: 8%;"/> Nessa perspectiva, “ a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante.” (AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014). [Grifou-se]. </p> <p class="MsoNormal" style="text-align: justify; text-indent: 8%;"/> ¶ Nesse ponto, a jurisprudência do Superior Tribunal de Justiça é assente no sentido de que configura mero aborrecimento o desconto indevido de valores incapazes de comprometer a subsistência da parte. A propósito, confira-se:¶</p> <p class="MsoNormal" style="text-align: justify; text-indent: 8%;"/>
 </p> <p class="MsoNormal" style="text-align: justify; padding-left: 150px;"/> AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITOS. RESTITUIÇÃO

Processo	3001018-02.2025.8.06.0029
	DE VALORES E INDENIZAÇÃO; POR DANOS MORAIS. DESCONTO INDEVIDO. VALOR ÍNFIIMO. DANO MORAL INEXISTENTE. MERO ABORRECIMENTO. CONSONÂNCIA COM A JURISPRUDÊNCIA DESTA CORTE SUPERIOR.#160;RECURSO DESPROVIDO. #160;1. Esta Corte Superior entende que a caracterização do dano moral exige que a comprovação do dano repercuta na esfera dos direitos da personalidade. A fraude bancária, nessa perspectiva, não pode ser considerada suficiente, por si só, para a caracterização do dano moral.(AgInt nos EDcl no AREsp 1.669.683/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 23/11/2020, DJe de 30/11/2020).&#160; 2. O Tribunal de origem concluiu que o desconto indevido de R\$ 70,00 (setenta reais) no benefício previdenciário da agravante não acarretou danos morais, considerando que foi determinada a restituição do valor, que a instituição financeira também foi vítima de fraude e que não houve inscrição do nome da agravante em cadastros de proteção ao crédito, de modo que ficou configurado mero aborrecimento.#160; 3. "A jurisprudência desta Corte entende que, quando a situação experimentada não tem o condão de expor a parte a dor, vexame, sofrimento ou constrangimento perante terceiros, não há falar em dano moral, uma vez que se trata de mero aborrecimento ou dissabor, mormente quando a falha na prestação de serviços, embora tenha acarretado aborrecimentos, não gerou maiores danos ao recorrente, como ocorreu na presente hipótese".#160;(STJ#160;- AgInt no AREsp 1.354.773/MS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 02/04/2019, DJe de 24/04/2019). 4. Agravo interno desprovido. (AgInt nos EDcl no REsp n. 1.948.000/SP, relator Ministro Raul Araújo, Quarta Turma, julgado em 23/5/2022, DJe de&#160; 23/6/2022). [Grifou-se]. </p><p class="MsoNormal" style="text-align: justify;">
 </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> No mesmo sentido tem decidido este egrégio Tribunal de Justiça, inclusive esta colenda Primeira Câmara de Direito Privado, em casos análogos aos dos autos </p><p class="MsoNormal" style="text-align: justify;">
 </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA/NULIDADE DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DE INDÉBITO E PEDIDO DE REPARAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. INSTITUIÇÃO FINANCEIRA NÃO COMPROVOU A REGULARIDADE DA CONTRATAÇÃO.&#160; DANOS MORAIS NÃO CONFIGURADOS. DESCONTOS EM VALORES IRRISÓRIOS.#160;RESTITUIÇÃO DO INDÉBITO, NA FORMA SIMPLES E EM DOBRO (EAREsp 676.608/RS). SENTENÇA REFORMADA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para lhe dar parcial provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital. (Apelação Cível&#160; TJ-CE#160;0013083-17.2017.8.06.0173, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO,&#160; 1ª Câmara Direito Privado, data do julgamento:&#160; 14/02/2024, data da publicação:&#160;#160; 14/02/2024). [Grifou-se]. </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;">
 </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> CÍVEL. PROCESSUAL CIVIL. APELAÇÃO CÍVEL. RMC RESERVA DE MARGEM CONSIGNÁVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C REPETIÇÃO DE INDÉBITO E PEDIDO DE REPARAÇÃO POR DANOS MORAIS E TUTELA DE URGÊNCIA ANTECIPADA COM PEDIDO LIMINAR. SENTENÇA PROCEDENTE. IRRESIGNAÇÃO DO BANCO RÉU. AUSÊNCIA DE PROVA DA CONTRATAÇÃO. ILICITUDE DOS DESCONTOS NO BENEFÍCIO DA AUTORA. RESTITUIÇÃO SIMPLES MANTIDA EM ATENÇÃO AO ART. 42 DO CDC E A MODULAÇÃO DE EFEITOS DO EARESP 676.608/RS.&#160; DANOS MORAIS. NÃO CONFIGURADOS. VALORES DOS DESCONTOS IRRISÓRIOS. MERO ABORRECIMENTO.#160;APELO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PARCIAL PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. (Apelação Cível&#160; TJ-CE#160;0295598-83.2022.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA

Processo	3001018-02.2025.8.06.0029
	LIBERATO,&#160; 1ª Câmara Direito Privado, data do julgamento: 06/09/2023, data da publicação:&#160; 06/09/2023). [Grifou-se]. </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;">
 </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> APELAÇÃO CÍVEL. CONTRATOS DE EMPRÉSTIMO CONSIGNADO. ALEGAÇÃO DE CONEXÃO. PROCESSOS FUNDADOS EM CONTRATOS DISTINTOS. DESNECESSIDADE DE PRÉVIO REQUERIMENTO ADMINISTRATIVO. PRELIMINARES REJEITADAS. INEXISTÊNCIA DE DOCUMENTOS APTOS A COMPROVAR A REGULARIDADE DOS NEGÓCIOS JURÍDICOS. AUSÊNCIA DE COMPROVANTE DE REPASSE DOS VALORES SUPOSTAMENTE PACTUADOS. CONTRATAÇÕES ILÍCITAS. DANOS PATRIMONIAIS CONFIGURADOS.&#160; DANOS MORAIS. PARCELAS CORRESPONDENTES AO VALOR DE R\$ 66,15. QUANTIA IRRISÓRIA SE COMPARADA AO VALOR DO BENEFÍCIO PREVIDENCIÁRIO DA PARTE PROMOVENTE. DESCONTOS INEXPRESSIVOS. MERO ABORRECIMENTO.&#160;RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DARLHE PARCIAL PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. (Apelação Cível&#160; TJ-CE&#160;0050276-84.2020.8.06.0036, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO,&#160; 1ª Câmara Direito Privado, data do julgamento: 30/08/2023, data da publicação:&#160; 31/08/2023). [Grifou-se]. </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> <br style="mso-special-character: line-break;" /> <br style="mso-special-character: line-break;" /> </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> Apelação cível. Descontos indevidos em benefício previdenciário. Contratação não comprovada. Pleito de majoração de danos morais e Restituição dos descontos na forma dobrada. Devido restituição em dobro apenas dos descontos ocorridos após 30/03/2021. EAREsp 676608/RS.&#160; Danos Morais indevidos.&#160;Vedação a Reformatio in Pejus. Recurso Parcialmente Provido. I. Caso em exame 1. Apelação Cível interposta em Ação de Cancelamento de Descontos Indevidos c/c Reparação por Danos Materiais e Morais, ajuizada em face de instituição bancária, pleiteando a reforma da sentença para majorar os danos morais fixados na sentença e a restituição dos valores na forma dobrada. II. Questão em discussão 2. Há duas questões em discussão: (i) verificar se é cabível a restituição dos valores descontados de forma dobrada; (ii) examinar a possibilidade de majoração da indenização fixada a título de danos morais. III. Razões de decidir 3. O banco apelado não comprovou a regularidade da contratação, descumprindo o ônus da prova previsto no art. 373, II, do CPC, o que justifica a nulidade dos descontos efetuados e, uma vez caracterizado a falha na prestação do serviço, impõe-se o dever de reparar civilmente o consumidor. 4. A restituição dos valores descontados de forma dobrada encontra amparo no art. 42, parágrafo único, do Código de Defesa do Consumidor (CDC), mas conforme entendimento do STJ firmado em recurso repetitivo (EAREsp 676608/RS), os efeitos foram modulados para alcançar apenas descontos realizados após 30/03/2021. Assim, os valores descontados após essa data devem ser restituídos em dobro, corrigidos monetariamente pelo INPC e acrescidos de juros moratórios de 1% ao mês desde a citação.&#160; 5. No tocante aos danos morais, a jurisprudência do STJ entende que descontos indevidos em benefício previdenciário, quando de valores ínfimos e sem repercussão significativa na subsistência do consumidor, caracterizam mero aborrecimento, insuficiente para configurar dano extrapatrimonial. Precedentes.&#160;6.&#160; No caso concreto, os valores descontados variaram entre R\$ 0,04 e R\$ 34,13, não comprometendo a subsistência do apelante nem evidenciando ofensa à sua dignidade.&#160;A condenação por danos morais foi mantida, mas o quantum indenizatório de R\$ 1.000,00 (um mil reais) não comporta majoração, em respeito ao princípio da proibição da reformatio in pejus. IV. Dispositivo 7. Recurso parcialmente provido. Dispositivos relevantes citados: CF/1988, arts. 1º, III, e 5º, V e X; CDC, art. 42, parágrafo único; CPC, art. 373, II; STJ, Súmulas nº 43 e nº 54 . Jurisprudência relevante citada: STJ, EAREsp 676608/RS, Rel. Min. Paulo de Tarso Sanseverino, Segunda Seção, DJe 30/03/2021; STJ, AgRg no REsp 1.269.246/RS, Rel. Min. Luis Felipe Salomão, Quarta Turma, DJe 27/05/2014. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para, no mérito, parcial provimento nos termos do voto do Relator. Fortaleza, data constante no sistema.&#160;(Apelação Cível&#160; TJ-

Processo	3001018-02.2025.8.06.0029
	CE&#160;0202582-54.2023.8.06.0029, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA,&#160; 1ª Câmara Direito Privado, data do julgamento:&#160; 22/01/2025, data da publicação:&#160;&#160;22/01/2025. [Grifou-se]. </p><p class="MsoNormal" style="text-align: justify;">
 </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> No caso em tela, os descontos se deram em valores inexpressivos, não ultrapassando R\$ 15,95 (quinze reais e noventa e cinco centavos),&#160;conforme extrato bancário de ID. n.º 27355460.&#160;Nesse cenário, não se olvida que a situação possa eventualmente ter trazido algum aborrecimento à consumidora, contudo, não foi capaz de atingir valores fundamentais do ser humano, tratando-se de meros aborrecimentos a que se está sujeito na vida em sociedade.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Vale lembrar, por oportuno, que a parte autora será devidamente restituída dos valores indevidamente descontados, os quais serão corrigidos monetariamente e acrescidos de juros de mora.&#160;</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Desse modo, entende-se que os descontos em valor que não é capaz de comprometer a subsistência não correspondem a um dano à personalidade que enseje o pagamento de indenização por danos morais, dado que não ensejaram maiores consequências negativas.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Assim, agiu de forma acertada o douto magistrado de primeiro grau&#160;ao julgar improcedente o pleito de condenação da instituição requerida ao pagamento de indenização por danos morais.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; <strong style="font-size: large; font-family: &quot;times new roman&quot;; times;">2.2 - Da repetição do indébito</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> <strong style="font-size: large; font-family: &quot;times new roman&quot;; times;">&#160; A esse respeito, é oportuno destacar que o entendimento do Superior Tribunal de Justiça é que “a restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que cobrou valor indevido, revelando-se cabível quando a cobrança indevida consubstanciar conduta contrária à boa-fé objetiva.” (STJ. Corte Especial. EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020).</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> A discussão quanto às hipóteses de aplicação da repetição em dobro prevista no art. 42, parágrafo único, do CDC, foi apaziguada e decidida pelo c. STJ no julgamento dos embargos de divergência em agravo em recurso especial&#160; (EAREsp 676.608/RS), do qual resultou o entendimento de que a restituição em dobro do indébito seja aplicado apenas às cobranças indevidas realizadas&#160; a partir da publicação daquele acórdão, ou seja,&#160; 30/03/2021. Confira-se: </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;">
 </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> EMBARGOS DE DIVERGÊNCIA EM AGRAVO EM RECURSO ESPECIAL. CIVIL. PROCESSUAL CIVIL. TELEFONIA FIXA. COBRANÇA INDEVIDA. AÇÃO DE REPETIÇÃO DE INDÉBITO DE TARIFAS. 1) RESTITUIÇÃO EM DOBRO DO INDÉBITO (PARÁGRAFO ÚNICO DO ARTIGO 42 DO CDC). DESINFLUÊNCIA DA NATUREZA DO ELEMENTO VOLITIVO DO FORNECEDOR QUE REALIZOU A COBRANÇA INDEVIDA. DOBRO CABÍVEL QUANDO A REFERIDA COBRANÇA CONSUBSTANCIA CONDUTA CONTRÁRIA À BOA-FÉ OBJETIVA. 2) APLICAÇÃO DO PRAZO PRESCRICIONAL DECENAL DO CÓDIGO CIVIL (ART. 205 DO CÓDIGO CIVIL). APLICAÇÃO ANALÓGICA DA SÚMULA 412/STJ. 3) MODULAÇÃO PARCIAL DOS EFEITOS DA DECISÃO. CONHECIMENTO E PROVIMENTO INTEGRAL DO RECURSO. (...)&#160;Fixação das seguintes teses.&#160; Primeira tese&#160;A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que

Processo	0269525-06.2024.8.06.0001
Número de ordem	130
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	PASEP
Polo ativo	MARIA AMELIA DA SILVA LIMA
Advogado(s) - Polo ativo	GILBERTO SIEBRA MONTEIRO - (CE6004-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	Não informado

Processo	0269525-06.2024.8.06.0001
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	I – Da legitimidade passiva e da competência da Justiça Estadual Relativamente à alegada ilegitimidade passiva, cumpre frisar que o c. STJ pacificou, no Tema 1150, com trânsito em julgado em 17 de outubro de 2023, as seguintes teses: i) o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa; ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil; iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. [Grifou-se]. Portanto, irrefutável a legitimidade do Banco do Brasil S/A para compor o polo passivo da presente lide. Ademais, quanto à alegada incompetência absoluta da Justiça Estadual, importa destacar que o autor pleiteia o pagamento das diferenças do PASEP, acrescido de juros e correção monetária. Como se infere do caso, a demanda não versa sobre índices equivocados de responsabilidade do Conselho Gestor do Fundo, mas sobre responsabilidade decorrente da má gestão do banco que, segundo a demandante, não aplicou correção monetária e juros devidos na sua conta do Pasep. Neste contexto, segundo decidido pelo STJ (Tema 1150), uma vez que o Banco do Brasil possui legitimidade ad causam para figurar no polo passivo de demanda, não existem dúvidas acerca da competência da Justiça Comum Estadual para apreciar a controvérsia. Como se infere do caso, a demanda não versa sobre índices equivocados de responsabilidade do Conselho Gestor do Fundo, mas sobre a má gestão imputada ao Banco, decorrente de saques indevidos ou de não aplicação dos índices de juros e de correção monetária na conta do PASEP. Assim, conclui-se que a legitimidade passiva é do Banco do Brasil S.A., o que define a competência da Justiça Comum Estadual. Precedentes do STJ. 3. Agravo Interno não provido. (AgInt no REsp n. 1.907.473/DF, relator Ministro Herman Benjamin, Segunda

Processo	0269525-06.2024.8.06.0001
	Turma, julgado em 26/4/2021, DJe de 3/8/2021.) [Grifou-se]
 </p> AGRAVO DE INSTRUMENTO - AÇÃO DE COBRANÇA - CONTA VINCULADA AO PASEP - ATUALIZAÇÃO MONETÁRIA DOS VALORES DEPOSITADOS - COMPETÊNCIA DA JUSTIÇA ESTADUAL - LEGITIMIDADE PASSIVA DO BANCO DO BRASIL S.A. - RECURSO AO QUAL SE DÁ PROVIMENTO. - Conforme decidido pelo STJ em sede recurso repetitivo (Tema 1.150), o Banco do Brasil S/A detém legitimidade passiva para figurar em demanda que versa sobre responsabilidade da referida instituição financeira decorrente da má gestão, em razão de saques indevidos ou de não aplicação dos índices de juros e de correção monetária na conta do Pasep. - Considerando que o caso versa sobre suposta falha na prestação de serviços por parte da instituição bancária quanto à incorreta atualização de valores de contas vinculadas ao PASEP, tem-se que a Justiça Comum Estadual é a competente para conhecer e julgar a presente ação. - Recurso ao qual se dá provimento. (TJMG- Agravo de Instrumento-Cv 1.0000.21.115476-0/001, Relator(a): Des.(a) Lílian Maciel, 20ª CÂMARA CÍVEL, julgamento em 17/04/2024, publicação da súmula em 18/04/2024) [Grifou-se]
 </p> REVISIONAL C.C DANOS MATERIAIS E MORAIS. Autor que alega desfalques em conta vinculada a PASEP. Prescrição. Falta de interesse recursal e razões dissociadas da decisão recorrida. Não conhecimento. Ilegitimidade passiva e incompetência do Juízo. Inocorrência. Tese fixada no Tema 1150, do STJ que reconhece a legitimidade do Banco do Brasil para figurar no polo passivo ações que discutem eventual falha na prestação do serviço quanto a conta vinculada ao PASEP, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa. Reconhecida a legitimidade e sendo o banco sociedade de economia mista, patente a competência da Justiça Estadual. Precedentes. Incidência do art. 252, do Regimento Interno deste E. Tribunal de Justiça. Decisão mantida. RECURSO DESPROVIDO, na parte conhecida. (TJSP – Agravo de Instrumento 221476-18.2024.8.26.0000, Rel. Des. Anna Paula Dias da Costa, 38ª Câmara de Direito Privado, publicação 22.07.2024) [Grifou-se]
 </p> AGRAVO DE INSTRUMENTO. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS. CORREÇÃO DE SALDO EXISTENTE EM CONTA VINCULADA AO PASEP. JULGAMENTO DO TEMA 1.150 STJ. LEGITIMIDADE PASSIVA DO BANCO DO BRASIL. COMPETÊNCIA DA JUSTIÇA ESTADUAL. PRECEDENTES. INVERSÃO DO ÔNUS DA PROVA EM FAVOR DO CONSUMIDOR. ADMISSÃO. SÚMULAS 297 e 479 do STJ. RECURSO CONHECIDO E PROVIDO. DECISÃO DO JUÍZO A QUO REFORMADA. (TJCE – Agravo de Instrumento 0623615-93.2021.8.06.0000, Rel. Des. EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, publicação 14.08.2024) [Grifou-se]
 </p> AGRAVO INTERNO EM APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. PROGRAMA DE FORMAÇÃO DO PATRIMÔNIO DO SERVIDOR (PASEP). MÁ GESTÃO DOS VALORES DEPOSITADOS. JULGAMENTO DO TEMA 1.150 STJ. LEGITIMIDADE PASSIVA DO BANCO DO BRASIL. COMPETÊNCIA DA JUSTIÇA ESTADUAL. PRECEDENTES. RECURSO CONHECIDO E NÃO PROVIDO. DECISÃO AGRAVADA CONFIRMADA. 1. O caso em exame trata da responsabilidade decorrente de má gestão do Banco do Brasil S/A, derivada de desfalques na conta do Programa de Formação do Patrimônio do Servidor (PASEP). 2. Sobre o tema, o Superior Tribunal de Justiça (STJ) firmou o Tema Repetitivo nº 1.150, na qual restou decidido que i) o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto à conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa; ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil; e iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. 3. Recurso conhecido e

Processo	0269525-06.2024.8.06.0001
	style="font-size: medium;">" iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP. [Grifou-se].</p><p align="justify">
 </p><p style="text-align: justify; text-indent: 8%;"> ">A fluência do prazo prescricional de dez anos para a parte exercer a pretensão condenatória começa a partir da data em que se tem conhecimento da lesão. Sendo assim, de acordo com o princípio da actio nata, o direito de pleitear a indenização surge quando a lesão e suas consequências são efetivamente constatadas. </p><p style="text-align: justify; text-indent: 8%;"> ">
 </p><p style="text-align: justify; text-indent: 8%;"> ">No caso em apreço, observa-se que o saque dos valores vinculados à conta individual do PASEP ocorreu em dezembro de 1991, ocasião em que o d. juízo de primeira instância entendeu ter havido a ciência quanto ao montante existente na referida conta, dando ensejo, a partir de então, à fluência do prazo prescricional para eventual questionamento de irregularidades ou desvios. Contudo, o precedente vinculante invocado consolidou o entendimento de que o termo inicial do prazo prescricional somente se estabelece no momento em que o titular, de forma inequívoca e comprovada, tem ciência dos lançamentos indevidos ou das subtrações irregulares efetuadas na respectiva conta individual do PASEP.</p><p style="text-align: justify; text-indent: 8%;"> ">
 </p><p style="text-align: justify; text-indent: 8%;"> ">Assim, o entendimento mais escorreito é no sentido de que o termo inicial da contagem do prazo prescricional da pretensão autoral se dá quando do recebimento do extrato ou das microfilmagens da sua conta. Em exame ao caderno processual, tem-se que a autora recebeu os extratos em 10 de novembro de 2023 (ID 27345905), ajuizando a ação em 19 de setembro de 2024, de modo que não há que se falar em prescrição. Em casos análogos, para fins persuasivos, colaciono precedentes deste egrégio Tribunal de Justiça: </p><p align="justify">
 </p><p style="text-align: justify; padding-left: 240px;"> ">DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER C/C INDENIZATÓRIA POR DANOS MATERIAIS E MORAIS. PROGRAMA DE FORMAÇÃO DO PATRIMÔNIO DO SERVIDOR PÚBLICO - PASEP. PRESCRIÇÃO. PRAZO DECENAL. O STJ PACIFICOU, AINDA, O ENTENDIMENTO DE QUE "A PRETENSÃO AO RESSARCIMENTO DOS DANOS HAVIDOS EM RAZÃO DOS DESFALQUES EM CONTA INDIVIDUAL VINCULADA AO PASEP SE SUBMETE AO PRAZO PRESCRICIONAL DECENAL PREVISTO PELO ARTIGO 205 DO CÓDIGO CIVIL", ALÉM DE QUE "O TERMO INICIAL PARA A CONTAGEM DO PRAZO PRESCRICIONAL É O DIA EM QUE O TITULAR, COMPROVADAMENTE, TOMA CIÊNCIA DOS DESFALQUES REALIZADOS NA CONTA INDIVIDUAL VINCULADA AO PASEP". NO CASO CONCRETO, A RECORRENTE OBTVE ACESSO AO EXTRATO DA SUA CONTA PASEP AOS 23.05.2024 (FLS. 25/27), E AJUIZOU A PRESENTE AÇÃO EM 20.06.2024, PORTANTO, NÃO HÁ QUE SE FALAR EM PRESCRIÇÃO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. </p><p style="text-align: justify; padding-left: 240px;"> ">#160; ">(TJCE. Apelação Cível&#160;- 0244421-12.2024.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160;27/11/2024, data da publicação:&#160;28/11/2024).</p><p style="text-align: justify; padding-left: 240px;"> ">
 </p><p style="text-align: justify; padding-left: 240px;"> ">APELAÇÃO EM AÇÃO DE INDENIZAÇÃO QUE EXTINGUIU O FEITO COM RESOLUÇÃO DO MÉRITO, ANTE O RECONHECIMENTO DA PRESCRIÇÃO. PASEP.&#160;PRESCRIÇÃO DECENAL. PRINCÍPIO DA ACTIO NATA. TEORIA DA CIÊNCIA INEQUÍVOCA. PRESCRIÇÃO NÃO CONFIGURADA. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. I- CASO EM EXAME 1. Trata-se de Apelação Cível interposta, adversando sentença proferida nos autos da Ação de Indenização por Danos Morais e Materiais em epígrafe, que julgou extinta a ação, pelo reconhecimento da prescrição, com apreciação do mérito, II ¿ QUESTÃO EM DISCUSSÃO 2. Cinge-se a controvérsia recursal em aferir se a pretensão

Processo	0269525-06.2024.8.06.0001
	deduzida na exordial encontra-se atingida pela prescrição. III ¿ RAZÕES DE DECIDIR 3. O Tema nº 1.150 /STJ dispôs sobre o prazo prescricional para os casos em análise, o qual restou consolidado o prazo decenal, na forma do artigo 205 do Código Civil, assim como a aplicação da teoria da actio nata. Com isso, o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP. 4. Isto posto, entendo que a prescrição reconhecida pelo Juízo de primeiro grau há de ser afastada, uma vez que restou suficientemente explicitado, diante da descrição fática narrada na petição inicial, que a parte promovente somente teve ciência acerca dos desfalques em seus rendimentos na data de emissão dos extratos microfilmados de sua conta PASEP em 2019. IV ¿ DISPOSITIVO 5. Recurso conhecido e provido. Sentença anulada. Retorno dos autos à origem, para regular seguimento. (TJCE. Apelação Cível nº 0193590-33.2019.8.06.0001, Rel. Desembargador(a) CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento: 27/11/2024, data da publicação: 28/11/2024). APELAÇÃO. AÇÃO DE INDENIZAÇÃO. PASEP. QUESTÕES PRELIMINARES ¿ ILEGITIMIDADE PASSIVA, INCOMPETÊNCIA DA JUSTIÇA COMUM E PRESCRIÇÃO. TEMA REPETITIVO 1150 - LEGITIMIDADE PASSIVA DO BANCO DO BRASIL S/A - COMPETÊNCIA DA JUSTIÇA COMUM ESTADUAL - PRESCRIÇÃO ¿ PRAZO DECENAL E CONTAGEM A PARTIR DA CIÊNCIA DOS DESFALQUES. CERCEAMENTO DE DEFESA. ERROR IN PROCEDENDO. NECESSIDADE DE PRODUÇÃO DE PROVA PERICIAL. RECURSO PROVIDO. SENTENÇA ANULADA. 1. Consiste a controvérsia recursal na análise das questões preliminares concernentes à ilegitimidade passiva do banco requerido, à incompetência absoluta da Justiça Comum para o processamento da presente demanda e à ocorrência de prescrição quinquenal, bem assim, na alegação de que houve error in procedendo em razão de não ter sido oportunizada a realização de prova pericial para verificação quanto à aplicação correta dos índices de atualização monetária e de rentabilização dos valores depositados. 2. No julgamento acerca do Tema Repetitivo 1150, o Superior Tribunal de Justiça estabeleceu que o Banco do Brasil é parte legítima para figurar no polo passivo em ações que discutem a gestão dos valores depositados no PASEP, seja no que tange à correção de valores depositados, seja no tocante aos saques efetuados. 3. Não resta dúvida de que a competência para conhecer e julgar a presente demanda é da Justiça Comum Estadual, máxime em razão do enunciado da Súmula 42 do STJ. 4. Ainda no julgamento do Tema Repetitivo 1150, o Superior Tribunal de Justiça esclareceu que a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil e que o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP. 5. No caso em concreto, a parte requerente tomou ciência do suposto desfalque antes do decurso do prazo decenal, pois se deparou com o extrato de sua conta PASEP na data de 03/07/2017, tendo sido a presente ação distribuída na data de 23/09/2019, não havendo que se falar, portanto, na ocorrência de prescrição. 6. Restaram constatados o cerceamento de defesa e o error in procedendo no caso em tela, visto que o juízo de origem não levou em consideração o pedido para realização de prova pericial contábil a fim de apurar eventual inconsistência na atualização dos valores depositados na conta PASEP de titularidade da parte requerente, em contrariedade à regra processual contida no art. 370 do CPC. 7. É forçoso reconhecer quanto à impertinência do julgamento antecipado da lide, haja vista a necessidade de produção de prova pericial, impondo-se a desconstituição da sentença e o retorno à origem para que a demanda prossiga com a instauração da fase instrutória. 8. Recurso conhecido e provido. Sentença anulada. (TJCE. Apelação Cível nº 0173335-54.2019.8.06.0001, Rel. Desembargador(a) PAULO DE TARSO PIRES NOGUEIRA, 3ª Câmara Direito Privado, data do julgamento: 13/11/2024, data da publicação: 13/11/2024). APELAÇÃO. AÇÃO ORDINÁRIA DE INDENIZAÇÃO RELACIONADA AOS SALDOS, ACRÉSCIMOS ILEGAIS, SAQUES E À DIFERENÇA DE VALORES NA CONTA VINCULADA DO PASEP DO AUTOR/RÉCORRENTE. SENTENÇA QUE RECONHECEU A PRESCRIÇÃO E EXTINGUIU O FEITO COM ANÁLISE DO MÉRITO. QUESTIONAMENTO SOLUCIONADO NO JULGAMENTO DO TEMA REPETITIVO Nº 1.150 QUE UNIFORMIZOU A INTERPRETAÇÃO DA LEGISLAÇÃO INFRACONSTITUCIONAL.

Processo	0269525-06.2024.8.06.0001
	PRAZO PRESCRICIONAL QUE NÃO FULMINA O DIREITO DE AÇÃO. PRINCÍPIO DA ACTIO NATA. LAPSO QUE FLUI A PARTIR DO MOMENTO EM QUE A PARTE TOMA CONHECIMENTO DA OCORRÊNCIA DE IRREGULARIDADE NA SUA CONTA VINCULADA DO PASEP. SENTENÇA ANULADA. REMESSA DO FEITO PARA A VARA DE ORIGEM PARA O DEVIDO PROCESSAMENTO E JULGAMENTO DO LITÍGIO. - A petição inicial remete à apreciação do Judiciário litígio que envolve a responsabilidade do Banco do Brasil S/A quanto à má gestão dos valores depositados pela União do programa PIS/PASEP. - O Tribunal da Cidadania uniformizou a interpretação da legislação infraconstitucional no julgamento do tema repetitivo nº 1.150 para reconhecer, dentre outras teses não devolvidas na via apelatória, que "ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil"; e que "iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP. - Em relação à prescrição, a jurisprudência entende ser aplicável o princípio da actio nata, iniciando-se o prazo prescricional a partir do momento em que a parte tem conhecimento da violação do seu direito e, aplicando a tese repetitiva nº 1.150 firmada pelo Tribunal da Cidadania, tem-se que: "A pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil ou ao prazo quinquenal estipulado pelo artigo 1º do Decreto nº 20.910/32" e que "O termo inicial para a contagem do prazo prescricional é o dia em que o titular toma ciência dos desfalques ou a data do último depósito efetuado na conta individual vinculada ao PASEP". Desta forma, o lapso da prescrição teve início quando o autor teve acesso à microfilmagem dos extratos da sua conta vinculada ao PASEP, requisitada em 09/02/2024 e com previsão de entrega no dia 08/06/2024, não fulminando o direito de ação exercitado em 27/06/2024. RECURSO CONHECIDO E PROVIDO EM PARTE. (TJCE. Apelação Cível- 0246192-25.2024.8.06.0001, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 2ª Câmara Direito Privado, data do julgamento: 02/10/2024, data da publicação: 02/10/2024). APELAÇÃO CÍVEL � AÇÃO INDENIZAT�RIA � PASEP � ALEGADA AUS�NCIA DE CORRET� APLICA��O DE CORRE��O MONET�RIA NA CONTA VINCULADA AO PASEP DA PARTE AUTORA � JULGAMENTO DE IMPROCED�NCIA NA ORIGEM � PRETENS�O DE REFORMA � PRELIMINARES CONTRARRECURSAIS � ILEGITIMIDADE PASSIVA DO BANCO DO BRASIL S/A � AFASTADA � TEMA REPETITIVO 1150 DO STJ, QUE DECIDIU PELA LEGITIMIDADE DO ENTE BANC�RIO � COMPET�NCIA DA JUSTI�A COMUM � RECONHECIDA � PRESCRI��O � AFASTADA � RAZ��ES RECURSAIS � PRELIMINAR DE CERCEAMENTO DE DEFESA � NECESSIDADE DE PRODU��O DE PROVA PERICIAL � ACOLHIMENTO � SENTEN�A ANULADA PARA A REALIZA��O DA PROVA � RECURSO CONHECIDO E PROVIDO � SENTEN�A DESCONSTITUIDA. 1. O presente recurso visa � reforma da senten�a que julgou improcedente o pedido autoral nos autos da A��o de Indeniza��o por Danos Morais e Materiais, decorrentes de suposta m� gest�o, por parte do BANCO DO BRASIL, de valores depositados na conta PASEP da parte autora. 2. Preliminares contrarrecursais � Ilegitimidade passiva do Banco do Brasil S/A e incompet�ncia absoluta da Justi�a Comum � No recente julgamento do Repetitivo 1150, o Superior Tribunal de Justi�a estabeleceu que o Banco do Brasil � parte leg�tima para ser inclu�do como r�u em a��es que discutem a gest�o dos valores depositados no PASEP, seja no que tange � corre��o de valores depositados, como a saques efetuados. (REsp n. 1.895.936/TO, relator Ministro Herman Benjamin, Primeira Se��o, julgado em 13/9/2023, DJe de 21/9/2023). � vista disso, e em aten��o ao enunciado da S�mula 42 do STJ, n�o h� d�vidas de que a compet�ncia para conhecer e julgar a a��o em li�a � a da Justi�a Comum. Preliminares rejeitadas. 3. Prejudicial de m�rito � Prescri��o � Sobre o tema da prescri��o, o Superior Tribunal de Justi�a, no julgamento do Recurso Especial Repetitivo n.� 1.951.931/DF (Tema n.� 1.150), de 13/09/2023, firmou as seguintes teses vinculantes: �ii) a pretens�o ao ressarcimento dos danos havidos em raz�o dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo art. 205 do C�digo Civil; �iii) o termo inicial para a contagem do prazo prescricional � o dia em que o titular, comprovadamente, toma ci�ncia dos desfalques realizados na conta individual vinculada ao PASEP. � 4. Portanto, segundo a tese fixada, � decenal o prazo prescricional para se questionar, em ju�zo, eventuais danos causados, em raz�o de desfalques na conta individual vinculada ao PASEP. 5. Por seu turno, o termo a quo do lapso prescricional, segundo a teoria da actio nata, � a data em que o titular da conta toma ci�ncia, comprovadamente, dos desfalques, que, em casos tais, acontece quando tem acesso aos extratos da conta PASEP, pois s�o ent�o passa a conhecer o fato e a extens�o de suas consequ�ncias. Precedentes da C�mara. No caso concreto, o demandante obteve acesso ao extrato da sua conta PASEP aos 25/10/2023, e ajuizou a presente a��o em

Processo	0269525-06.2024.8.06.0001
	26/03/2024, portanto, não há que se falar em prescrição. 6. Razões recursais ¿ Preliminar de cerceamento de defesa ¿ O apelante pugna pela nulidade da sentença, por cerceamento de defesa, defendendo a necessidade de perícia contábil a fim de apurar eventual erro na atualização dos valores depositados na sua conta PASEP. 7. No caso vertente, houve o julgamento antecipado da lide, concluindo-se por sua improcedência, tendo como fundamento a não satisfação do ônus probatório da parte apelante. 8. In casu, observa-se da prova coligida aos autos que, diante da natureza complexa do caso, que envolve mudanças de moeda e incidência de diversos índices de correção monetária, necessária a realização de perícia contábil. 9. Verifica-se, portanto, que é nítido o cerceamento de defesa e error in procedendo no caso concreto, uma vez que o feito de origem foi sentenciado sem que fosse realizada a produção de provas necessárias ao julgamento do mérito. 10. Nessa perspectiva, acolhe-se a preliminar de cerceamento de defesa, diante do não cabimento do julgamento antecipado da lide, haja vista a necessidade de produção de prova pericial no caso em apreço, impondo-se a desconstituição da sentença e o retorno à origem para que a demanda prossiga com a instauração da fase instrutória, ficando as demais questões recursais prejudicadas. 11. Recurso conhecido e provido. Sentença desconstituída. (TJCE. Apelação Cível - 0200701-83.2024.8.06.0101, Rel. Desembargador(a) MARIA DE FATIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 02/10/2024, data da publicação: 02/10/2024).
 APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA E INDENIZAÇÃO POR DANOS MORAIS. PROGRAMA DE FORMAÇÃO DO PATRIMÔNIO DO SERVIDOR (PASEP). SENTENÇA DECLARATÓRIA DE PRESCRIÇÃO DA PRETENSÃO AUTURAL. IRRESIGNAÇÃO DA PARTE AUTORA. ANÁLISE SOBRE O TERMO INICIAL DA PRESCRIÇÃO. APLICAÇÃO DO TEMA REPETITIVO Nº 1.150 DO STJ. RECURSO CONHECIDO É PARCIALMENTE PROVIDO. SENTENÇA ANULADA. RETORNO DOS AUTOS AO JUÍZO DE ORIGEM. 1. No caso, o presente recurso limita-se a impugnar a improcedência do pedido exordial, ante o reconhecimento da prescrição da pretensão autoral. 2. Sobre o tema, o Superior Tribunal de Justiça (STJ) firmou o Tema Repetitivo nº 1.150, na qual restou decidido que ¿ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil; e iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep.¿ 3. Dessa maneira, o lapso da prescrição teve início quando o autor teve acesso à microfilmagem dos extratos da sua conta vinculada ao PASEP, ocorrido em 2023, não fulminando o direito de ação exercitado no início deste ano de 2024. 4. Outrossim, ainda que o art. 1.013, § 4º, do CPC, permita o julgamento da demanda neste 2º grau, como pretende a parte autora, não vislumbro presentes os elementos necessários ao julgamento da causa no estado em que se encontra, haja vista a complexidade da demanda, com necessária dilação probatória e atenção às orientações contidas em Nota Técnica nº 07/2024, do Órgão da Vice-Presidência do Tribunal de Justiça do Estado do Ceará, emitida com a finalidade de conduzir os procedimentos a serem adotados nas ações indenizatórias vinculadas ao Tema 1150. 5. Recurso conhecido e parcialmente provido. Sentença anulada, com retorno dos autos ao juízo de origem para o devido processamento e julgamento. (TJCE. Apelação Cível - 0202505-95.2024.8.06.0001, Rel. Desembargador(a) MARCOS WILLIAM LEITE DE OLIVEIRA, 3ª Câmara Direito Privado, data do julgamento: 11/09/2024, data da publicação: 11/09/2024).
 A sentença merece, portanto, ser cassada, em vista da falta de decurso do prazo prescricional.
 Por fim, é necessário ressaltar que não é o caso de aplicar aqui a teoria da causa madura, uma vez haver necessidade de dilação probatória.
 Diante do exposto, conheço do recurso para DAR-LHE

1326

Processo	3042298-71.2024.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSY0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNohzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmlV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJFBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJFwCwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmJFYQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUu2ZXXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZMs6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qikym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfn1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGd425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvXNkIX410JEZMRU0ZDIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	roman&quot;, times;"/>PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/>
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 </p><p> PROCESSO: 3042298-71.2024.8.06.0001 </p><p style="text-align: justify;"/> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"/> APELANTE: JOSÉ CARLOS ALVES DE SOUZA </p><p style="text-align: justify;"/> APELADO: BANCO DO BRASIL S/A </p><p style="text-align: justify;"/> EMENTA:&#160;DIREITO CIVIL E PROCESSUAL CIVIL. RECURSO DE APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAL E MORAL. PRESCRIÇÃO INOCORRENTE. PRINCÍPIO DA ACTIO NATA. PRAZO QUE FLUI A PARTIR DO MOMENTO EM QUE A PARTE TOMA CIÊNCIA INEQUÍVOCA DA OCORRÊNCIA DA IRREGULARIDADE NA SUA CONTA VINCULADA DO PASEP (TEMA Nº 1.150), QUANDO DO RECEBIMENTO DO EXTRATO OU DAS MICROFILMAgens. RETORNO DOS AUTOS À VARA DE ORIGEM PARA O DEVIDO PROCESSAMENTO E JULGAMENTO DO LITÍGIO. RECURSO CONHECIDO E PROVIDO. SENTENÇA CASSADA. </p><p style="text-align: justify;"/> I. CASO EM EXAME </p><p style="text-align: justify;"/> 1. Trata-se de recurso de Apelação Cível interposto, contra sentença proferida pela MMª Juíza de Direito Leila Regina Corado Lobato, atuante na 36ª Vara Cível da Comarca de Fortaleza/CE, que julgou extinta, com resolução de mérito, Ação de Indenização por Danos Material e Moral, pelo reconhecimento da prescrição, com fulcro no art. 487, II, do CPC. </p><p style="text-align: justify;"/> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"/> 2. Cinge-se a controvérsia recursal em aferir se resta configurada a prescrição da ação proposta para discutir a suposta irregularidade na gestão e atualização monetária dos valores depositados a título de PASEP. </p><p style="text-align: justify;"/> III. RAZÕES DE DECIDIR </p><p style="text-align: justify;"/>

Processo	3042298-71.2024.8.06.0001
	style="font-family: &quot;times new roman&quot;; times;">3. A matéria em discussão foi objeto de apreciação pelo Superior Tribunal de Justiça, quando afetou ao rito dos recursos repetitivos o Tema nº 1.150, tendo o Tribunal da Cidadania uniformizado a interpretação da legislação infraconstitucional por meio das teses abaixo destacadas: i) o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa; ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil; e iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. </p><p style="text-align: justify;"> 4. A fluência do prazo prescricional de dez anos para a parte exercer a pretensão condenatória começa a partir da data em que se tem conhecimento da lesão. Sendo assim, de acordo com o princípio da actio nata, o direito de pleitear a indenização surge quando a lesão e suas consequências são constatadas.&#160; No caso&#160; sub judice, constata-se que o saque dos valores vinculados à conta individual do PASEP pela parte autora ocorreu em 13 de dezembro de 2011. Naquela oportunidade, o juízo a quo entendeu que tal ato implicaria a ciência do saldo existente na referida conta, deflagrando, a partir de então, o termo inicial do prazo prescricional para o exercício de eventual pretensão voltada à apuração de irregularidades, inconsistências ou desvios.&#160; Ocorre que, em sentido diverso, o entendimento firmado no precedente vinculante estabeleceu que o&#160; dies a quo&#160;da prescrição somente se configura no momento em que o titular da conta, de forma clara e comprovada, tem efetiva ciência dos desfalques perpetrados na sua conta individual vinculada ao PASEP.</p><p style="text-align: justify;"> 5. Assim, o entendimento mais escorreito é no sentido de que o termo inicial da contagem do prazo prescricional da pretensão autoral se dá quando do recebimento do extrato ou das microfilmagens da sua conta. Em exame ao caderno processual, tem-se que a parte autora recebeu os extratos em 23 de maio de 2024, ajuizando a ação em 13 de dezembro de 2024, de modo que não há que se falar em prescrição. A sentença merece, portanto, ser cassada, em vista da falta de decurso do prazo prescricional. Por fim, é necessário ressaltar que não é o caso de aplicar aqui a teoria da causa madura, uma vez haver necessidade de dilação probatória.</p><p style="text-align: justify;"> IV. DISPOSITIVO</p><p style="text-align: justify;"> 6. Recurso conhecido e provido.</p><p style="text-align: justify;"> ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer do recurso de apelação interposto para, no mérito, dar-lhe provimento, no sentido de anular a sentença e determinar o reprocessamento da ação, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p align="center"> &#160;</p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Relator </p><p> &#160;</p><p align="center"> RELATÓRIO </p><p align="center"> Trata-se de recurso de Apelação Cível interposto por José Carlos Alves De Souza&#160;contra sentença proferida pela MMª. Juíza de Direito Leila Regina Corado Lobato, da 36ª Vara Cível da Comarca de Fortaleza/CE, que julgou extinta, com resolução de mérito, Ação de Indenização por Danos Material e Moral ajuizada em desfavor do Banco do Brasil S/A, declarando a prescrição da ação, com fulcro no art. 487, inciso II, do Código de Processo Civil.&#160;</p>

Processo	3042298-71.2024.8.06.0001
	</p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Eis o dispositivo da sentença: </p><p align="justify"> &#160;</p><p style="text-align: justify; padding-left: 300px;"> Pelo exposto, com fundamento no art. 487, II, do CPC,&#160; declaro a prescrição da pretensão autoral e extingo o feito . </p><p style="text-align: justify; padding-left: 300px;"> &#160; </p><p style="text-align: justify; padding-left: 300px;"> Condeno a parte autora ao pagamento de custas e de honorários advocatícios, estes arbitrados em 10% (dez por cento) sobre o valor atualizado da causa, nos termos do art. 85, §2º, do CPC, entretanto, suspendo a cobrança pelo prazo de cinco anos, uma vez que o promovente é beneficiário da assistência gratuita aos necessitados, conforme preconizado no § 3º, do art. 98, do CPC. </p><p style="text-align: justify; padding-left: 300px;"> &#160; </p><p style="text-align: justify; padding-left: 300px;"> Transitado em julgado, arquivem-se os autos. </p><p style="text-align: justify; padding-left: 300px;"> &#160; </p><p style="text-align: justify; padding-left: 300px;"> P.R.I. </p><p align="justify"> &#160;</p><p align="justify"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> Irresignado, o promovente interpôs recurso de apelação alegando, em síntese, que não se pode presumir que o simples saque realizado em 2011 revelou ao autor a existência de eventual desfalque, ao passo que o termo inicial do prazo prescricional para ações que envolvem irregularidades nas contas do PASEP é a data em que o titular tem efetiva e inequívoca ciência dos desfalques ou da ausência de correção dos valores, pelo que requer a reforma da sentença no sentido de afastar a prescrição e determinar o retorno dos autos à origem para regular prosseguimento do feito. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text- indent: 8%;"> Em contrarrazões, a parte apelada sustenta, de forma preliminar, que seria ilegítima para figurar no polo passivo da ação. No mérito, defende a manutenção da sentença, dada a ocorrência da prescrição, com base na fundamentação apresentada no decisum. </p><p style="text-align: justify; text-indent: 8%;" lang="pt-PT"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> É o relatório. </p><p align="justify"> &#160;</p><p align="justify"> &#160;</p><p align="center"> VOTO </p><p align="justify"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> Conheço do recurso de apelação, pois preenche os requisitos intrínsecos e extrínsecos de admissibilidade. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> I – Da legitimidade passiva </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Relativamente à alegada ilegitimidade passiva, cumpre frisar que o c. STJ pacificou, no Tema 1150, com trânsito em julgado em 17 de outubro de 2023, as seguintes teses: </p><p style="text-align: justify; padding-left:

Processo	3042298-71.2024.8.06.0001
	</p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Como dito, a matéria em discussão foi objeto de apreciação pelo Superior Tribunal de Justiça, quando afetou ao rito dos recursos repetitivos o Tema nº 1.150, tendo o Tribunal da Cidadania uniformizado a interpretação da legislação infraconstitucional por meio das teses abaixo destacadas: &#160;</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; padding-left: 240px;"> i) o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa; </p><p style="text-align: justify; padding-left: 240px;"> ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil; e </p><p style="text-align: justify; padding-left: 240px;"> iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. [Grifou- se].</p><p align="justify"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> Com efeito, a fluência do prazo prescricional de dez anos para a parte exercer a pretensão condenatória começa a partir da data em que se tem conhecimento da lesão. Sendo assim, de acordo com o princípio da actio nata, o direito de pleitear a indenização surge quando a lesão e suas consequências são efetivamente constatadas. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> No caso sub judice, constata-se que o saque dos valores vinculados à conta individual do PASEP pela parte autora ocorreu em 13 de dezembro de 2011. Naquela oportunidade, o juízo a quo entendeu que tal ato implicaria a ciência do saldo existente na referida conta, deflagrando, a partir de então, o termo inicial do prazo prescricional para o exercício de eventual pretensão voltada à apuração de irregularidades, inconsistências ou desvios.&#160; Ocorre que, em sentido diverso, o entendimento firmado no precedente vinculante estabeleceu que o dies a quo da prescrição somente se configura no momento em que o titular da conta, de forma clara e comprovada, tem efetiva ciência dos desfalques perpetrados na sua conta individual vinculada ao PASEP.</p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Assim, o entendimento mais escorreito é no sentido de que o termo inicial da contagem do prazo prescricional da pretensão autoral se dá quando do recebimento do extrato ou das microfilmagens da sua conta. Em exame ao caderno processual, tem-se que a parte autora recebeu os extratos em 23 de maio de 2024 (ID 27187519), ajuizando a ação em 13 de dezembro de 2024, de modo que não há que se falar em prescrição. Em casos análogos, para fins persuasivos, colaciono precedentes deste egrégio Tribunal de Justiça: </p><p align="justify"> &#160;</p><p style="text-align: justify; padding-left: 240px;"> DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER C/C INDENIZATÓRIA POR DANOS MATERIAIS E MORAIS. PROGRAMA DE FORMAÇÃO DO PATRIMÔNIO DO SERVIDOR PÚBLICO - PASEP. PRESCRIÇÃO. PRAZO DECENAL. O STJ PACIFICOU, AINDA, O ENTENDIMENTO DE QUE "A PRÉTENSÃO AO RESSARCIMENTO DOS DANOS HAVIDOS EM RAZÃO DOS DESFALQUES EM CONTA INDIVIDUAL VINCULADA AO PASEP SE SUBMETE AO PRAZO PRESCRICIONAL DECENAL PREVISTO PELO ARTIGO 205 DO CÓDIGO CIVIL", ALÉM DE QUE "O TERMO INICIAL PARA A CONTAGEM DO PRAZO PRESCRICIONAL É O DIA EM QUE O TITULAR, COMPROVADAMENTE, TOMA CIÊNCIA DOS DESFALQUES REALIZADOS NA CONTA INDIVIDUAL VINCULADA AO PASEP; . NO CASO CONCRETO, A RECORRENTE OBTVE ACESSO AO EXTRATO

Processo	3042298-71.2024.8.06.0001
	DA SUA CONTA PASEP AOS 23.05.2024 (FLS. 25/27), E AJUIZOU A PRESENTE AÇÃO EM 20.06.2024, PORTANTO, NÃO HÁ QUE SE FALAR EM PRESCRIÇÃO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. (TJCE. Apelação Cível- 0244421-12.2024.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 27/11/2024, data da publicação: 28/11/2024). APELAÇÃO EM AÇÃO DE INDENIZAÇÃO QUE EXTINGUIU O FEITO COM RESOLUÇÃO DO MÉRITO, ANTE O RECONHECIMENTO DA PRESCRIÇÃO. PASEP; PRESCRIÇÃO DECENAL. PRINCÍPIO DA ACTIO NATA. TEORIA DA CIÊNCIA INEQUÍVOCA. PRESCRIÇÃO NÃO CONFIGURADA. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. I- CASO EM EXAME 1. Trata-se de Apelação Cível interposta, adversando sentença proferida nos autos da Ação de Indenização por Danos Morais e Materiais em epígrafe, que julgou extinta a ação, pelo reconhecimento da prescrição, com apreciação do mérito, II ¿ QUESTÃO EM DISCUSSÃO 2. Cinge-se a controvérsia recursal em aferir se a pretensão deduzida na exordial encontra-se atingida pela prescrição. III ¿ RAZÕES DE DECIDIR 3. O Tema nº 1.150 /STJ dispôs sobre o prazo prescricional para os casos em análise, o qual restou consolidado o prazo decenal, na forma do artigo 205 do Código Civil, assim como a aplicação da teoria da actio nata. Com isso, o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep; 4. Isto posto, entendo que a prescrição reconhecida pelo Juízo de primeiro grau há de ser afastada, uma vez que restou suficientemente explicitado, diante da descrição fática narrada na petição inicial, que a parte promovente somente teve ciência acerca dos desfalques em seus rendimentos na data de emissão dos extratos microfilmados de sua conta PASEP em 2019. IV ¿ DISPOSITIVO 5. Recurso conhecido e provido. Sentença anulada. Retorno dos autos à origem, para regular seguimento. (TJCE. Apelação Cível- 0193590-33.2019.8.06.0001, Rel. Desembargador(a) CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento: 27/11/2024, data da publicação: 28/11/2024). APELAÇÃO. AÇÃO DE INDENIZAÇÃO. PASEP. QUESTÕES PRELIMINARES ¿ ILEGITIMIDADE PASSIVA, INCOMPETÊNCIA DA JUSTIÇA COMUM E PRESCRIÇÃO. TEMA REPETITIVO 1150 - LEGITIMIDADE PASSIVA DO BANCO DO BRASIL S/A - COMPETÊNCIA DA JUSTIÇA COMUM ESTADUAL - PRESCRIÇÃO ¿ PRAZO DECENAL E CONTAGEM A PARTIR DA CIÊNCIA DOS DESFALQUES. CÉRCEAMENTO DE DEFESA. ERROR IN PROCEDENDO. NECESSIDADE DE PRODUÇÃO DE PROVA PERICIAL. RECURSO PROVIDO. SENTENÇA ANULADA. 1. Consiste a controvérsia recursal na análise das questões preliminares concernentes à ilegitimidade passiva do banco requerido, à incompetência absoluta da Justiça Comum para o processamento da presente demanda e à ocorrência de prescrição quinquenal, bem assim, na alegação de que houve error in procedendo em razão de não ter sido oportunizada a realização de prova pericial para verificação quanto à aplicação correta dos índices de atualização monetária e de rentabilização dos valores depositados. 2. No julgamento acerca do Tema Repetitivo 1150, o Superior Tribunal de Justiça estabeleceu que o Banco do Brasil é parte legítima para figurar no polo passivo em ações que discutem a gestão dos valores depositados no PASEP, seja no que tange à correção de valores depositados, seja no tocante aos saques efetuados. 3. Não resta dúvida de que a competência para conhecer e julgar a presente demanda é da Justiça Comum Estadual, máxime em razão do enunciado da Súmula 42 do STJ. 4. Ainda no julgamento do Tema Repetitivo 1150, o Superior Tribunal de Justiça esclareceu que a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil e que o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP. 5. No caso em concreto, a parte requerente tomou ciência do suposto desfalque antes do decurso do prazo decenal, pois se deparou com o extrato de sua conta PASEP na data de 03/07/2017, tendo sido a presente ação distribuída na data de 23/09/2019, não havendo que se falar, portanto, na ocorrência de prescrição. 6. Restaram constatados o cerceamento de defesa e o error in procedendo no caso em tablado, visto que o juízo de origem não levou em consideração o pedido para realização

Processo	3042298-71.2024.8.06.0001
	de prova pericial contábil a fim de apurar eventual inconsistência na atualização dos valores depositados na conta PASEP de titularidade da parte requerente, em contrariedade à regra processual contida no art. 370 do CPC. 7. É forçoso reconhecer quanto à impertinência do julgamento antecipado da lide, haja vista a necessidade de produção de prova pericial, impondo-se a desconstituição da sentença e o retorno à origem para que a demanda prossiga com a instauração da fase instrutória. 8. Recurso conhecido e provido. Sentença anulada. (TJCE. Apelação Cível- 0173335-54.2019.8.06.0001, Rel. Desembargador(a) PAULO DE TARSO PIRES NOGUEIRA, 3ª Câmara Direito Privado, data do julgamento: 13/11/2024, data da publicação: 13/11/2024). APELAÇÃO. AÇÃO ORDINÁRIA DE INDENIZAÇÃO RELACIONADA AOS SALDOS, ACRÉSCIMOS ILEGAIS, SAQUES E À DIFERENÇA DE VALORES NA CONTA VINCULADA DO PASEP DO AUTOR/RÉCORRENTE. SENTENÇA QUE RECONHECEU A PRESCRIÇÃO E EXTINGUIU O FEITO COM ANÁLISE DO MÉRITO. QUESTIONAMENTO SOLUCIONADO NO JULGAMENTO DO TEMA REPETITIVO Nº 1.150 QUE UNIFORMIZOU A INTERPRETAÇÃO DA LEGISLAÇÃO INFRACONSTITUCIONAL. PRAZO PRESCRICIONAL QUE NÃO FULMINA O DIREITO DE AÇÃO. PRINCÍPIO DA ACTIO NATA. LAPSO QUE FLUI A PARTIR DO MOMENTO EM QUE A PARTE TOMA CONHECIMENTO DA OCORRÊNCIA DE IRREGULARIDADE NA SUA CONTA VINCULADA DO PASEP. SENTENÇA ANULADA. REMESSA DO FEITO PARA A VARA DE ORIGEM PARA O DEVIDO PROCESSAMENTO E JULGAMENTO DO LITÍGIO. - A petição inicial remete à apreciação do Judiciário litígio que envolve a responsabilidade do Banco do Brasil S/A quanto à má gestão dos valores depositados pela União do programa PIS/PASEP. - O Tribunal da Cidadania uniformizou a interpretação da legislação infraconstitucional no julgamento do tema repetitivo nº 1.150 para reconhecer, dentre outras teses não devolvidas na via apelatória, que "ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil"; e que "iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP. - Em relação à prescrição, a jurisprudência entende ser aplicável o princípio da actio nata, iniciando-se o prazo prescricional a partir do momento em que a parte tem conhecimento da violação do seu direito e, aplicando a tese repetitiva nº 1.150 firmada pelo Tribunal da Cidadania, tem-se que: "A pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil ou ao prazo quinquenal estipulado pelo artigo 1º do Decreto nº 20.910/32" e que "O termo inicial para a contagem do prazo prescricional é o dia em que o titular toma ciência dos desfalques ou a data do último depósito efetuado na conta individual vinculada ao PASEP". Desta forma, o lapso da prescrição teve início quando o autor teve acesso à microfilmagem dos extratos da sua conta vinculada ao PASEP, requisitada em 09/02/2024 e com previsão de entrega no dia 08/06/2024, não fulminando o direito de ação exercitado em 27/06/2024. RECURSO CONHECIDO E PROVIDO EM PARTE. (TJCE. Apelação Cível- 0246192-25.2024.8.06.0001, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 2ª Câmara Direito Privado, data do julgamento: 02/10/2024, data da publicação: 02/10/2024). APELAÇÃO CÍVEL � AÇÃO INDENIZAT�RIA � PASEP � ALEGADA AUS�NCIA DE CORRETA APLICA��O DE CORRE��O MONET�RIA NA CONTA VINCULADA AO PASEP DA PARTE AUTORA � JULGAMENTO DE IMPROCED�NCIA NA ORIGEM � PRETENS�O DE REFORMA � PRELIMINARES CONTRARRECURSAIS � ILEGITIMIDADE PASSIVA DO BANCO DO BRASIL S/A � AFASTADA � TEMA REPETITIVO 1150 DO STJ, QUE DECIDIU PELA LEGITIMIDADE DO ENTE BANC�RIO � COMPET�NCIA DA JUSTI�A COMUM � RECONHECIDA � PRESCRI��O � AFASTADA � RAZ�ES RECURSAIS � PRELIMINAR DE CERCEAMENTO DE DEFESA � NECESSIDADE DE PRODU��O DE PROVA PERICIAL � ACOLHIMENTO � SENTEN�A ANULADA PARA A REALIZA��O DA PROVA � RECURSO CONHECIDO E PROVIDO � SENTEN�A DESCONSTITU�DA. 1. O presente recurso visa � reforma da senten�a que julgou improcedente o pedido autoral nos autos da A��o de Indeniza��o por Danos Morais e Materiais, decorrentes de suposta m� gest�o, por parte do BANCO DO BRASIL, de valores depositados na conta PASEP da parte autora. 2. Preliminares contrarrecursais � Ilegitimidade passiva do Banco do Brasil S/A e incompet�ncia absoluta da Justi�a Comum � No recente julgamento do Repetitivo 1150, o Superior Tribunal de Justi�a estabeleceu que o Banco do Brasil � parte leg�tima para ser

Processo	3042298-71.2024.8.06.0001
	incluído como réu em ações que discutem a gestão dos valores depositados no PASEP, seja no que tange à correção de valores depositados, como a saques efetuados. (REsp n. 1.895.936/TO, relator Ministro Herman Benjamin, Primeira Seção, julgado em 13/9/2023, DJe de 21/9/2023). À vista disso, e em atenção ao enunciado da Súmula 42 do STJ, não há dúvidas de que a competência para conhecer e julgar a ação em liça é a da Justiça Comum. Preliminares rejeitadas. 3. Prejudicial de mérito ¿ Prescrição ¿ Sobre o tema da prescrição, o Superior Tribunal de Justiça, no julgamento do Recurso Especial Repetitivo n.º 1.951.931/DF (Tema n.º 1.150), de 13/09/2023, firmou as seguintes teses vinculantes: ¿ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil;¿ ¿iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP.¿ 4. Portanto, segundo a tese fixada, é decenal o prazo prescricional para se questionar, em juízo, eventuais danos causados, em razão de desfalques na conta individual vinculada ao PASEP. 5. Por seu turno, o termo a quo do lapso prescricional, segundo a teoria da actio nata, é a data em que o titular da conta toma ciência, comprovadamente, dos desfalques, que, em casos tais, acontece quando tem acesso aos extratos da conta PASEP, pois só então passa a conhecer o fato e a extensão de suas consequências. Precedentes da Câmara. No caso concreto, o demandante obteve acesso ao extrato da sua conta PASEP aos 25/10/2023, e ajuizou a presente ação em 26/03/2024, portanto, não há que se falar em prescrição. 6. Razões recursais ¿ Preliminar de cerceamento de defesa ¿ O apelante pugna pela nulidade da sentença, por cerceamento de defesa, defendendo a necessidade de perícia contábil a fim de apurar eventual erro na atualização dos valores depositados na sua conta PASEP. 7. No caso vertente, houve o julgamento antecipado da lide, concluindo-se por sua improcedência, tendo como fundamento a não satisfação do ônus probatório da parte apelante. 8. In casu, observa-se da prova coligida aos autos que, diante da natureza complexa do caso, que envolve mudanças de moeda e incidência de diversos índices de correção monetária, necessária a realização de perícia contábil. 9. Verifica-se, portanto, que é nítido o cerceamento de defesa e error in procedendo no caso concreto, uma vez que o feito de origem foi sentenciado sem que fosse realizada a produção de provas necessárias ao julgamento do mérito. 10. Nessa perspectiva, acolhe-se a preliminar de cerceamento de defesa, diante do não cabimento do julgamento antecipado da lide, haja vista a necessidade de produção de prova pericial no caso em apreço, impondo-se a desconstituição da sentença e o retorno à origem para que a demanda prossiga com a instauração da fase instrutória, ficando as demais questões recursais prejudicadas. 11. Recurso conhecido e provido. Sentença desconstituída. (TJCE. Apelação Cível - 0200701-83.2024.8.06.0101, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 02/10/2024, data da publicação: 02/10/2024). APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA E INDENIZAÇÃO POR DANOS MORAIS. PROGRAMA DE FORMAÇÃO DO PATRIMÔNIO DO SERVIDOR (PASEP). SENTENÇA DECLARATÓRIA DE PRESCRIÇÃO DA PRETENSÃO AUTURAL. IRRESIGNAÇÃO DA PARTE AUTORA. ANÁLISE SOBRE O TERMO INICIAL DA PRESCRIÇÃO. APLICAÇÃO DO TEMA REPETITIVO Nº 1.150 DO STJ. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA ANULADA. RETORNO DOS AUTOS AO JUÍZO DE ORIGEM. 1. No caso, o presente recurso limita-se a impugnar a improcedência do pedido exordial, ante o reconhecimento da prescrição da pretensão autoral. 2. Sobre o tema, o Superior Tribunal de Justiça (STJ) firmou o Tema Repetitivo nº 1.150, na qual restou decidido que ¿ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo art. 205 do Código Civil; e iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao PASEP.¿ 3. Dessa maneira, o lapso da prescrição teve início quando o autor teve acesso à microfilmagem dos extratos da sua conta vinculada ao PASEP, ocorrido em 2023, não fulminando o direito de ação exercitado no início deste ano de 2024. 4. Outrossim, ainda que o art. 1.013, § 4º, do CPC, permita o julgamento da demanda neste 2º grau, como pretende a parte autora, não vislumbro presentes os elementos necessários ao julgamento da causa no estado em que se encontra, haja vista a complexidade da demanda, com necessária dilação probatória e atenção às orientações contidas em Nota Técnica nº 07/2024, do Órgão da Vice-Presidência do Tribunal de Justiça do Estado do Ceará, emitida com a finalidade de conduzir os procedimentos a serem adotados nas ações indenizatórias vinculadas ao Tema 1150. 5. Recurso conhecido e parcialmente provido. Sentença anulada, com retorno dos autos ao juízo de origem para o devido processamento e julgamento.

Processo	3042298-71.2024.8.06.0001
	</p><p style="text-align: justify; padding-left: 240px;"> (TJCE. Apelação Cível - 0202505-95.2024.8.06.0001, Rel. Desembargador(a) MARCOS WILLIAM LEITE DE OLIVEIRA, 3ª Câmara Direito Privado, data do julgamento: 11/09/2024, data da publicação: 11/09/2024). </p><p align="justify"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> >A sentença merece, portanto, ser cassada, em vista da falta de decurso do prazo prescricional. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> >Por fim, é necessário ressaltar que não é o caso de aplicar aqui a teoria da causa madura, uma vez haver necessidade de dilação probatória. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> >Diante do exposto, conheço do recurso para DAR-LHE PROVIMENTO, a fim de cassar a sentença recorrida, determinando o retorno do processo ao il. juízo de primeiro grau para o regular processamento da demanda. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> >É como voto. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> >Fortaleza, data da assinatura digital. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> >Relator </p><p> &#160;</p><p align="justify"> </p><p align="justify">&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0200794-76.2023.8.06.0070
Número de ordem	132
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	HELENA FELIX DE SOUSA
Advogado(s) - Polo ativo	DOUGLAS VIANA BEZERRA - (CE21587-A)
Polo passivo	BANCO ITAU BMG CONSIGNADO S.A.
Advogado(s) - Polo passivo	ENY ANGE SOLEDADE BITTENCOURT DE ARAUJO - (BA29442-A)
Terceiros	Não informado

Processo	0200794-76.2023.8.06.0070
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWvZtqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmCl3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmJFYQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTuPljdZg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fnsFHHqjeh3WFOUwU2ZXJlJxMkCMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjpg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkIx410JEZMRU0ZDIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	roman" >, times;">PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line- height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> <span style="font-family: &quot;times new roman&quot;,
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 </p><p style="text-align: justify;"> PROCESSO: 0200794- 76.2023.8.06.0070 </p><p style="text-align: justify;"> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"> APELANTE: HELENA FELIX DE SOUSA </p><p style="text-align: justify;"> APELADO: BANCO ITAÚ BMG CONSIGNADO S.A. </p><p style="text-align: justify;">
 </p><p style="text-align: justify;"> <br </p><p style="text-align: justify;"> EMENTA: APELAÇÃO CÍVEL. DIREITO DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. ANUÊNCIA MEDIANTE ASSINATURA ELETRÔNICA. CONFIRMAÇÃO POR BIOMETRIA FACIAL E GEOLOCALIZAÇÃO. NEGÓCIO JURÍDICO VÁLIDO. INSTITUIÇÃO FINANCEIRA QUE SE DESINCUMBIU DO ÔNUS PROBATÓRIO. RECURSO DESPROVIDO. SENTENÇA MANTIDA. </p><p style="text-align: justify;"> I. CASO EM EXAME &#160; </p><p style="text-align: justify;"> 1. Trata-se de Apelação Cível interposta por helenafélix de Sousa com o objetivo de reformar a sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Cratêus, que julgou improcedente a presente Ação Declaratória de Inexistência de Negócio Jurídico c/c Repetição de Indébito e Indenização por Danos Morais ajuizada em desfavor do Banco Itaú Consignado S.A. </p><p style="text-align: justify;"> II. QUESTÕES EM DISCUSSÃO </p><p style="text-align: justify;"> <span style="font-size:

Processo	0200794-76.2023.8.06.0070
	2. O cerne da controvérsia consiste em verificar a validade do contrato de empréstimo consignado nº 631528021 que implicou descontos no benefício previdenciário da demandante, e, em seguida, avaliar o cabimento do pedido de indenização por danos materiais e morais, à luz das normas do Código de Defesa do Consumidor. III. RAZÕES DE DECIDIR 3. Analisando os fólios desta pasta processual, verifica-se que a contratação questionada ocorreu por meio digital, tendo o banco colacionado Cédula de crédito bancário (ID 27187351), acompanhados de cópia do documento pessoal, além de biometria facial da demandante (selfie), contendo ainda assinatura eletrônica com geolocalização, data, hora e IP do dispositivo utilizado (ID 27187355). Por fim, o banco promoveu também juntou comprovante de transferência bancária da quantia liberada para conta de titularidade da autora (ID 27187354). Com base na cópia do instrumento contratual, confere-se que os dados e as condições do negócio jurídico registrado sob o nº 631528021, formalizado dia 02 de julho de 2021, estão em consonância às informações lançadas no histórico de empréstimo consignado fornecido pelo INSS (ID 27187212 a 27187214), anexado pela própria autora/apelante. 4. Vale salientar que a assinatura da consumidora na cédula bancária representa a expressa declaração de vontade em adquirir o serviço, bem como a aceitação aos seus termos e condições, vinculando-o ao compromisso ajustado. A esse respeito, conforme dito, o banco juntou comprovante de formalização digital, que reforça a regularidade da contratação mediante anuência da consumidora, indicando o dia, horário, geolocalização e IP do dispositivo utilizado para efetivar o aceite dos termos do pacto negocial. 5. Por tudo isso, reputa-se a existência de elementos suficientes para comprovar a validade do negócio jurídico celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, de seu ônus probante, produzindo prova pertinentes à regularidade da contratação, como hipótese excludente de responsabilidade (art. 373, inciso II, CPC, c/c art. 14, § 3º, do CDC). 6. Logo, ante a regularidade da contratação, não há que falar na ocorrência de ato ilícito por parte da instituição financeira, e, por consequência, em danos materiais ou morais capazes de ensejar o pagamento de indenização, nos termos do artigo 5º, inciso X, da Constituição Federal. Dessa forma a manutenção da sentença é medida que se impõe. IV. DISPOSITIVO 7. Recurso desprovido. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação interposto, para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de Apelação Cível interposta por Helena Félix de Sousa com o objetivo de reformar a sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Cratús, que julgou improcedente a presente Ação Declaratória de Inexistência de Negócio Jurídico c/c Repetição de Indébito e Indenização por Danos

Processo	0200794-76.2023.8.06.0070
	Morais ajuizada em desfavor do Banco Itaú Consignado S.A. A referida ação visa à declaração de nulidade de relação contratual entre as partes, à fixação de indenização a título de danos morais e à devolução em dobro de parcelas indevidamente descontadas do benefício previdenciário da autora/apelante. Ao analisar o conjunto probatório acostado aos autos, o juízo singular destacou que "[...] Dessa forma, a apresentação de instrumento de contrato devidamente assinado eletronicamente pelo requerente, com sua biometria facial, além dos demais documentos apresentados pelo banco, retira a verossimilhança das alegações da autora e permite a constatação de que a contratação entre as partes foi efetivamente realizada. Para mais, infere-se dos autos que a contratação é existente e válida e que o crédito na conta da parte autora efetivamente existiu, ainda mais considerando o demonstrativo de operações financeiras e o comprovante de transferência eletrônica, em que se verifica a disponibilização de crédito no valor de R\$ 143,88 (cento e quarenta e três reais e oitenta e oito centavos) em conta de titularidade da parte autora. Assim, não há elementos nos autos a apontar fraude ou mesmo negligência por parte da instituição ré. Para isso, deveriam ter sido trazidos, pela parte promotora, indícios mínimos de suas alegações com potencial suficiente para desqualificar ou mesmo contrariar as provas apresentadas pelo banco requerido. [...]. Assim, a ação foi julgada improcedente nos seguintes termos (ID 27187382): Ante o exposto, com fundamento no art. 487, I, do Código de Processo Civil, JULGO IMPROCEDENTES os pedidos formulados na peça inaugural. Diante da sucumbência, condeno a parte autora ao pagamento das custas e honorários advocatícios em favor da parte adversa, os quais arbitro em 10% sobre o valor da causa, observada a suspensão da exigibilidade em razão da gratuidade deferida no curso do feito (art. 98, §3º, CPC/15). Após o decurso do prazo recursal, certifique-se o trânsito em julgado e arquivem-se os autos com as cautelas de praxe. Publique-se. Registre-se. Intimem-se. Ressalto, ainda, que todos os expedientes necessários ao cumprimento da presente sentença poderão ser assinados pelos servidores do NUPACI. Expedientes necessários. &#160; Nas razões recursais (ID 27187385), a apelante sustenta que o contrato eletrônico apresentado pelo réu carece de validade formal, pois não contém assinatura física nem eletrônica emitida por autoridade certificadora vinculada à ICP-Brasil. Ressalta a inexistência de campo de autenticação digital, certificado ou qualquer elemento capaz de assegurar a origem da suposta adesão. Argumenta, ainda, ser pessoa idosa, aposentada, residente em região interiorana e sem familiaridade com recursos tecnológicos, não possuindo aparelho celular compatível com o modelo indicado, tampouco acesso regular à internet ou a aplicativos bancários. Acrescenta não deter conhecimento técnico para utilização de plataformas digitais de assinatura, circunstâncias que tornam material e tecnicamente impossível a contratação nos moldes alegados pelo réu. Aduz, também, que a alegação do banco acerca da realização da contratação por biometria facial (selfie) não pode ser considerada prova inequívoca de consentimento, uma vez que é plenamente possível a utilização indevida de imagens fotográficas para burlar sistemas de autenticação facial, sobretudo em plataformas bancárias que não adotam dupla verificação ou certificados digitais confiáveis. Por fim, requer o provimento do presente recurso, com a

Processo	0200794-76.2023.8.06.0070
	consequente reforma integral da sentença, para que sejam julgados procedentes os pedidos iniciais e para condenar o promovido em custas e honorários sucumbenciais. Ausência de preparo recursal, pois beneficiária da gratuidade judiciária. Contrarrazões recursais (ID 27453117), nas quais a instituição financeira postula pelo desprovemento da apelação, mantendo-se a sentença em todos os seus termos. E o relatório. &#160; VOTO &#160; Conheço do recurso de apelação cível, pois satisfeitos os requisitos intrínsecos e extrínsecos de admissibilidade. O cerne da controvérsia consiste em verificar a validade do contrato de empréstimo consignado nº 631528021 que implicou descontos no benefício previdenciário da demandante, e, em seguida, avaliar o cabimento do pedido de indenização por danos materiais e morais, à luz das normas do Código de Defesa do Consumidor. De início, incumbe ressaltar que existe relação de consumo entre os litigantes, uma vez que a parte autora/apelante é destinatária final dos serviços oferecidos pelo réu/apelado, e a atividade bancária é considerada serviço para os fins legais (arts. 2º e 3º, § 2º, do CDC). Com base nisso, é cabível a inversão do ônus probatório em desfavor da instituição bancária, como medida adequada nas ações deste tipo, porque, considerando a impossibilidade de a parte autora constituir prova negativa da relação jurídica, compete ao banco trazer aos autos documentos hábeis a demonstrar a regularidade da relação contratual contestada na exordial, nos termos do artigo 373, inciso II, do Código de Processo Civil. Em sua defesa, a instituição financeira sustenta que o contrato impugnado trata-se de refinanciamento de empréstimo consignado, com descontos em benefício previdenciário. Afirma que, em razão da operação, foi liberado ao autor o valor de R\$ 143,88, além da quitação do contrato anterior, de nº 620731790, no montante de R\$ 2.144,77, o qual passou a compor o novo ajuste. Destaca que o refinanciamento implicou alteração no prazo, no valor das parcelas e na concessão de crédito adicional, substituindo integralmente as condições do pacto anterior, o que teria resultado em benefício financeiro imediato ao autor, inclusive com a baixa de restrições em seu nome. Analisando os fólios desta pasta processual, verifico que a contratação questionada ocorreu por meio digital, tendo o banco colacionado Cédula de crédito bancário (ID 27187351), acompanhados de cópia do documento pessoal, além de biometria facial da demandante (selfie), contendo ainda assinatura eletrônica com geolocalização, data, hora e IP do dispositivo utilizado (ID 27187355). Por fim, o banco promoveu também juntou comprovante de transferência bancária da quantia liberada para conta de titularidade da autora (ID 27187354 >). Com base na cópia do instrumento contratual, confere-se que os dados e as condições do negócio jurídico registrado sob o nº 631528021, formalizado dia 02 de julho de 2021, estão em consonância às informações lançadas no histórico de empréstimo consignado fornecido pelo INSS (ID 27187212 a 27187214), anexado pela própria autora/apelante. Vale salientar que a assinatura da consumidora nas cédulas bancárias representa a expressa declaração de vontade em adquirir o serviço, bem como a aceitação aos seus termos e condições, vinculando-o ao compromisso ajustado. Por oportuno, impende registrar que é plenamente viável a formalização do contrato mediante assinatura eletrônica, por meio da qual se utilizam combinações de códigos que permitem extrair o aceite entre o emissor e o receptor, a exemplo de senhas,

Processo	0200794-76.2023.8.06.0070
	ações específicas, e-mail ou número de telefone. A esse respeito, conforme dito, o banco juntou comprovante de formalização digital, que reforça a regularidade da contratação mediante anuência da consumidora, indicando-se o dia, horário, geolocalização do dispositivo utilizado para efetivar o aceite dos termos do pacto negocial. Nesse contexto, insta salientar que a jurisprudência pátria, inclusive desta e. Corte de Justiça, tem se manifestado pela validade da contratação via eletrônica. Vejamos: &#160; APELAÇÃO CÍVEL. DIREITO DO CONSUMIDOR. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. CONTRATAÇÃO DE CARTÃO DE CRÉDITO COM RESERVA DE MARGEM CONSIGNÁVEL. ANUÊNCIA MEDIANTE ASSINATURA ELETRÔNICA. CONFIRMAÇÃO POR BIOMETRIA FACIAL E GEOLOCALIZAÇÃO. CIÊNCIA DO TIPO DE CONTRATAÇÃO. CÉDULAS ESCRITAS COM CARACTERES EM DESTAQUE. COMPROVANTE DE REPASSE DO NUMERÁRIO PARA CONTA DE TITULARIDADE DO AUTOR. NEGÓCIO JURÍDICO VÁLIDO. INSTITUIÇÃO FINANCEIRA QUE SE DESINCUMBIU DO ÔNUS PROBATÓRIO. RECURSO DESPROVIDO. 1. O cerne da controvérsia consiste em verificar a validade do contrato de cartão de crédito com margem consignável nº 766133829, alvo de impugnação por ter sido realizado em meio virtual, que implicou descontos no benefício previdenciário do demandante / apelante, e, em seguida, avaliar o cabimento do pedido de indenização por danos materiais e morais, à luz das normas do Código de Defesa do Consumidor. 2. Analisando os fólios desta pasta processual, verifico que a contratação do cartão de crédito com margem consignável ocorreu por meio virtual, tendo o banco colacionado a cópia dos documentos pessoais do autor, o Termo de Adesão ao Cartão Benefício Consignado PAN, o Termo de Consentimento Esclarecido do Cartão Benefício Consignado, assinado digitalmente com fotografia selfie, contendo geolocalização. 3. Além disso, há comprovação da solicitação de saque Cartão de Benefício Consignado assinado digitalmente com fotografia selfie e geolocalização, corroborado pelo dossiê de contratação e pela autorização de acesso aos dados da previdência social assinado digitalmente pela mesma modalidade acima indicada, sem olvidar o recibo de transferência do repasse da quantia referente ao mútuo bancário para a conta corrente vinculada à agência na qual o autor / apelante recebe o benefício previdenciário. 4. observo que os instrumentos colacionados possuem título destacados que demonstram a anuência do consumidor com relação ao Termo de Adesão ao Cartão Benefício Consignado PAN, inclusive com Termo de Consentimento Esclarecido do Cartão Benefício Consignado PAN, devidamente subscritos eletronicamente pelo consumidor no ato da adesão. Os referidos títulos estão escritos em letras maiúsculas e destacadas no topo dos documentos, de maneira que não há como acolher a tese do autor / apelante de que não estava ciente, inicialmente, do tipo de operação a que estava aderindo. 5. Vale salientar que a assinatura do consumidor nas cédulas bancárias representa a expressa declaração de vontade em adquirir o serviço, bem como a aceitação aos seus termos e condições, vinculando-o ao compromisso ajustado. A esse respeito, conforme dito, o banco juntou comprovante de formalização digital, que reforça a regularidade da contratação mediante anuência do consumidor, indicando-se o horário e a geolocalização do dispositivo utilizado para efetivar o aceite dos termos do pacto negocial, além de conter o IP e as características do dispositivo eletrônico. 6. Por tudo isso, reputo a existência de elementos suficientes para comprovar a validade do negócio jurídico celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, de seu ônus probante, produzindo prova pertinentes à regularidade da contratação, como hipótese excludente de responsabilidade (art. 373, inciso II, CPC, c/c art. 14, § 3º, do CDC). 7. Logo, ante a regularidade da contratação, não há que falar na ocorrência de ato ilícito por parte da instituição financeira, e, por consequência, em danos materiais ou morais capazes de ensejar o pagamento de indenização, nos termos do artigo 5º, inciso X, da Constituição Federal. 8. Recurso desprovido. A (TJ-CE - Apelação Cível - TJ-CE 0200896-90.2024.8.06.0029, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 11/09/2024, data da publicação: 11/09/2024). [Grifou-se] PROCESSUAL CIVIL. AÇÃO DECLARATÓRIA DE NULIDADE DE CONTRATO DE CARTÃO DE CRÉDITO COM MARGEM CONSIGNÁVEL (RMC) C/C REPARAÇÃO POR DANOS MATERIAIS E

Processo	0200794-76.2023.8.06.0070
	MORAIS. EM SUA DEFESA O BANCO ACIONADO COLACIONOU AOS AUTOS CÓPIA DO CONTRATO DE ADESÃO AO CARTÃO DE CRÉDITO. TERMO DE CONSENTIMENTO ESCLARECIDO DO CARTÃO DE CRÉDITO CONSIGNADO. TRANSFERÊNCIA VIA TED DE VALORES DEPOSITADOS NA CONTA DO APELANTE. RECURSO CONHECIDO E IMPROVIDO. I. Perscrutando os autos, observa-se que o autor/apelante afirma ter efetuado o contrato, todavia, acreditava ser empréstimo diverso, sem prejuízo de seu benefício previdenciário. Descuidou-se que a instituição Banco BMG colacionou aos autos cópia do Contrato de Adesão a Cartão de Crédito Consignado, conforme se veem do TERMO DE CONSENTIMENTO ESCLARECIDO DO CARTÃO DE CRÉDITO CONSIGNADO (fs. 76); faturas de cartão de crédito (fs. 105/104); comprovantes de transferência TED às fs. 182/184. Ora, inegavelmente, os créditos na conta da parte autora/apelante, foram provenientes da contratação, fato que deu ensejo a incidência dos descontos em seus proventos dos valores mínimos fixados em reserva de margem consignável – RMC, não havendo, portanto, como alegar que houve fraude ou mesmo desconhecimento dos termos do contrato, até mesmo porque, sem nenhuma reclamação os valores foram transferidos para a conta de titularidade do apelante. II. Nesse considerar, pelos documentos estadeados nos autos, não há que se falar em nulidade contratual, de igual modo, em ressarcimento por danos, que alega ter experimentado. Portanto, não houve cobrança de quantia indevida, vez que o apelante firmou o contrato, bem como fez utilização do Cartão de Crédito Consignado, ensejando o regular desconto consignado. III. Recurso de Apelação conhecido e improvido. (TJ-CE - AC: 02315184720218060001 Fortaleza, Relator: INACIO DE ALENCAR CORTEZ NETO, Data de Julgamento: 25/05/2022, 2ª Câmara Direito Privado, Data de Publicação: 26/05/2022). [Grifou-se] #160;</p> <p style="text-align: justify; padding-left: 120px;"> APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA CONTRATUAL C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. PRELIMINAR CONTRARRECURSAL DE MÁLFERIMENTO AO PRINCÍPIO DA DIALETICIDADE RECHAÇADA. EMPRÉSTIMO CONSIGNADO. SENTENÇA DE IMPROCEDÊNCIA. CONTRATO REALIZADO VIA AUTENTICAÇÃO DIGITAL. MEDIANTE BIOMETRIA FACIAL. AUSÊNCIA DE IRREGULARIDADE NA CONTRATAÇÃO. VALORES CREDITADOS NA CONTA DA PARTE AUTORA. AUSÊNCIA DE FALHA NA PRESTAÇÃO DO SERVIÇO PELA INSTITUIÇÃO FINANCEIRA. ATO ILÍCITO NÃO CONFIGURADO. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. Inicialmente, em sede de contrarrazões, a instituição financeira recorrida suscitou preliminar de ausência de impugnação específica à sentença, contudo, não assiste razão à parte apelada, pois da análise das razões de apelação, verifica-se que o recorrente apresenta o seu inconformismo face aos termos da sentença que julgou improcedente a demanda. Preliminar rejeitada. 2. A parte autora ajuizou a presente demanda no afã de desconstituir empréstimo livremente por ela pactuado, sob o argumento de jamais ter assinado qualquer contrato. 3. A parte promovente, ora apelante, não provou o contexto do vício de consentimento capaz de ensejar a procedência do seu pleito inaugural, muito menos a existência de qualquer fraude a ocasionar a declaração de inexistência do negócio jurídico entabulado, sobretudo por se tratar de um contrato de empréstimo consignado realizado via digital - autenticação eletrônica, mediante biometria facial (selfie). 4. Não obstante, o promovente ter deixado de refutar a contento as provas trazidas aos autos pela parte adversa, é imperioso destacar que o demandado trouxe à baila o comprovante de transferência de valores hospedado à fl. 158, em que comprova de maneira cristalina o depósito da quantia de R\$ 1.479,88 (mil quatrocentos e setenta e nove reais e oitenta e oito centavos) em conta bancária de titularidade do demandante, sendo esse o numerário constante no contrato impugnado, bem como no extrato de consignações acostado pelo autor. 5. Outrossim, embora o apelante tenha alegado que inexistem elementos no contrato juntado aos autos que garantiriam a identificação do contratante, como geolocalização e endereço de IP, na verdade, é fácil observar que todas estas informações foram disponibilizadas na avença. 6. Desta feita, a trilha digital e os reiterados pontos de autenticação levam a crer pela regularidade da contratação, visto que são múltiplas as provas de que a operação de crédito contratada foi efetivamente realizada pelo apelante. Diante disso, pode-se reconhecer, a exigibilidade da dívida, notadamente em razão dos documentos trazidos pela ré na contestação. 7. Recurso conhecido e desprovido. Sentença mantida. (TJ-CE - Apelação Cível 0201254-57.2022.8.06.0051, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento:12/03/2024, data da publicação: 12/03/2024). [Grifou-se] #160;</p> <p style="text-align: justify; padding-left: 120px;"> #160;</p>

Processo	0200794-76.2023.8.06.0070
	comprovar a validade do negócio jurídico celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, de seu ônus probante, produzindo provas pertinentes à regularidade da contratação, como hipótese excludente de responsabilidade (art. 373, inciso II, CPC, c/c art. 14, § 3º, do CDC). Logo, ante a regularidade da contratação, não há que falar na ocorrência de ato ilícito por parte da instituição financeira, e, por consequência, em danos materiais ou morais capazes de ensejar o pagamento de indenização, nos termos do artigo 5º, inciso X, da Constituição Federal. Nesse sentido, é assente a jurisprudência deste egrégio Tribunal de Justiça: PROCESO CIVIL. APELAÇÃO CÍVEL. DECLARATÓRIA DE NULIDADE CONTRATUAL C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. CONTRATO COM AUTENTICAÇÃO ELETRÔNICA. BIOMETRIA FACIAL. DEMONSTRAÇÃO DO REPASSE DO VALOR PARA CONTA DE TITULARIDADE DA AUTORA. BANCO RÉU QUE SE DESINCUMBIU DO ÔNUS PROBANTE. ATO ILÍCITO NÃO DEMONSTRADO. REGULARIDADE DA CONTRATAÇÃO. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. Reclama o banco/recorrente da sentença do douto julgante da 2ª Vara da Comarca de Boa Viagem, que julgou parcialmente procedentes os pedidos contidos na ação Declaratória de Nulidade Contratual c/c Repetição de Indébito e Indenização por Danos Morais, declarando a inexistência do contrato apontado na exordial, condenando o banco a restituir, na forma simples, os valores descontados do benefício previdenciário da autora/recorrida, e ainda, ao pagamento da quantia de R\$ 2.000,00 (dois mil reais) a título de danos morais. 2. Por certo, conforme entendimento firmado pela Segunda Seção do Superior Tribunal de Justiça, quando do julgamento do REsp 1197929 / PR submetido ao rito dos recursos repetitivos, as instituições bancárias respondem objetivamente pelos danos causados por fraudes ou delitos praticados por terceiros como, por exemplo, abertura de conta-corrente ou recebimento de empréstimos mediante fraude ou utilização de documentos falsos, porquanto tal responsabilidade decorre do risco do empreendimento, caracterizando-se como fortuito interno. 3. Ocorre que, cotejando o vertente caderno processual, não verifico causas que maculem a regularidade da celebração do negócio jurídico discutido nestes autos, isto porque o banco/apelante juntou o contrato discutido nesta demanda (fls. 90/99), assinado por meio de autenticação eletrônica, acompanhado de cópia dos documentos pessoais da autora e fotografia do momento da contratação. 4. Para reforçar a validade da contratação, a instituição financeira/apelante, acostou aos autos o documento de fls. 91, onde consta dados de geolocalização e Id da sessão do usuário, com informação do dia e horário da coleta dos dados. 5. Destaco ainda, que o banco logrou êxito em comprovar que o contrato objeto da presente demanda tratar-se de um Refinanciamento, conforme Quadro II do instrumento contratual (fls.92), sendo liberado o valor (troco), remanescente de R\$ 2.062,00 (dois mil, sessenta e dois reais), em conta de titularidade da autora/apelada, o que ficou comprovado através do documento de transferência constante às fls. 137 dos autos. 6. Sendo assim, concluo pela regularidade do negócio jurídico celebrado entre as partes, não observando na espécie quaisquer indícios de vício de consentimento ou fraude, não tendo a Instituição Financeira cometido nenhum ilícito capaz de ensejar indenização por danos morais, bem como a devolução dos valores devidamente descontados. 7. Recurso conhecido e provido. Sentença reformada. (TJ-CE - Apelação Cível 0201553-34.2022.8.06.0051, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 21/02/2024, data da publicação: 22/02/2024). [Grifou-se]. PROCESSUAL CIVIL. CONSUMIDOR. AÇÃO DECLARATÓRIA DE NULIDADE DE RELAÇÃO CONTRATUAL C/C REPETIÇÃO DE INDÉBITO E DANOS MORAIS. CONTRATOS DE EMPRÉSTIMOS BANCÁRIOS CONSIGNADOS. COMPROVAÇÃO DA FORMALIZAÇÃO DOS CONTRATOS. JUNTADA DAS TRANSFERÊNCIAS ELETRÔNICAS EM CONTA DE TITULARIDADE DA AUTORA NOS VALORES PACTUADOS. INEXISTÊNCIA DE ATO ILÍCITO PASSÍVEL DE REPARAÇÃO POR DANOS MORAIS. PEDIDO DE REALIZAÇÃO DE PERÍCIA GRAFOTÉCNICA. DESNECESSIDADE. RECURSO CONHECIDO E IMPROVIDO. SENTENÇA MANTIDA. 1 - Trata-se de Apelação Cível interposta por MARIA CORREIA

1355

Processo	3004253-61.2025.8.06.0001
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	BANCO BRADESCO FINANCIAMENTOS S.A.
Advogado(s) - Polo ativo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A) ANDRE NIETO MOYA - (SP235738-A)
Polo passivo	JOAQUIM ALVES MARINHO
Advogado(s) - Polo passivo	JESSICA JULIANE DA SILVA SIPRIANO - (SP516548-A)
Terceiros	Não informado

Processo	3004253-61.2025.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNohzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RDl82dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPxK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmWFKYQAKCMg2 MxkjXcQHMQU6JT0upJjAhrRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LTl9z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxBG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfLk3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fnsFHHqjeh3WFOUu2ZXJlJxMkCMg2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZMs6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41gnkUvsnXNkIx410JEZMRU0ZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	roman&quot;, times;">PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="line- height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> times;">
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 </p><p>PROCESSO: 3004253-61.2025.8.06.0001 </p><p style="text-align: justify;"> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"> APELANTE: BANCO BRADESCO FINANCIAMENTOS S.A. </p><p style="text-align: justify;"> APELADO: JOAQUIM ALVES MARINHO </p><p style="text-align: justify;"> times;">EMENTA: DIREITO CIVIL, PROCESSUAL CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO BANCÁRIO. SENTENÇA DE PARCIAL PROCEDÊNCIA. TAXA ANUAL DE JUROS REMUNERATÓRIOS SUPERIOR À MÉDIA DE MERCADO. ABUSIVIDADE CONFIGURADA. VENDA CASADA DE SEGURO PRESTAMISTA CONFIGURADA. ABUSIVIDADE CONTRATUAL. REPETIÇÃO DO INDÉBITO MANTIDA. RECURSO CONHECIDO E DESPROVIDO.</p><p style="text-align: justify," dir="ltr">I) CASO EM EXAME:&#160;&#160;</p><p style="text-align: justify," dir="ltr">1. Trata-se de recurso de Apelação Cível interposto por Banco Bradesco Financiamentos S/A contra sentença de ID. 27173329, prolatada pelo Juízo da 16ª Vara Cível da Comarca de Fortaleza/CE, que julgou parcialmente a Ação Revisional de Contrato ajuizada por Joaquim Alves Marinho em desfavor do ora recorrente.</p><p style="text-align: justify," dir="ltr"> times;">II) QUESTÃO EM DISCUSSÃO:&#160;</p><p style="text-align: justify," dir="ltr">2. O cerne da controvérsia recursal consiste em examinar a possível abusividade das cláusulas contratuais relativas à taxa de juros remuneratórios, à legalidade da cobrança de seguro prestamista, ao cabimento ou não da repetição de indébito e a possibilidade ou não de inversão da sucumbência.</p><p style="text-align: justify," dir="ltr">III) RAZÕES DE DECIDIR:&#160;

Processo	3004253-61.2025.8.06.0001
	3. No caso concreto, trata-se de uma cédula de crédito bancário, celebrada em 03/03/2023, cujo valor financiado foi de R\$ 15.509,37 (quinze mil, quinhentos e nove reais e trinta e sete centavos), a ser paga em 48 (quarenta e oito) parcelas mensais de R\$ 662,23 (seiscentos e sessenta e dois reais e vinte e três centavos), em que a taxa de juros remuneratórios pactuada foi de 3,36% ao mês e 48,71% ao ano, enquanto a taxa média divulgada pelo BACEN, para as operações de crédito para pessoas físicas vinculado à aquisição de veículos (séries 25471 e 20749), no período (março de 2023), era respectivamente de 2,12% ao mês e 28,58% ao ano. 4. Como é possível constatar, a taxa de juros anual pactuada supera em 20,13 pontos percentuais da referida taxa média de mercado para o tipo de operação, gerando, a priori, uma desvantagem ao consumidor. Quanto aos juros remuneratórios, a diferença entre a taxa contratada e a média praticada pelo mercado para o mesmo tipo de operação é significativamente discrepante, revelando-se abusiva a cláusula que estipula as taxas de juros remuneratórios do contrato questionado, vez que ultrapassa – e muito – a margem de tolerância adotada por esta e. Primeira Câmara de Direito Privado, de cinco pontos percentuais. Por isso, a taxa contratada deve ser reduzida para a média divulgada pelo Banco Central do Brasil. 5. O Superior Tribunal de Justiça firmou o entendimento, em sede de julgamento de Recurso Repetitivo (REsp n. 1639259/SP), no sentido de considerar abusiva a imposição ao consumidor de contratação de seguro com a instituição financeira ou com seguradora por ela indicada, em contratos bancários em geral, nestes termos: “nos contratos bancários em geral, o consumidor não pode ser compelido a contratar seguro com a instituição financeira ou com seguradora por ela indicada”, porque além de configurar venda casada, é proibida pelo artigo 39, I, do Código de Defesa do Consumidor, uma vez que retira do consumidor o direito de negociar um preço mais justo com outras seguradoras. Neste azo, considerando não se extrair do caso concreto a concessão de oportunidade de contratação, pelo apelado, do comentado seguro, sua cobrança de forma unilateral configura abusividade suficiente a permitir o seu afastamento, permitindo, por consectário, sua restituição a agravada. 6. Por ter sido reconhecida abusividade nas cláusulas contratuais que preveem juros remuneratórios acima da média de mercado e a venda casada do seguro prestamista, nasce para a contratante o direito à restituição dos valores indevidamente pagos, que deve seguir o mesmo parâmetro fixado na sentença, sob pena de <i>reformatio in pejus</i>. IV) DISPOSITIVO: 7. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso para lhe negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de recurso de Apelação Cível interposto por Banco Bradesco Financiamentos S/A contra sentença de ID. 27173329, prolatada pelo d. juízo da 16ª Vara Cível da Comarca de Fortaleza, que julgou parcialmente procedente a Ação Revisional de Contrato ajuizada por Joaquim Alves

Processo	3004253-61.2025.8.06.0001
	relação à definição da mora, é aplicável o entendimento do Superior Tribunal de Justiça, no sentido de que a descaracterização da mora só ocorre quando o caráter abusivo decorrer da cobrança dos chamados encargos do "período da normalidade". Precedente: (STJ - AgRg no AREsp 736.034/RS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 15/12/2015, DJe 01/02/2016). Logo, ante a ausência de abusividade no negócio jurídico celebrado, observado o grau de cognição ora disponível, deve ser mantido o reconhecimento da mora da parte devedora, tornando-se inviável acolher a pretensão recursal do Recorrente de não inclusão do seu nome em cadastros de restrição creditícias; além disto, prejudicado fica o pleito cautelar de manutenção na posse do veículo. - RECURSO CONHECIDO, EM PARTE, E, NA PARTE ADMITIDA, IMPROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos nº 0632738- 18.2021.8.06.0000, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer, em parte, do Recurso e, na parte admitida, negar-lhe provimento, nos termos do Voto da Relatora. Votação Unânime. Fortaleza, 26 de janeiro de 2022. VERA LÚCIA CORREIA LIMA Desembargadora Relatora (Agravado de Instrumento - 0632738-18.2021.8.06.0000, Rel. Desembargador(a) VERA LÚCIA CORREIA LIMA, 1ª Câmara Direito Privado, data do julgamento: 26/01/2022, data da publicação: 26/01/2022, grifei).
 APELAÇÃO CÍVEL. AÇÃO REVISIONAL. DESNECESSIDADE DE PERÍCIA. EVENTUAIS ILEGALIDADES QUE PODEM SER VERIFICADAS PELA SIMPLES LEITURA DO CONTRATO. CERCEAMENTO DE DEFESA. INOCORRÊNCIA. CAPITALIZAÇÃO DE JUROS. DUODÉCUPLO DA TAXA MENSAL INFERIOR À TAXA COBRADA NO CONTRATO. PACTUAÇÃO EXPRESSA. VALIDADE DA COBRANÇA. PRECEDENTES DO STJ. JUROS REMUNERATÓRIOS CONTRATUAIS NO PERCENTUAL DE 41,73% AO ANO. ABUSIVIDADE EM RELAÇÃO À TAXA MÉDIA DE MERCADO NO PERÍODO DA CONTRATAÇÃO (28,58% AO ANO). DEVOLUÇÃO EM DOBRO DA QUANTIA COBRADA A MAIOR (EAREsp 676608/RS, STJ, RELATOR MINISTRO OG FERNANDES, 21/10/2020), PERMITIDA A COMPENSAÇÃO. COBRANÇA ABUSIVA NO PERÍODO DA NORMALIDADE CONTRATUAL. MORA DESCARACTERIZADA. PRECEDENTES DO STJ. INEXISTÊNCIA DE COBRANÇA DE COMISSÃO DE PERMANÊNCIA A PROSTRAR AO SOLO O ARGUMENTO DE SUA CUMULAÇÃO COM OUTRAS VERBAS MORATÓRIAS. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. 1. No que tange ao argumento de que a ação foi julgada sem que fosse realizada instrução probatória, a contrario sensu do que fundamenta o recorrente, em hipóteses como a dos autos não há necessidade de realização de prova pericial contábil, haja vista a inexistência de questão de indagação de alta complexidade para a resolução da lide. Com efeito, a declaração da existência ou não de ilegalidades no contrato, sobretudo aquelas que dizem respeito à cobrança de juros remuneratórios, da presença de anatocismo, cobrança de tarifas, e outras, não prescinde de conhecimento técnico, posto que a matéria é de cunho eminentemente de direito e resolve-se por simples leitura do contrato. 2. Com relação à capitalização de juros, segundo o STJ, para cobrá-la é necessário apenas que a taxa de juros anual seja superior a doze vezes (duodécuplo) a taxa mensal fixada no contrato, circunstância presente aos autos, porquanto, a soma dos juros mensais de 2,95%, totaliza o percentual anual de 35,40%, inferior ao percentual cobrado ao ano de 41,73%. (fl. 63) 3. Os juros no percentual apontado no contrato, de 41,73% ao ano, ostentam caráter de abusividade, na medida em que discrepam, significativamente, da taxa média de mercado para o caso de aquisição de veículo para pessoa física no período da contratação (março/2023), consoante extrai do site do Banco Central do Brasil, que apontou o percentual de 28,58% ao ano para aquele interregno, ou seja, uma diferença superior a 5% (cinco por cento) entre a taxa média de mercado e a taxa contratual, percentual este considerado como suficiente para autorizar a revisão contratual conforme entendimento consolidado na ambiência da Primeira Câmara de Direito Privado. 4. Como visto, houve a cobrança abusiva de juros remuneratórios no período da normalidade do contrato, o que acarreta como consequência a descaracterização da mora, consoante a sólida, estável, firme, jurisprudência do colendo Superior Tribunal de Justiça (STJ) sobre este assunto, no sentido de que A cobrança de encargos abusivos no período da normalidade enseja a descaracterização da mora. (AgInt no AREsp 1118462/RS, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 20/02/2018, DJe 01/03/2018) 5. Na hipótese de inadimplemento, o contrato não exige a cobrança de comissão de permanência, o que prostra ao solo o argumento da existência de cumulação desse encargo com outras verbas moratórias (cl. 14, fl. 70) 6. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. ACÓRDÃO: Vistos, relatados e discutidos estes autos da APELAÇÃO CÍVEL nº 0233886-58.2023.8.06.0001, em que é apelante JOSÉ HÉLIO MARTINS DE SOUZA e apelado BANCO PAN S/A, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer e dar parcial provimento ao recurso, nos termos do

Processo	3004253-61.2025.8.06.0001
	voto do Relator. Fortaleza, 18 de outubro de 2023. EMANUEL LEITE ALBUQUERQUE Relator (Apelação Cível - 0233886-58.2023.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 18/10/2023, data da publicação: 18/10/2023, grifei).&#160; </p><p style="text-align: justify; padding-left: 150px;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> No caso concreto, trata-se de uma cédula de crédito bancário, celebrada em 03/03/2023, cujo valor financiado foi de R\$15.509,37 (quinze mil, quinhentos e nove reais e trinta e sete centavos), a ser paga em 48 (quarenta e oito) parcelas mensais de R\$662,23 (seiscentos e sessenta e dois reais e vinte e três centavos), em que a taxa de juros remuneratórios pactuada foi de 3,36% ao mês e 48,71% ao ano, enquanto a taxa média divulgada pelo BACEN, para as operações de crédito para pessoas físicas vinculado à aquisição de veículos (séries 25471 e 20749), no período (março de 2023), era respectivamente de 2,12% ao mês e 28,58% ao ano. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Como é possível constatar, a taxa de juros anual pactuada supera em 20,13 pontos percentuais da referida taxa média de mercado para o tipo de operação, gerando, a priori, uma desvantagem ao consumidor. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Como se vê, a diferença entre a taxa contratada e a média praticada pelo mercado para o mesmo tipo de operação é significativamente discrepante, revelando-se abusiva a cláusula que estipula as taxas de juros remuneratórios do contrato questionado, vez que ultrapassa a margem de tolerância adotada por esta e. Primeira Câmara de Direito Privado, de cinco pontos percentuais. Por isso, a taxa contratada deve ser reduzida para a média divulgada pelo Banco Central do Brasil, respectivamente de 2,12% ao mês e 28,58% ao ano. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Por oportuno, registre-se que a instituição financeira não justificou as razões pelas quais adotou taxas bem superiores às de mercado, independentemente do prazo de amortização ou do valor solicitado. Além disso, não foi demonstrado que o consumidor possuía restrição creditícia que limitasse as possibilidades de contratação no mercado ou ensejasse risco elevado para a liberação de empréstimo, nem mesmo eventual impontualidade nas suas obrigações. Também não foram demonstrados a situação da economia na época da contratação nem o custo da captação dos recursos, comparado ao de outras operações disponíveis no mercado. Assim, a apelante não se eximiu do ônus de justificar as razões pelas quais adotou taxas tão superiores às de mercado, do que se observa flagrante abusividade. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Dessa forma, estando o contrato em desconformidade com a orientação jurisprudencial consagrada pelo c. STJ, não merece reparos a sentença impugnada quanto a esse ponto, posto ter reconhecido a flagrante abusividade dos juros aplicados e a vantagem desproporcional da instituição financeira.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> 2. Da ilegalidade da cobrança do seguro prestamista </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> O Superior Tribunal de Justiça firmou o entendimento, em sede de julgamento de Recurso Repetitivo (REsp n. 1639259/SP), no sentido de considerar abusiva a imposição ao consumidor de contratação de seguro com a instituição financeira ou com seguradora por ela indicada, em contratos bancários em geral, nestes termos: “nos contratos bancários em geral, o consumidor não pode ser compelido a contratar seguro com a instituição financeira ou com seguradora por ela indicada”, porque além de configurar venda casada, é proibida pelo artigo 39, I, do Código

Processo	3004253-61.2025.8.06.0001
	de Defesa do Consumidor, uma vez que retira do consumidor o direito de negociar um preço mais justo com outras seguradoras. Neste azo, considerando não se extrair do caso concreto a concessão de oportunidade de contratação, pelo consumidor apelado, do comentado seguro, sua cobrança de forma unilateral configura abusividade suficiente a permitir o seu afastamento, permitindo, por consectário, sua restituição a agravada. Cito, na oportunidade, o entendimento desta Corte de Justiça acerca do tema: APELAÇÃO CÍVEL. DIREITO DO CONSUMIDOR. AÇÃO REVISIONAL DE CONTRATO. CÉDULA DE CRÉDITO BANCÁRIO. IMPUGNAÇÃO À GRATUIDADE DA JUSTIÇA DEFERIDA EM FAVOR DA APELADA REJEITADA. SEGURO PRESTAMISTA CONTRATADO NO MESMO INSTRUMENTO CONTRATUAL. VENDA CASADA CONFIGURADA. ILEGALIDADE NA CONTRATAÇÃO DO SEGURO. HONORÁRIOS ADVOCATÍCIOS. SUCUMBÊNCIA TOTAL DO RÉU. MAJORAÇÃO EM SEDE RECURSAL. RECURSO APELATÓRIO DO RÉU CONHECIDO E DESPROVIDO. SENTENÇA DE PROCEDÊNCIA MANTIDA. 1. Não assiste razão ao apelante, pois nos termos do art. 99, § 3º do CPC/15, presume-se verdadeira a declaração de hipossuficiência formulada por pessoa natural, sendo ilidida apenas com prova inequívoca em sentido contrário. Na hipótese dos autos, o apelante não acostou provas que ilidissem a gratuidade da justiça deferida em favor da recorrida, tendo a declaração de hipossuficiência feita pela apelada à fl. 09, presunção de veracidade. Preliminar rejeitada. 2. In casu, verifica-se que na cláusula nº 7 do contrato de empréstimo (fl. 14), há a previsão expressa da contratação da seguradora indicada pelo Banco recorrente, não tendo sido oportunizada à parte autora, ora recorrida, a alternativa de optar ou não pela contratação do mencionado seguro prestamista. Ademais, constata-se, ainda, que o contrato de seguro às fls. 17/24 não foi sequer assinado pela contratante, revelando-se totalmente abusiva a contratação do seguro prestamista, configurando-se, assim, o instituto da venda casada. Portanto, mantenho a sentença neste ponto. 3. Por derradeiro, tendo em vista que a demandante, ora apelada, saiu vitoriosa em todos os seus pedidos iniciais, caberá ao Banco demandado/apelante arcar integralmente com os ônus da sucumbência (art. 85, caput, CPC/15), observada a majoração dos honorários advocatícios sucumbenciais, a título recursal, de 10% (dez por cento) para 15% (quinze por cento) sobre o valor da condenação, a teor do § 11 do art. 85 do CPC/15 c/c a regra de transição contida no Enunciado Administrativo nº 07/STJ. 4. RECURSO APELATÓRIO DO RÉU CONHECIDO E DESPROVIDO. SENTENÇA DE PROCEDÊNCIA MANTIDA. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda, a Turma Julgadora da Terceira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, conhecer e negar provimento ao recurso apelaratório do réu, mantendo, desse modo, inteiramente a sentença recorrida que julgou procedente o pedido autoral, observada, ainda, a majoração, a título recursal, dos honorários advocatícios sucumbenciais, tudo nos termos do voto condutor da Relatora (Relator (a): MARIA VILAUBA FAUSTO LOPES; Comarca: Fortaleza; Órgão julgador: 32ª Vara Cível; Data do julgamento: 18/12/2019; Data de registro: 18/12/2019). DIREITO CIVIL E CONSUMERISTA. AGRAVO INTERNO EM APELAÇÃO. AÇÃO REVISIONAL. CÉDULA DE CRÉDITO BANCÁRIO. FINANCIAMENTO PARA AQUISIÇÃO DE VEÍCULO. TAXA DE JUROS REMUNERATÓRIOS DESTOANTE DA MÉDIA DE MERCADO. NECESSIDADE DE REDUÇÃO. TARIFA DE AVALIAÇÃO DO BEM DADO EM GARANTIA. AUSÊNCIA DE COMPROVAÇÃO DA PRESTAÇÃO DO SERVIÇO. VENDA CASADA DE SEGURO PRESTAMISTA E TÍTULO CAPITALIZAÇÃO. IMPOSSIBILIDADE. RECURSO CONHECIDO E DESPROVIDO. [...] 13. DO SEGURO PRESTAMISTA. A Corte Superior, analisando o seguro de proteção financeira, que é uma extensão do seguro prestamista, adotou o entendimento de que a sua cobrança não confronta com a regulação bancária, sendo vedada apenas a venda casada. 14. Na hipótese em exame, há cláusula contratual (item 5.5)

Processo	3004253-61.2025.8.06.0001
	prevendo a cobrança do valor de R\$ 700,00 (setecentos reais) a título de seguro prestamista na própria cédula de crédito bancário, inexistindo previsão acerca da possibilidade de o consumidor não aderir a esse serviço, o que conduz à conclusão de que não foi garantida ao autor a liberdade de contratar ou não o seguro ou escolher outra seguradora, caracterizando a venda casada, prática legalmente proibida, nos termos do art. 39, inciso I, do Código de Defesa do Consumidor. Portanto, resta caracterizada a abusividade contratual no ponto, devendo ser acolhido o pleito de afastamento dessa cláusula. 15.DO TÍTULO DE CAPITALIZAÇÃO. Assim como ocorreu em relação ao seguro prestamista, a previsão no item 5.5 acerca do título de capitalização no valor de R\$ 80,98 (oitenta reais e noventa e oito centavos) ocorreu no próprio instrumento de cédula de crédito bancário e não evidencia a existência da liberdade de contratação pelo consumidor, não sendo legítima a sua cobrança. 16. Agravo Interno conhecido, porém improvido. ACÓRDÃO Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Egrégio Tribunal de Justiça do Estado do Ceará, nos autos do processo nº 0186589-65.2017.8.06.0001/50000 por unanimidade, por uma de suas Turmas, em conhecer do Agravo Interno, mas para desprovê-lo, nos termos do voto do eminente Relator. Fortaleza, 31 de julho de 2019.(Relator (a): HERÁCLITO VIEIRA DE SOUSA NETO; Comarca: Fortaleza; Órgão julgador: 8ª Vara Cível; Data do julgamento: 31/07/2019; Data de registro: 31/07/2019) DIREITO DO CONSUMIDOR E BANCÁRIO. APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. FINANCIAMENTO DE VEÍCULO. S EGURO PRESTAMISTA. VENDA CASADA CONFIGURADA. ILEGALIDADE DA COBRANÇA. RESTITUIÇÃO DOS VALORES PAGOS. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. I. CASO EM EXAME Apelação cível interposta por Gleiciane Simão Gomes contra sentença da 38ª Vara Cível da Comarca de Fortaleza, que julgou improcedente ação de indenização por danos morais e materiais movida contra o Banco Votorantim S/A, entendendo que não houve irregularidade na contratação do seguro prestamista vinculado ao financiamento de veículo, inexistindo, portanto, dano a ser indenizado. II. QUESTÃO EM DISCUSSÃO Há duas questões em discussão: (i) determinar se a contratação do seguro prestamista configurou prática de venda casada, vedada pelo art. 39, I, do Código de Defesa do Consumidor (CDC); e (ii) estabelecer se é devida a restituição dos valores pagos, de forma simples ou em dobro, em razão da ilegalidade da cobrança. III. RAZÕES DE DECIDIR A venda casada ocorre quando o fornecedor condiciona o fornecimento de um produto ou serviço à contratação de outro, o que é vedado pelo art. 39, I, do CDC. O STJ, no Tema Repetitivo nº 972, estabelece que o consumidor não pode ser compelido a contratar seguro com a instituição financeira ou seguradora por ela indicada, sendo abusiva a cláusula que restringe essa liberdade. No caso concreto, a cláusula contratual 5.5 do contrato impôs a contratação de seguro prestamista com seguradora do mesmo grupo econômico da instituição financeira, sem oferecer alternativa ao consumidor, configurando venda casada. De acordo com o EAREsp nº 676.608/RS, a restituição em dobro do indébito (art. 42, parágrafo único, do CDC) é cabível sempre que a cobrança indevida consubstanciar conduta contrária à boa-fé objetiva, independentemente da prova de má-fé do fornecedor. A modulação de efeitos dessa decisão determina a devolução simples dos valores pagos até 30/03/2021 e em dobro para os valores cobrados após essa data, permitida a compensação. IV. DISPOSITIVO Recurso conhecido e provido. Sentença reformada. (Apelação Cível - 0203792-98.2021.8.06.0001, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento: 11/03/2025, data da publicação: 11/03/2025) No caso em questão, ao analisar o contrato juntado nos autos, é possível verificar que a contratação do seguro se deu no bojo do contrato de financiamento, caracterizando a venda casada. Nesse caminhar, resta evidente a venda casada de seguro prestamista, o que vedada pelo artigo 39, I, do Código de Defesa do Consumidor. Repetição do indébito em dobro

Processo	3004253-61.2025.8.06.0001
	times;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Por ter sido reconhecida abusividade nas cláusulas contratuais que preveem juros remuneratórios acima da média de mercado e a venda casada do seguro prestamista, nasce para a contratante o direito à restituição dos valores indevidamente pagos. </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> &#160;</p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Como não houve recurso da parte autora e o Banco, neste apelo, limitou-se a pedir a retirada total dessa condenação, deixo de aplicar o entendimento adotado pelo STJ no &#160;EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020, relativo à repetição em dobro de valores, para não incidir em reformatio in pejus.</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> <strong style="font-family: &quot;times new roman&quot;, times; font-size: large;">4. Dispositivo</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Diante do exposto, conheço do apelo interposto para lhe negar provimento, mantendo inalterada a sentença. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Com o resultado, majoro os honorários advocatícios em 2% (dois por cento) sobre o valor arbitrado pelo juízo a quo em desfavor da parte ora apelante, observado o limite do percentual previsto no art. 85, §2º, do CPC.</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> É como voto. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify;" dir="ltr">&#160;</p><p style="text-align: center;" dir="ltr">
 DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;" dir="ltr">
 </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p></p>
Processo	3032143-72.2025.8.06.0001
Número de ordem	134
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alienação Fiduciária
Polo ativo	ANADIA MARIA DE OLIVEIRA SALVADOR
Advogado(s) - Polo ativo	ANA VALERIA ASSUNCAO PINTO VIANA - (CE8234-A) LUIZA DE MARILAC SILVA SALVADOR - (CE8753-A)
Polo passivo	BANCO VOLKSWAGEN S.A.
Advogado(s) - Polo passivo	MARIA LUCILIA GOMES - (CE16018-A) AMANDIO FERREIRA TERESO JUNIOR - (CE23189-A)
Terceiros	Não informado

Processo	3032143-72.2025.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNhEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKSrLz8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmCl3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmWFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWj+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxBG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUu2ZXJlJxMkCAGKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJ1VfDrTECR2H3TDT2lZMs6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2DltgIsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJ0BFvMkyqUYCXG6425NbR9LZQW6GZT9CdPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41gnUvsnXNkIX410JEZMRU0ZDIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	3032143-72.2025.8.06.0001
	III. RAZÕES DE DECIDIR 3. No caso sob exame, verifica-se que a instituição financeira instruiu a petição inicial com a cópia do instrumento contratual e com a notificação encaminhada ao endereço informado no contrato pela devedora, o que foi devidamente certificado na carta com AR. Ainda que não houvesse efetivo recebimento da notificação, os documentos que instruem a inicial são suficientes para constituir em mora a devedora fiduciária, em consonância com o art. 2º, § 2º, do Decreto-Lei nº 911/69 e com o entendimento consolidado pelo Superior Tribunal de Justiça no julgamento do Tema Repetitivo nº 1.132 pelo STJ, segundo o qual “para a comprovação da mora nos contratos garantidos por alienação fiduciária, é suficiente o envio de notificação extrajudicial ao devedor no endereço indicado no instrumento contratual, dispensando-se a prova do recebimento, quer seja pelo próprio destinatário, quer por terceiros”. 4. Dito isso, uma vez demonstrado o envio da notificação ao endereço indicado no contrato, cujo recebimento foi devidamente certificado, é insubsistente a alegada irregularidade da notificação, sendo, inclusive, dispensável a prova do recebimento (Tema 1.132 do STJ). 5. É cediço que, independentemente dos motivos que levaram ao atraso no pagamento das prestações avençadas, a legislação de regência é clara ao afirmar que, comprovada a mora, ainda que em relação apenas a uma parcela do financiamento, o credor fiduciário tem direito à consolidação da posse plena e exclusiva do bem, que somente pode ser restituído ao devedor se este promover a quitação integral do contrato, no prazo de 5 (cinco) dias, contados da execução da medida liminar. Com base nisso, o mero fato de o(a) devedor(a) mencionar a existência de problemas de saúde ou a possibilidade de purgação da mora efetuando o pagamento exclusivo das parcelas vencidas – sem qualquer amparo na legislação aplicável –, não constitui motivação idônea ou elemento de convicção capaz a infirmar a consolidação da posse e propriedade do veículo em favor do credor fiduciário. 6. Vale pontuar que não merece amparo o pleito de restituição dos valores pagos pela ré / apelante, visto que, no contrato de financiamento de veículo, em havendo inadimplência do devedor fiduciário, as prestações pagas – junto com o valor arrecadado pela futura alienação extrajudicial do veículo – serão utilizadas para quitar a dívida contraída, sendo inviável a restituição do numerário, salvo se, com a sua venda, sobrevier saldo excedente, o que exige análise em ação própria. 7. Por fim, cumpre frisar que as custas processuais e os honorários advocatícios constituem consectários legais da condenação da parte vencida, decorrendo diretamente do princípio da sucumbência. Assim, inobstante a parte vencida seja beneficiária da justiça gratuita, tais encargos devem ser formalmente aplicados, ressalvando-se apenas a suspensão de sua exigibilidade (art. 98, §3º, do CPC). IV. DISPOSITIVO 8. Recurso desprovido. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer do recurso interposto para, no mérito, negar-lhe provimento, no sentido de manter inalterada a r. sentença recorrida, nos termos do voto do Desembargador Relator. Fortaleza, data e assinatura digital. &#160; DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator
 &#160; RELATÓRIO Cuida-se de recurso de Apelação Cível interposto por Anádia Maria de Oliveira Salvador

Processo	3032143-72.2025.8.06.0001
	contra sentença prolatada pelo MMº. Juiz de Direito Agenor Studart Neto, da 16ª Vara Cível da Comarca de Fortaleza, que, nos autos da Ação de Busca e Apreensão proposta pelo Banco Volkswagen S/A, julgou procedentes os pedidos formulados na petição inicial. ¶ ¶ Eis o dispositivo da sentença: ¶ “Diante do exposto, com fulcro no artigo 487, inciso I, do Código de Processo Civil,¶ JULGO PROCEDENTE o pedido formulado na inicial para:¶ a)¶ CONSOLIDAR, em mãos da parte autora, BANCO VOLKSWAGEN S.A., o domínio e a posse plena e exclusiva do veículo VOLKSWAGEN VIRTUS AB, placa RIJ7C01, chassi 9BWDH6BZXP023501, RENAVAL 01389198860, tornando definitiva a liminar anteriormente concedida (ID 154825645). b)¶ AUTORIZAR a parte autora, com fundamento no Art. 3º, § 1º, do Decreto-Lei nº 911/69, a proceder à venda do bem, devendo aplicar o produto na liquidação de seu crédito e das despesas decorrentes, entregando à parte devedora eventual saldo remanescente, mediante prestação de contas. ¶ CONDENO a parte requerida (ANADIA MARIA DE OLIVEIRA SALVADOR) ao pagamento das custas e despesas processuais, bem como dos honorários advocatícios em favor do patrono da parte autora, os quais fixo em 10% (dez por cento) sobre o valor atualizado da causa, nos termos do art. 85, § 2º, do Código de Processo Civil. Fica, contudo, a exigibilidade de tais verbas suspensa, nos termos do art. 98, § 3º, do Código de Processo Civil, em razão da concessão dos benefícios da justiça gratuita. ¶ DETERMINO, independentemente do trânsito em julgado desta decisão e caso ainda não tenha sido providenciado, a retirada de eventuais restrições de circulação inseridas por este Juízo via sistema RENAJUD, tendo em vista a consolidação da propriedade plena do bem em favor da parte autora (Art. 3º, § 1º, DL 911/69). ¶ Valerá esta sentença, devidamente assinada digitalmente e acompanhada da certidão de trânsito em julgado, como ofício a ser apresentado diretamente pelos interessados junto ao Departamento Estadual de Trânsito (DETRAN) competente para que seja promovida a transferência de propriedade do veículo para o nome da parte autora (BANCO VOLKSWAGEN S.A.), conforme autorizado pelo Decreto-Lei nº 911/69. Fica a cargo da própria parte interessada a apresentação direta deste ofício ao órgão de trânsito, instruindo-o com as cópias dos documentos processuais que entender pertinentes para o cumprimento da determinação. ¶ Decorrido o prazo legal sem a interposição de recurso voluntário pelas partes, certifique-se o trânsito em julgado e, após as baixas e anotações de estilo, arquivem-se os presentes autos. ¶ Publique-se no DJEN, nos termos da Portaria n. 569/2025, DJ 10/03/2025. ¶ Expediente Necessário. ¶ ¶ Nas razões recursais, a parte apelante aduz, em síntese, que não teria sido corretamente notificada para purgar a mora, pois estava ausente do endereço para o qual foi encaminhada a notificação, comprometendo, assim, a constituição em mora. Argumenta que, além de sua condição financeira, seu estado de saúde também deve ser considerado como meio de afastar a apreensão do veículo, pleiteando a purgação da mora mediante o pagamento apenas das parcelas vencidas, sem incluir custas processuais e honorários advocatícios. ¶ ¶

Processo	3032143-72.2025.8.06.0001
	Alega, ainda, que a instituição financeira deve prestar as contas com o valor obtido com a venda do bem, demonstrando o detalhamento nos autos do cálculo relativo ao saldo devedor atualizado, sob pena de serem aceitos como corretas as contas apresentadas pela ora apelante.</p><p style="text-indent: 8%; align: justify">&#160;</p><p style="text-indent: 8%; align: justify">Ao final, requer o provimento do recurso, para que seja reformada a sentença e reconhecida a irregularidade da notificação e da cobrança das parcelas vincendas, ou, subsidiariamente, que os autos sejam remetidos à contadoria judicial, com a finalidade de se apurar o saldo em aberto e a eventual restituição de valores pagos.</p><p style="text-indent: 8%; align: justify">&#160;</p><p style="text-indent: 8%; align: justify">Em contrarrazões, a parte apelada suscita, de forma preliminar, a ausência de impugnação específica da sentença e impugna o benefício da justiça gratuita concedido à parte apelante. No mérito, advoga a manutenção do decisum, ressaltando i) a validade da notificação extrajudicial; ii) a ausência de purgação da mora; iii) a impossibilidade de excluir as custas e os honorários de sucumbência; e iv) o não cabimento do pedido de prestação de contas e de restituição de valores.</p><p style="text-indent: 8%; align: justify">&#160;</p><p style="text-indent: 8%; align: justify">É o relatório.</p><p align=

Processo	3032143-72.2025.8.06.0001
	QUE PARCELA 19 FOI PAGA, INCLUSIVE COM RECONHECIMENTO POR PARTE DA INSTITUIÇÃO FINANCEIRA QUANDO DO AJUIZAMENTO DA AÇÃO (PROTOCOLADA EM 13/02/2023), NA MEDIDA EM QUE NO DEMONSTRATIVO DE DÉBITO (FL. 29), NÃO MAIS SE INCLUIU A 19ª PARCELA, MAS TÃO SOMENTE A 20ª EM DIANTE. HÁ UMA DIFERENÇA DE DATA DE RECEBIMENTO (02.01.2023) E O CARIMBO DOS CORREIOS (02.02.2023). CONTUDO, À FL. 127, O BANCO DEMONSTRA QUE, DE ACORDO COM O CÓDIGO DE RASTREIO YA163395302BR DESCRITO NO CORPO DO "AR", A NOTIFICAÇÃO EXTRAJUDICIAL FOI POSTADA EM27/01/2023 E ENTREGUE EM 02/02/2023, O QUE REVELA TRATAR-SE, REFERIDA INCONSISTÊNCIA, DE MERO EQUIVOCO NA ESCRITA DA DATA (02.01.2023). DESNECESSIDADE DE PROVA PERICIAL. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. (Apelação Cível - 0208972-27.2023.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 13/09/2023, data da publicação: 13/09/2023). [Grifou-se]. APELAÇÃO CÍVEL EM AÇÃO DE BUSCA E APREENSÃO. SENTENÇA RECORRIDA QUE EXTINGUIU O FEITO SEM RESOLUÇÃO DE MÉRITO COM FUNDAMENTO NO ART.485, I DO CPC. AUTOR QUE NÃO EMENDOU A INICIAL MESMO TENDO SIDO INTIMADO PARA TANTO. CORRESPONDÊNCIA NÃO ENTREGUE NO ENDEREÇO DO DEVEDOR. AVISO DE RECEBIMENTO COM OBSERVAÇÃO DE "NÃO PROCURADO". NOTIFICAÇÃO CONSIDERADA REGULAR. MORA DO DEVEDOR COMPROVADA. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. A controvérsia recursal consiste em analisar se a notificação extrajudicial enviada para o endereço indicado no contrato e devolvida ao remetente com a observação "não procurado", bem como o protesto do título anterior ao ajuizamento da ação de busca e apreensão são documentos hábeis para comprovar a constituição do devedor em mora, nos termos do Decreto-Lei nº. 911/69. 2. Na espécie, entendeu o juízo a quo que o recorrente, mesmo devidamente intimado na pessoa de seu representante legal, não cumpriu as diligências que lhe competia no prazo que lhe fora assinado de 15 (quinze) dias, no sentido de comprovar a notificação extrajudicial válida, na forma do art. 2º, § 2º, do Decreto-Lei nº 911/69. 3. Sobre o tema em apreço, deve-se destacar que, a demanda de busca e apreensão de bem objeto de alienação fiduciária em garantia, procedimento especial regulado em legislação extravagante, a comprovação da mora integra o interesse processual do credor fiduciário. É o que se extrai, em última análise, do artigo 3º, 'caput', do Decreto-lei n. 911/69, com redação dada pela Lei n. 13.043/2014: "o proprietário fiduciário ou credor poderá, desde que comprovada a mora, na forma estabelecida pelo § 2º do art. 2º, ou o inadimplemento, requerer contra o devedor ou terceiro a busca e apreensão do bem alienado fiduciariamente, a qual será concedida liminarmente, podendo ser apreciada em plantão judiciário". 4. Interpretando esse dispositivo, ambas as Turmas da 2ª Seção do Superior Tribunal de Justiça, que têm competência para o julgamento da matéria, pacificaram o entendimento de que o envio da notificação ao endereço do devedor fiduciante constante do contrato é suficiente para demonstração da mora, mesmo havendo devolução do Aviso de Recebimento (AR), pois não é necessário o efetivo recebimento da correspondência pela pessoa do devedor. 5. Neste passo, a Segunda Seção do Superior Tribunal de Justiça, ao julgar o Recurso Especial nº 1.951.662/RS, submetido ao regime dos recursos repetitivos, concluiu aprovando a seguinte tese no Tema 1.132: "Para a comprovação da mora nos contratos garantidos por alienação fiduciária, é suficiente o envio de notificação extrajudicial ao devedor no endereço indicado no instrumento contratual, dispensando-se a prova do recebimento, quer seja pelo próprio destinatário, quer por terceiros." 6. Nesse contexto, constata-se que basta o envio da notificação ao endereço do devedor fiduciante constante do contrato e não é necessário o efetivo recebimento da correspondência por ele, então é lógico que pouco importa o motivo da devolução anotado no AR, se "mudou-se", "endereço insuficiente", "não procurado", "não existe o número", "desconhecido", "recusado" ou "outro". 7. Feitas tais ponderações, no caso vertente, a notificação (fls. 29) foi devidamente enviada ao endereço informado pelo devedor fiduciante no contrato (fls. 20/26), tendo o AR sido devolvido com a observação "não procurado (fls. 29) e, na forma da jurisprudência já mencionada, isso é o suficiente para comprovar a mora. 8. Recurso conhecido e provido. Sentença cassada. (Apelação Cível - 0200840-86.2023.8.06.0160, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 06/09/2023, data da publicação: 07/09/2023). [Grifou-se].

Processo	3032143-72.2025.8.06.0001
	<p>style="font-size: large;"/> Dito isso, uma vez demonstrado o envio da notificação ao endereço indicado no contrato, cujo recebimento foi devidamente certificado, é insubsistente a alegada irregularidade da notificação, sendo, inclusive, dispensável a prova do recebimento (Tema 1.132 do STJ).</p> <p align="justify"> #160; </p> <p justify"="" style="text-indent: 8%; align="> IV. Da purgação da mora </p> <p align="justify"> #160; </p> <p align="justify"> Conforme mencionado, a vertente ação judicial possui rito específico previsto no Decreto-Lei nº 911/69, tendo como objetivo precípuo a recuperação do bem alienado e, em fase posterior, a purgação da mora e a análise de eventual defesa. Isso significa que, uma vez realizada a apreensão do veículo objeto da alienação fiduciária, e não sendo purgada a mora, abre-se para o(a) devedor(a) a possibilidade de discutir as matérias que entender pertinentes, inclusive demonstrar eventual falha na prestação do serviço bancário para o fim de desconstituir a mora.</p> <p justify"="" style="text-indent: 8%; align="> #160; </p> <p justify"="" style="text-indent: 8%; align="> Seguindo essa linha de raciocínio, independentemente dos motivos que levaram ao atraso no pagamento das prestações avençadas, a legislação de regência é clara ao afirmar que, comprovada a mora, ainda que em relação apenas a uma parcela do financiamento, o credor fiduciário tem direito à consolidação da posse plena e exclusiva do bem, que somente pode ser restituído ao devedor se este promover a <u>quitação integral do contrato</u>, no prazo de 5 (cinco) dias, contados da execução da medida liminar.</p> <p align="justify"> #160; </p> <p align="justify"> Confira-se a fundamentação correspondente: </p> <p align="justify"> Decreto-Lei nº 911/69 </p> <p justify"="" style="padding-left: 150px; align="> #160; </p> <p justify"="" style="padding-left: 150px; align="> [...] </p> <p justify"="" style="padding-left: 150px; align="> Art. 2 ^o <u>No caso de inadimplemento ou mora nas obrigações contratuais garantidas mediante alienação fiduciária, o proprietário fiduciário ou credor poderá vender a coisa a terceiros, independentemente de leilão, hasta pública, avaliação prévia ou qualquer outra medida judicial ou extrajudicial, salvo disposição expressa em contrário prevista no contrato, devendo aplicar o preço da venda no pagamento de seu crédito e das despesas decorrentes e entregar ao devedor o saldo apurado, se houver, com a devida prestação de contas.</u> </p> <p justify"="" style="padding-left: 150px; align="> #160; </p> <p justify"="" style="padding-left: 150px; align="> § 1º O crédito a que se refere o presente artigo abrange o principal, juros e comissões, além das taxas, cláusula penal e correção monetária, quando expressamente convencionados pelas partes. </p> <p justify"="" style="padding-left: 150px; align="> #160; </p> <p justify"="" style="padding-left: 150px; align="> § 2 ^o <u>A mora decorrerá do simples vencimento do prazo para pagamento e poderá ser comprovada por carta registrada com aviso de recebimento, não se exigindo que a assinatura constante do referido aviso seja a do próprio destinatário. </u></p> <p align="justify"> #160; </p> <p justify"="" style="padding-left: 150px; align="> #160; </p>

Processo	3032143-72.2025.8.06.0001
	new roman", times;">§ 3º A mora e o inadimplemento de obrigações contratuais garantidas por alienação fiduciária, ou a ocorrência legal ou convencional de algum dos casos de antecipação de vencimento da dívida facultarão ao credor considerar, de pleno direito, vencidas tôdas as obrigações contratuais, independentemente de aviso ou notificação judicial ou extrajudicial. </p><p style="padding-left: 150px;" align="justify"> [...] </p><p style="padding-left: 150px;" align="justify"> &#160; </p><p style="padding-left: 150px;" align="justify"> Art. 3 <sup> o </sup>O proprietário fiduciário ou credor poderá, desde que comprovada a mora, na forma estabelecida pelo § 2 <sup> o</sup>&#160;do art. 2 <sup> o</sup>, ou o inadimplemento, requerer contra o devedor ou terceiro a busca e apreensão do bem alienado fiduciariamente, a qual será concedida liminarmente, podendo ser apreciada em plantão judiciário. </p><p style="padding-left: 150px;" align="justify"> &#160; </p><p style="padding-left: 150px;" align="justify"> § 1º&#160; Cinco dias após executada a liminar mencionada no&#160; caput , consolidar-se-ão a propriedade e a posse plena e exclusiva do bem no patrimônio do credor fiduciário, cabendo às repartições competentes, quando for o caso, expedir novo certificado de registro de propriedade em nome do credor, ou de terceiro por ele indicado, livre do ônus da propriedade fiduciária. </p><p style="padding-left: 150px;" align="justify"> &#160; </p><p style="padding-left: 150px;" align="justify"> § 2º&#160; No prazo do § 1 <sup> o</sup> o, o devedor fiduciante poderá pagar a integralidade da dívida pendente, segundo os valores apresentados pelo credor fiduciário na inicial, hipótese na qual o bem lhe será restituído livre do ônus. [Grifou-se]. </p><p align="justify">
</p><p style="text-indent: 8%;" align="justify"> Com base nisso, o mero fato de o(a) devedor(a) mencionar a existência de problemas de saúde ou a possibilidade de purgação da mora efetuando o pagamento exclusivo das parcelas vencidas – sem qualquer amparo na legislação aplicável –, não constitui motivação idônea ou elemento de convicção capaz a infirmar a consolidação da posse e propriedade do veículo em favor do credor fiduciário. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Em outras palavras, uma vez comprovada a inadimplência da devedora e a notificação extrajudicial encaminhada ao seu endereço para o fim de constituir a mora, sendo oportunizada a purgação do encargo (art. 3º, caput e § 2º, do Decreto-Lei nº 911/69), inexistiu ilegalidade cometida pelo credor fiduciário. Para evitar a constrição judicial do bem, seria imprescindível o pagamento da integralidade da dívida pendente, conforme os valores indicados na petição inicial, em consonância aos ditames da lei e das cláusulas do contrato de financiamento anexado aos autos. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Não é outro o entendimento da egrégia Corte Superior: </p><p align="justify">
</p><p style="padding-left: 150px;" align="justify"> AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO DE BUSCA E APREENSÃO. ALIENAÇÃO FIDUCIÁRIA COM GARANTIA. COMPROVAÇÃO DA MORA. NOTIFICAÇÃO EXTRAJUDICIAL COM AVISO DE RECEBIMENTO. PROVA DE REMESSA AO ENDEREÇO CONSTANTE DO CONTRATO. PURGAÇÃO DA MORA. NECESSIDADE DE PAGAMENTO DA INTEGRALIDADE DA DÍVIDA NO PRAZO DE 5 DIAS APÓS A EXECUÇÃO DA LIMINAR. DECISÃO MANTIDA. AGRAVO INTERNO DESPROVIDO. 1. Em ação de busca e apreensão fundada em contratos garantidos com alienação fiduciária (art. 2º, § 2º, do Decreto-Lei n. 911/1969), para a comprovação da mora, é suficiente o envio de notificação

Processo	3032143-72.2025.8.06.0001
	extrajudicial ao devedor no endereço indicado no instrumento contratual, dispensando-se a prova do recebimento, quer seja pelo próprio destinatário, quer por terceiros. 2. Nos contratos firmados na vigência da Lei n. 10.931/2004, compete ao devedor, no prazo de 5 dias após a execução da liminar na ação de busca e apreensão, pagar a integralidade da dívida, sob pena de consolidação da propriedade do bem móvel objeto de alienação fiduciária (Tema n. 722 do STJ). 3. Agravo interno desprovido. (STJ - AgInt nos EDcl no AREsp: 2431807 PR 2023/0280527-6, Relator.: Ministro JOÃO OTÁVIO DE NORONHA, Data de Julgamento: 27/05/2024, T4 - QUARTA TURMA, Data de Publicação: DJe 29/05/2024). [Grifou-se]. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. ADMISSIBILIDADE. RECONSIDERAÇÃO. AÇÃO DE BUSCA E APREENSÃO. ALIENAÇÃO FIDUCIÁRIA COM GARANTIA. NEGATIVA DE PRESTAÇÃO JURISDICIONAL. NÃO OCORRÊNCIA. PURGAÇÃO DA MORA. NECESSIDADE DE PAGAMENTO DA INTEGRALIDADE DA DÍVIDA. DISSÍDIO JURISPRUDENCIAL NÃO CONHECIDO. AGRAVO INTERNO DESPROVIDO. 1. Inexiste negativa de prestação jurisdicional quando a corte de origem examina e decide, de modo claro e objetivo, as questões que delimitam a controvérsia, não ocorrendo nenhum vício que possa nulificar o acórdão recorrido. 2. Nos contratos firmados na vigência da Lei n. 10.931/2004, compete ao devedor, no prazo de 5 dias após a execução da liminar na ação de busca e apreensão, pagar a integralidade da dívida, sob pena de consolidação da propriedade do bem móvel objeto de alienação fiduciária (Tema n. 722 do STJ). 3. A incidência da Súmula n. 7 do STJ quanto à interposição pela alínea a do permissivo constitucional impede o conhecimento do recurso especial pela divergência jurisprudencial sobre a mesma questão. 4. Agravo interno desprovido. (STJ - AgInt no AREsp: 2209359 GO 2022/0292381-1, Relator.: Ministro JOÃO OTÁVIO DE NORONHA, Data de Julgamento: 03/06/2024, T4 - QUARTA TURMA, Data de Publicação: DJe 06/06/2024). [Grifou-se]. Vale pontuar que não merece amparo o pleito de restituição dos valores pagos pela ré / apelante, visto que, no contrato de financiamento de veículo, em havendo inadimplência do devedor fiduciário, as prestações pagas – junto com o valor arrecadado pela futura alienação extrajudicial do veículo – serão utilizadas para quitar a dívida contraída, sendo inviável a restituição do numerário, salvo se, com a sua venda, sobrevier saldo excedente, o que exige análise em ação própria (REsp: 1866230 SP 2019, Relator: Ministra NANCY ANDRIGHI, T3 - TERCEIRA TURMA, DJe 28/09/2020; AgInt no AREsp: 2324008 MS 2023/0095526-6, Relator.: Ministro RAUL ARAÚJO, T4 - QUARTA TURMA, DJe 08/09/2023). V. Das custas e dos honorários de sucumbência. Por fim, cumpre frisar que as custas processuais e os honorários advocatícios constituem consectários legais da condenação da parte vencida, decorrendo diretamente do princípio da sucumbência. Assim, inobstante a parte vencida seja beneficiária da justiça gratuita, tais encargos devem ser formalmente aplicados, ressaltando-se apenas a suspensão de sua exigibilidade (art. 98, §3º, do CPC). Em virtude disso, não prospera o pleito de exclusão dos respectivos encargos. VI. Dispositivo Ante o exposto, pelas razões de fato e de direito acima delineadas, conheço do recurso de apelação para, no mérito, negar-lhe provimento, mantendo-se inalterados os termos da r. sentença

Processo	3032143-72.2025.8.06.0001
	recorrida. </div></div></p><div align="justify"> <div style="font-size: large;"> <div style="font-family: &quot;times new roman&quot;; times;">&#160;</div> </div></p><p style="text-indent: 8%;" align="justify"> <div style="font-size: large;"> <div style="font-family: &quot;times new roman&quot;; times;">Com o resultado, majoro os honorários advocatícios ao patamar de 12% (doze por cento) sobre o valor da causa, cuja exigibilidade ficará suspensa em razão dos benefícios da justiça gratuita (arts. 85, § 11, e 98, § 3º, do CPC).</div> </div></p><div align="justify"> <div style="font-size: large;"><div style="font-family: &quot;times new roman&quot;; times;">&#160;</div></div></p><p style="text-indent: 8%;" align="justify"> <div style="font-size: large;"><div style="font-family: &quot;times new roman&quot;; times;">É como voto.</div></div></p><p style="text-indent: 8%;" align="justify"> <div style="font-size: large;"><div style="font-family: &quot;times new roman&quot;; times;">
 </div></div></p><p style="text-align: justify; text-indent: 8%;"> <div style="text-align: start;"><div style="font-size: large;"> <div style="font-size: medium;"> <div style="font-size: large;"> <div style="font-family: &quot;times new roman&quot;; times;">Fortaleza, data da assinatura digital.</div> </div> </div> </div></p><p style="text-align: justify; text-indent: 8%;"> <div style="text-align: start;"><div style="font-size: large;"> <div style="font-size: medium;"> <div style="font-size: large;"> <div style="font-family: &quot;times new roman&quot;; times;">
 </div> </div> </div> </div> </div></p><p style="text-align: center;"> <div style="font-family: &quot;times new roman&quot;; times; font-size: small;"> <div style="font-size: medium;"> <div style="font-size: large;"> <div style="font-family: &quot;times new roman&quot;; times;">DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</div> </div></div> </div></p><p style="text-align: center;"> <div style="font-family: Arial, serif;"> <div style="font-size: medium;"> <div style="font-size: large;"> <div style="font-size: medium;"> <div style="font-size: medium;"> <div style="font-size: large;"> <div style="font-family: &quot;times new roman&quot;; times;">Relator</div> </div> </div> </div> </div> </div></p><p> <div style="font-size: large;"> <div style="font-size: medium;"> <div style="font-size: large;"> <div style="font-family: &quot;times new roman&quot;; times;">
 </div> </div> </div> </div></p><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> <div style="font-size: medium;"> &#160; </div></p>
Processo	3001497-22.2025.8.06.0117
Número de ordem	135
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	MARIA MICHELE DE OLIVEIRA
Advogado(s) - Polo ativo	GIOVANNA VALENTIM COZZA - (SP412625-A)
Polo passivo	BANCO VOTORANTIM S.A.
Advogado(s) - Polo passivo	JOAO FRANCISCO ALVES ROSA - (BA17023-A)
Terceiros	Não informado

Processo	3001497-22.2025.8.06.0117
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Processo	3001497-22.2025.8.06.0117
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Processo	3001497-22.2025.8.06.0117
	roman&quot;, times;"/>PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> </p><p> PROCESSO: 3001497-22.2025.8.06.0117 </p><p style="text-align: justify;"/> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"/> APELANTE: MARIA MICHELE DE OLIVEIRA </p><p style="text-align: justify;"/> APELADO: BANCO VOTORANTIM S.A. </p><p style="text-align: justify;"/> &#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;"/> EMENTA: DIREITO CIVIL, PROCESSUAL CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO BANCÁRIO. SENTENÇA DE IMPROCEDÊNCIA. PRELIMINAR DE AUSÊNCIA DE INTERESSE RECURSAL NÃO CONFIGURADA. TAXA ANUAL DE JUROS REMUNERATÓRIOS SUPERIOR À MÉDIA DE MERCADO. ABUSIVIDADE CONFIGURADA. CAPITALIZAÇÃO DIÁRIA DE JUROS SEM INDICAÇÃO DA TAXA DIÁRIA. VIOLAÇÃO AO DEVER DE INFORMAÇÃO. DESCARACTERIZAÇÃO DA MORA. REPETIÇÃO DO INDÉBITO EM DOBRO. ALEGAÇÃO DE ABUSIVIDADE DAS CLÁUSULAS REFERENTES À CAPITALIZAÇÃO DOS JUROS, À COBRANÇA DE TARIFAS DE CADASTRO, DO REGISTRO DE CONTRATO E DE AVALIAÇÃO DOS BENS, À CONTRATAÇÃO DE SEGURO PRESTAMISTA E À COBRANÇA DE COMISSÃO DE PERMANÊNCIA. ABUSIVIDADES NÃO CONSTATADAS. REGULARIDADE. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE.</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;"/> I) CASO EM EXAME:&#160;&#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;"/> 1. Trata-se de recurso de Apelação Cível interposto por Maria Michele de Oliveira contra sentença de ID. 27099504, prolatada pelo Juízo da 2ª Vara Cível da Comarca de Maracanaú/CE, que julgou improcedente a Ação Revisional de

Processo	3001497-22.2025.8.06.0117
	Contrato ajuizada pela recorrente contra Banco Votorantim S/A. QUESTÃO EM DISCUSSÃO: RAZÕES DE DECIDIR: 3. No caso concreto, trata-se de uma cédula de crédito bancário, celebrada em 17/11/2022, cujo valor financiado foi de R\$ 32.290,56 (trinta e dois mil, duzentos e noventa reais e cinquenta e seis centavos), a ser paga em 48 (quarenta e oito) parcelas mensais de R\$1.342,00 (mil e trezentos e quarenta e dois reais), em que a taxa de juros remuneratórios pactuada foi de 3,22% ao mês e 46,33% ao ano, enquanto a taxa média divulgada pelo BACEN, para as operações de crédito para pessoas físicas vinculado à aquisição de veículos (séries 25471 e 20749), no período (novembro), era respectivamente de 2,06% ao mês e 27,65% ao ano. 4. Como é possível constatar, a taxa de juros anual pactuada supera em 18,68 pontos percentuais da referida taxa média de mercado para o tipo de operação gerando, a priori, uma desvantagem à consumidora. Assim, a diferença entre a taxa contratada e a média praticada pelo mercado para o mesmo tipo de operação é significativamente discrepante, revelando-se abusiva a cláusula que estipula as taxas de juros remuneratórios do contrato questionado, vez que ultrapassa – e muito – a margem de tolerância adotada por esta e. Primeira Câmara de Direito Privado, de cinco pontos percentuais. Por isso, a taxa contratada deve ser reduzida para a média divulgada pelo Banco Central do Brasil. Uma vez reconhecida a abusividade quanto a taxa de juros remuneratórios, entendo que deve haver uma compensação entre os valores devidos pelo consumidor e o que será pago pela instituição financeira a fim de evitar enriquecimento sem causa.

Processo	3001497-22.2025.8.06.0117
	New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">5. Quanto à capitalização dos juros, a orientação do c. STJ é de que “é permitida a capitalização de juros com periodicidade inferior à anual em contratos celebrados com instituições integrantes do Sistema Financeiro Nacional a partir de 31/3/2000 (MP nº 1.963-17/2000, reeditada como MP n. 2.170-36/2001), desde que expressamente pactuada”, e de que “a previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal é suficiente para permitir a cobrança da taxa efetiva anual contratada.” (Súmulas nº 539 e 541). 6. Em análise à cédula bancária (fl. 4, ID 27098766), verifica-se na cláusula “Promessa de Pagamento”, a previsão de que o cliente “Prometo pagar ao BV, na praça da sua sede, ou à sua ordem, nas respectivas datas de vencimento, a dívida em dinheiro, certa, líquida e exigível correspondente ao Valor Total do Crédito (item F.6.) acrescidos dos juros remuneratórios (item I) capitalizados diariamente sendo que os juros já estão incorporados no Valor da Parcela (item F.5)”. &#160; Já no campo “F – Dados do Financiamento” (fl. 1, ID 27098766), nas condições específicas do contrato, observa-se que foram discriminadas apenas as taxas de juros mensal e anual, de 3,22% a.m. e 46,33% a.a, respectivamente. (item F.4). A respeito disso, a Segunda Seção do c. STJ assentou posicionamento no sentido de que não basta previsão da periodicidade da capitalização de juros no contrato, sendo necessária a expressa indicação da taxa aplicável, sob pena de violação do dever de informação imposto ao fornecedor. Logo, havendo previsão no contrato firmado entre as partes da incidência de capitalização diária de juros, mas inexistindo cláusula mencionando a taxa aplicável, resta configurada a violação ao dever de informação e a abusividade da referida cláusula. 7. No caso, tendo sido constatada abusividade nos encargos exigidos no período da normalidade contratual, impõe-se reconhecer descaracterizada a mora e seus efeitos. Por ter sido reconhecida abusividade nas cláusulas contratuais que preveem juros capitalizados diariamente e cobrança da tarifa de avaliação do bem, nasce para a contratante o direito à restituição dos valores indevidamente pagos. Assim, considerando a modulação temporal dos efeitos da decisão contida no EAREsp nº 676.608/RS, somente os valores pagos após a data da publicação do acórdão em que fixado o precedente (30/03/2021), deverão ser restituídos em dobro. É o caso dos autos, tendo em vista que o instrumento contratual em discussão foi entabulado em novembro de 2022. 8. Sobre a matéria, “a procedência dos pedidos formulados em ação revisional de contrato bancário possibilita tanto a compensação de créditos quanto a devolução da quantia paga indevidamente, em obediência ao princípio que veda o enriquecimento ilícito”. (AgInt no REsp 1679635/PR, Rel. Ministro ANTÔNIO CARLOS FERREIRA, QUARTA TURMA, julgado em 10/08/2020, DJe 14/08/2020). Portanto, devida a compensação de valores, a ser devidamente apurada em sede de liquidação de sentença. 9. Quanto à tarifa de cadastro, conforme orientação da Súmula nº 566 do STJ, “Nos contratos bancários posteriores ao início da vigência da Resolução-CMN nº

Processo	3001497-22.2025.8.06.0117
	3.518/2007, em 30/4/2008, pode ser cobrada a tarifa de cadastro no início do relacionamento entre o consumidor e a instituição financeira". É o caso dos autos, tendo em vista que o instrumento contratual em discussão foi entabulado em novembro de 2022 e não há notícia de relação jurídica prévia. 10. Sobre as tarifas de registro de contrato e avaliação do bem, no julgamento do Tema 958 pelo Superior Tribunal do Justiça, no REsp 1.578.553/SP, em 28.11.2018, de relatoria do Ministro Paulo de Tarso Sanseverino, restou consolidado o entendimento da validade da contratação, ressalvado o reconhecimento de abusividade da cobrança por serviço não efetivamente prestado e a possibilidade de controle da onerosidade excessiva, em cada caso concreto. No caso em comento, observa-se que a própria parte autora anexou o CRLV (Id 27098767), que comprova o registro do contrato de financiamento junto ao órgão público de trânsito, pois há anotação do gravame (alienação fiduciária). Em relação à tarifa de avaliação, o restou comprovado pela requerida/apelada que este serviço foi realmente efetivado, posto que o Banco promovido anexou o termo de avaliação do veículo no ID 27098784. 11. No tocante ao seguro prestamista, extrai-se que houve a oportunidade de escolha da contratação pela consumidora/apelante, eis que o contrato de seguro foi firmado em apartado, em instrumento de adesão próprio, conforme ID 27098766. Nele, inclusive, há a declaração de que a contratação é opcional e que é facultado à seguradora o cancelamento a qualquer tempo. Logo, conclui-se que não houve venda casada e que a cobrança não é abusiva, rejeitando, por consectário, sua restituição à apelante. 12. No que concerne à cobrança de comissão de permanência, não se encontra tal encargo na cláusula contratual que dispõe sobre o atraso de pagamento. Assim, exsurge a falta de interesse de agir do autor/apelante, neste ponto. IV) DISPOSITIVO: 13. Recurso conhecido e parcialmente provido. Sentença reformada em parte. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso para lhe dar parcial provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO

Processo	3001497-22.2025.8.06.0117
	baseline; white-space: pre-wrap;">Presidente/Relator justify;"> <strong style="font-weight: normal;">
 center; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> RELATÓRIO justify;"> <strong style="font-weight: normal;">
 line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Trata-se de recurso de Apelação Cível interposto por Maria Michele de Oliveira contra sentença de ID. 27099504, prolatada pelo d. juízo da 2ª Vara Cível da Comarca de Maracanaú, que julgou improcedente a Ação Revisional de Contrato ajuizada pela ora recorrente em desfavor do Banco Votorantim S/A. justify;"> <strong style="font-weight: normal;">
 line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Eis o dispositivo da sentença (ID 27099504): line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> vertical-align: baseline; white-space: pre-wrap;"> Ante o exposto, julgo IMPROCEDENTE o pedido deduzido na inicial, nos termos do artigo 487, inciso I, do Código de Processo Civil. line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> vertical-align: baseline; white-space: pre-wrap;"> Condeno a parte autora ao pagamento das custas e dos honorários advocatícios que fixo em 10% do valor dado à causa, conforme o artigo 85, § 2º do Código de Processo Civil. Tais pagamentos ficam suspensos por ser a parte autora beneficiária da Gratuidade de Justiça outorgada deferida, conforme artigo 98, § 3º do CPC. line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> font-size: medium;"> Publique-se, Registre-se. Intimem-se as partes por seus causídicos. Transitada em julgado, com as cautelas de estilo, dê-se baixa na distribuição e ARQUIVE-SE, independente de nova conclusão ao Juízo. text-align: justify;"> <strong style="font-weight: normal;">
 line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Irresignada, a parte autora manejou apelo, de ID. 27099506, sustentando, em síntese, a abusividade da relação contratual entre as partes, tendo em vista: font-size: 13.99999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">

Processo	3001497-22.2025.8.06.0117
	(i) a cobrança de juros remuneratórios acima da taxa média de mercado; (ii)&#160;a nulidade da cláusula que prevê comissão de permanência cumulada com outros encargos moratórios; (iii) a ilegalidade da cobrança das tarifas de cadastro, de registro de contrato e de avaliação do bem e do seguro prestamista; (iv)&#160;a prática de capitalização diária de juros, em que pese a ausência de expressa previsão nesse sentido. Em seus requerimentos, pugna pelo provimento do seu apelo para que seja totalmente reformada a sentença.</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Sem comprovação de preparo, em razão do deferimento da benesse da justiça gratuita, na decisão de ID 27098771.</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">Em contrarrazões (ID 27099510), a instituição financeira alega, em sede preliminar, a ausência de interesse recursal da parte autora. No mérito, aduz: (i) nas cobranças de quaisquer tarifas e encargos, segue rigorosamente a disciplina dos normativos do CMN, publicados pelo BACEN, e de precedentes do Superior Tribunal de Justiça, não havendo, configuração de qualquer cobrança ou prática abusiva de sua parte; (ii) a impossibilidade de limitação dos juros remuneratórios pactuados; (iii)

Processo	3001497-22.2025.8.06.0117
	style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">a inexistência de abusividade na capitalização; (iv) a legalidade na cobrança de encargos moratórios e a inexistência de cumulação da comissão de permanência; (v) a impossibilidade de descaracterização da mora; (vi) a legalidade da cobrança das tarifas de cadastro, de registro de contrato e de avaliação do bem; (vii) a inexistência de venda casada quanto ao seguro prestamista; (viii) o seguro de proteção financeira contratado juntamente ao contrato de financiamento firmado entre as partes não possui natureza de tarifa, mas sim de contratação de prestação de serviços, sendo patente a legalidade da cobrança de valores para adimplemento do seguro contratado pela recorrente; (ix) a legalidade da cobrança de seguro de acidentes pessoais; (x) a impossibilidade de reconhecimento da abusividade das cláusulas contratuais.</p><p style="line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> </p><p style="line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">Subsidiariamente, alega: (i) <span style="font-size: 13.99999999999998pt; font-family: 'Times

Processo	3001497-22.2025.8.06.0117
	New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">a inexistência de indébito e, consequentemente, a impossibilidade de restituição na forma simples ou em dobro; (ii) a aplicação da taxa Selic à correção monetária e ao juros de mora; (iii) a aplicação da súmula 43 do STJ quanto ao termo inicial da correção monetária; (iv) a compensação de valores com o saldo devedor do apelante.</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Ao final, pugna pelo desprovemento do apelo autoral e, consequentemente, a manutenção da sentença vergastada.</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">
 </p><p style="line-height: 1.38; text-align: center; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> VOTO</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Registro que os pressupostos recursais – cabimento, legitimidade e interesse de recorrer, tempestividade, regularidade formal, inexistência de fato impeditivo ou extintivo do poder de recorrer – estão devidamente preenchidos no caso concreto, inexistindo quaisquer vícios que obstem o conhecimento do recurso.</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-indent: 8%; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <span style="font-size: 13.99999999999998pt; font-family: 'Times New

Processo	3001497-22.2025.8.06.0117
	Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">O cerne da controvérsia recursal consiste em examinar a possível abusividade das cláusulas contratuais relativas a taxa de juros remuneratórios, capitalização de juros, cobrança de tarifas de cadastro, de registro do contato e de avaliação, seguro prestamista e cumulação de comissão de permanência com encargos moratórios. 1. Da preliminar de ausência de interesse recursal O apelado Banco Votorantim S/A aduz que o apelo da autora não deve ser conhecido em razão da ausência de interesse recursal quanto à nulidade da cláusula que prevê a comissão de permanência, posto que no contrato impugnado inexistente qualquer cláusula prevista neste sentido. Pois bem, a cassação ou reforma de uma decisão prejudicial aos seus interesses ou pretensões de alcançar algum proveito. O interesse recursal decorre da necessidade de a parte obter a cassação ou reforma de uma decisão prejudicial aos seus interesses ou pretensões de alcançar algum proveito. In casu Diferentemente do que alega o Banco apelado, não é somente a improcedência integral de determinado pedido que conduz ao reconhecimento de interesse recursal, mas o seu não acatamento, pelo juízo, da forma como requerido na

Processo	3001497-22.2025.8.06.0117
	inicial é suficiente para preencher o requisito do interesse. Assim, >rejeito a preliminar de ausência de interesse recursal suscitada em contrarrazões. 2. Do mérito recursal 2.1. Dos juros remuneratórios Em se tratando de ação revisional de contrato de financiamento bancário, é unânime o entendimento de que o Código de Defesa do Consumidor é aplicável às instituições financeiras . (Súmula 297, STJ). Na hipótese, o contrato é de adesão, o qual pode ser definido, nos termos do caput do artigo 54 do CDC, como

Processo	3001497-22.2025.8.06.0117
	font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> "aquele cujas cláusulas tenham sido aprovadas pela autoridade competente ou estabelecidas unilateralmente pelo fornecedor de produtos ou serviços, sem que o consumidor possa discutir ou modificar substancialmente seu conteúdo".&#160;</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Assim sendo, impera-se a flexibilização do princípio da autonomia da vontade (pacta sunt servanda), vez que não é dada oportunidade ao consumidor de opinar na elaboração das cláusulas do negócio, submetendo-se às regras unilateralmente estabelecidas em um contrato padrão.&#160;</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Nesse contexto, alegando abusividade em uma das cláusulas do instrumento aderido, arguiu o consumidor que a taxa de juros remuneratórios foi fixada acima da média de mercado.&#160;</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Sobre o assunto, registre-se que o c. Superior Tribunal de Justiça analisou a matéria dos juros remuneratórios em sede de incidente de recurso repetitivo (Tema de nº 25), resultando a orientação nº 1, adiante transcrita:</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> DIREITO PROCESSUAL CIVIL E BANCÁRIO. RECURSO ESPECIAL. AÇÃO REVISIONAL DE CONTRATO BANCÁRIO. INCIDENTE DE PROCESSO REPETITIVO. JUROS REMUNERATÓRIOS. CONFIGURAÇÃO DA MORA. JUROS MORATÓRIOS.OFÍCIO. (...) ORIENTAÇÃO 1 JUROS REMUNERATÓRIOS. a) As instituições f inanceiras não se sujeitam à limitação dos juros remuneratórios estipulada na Lei de Usura (Decreto 22.626/33), Súmula 596/STF; b) A estipulação de juros remuneratórios superiores a 12% ao ano, por si só, não indica abusividade; c) São inaplicáveis aos juros remuneratórios dos contratos de mútuo bancário as disposições do art. 591 c/c o art. 406 do CC/02; d) É admitida a revisão das taxas de juros remuneratórios em situações excepcionais, desde que caracterizada a relação de consumo e que a abusividade (capaz de colocar o consumidor em desvantagem exagerada art. 51, § 1º, do CDC) fique cabalmente demonstrada, ante as peculiaridades do julgamento em concreto. (...) (Recurso Especial n. 1.061.530 – RS (2008/0119992-4), Relatora Ministra

Processo	3001497-22.2025.8.06.0117
	NANCY ANDRIGHI, SEGUNDA SEÇÃO, julgado em 22/10/2008). [Grifou-se]. <strong style="font-weight: normal;">
 A partir dessa orientação, vê-se que se estabeleceu uma tolerância na admissão do percentual, que pode ser revisto em caso de flagrante abusividade. No âmbito deste e. Tribunal de Justiça, prevalece o entendimento de que a taxa de juros remuneratórios deve ser compatível com o mercado.</p><p style="text-align: justify; text-indent: 8%;" <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Assim, especificamente nesta augusta Primeira Câmara de Direito Privado, fixou-se o entendimento de que a revisão da cláusula que prevê os juros remuneratórios é possível quando se verificar que ela é superior a 5 pontos percentuais da média divulgada pelo Banco Central. Nesse sentido, colaciono os seguintes arestos:</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">
 </p><p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">AGRAVO DE INSTRUMENTO. REVISÃO DE CLÁUSULAS CONTRATUAIS. ALEGATIVAS DE VEDAÇÃO DE COMISSÃO DE PERMANÊNCIA CUMULADA COM OS DEMAIS ENCARGOS, REPETIÇÃO DE INDÉBITO EM DOBRO E DANOS MORAIS. MATÉRIAS NÃO ENFRENTADAS PELO JUÍZO DE ORIGEM. CAPITALIZAÇÃO MENSAL DE JUROS. PACTUAÇÃO EXPRESSA, NOS TERMOS DAS SÚMULAS Nº 539 E 541, DO STJ. JUROS REMUNERATÓRIOS. OBEDIÊNCIA À SÚMULA VINCULANTE Nº 7, DO STF E APLICADOS DENTRO DA TAXA MÉDIA DE MERCADO. MORA. CARACTERIZAÇÃO. INCLUSÃO DE NOME EM CADASTRO DE RESTRIÇÃO. MANUTENÇÃO NA POSSE DO VEÍCULO. INVIABILIDADE. RECURSO CONHECIDO, EM PARTE, E, NA PARTE CONHECIDA, IMPROVIDO. - Os autos revelam Agravo de Instrumento, com pedido de efeito suspensivo, manejado pelo senhor Alex Ferreira de Lima em face da decisão de págs. 83/90, lavrada pelo douto Juiz de Direito da 2ª Vara da Comarca de Horizonte/CE, nos autos da "Ação Revisional de Cláusulas Contratuais, com Pedido Liminar, em sede de Tutela de Urgência c/c Indenização Por Danos Morais" nº 0050788- 77.2021.8.06.0086, que indeferiu o pleito formulado em face do Banco Volkswagen S/A. - [...] - No tocante aos juros remuneratórios, aplica-se o entendimento da Súmula Vinculante nº 7 do STF, pelo que improcedente, pelo menos neste momento inicial da demanda, o reconhecimento da abusividade. O percentual aplicado ao contrato, no patamar de 19,96% ao ano (pág. 201), revelou-se dentro da taxa média de mercado. respeitada a margem de tolerância de 5% (definida no Agravo Interno nº 0022789-32.2016.8.06.0117/50000), portanto, compatível com as taxas aplicadas no Brasil (20,10%), conforme dados apurados pelo sítio eletrônico do Banco Central. Precedente: (AgInt no AREsp 1149073/MS, Rel. Ministro PAULO DE TARSO SANSEVERINO, TERCEIRA TURMA, julgado em 08/04/2019, DJe 15/04/2019) - Com relação à definição da mora, é aplicável o entendimento do Superior Tribunal de Justiça, no sentido de que a descaracterização da mora só ocorre quando o caráter abusivo decorrer da cobrança dos chamados encargos do "período da normalidade". Precedente: (STJ - AgRg no AREsp 736.034/RS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 15/12/2015, DJe 01/02/2016). Logo, ante a ausência de abusividade no negócio jurídico celebrado, observado o grau de cognição ora disponível, deve ser mantido o reconhecimento da mora da parte devedora, tornando-se inviável acolher a pretensão recursal do Recorrente de

Processo	3001497-22.2025.8.06.0117
	não inclusão do seu nome em cadastros de restrição creditícias; além disto, prejudicado fica o pleito cautelar de manutenção na posse do veículo. - RECURSO CONHECIDO, EM PARTE, E, NA PARTE ADMITIDA, IMPROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos nº 0632738- 18.2021.8.06.0000, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer, em parte, do Recurso e, na parte admitida, negar-lhe provimento, nos termos do Voto da Relatora. Votação Unânime. Fortaleza, 26 de janeiro de 2022. VERA LÚCIA CORREIA LIMA Desembargadora Relatora (Agravado de Instrumento - 0632738-18.2021.8.06.0000, Rel. Desembargador(a) VERA LÚCIA CORREIA LIMA, 1ª Câmara Direito Privado, data do julgamento: 26/01/2022, data da publicação: 26/01/2022, grifei). <strong style="font-weight: normal;">
 <p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">APELAÇÃO CÍVEL. AÇÃO REVISIONAL. DESNECESSIDADE DE PERÍCIA. EVENTUAIS ILEGALIDADES QUE PODEM SER VERIFICADAS PELA SIMPLES LEITURA DO CONTRATO. CERCEAMENTO DE DEFESA. INOCORRÊNCIA. CAPITALIZAÇÃO DE JUROS. DUODÉCUPLO DA TAXA MENSAL INFERIOR À TAXA COBRADA NO CONTRATO. PACTUAÇÃO EXPRESSA. VALIDADE DA COBRANÇA. PRECEDENTES DO STJ. JUROS REMUNERATÓRIOS CONTRATUAIS NO PERCENTUAL DE 41,73% AO ANO. ABUSIVIDADE EM RELAÇÃO À TAXA MÉDIA DE MERCADO NO PERÍODO DA CONTRATAÇÃO (28,58% AO ANO). DEVOLUÇÃO EM DOBRO DA QUANTIA COBRADA A MAIOR (EAREsp 676608/RS, STJ, RELATOR MINISTRO OG FERNANDES, 21/10/2020), PERMITIDA A COMPENSAÇÃO. COBRANÇA ABUSIVA NO PERÍODO DA NORMALIDADE CONTRATUAL. MORA DESCARACTERIZADA. PRECEDENTES DO STJ. INEXISTÊNCIA DE COBRANÇA DE COMISSÃO DE PERMANÊNCIA A PROSTRAR AO SOLO O ARGUMENTO DE SUA CUMULAÇÃO COM OUTRAS VERBAS MORATÓRIAS. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. 1. No que tange ao argumento de que a ação foi julgada sem que fosse realizada instrução probatória, a contrario sensu do que fundamenta o recorrente, em hipóteses como a dos autos não há necessidade de realização de prova pericial contábil, haja vista a inexistência de questão de indagação de alta complexidade para a resolução da lide. Com efeito, a declaração da existência ou não de ilegalidades no contrato, sobretudo aquelas que dizem respeito à cobrança de juros remuneratórios, da presença de anatocismo, cobrança de tarifas, e outras, não prescinde de conhecimento técnico, posto que a matéria é de cunho eminentemente de direito e resolve-se por simples leitura do contrato. 2. Com relação à capitalização de juros, segundo o STJ, para cobrá-la é necessário apenas que a taxa de juros anual seja superior a doze vezes (duodécuplo) a taxa mensal fixada no contrato, circunstância presente aos autos, porquanto, a soma dos juros mensais de 2,95%, totaliza o percentual anual de 35,40%, inferior ao percentual cobrado ao ano de 41,73%. (fl. 63) 3. Os juros no percentual apontado no contrato, de 41,73% ao ano, ostentam caráter de abusividade, na medida em que discrepam, significativamente, da taxa média de mercado para o caso de aquisição de veículo para pessoa física no período da contratação (março/2023), consoante extraí do site do Banco Central do Brasil, que apontou o percentual de 28,58% ao ano para aquele interregno, ou seja, uma diferença superior a 5% (cinco por cento) entre a taxa média de mercado e a taxa contratual, percentual este considerado como suficiente para autorizar a revisão contratual conforme entendimento consolidado na ambiência da Primeira Câmara de Direito Privado. 4. Como visto, houve a cobrança abusiva de juros remuneratórios no período da normalidade do contrato, o que acarreta como consequência a descaracterização da mora, consoante a sólida, estável, firme, jurisprudência do colendo Superior Tribunal de Justiça (STJ) sobre este assunto, no sentido de que uma cobrança de encargos abusivos no período da normalidade enseja a descaracterização da mora. (AgInt no AREsp 1118462/RS, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 20/02/2018, DJe 01/03/2018) 5. Na hipótese de inadimplemento, o contrato não exige a cobrança de comissão de permanência, o que prostra ao solo o argumento da existência de cumulação desse encargo com outras verbas moratórias (cl. 14, fl. 70) 6. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. ACÓRDÃO: Vistos, relatados e discutidos estes autos da APELAÇÃO CÍVEL nº 0233886-58.2023.8.06.0001, em que é apelante JOSÉ HÉLIO MARTINS DE SOUZA e apelado BANCO PAN S/A, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por

Processo	3001497-22.2025.8.06.0117
	unanimidade de votos, em conhecer e dar parcial provimento ao recurso, nos termos do voto do Relator. Fortaleza, 18 de outubro de 2023. EMANUEL LEITE ALBUQUERQUE Relator (Apelação Cível - 0233886-58.2023.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 18/10/2023, data da publicação: 18/10/2023, grifei).&#160;</p><p style="text-align: justify;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">No caso concreto, trata-se de uma cédula de crédito bancário, celebrada em 17/11/2022, cujo valor financiado foi de R\$ 32.290,56 (trinta e dois mil, duzentos e noventa reais e cinquenta e seis centavos), a ser paga em 48 (quarenta e oito) parcelas mensais de R\$1.342,00 (mil e trezentos e quarenta e dois reais), em que a taxa de juros remuneratórios pactuada foi de 3,22% ao mês e 46,33% ao ano, enquanto a taxa média divulgada pelo BACEN, para as operações de crédito para pessoas físicas vinculado à aquisição de veículos (séries 25471 e 20749), no período (novembro), era respectivamente de 2,06% ao mês e 27,65% ao ano.</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">Como é possível constatar, a taxa de juros anual pactuada supera em 18,68 pontos percentuais da referida taxa média de mercado para o tipo de operação, gerando, a priori, uma desvantagem à consumidora.</p><p style="text-align: justify;"> <strong style="font-weight: normal;">
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Processo	3001497-22.2025.8.06.0117
	compostos com periodicidade inferior a um ano. Entretanto, os contratos bancários figuram como exceção, conforme art. 5º da Medida Provisória nº 2.170-36, segundo o qual nas operações realizadas pelas instituições integrantes do Sistema Financeiro Nacional, é admissível a capitalização de juros com periodicidade inferior a um ano. Isto é corroborado pelo entendimento sumulado do Superior Tribunal de Justiça, enunciado nº 539, segundo o qual “É permitida a capitalização de juros com periodicidade inferior à anual em contratos celebrados com instituições integrantes do Sistema Financeiro Nacional a partir de 31/3/2000 (MP nº 1.963-17/2000, reeditada como MP n. 2.170-36/2001), desde que expressamente pactuada” Assim, é entendimento consolidado no STJ a admissibilidade da capitalização dos juros em periodicidade inferior à anual em contratos firmados com instituição financeira, se expressamente pactuada. Porém, no caso em tela, em que pese a previsão da capitalização dos juros no contrato celebrado entre as partes, a cláusula se mostra abusiva. Explico, a seguir. Em análise à cédula bancária (fl. 4, ID 27098766), verifica-se na cláusula “Promessa de Pagamento”, a previsão de que o cliente “Prometo pagar ao BV, na praça da sua sede, ou à sua ordem, nas respectivas datas de vencimento, a dívida em dinheiro, certa, líquida e exigível correspondente ao Valor Total do Crédito (item F.6.) acrescidos dos juros remuneratórios (item I) capitalizados diariamente sendo que os juros já estão incorporados no Valor da Parcela (item F.5)”. [grifei].

Processo	3001497-22.2025.8.06.0117
	font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Já no campo "F – Dados do Financiamento" (fl. 1, ID 27098766), nas condições específicas do contrato, observa-se que foram discriminadas apenas as taxas de juros mensal e anual, de 3,22% a.m. e 46,33% a.a, respectivamente. (item F.4).
 A respeito disso, a Segunda Seção do c. STJ assentou posicionamento no sentido de que não basta previsão da periodicidade da capitalização de juros no contrato, sendo necessária a expressa indicação da taxa aplicável, sob pena de violação do dever de informação imposto ao fornecedor. Eis a ementa do julgado paradigma:</p> <p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;">
 </p> <p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">RECURSO ESPECIAL. DIREITO CIVIL, PROCESSUAL CIVIL E DO CONSUMIDOR. (EN. 3/STJ). CÉDULA DE CRÉDITO BANCÁRIO. CAPITALIZAÇÃO DIÁRIA DE JUROS REMUNERATÓRIOS. TAXA DIÁRIA NÃO INFORMADA. VIOLAÇÃO AO DEVER DE INFORMAÇÃO. ABUSIVIDADE. 1. Controvérsia acerca do cumprimento de dever de informação na hipótese em que pactuada capitalização diária de juros em contrato bancário. 2. Necessidade de fornecimento, pela instituição financeira, de informações claras ao consumidor acerca da periodicidade da capitalização dos juros adotada no contrato, e das respectivas taxas. 3. Insuficiência da informação acerca das taxas efetivas mensal e anual, na hipótese em que pactuada capitalização diária, sendo imprescindível, também, informação acerca da taxa diária de juros, a fim de se garantir ao consumidor a possibilidade de controle 'a priori' do alcance dos encargos do contrato. Julgado específico da Terceira Turma. 4. Na espécie, abusividade parcial da cláusula contratual na parte em que, apesar de pactuar as taxas efetivas anual e mensal, que ficam mantidas, conforme decidido pelo acórdão recorrido, não dispôs acerca da taxa diária. 5. RECURSO ESPECIAL DESPROVIDO, COM MAJORAÇÃO DE HONORÁRIOS. (REsp n. 1.826.463/SC, relator Ministro Paulo de Tarso Sanseverino, Segunda Seção, julgado em 14/10/2020, DJe de 29/10/2020). [Grifei].</p> <p style="text-align: justify;">
 </p> <p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;">Nesse mesmo sentido, esta c. Primeira Câmara de Direito Privado vem decidindo. Confira-se, para efeito de argumentação:&#160;</p> <p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;">
 </p> <p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New

Processo	3001497-22.2025.8.06.0117
	Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">AGRAVO DE INSTRUMENTO. BUSCA E APREENSÃO. ALIENAÇÃO FIDUCIÁRIA. FINANCIAMENTO DE VEÍCULO. CAPITALIZAÇÃO DIÁRIA DE JUROS REMUNERATÓRIOS. TAXA DIÁRIA NÃO INFORMADA. VIOLAÇÃO AO DEVER DE INFORMAÇÃO. ABUSIVIDADE NO PERÍODO DA NORMALIDADE CONTRATUAL VERIFICADA. MORA DESCARACTERIZADA. PRESSUPOSTO DE CONSTITUIÇÃO E DESENVOLVIMENTO VÁLIDO E REGULAR DA AÇÃO DE BUSCA E APREENSÃO. EXTINÇÃO DO FEITO NO JULGAMENTO DE AGRAVO DE INSTRUMENTO. EFEITO TRANSLATIVO DO RECURSO. POSSIBILIDADE. RECURSO CONHECIDO E PROVIDO. DECISÃO DE PRIMEIRO GRAU QUE CONCEDEU A LIMINAR DE BUSCA E APREENSÃO DO VEÍCULO REVOGADA. EXTINÇÃO DO FEITO. A C O R D A a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, conhecer do presente recurso e dar-lhe provimento para revogar decisão agravada, nos termos do voto do eminente Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/ Relator (Agravado de Instrumento - 0627216-05.2024.8.06.0000, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 17/07/2024, data da publicação: 17/07/2024). [Grifei]. AGRAVO DE INSTRUMENTO. AÇÃO DE BUSCA E APREENSÃO EM ALIENAÇÃO FIDUCIÁRIA. CAPITALIZAÇÃO DIÁRIA DE JUROS SEM EXPRESSA PACUAÇÃO DA TAXAS DE JUROS APLICÁVEL. ILEGALIDADE. DESCARACTERIZAÇÃO DA MORA. EXTINÇÃO DA AÇÃO COM BASE NO EFEITO TRANSLATIVO DO AGRAVO DE INSTRUMENTO. RESTITUIÇÃO DO VEÍCULO OU CONVERSÃO EM PERDAS E DANOS. RECURSO CONHECIDO E PROVIDO. DECISÃO AGRAVADA REVOGADA. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso, para DAR-LHE PROVIMENTO, revogando a decisão recorrida, e, com base no efeito translativo, extinguir a ação de busca e apreensão (proc. nº 0200419-25.2023.8.06.0119), por ausência de pressuposto de constituição e de desenvolvimento válido e regular do processo (art. 485, inciso IV, do CPC), nos termos do voto do eminente relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (TJ-CE - Agravado de Instrumento - 0625745-85.2023.8.06.0000, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 07/06/2023, data da publicação: 07/06/2023) [Grifei]. DIREITO DO CONSUMIDOR E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. CAPITALIZAÇÃO DIÁRIA DE JUROS. AUSÊNCIA DE INFORMAÇÃO CLARA SOBRE A TAXA DIÁRIA DE JUROS. VIOLAÇÃO DO DEVER DE INFORMAÇÃO. ABUSIVIDADE CONFIGURADA. DESCARACTERIZAÇÃO DA MORA.

Processo	3001497-22.2025.8.06.0117
	style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">>RESTITUIÇÃO EM DOBRO. SENTENÇA REFORMADA EM PARTE. I. CASO EM EXAME Apelação cível interposta contra sentença que julgou improcedentes os pedidos formulados na ação revisional ajuizada pela parte autora. O autor/recorrente alega a abusividade da capitalização diária de juros, pela ausência de informação clara sobre a taxa diária, e pleiteia a descaracterização da mora, além da restituição em dobro de valores pagos indevidamente. Há quatro questões em discussão: (i) analisar as preliminares de violação à dialeticidade e impugnação à justiça gratuita suscitadas pela parte recorrida; (ii) definir se a ausência de previsão expressa da taxa diária de juros no contrato bancário torna abusiva a capitalização diária de juros; (iii) estabelecer se a mora do devedor pode ser descaracterizada em razão da cobrança abusiva e (iv) se é cabível compensação de créditos e a restituição em dobro dos valores pagos indevidamente. >A ausência de previsão expressa da taxa diária de juros remuneratórios no contrato, apesar de pactuada a capitalização diária, viola o dever de informação imposto pelo Código de Defesa do Consumidor, conforme entendimento consolidado no REsp 1.826.463/SC, do STJ. A cobrança de encargos abusivos durante o período de normalidade contratual enseja a descaracterização da mora do devedor, conforme jurisprudência pacífica do Superior Tribunal de Justiça (STJ), conforme REsp 1.639.320/SP e REsp 1.639.259/SP. A restituição em dobro de valores pagos indevidamente, conforme previsto no art. 42, parágrafo único, do Código de Defesa do Consumidor (CDC), é cabível quando a cobrança indevida se der em violação à boa-fé objetiva, conforme decidido pelo STJ no EAREsp 676.608/RS, cuja eficácia temporal dessa decisão foi restringida para contratos posteriores a data 30/03/2021. >Preliminares rejeitadas. Recurso parcialmente provido. Jurisprudência relevante citada: STJ, REsp 1.826.463/SC, Rel. Min. Paulo de Tarso Sanseverino, 14.10.2020; STJ, EAREsp 676.608/RS, Rel. Min. Og Fernandes, 30.03.2021; STJ, REsp 1.639.320/SP, Rel. Min. Marco Buzzi, 11.12.2019. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em rejeitar as preliminares suscitadas para conhecer do recurso e, no mérito, dar-lhe parcial provimento nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (Apelação Cível - 0201001-54.2024.8.06.0001, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 18/09/2024, data da publicação: 18/09/2024) [Grifei].&#160;</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Logo, havendo previsão, no contrato firmado entre as partes, da incidência de capitalização diária de juros, mas inexistindo cláusula mencionando a taxa aplicável, resta configurada a violação ao dever de informação e a abusividade da referida cláusula.&#160;</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Sendo assim, neste capítulo, a decisão singular merece reforma, pois em dissonância com a orientação superior. Por conseguinte,&#160; defiro a pretensão recursal, verificada a abusividade da cobrança de juros capitalizados diariamente.&#160;</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; margin-left: 72pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> <span style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color:

Processo	3001497-22.2025.8.06.0117
	#000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">2.3. Da repetição do indébito em dobro e da descaracterização da mora</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Por ter sido reconhecida a abusividade nas cláusulas contratuais que preveem juros capitalizados diariamente e cobrança da tarifa de avaliação do bem, nasce para a contratante o direito à restituição dos valores indevidamente pagos.</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Sobre o assunto, oportuno destacar que o atual entendimento do Superior Tribunal de Justiça – STJ é que “a restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que cobrou valor indevido, revelando-se cabível quando a cobrança indevida consubstanciar conduta contrária à boa-fé objetiva.” (STJ. Corte Especial. EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020).&#160;</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">A propósito, a discussão quanto às hipóteses de aplicação da repetição em dobro prevista no art. 42, parágrafo único, do CDC, foi apaziguada e decidida pelo c. STJ no julgamento dos embargos de divergência em agravo em recurso especial (EAREsp 676.608/RS), resultando no entendimento de que a restituição em dobro do indébito seja aplicada apenas às cobranças indevidas realizadas a partir da publicação daquele acórdão, ou seja, 30/03/2021. Confira-se, in verbis</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">
</p><p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> EMBARGOS DE DIVERGÊNCIA EM AGRAVO EM RECURSO ESPECIAL. CIVIL. PROCESSUAL CIVIL. TELEFONIA FIXA. COBRANÇA INDEVIDA. AÇÃO DE REPETIÇÃO DE INDÉBITO DE TARIFAS. 1) RESTITUIÇÃO EM DOBRO DO INDÉBITO (PARÁGRAFO ÚNICO DO ARTIGO 42 DO CDC). DESINFLUÊNCIA DA NATUREZA DO ELEMENTO VOLITIVO DO FORNECEDOR QUE REALIZOU A COBRANÇA INDEVIDA. DOBRA CABÍVEL QUANDO A REFERIDA COBRANÇA CONSUBSTANCIAR CONDUTA CONTRÁRIA À BOA-FÉ OBJETIVA. 2) APLICAÇÃO DO PRAZO PRESCRICIONAL DECENAL DO CÓDIGO CIVIL (ART. 205 DO CÓDIGO CIVIL). APLICAÇÃO ANALÓGICA DA SÚMULA 412/STJ. 3) MODULAÇÃO PARCIAL DOS EFEITOS DA DECISÃO. CONHECIMENTO E PROVIMENTO INTEGRAL DO RECURSO. (...) Fixação das seguintes teses. Primeira tese: A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva. Segunda tese: A ação de repetição de indébito por

Processo	3001497-22.2025.8.06.0117
	cobrança de valores referentes a serviços não contratados promovida por empresa de telefonia deve seguir a norma geral do prazo prescricional decenal, consoante previsto no artigo 205 do Código Civil, a exemplo do que decidido e sumulado no que diz respeito ao lapso prescricional para repetição de tarifas de água e esgoto (Súmula 412/STJ). Modulação dos efeitos: Modulam-se os efeitos da presente decisão - somente com relação à primeira tese - para que o entendimento aqui fixado quanto à restituição em dobro do indébito seja aplicado apenas a partir da publicação do presente acórdão. A modulação incide unicamente em relação às cobranças indevidas em contratos de consumo que não envolvam prestação de serviços públicos pelo Estado ou por concessionárias, as quais apenas serão atingidas pelo novo entendimento quando pagas após a data da publicação do acórdão. (EAREsp 676.608/RS, Rel. Ministro OG FERNANDES, CORTE ESPECIAL, julgado em 21/10/2020, DJe 30/03/2021). GN. Assim, considerando a modulação temporal dos efeitos da decisão contida no EAREsp nº 676.608/RS, somente os valores pagos após a data da publicação do acórdão em que fixado o precedente (30/03/2021), deverão ser restituídos em dobro. É o caso dos autos, tendo em vista que o instrumento contratual em discussão foi entabulado em novembro de 2022. Ademais, no caso, tendo sido constatada abusividade nos encargos exigidos no período da normalidade contratual, impõe-se reconhecer descaracterizada a mora e seus efeitos. Sobre a matéria, a procedência dos pedidos formulados em ação revisional de contrato bancário possibilita tanto a compensação de créditos quanto a devolução da quantia paga indevidamente, em obediência ao princípio que veda o enriquecimento ilícito. (AgInt no REsp 1679635/PR, Rel. Ministro ANTÔNIO CARLOS FERREIRA, QUARTA TURMA, julgado em 10/08/2020, DJe 14/08/2020). Portanto, devida a compensação de valores, a ser devidamente apurada em sede de liquidação de sentença.

Processo	3001497-22.2025.8.06.0117
	 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> 2.5. Da tarifa de cadastro</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">Sobre a tarifa de cadastro, o STJ editou a Súmula nº 566, no sentido de que "Nos contratos bancários posteriores ao início da vigência da Resolução-CMN nº 3.518/2007, em 30/4/2008, pode ser cobrada a tarifa de cadastro no início do relacionamento entre o consumidor e a instituição financeira".</p><p style="text-align: justify; text-indent: 8%;" <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Cumpre asseverar que o Superior Tribunal de Justiça, no julgamento do Resp. nº 1.251.331/RS, que tramitou sob o rito dos recursos repetitivos, julgado na forma do art. 543- C do CPC, sobre o tema decidiu nos seguintes termos:</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">
 </p><p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">Nos contratos bancários celebrados até 30.4.2008 (fim da vigência da Resolução CMN 2.303/96) era válida a pactuação das tarifas de abertura de crédito (TAC) e de emissão de carnê (TEC), ou outra denominação para o mesmo fato gerador, ressalvado o exame de abusividade em cada caso concreto. Com a vigência da Resolução CMN 3.518/2007, em 30.4.2008, a cobrança por serviços bancários prioritários para pessoas físicas ficou limitada às hipóteses taxativamente previstas em norma padronizadora expedida pela autoridade monetária. Desde então, não mais tem respaldo legal a contratação da Tarifa de Emissão de Carnê (TEC) e da Tarifa de Abertura de Crédito (TAC), ou outra denominação para o mesmo fato gerador. Permanece válida a Tarifa de Cadastro expressamente tipificada em ato normativo padronizador da autoridade monetária, a qual somente pode ser cobrada no início do relacionamento entre o consumidor e a instituição financeira. (Rel. Ministra MARIA ISABEL GALLOTTI, SEGUNDA SEÇÃO, julgado em 28/08/2013, DJe 24/10/2013, Tema 618). [Grifo nosso].</p><p style="text-align: justify;"> <strong style="font-weight:normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Como visto, permanece válida a cobrança da tarifa de cadastro, desde que expressamente pactuada, a qual somente pode ser cobrada no início da pactuação nos contratos celebrados após a vigência da Resolução CMN nº 3.518/2007, ou seja, posterior a 30 de abril de 2008, sendo este exatamente o caso dos autos, tendo em vista que o instrumento

Processo	3001497-22.2025.8.06.0117
	contratual em discussão foi entabulado em novembro de 2022 e não há notícia de relação jurídica prévia. Ademais, não convence a tese de o valor cobrado é exorbitante, vez que o recorrente não demonstrou o valor da tarifa praticada por outras instituições financeiras na época da contratação. Ora, como se sabe, a despeito da inversão do ônus da prova que pode ser declarada em prol do consumidor, cabe a ele produzir prova mínima de suas alegações. Nesse sentido: Apelação Cível - 0200373-81.2022.8.06.0083, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 23/08/2023, data da publicação: 23/08/2023; Apelação Cível – 0044217-56.2012.8.06.0167, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 14/12/2022, data da publicação: 14/12/2022; Agravo Interno Cível - 0110920- 35.2019.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 15/06/2022, data da publicação: 17/06/2022; todos desta Primeira Câmara de Direito Privado. Logo, é o caso de rejeitar a tese de abusividade sobre a cláusula que estipulou a cobrança da tarifa de cadastro 2.6. Das tarifas de registro do contrato e de avaliação do bem Sobre as tarifas de registro de contrato e avaliação do bem, vale destacar o julgamento do Tema 958 pelo Superior Tribunal do Justiça, no REsp 1.578.553/SP, em 28.11.2018, de relatoria do Ministro Paulo de Tarso Sanseverino, que fixou as seguintes teses para fins do art. 1.040 do Código de Processo Civil: 2.1. Abusividade da cláusula que prevê a cobrança de ressarcimento de serviços prestados por terceiros, sem a especificação do serviço a ser efetivamente prestado; 2.2. Abusividade da cláusula que prevê o ressarcimento pelo consumidor da comissão do correspondente bancário, em

Processo	3001497-22.2025.8.06.0117
	contratos celebrados a partir de 25/02/2011, data de entrada em vigor da Res.-CMN 3.954/2011, sendo válida a cláusula no período anterior a essa resolução, ressalvado o controle da onerosidade excessiva; 2.3. Validade da tarifa de avaliação do bem dado em garantia, bem como da cláusula que prevê o ressarcimento de despesa com o registro do contrato, ressalvadas a: 2.3.1. abusividade da cobrança por serviço não efetivamente prestado; e a 2.3.2. possibilidade de controle da onerosidade excessiva, em cada caso concreto. Portanto, restou consolidado o entendimento da validade da contratação da tarifa de avaliação do bem e da tarifa de registro de contrato, ressalvado o reconhecimento de abusividade da cobrança por serviço não efetivamente prestado e a possibilidade de controle da onerosidade excessiva, em cada caso concreto. No caso em tela, observa-se que a própria parte autora anexou o CRLV (ID 27098767), que comprova o registro do contrato de financiamento junto ao órgão público de trânsito, pois há anotação do gravame (alienação fiduciária). Em relação à tarifa de avaliação, o restou comprovado pela requerida apelada que este serviço foi realmente efetivado, posto que o Banco promovido anexou o termo de avaliação do veículo no ID 27098784. Assim, constata-se que não houve cobrança indevida relativamente à tarifa de registro do contrato e à tarifa de avaliação do bem previstas, respectivamente, nas cláusulas "B.9" e "D.2" do contrato firmado entre as partes (ID 20544807), nos valores de R\$ 446,02

Processo	3001497-22.2025.8.06.0117
	(quatrocentos e quarenta e seis reais e dois centavos) e R\$ 299,00 (duzentos e noventa e nove reais). Isso porque a instituição financeira comprovou a efetiva prestação dos serviços correspondentes, em conformidade com o entendimento firmado no Tema 958 do Superior Tribunal de Justiça, que admite a legalidade dessas cobranças quando demonstrada a sua realização e ausência de excessiva onerosidade ao consumidor.&#160;</p><p style="text-align: justify;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Colho da fonte jurisprudencial deste e. Tribunal de Justiça decisões nesse sentido [grifo nosso]</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">
<p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO. CÉDULA DE CRÉDITO BANCÁRIO. SENTENÇA IMPROCEDENTE. CAPITALIZAÇÃO DE JUROS. LEGALIDADE. TAXA DE JUROS REMUNERATÓRIOS PACTUADA EM PATAMAR RAZOÁVEL. ABUSIVIDADE NÃO CONFIGURADA. TARIFA DE AVALIAÇÃO DE BEM. TARIFA DE CADASTRO. TARIFA DE REGISTRO DE CONTRATO. LEGALIDADE. RECURSO CONHECIDO E DESPROVIDO. [...] No caso dos autos, restou demonstrado que o banco efetuou a cobrança da Tarifa de Cadastro no início do relacionamento com o cliente, conforme se vê do contrato. Assim, não há dúvida quanto a legitimidade da cobrança da aludida tarifa. No mais, o valor praticado pela instituição financeira não apresenta-se excessivo, porquanto verifica-se que o banco cobrou valor condizente com a média cobrada pelos bancos privados (conforme previsto no endereço eletrônico www.bcb.gov.br/fis/tarifas/htms/tarifdwl.asp). Da tarifa de avaliação de bem e Tarifa de Registro de Contrato: o Superior Tribunal de Justiça, quando do julgamento do Recurso Repetitivo REsp 1.578.553/SP (Tema repetitivo 958/STJ), fixou a seguinte tese “Validade da tarifa de avaliação do bem dado em garantia, bem como da cláusula que prevê o ressarcimento de despesa com o registro do contrato, ressalvadas a: 2.3.1. abusividade da cobrança por serviço não efetivamente prestado; e a 2.3.2. possibilidade de controle da onerosidade excessiva, em cada caso concreto”. Desse modo, na forma como pactuada, a cobrança de tarifa de avaliação do bem, não se revela abusiva, não havendo de se falar no provimento do pleito recursal. [...] Recurso CONHECIDO e DESPROVIDO. (TJCE - Apelação Cível nº 0285409-12.2023.8.06.0001. Rel. Des. Everardo Lucena Segundo. 2ª Câmara Direito Privado. DJe: 08/05/2024) (Destaquei)&#160;</p><p style="text-align: justify;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-

Processo	3001497-22.2025.8.06.0117
	space: pre-wrap;">Logo, ante a inexistência de abusividade e demonstrada a prestação do serviço, resta válida a cobrança da referida tarifa.&#160;</p><p style="text-align: justify;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> 2.7.&#160; Da legalidade da cobrança do seguro prestamista</p><p style="text-align: justify;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> O Superior Tribunal de Justiça firmou o entendimento, em sede de julgamento de Recurso Repetitivo (REsp n. 1639259/SP), no sentido de considerar abusiva a imposição ao consumidor de contratação de seguro com a instituição financeira ou com seguradora por ela indicada, em contratos bancários em geral, nestes termos: "nos contratos bancários em geral, o consumidor não pode ser compelido a contratar seguro com a instituição financeira ou com seguradora por ela indicada", porque além de configurar venda casada, é proibida pelo artigo 39, I, do Código de Defesa do Consumidor, uma vez que retira do consumidor o direito de negociar um preço mais justo com outras seguradoras.</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Neste azo, extrai-se do caso concreto a oportunidade de escolha da contratação pela consumidora/apelante, eis que o contrato de seguro foi firmado em apartado, em instrumento de adesão próprio, conforme fls. 2, 6, 8, 11, 13, 14, 16 e 18 do documento de ID 27098766. Nele, inclusive, há a declaração de que a contratação é opcional e que é facultado à seguradora o cancelamento a qualquer tempo (fls. 8 e 14, ID 27098766).&#160;</p><p style="text-align: justify; text-indent: 8%;">&#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Cito, na oportunidade, outras decisões deste e. Tribunal de Justiça acerca do tema:</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">
 </p><p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">APELAÇÃO CÍVEL. CONTRATO DE FINANCIAMENTO DE VEÍCULO.COBRANÇA DE TARIFA DE SEGURO PRESTAMISTA. ALEGAÇÃO DE ABUSIVIDADE FUNDADA NO ARTIGO 39, INCISO I, DO CDC. PRÉVIO CONSENTIMENTO DO CONSUMIDOR. SERVIÇO PACTUADO EM DOCUMENTO DIVERSO. INOCORRÊNCIA DE VENDA

Processo	3001497-22.2025.8.06.0117
	CASADA. DANOS MORAIS E MATERIAIS NÃO CONFIGURADOS. RECURSO CONHECIDO E DESPROVIDO. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para NEGARLHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (Apelação Cível Desembargador(a) - 0245560-67.2022.8.06.0001, Rel. FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 31/05/2023, data da publicação: 31/05/2023, G.N.) DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DE REPARAÇÃO DE DANOS MATERIAIS E MORAIS. CONTRATO DE MÚTUO. SEGURO PRESTAMISTA. ALEGAÇÃO DE VENDA CASADA. NÃO CONFIGURAÇÃO. OPÇÃO EM SEPARADO. CONTRATO DIVERSO. OPÇÃO PELA CONTRATAÇÃO. ABUSIVIDADE NÃO DEMONSTRADA PRECEDENTES STJ E TJCE. RECURSO CONHECIDO E IMPROVIDO. SENTENÇA CONFIRMADA. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, unanimemente, pelo conhecimento e improvido do recurso, nos termos do voto do Relator, que passa a integrar este acórdão. Fortaleza, 05 de setembro de 2023 MARIA DO LIVRAMENTO ALVES MAGALHAES Presidente do Órgão Julgador DESEMBARGADOR DURVAL AIRES FILHO Relator PROCURADOR(A) DE JUSTIÇA (Apelação Cível - 0050847-34.2021.8.06.0064, Rel. Desembargador(a) DURVAL AIRES FILHO, 4ª Câmara Direito Privado, data do julgamento: 05/09/2023, data da publicação: 11/09/2023, G.N.) Logo, conclui-se que não houve venda casada e que a cobrança não é abusiva, rejeitando, por consectário, sua restituição à apelante. 2.8. Da comissão de permanência No tocante à comissão de permanência, cumpre registrar que referido encargo tem o caráter múltiplo, na medida em que se destina à remuneração do capital objeto do empréstimo, à atualização monetária do saldo devedor e à sanção pelo descumprimento contratual.

Processo	3001497-22.2025.8.06.0117
	style="font-size: 13.99999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Ocorre que, diante de tantas controvérsias relativas à cobrança da comissão de permanência, bem como tendo em vista as mudanças ocorridas no nosso cenário econômico, a matéria foi apreciada pelo Superior Tribunal de Justiça, no julgamento dos Recursos Especiais 1.058.114- RS e 1.063.343- RS, oportunidade em que se entendeu possível a sua cobrança para o período de inadimplência, desde que (i) expressamente prevista no contrato e (ii) não cumulada com os demais encargos (correção monetária, juros remuneratórios, juros moratórios ou multa contratual). <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> A propósito, o Colendo Superior Tribunal de Justiça editou as seguintes súmulas:&#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">
 </p><p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Súmula 30. A comissão de permanência e a correção monetária são inacumuláveis.&#160; </p><p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Súmula 294. Não é potestativa a cláusula contratual que prevê a comissão de permanência, calculada pela taxa média de mercado apurada pelo Banco Central do Brasil, limitada à taxa do contrato. </p><p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Súmula 296. Os juros remuneratórios, não cumuláveis com a comissão de permanência, são devidos no período de inadimplência, à taxa média de mercado estipulada pelo Banco Central do Brasil, limitada ao percentual contratado.&#160; </p><p style="line-height: 1.38; margin-left: 108pt; text-align: justify; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Súmula 472. A cobrança de comissão de permanência - cujo valor não pode ultrapassar a soma dos encargos remuneratórios e moratórios previstos no contrato - exclui a exigibilidade dos juros remuneratórios, moratórios e da multa contratual. </p><p style="text-align: justify;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Nesse contexto, é imperativo considerar nula de pleno direito eventual aplicação de comissão de permanência acrescida de juros moratórios ou remuneratórios, multa contratual e correção monetária.&#160;</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr">

Processo	3001497-22.2025.8.06.0117
	#000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Ocorre que, no caso, não houve previsão de cobrança de comissão de permanência, de modo que não assiste razão ao pleito do apelante.&#160; &#160; &#160;&#160; Diante do exposto, conheço do apelo interposto para lhe dar parcial provimentono sentido de:<p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;">&#160;
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; padding-left: 150px;"> a) reconhecer a abusividade na cobrança de taxa de juros remuneratórios superior à média do mercado, reformando a sentença no sentido de limitá-los à taxa média de mercado apurada na época da contratação;</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; padding-left: 150px;"> &#160;&#160;

Processo	3001497-22.2025.8.06.0117
	margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> &#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Com o resultado, redistribuo os ônus da sucumbência, que será suportado na proporção de 2/3 pelo requerido e de 1/3 pelo promovente, restando suspensa a exigibilidade de seu pagamento por parte do promovente, vez que é beneficiário da justiça gratuita (art. 98, § 3º, do CPC).</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> É como voto.</p><p style="text-align: justify; text-indent: 8%;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: justify; margin-top: 8pt; margin-bottom: 8pt; text-indent: 8%;" dir="ltr"> Fortaleza, data da assinatura digital.</p><p style="line-height: 1.38; text-align: center; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">&#160;</p><p style="line-height: 1.38; text-align: center; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr">
 DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="line-height: 1.38; text-align: center; margin-top: 8pt; margin-bottom: 8pt;" dir="ltr"> Relator</p><p style="text-align: justify;">
 </p><p align="justify">&#160;</p><p align="center;"> &#160; </p>
Processo	0248235-32.2024.8.06.0001
Número de ordem	136
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Práticas Abusivas
Polo ativo	MARIA SANDRA DA SILVA NASCIMENTO BMP SOCIEDADE DE CREDITO AO MICROEMPREENDEDOR E A EMPRESA DE PEQUENO PORTE LTDA PAYJOY TECNOLOGIA E SERVICOS FINANCEIROS LTDA
Advogado(s) - Polo ativo	Não informado
Polo passivo	BMP SOCIEDADE DE CREDITO AO MICROEMPREENDEDOR E A EMPRESA DE PEQUENO PORTE LTDA PAYJOY TECNOLOGIA E SERVICOS FINANCEIROS LTDA MARIA SANDRA DA SILVA NASCIMENTO
Advogado(s) - Polo passivo	MILTON GUILHERME SCLAUSER BERTOCHÉ - (SP167107-A) MILTON GUILHERME SCLAUSER BERTOCHÉ - (SP167107-A)
Terceiros	Não informado

Processo	0248235-32.2024.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSY0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCIQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUJZReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJFBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsquxatW0YlaGYnMWb Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsPOONGNYVgiAooWj+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fnsFHHqjeh3WFOUu2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJ1VfDrTECR2H3TDT2lZMs6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIIEHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41gnkUvsnXNkIx410JEZMRUZOZDIFMjFvRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0248235-32.2024.8.06.0001
	PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 0248235-32.2024.8.06.0001 APELAÇÃO CÍVEL (198) APELANTE: MARIA SANDRA DA SILVA NASCIMENTO, BMP SOCIEDADE DE CRÉDITO AO MICROEMPREENDEDOR E A EMPRESA DE PEQUENO PORTE LTDA., PAYJOY TECNOLOGIA E SERVIÇOS FINANCEIROS LTDA. APELADO: BMP SOCIEDADE DE CRÉDITO AO MICROEMPREENDEDOR E A EMPRESA DE PEQUENO PORTE LTDA., PAYJOY TECNOLOGIA E SERVIÇOS FINANCEIROS LTDA., MARIA SANDRA DA SILVA NASCIMENTO. EMENTA: DIREITO DO CONSUMIDOR E PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. PEDIDO DE RECONHECIMENTO DE DANO MORAL. SUPOSTA CONTRADIÇÃO E/OU OMISSÃO. RECURSO CONHECIDO E DESPROVIDO. I) CASO EM EXAME 1. Trata-se de recurso de embargos de declaração opostos por Maria Sandra da Silva Nascimento contra acórdão proferido pela 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará na Apelação Cível nº 0248235-32.2024.8.06.0001

Processo	0248235-32.2024.8.06.0001
	32.2024.8.06.0001, que revisou contrato de empréstimo pessoal e determinou a restituição em dobro de valores pagos indevidamente, afastando a condenação por danos morais e definindo efeitos sobre honorários e custas processuais. II) QUESTÃO EM DISCUSSÃO 2. A controvérsia recursal consiste em verificar a existência de omissão, contradição ou obscuridade no acórdão quanto à exclusão da condenação por danos morais e à análise de honorários advocatícios e custas processuais. III) RAZÕES DE DECIDIR 3. Verificou-se que todos os pontos suscitados pela embargante foram devidamente analisados no acórdão embargado. A exclusão da condenação por danos morais fundamentou-se na ausência de prova de transtornos ou dano moral <i>in re ipsa</i>, considerando que não houve cobrança vexatória nem negativação indevida do nome da autora. Não há omissão, contradição ou obscuridade a ser sanada. Os embargos de declaração não se prestam à rediscussão da matéria já decidida, nos termos do art. 1.022 do CPC e da Súmula 18 do TJCE. IV) DISPOSITIVO 4. Embargos de declaração conhecidos e desprovidos. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para lhe negar provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de recurso de embargos de declaração opostos por Maria Sandra da Silva Nascimento contra o acórdão proferido pela 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará na Apelação Cível nº 0248235-32.2024.8.06.0001. O acórdão embargado teve a seguinte ementa: DIREITO DO CONSUMIDOR E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO REVISIONAL. CONTRATO DE EMPRÉSTIMO PESSOAL NÃO CONSIGNADO. ABUSIVIDADE DE JUROS REMUNERATÓRIOS. CONFIGURAÇÃO. AUTORIZADA A REVISÃO QUANDO A TAXA CONTRATADA SUPERAR DEMASIADAMENTE A MÉDIA DIVULGADA PELO BANCO CENTRAL PARA O TIPO DE CONTRATAÇÃO. IMPONDO-SE REVISÃO DOS JUROS REMUNERATÓRIOS, RESTA AFASTADA A MORA. RESTITUIÇÃO DO INDÉBITO SIMPLES E EM DOBRO. EAREsp 676.608/RS. MODULAÇÃO DOS EFEITOS. PRESTAÇÕES POSTERIORES A 30.03.2021. RECURSO DA AUTORA CONHECIDO E PROVIDO. RECURSO DA RÉ CONHECIDO E PARCIALMENTE PROVIDO.

Processo	0248235-32.2024.8.06.0001
	ou contradição a ser sanada no presente caso. </p><p style="text-indent: 8%;A embargante, na verdade, manifesta a intenção de rediscutir a matéria já decidida, o que é vedado em sede de embargos de declaração (súmula 18 do TJCE). </p><p style="text-indent: 8%;Assim, com fulcro no art. 1.022 do código de processo civil,conheço dos embargos de declaração e lhes nego provimento, por não estarem presentes quaisquer dos requisitos indicados pela lei, nem serem apropriados à rediscussão da lide, mantendo inalterado o acórdão.</p><p style="text-indent: 8%;É como voto.</p><p style="text-indent: 8%;Fortaleza, data da assinatura digital. </p><p align="justify"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Relator </p><p align="justify"> Marinoni, Luiz Guilherme. ARENHART, Sérgio Cruz. MITIDIERO, Daniel. Novo código de processo civil comentado. São Paulo: RT, 2015, p. 953.</p><p></p><p style="text-align: center;"> </p>
Processo	3002884-35.2025.8.06.0000
Número de ordem	137
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Desconto em Folha de Pagamento/Benefício Previdenciário
Polo ativo	BANCO DO NORDESTE DO BRASIL SA
Advogado(s) - Polo ativo	JOSE INACIO ROSA BARREIRA - (CE8151-A)
Polo passivo	JOSE FRANCISCO DOS SANTOS
Advogado(s) - Polo passivo	MARCIANA AIRES DE OLIVEIRA - (CE28069-A)
Terceiros	Não informado

Processo	3002884-35.2025.8.06.0000
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAEwAAABnCAYAAACq/KTeAAAAANSR0IArs4c6QAAAAARnQU1BAACxjww8YQUAAAAJcEhZcwAAAFxEAAABcRAco m8z8AAEulSURBVHhe7b11YFbH1vZnZdCqRfquMfdiOGQhLi7IEmlu5OEKIEEd3cpbqXU KFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY +lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjsbpbEzHeCO8R/Rhq2Z +6OXXcf/CQH69dlcZnBKIBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHqZj XiOCT6jrYmfHMVDacfdRw/5+puvOXRO1998+QkXjnNRuXuH3vZx7/8ognt6TNNWtt/qf+nei DIF93mX5X/GLAnT57w8OEDPjv2CUvnVIFZGEfyBBcifO0ZZtWXccMsSY6dxlZVK1g+v5Kk MHvemT+RXQuj2L1kljOzXUiNHEWo1xhKc7PZvmoBaSFOrcwLYPeicHbP9efdBeHMz/Mg O96LbRsWkhTjt88IM0oSPNng2bzl7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbnGop8 TOVOCqa0qYM3KhhV9elnX/l8UWNon7f//q4A1XOqna8yLSeFaA8rFhT5sH5mklARS3q4N Rnr40iK8MTJtC9eToMoix/GvgVRHFwUwfvL9haF0jRRFS/S1JC3Uim3wos7LGsHdRJO +tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XfWqT875oYTPXYwrlb98R5u QmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsyloT2 LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXe LCoZz4JiN+YVujEn35XZ+fl5byyL8kYJw8YwX863aJoPS8u8WVHhzbprfnlOP7bPDmDXvG D2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KshHqm /YvylwC7c/sWS6cXkD1pFAfXJLJzXhCbavYVR7AUmFcXZYllamjKE0crsEkW/lm2AhtLE gJtyQlyJop/mbEehsxyUufGM8hRHnoEbmpr9Uo+r7jMZGJUid6D9HqJF894gP0SQ2tFhab kxlpS26MPYWTHAQKR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+ X8EmCp7d23Ce4wp6dEOZESYkRpsQEgqKSkCxiR3AcCtP5Hu/YlyH0CmDdrGT59ovyHE BRmSGGLGIGBL4oMsiQ0yJS7EiPgwQ6nmTAm3YrL6LchMQDljzt+cWH8rrcb5WzDBx5g YXyMivfSI8BhChLSAPI6PyR5GYuYWJAWbkRxoSEaIKQUTncRtmJGXFsmPI89r7RYXXF/ Uh3rTfUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAlYECdv8hRnyPc7PjDA3PwG PPRf+RtJxY+ICjQQs+Sw1lciYxGATiaJ6uDu2FEYJcEEWJAAYcXsNtf1j/JSQIWDiXoBnB4wc J+AbEBuuuNdIXzissnCiDEuMr1w0wld7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335 NQX4qoYGj8B0jrHldSLJ0PFWZTZQV+bGOlKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA2 1UawcWYom6RumTWBqhQ3iscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBrEvKlBeAmoYa 6DmZyYVsxxJPkxtmSHWUgQUcAaEORuhJ+XDCGbw1m+uJafb93Q2qvarQctDdt/v/whlha K22myrUfr7N27VImSONKpoyWDkawebY449kxKidQGnyOLImjSElBRJgXaUt3GSWGBJ ofih/2B7ckPMYQszoUC+x3qa4W37NlkhdusLvsNNyN3EygDQXRpdTEOpAeaktKqCMFs S7ix4axtiZKwBaA62LYXBvKqqpwYkOHkZocidHDnD//i2tnX+1/CXAtDF68osIV90o7d6xXn yUHRlhimSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5c2nlkFbuJ7L PAdOUDqIEJcBIMYP1yipA/5E4Yy2dOAumXPob/4MT9bpoSOJS50Hlhl4kYN5hMYVdKoL Brfh8K0yOsS4qrHtlI4Hj+6p7VP1+K/Vv4aYIraOmZ784dKqemkhY1TKRCAIUTRFuFwotEc Cczom0GB9sDAYwzsGlpqwoMRSHDqDuL4ylJHUIQRPj82REUpIQR9JQJL C8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVNREIHNFwFSLBJnHFEu/SVS+IKbN5 6UmLEc3LdT68Sg3+1/M8AJuXDA7vJnOTNkoplts6LIV2iU260tWgxZ3H15hSkRNPjledFP OoLMIEES2pUIDlj3nsgCX7i0CUlpiSrfV0wGdiXgW++zhg7IXCJAYS76ZMsTEzyNSAnzlyJ7 gNjKizBY5wdr77UiaKMalLHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqrh6F8sfw0w MUdVVJJo0b3oRrrY9xcRMylsyJUukQUmck6bBliv6T52i4u1uHXABUYBZh81mePYWCda qTaqJ6j70sRXTc8Lxc6wNy906sgLHTrwxNPM4yp/pTXGyK3OKPMUXhrJhRgILSgNJiRPBk cTfd56jox4f8lTh1CV7kpV6jgKJzolz63F35kROU7kjin8ovvj0uNbWv1r+EmANLUGLz49QIBb GnlIlgEYURbJgeKk44iHXSUQUlwhBJtqvzYxihq0L9GJEcw0SJj5X9XajNGsvMLA9ivlwoSPb DsP9bvNilC92fe56XOnfC3rQfpekBJldZy34uzMgYQ22uu4hcExljXHFxNcYvIUj8IZGAGsSa yIBWi2hdWyORVa6/ec4EUilR10849cBboju/0n5DwH74wU3rJ5Hkks+cyRfq0sbTpGYYI60u ThqK6b4GuNi/SY1BVECwjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwcikQcSf+3X+X5Z56 h2/Mv8pwwzdKGp6WZkUwJsZeokLmnm07MDDelRM9VLS/PS+G6flR+IzqL6DrKSNyJkdlA hJxyxKHMzNTKvyloaTHBfPdt2e09qrW/6eQ/VPA1El/FcTap/r6yyNtqkSV6z9coixrokQwfSoS bFIYMJ4EL2PRUiMI8Y1ivWisrEhrEgJmPMWJlfYUpHswsqyQJaW+IsgNSlrZiQThXWOZg N59dnOPNOhE107Pk3nNm3o/2Y3onxHskQcLthQTIS8CWvET1anukumYMMkyQCifUT8S nRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFruxcukrarpOqj9W2ATn1w7+J4D9nWP0JdULV z8v+HZtICHfhw+wkFpf5MavQn9BxAKKEEZPSPQ4qek+ICX7MjXJ6lkwf0SAsiXfP7jw caRM9GVSqBeBnuPEL3ng7+1NgK8vQT5Svbyl8PMiOsaI5Am+JEWNN1/OKZsQSH5ICE Wis4qTQpmWGCwD4UepgFSU5iJplQUJkkUslCi9UnxeWfwY+dskrI+6UN/y34oII22e7N8p/ wIwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUle7OlGikUr1li85gLS4UHLT4ygtzGR 6eRFL5tWxfuVydmezewnt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6 +ZNbvX0ixvXb0pHr/DDhQtcOv8tZ05/xpddfsrJk8f4+KMpEG//PnZv2cSG5QtZOGsaVWW5F OUkKiNgFqYFS4QOolCCjr/3WgqmV7Br5zvs27DuU5YPktoJ3+rrvy7/0oc9eaz4Cme+OCp8h QuZPWsOc2tnM72ymnK5+ly6KtauWczB/Zs5emQv33zOdevX+fnu7e4/IIONnoN5bFkBY8 ePeb+vQfcvnOPGzdvSYZwjcti1hcvX+D7i+f49tz3fhf2DN98L/W7M3x79nu+P3eec+fPCUHY cenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yp pqKqurqa2bJbWWDRvWCSiOZ9BjP9Kt//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdfdsVN+e3R Y+XHDPSIFNy9d4erwpBvv7/Ap5+d4P0PD7Bz3mZwb13LrNXzmTqvkqzaEpKrs4kr2T2FiSQI RhbEE50/ALZsaD3HuHplReKRF4J4aLjUmZ/qlvDkKZobjmxNBkDj58IJYYoqTij32WRkpFDt k1RZTMrWTuuWs2bGGnQd38NGxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPpxvdf57MTnMtjr yc7OYePGjfl3+atlJFX/UfmXDFoxmFvBs13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGB wjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfnvXvS3Kc3Ta Q+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spX3r1o6dmmbtuN700lSoeck2r

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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;3002884-35.2025.8.06.0000 - &#160;AGRAVO DE INSTRUMENTO (202)</p><p> AGRAVANTE: BANCO DO NORDESTE DO BRASIL S/A</p><p> AGRAVADO: JOSÉ FRANCISCO DOS SANTOS</p><p>
 </p><p align="center">
 </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Ementa: Direito civil. Agravo de instrumento. Cautelar inominada. Pedido de desbloqueio de saldo referente ao benefício previdenciário. Impenhorabilidade dos valores depositados em conta corrente. aplicações financeiras e congêneres, até o limite de 40 (quarenta) salários mínimos, por interpretação extensiva dos termos do inciso x, do artigo 833, do cpc. Natureza salarial e caráter alimentar. Precedentes stj. Recurso conhecido, todavia, desprovido. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify">
 </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Vistos, relatados e discutidos estes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso

Processo	3002884-35.2025.8.06.0000
	interposto, para NEGAR-LHE PROVIMENTO, n os termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Presidente/Relator </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify">

</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> RELATÓRIO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Trata-se de Agravado de Instrumento, interposto pelo BANCO DO NORDESTE DO BRASIL S/A, adversando decisão interlocutória proferida pelo Juízo da 2ª Vara Cível da Comarca de Iguatu, que, nos autos da Ação Cautelar Inominada nº 3002926-39.2024.8.06.0091 (Pedido de Desbloqueio de Saldo Referente ao Benefício Previdenciário), manejada por JOSÉ FRANCISCO DOS SANTOS em desfavor do ora recorrente, deferiu o pedido de tutela de urgência antecedente de natureza cautelar para determinar que a instituição financeira proceda ao desbloqueio do saldo de valores constante na conta corrente do requerente junto à a gência bancária de Iguatu/CE (fls. 10/14 do id. 18431673).</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Em suas razões, a instituição financeira agravante alega que “ em momento algum houve arbitrariedade praticada pelo Banco, pois, ao contrário do que fora alegado na exordial e acolhido na r. decisão interlocutória, os descontos foram plenamente autorizados pela parte agravada, considerando que, entre as partes, há relacionamento bancário junto à Agência 0021 e Conta-Corrente 17365-0 e, além disso, houve a legítima celebração de Nota de Crédito Rural nº 21.2012.9003.9284, com vencimento final em 17/01/2021, no valor de R\$ 12.000,00 (doze mil reais), a qual se encontra inadimplida.” </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Ressalta que, “por expressa disposição contratual, notadamente a cláusula autorização de débito, constante da Nota de Crédito Rural nº 21.2012.9003.9284 pactuada entre as partes, ficou o Banco autorizado a debitar os valores correspondentes em conta de depósitos, visando o adimplemento das prestações pactuadas.”</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Pugna pela concessão do competente efeito suspensivo, a fim de que seja afastada a decisão interlocutória ID 133305437, para permitir a realização de descontos e, ao final, o provimento do recurso, reformando-se a decisão recorrida. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Efeito suspensivo negado na decisão proferida pelo anterior Relator (id. 19155288). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Contrarrrazões apresentadas (id. 27110532). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Recurso redistribuído a este relator, por força do Assento Regimental nº 23/2025, que alterou a redação dos artigos 3º, caput, 4º, incisos VII e VIII, 31, §1º, 80 e 89, caput e parágrafo único, além de acrescentar o art. 321-A ao Regimento Interno do Tribunal de Justiça do Estado do Ceará, da Resolução do Tribunal Pleno nº 07/2025, ambos de 22 de maio de 2025, da Portaria nº

Processo	3002884-35.2025.8.06.0000
	1720/2025 (DJEa, de 9 de julho de 2025) (id. 2614679). É o relatório. VOTO Conheço do recurso, eis que presentes os pressupostos de admissibilidade. O cerne da pretensão recursal consiste em examinar a possibilidade de manutenção do bloqueio de valores que constituiriam verba impenhorável, com fulcro no artigo 833, inciso X, do Código de Processo Civil. Sobre a matéria em análise, é pertinente examinar as normas processuais constantes no artigo 833 da Lei Adjetiva Civil em vigor, com ênfase nos seguintes dispositivos: Art. 833. São impenhoráveis: [...] X - a quantia depositada em caderneta de poupança, até o limite de 40 (quarenta) salários mínimos; [...] O disposto nos incisos IV e X do caput não se aplica à hipótese de penhora para pagamento de prestação alimentícia, independentemente de sua origem, bem como às importâncias excedentes a 50 (cinquenta) salários-mínimos mensais, devendo a constrição observar o disposto no art. 528, § 8º, e no art. 529, § 3º. [Grifei]. O atual posicionamento do c. Superior Tribunal de Justiça referenda a impenhorabilidade de quaisquer quantias até o valor equivalente a 40 salários mínimos, seja em conta poupança, conta corrente ou aplicações financeiras, presumindo-se necessárias ao sustento do devedor e familiares. Segundo a referida Corte, a impenhorabilidade em debate não se restringe às contas poupança, abrangendo quaisquer contas bancárias relacionadas à segurança do sustento do titular e à formação do seu patrimônio mínimo, ressalvadas situações de abuso, má-fé ou fraude. O STJ também é firme no entendimento segundo o qual a simples movimentação atípica apurada pelas instâncias ordinárias, por si só, não constitui má-fé ou fraude a ensejar a mitigação da impenhorabilidade estabelecida pelo artigo 833, inciso X, do Código de Processo Civil. Neste sentido: AGRAVO INTERNO. RECURSO ESPECIAL. PROCESSUAL CIVIL. PENHORA DE CONTA CORRENTE. LIMITE DE IMPENHORABILIDADE DO VALOR CORRESPONDENTE A 40 (QUARENTA) SALÁRIOS MÍNIMOS. VIOLAÇÃO AO ART. 833 DO CPC/2015. DECISÃO MANTIDA. RECURSO NÃO PROVIDO. 1. A jurisprudência desta Corte Superior entende que é impenhorável a quantia de até quarenta salários mínimos poupada, seja ela mantida em

Processo	3002884-35.2025.8.06.0000
	papel- moeda; em conta corrente; aplicada em caderneta de poupança propriamente dita ou em fundo de investimentos, e ressalvado eventual abuso, má-fé, ou fraude, a ser verificado caso a caso, de acordo com as circunstâncias da situação concreta em julgamento. Precedentes. 2. Agravo interno a que se nega provimento. (STJ - AgInt no REsp: 1933400 RJ 2021/0114047-9, Relator: Ministra MARIA ISABEL GALLOTTI, Data de Julgamento: 21/03/2022, T4 - QUARTA TURMA, Data de Publicação: DJe 24/03/2022). PROCESSUAL CIVIL E TRIBUTÁRIO. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. EXECUÇÃO FISCAL. VALORES BLOQUEADOS EM CONTA POUPANÇA. IMPENHORABILIDADE. LIMITE DE ATÉ 40 SALÁRIOS MÍNIMOS. AGRAVO INTERNO DA FAZENDA NACIONAL NÃO PROVIDO. 1. É entendimento desta Corte Superior que são impenhoráveis os saldos inferiores a 40 salários-mínimos depositados não só em caderneta de poupança mas, também, a mantida em fundo de investimento, em conta-corrente ou guardada em papel-moeda, ressalvado eventual abuso, má-fé ou fraude. (AgInt no REsp 1.858.456/RO, Rel. Ministra REGINA HELENA COSTA, PRIMEIRA TURMA, julgado em 15/6/2020, DJe 18/6/2020). 2. Agravo Interno da FAZENDA NACIONAL não provido. (STJ - AgInt no AREsp: 1853515 RS 2021/0069263-2, Relator: Ministro MANOEL ERHARDT (DESEMBARGADOR CONVOCADO DO TRF5), Data de Julgamento: 04/10/2021, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 07/10/2021). PROCESSUAL CIVIL E ADMINISTRATIVO. AGRAVO INTERNO NO RECURSO ESPECIAL. REGRA DE IMPENHORABILIDADE. VALORES ATÉ 40 SALÁRIOS MÍNIMOS DEPOSITADOS EM CONTAS BANCÁRIAS. INCIDÊNCIA. PRECEDENTES. 1. São impenhoráveis os saldos inferiores a 40 salários-mínimos depositados em caderneta de poupança e, conforme entendimento do STJ, em outras aplicações financeiras e em conta-corrente. Precedentes. 2. Agravo interno não provido. (STJ - AgInt no REsp: 1812780 SC 2019/0128828-6, Relator: Ministro BENEDITO GONÇALVES, Data de Julgamento: 24/05/2021, T1 - PRIMEIRA TURMA, Data de Publicação: DJe 26/05/2021). No caso em tela, conforme manifestação do executado nos autos de origem, o banco agravante vem realizando reiteradamente bloqueios e valores que ingressam em sua conta benefício – c onta corrente 17.365-0 – Ag. 0021 – BNB Iguatu, retendo verba alimentar do autor, sob a justificativa da existência de dívida não paga , oriund a de operações de crédito rural em atraso junto à referida agência. Com base nos elementos trazidos aos autos, impende destacar as seguintes premissas. A primeira é que os valores e movimentações bancárias demonstrados nos autos originários pesam a favor

Processo	3002884-35.2025.8.06.0000
	do argumento de que as verbas bloqueadas possuem, de fato, natureza salarial e remuneratória (salário e auxílios). Não há indícios sequer da configuração de reserva financeira ou de investimentos, levando o aparato fático atualmente apresentado a entender que os valores bloqueados constituem recursos correntes voltados exclusivamente para a manutenção do agravado e o sustento da família. A o par disso, ainda que não fosse suficientemente demonstrada a natureza salarial dos recursos constrictos, impende ressaltar que a soma dos saldos das contas bloqueadas, por vezes equivalente a R\$ 476,78 cada, tende a ir de encontro ao disposto no já citado artigo 833, inciso X, do CPC, e ao sólido entendimento do Tribunal da Cidadania no sentido da impenhorabilidade de quaisquer quantias até o valor equivalente a 40 salários mínimos (inclusive as depositadas em contas correntes). No sentido das explanações ora realizadas, assim já se manifestou a jurisprudência de nossos tribunais: </p> <p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> EXECUÇÃO FISCAL. APLICAÇÃO FINANCEIRA. IMPENHORABILIDADE DO LIMITE PREVISTO NO ART. 649, X, DO CPC. AFASTAMENTO DA CONSTRIÇÃO EM RELAÇÃO AO LIMITE DE QUARENTA SALÁRIOS MÍNIMOS. 1. O Superior Tribunal de Justiça possui jurisprudência que entende serem impenhoráveis os valores que alcancem até o montante de quarenta salários mínimos depositados em poupança, como também aqueles depositados em conta-corrente ou fundo de investimento. 2. O STJ também já decidiu que a simples movimentação atípica apurada pelas instâncias ordinárias, por si só, não constitui má-fé ou fraude a ensejar a mitigação da impenhorabilidade estabelecida pelo art. 833, X, do novo CPC. 3. Agravo Interno não provido.</p> <p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; break-before: auto;" align="justify"> (STJ - AgInt no REsp: 1897212 SP 2020/0250135-0, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 19/04/2021, T2 - SEGUNDA TURMA, Data de Publicação: DJe 01/07/2021). </p> <p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; break-before: auto;" align="justify">
 </p> <p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; break-before: auto;" align="justify"> PROCESSUAL CIVIL. AGRAVO INTERNO EM RECURSO ESPECIAL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. VALORES DEPOSITADOS EM CONTAS BANCÁRIAS. MONTANTE INFERIOR A QUARENTA SALÁRIOS MÍNIMOS. IMPENHORABILIDADE . 1. Cuida-se, na origem, de execução de título extrajudicial. 2. São impenhoráveis os valores poupados pelo devedor, seja em caderneta de poupança, conta-corrente, fundo de investimentos ou em papel-moeda, até o limite de 40 salários mínimos. Precedente da 2ª Seção. 3. A simples movimentação atípica apurada pelas instâncias ordinárias, por si só, não constitui má-fé ou fraude a ensejar a mitigação da impenhorabilidade do art. 833, X, do NCPC. 4. Agravo interno no recurso especial não provido. </p> <p class="western" style="line-height: 200%; text-indent: 0.2cm; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (STJ - AgInt no REsp 1795956/SP, Rel. Ministra NANCY ANDRIGHI, TERCEIRA TURMA, julgado em 13/05/2019, DJe 15/05/2019). </p> <p class="western" style="line-height: 200%; text-indent: 0.2cm; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">
 </p> <p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO DE INSTRUMENTO. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. IMPENHORABILIDADE. DESBLOQUEIO DE CONTA POUPANÇA ATÉ 40 SALÁRIOS MÍNIMOS. POSSIBILIDADE. IRRELEVANCIA DA MOVIMENTAÇÃO. SUSTENTO FAMILIAR. INTELIGENCIA DO ART. 833, X, DO CPC. DECISÃO REFORMADA. AGRAVO PROVIDO. - Segundo o disposto no art. 833, X, do CPC são impenhoráveis os valores poupados pelo devedor, tanto depositados em cadernetas de poupança ou em outra aplicação financeira, desde que limitados a quantia de 40 (quarenta) salários-mínimos - A limitação a 40 (quarenta) salários mínimos tem como

1447

Processo	3003564-20.2025.8.06.0000
Advogado(s) - Polo ativo	ELIANE CAROLINE DE ASSIS COSTA - (CE49587-A) DAVI FERREIRA FROTA - (CE41989-A)
Polo passivo	A2 FOMENTO MERCANTIL LTDA
Advogado(s) - Polo passivo	GILVANDO FURTADO DE FIGUEIREDO JUNIOR - (CE18259-A) GUSTAVO REBELO DE CAMPOS - (CE35289-A)
Terceiros	Não informado

Processo	3003564-20.2025.8.06.0000
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RDl82dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmWFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAhrRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LTl9z2wZ6B+iP9WeVIWtYJQMh0z2DdvrYlZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfLk3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fn5FHghjY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WYOGE pw1t9ofclZHE21NneWVeWBxJJElVfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXBY41gnUvXNkIXX410JEZMRU0ZDIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	3003564-20.2025.8.06.0000
	PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 3003564-20.2025.8.06.0000 AGRAVO DE INSTRUMENTO (202) AGRAVANTE: NORDESTINA INDÚSTRIA COMÉRCIO E SERVIÇOS DE EQUIPAMENTOS PARA REFRIGERACAO LTDA. AGRAVADO: A2 FOMENTO MERCANTIL LTDA. EMENTA: AGRAVO DE INSTRUMENTO. EMBARGOS À EXECUÇÃO. EFEITO SUSPENSIVO. CHEQUE ALEGADAMENTE FRAUDULENTO. AUSÊNCIA DE GARANTIA DA EXECUÇÃO. IMPOSSIBILIDADE DE CONCESSÃO DE EFEITO SUSPENSIVO. REQUISITOS DO ART. 919, §1º DO CPC. AGRAVO INTERNO PREJUDICADO. 1) CASO EM EXAME 1. Trata-se de Agravo de Instrumento interposto por Nordestina Indústria Comércio e Serviços de Equipamentos para Refrigeração Ltda e HBX Participações S/A contra decisão que indeferiu efeito suspensivo aos embargos à execução ajuizados em face de A2 Fomento Mercantil Ltda. O juízo a quo entendeu que a alegação de fraude no cheque deveria ser analisada oportunamente nos embargos à execução, não sendo possível a suspensão do processo na fase atual. Os

Processo	3003564-20.2025.8.06.0000
	agravantes sustentam fraude na emissão e endosso do cheque, devolvido pelo motivo 22, e pleiteiam efeito suspensivo independentemente de garantia da execução. II) QUESTÃO EM DISCUSSÃO 2. O ponto controvertido consiste em verificar se estão presentes os requisitos legais para concessão de efeito suspensivo aos embargos à execução, especialmente considerando a ausência de garantia da execução e a alegada fraude na emissão do cheque que lastreia a ação executiva. III) RAZÕES DE DECIDIR 3. O art. 919, § 1º, do CPC, condiciona a concessão de efeito suspensivo aos embargos à execução à presença dos requisitos para tutela provisória e à garantia da execução por penhora, depósito ou caução suficientes. No caso, não há garantia oferecida pelas agravantes, impedindo a suspensão da execução. 4. A alegação de hipossuficiência financeira foi apresentada apenas em agravo interno, o que constitui inovação recursal, devendo ser desconsiderada por violação ao princípio da unicidade recursal. A suposta fraude no cheque depende de dilação probatória e não pode ser apreciada em sede de cognição sumária do agravo de instrumento. 5. Requisitos da tutela provisória não preenchidos. IV) DISPOSITIVO 6. Recurso de Agravo de Instrumento conhecido e desprovido. Agravo Interno prejudicado. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Agravo de Instrumento para lhe negar provimento, bem como para julgar prejudicado o Agravo Interno, nos termos do voto do relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Cuida-se de Agravo de Instrumento interposto por Nordestina Indústria Comércio e Serviços de Equipamentos para Refrigeração Ltda. e HBX Participações S/A em face de decisão final proferida nos autos dos Embargos à Execução nº 0211604-26.2023.8.06.0001 (IDs 135585385 e 95664267), que foram ajuizados pelas ora agravantes contra A2 Fomento Mercantil Ltda. Na decisão combatida (ID 135585385), que apreciou os embargos de declaração que foram opostos por Nordestina Indústria

Processo	3003564-20.2025.8.06.0000
	Comércio e Serviços de Equipamentos para Refrigeração Ltda, foi esclarecido que, na decisão de ID 95664267, não fora concedido o efeito suspensivo pleiteado nos embargos à execução. Além disso, o juízo <i>asseverou</i> que “a questão referente à alegada fraude no cheque, que lastreia a execução, não seria objeto de análise neste momento, uma vez que a mesma deveria ser oportunamente apreciada durante o andamento dos embargos de execução, com a produção das provas pertinentes.” Assim, argumenta que, com base no poder geral de cautela, deve ser concedida a liminar para conceder efeito suspensivo aos embargos à execução, independentemente de a ação estar ou não garantida por penhora, caução ou depósito. Sem preparo recursal, em virtude da gratuidade judiciária concedida pelo juízo de primeiro grau (ID 95664267). Na decisão interlocutória (ID 19451587), indeferi o pleito de efeito suspensivo a este recurso. Contrarrazões recursais foram apresentadas no ID 20212420, alegando-se, preliminarmente, a impossibilidade de concessão de efeito suspensivo aos embargos à execução pela ausência de garantia do juízo. Em seguida, quanto ao mérito, alegou que o título executivo se reveste de todos os requisitos de formalidade, razão pela qual a ação executiva deve ter seu curso continuado. Assim, pugnou pelo desprovemento do recurso. Interposição de agravo interno contra a decisão anterior (ID 20343136), em que as agravantes, Nordeste Indústria Comércio e Serviços de Equipamentos para Refrigeração Ltda e HBX Participações S/A, alegam que as empresas têm passado por situação de dificuldade financeira que as tem impedido de exercer por completo a sua atividade empresarial. Diante disso, requerem que seja afastada a exigência da garantia da execução, conforme autorizado pelo § 1º do art. 919 do CPC. Não foram oferecidas contrarrazões ao Agravo Interno, conforme certificado nos autos. É o relatório. VOTO

Processo	3003564-20.2025.8.06.0000
	919 do CPC, impede a concessão de efeito suspensivo ao embargos à execução. &#160; Dito isso, despiciendo analisar a questão trazida pelos agravantes a respeito da suposta fraude na emissão do título de crédito, tendo em vista que, além da probabilidade do direito e o perigo de dano, a execução deve estar suficientemente garantida para que seja suspensa por meio dos embargos. &#160; De mais a mais, note-se que a matéria alegada pelos embargantes nos autos originários, relativa à falsidade na assinatura aposta no cheque, depende de dilação probatória para ser aferida, a qual, em sede de cognição sumária, própria do agravo de instrumento, tem sua verificação prejudicada. &#160; Diante disso, conheço do presente recurso para lhe negar provimento, mantendo a decisão interlocutória de primeiro grau em todos os seus termos. &#160; Fica prejudicado o julgamento do Agravo Interno, em virtude do julgamento concomitante do recurso principal. &#160; Comunique-se ao d. juízo singular sobre os termos deste julgamento, para os devidos fins. &#160; É como voto. &#160; Fortaleza, data da assinatura digital. &#160; DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO &#160; Relator &#160; &#160; &#160;
Processo	0257233-86.2024.8.06.0001
Número de ordem	139
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	PASEP
Polo ativo	SEVERIANO FACANHA DE MACEDO
Advogado(s) - Polo ativo	REGINALDO CASTELO BRANCO ANDRADE - (CE9975-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	Não informado

Processo	0257233-86.2024.8.06.0001
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Processo	0257233-86.2024.8.06.0001
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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;0257233-86.2024.8.06.0001 - &#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: SEVERIANO FAÇANHA DE MACEDO</p><p> APELADO: BANCO DO BRASIL S/A</p><p>
 </p><p align="center">
 </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Ementa : DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM RECURSO DE APELAÇÃO CÍVEL. AUSÊNCIA DE VÍCIOS NO JULGADO. MATÉRIA EXPRESSAMENTE ANALISADA. TENTATIVA DE REDISCUSSÃO. INCIDÊNCIA DA SÚMULA Nº 18/TJCE. ACLARATÓRIOS CONHECIDOS, TODAVIA, DESPROVIDOS. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer dos Embargos de Declaração, todavia, para NEGAR-LHES PROVIMENTO , nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Presidente/Relator </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> RELATÓRIO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Trata-se de Embargos de Declaração opostos pelo BANCO DO BRASIL S/A, adversando acórdão da Primeira Câmara de Direito Privado deste

Processo	0257233-86.2024.8.06.0001
	Tribunal que, nos autos da Apelação Cível nº 0257233-86.2024.8.06.0001, deu provimento ao recurso, reconhecendo a inexistência de prescrição, cassando a sentença de 1º grau e determinando o retorno dos autos ao Juízo de origem para regular processamento da demanda (id. 23210420). Em suas razões, o embargante aponta vício de omissão no julgado pugnando pelo acolhimento dos aclaratórios para que esta Corte se pronuncie sobre os pontos suscitados, inclusive para fins de prequestionamento perante as instâncias superiores. Sem contrarrazões. É o relatório. VOTO Conheço destes Embargos Declaratórios, eis que presentes os pressupostos de admissibilidade. Nos termos do art. 1.022, do Código de Processo Civil, a interposição do recurso em comento condiciona-se à presença de obscuridade, contradição ou omissão no julgado, impondo-se o seu acolhimento quando algum desses vícios estiver configurado. Extraí-se o teor do referido dispositivo legal: I - esclarecer obscuridade ou eliminar contradição; II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material. Com efeito, a omissão deve ser considerada quando o juiz ou tribunal omite-se em relação a ponto sobre o qual deveria pronunciar-se. Isso não significa que o julgador esteja obrigado a responder a todas as alegações das partes, nem a rebater todos os seus argumentos, basta que expresse os motivos que reputa suficientes à conclusão. Os fundamentos em que se baseia para decidir de uma ou outra forma constituem a motivação, requisito essencial à validade do julgamento. Já a contradição que os embargos de declaração se propõem a sanar deve ser a interna, verificada no corpo textual do acórdão, que apresente incoerência entre os fundamentos expostos ou entre estes e a parte dispositiva do julgado. A obscuridade, por sua vez, corresponde à falta de clareza do texto. Essa somente fica caracterizada quando, por qualquer motivo, é prejudicada a compreensão da decisão judicial.

Processo	0257233-86.2024.8.06.0001
	style="font-size: 14pt;">O erro material que autoriza o cabimento dos Embargos de Declaração é aquele relativo a equívoco ou inexatidão relacionado a aspectos objetivos, afastando-se, portanto, a questão acerca do posicionamento/entendimento do julgado. Ademais, o presente recurso não possui, pois, como regra, caráter substitutivo, modificador ou infringente quanto ao acórdão embargado, mas sim, aspecto integrativo ou aclaratório. Não é matéria dos embargos de declaração, portanto, o inconformismo da parte com o resultado obtido. Pois bem. No caso dos autos, verifica-se que o julgado supracitado não incorreu em quaisquer vícios conforme alega o embargante, devendo os embargos serem rejeitados, sob pena de rediscussão da matéria já amplamente analisada durante o processo, o que, conforme o ordenamento jurídico pátrio e, na esteira de decisões dos tribunais pátrios, tem-se como inviável. Com efeito, alega o recorrente que o decisum recorrido porta vício de omissão no julgado. Aduz que é de rigor o reconhecimento da prescrição do caso posto em tela, já que a presente demanda foi ajuizada em 03/08/2024, cerca de 21 anos após o saque realizado (04/04/2003). Em que pese o esforço despendido pelo embargante, não se vislumbra, no acórdão embargado, quaisquer vícios, eis que, como se observa do decisório embargado, a matéria foi devidamente enfrentada, como se pode extrair da Ementa que ora segue transcrita: Ementa: Direito civil e processual civil. Recurso de apelação cível. Ação de indenização por danos materiais e morais. Diferença de valores na conta vinculada ao pasep. Prescrição inócurrente. Princípio da actio nata. actio nata. Prazo que flui a partir do momento em que a parte toma ciência inequívoca da ocorrência da irregularidade na sua conta vinculada do pasep (tema nº 1.150), quando do recebimento do extrato ou das microfilmagens. Retorno dos autos à vara de origem para o devido processamento e julgamento do litígio. Recurso conhecido e provido. Sentença cassada. Nesse viés, a matéria fora devidamente apreciada por esta Primeira Câmara de Direito Privado, tendo sido, inclusive, colacionado precedentes desta Câmara no mesmo sentido, com a finalidade de demonstrar que o início do prazo prescricional somente ocorreu na data em que o titular da conta toma ciência, comprovadamente, dos desfalques, ou seja, quando tem acesso aos extratos da conta PASEP, pois só então passa a conhecer o fato e a extensão de suas consequências, não sendo, desta forma, a partir do saque realizado. Tem-se, portanto, que os argumentos trazidos pelo embargante revelam clara tentativa de reexaminar matéria já discutida, não havendo quaisquer vícios a sanar.

Processo	0257233-86.2024.8.06.0001
	background: transparent;" align="justify"> Nessa vertente, inexistindo vícios a serem corrigidos, entendendo que o pedido de alteração do julgado mais se aproxima como de reanálise do mérito da demanda, medida não albergada por esta via. </p><p class="western" style="line-height: 200%; text-indent: 2.4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Ademais, esse posicionamento restou sumulado por esta Corte de Justiça, através da Súmula nº 18 que aduz: "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada." </p><p class="western" style="line-height: 200%; text-indent: 2.4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse sentido: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> EMBARGOS DECLARATÓRIOS EM APELAÇÃO CÍVEL. EXECUÇÃO INDIVIDUAL DE AÇÃO COLETIVA. EXPURGOS INFLACIONÁRIOS. PRESCRIÇÃO RECONHECIDA. AUSÊNCIA DE OMISSÃO. REDISCUSSÃO DA MATÉRIA - IMPOSSIBILIDADE. OFENSA À SUMULA 18/TJCE. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1 - Examinando o Acórdão embargado e os fundamentos que o embasaram, constata-se que não se ressente o acórdão de qualquer dos defeitos a que alude o art. 1.022 do Estatuto Processual, nele não se vislumbrando nenhum vício a ser suprida. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 2 - O decisum embargado concluiu de forma clara e precisa pelo reconhecimento da prescrição para o ajuizamento da Execução individual da sentença proferida na Ação Civil Pública nº 1998.01.1.016798-9, assim o fazendo em atenção ao entendimento já adotado por esta 4a Câmara de Direito Privado em casos semelhantes, no sentido de não reconhecer o ajuizamento da Cautelar de protesto pelo Ministério Público do Distrito Federal como causa interruptivo do prazo prescricional para o ajuizamento da execução, notadamente em face da ilegitimidade do parquet para a execução da referida sentença, haja vista tratar-se de direito patrimonial disponível. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 3- Não obstante a existência de posicionamentos jurisprudenciais divergentes, inclusive no âmbito deste Tribunal, o acórdão recorrido está em consonância com precedentes deste órgão fracionário, assim como da 1a Câmara de Direito Privado, consoante jurisprudência colacionado. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 4 - Embargos Declaratórios conhecidos e improvidos. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-CE - ED: 00001766720188060175 CE 0000176-67.2018.8.06.0175, Relator: RAIMUNDO NONATO SILVA SANTOS, Data de Julgamento: 07/07/2020, 4 <sup> a</sup> . Câmara Direito Privado, Data de Publicação: 07/07/2020). </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. ALEGAÇÃO DE OMISSÃO E CONTRADIÇÃO. INEXISTÊNCIA. AUSÊNCIA DE CONFIGURAÇÃO DE QUAISQUER DAS HIPÓTESES PREVISTAS NO ART. 1.022 E INCISOS, DO NCPC. REDISCUSSÃO DA MATÉRIA JULGADA. IMPOSSIBILIDADE. SÚMULA Nº 18 DO TJCE. EMBARGOS CONHECIDOS MAS NÃO PROVIDOS. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> I - Casa do Rádio Amador do Ceará - CRACE opõe EMBARGOS DE DECLARAÇÃO para efeito de esclarecimento de omissões, contradições que afirma existir na decisão de fls. 162/167, tomada por esta relatoria e a unanimidade de votos da Colenda Quarta Câmara de Direito Privado deste Sodalício, na Apelação de na 0901617-37.2014.8.06.0001, que tem como parte contrária Miguel Antonio Moraes Celestino e Vera Gil Celestino. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> </p>

Processo	0257233-86.2024.8.06.0001
	family: Georgia, serif;"> II - Os Embargos de Declaração, que pelo princípio da taxatividade é instrumento recursal, previsto nos arts. 1.022 a 1.026, do Código de Ritos, é cabível contra qualquer decisão que contenha obscuridade, contradição, omissão, ou mesmo para corrigir erro material. Na situação vertente, não se constata a presença de nenhuma das hipóteses autorizadoras do manejo do presente recurso. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> III - A embargante pretende rediscutir mérito da demanda, objetivo este expressamente proibido pelo entendimento sumulado deste Tribunal, a teor da Súmula 18, quando reza que "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada." </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> IV - Embargo de Declaração conhecidos mas não providos. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-CE - ED: 09016173720148060001 CE 0901617-37.2014.8.06.0001, Relator: FRANCISCO BEZERRA CAVALCANTE, Data de Julgamento: 12/05/2020, 4a Câmara Direito Privado, Data de Publicação: 12/05/2020). </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> CIVIL. DIREITO DO CONSUMIDOR. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO. INDENIZAÇÃO. FRAUDE NA CONTRATAÇÃO. NEGATIVAÇÃO INDEVIDA EM FACE DA CONDUTA ADOTADA POR TERCEIRO. RESPONSABILIDADE DA EMPRESA DE TELEFONIA. DANOS MORAIS IN RE IPSA. ALEGAÇÃO DE QUE A AUTORA É DEVEDORA CONTUMAZ. INSCRIÇÃO PREEXISTENTE ILEGÍTIMA. INAPLICABILIDADE DA SÚMULA Nº 385 DO STJ. INEXISTÊNCIA DOS PRESSUPOSTOS DO ARTIGO 1.022 DO CPC. REDISCUSSÃO DA MATÉRIA. INCIDÊNCIA DA SÚMULA Nº 18 DO TJCE. ACLARATÓRIOS CONHECIDOS E IMPROVIDOS. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. In casu, verifica-se que o intuito precípua do polo recorrente ao manejar os presentes aclaratórios é a reforma da decisão proferida em apreciação de Apelação, visto que rediscute o mérito da causa sem apontar a existência de omissão, obscuridade ou contradição. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 2. No presente recurso aponta-se omissão, aduzindo que o acórdão não se manifestou sobre a alegativa de que a parte apelada é devedora contumaz, com inscrição prévia no órgão de proteção ao crédito. Assevera que a decisão contraria a súmula 385 do Superior Tribunal de Justiça, já que a inclusão irregular não gera indenização por danos imateriais quando preexistente legítima inscrição. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 3. O tema foi discutido e julgado, nos seguintes termos: "Deve-se reconhecer que a transação sobre a qual recaiu a presente irrisignação decorreu de fraude, uma vez que a empresa não se desincumbiu do ônus que lhe competia de comprovar a regularidade da operação, considerando que todas as provas colacionadas aos autos apontam para a veracidade da conjuntura narrada pela suplicante, que afirma não ter contraído a dívida, especialmente tendo em vista a notória divergência entre os dados, a assinatura e a fotografia constantes no documento original da requerente daquele apresentado no momento da contratação perante a operadora de telefonia". </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 4. Sabe-se que, ao decidir, o Magistrado não tem obrigação de refutar, um a um, os argumentos trazidos, mas tão somente fundamentar suficiente e coerentemente suas conclusões, o que foi devidamente atendido na decisão atacada. Entretanto, a título de esclarecimento, tem-se que, pelas provas colacionadas aos autos, resta evidente que as restrições são ilegítimas, considerando que decorreram de fraude perpetrada por terceiro que utilizou o nome de solteira da apelada em outros Estados do país para dar golpes no mercado, não havendo evidências concretas de que a recorrida era devedora contumaz. Portanto, inaplicável o verbete sumular nº 385 do STJ. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 5. Os embargos declaratórios em apreço retratam tão somente a inconformidade do polo recorrente em relação à decisão alvejada, sem, contudo, apresentar razões que

Processo	0257233-86.2024.8.06.0001
	justifiquem a interposição dessa espécie recursal, a qual possui hipótese de cabimento especificamente vinculada à finalidade integrativa de aperfeiçoamento das decisões judiciais, com expressa previsão no art. 1.022 do CPC, não prosperando a irresignação. 6. A presente insurgência traduz mero inconformismo com o decisum colegiado, o que não possibilita um novo julgamento por meio de embargos de declaração, a teor da Súmula 18 deste Egrégio Tribunal de Justiça. 7. Embargos declaratórios conhecidos e desprovidos. (TJ-CE - ED: 01417619620088060001 CE 0141761- 96.2008.8.06.0001, Relator: HERACLITO VIEIRA DE SOUSA NETO, Data de Julgamento: 28/02/2018, 1a Câmara Direito Privado, Data de Publicação: 01/03/2018). Tem-se que, não ocorrendo nenhum dos vícios previstos no art. 1.022, do CPC, existe, além do intuito meramente prequestionador, o propósito de desdobramento, via embargos de declaração, de rediscutir matéria já decidida. Outrossim, é cediço que o art. 1.025 do CPC prevê a figura do prequestionamento ficto ou implícito, in verbis: Art. 1.025. Consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de prequestionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade. Logo, com a inserção do referido artigo no Código de Processo Civil de 2015, foi expressamente positivada a possibilidade do prequestionamento implícito, restando superada a necessidade de prequestionamento de toda a matéria como condição de admissibilidade recursal nos tribunais superiores. Com esse posicionamento: PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO NO AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. AUSÊNCIA DE QUALQUER DOS VÍCIOS ELENCADOS NO ART. 1.022 DO CPC/2015. MATÉRIA CONSTITUCIONAL. APRECIÇÃO PELO STJ. IMPOSSIBILIDADE, AINDA QUE PARA FINS DE PREQUESTIONAMENTO. EMBARGOS DE DECLARAÇÃO REJEITADOS. 1. Os embargos de declaração somente são cabíveis quando houver na decisão obscuridade, contradição, omissão ou erro material, consoante dispõe o art. 1.022 do CPC/2015. 2. Ausente qualquer dos mencionados vícios, incabível a utilização de embargos de declaração para fins de prequestionamento de matéria constitucional, com o objetivo de permitir a interposição de recurso extraordinário. 3. Embargos de declaração rejeitados. (STJ - EDcl no AgInt nos EDcl no REsp: 1395172 RS 2013/0240537- 9, Relator: Ministro ANTONIO CARLOS FERREIRA, Data de Julgamento: 09/02/2021, T4 – QUARTA TURMA, Data de Publicação: DJe 12/02/2021)

1471

Processo	0200229-15.2024.8.06.0091
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Propriedade Fiduciária
Polo ativo	BANCO BRADESCO FINANCIAMENTOS S.A.
Advogado(s) - Polo ativo	FRANCISCO SAMPAIO DE MENEZES JUNIOR - (CE9075-A)
Polo passivo	MARCILIA FERNANDES DA COSTA
Advogado(s) - Polo passivo	JOHN KENNEDY VIANA DINIZ - (CE14737-A)
Terceiros	Não informado

Processo	0200229-15.2024.8.06.0091
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmWFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTuPljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxBG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hLzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvlgRLkiu3cCAWl2fns5FHgkY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZC9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkIx410JEZMRU0ZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0200229-15.2024.8.06.0091
	roman&quot;, times;"/>PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 0200229-15.2024.8.06.0091 APELAÇÃO CÍVEL (198) APELANTE: BANCO BRADESCO FINANCIAMENTOS S.A. APELADO: MARCÍLIA FERNANDES DA COSTA EMENTA: DIREITO CIVIL, PROCESSUAL CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. ALIENAÇÃO FIDUCIÁRIA DE VEÍCULO. DESPESAS DE REMOÇÃO E ESTADIA EM PÁTIO PRIVADO. OBRIGAÇÃO PROPTER REM. RESPONSABILIDADE DO CREDOR FIDUCIÁRIO. INSURGÊNCIA DO BANCO CREDOR QUANTO À CONDENAÇÃO A RESTITUIR EM DOBRO DOS VALORES PAGOS PELA DEVEDORA REFERENTES ÀS DIÁRIAS DO VEÍCULO NO PÁTIO DA INSTITUIÇÃO BANCÁRIA. RECURSO CONHECIDO E DESPROVIDO.&#160; I. CASO EM EXAME: 1. Tratam os autos de apelação cível interposta por Banco Bradesco Financiamentos S/A em face da sentença proferida pelo juízo da 1ª Vara Cível da Comarca de Iguatu, que julgou parcialmente procedente a Ação de Indenização por Danos Materiais e Imateriais proposta por Marcília Fernandes da Costa. II. QUESTÃO EM DISCUSSÃO:&#160; 2. Cinge-se a controvérsia em analisar se acertada a sentença de parcial procedência dos pedidos na Ação de Indenização por Danos Materiais e Imateriais, que condenou a parte promovida, ora apelante, a restituir em dobro os valores pagos com as diárias do veículo no pátio à parte autora, ora apelada. III. RAZÕES DE DECIDIR:

Processo	0200229-15.2024.8.06.0091
	family: &quot;times new roman&quot;; times;">3.&#160; A Terceira Turma do Superior Tribunal de Justiça, no julgamento do RESP. 1657752 SP, entendeu que o credor fiduciário é o responsável pelo pagamento das despesas de remoção e estadia de veículos em pátio de propriedade privada, mesmo quando a apreensão dos bens não se deu a seu pedido ou por qualquer fato imputável a ele. No entanto, segundo o colegiado, o credor pode exercer o direito de regresso contra os devedores. </p><p style="text-align: justify;" dir="ltr"> 4. Nos autos, está devidamente comprovado que a liminar de busca e apreensão do veículo foi deferida no processo nº 0201450-67.2023.8.06.0091 (ID 18924437). Além disso, restou demonstrado que o banco informou o local de recolhimento do veículo para que a parte autora pudesse retirá-lo (fl. 2, ID 18924439 e ID 18924434). Por fim, os documentos de IDs 18924435, 18924438 e 18924440 comprovam que a parte autora efetuou o pagamento das despesas de estadia do veículo, viabilizando sua remoção </p><p style="text-align: justify;" dir="ltr"> 5.&#160; E é importante ter em vista, ainda, que os gastos com a guarda e a remoção do veículo alienado foram presumivelmente destinados à devida conservação do automóvel. Sem o abrigo e a diligência do pátio particular, a garantia provavelmente pereceria, e não se pode dizer que a empresa responsável pela manutenção do bem estaria obrigada a devolver o veículo sem qualquer contraprestação pelo serviço prestado.&#160; Dispensar o recorrente do pagamento dessas despesas implicaria em amparar judicialmente o locupletamento indevido do credor fiduciário, legítimo proprietário do bem depositado.&#160;</p><p style="text-align: justify;" dir="ltr"> 6. Portanto, ante a comprovada responsabilidade da instituição financeira pelas despesas oriundas da guarda do veículo, revela-se devida a restituição dos valores pagos pela promovente/apelada a título de diárias no pátio privado. Por conseguinte, tendo sido comprovado o dano material sofrido pela apelada, no que se refere à condenação para restituir em dobro os valores efetivamente descontados, oportuno destacar que o entendimento do Superior Tribunal de Justiça é que “a restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que cobrou valor indevido, revelando-se cabível quando a cobrança indevida consubstanciar conduta contrária à boa-fé objetiva.”(EAREsp n. 676.608/RS, relator Ministro Og Fernandes, Corte Especial, julgado em 21/10/2020, DJe de 30/03/2021). </p><p style="text-align: justify;" dir="ltr"> 7. Dessa forma, ao considerar que o veículo objeto da lide foi regularmente apreendido em 27/09/2023 e permaneceu depositado no pátio do banco por cerca de um mês, a decisão recorrida se encontra&#160; de acordo com a jurisprudência vigente em nosso ordenamento, a devolução dos valores descontados deve ocorrer em dobro, conforme deve ser apurado em fase de cumprimento de sentença. </p><p style="text-align: justify;" dir="ltr"> IV. DISPOSITIVO:&#160;</p><p style="text-align: justify;" dir="ltr"> 8. Recurso conhecido e desprovido. </p><p style="text-align: justify;">
 </p><p style="text-align: justify;" dir="ltr"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação para, no mérito, negar-lhe provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p style="text-align: justify;">
 </p><p style="text-align: center;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Presidente/Relator </p><p style="text-align: center;">
 </p><p style="text-align: center;" dir="ltr"> RELATÓRIO&#160; </p><p style="text-align: justify;" dir="ltr"> Tratam os autos de apelação cível interposta por Banco Bradesco Financiamentos

Processo	0200229-15.2024.8.06.0091
	S/A em face da sentença proferida pelo juízo da 1ª Vara Cível da Comarca de Iguatu, que julgou parcialmente procedente a Ação de Indenização proposta por Marcília Fernandes da Costa. Eis o dispositivo da referida sentença (ID 18924715): Ante o exposto, julgo parcialmente PROCEDENTE o pedido, nos termos do artigo 487, inciso I, do Código de Processo Civil, para condenar a parte promovida a restituir a parte autora, os valores pagos com as diárias do veículo no pátio, sendo o reembolso em dobro, corrigidas monetariamente pelo INPC, contados da data do desembolso, e acrescidas de juros moratórios de 1% ao mês, na forma simples, a partir da citação. Considerando a sucumbência recíproca, condeno as partes ao pagamento das custas processuais e honorários advocatícios, fixados no patamar de 10% (dez por cento) sobre o valor da causa, na proporção de 50% para cada. Suspensa a exigibilidade com a relação à autora, por ser beneficiária da gratuidade de justiça. Irresignada, a instituição financeira apelante interpôs o presente apelo (ID 18924717), insurgindo-se quanto à sua condenação a restituir, de forma simples ou em dobro, os valores pagos com as diárias do veículo no pátio. Pugna, assim, pelo provimento de seu recurso, a fim de que seja julgada improcedente a ação. Preparo recolhido, conforme comprovante de ID 18924719. Contrarrazões apresentadas no ID 18924723, pugnando pelo desprovisionamento da apelação. Realizada tentativa de mediação/conciliação no segundo grau (ID 25440079), não se obteve êxito. É o relatório. VOTO Registro que os pressupostos recursais – cabimento, legitimidade e interesse de recorrer, tempestividade, regularidade formal, inexistência de fato impeditivo ou extintivo do poder de recorrer – estão devidamente preenchidos no caso concreto, inexistindo quaisquer vícios que obstem o conhecimento do recurso. Cinge-se a controvérsia em analisar se acertada a sentença de parcial procedência, que condenou a parte promovida apelante a restituir em dobro os valores pagos com as diárias do veículo no pátio à parte autora apelada.

Processo	0200229-15.2024.8.06.0091
	roman&quot;, times;";>
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Examinando detidamente os autos principais, verifico que a irresignação da apelante não tem fundamento, conforme será exposto a seguir. </p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> De início, saliento que a relação jurídica travada entre as partes é regulada pelos preceitos contidos no Código de Defesa do Consumidor.&#160;</p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Com efeito, no presente caso, estão caracterizadas as figuras do consumidor usuário de um serviço e do fornecedor que o presta, previstas respectivamente no arts. 2º e 3º do CDC.&#160; </p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Além disso, já superados os debates sobre a temática no âmbito das cortes superiores, não se revela mais controversa a incidência das normas consumeristas, quando se trata de uma instituição financeira na condição de prestadora do serviço, porquanto a súmula nº 297, do STJ, expressa os seguintes termos: "O código de defesa do consumidor é aplicável às instituições financeiras".&#160; </p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Na espécie, a instituição financeira se consolidou no domínio do veículo, com fundamento em negócio jurídico garantido pela alienação fiduciária. Ainda que o instituto seja regido por norma especial (Decreto-lei nº 911/1969), à evidência do contexto caracterizado acima, não há prejuízo à incidência do CDC para amparar o consumidor em sua manifesta vulnerabilidade. </p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Com efeito, a alienação fiduciária em garantia transfere ao credor apenas o domínio resolúvel e a posse indireta da coisa móvel alienada (art. 1.361 do CC/02).&#160;Assim, <em style="font-family: &quot;times new roman&quot;, times; font-size: large;";>"ocorre o fenômeno do desdobramento da posse, tornando-se o devedor o possuidor direto da coisa, e o credor - titular da propriedade fiduciária resolúvel -, possuidor indireto. Somente após o pagamento da dívida, a propriedade fiduciária do credor se extingue em favor do devedor, bem como sua posse indireta, tornando-se o devedor proprietário e possuidor pleno" (REsp 881.270/RS, 4ª Turma, DJe de 19/3/2010).</p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Ocorre que as despesas decorrentes do depósito do veículo alienado em pátio privado referem-se ao próprio bem, ou seja, constituem obrigações propter rem. Essa espécie de obrigação provém "da existência de um direito real, impondo-se a seu titular" (GOMES, Orlando. Obrigações. Rio de Janeiro: Forense, 2007, 17ª Ed., p. 29), de maneira que independe da manifestação expressa ou tácita da vontade do devedor. </p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Na espécie, isso equivale a dizer que as despesas com a remoção e a guarda dos veículos alienados estão vinculadas ao bem e a seu proprietário, ou seja, o titular da propriedade fiduciária resolúvel, ora apelante. </p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Nesse sentido, a Terceira Turma do Superior Tribunal de Justiça, no julgamento do RESP. 1657752 SP, entendeu que o credor fiduciário é o responsável pelo pagamento das despesas de remoção e estadia de veículos em pátio de propriedade privada, mesmo quando a

Processo	0200229-15.2024.8.06.0091
	apreensão dos bens não se deu a seu pedido ou por qualquer fato imputável a ele. No entanto, segundo o Colegiado, o credor pode exercer o direito de regresso contra os devedores. Perquirir acerca dos motivos que levaram à apreensão do veículo, ademais, não alteraria essa conclusão. Mesmo que a retenção do automóvel possa ser imputada ao devedor fiduciante, é certo que as despesas decorrentes da permanência do bem em pátio particular devem ser suportadas pelo credor fiduciário. Nos autos, está devidamente comprovado que a liminar de busca e apreensão do veículo foi deferida no processo nº 0201450-67.2023.8.06.0091 (ID 18924437). Além disso, restou demonstrado que o banco informou o local de recolhimento do veículo para que a parte autora pudesse retirá-lo (fl. 2, ID 18924439 e ID 18924434). Por fim, os documentos de IDs 18924435, 18924438 e 18924440 comprovam que a parte autora efetuou o pagamento das despesas de estadia do veículo, viabilizando sua remoção. É importante ter em vista, ainda, que os gastos com a guarda e a remoção do veículo alienado foram presumivelmente destinados à devida conservação do automóvel. Sem o abrigo e a diligência do pátio particular, a garantia provavelmente pereceria, e não se pode dizer que a empresa responsável pela manutenção do bem estaria obrigada a devolver o veículo sem qualquer contraprestação pelo serviço prestado. Dispensar o recorrente do pagamento dessas despesas implicaria em amparar judicialmente o locupletamento indevido do credor fiduciário, legítimo proprietário do bem depositado. Portanto, ante a comprovada responsabilidade da instituição financeira pelas despesas oriundas da guarda do veículo, revela-se devida a restituição dos valores pagos pela promovente/apelada a título de diárias no pátio privado. Por conseguinte, tendo sido comprovado o dano material sofrido pela apelada, no que se refere à condenação para restituir em dobro os valores efetivamente descontados, oportuno destacar que o entendimento do Superior Tribunal de Justiça é que “a restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que cobrou valor indevido, revelando-se cabível quando a cobrança indevida consubstanciar conduta contrária à boa-fé objetiva.” (EAREsp n. 676.608/RS, relator Ministro Og Fernandes, Corte Especial, julgado em 21/10/2020, DJe de 30/03/2021). A discussão foi apaziguada e decidida pelo c. STJ, resultando no entendimento de que a restituição em dobro do indébito seja aplicado apenas às cobranças indevidas realizadas a partir da publicação do acórdão que fixou a tese acima descrita, ou seja, 30 de março de 2021. Dessa forma, ao considerar que o veículo objeto da lide foi regularmente apreendido em 27/09/2023 e permaneceu depositado no pátio do Banco por cerca de um mês, a sentença se encontra de acordo com a jurisprudência vigente em nosso ordenamento jurídico e a devolução dos valores descontados deve ocorrer em dobro, conforme deve ser apurado em fase de cumprimento de sentença.

Processo	0200229-15.2024.8.06.0091
	romano; times;">Refutadas todas as teses do banco recorrente, sendo certo que não têm o condão de infirmar a conclusão adotada pelo julgador primevo, é de rigor o desprovemento do recurso e a manutenção da sentença. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Com amparo nos fundamentos expostos, conheço do recurso apelatório para lhe negar provimento, mantendo a sentença em sua integralidade.&#160;</p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Considerando o desprovemento da apelação, majoro os honorários advocatícios a cargo do Banco para o patamar de 12% (doze por cento) do valor da causa, o que faço com arrimo no art. 85, § 11 do CPC. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> É como voto. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify;">
 </p><p style="text-align: center;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;" dir="ltr"> Relator </p><p style="text-align: justify;"> &#160;</p>
<p /><p /><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p></p>
Processo	0200554-90.2024.8.06.0090
Número de ordem	141
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Fixação
Polo ativo	JOSEFA GILMARA RIBEIRO
Advogado(s) - Polo ativo	Não informado
Polo passivo	JONES OLIVEIRA LIMA
Advogado(s) - Polo passivo	FABRICIO MOREIRA DA COSTA - (CE10373-A) RENAN SOUSA MOREIRA DA COSTA - (CE52630-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA Francisco Michel Ribeiro Lima P. R. L.

Processo	0200554-90.2024.8.06.0090
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Processo	0200554-90.2024.8.06.0090
	times; font-size: large;">&#160;quantum &#160; fixado a título de pensão alimentícia, requerendo os alimentandos/apelantes a majoração dos alimentos fixados na origem em 20% (vinte por cento) para 35% (trinta e cinco por cento) do salário-mínimo.</p> <p style="text-align: justify;"> &#160; III) RAZÕES DE DECIDIR</p> <p style="text-align: justify;"> 3.&#160; O Código Civil prevê que os alimentos devem ser fixados na proporção das necessidade do reclamante e dos recursos da pessoa obrigada, sem desfalque do necessário ao sustento desta (arts. 1.694, §1º, e 1.695, do CC).&#160; No caso, os dois alimentandos/apelantes alegam que o &#160; <em style="font-family: &quot;times new roman&quot;, times; font-size: large; text-indent: 8%;">quantum &#160; fixado a título de alimentos na sentença recorrida (20% do salário mínimo) é insuficiente para prover o seu sustento, posto que não atende ao mínimo existencial. Ademais, sustentam que o alimentante/apelado, embora esteja desempregado, manteve vínculo empregatício formal até junho/2024 e que <em style="font-family: &quot;times new roman&quot;, times; font-size: large; text-indent: 8%;">a temporariedade da situação de desemprego não justifica a fixação dos alimentos em patamar tão reduzido, sobretudo considerando que o alimentante possui plenas condições de retornar ao mercado de trabalho ."</p> <p style="text-align: justify;"> &#160; 4. Da análise dos autos, observa-se que o alimentante/apelado trouxe aos autos extrato do CNIS de ID. n.º 19227456, que comprova a rescisão do seu contrato de trabalho em 12.06.2024, encontrando-se desempregado.&#160; Contudo, a situação de desemprego não é causa que por si só leve à redução dos alimentos, até porque a maioria da população brasileira trabalha na informalidade, cujos rendimentos não são conhecidos. O recorrido se encontra em plena idade produtiva e seguramente, tem condição de obter emprego e renda.&#160;</p> <p style="text-align: justify;"> &#160; 5. Os argumentos trazidos pelo alimentante/apelado limitam-se a sustentar que suas possibilidades não comportam a fixação dos aliment os em patamar superior ao estabelecido, sem, contudo, acostar lastro probatório suficiente a esse respeito. Isso infirma a probabilidade de sua incapacidade financeira,&#160;sobretudo ante a&#160;ausência de notícia de eventual obstáculo que dificulte ou impeça o recorrido de&#160;exercer outras atividades remuneradas.&#160; Nada obstante as alegações do apelado, é importante destacar que a jurisprudência pacificou o entendimento de que os alimentos devem ser fixados de forma a garantir o mínimo existencial do alimentando, o que, em regra, corresponde a 30% do salário mínimo, devendo os alimentos serem fixados em valor inferior apenas em casos excepcionais, o que não ficou comprovado neste processo.</p> <p style="text-align: justify;"> 6.&#160; Dessa forma, entende-se que o percentual fixado pela sentença recorrida&#160;não garante aos dois alimentandos/apelantes o mínimo existencial, razão pela qual os alimentos devem ser majorados para o valor correspondente a 30% (trinta por cento) do salário mínimo.&#160; conforme o esboço fático-jurídico acima explicitado.</p> <p align="justify"> IV) DISPOSITIVO</p> <p align="justify"> 7.&#160; Recurso conhecido e parcialmente provido.</p> <p align="justify"> &#160;

Processo	0200554-90.2024.8.06.0090
	&quot;times new roman&quot;, times; font-size: large; ">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará,&#160; por unanimidade,&#160; em conhecer do recurso de apelação para dar-lhe parcial provimento, nos termos do voto do Desembargador Relator.&#160; Fortaleza, data da assinatura digital. &#160;</p><p align="center"> &#160; </p><p align="center"> &#160; </p><p align="center"> Presidente/Relator </p><p align="center">
 </p><p align="center"> &#160; </p><p align="center"> RELATÓRIO </p><p align="center">&#160;</p><p style="text-align: justify; text-indent: 8%; "> &#160; Trata-se de recurso de Apelação Cível interposto por Francisco Michel Ribeiro Lima e Pyetro Ribeiro Lima, representados por sua genitora, Josefa Gilmara Ribeiro, contra sentença proferida pelo MM. Juiz de Direito Joseph Raphael Alencar Brandão, da 1ª Vara Cível da Comarca de Icó, que julgou parcialmente procedente a presente Ação de Alimentos, ajuizada pelos ora Apelantes em desfavor de Jones Oliveira Lima.</p><p style="text-align: justify; text-indent: 8%; "> &#160; Na exordial, informam os autores/apelantes que são filhos do requerido/apelado e que têm enfrentado dificuldades para prover o sustento de suas necessidades mais básicas, como alimentação, vestuários, educação, saúde, lazer etc. Narram que o requerido/apelado possui &#160;" trabalho estável e com carteira assinada," mas " se recusa a pagar mais de R\$ 200,00 (duzentos reais) a título de pensão alimentícia". &#160;Requereram, assim, a fixação&#160;de alimentos no percentual de 35% (trinta e cinco por cento) do salário mínimo, valor equivalente a R\$ 494,20 (quatrocentos e noventa e quatro reais e vinte centavos).</p><p style="text-align: justify; text-indent: 8%; "> Ao analisar o conjunto probatório acostado aos autos, o juízo singular destacou que:&#160;</p><p style="text-align: justify; text-indent: 8%; ">&#160;</p><p style="text-align: justify; padding-left: 150px; "> "Em que pese o requerimento dos autores pela fixação dos alimentos no patamar de&#160;35% do salário-mínimo, de acordo com os documentos anexados nos autos, entendo ser proporcional a fixação de alimentos no patamar de 20% do salário-mínimo, uma vez que o requerido se encontra desempregado (CNIS às págs. 65), o que atende ao trinômio necessidade, possibilidade e proporcionalidade". </p><p style="text-align: justify; padding-left: 150px; "> Assim,&#160; a ação foi julgada parcialmente procedente, decidindo-se nos seguintes termos (sentença de ID. n.º 19227469): </p><p style="text-align: justify; padding-left: 150px; "> "Ante o exposto, confirmo a tutela antecipada deferida nas págs. 19/20, nos termos do artigo 487, I, do Código de Processo Civil, JULGO

Processo	0200554-90.2024.8.06.0090
	PARCIALMENTE PROCEDENTE o pedido inicial para condenar o requerido, Jones Oliveira Lima, ao pagamento de pensão alimentícia para seus filhos Francisco Michel Ribeiro Lima e Pyetro Ribeiro Lima, no valor correspondente em 20% (vinte por cento) do salário-mínimo vigente, a serem depositados e/ou transferidos para a conta bancária de titularidade da genitora dos infantes".</p><p style="text-align: justify; padding-left: 150px;">&#160;</p><p style="text-align: justify; text-indent: 8%;"> Irresignados, os autores/alimentandos interpuseram o Recurso de Apelação de ID. n.º 19227478, requerendo&#160; a reforma da sentença para&#160;que a pensão alimentícia seja majorada para 35% (trinta e cinco por cento) do salário-mínimo. Para tanto, sustentam que o&#160; <em style="font-family: &quot;times new roman&quot;, times; font-size: large; text-indent: 8%;">quantum &#160;fixado na origem " r evela-se manifestamente insuficiente para atender às necessidades de duas crianças em fase de desenvolvimento," e que " o requerido possui experiência profissional recente, tendo mantido vínculo formal até meados de 2024, não&#160;havendo nos autos qualquer elemento que indique impossibilidade de retorno ao mercado de trabalho ou incapacidade laborativa". </p><p style="text-align: justify; text-indent: 8%;"> &#160; Contrarrrazões apresentadas no ID. n.º 19227484.</p><p style="text-align: justify; text-indent: 8%;"> &#160; Parecer do Ministério Público no ID. n.º 20533848,&#160;no qual opina pelo conhecimento e provimento do recurso para que sejam&#160; majorados " os alimentos para 30% do salário-mínimo em favor dos menores". </p><p style="text-align: justify; text-indent: 8%;"> É o relatório. <p align="center">
 </p><p align="center"> VOTO </p><p align="center">
 </p><p align="center">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> 1- Admissibilidade </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Presentes os pressupostos recursais de admissibilidade intrínsecos (legitimidade, interesse, cabimento e inexistência de fato impeditivo ou extintivo) e extrínsecos (tempestividade, preparo e regularidade formal), conheço do recurso.&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> &#160; 2 <strong style="font-family: &quot;times new roman&quot;, times; font-size: large; text-indent: 0px; text-decoration-line: underline;">&#160;Mérito recursal</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Consoante relatado, o presente&#160; apelo cinge-se à análise do <em style="font-family: &quot;times new roman&quot;, times; font-size: large;">&#160;quantum &#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> fixado a título de pensão alimentícia, requerendo os alimentandos/apelantes a majoração dos alimentos fixados na origem em 20% (vinte por cento) para 35% (trinta e cinco por cento)

Processo	0200554-90.2024.8.06.0090
	do salário-mínimo. De início, ressalte-se que a família compõe um núcleo em relação ao qual o Estado relegou especial proteção, constituindo a base da estrutura social por representar a primeira instituição que orienta e fornece subsídios para instruir o desenvolvimento pessoal e profissional das crianças e dos adolescentes. É indiscutível que existe um grau de proteção elevado do instituto da família, na medida em que ela é responsável pelas primeiras impressões de mundo que as pessoas constroem, bem como constitui o pilar de sustentação moral e material de qualquer indivíduo. O art. 227, caput, da Constituição Federal, preleciona que a garantia dos direitos das crianças, dos jovens e adolescentes constitui o objetivo máximo da família, da sociedade e do Estado, com absoluta prioridade, do qual se extrai o princípio da solidariedade familiar, com reflexo nos arts. 1.566, inciso IV, e 1.694, caput, do Código Civil, que assim dispõem: Art. 1.566. São deveres de ambos os cônjuges: IV - sustento, guarda e educação dos filhos; Art. 1.694. Podem os parentes, os cônjuges ou companheiros pedir uns aos outros os alimentos de que necessitem para viver de modo compatível com a sua condição social, inclusive para atender às necessidades de sua educação. Tais proposições estão diretamente vinculadas ao desenvolvimento e à sobrevivência digna do menor (art. 1º, III, da CF/88), com amparo e orientação dos responsáveis pelo sustento, guarda e educação dos filhos. Para tanto, o Código Civil prevê que os alimentos devem ser fixados na proporção das necessidade do reclamante e dos recursos da pessoa obrigada, sem desfalque do necessário ao sustento desta (arts. 1.694, §1º, e 1.695, do CC). Veja-se: Art. 1.694. [...] § 1º Os alimentos devem ser fixados na proporção das necessidades do reclamante e dos recursos da pessoa obrigada. Art. 1.695. São devidos os alimentos quando quem os pretende não tem bens suficientes, nem pode prover, pelo seu trabalho, à própria manutenção, e aquele, de quem se reclama, pode fornecê-los, sem desfalque do necessário ao seu sustento. Portanto, dois aspectos são imprescindíveis na fixação da verba alimentar: a possibilidade do obrigado e a necessidade do beneficiado, tendo como vetor o princípio da proporcionalidade.

Processo	0200554-90.2024.8.06.0090
	size: large;"> Tal verba deve ser simultaneamente proporcional aos ganhos do alimentante e às necessidades do alimentando, sem se excluir qualquer um dos genitores de sua obrigação, tendo em vista o princípio da solidariedade, inerente ao Direito de Família. Nesse sentido, para fins persuasivos, vejam-se os seguintes julgados: </p><p style="text-align: justify; font-family: "Times New Roman";, font-size: medium; text-indent: 8%;">&#160;</p><p style="text-align: justify; font-family: "Times New Roman";, font-size: medium; padding-left: 150px;"> RECURSO ESPECIAL. AÇÃO REVISIONAL DE ALIMENTOS. CARÁTER PROVISÓRIO DA OBRIGAÇÃO. CRITÉRIO DE RAZOABILIDADE.&#160;ATENÇÃO AO BINÔMIO NECESSIDADE/POSSIBILIDADE.&#160;1. Admite-se a fixação provisória de alimentos quando, rompida a relação matrimonial, necessita o ex-cônjuge alimentado de período para adequar-se à nova realidade profissional e financeira.&#160; 2. É princípio do direito alimentar que, observado o caso concreto, tanto quanto possível, a pensão seja fixada, considerando-se a capacidade do alimentante e o padrão de vida propiciado à alimentada.&#160;3. Recurso especial desprovido. (STJ - REsp 1353941 / RJ RECURSO ESPECIAL - 2012/0201468-3 - Relator(a) Ministra NANCY ANDRIGHI (1118) - Relator(a) p/ Acórdão - Ministro JOÃO OTÁVIO DE NORONHA (1123) - Órgão Julgador - T3 - TERCEIRA TURMA - Data do Julgamento 16/04/2013 - Data da Publicação/Fonte DJe&#160; 24/05/2013). [Grifou-se]. </p><p style="text-align: justify; font-family: "Times New Roman";, font-size: medium; padding-left: 150px;">&#160;</p><p style="text-align: justify; font-family: "Times New Roman";, font-size: medium; padding-left: 150px;"> APELAÇÃO CÍVEL. CONSTITUCIONAL. CIVIL. FAMÍLIA. REVISIONAL DE ALIMENTOS. (ARTIGO 1.699, CC). FILHA QUE ATINGIU A MAIORIDADE. REVEL. MUDANÇA NA CONDIÇÃO FINANCEIRA DO ALIMENTANTE. ACERVO PROBATÓRIO QUE COADUNA COM O PLEITO DE REDUÇÃO DA PENSÃO. POSSIBILIDADE. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. O conflito resume-se na possibilidade de redução do quantum fixado a título de alimentos pagos pelo genitor em favor da filha maior.&#160; 2. A obrigação alimentar é mutável, isto é, pode aumentar ou diminuir de acordo com as necessidades do alimentando ou os recursos do alimentante, no entanto, cada caso, deve ser avaliado individualmente com suas devidas peculiaridades. (Artigo 1.699 do CC).&#160;3. Incumbe ao autor provar que sua capacidade de contribuir com os alimentos em favor da alimentanda diminuiu considerável e involuntariamente, pois, na espécie, o ônus da prova é de quem o alega (Artigo 373, I, CPC/2015). 4. Sobre as consequências da revelia, a mitigação à sua eficácia deve prevalecer no caso concreto, vez que, o direito material em discussão é indisponível (artigo 345, II, CPC/2015). 5. A prova testemunhal demonstrou a mudança no cenário econômico do alimentante com redução na capacidade financeira, enquanto a promovida/alimentanda não desincumbiu do ônus de provar quanto a existência de fato impeditivo, modificativo ou extintivo do direito do autor (Art. 373, II, CPC/2015), pois sequer contestou ou apresentou prova no momento em que lhe fora dada a oportunidade. 6. Recurso CONHECIDO e PROVIDO. Sentença reformada para reduzir a pensão alimentícia para 15% (quinze por cento) do salário mínimo vigente. (TJ/CE&#160;- Apelação nº 0010055-19.2012.8.06.0043; Relator: Des. HERÁCLITO VIEIRA DE SOUSA NETO; Comarca: Barbálha; Órgão julgador:&#160;1ª Câmara Direito Privado Data do julgamento: 14/06/2017; Data de publicação:&#160; 20/06/2017). [Grifou-se]. </p><p style="text-align: justify; font-family: "Times New Roman";, font-size: medium; padding-left: 150px;">&#160;</p><p style="text-align: justify; font-family: "Times New Roman";, font-size: medium; text-indent: 8%;"> No caso, os dois alimentandos/apelantes alegam que o quantum fixado a título de alimentos na sentença recorrida (20% do salário mínimo) é insuficiente para prover o seu sustento, posto que não atende ao mínimo existencial. Ademais, sustentam que o alimentante/apelado, embora esteja desempregado, manteve vínculo empregatício formal até junho/2024 e que " a temporariedade da situação de desemprego não justifica a fixação dos alimentos em patamar tão reduzido, sobretudo considerando que o alimentante possui plenas condições de retornar ao mercado de trabalho".</p><p style="text-align: justify; font-family: "Times New Roman";, font-size: medium; text-indent: 8%;"> Pois bem, compulsando minuciosamente os autos, entendo merecer reforma a sentença combatida. Explico a seguir.&#160;</p><p style="text-align: justify; font-family: "Times New Roman";, font-size: medium; text-indent: 8%;"> Da análise dos autos, observa-se que o alimentante/apelado trouxe aos autos extrato do CNIS de ID. n.º 19227456, que

Processo	0200554-90.2024.8.06.0090
	comprova a rescisão do seu contrato de trabalho em 12.06.2024, encontrando-se desempregado. Contudo, a situação de desemprego não é causa que por si só leve à redução dos alimentos, até porque a maioria da população brasileira trabalha na informalidade, cujos rendimentos não são conhecidos. O recorrido se encontra em plena idade produtiva e seguramente, tem condição de obter emprego e renda. Veja-se que os argumentos trazidos pelo alimentante/apelado limitam-se a sustentar que suas possibilidades não comportam a fixação dos alimentos, os em patamar superior ao estabelecido, sem, contudo, acostar lastro probatório suficiente a esse respeito. Isso infirma a probabilidade de sua incapacidade financeira, sobretudo ante a ausência de notícia de eventual obstáculo que dificulte ou impeça o recorrido de exercer outras atividades remuneradas. Nada obstante as alegações do apelado, é importante destacar que a jurisprudência pacificou o entendimento de que os alimentos devem ser fixados de forma a garantir o mínimo existencial do alimentando, o que, em regra, corresponde a 30% do salário mínimo, devendo os alimentos serem fixados em valor inferior apenas em casos excepcionais, o que não ficou comprovado neste processo. Nesse sentido: APelação CÍVEL - DIREITO DE FAMÍLIA - FIXAÇÃO DE ALIMENTOS EM FAVOR DE FILHO MENOR - NECESSIDADES PRESUMIDAS - ARBITRAMENTO EM VALOR MODESTO CONSOANTE AS POSSIBILIDADES DO ALIMENTANTE - IMPOSSIBILIDADE DE REDUÇÃO - PRESERVAÇÃO DE ACESSO AO MÍNIMO EXISTENCIAL - CONSTITUIÇÃO DE NOVA FAMÍLIA PELO ALIMENTANTE - APLICAÇÃO DO PRINCÍPIO DA PATERNIDADE RESPONSÁVEL - AUSÊNCIA DE VÍNCULO EMPREGATÍCIO FORMAL - FUNDAMENTO QUE NÃO ELIDE O DEVER ALIMENTAR - DESPROVIMENTO DO RECURSO. 1- Na fixação da pensão alimentícia deve ser considerada a proporcionalidade entre as necessidades de quem a reclama e as possibilidades de quem está obrigado a prestá-la, nos termos do artigo 1.694, §1º, do Código Civil. 2- O arbitramento dos alimentos observando o equacionamento ditado pelo art. 1.694, §1º, do Código Civil, que estabeleceu obrigação alimentar em 30% (trinta por cento) do salário mínimo à filha menor absolutamente incapaz em consideração às possibilidades do alimentante é insuscetível de recuo, sob pena de comprometer a subsistência da alimentanda. Preservação do acesso ao mínimo existencial. 3- O princípio da paternidade responsável impõe a consideração detida do planejamento familiar pelo genitor, que ao constituir uma nova família deverá sopesar, dentre outros elementos, a extensão do dever de sustento previamente constituído em favor dos demais filhos, a quem deve ser assegurado o acesso ao mínimo existencial. 4 - A alegação de ausência de vínculo empregatício formal não é fundamento para que o encargo alimentar seja estabelecido em desacordo com as necessidades presumidas do filho, mormente porque não representa necessariamente ausência de renda. (TJ-MG - Apelação Cível 1.0000.24.106525-9/001, Relator(a): Des.(a) Francisco Ricardo Sales Costa (JD Convocado), Câmara Justiça 4.0 - Especial, julgamento em 24/05/2024, publicação da súmula em 24/05/2024). [Grifou-se]. APelação CÍVEL - DIREITO DE FAMÍLIA - ALIMENTOS - GENITOR - FATO SUPERVENIENTE - DESEMPREGO - BASE DE CÁLCULO - SALÁRIO MÍNIMO - VERBA ALIMENTAR PARA FILHA MENOR DE IDADE - QUANTUM - REDIMENSIONAMENTO - 30% (TRINTA POR CENTO) DO SALÁRIO MÍNIMO - TRINÔMIO ALIMENTAR -

1499

Processo	0271923-23.2024.8.06.0001
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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;0271923-23.2024.8.06.0001 - &#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MARTA FERREIRA ÂNGELO DOS SANTOS, MARIA NEUMA CARDOSO DOS SANTOS, MARLUCIA FERREIRA ÂNGELO</p><p> APELADO: BANCO DO BRASIL S/A</p><p>
 </p><p align="center">
 </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Ementa : DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM RECURSO DE APELAÇÃO CÍVEL. AUSÊNCIA DE VÍCIOS NO JULGADO. MATÉRIA EXPRESSAMENTE ANALISADA. TENTATIVA DE REDISCUSSÃO. INCIDÊNCIA DA SÚMULA Nº 18/TJCE. ACLARATÓRIOS CONHECIDOS, TODAVIA, DESPROVIDOS. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer dos Embargos de Declaração, todavia, para NEGAR-LHES PROVIMENTO , nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Presidente/Relator </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center">

</p><p class="western" style="font-style: normal; line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> RELATÓRIO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm;">

Processo	0271923-23.2024.8.06.0001
	background: transparent;" align="justify"> Trata-se de Embargos de Declaração opostos pelo BANCO DO BRASIL S/A, adversando acórdão da Primeira Câmara de Direito Privado deste Tribunal que, nos autos da Apelação Cível nº 0271923-23.2024.8.06.0001, deu provimento ao recurso, reconh e cendo a inoccrrência de prescrição, cassando a sentença de 1º grau e determinando o retorno dos autos ao Juízo de origem para regular processamento da demanda (id. 21338200). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Em suas razões, o embargante aponta vício de contradição no julgado pugnando pelo acolhimento dos aclaratórios para que esta Corte se pronuncie sobre os pontos suscitados, inclusive para fins de prequestionamento perante as instâncias superiores. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Sem contrarrazões. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É o relatório. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> VOTO </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Conheço destes Embargos Declaratórios, eis que presentes os pressupostos de admissibilidade. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nos termos do art. 1.022, do Código de Processo Civil, a interposição do recurso em comento condiciona-se à presença de obscuridade, contradição ou omissão no julgado, impondo-se o seu acolhimento quando algum desses vícios estiver configurado. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Extrai-se o teor do referido dispositivo legal: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> I - esclarecer obscuridade ou eliminar contradição; </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> III - corrigir erro material. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Com efeito, a omissão deve ser considerada quando o juiz ou tribunal omite-se em relação a ponto sobre o qual deveria pronunciar-se. Isso não significa que o julgador esteja obrigado a responder a todas as alegações das partes, nem a rebater todos os seus argumentos, basta que expresse os motivos que reputa suficientes à conclusão. Os fundamentos em que se baseia para decidir de uma ou outra forma constituem a motivação, requisito essencial à validade do julgamento. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Já a contradição que os embargos de declaração se propõem a sanar deve ser a interna,

Processo	0271923-23.2024.8.06.0001
	verificada no corpo textual do acórdão, que apresente incoerência entre os fundamentos expostos ou entre estes e a parte dispositiva do julgado. A obscuridade, por sua vez, corresponde à falta de clareza do texto. Essa somente fica caracterizada quando, por qualquer motivo, é prejudicada a compreensão da decisão judicial. O erro material que autoriza o cabimento dos Embargos de Declaração é aquele relativo a equívoco ou inexactidão relacionado a aspectos objetivos, afastando-se, portanto, a questão acerca do posicionamento/entendimento do julgado. Ademais, o presente recurso não possui, pois, como regra, caráter substitutivo, modificador ou infringente quanto ao acórdão embargado, mas sim, aspecto integrativo ou aclaratório. Não é matéria dos embargos de declaração, portanto, o inconformismo da parte com o resultado obtido. Pois bem. No caso dos autos, verifica-se que o julgado supracitado não incorreu em quaisquer vícios conforme alega o embargante, devendo os embargos serem rejeitados, sob pena de rediscussão da matéria já amplamente analisada durante o processo, o que, conforme o ordenamento jurídico pátrio e, na esteira de decisões dos tribunais pátrios, tem-se como inviável. Com efeito, alega o recorrente que o decisum recorrido porta vício de contradição no julgado. Aduz que é de rigor o reconhecimento da prescrição do caso posto em tela, já que a presente demanda foi ajuizada em 27/09/2024, cerca de 14 anos após o saque realizado (09/06/2010). Em que pese o esforço despendido pelo embargante, não se vislumbra, no acórdão embargado, quaisquer vícios, eis que, como se observa do decisório embargado, a matéria foi devidamente enfrentada, como se pode extrair da Ementa que ora segue transcrita: Ementa: &#160; Direito civil e processual civil. Recurso de apelação cível. Ação de indenização por danos materiais e morais. Diferença de valores na conta vinculada ao pasesp. Prescrição incorrente. Princípio da actio nata. Prazo que flui a partir do momento em que a parte toma ciência inequívoca da ocorrência da irregularidade na sua conta vinculada do pasesp (tema nº 1.150), quando do recebimento do extrato ou das microfilmagens. Retorno dos autos à vara de origem para o devido processamento e julgamento do litígio. Recurso conhecido e provido. Sentença cassada. Nesse viés, a matéria fora devidamente apreciada por esta Primeira Câmara de Direito Privado, tendo sido, inclusive, colacionado precedentes desta Câmara no mesmo sentido, com a finalidade de demonstrar que o início do prazo prescricional somente ocorreu na data em que o titular da conta toma ciência, comprovadamente, dos desfalques, ou seja, quando tem acesso aos

Processo	0271923-23.2024.8.06.0001
	extratos da conta PASEP, pois só então passa a conhecer o fato e a extensão de suas consequências, não sendo, desta forma, a partir do saque realizado. Tem-se, portanto, que os argumentos trazidos pelo embargante revelam clara tentativa de reexaminar matéria já discutida, não havendo quaisquer vícios a sanar. Nessa vertente, inexistindo vícios a serem corrigidos, entendo que o pedido de alteração do julgado mais se aproxima como de reanálise do mérito da demanda, medida não albergada por esta via. Ademais, esse posicionamento restou sumulado por esta Corte de Justiça, através da Súmula nº 18 que aduz: São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. Nesse sentido: EMBARGOS DECLARATÓRIOS EM APELAÇÃO CÍVEL. EXECUÇÃO INDIVIDUAL DE AÇÃO COLETIVA. EXPURGOS INFLACIONÁRIOS. PRESCRIÇÃO RECONHECIDA. AUSÊNCIA DE OMISSÃO. REDISCUSSÃO DA MATÉRIA - IMPOSSIBILIDADE. OFENSA À SUMULA 18/TJCE. 1 - Examinando o Acórdão embargado e os fundamentos que o embasaram, constata-se que não se ressente o acórdão de qualquer dos defeitos a que alude o art. 1.022 do Estatuto Processual, nele não se vislumbrando nenhum vício a ser suprida. 2 - O decisum embargado concluiu de forma clara e precisa pelo reconhecimento da prescrição para o ajuizamento da Execução individual da sentença proferida na Ação Civil Pública nº 1998.01.1.016798-9, assim o fazendo em atenção ao entendimento já adotado por esta 4ª Câmara de Direito Privado em casos semelhantes, no sentido de não reconhecer o ajuizamento da Cautelar de protesto pelo Ministério Público do Distrito Federal como causa interruptiva do prazo prescricional para o ajuizamento da execução, notadamente em face da ilegitimidade do parquet para a execução da referida sentença, haja vista tratar-se de direito patrimonial disponível. 3- Não obstante a existência de posicionamentos jurisprudenciais divergentes, inclusive no âmbito deste Tribunal, o acórdão recorrido está em consonância com precedentes deste órgão fracionário, assim como da 1ª Câmara de Direito Privado, consoante jurisprudência colacionado. 4 - Embargos Declaratórios conhecidos e improvidos. (TJ-CE - ED: 00001766720188060175 CE 0000176-67.2018.8.06.0175, Relator: RAIMUNDO NONATO SILVA SANTOS, Data de Julgamento: 07/07/2020, 4º/2020, a) Câmara Direito Privado, Data de Publicação: 07/07/2020). PROCESSUAL CÍVEL. EMBARGOS DE DECLARAÇÃO. ALEGAÇÃO DE OMISSÃO E CONTRADIÇÃO. INEXISTÊNCIA. AUSÊNCIA DE CONFIGURAÇÃO DE

Processo	0271923-23.2024.8.06.0001
	QUAISQUER DAS HIPÓTESES PREVISTAS NO ART. 1.022 E INCISOS, DO NCPC. REDISCUSSÃO DA MATÉRIA JULGADA. IMPOSSIBILIDADE. SÚMULA Nº 18 DO TJCE. EMBARGOS CONHECIDOS MAS NÃO PROVIDOS. I - Casa do Rádio Amador do Ceará - CRACE opõe EMBARGOS DE DECLARAÇÃO para efeito de esclarecimento de omissões, contradições que afirma existir na decisão de fls. 162/167, tomada por esta relatoria e a unanimidade de votos da Colenda Quarta Câmara de Direito Privado deste Sodalício, na Apelação de na 0901617-37.2014.8.06.0001, que tem como parte contrária Miguel Antonio Moraes Celestino e Vera Gil Celestino. II - Os Embargos de Declaração, que pelo princípio da taxatividade é instrumento recursal, previsto nos arts. 1.022 a 1.026, do Código de Ritos, é cabível contra qualquer decisão que contenha obscuridade, contradição, omissão, ou mesmo para corrigir erro material. Na situação vertente, não se constata a presença de nenhuma das hipóteses autorizadoras do manejo do presente recurso. III - A embargante pretende rediscutir mérito da demanda, objetivo este expressamente proibido pelo entendimento sumulado deste Tribunal, a teor da Súmula 18, quando reza que "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada." IV - Embargo de Declaração conhecidos mas não providos. (TJ-CE - ED: 09016173720148060001 CE 0901617-37.2014.8.06.0001, Relator: FRANCISCO BEZERRA CAVALCANTE, Data de Julgamento: 12/05/2020, 4a Câmara Direito Privado, Data de Publicação: 12/05/2020). CIVIL. DIREITO DO CONSUMIDOR. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO. INDENIZAÇÃO. FRAUDE NA CONTRATAÇÃO. NEGATIVAÇÃO INDEVIDA EM FACE DA CONDUTÁ ADOTADA POR TERCEIRO. RESPONSABILIDADE DA EMPRESA DE TELEFONIA. DANOS MORAIS IN RE IPSA. ALEGAÇÃO DE QUE A AUTORA É DEVEDORA CONTUMAZ. INSCRIÇÃO PREEXISTENTE ILEGÍTIMA. INAPLICABILIDADE DA SÚMULA Nº 385 DO STJ. INEXISTÊNCIA DOS PRESSUPOSTOS DO ARTIGO 1.022 DO CPC. REDISCUSSÃO DA MATÉRIA. INCIDÊNCIA DA SÚMULA Nº 18 DO TJCE. ACLARATÓRIOS CONHECIDOS E IMPROVIDOS. 1. In casu, verifica-se que o intuito precípuo do polo recorrente ao manejar os presentes aclaratórios é a reforma da decisão proferida em apreciação de Apelação, visto que rediscute o mérito da causa sem apontar a existência de omissão, obscuridade ou contradição. 2. No presente recurso aponta-se omissão, aduzindo que o acórdão não se manifestou sobre a alegativa de que a parte apelada é devedora contumaz, com inscrição prévia no órgão de proteção ao crédito. Assevera que a decisão contraria a súmula 385 do Superior Tribunal de Justiça, já que a inclusão irregular não gera indenização por danos imateriais quando preexistente legítima inscrição. 3. O tema foi discutido e julgado, nos seguintes termos: "Deve- se reconhecer que a transação sobre a qual recaiu a presente irresignação decorreu de fraude, uma vez que a empresa não se desincumbiu do ônus que lhe competia de comprovar a regularidade da operação, considerando que todas as provas colacionadas aos autos apontam para a veracidade da conjuntura narrada pela suplicante, que afirma não ter contraído a dívida, especialmente tendo em vista a notória divergência entre os dados, a assinatura e a fotografia constantes no documento original da requerente daquele

Processo	0271923-23.2024.8.06.0001
	apresentado no momento da contratação perante a operadora de telefonia". 4. Sabe-se que, ao decidir, o Magistrado não tem obrigação de refutar, um a um, os argumentos trazidos, mas tão somente fundamentar suficiente e coerentemente suas conclusões, o que foi devidamente atendido na decisão atacada. Entretanto, a título de esclarecimento, tem-se que, pelas provas colacionadas aos autos, resta evidente que as restrições são ilegítimas, considerando que decorreram de fraude perpetrada por terceiro que utilizou o nome de solteira da apelada em outros Estados do país para dar golpes no mercado, não havendo evidências concretas de que a recorrida era devedora contumaz. Portanto, inaplicável o verbete sumular nº 385 do STJ. 5. Os embargos declaratórios em apreço retratam tão somente a inconformidade do polo recorrente em relação à decisão alvejada, sem, contudo, apresentar razões que justifiquem a interposição dessa espécie recursal, a qual possui hipótese de cabimento especificamente vinculada à finalidade integrativa de aperfeiçoamento das decisões judiciais, com expressa previsão no art. 1.022 do CPC, não prosperando a irrisignação. 6. A presente insurgência traduz mero inconformismo com o decism colegiado, o que não possibilita um novo julgamento por meio de embargos de declaração, a teor da Súmula 18 deste Egrégio Tribunal de Justiça. 7. Embargos declaratórios conhecidos e desprovidos. (TJ-CE - ED: 01417619620088060001 CE 0141761-96.2008.8.06.0001, Relator: HERACLITO VIEIRA DE SOUSA NETO, Data de Julgamento: 28/02/2018, 1a Câmara Direito Privado, Data de Publicação: 01/03/2018). Tem-se que, não ocorrendo nenhum dos vícios previstos no art. 1.022, do CPC, existe, além do intuito meramente prequestionador, o propósito de desdobramento, via embargos de declaração, de rediscutir matéria já decidida. Outrossim, é cediço que o art. 1.025 do CPC prevê a figura do prequestionamento ficto ou implícito, in verbis: Art. 1.025. Consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de prequestionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade. Logo, com a inserção do referido artigo no Código de Processo Civil de 2015, foi expressamente positivada a possibilidade do prequestionamento implícito, restando superada a necessidade de prequestionamento de toda a matéria como condição de admissibilidade recursal nos tribunais superiores. Com esse posicionamento: PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO NO AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. AUSÊNCIA DE QUALQUER DOS VÍCIOS ELENCADOS NO ART. 1.022 DO CPC/2015. MATÉRIA CONSTITUCIONAL. APRECIACÃO PELO STJ. IMPOSSIBILIDADE, AINDA QUE PARA FINS DE PREQUESTIONAMENTO. EMBARGOS DE DECLARAÇÃO REJEITADOS.

Processo	0271923-23.2024.8.06.0001
	</p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. Os embargos de declaração somente são cabíveis quando houver na decisão obscuridade, contradição, omissão ou erro material, consoante dispõe o art. 1.022 do CPC/2015. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 2. Ausente qualquer dos mencionados vícios, incabível a utilização de embargos de declaração para fins de prequestionamento de matéria constitucional, com o objetivo de permitir a interposição de recurso extraordinário. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 3. Embargos de declaração rejeitados. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (STJ - EDcl no AgInt nos EDcl no REsp: 1395172 RS 2013/0240537- 9, Relator: Ministro ANTONIO CARLOS FERREIRA, Data de Julgamento: 09/02/2021, T4 – QUARTA TURMA, Data de Publicação: DJe 12/02/2021) </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">

</p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> PROCESO PENAL. EMBARGOS DE DECLARAÇÃO NO AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. AUSÊNCIA DE OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE. REVISÃO DO JULGADO. IMPOSSIBILIDADE. EXCLUSÃO DE QUALIFICADORA. INOVAÇÃO RECURSAL. FINS DE PREQUESTIONAMENTO. NÃO CABIMENTO. EMBARGOS REJEITADOS. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. Nos termos do art. 619 do Código de Processo Penal, os embargos de declaração, como recurso de correção, destinam-se a suprir omissão, contradição e ambiguidade ou obscuridade existente no julgado. Não se prestam, portanto, para sua revisão no caso de mero inconformismo da parte. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 2. A questão relativa à exclusão da qualificadora não foi objeto das razões do recurso especial. Cuida-se, portanto, de evidente inovação recursal, vedada em sede de agravo regimental ou embargos de declaração. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 3. Ainda que manejados para fins de prequestionamento, os embargos de declaração têm suas hipóteses de cabimento restritas ao artigo 619 do Código de Processo Penal, o que não se verifica no presente caso. 4. Embargos de declaração rejeitados. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (STJ - EDcl no AgRg no AREsp: 1259895 MS 2018/0051208-4, Relator: Ministro RIBEIRO DANTAS, Data de Julgamento: 26/06/2018, T5 - QUINTA TURMA, Data de Publicação: DJe 01/08/2018). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Assim, os fundamentos contidos nos embargos de declaração não indicam a existência de qualquer vício no acórdão recorrido capaz de ser saneado por esta via horizontal. O fato de não terem sido acolhidos os argumentos invocados pela parte embargante no recurso não configura mácula, a ensejar o acolhimento dos aclaratórios. A irrisignação com o resultado do julgamento deve ser manejada pela via processual adequada. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Diante de todo o exposto, inexistindo vício capaz de autorizar qualquer reparação no decisum CONHEÇO e NEGO</p>

Processo	0271923-23.2024.8.06.0001
	PROVIMENTO aos Embargos de Declaração. É o voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator &#160; &#160; &#160; &#160; &#160; &#160;
Processo	0229296-04.2024.8.06.0001
Número de ordem	143
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Irredutibilidade de Vencimentos
Polo ativo	VERA LUCIA AQUINO PIMENTEL DE ANDRADE
Advogado(s) - Polo ativo	FATIMA MACIEL SOUTO - (CE31000-A)
Polo passivo	BANCO BNP PARIBAS BRASIL S.A.
Advogado(s) - Polo passivo	SUELLEN PONCELL DO NASCIMENTO DUARTE - (PE28490-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0229296-04.2024.8.06.0001
	4aYEeqfUBv0lxyxFOu/Is4Xj9QIJksGMnVmCTOWzGDVjtUc+ORDzpz7htt3bwvjH3H06BEyM tP55JNPdH3+TxmmyvoNGygVdp2TkHzn3i1W71yLf0Yk9hPHYxAXnD4SubqJCu8cZESbIA OaBvbnqSDpfOgAGkUNockEPZrFGdE80YTmKca0SJXPGSY0zTClaaYZzbPMaCq1mbaV 36Q2ybSgSZaq5ILN5Lv8LdNc9rHQ/t4s21i+G9NMztM83YQWafJbhihyaEpuVZjueZTYYN FDyYRoFDaC61S7ABL4nk6BFmK4BKRJ7gQbwAefrc19z++Sd2bNtkbm4u3333vdZvnWn +PXiN6i1KK7qPv0XED8Sh5uXlcuzjozy5e48PjrOnjBKS+8+NA0eSOPiATSNHULTBAEqZU Q6ZspTWcY8IW1EI+nYU9Lhp6SzjaSzbStCY2kk09JbSqdVZ8bScd/20rVtup4VeVzVv1+A vBT6XLudPk9s75mGdbvo44zla1co74+pVW5fraltEGAV+1LMKTxJD0ZSG7QD+elSwgcWq K+NzLElyusWD+XKZXV/46DaTuhinz/D1oOsCk6MBSFq774ez331NQkMfWLZu5f/chX37/D aPivOjs0492SSYy2tllAaCxdLKx2qqOqk6ozmodauikrjbKkl6kSwekNk4TANPVd+IU/Vbtq3V agS6gNBZAG2vHyr4ZCnAFfv15MiwEdHUudXz9NdTx/6KqgWqswFcsFkDbTzDkNRHcVYU mc/fBz1y6elFp00pYumSRgPTnQUAzyV/Bqp/b+vnnn5IRPZ0F8+Zy88YNromDjylKpaP3EDr Em9BOTOApBUzDyAt7NCb9voFa58REpDNN1P71jFLbJmlm8rt0WHVamAL+eM1M1T5yb GMBpqkA0ry+NIH7i6kqsBqlq62lbiU9qsoANJZRNE4TBv6+DX9X1fUvSV9XgGss5zWgZoU8/f 2vW79nIXQkGn3/+OVMLCtmza7eGha78FgQaNYDVgKGi4dlI6koK+XKpYvatE31jCq62w+ kQ5QJLaWhTQWspzLFHOpZpNV/BJh0QIUd83QNbSwNbqoaLp+fypFRl6p8U0sBs1Wq6oj Ox7UUM2otQLQU0JvJ+RtnC9Oy1TUbBktU1cVe55SJv37NvxZITb/CpqYexMZgNaBA7G OGMIHJw5LML3He3v3UZiXz7ETuoRdxzYdQo2UNmpglqLenj07KSz5M9QXn4mWucfGHR vRc7GkmekLDHtVr4ckMcVsdWEBTGtsvcmoqsnd1WZim7UFbiqKpDkN2l0E3HcymG3Tj CiFYwhbYOG0M53EO28BtLRUwbHY4BE1IG08R5I64DBtI40pHwSDFiYOS5QG7TG2jnrXY Dmx/45YBr7tIGUAZN2qYFRfq6IMLSd1wc8E0I4c/40T+7fYd3KIZSVI3PpyiUNm4aiAdZgo5 9//ikF+bns279HNNZ9Dp88jHXISdr4DuTpCANaOrxMu/G9aJMs5pKtzOKPDfp9/dW3aPTX AdZUAG6bak2HKVZ0jDCinetg2tv15WnJITubG9PF3paul5x50c6KzqZGvDj8OM86OtBxqc XtrPVpbzOAdiMG0cFP5MlkHSMb5whYUhVrlen/WVv+rDYRwJopNitTFv/YKt6UI8YPIaE6k 2s3rnDn1k0qq0TbLZyn6cuG0qhhevnKpUuUFhexcsVSHjy6w5nvv8ZD9FR770G0TDWhv C+c6Q+rR1fpY17b3H85gKA+15fgfmzhqkRbwDLIPaJfNK0aedcz86muJT3dGJV4e5oAr+Sg sf0DQSu+oTA9SewyqzDNHkGQWuP4bvmOF5LD2KbNYPe7qG8PdqtLjY2tBo6mFbu/QU 4fdqK6TYTv6j5ub9rwx/rr20Vpqrmt8mMqYjCR0FpPNKSbhh4zVtRy78FtyT4ukiuBb+OG9b/m mprTv3//HnPMzqaysow7t29y9cYIUkVFP+smIjNB+Q7xFeYlVWkuDOoUa0NyhG63dewoAlml eFjROVf5DNULn03QN0pmIRnn53mGiMHTM27Qwe5OXR47FlrOaoPXvY1u+EsZuWjadx 3/vTfx3XiRgSnLck59D/+dV3HffUN+v45T3V4cStcTs+kzxtZsYfDYFJ5zsKKN5zs8LRbQKk XakCPXVRFQ2tC4HqDGAogWieu//wqY7NdlYQ75m9pH/U3JoYh/RkSbMvmd7dy79F9Tnx 6gpzsLA4f/lgHmEpqNm9eR35RrQQRlyRC3mTG8lpec5elKGG3mfJTmiYSRy8nbZ1qSYcw A1olaO3c+tAh0Ur2UVpHGqwa0hyqaoxoHvneOtOepwXkdIzV8oyY1QDvMNym7yD03esE HLqBZckGnGe9i8+7P+O+6yrDZ3+EefE2vNZ/jdeOy3jtu8HIVZ9iULgWlZVf473nJ57rhK553 uc8+fx1vDxdDDqL4PRS1gvAlh0VzONMSowqYhcl2MUYPWBSANO1XrwtM9SG4s1tBBitJ KMwinShSOS3D+UTGD7jm3k5GRz+fJlGh36+AOKxcl/fwYjx/cZ/e+PQxxsaK972DaqZCzt Eo5VDFJNWpNxAw7pFrxdJgeLRxfFvNUPK0ip1Ba+YTGAQJutpihANw+1YwOAXp0M0vB ANdAxk1bzcSPqWxgZ3/sj4HecwL1zFiDnvC2C38dxxCYOclbgsO4Ln7muME8aNI9/MKjZ hldV//4+4bf9JQPsJl3VfYF28Hp85e7BPrqCzpQ1tHqfRebIAPkRztoFWVSRUWu4pMdkGsD TAGphW/13ps6YZsr8c87T071mH3sSnJXBREv87d35m5coVVFruYn+LCijMzeOeJM2PRc 0f+vaAQ0NdaOMhEUqcuxKn6qKNBSidFhLQpEftU8U8w/RpJqC1dushTLOUFEVpKXHA OQa0zrKka4ABrQZ2o9/Y8YSuPIr/povSyY0MnXUI7323GbXyJBb5yxi37Diee2/huv4rhqTNx 2P9Kdz2/sz4vXcZufg4Q7KW4r3pGzx2XWf8nuu4b/0OA2GM9awDeO29QsC+CwwwW86L Nva0t+9Ju0QxMxUMskXVK8tQwIjr0IndPwLVUBUxGmcZCEOlzbFGdButT37FVC6dv8AT0 WenvviC4RKEGh0+epRZM2uZUVHf6e/ER1ynw8//wTneE/aiapXoGkiU6oCTLN9acxTsm2 dZknHcHG6Tt1oM14amizRRsyhYDaMdqYNiZ9GDzGF5ukcnz3XmLs5stYFW1gaN27+L17 F/va/dgUrRQwzmissajYjkPIVjy3n8dz3y08N57FNG8dznUfihnewXXDXdbx2CivLNkrdhLsw1H XPLVx2/0j4/vOML11AJwMJUsp60iFZclHfMMUaaZOWHwJ9+BJQ2u/1n8WKmomvbiP5b3 cvl7IXTuPCj5fEv99l9/YdTC2cypo1a3RO/9rVqyxYulDcwqJJOHj9L+ltg8ZKhlW/7/Bt2x0n yBUUnKLzQSP6WUdRMZtXZpVnQS0Jo7vSSBoAedp1jyTKw5LcQZ9/QNw2/ePvTiZ+Cz/T vGCzMsPy5haO1OQt+7jVXpVmxK1hKw+xJ+Oy/Te8psRi/8EK93bxCw5xKuc3ZinjmXsO0X 8Np9E+/dl7Gs3o5+8Vo8tnwj32+lyd6Vc4s5rzmNffkGbBOM8qypsH+cullUCUGKMGGZcuy N/8YsVW1gXGPI8KcY8orbYLNf3Dt9jXuPr7LCIENU/PzeXf/uzqn/7h+gvCeRMrl69eSnzeV U4dPiOR/xM73djEgwJ7WakgLCuJU3wq1UDM0YrXi8cJoyxonizqXEauQ/hgmtm/SGdXEZy OfXjR2hgPhbvX23GBwQmzCd54Ct9NXzI0fy4jZmwWiSpy+mbDHctpmCQDXGCt+y0RMz3Xt 17hvv4hz5XoGBsRiOTELp9x5jK5Yx9C8BRil1+G+4QR++6/jtUsCgNSxS7/AKHc9w+e/T+S 2b7GfMo3Whv21GZTWKmiJSFb+V0mgvwVMG3iprVLE3/oOIDgmh8uXhIzfMiSZYUeWxm c+uwzDSNVRLiKDnuu6HxQCLCspVrJJcq4fuzZ3koB2XXldJZFHzZEPxZ7rt27ljmLCrmiHT vOiQYEILYZ4CrUu4ER1MX6fLgN7it4LxW/spvjt+wDR7Ge6rDoueOxsaA9zispENRO85glrM Wi/ldRLz3I4MzFzG6Zid+u67huugl/X2TMPAMZERfGrW7mDept0kTRMGtsZDZeoyiaKf4b PzLGNm7sEirhq77Ln4rD5CoJhy4KaT9PEpprn5q3SJl1xUpW2/N7/fAyYgthLaR46EINQR w4d/UDLgrZs2UpeXjZfn/pcw0abxRGs6ufDIHjVCdh79+9TVVVDzYyZ3Lt3l6/Pn8EyeixtQiR qZlrhsDaBmcc38emNC6w+c4iYbVN5qWSkaDEbnpliTQvj1zH2i8M6oY4RtXvx23aeYWXbs S5YxKiUcrzDJfQYiWjcuqWz17D8LoPCNrxPQPIzZF23hGCxYlbZS+kd0gWnrN3EIS3FY/UA sJTcli7dS+fnPiCXRt3Mil2B4PIZPTcw/CKTCGuaAY2E/PxWv0V4QcvcJ/LedrEgE6u/WktUq OpDKhik4r2mtTQTFGnAFonGtPdx4j8mhleCw4nT5wkKzNLzLBh8Z0OrN8BpisNKdKpU6fIz y/gOHsHte/pMwt4wc+QNRGm9Ch2Y/7n27krvx+7f1jaqMKyTATCGID01Hez1Jo4zZzPb6rTf CXOhdPCf+eiz5gYFAqW4LCKS3NYFJyHGYeYVinzMV73RmcZu7COGcx3uvF+S8/Sp+YU hyqthG85wqeKw5jk1AuABUyLnwK6Tn51M2ZT3JuMckl5WzavZvjh49QMa2K0JR8nHPn47

Processo	0229296-04.2024.8.06.0001
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	TEDNsFW3E0279sYsYyewNC/n27DeaNLpz7wGnPvuKGWV2hPGu/bv4YerMrD1RVtr/5XX/+d8m8zTCsNZ9Uu8NsV7gjVjx8/wdzZcyjML2TXzl3aO1kfiej94eaP7PrkiCH5cbzqlYsZEDLeGGFSng1ExXAtDXzRrRKNMd9QzbRqwuJXJFL3P5KQqWoNEuZtfJfaom4sEyoaSVRuH20IZ299TAIHUH5whmc/voU90SlqxkY9azU7LlZNaDe2bKVSxcv1rf2r5X/O8B+Vxqc4++BU6OqlpOrhyJKiqdy6P2DXLmmgHvET5Kfbd6zGZcpfrzsPoT24UPE3yhFLmapZliAolKcF4tH0y7Vv/qoNzxU600bErUri1Y1INYGpWNVisj5Pi0rv521J+owCjn71GT/LtdXzQd9++63kxKvlyMjQtmop1z+Lev+35T8GrKH8me3fFcYdPXKYwqJ8Kqoq+ej9D7I5WSLUgwdcu36JeRsXYR4xgmd99GgdZahJA7XITfko3dvslEBVEVXMUAJCC2Ffa/lbi0QDWocN4RVvE0IKY7X3m6nX3zy8c5/vvz/H+s0qpcnUnpO6cOHCH4D6s3b+J+UvA/b78oeRFEd6+/Ytdu7Zl6IGEXPmzOPijz/mp1s3RPc/5luzX2pLvPv52UgqJGxTgUGioZYkS6ag/JQCS03ytRSn3zZCjxc9B+E80Y1IO9by0x1R6l8ec+G7s+x4ZztIJSXMmD6dM6fP/B2j/qfAUuV/FLAGE9U1UDVa19Drt26xStKrNnX8li5ZxqlPJalXr0SWZHfboV24JAakXhpCO8kZW6aYignqCWB6NBWwWiVLBPQBtF8/O3JmTOWbsyptecKP166xf+9eKirF/MtLOxR0E7ncbwFJlf9JoBrK/yhgvy8C26//GsrldxdZXDePitypbFu3kYuXdJNy5y+epah2Kr191QscJbEXjdVSzLFlvBHtPAYwbKlnW/fu4MHDRzyUSH3s+CfMqZ1JiXobpjBYTQ6oov5rhP/t8t8DTHDSwrZW1evXfzOT458cpax8GmXi3z748DCCggSG+yzdvqgqzFG09x5AJ78hPOcymKjSJE59o3t28eqLa6xZv07zjcsWL9HejK6KOrWaNW540fh/s/wXAVOI6dil/bcoparXtDR06ed7d9iwcSO5uXmsW7ueGzd+4uEvD9l3+F1GRXsxeLgFedOLufLTD9r+Z778iurySu2dEifqXxeqirqCdhIV//t4/fcA+3eLmlypKy9jujhsLbJJwq/en/O9m3aa+bV208+eO8Q+Tm5rJHE/6efftkO+2/4p3+n/K8ApjqrTLTBTk9KUjxr1izKyso4e/aspttUVauW9+3bR052Nnv36J5/UuVvj/9/Wf5XAWvYqqKmxtdWDrSuiDy5fvMSDe/f58P0PSE5KkgH4VnTHZ3W/Met/g2X/6yapyu9BUy9JWrp4MR8eep/szCw+OfzbVPFv/5nW/73y/wnAFFMa2HLlyhUS4qfg7+MrwC3Rfmsoao//H7D60gCY2u7asZPioqmSf+pkw/+G6f15gf8DLIMncTIWGuAAAAAASUVORK5CYII=" alt="" /> </p><p style="text-align: center;"> <strong style="font-size: medium;">ESTADO DO CEARÁ
 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;0229296-04.2024.8.06.0001 - AGRAVO INTERNO</p><p> AGRAVANTE: VERA LÚCIA AQUINO PIMENTEL DE ANDRADE</p><p> AGRAVADO: BANCO BNP PARIBAS BRASIL S.A.</p><p>
 </p><p align="center">&#160;</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Ementa: Direito processual civil. Ag ravo interno em apelação cível. Recurso interposto em face de decisão colegiada. Manifesta inadmissibilidade. Erro grosseiro. Inteligência do art. 1.021 do código de processo civil. Precedentes desta egrégia corte de justiça. Recurso não conhecido. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify">

</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> ACORDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Vistos, relatados e discutidos estes autos, acordam os membros da Primeira Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em NÃO CONHECER do recurso interposto, nos termos do voto do desembargador relator. Fortaleza, data da assinatura digital. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Presidente/Relator </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify">

</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> RELATÓRIO

Processo	0229296-04.2024.8.06.0001
	Trata-se de Agravo Interno, interposto por VERA LUCIA AQUINO PIMENTEL ANDRADE, adversando acórdão proferido pela colenda Primeira Câmara de Direito Privado deste Sodalício, que, nos autos do Recurso de Apelação Cível nº 0229296-04.2024.8.06.0001, negou provimento ao recurso da autora, ora agravante, mantendo incólume a sentença fustigada (id. 25763801). Em suas razões, a agravante aduz que “é inteira justiça que a Agravante seja indenizada pelos danos sofridos, em face da conduta negligente do Agravado, em firmar contrato no valor de R\$ 5.670,04 e informar ao INSS o valor para desconto de R\$ 46.477,23 e não comprova o valor da transferência do valor de quarenta e seis mil, quatrocentos e setenta e sete reais e vinte e três centavos.” Alega que “a referida sentença precisa ser refeita para que se faça justiça, já que o Agravado não comprovou em nenhuma fase do processo o valor do depósito de R\$ 46.477,23 referente ao contrato 22624110/20.”; que “Levando-se em consideração o princípio da proporcionalidade e razoabilidade, e ainda o transtorno psicológico sofrido pela Agravante e a capacidade financeira de quem ocasionou o dano, deve ser fixado como forma de compensar o prejuízo sofrido, além de punir o agente causador e evitar novas condutas ilícitas, preconizando o caráter educativo e reparatório.” Pugna pelo provimento do recurso, a fim de que seja reformado o acórdão vergastado, a fim de que a ação seja julgada procedente. Sem contrarrazões. É o relatório. VOTO Prefacialmente, antes de analisar o mérito, deve-se averiguar a presença dos pressupostos intrínsecos e extrínsecos de admissibilidade, sem os quais resta inviabilizado o conhecimento do recurso. Nesse contexto, verifica-se a existência de óbices para o regular processamento e julgamento deste agravo interno, conforme será a seguir demonstrado. Verifica-se que o presente recurso interno desafia decisão colegiada, em descompasso com a regra do art. 1.021 do Código de Processo Civil, que estabelece, como pressuposto para a interposição do agravo interno, a existência de decisão singular de relator. Diante disso, a apresentação deste recurso configura erro grosseiro que exige o seu não conhecimento.

Processo	0229296-04.2024.8.06.0001
	indent: 2.4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse sentido, colho precedentes deste egrégio Tribunal.</p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO INTERNO NO AGRAVO DE INSTRUMENTO. RECURSO INTERPOSTO EM FACE DE DECISÃO COLEGIADA. MANIFESTA INADMISSIBILIDADE. ERRO GROSSEIRO. INTELIGÊNCIA DO ART. 1.021 DO CÓDIGO DE PROCESSO CIVIL. PRECEDENTES DESTA EGRÉGIA CORTE DE JUSTIÇA. RECURSO NÃO CONHECIDO. 1. É dever do Relator, na condição de reitor do feito, atentar para a presença dos requisitos admissionais do recurso, bem como para a presença e manutenção dos pressupostos para seu desenvolvimento regular, sempre atentando para situações que ensejem o encerramento prematuro do manejo, em estrita observância das hipóteses tratadas no art. 932 do Código de Processo Civil. 2. Arrimado nessa baliza, compulsando diretamente os autos de origem, verifica-se que o presente recurso interno desafia decisão colegiada, em descompasso com a regra do art. 1.021 do Código de Processo Civil, o que estabelece, como pressuposto para o ajuizamento do agravo interno, a existência de decisão singular de relator. 3. Nesse diapasão, o ajuizamento do presente recurso constitui erro grosseiro de interposição, não merecendo ser conhecido, nos termos do art. 932, inciso III, do Código de Processo Civil. 4. Recurso não conhecido.</p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-CE, Agravo Interno Cível - 0636338-47.2021.8.06.0000, Rel. Desembargador (a) EVERARDO LUCENA SEGUNDO, 2ª Câmara Direito Privado, data do julgamento: 27/07/2022, data da publicação: 27/07/2022). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO INTERNO. INTERPOSIÇÃO CONTRA DECISÃO COLEGIADA. ERRO GROSSEIRO. FUNGIBILIDADE. AFASTAMENTO. RECURSO NÃO CONHECIDO. 1. O recurso não merece ser conhecido por expressa vedação legal. 2. Isso porque, o recurso de agravo interno somente cabível contra decisão interlocutória ou monocrática de Relator, não sendo possível o seu uso para combater decisão colegiada. 3. Nesta situação, a interposição de agravo interno contra decisão colegiada constitui erro grosseiro e inescusável, tendo em vista sua exclusiva previsão para atacar decisão monocrática, consoante se depreende do art. 1.021 do CPC. 4. Agravo interno não conhecido.</p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-CE, Agravo Interno C vel - 0239028-48.2020.8.06.0001, Rel. Desembargador (a) CARLOS ALBERTO MENDES FORTE, 2ª Câmara Direito Privado, data do julgamento: 04/05/2022, data da publicação: 04/05/2022). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Portanto, tratando-se o presente agravo interno de recurso inadmissível por ter sido interposto contra decisão colegiada, não merece ser conhecido. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Diante do exposto, NÃO CONHEÇO do presente Agravo Interno, por manifestamente inadmissível. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Fortaleza, data da assinatura digital. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-decoration: none;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-

Processo	0229296-04.2024.8.06.0001
	bottom: 0.5cm;" align="center"> Relator </p><p> &#160;</p><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0267763-23.2022.8.06.0001
Número de ordem	144
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	MARIA ZENILDA DE LIMA
Advogado(s) - Polo ativo	CAMILLA DE NAZARE RODRIGUES SIQUEIRA - (CE42093-A)
Polo passivo	BANCO VOTORANTIM S.A. BANCO VOTORANTIM S.A
Advogado(s) - Polo passivo	JOAO FRANCISCO ALVES ROSA - (BA17023-A)
Terceiros	Não informado

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Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSY0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiwK7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUJZReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNhEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWYTYJQMhoz2DdvrYIz8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQm+5 PxxH6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fnsFHHqjeh3WFOUu2ZXJlJxMkCMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOGPE pw1t9ofclZHE21NneWVeWBxJJ1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfn1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41gnUvXNkIx410JEZMRU0ZDIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	roman" >, times;">PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;">
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 </p><p> PROCESSO: 0267763-23.2022.8.06.0001 </p><p style="text-align: justify;"> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"> APELANTE: MARIA ZENILDA DE LIMA </p><p style="text-align: justify;"> APELADO: BANCO VOTORANTIM S.A.
 </p><p style="text-align: justify;">
 </p><p style="text-align: justify;">
 </p><p align="justify"> EMENTA PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO BANCÁRIO. FINANCIAMENTO PARA AQUISIÇÃO DE VEÍCULO. TAXA DE JUROS REMUNERATÓRIOS QUE SUPERA A TAXA MÉDIA DE MERCADO. CONTRADIÇÃO SANADA. RECURSO PROVIDO, MAS SEM EFEITOS MODIFICATIVOS. </p><p align="justify"> I. CASO EM EXAME </p><p align="justify"> 1.&#160;Cuida-se de Embargos de Declaração opostos contra acórdão da Primeira Câmara de Direito Privado do Tribunal de Justiça do Ceará, que negou provimento ao recurso da Ação Cível interposto nos autos da Ação Revisional de Contra Bancário, no sentido de manter inalterada a sentença recorrida. </p><p align="justify"> II. QUESTÃO EM DISCUSSÃO </p><p align="justify"> 2.&#160;O recurso visa a eliminar possível contradição na decisão colegiada, especificamente no que se refere ao exame dos encargos ajustados no financiamento e a taxa média de juros divulgada pelo Banco Central. </p><p align="justify"> <span style="font-family:

Processo	0267763-23.2022.8.06.0001
	III. RAZÕES DE DECIDIR 3. De fato, ao reanalisar o voto condutor do acórdão, verifica-se que a contradição reside na afirmação de que a taxa de juros anual não superaria a média de mercado para o tipo de operação contratada, quando, em verdade, se constatou que a taxa de juros mensal (2,19%) e anual (29,63%) do financiamento apresentam, efetivamente, percentuais superiores à taxa média divulgada pelo Banco Central (2,02% ao mês e 27,15% ao ano). Ainda assim, o <i>decisum</i> esclareceu que a diferença entre a taxa referencial e os encargos estabelecidos no contrato não revelaram margem considerável de discrepância, sendo destacado que o mero fato de a taxa de juros superar a taxa média de mercado não significa, por si só, flagrante abusividade. 4. Assim, embora se reconheça a existência de contradição no voto condutor do acórdão quanto à análise das taxas de juros aplicadas, constata-se que tal vício não possui o condão de alterar o resultado do julgamento, porquanto a diferença entre os percentuais contratados e a média de mercado não revelou abusividade ou onerosidade excessiva, inexistindo outros elementos aptos a infirmar essa conclusão. IV. DISPOSITIVO 5. Recurso provido. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer do recurso para, no mérito, dar-lhe provimento, no sentido de sanar a contradição apontada e reconhecer que os juros remuneratórios pactuados superam a taxa média de mercado, mas sem aplicar efeitos modificativos, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator RELATÓRIO Cuida-se de Embargos de Declaração opostos por Maria Zenilda de Lima contra acórdão da Primeira Câmara de Direito Privado do Tribunal de Justiça do Ceará, que negou provimento ao recurso de Apelação Cível interposto nos autos da Ação Revisional de Contra Bancário proposta em face do Banco Votorantim S/A, no sentido de manter inalterada a sentença recorrida. Eis a ementa do julgado: DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO. FINANCIAMENTO BANCÁRIO PARA AQUISIÇÃO DE VEÍCULO. ALEGADA ABUSIVIDADE DOS JUROS REMUNERATÓRIOS. TAXA ANUAL INFERIOR À MÉDIA DE MERCADO. PRETENSÃO AUTURAL INSUBSISTENTE. RECURSO DESPROVIDO. SENTENÇA MANTIDA. Nas razões recursais, a parte embargante aduz, em síntese, que o acórdão apresenta contradição quanto à análise da abusividade dos

Processo	0267763-23.2022.8.06.0001
	juros remuneratórios pactuados. Sustenta que há contradição por afirmar que a taxa de juros mensal de 2,19% ao mês, que é superior à taxa média de mercado divulgada pelo Banco Central (2,02% ao mês), não representa abusividade. A embargante defende que a diferença de 2,13% na taxa de juros anual deveria ser considerada relevante, especialmente à luz do Código de Defesa do Consumidor, e justifica sua insurgência com base no art. 51, § 1º do mencionado diploma legal, que dispõe sobre cláusulas contratuais que impõem vantagem exagerada ao consumidor. “Assim, requer o provimento do recurso, para que seja sanada a contradição apontada, realizando uma nova análise da taxa de juros aplicada no financiamento, a fim de que seja estabelecida a taxa média de juros, conforme divulgado pelo Banco Central, no período de março de 2022. Em contrarrazões, a parte embargada defende a inadequação do presente instrumento recursal para modificar o mérito da decisão já proferida, uma vez que não há a omissão, contradição, obscuridade ou erro material no acórdão embargado. Defende que a taxa de juros de 2,19% ao mês e 29,63% ao ano pactuada está dentro de uma margem aceitável em relação à média de mercado e que a diferença não é suficiente para caracterizar abusividade. Ainda, ressalta que a jurisprudência autoriza uma variação mínima entre os valores pactuados e a média de mercado divulgada pelo Banco Central, portanto, não configura abusividade, sugerindo a rejeição dos embargos. É o relatório. VOTO Conheço do recurso, pois satisfeitos os requisitos intrínsecos e extrínsecos de admissibilidade. No que diz respeito à admissibilidade e ao exame de mérito dos embargos, discorre o doutrinador Humberto Theodoro Júnior: O pressuposto de admissibilidade dessa espécie de recurso é a existência de obscuridade ou contradição na decisão; de omissão de algum ponto sobre que devia pronunciar-se o juiz ou tribunal, ou erro material (NCPC, art. 1.022, I, II e III). Se o caso é de omissão, o julgamento dos embargos supri-la-á, decidindo a questão que, por lapso, escapou à decisão embargada. No caso de obscuridade ou contradição, o decisório será expungido, eliminando-se o defeito nele detectado. Tratando-se de erro material, o juiz irá corrigi-lo. Em qualquer caso, a substância do julgado será mantida, visto que os embargos de declaração não visam à reforma do acórdão, ou da sentença. No entanto, será inevitável alguma alteração no conteúdo do julgado, principalmente quando se tiver de eliminar omissão ou contradição. O que, todavia, se impõe ao julgamento dos embargos de declaração é que não se proceda a um novo julgamento da causa, pois a tanto não se destina esse remédio recursal. As eventuais novidades introduzidas no decisório primitivo não podem ir além do estritamente necessário à eliminação da obscuridade ou contradição, ao

Processo	0267763-23.2022.8.06.0001
Processo	0206705-24.2022.8.06.0064
Número de ordem	145
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Esbulho / Turbação / Ameaça
Polo ativo	RAIMUNDA MOTA ROCHA MARIA LINDETE MOTA DA ROCHA OSVALDO TEIXEIRA DA ROCHA
Advogado(s) - Polo ativo	Não informado
Polo passivo	CORNELIO CARMO DE ALBUQUERQUE
Advogado(s) - Polo passivo	GABRIEL SOARES CARDOSO FILHO - (CE25201-A) JOSE JAZIEL FERNANDES DANTAS - (CE11988-A)
Terceiros	Rita de Casse Melo de Lira ANTONIO ALVES DE LIMA Antonio Costa Silva MARIA HELENA MEDEIROS DE LIMA PROCURADORIA GERAL DE JUSTICA

Processo	0206705-24.2022.8.06.0064
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAAFxEAABcRAco m8z8AAEulSURBVHhe7b11YFbH1vZnCdCqRfquMfdiOGQhLi7IEmlu5OEKIEEd3cpbqXU KFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY +lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z +6OXXcf/CQH69dlcZnBKIBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJ Xi0CT6jrYmfHMDacfdRw/5+puvOXRoL998+QK/XjnNZRuXuH3vZx7/8ognT6TNWtt/qf+nei DIF93mX5X/GLAnT57w8OEDPjv2CUvnVIFZGEfyBBcifO0ZZtWXccMsSY6dxiZVK1g+v5Kk MHvemT+RXQuj2L1kljOzXUiNHEWo1xhKc7PZvmoBaSFOrcwLYPeichbP9efdBeHMz/Mg O96LbRsWkhTtj88IM0oSPNng2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8 TOVOCqa0qYM3KhVy9elnX/8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mklARS3q4N RnR40iK8MTJtC9eToMoix/GvgVRHFwUwflY9haF0jRRFS/S1JC3Uim3wos7LGsHdRJO +tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFWqT875oYTPXYwrlb98R5u QmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsyOt2 LA0tj2L8wgPeWR7F0qjtJ9pQnjgaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXe LCoZz4JiN+YVujEn35XZ+fl5bylL8kYJw8YwX863aJoPS8u8WVHhzbpfniOP7bPDmDXvG D2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm /YvylwC7c/sWs6cXkd1pFAfXJLJzXhCbavxYVR7AUmFcXZYllamjKE0cRsEkW/Im2AhTLE gJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUId6D9HqJF894gP0SQ0zFhab kxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+ X8EmCp7d23Ce4wp6dEOZESYkRpsQEgqKSkCxiR3AcCtP5Hu/YlyH0CmDrGT59ovyHE BRmSGGLGIGBL4oMsiQ0yJS7EiPgWQ6nmTAm3YrL6LchMQDljzt+cWH8rrcb5WzDBx5g YXyMivfSi8BhChLSAPi6PyR5GYuYwJAWbkRxoSEaIKQUTncRtmJGXFsmPI89r7RYXXF/ Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHsySkC2uQAlYECdv8hRnyPc7PjD3PwG PprF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6Pdv2FEYJcEEWJAYYcXsNtf1j/U3lWDIXoBnB4wc J+AbEBuuuNdIXzissnCIDEuMr1w0wiD7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335 NQX4qoYGj8B0jrHldSLJ0PFWZTQV+bGOIKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA2 1UawcWYom6RumTWBqhQ3iscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBREvKlBeAmoYa 6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafB93Q2qvarQtcDdt/v/whila Kz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElBRJgXaUT3GSwGBJ ofih/FB7ckPMYQszoUC+x3qa4W37NlkhdusLXb8sNNYn3EYqDkRdpTEOPAeaktKqCMFs S7ix4axtiZKwBaA62LYXBvKqppwYkOHkZocidHDnD//i2tnX+1/CXAtDF68osiV90o7d6xXn yUHRlHlmSGWBMnppcmZjbJy5BwdzGtcFfigkeREOxMjJsBC8Q5p4r5pgSYU5cZnlFbuJ7L PAdOUDqIEJcBIMYP1yipA/5E4Yy2dOAumxPOb/4MT9bpoSOJS50Hilhi4kYN5hMYVdKoL BrfH8KY0YS4qrHtl4Hj+6p7VP1+K/Vv4aYIraOmZz784dKqemkhY1TKRCAlUTRFuFWotEc Cczxom0GB9sDAYwzsGlpwoMRsHDq7NpjiOQRjpzDuL4ylJHUIZpj8l2REUpIVQIR9JQaIL C8tDmJXvSY6Y3ObZk6lJd6c0NRDPMXYM6fMqJVNRElHNWfWSLBjNHFEu/SVS+IKbN5 6UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkoplts6LIV2iU260tWgxZ3HI5hSkRNPjledFP OoLMIEES2pUIDlj3nsgCX7i0CUlPlSrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzlyJ7 gNjKizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqrh6F8sfwOw MUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBliV6Ts2i4u1uHXAbYUBZhg81mePYWCda qTAQjeJ70sRXTc8Lxc6wNy906sgLHTrxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNjiRbKJ cTfd56jox4f8lTh1CV7kpV6jgKJz0lw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLZ49QlBb GnllgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJ5X9XajNGsvMLA9ivlwoSPb DsP9bvNilC92fe56XOnfC3rQfpekBJldZy34uzMgYQ22uu4hcExljXHFxNcyvIUj8lZGAGsSa yIBWi2hdWyORVa6/ec4EUilR10849cBboju/On5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60u ThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56 h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9ISL/PS+G6flR+IzqL6DrkSNyJkdIA hJxyxKHMzNTkvylaoTHBfPdt2e09qrW/6eQY/VPAlE/FcTpr6yNjHtqSV6z9coixrokQwSoS bFIYMJ4EL2PRUiMI8Y1ivWisrEhrEgJmPMPWJIfYUpHswsqyQJaW+IsgNSlrZiQThXWOZg N59dnOPNOhE107Pk3nNm3o/2Y3onxHskQcLthQTIS8CWvET1anukumYMMkyQCifUT8S nRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFruxzucurarpOqj9W2ATn1w7+J4D9nWP0JdULv z8v+HZtlCHFhw+wkFpf5MavQn9BxAKKEEZPSPQQ4qek+ICX7MjXJ6lkfwoSAsiXmjPFj7jw caRM9GVSqBeBnuPEL3ng7+1NgK8vQT5Svbyl8PMiOsAl5Am+JEWnJ1/OkZsQSH5iCE Wis4qTQpmWGCwD4UepgFSU5iJplQUJkkUsiCi9UnxeWfwY+dsklr+6UNYj34olI22e7N8p/ wlvwUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUle7OlGgiKUr1li85gLS4UHLT4ygtzGR 6eRFL5tWxfuVydmezwt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6 +ZNbvX0ixvXb0pHr/DDhQtcOv8tZ05/xpddfsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5F OUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+Ocp8h QuZPWsOc2tnM72ymnK5+ly6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONnoN5bFKBY8 ePeb+vQfcvNOPGzdvsYZwjcti1hcvX+D7i+f49z3fHf2DN98LW7M3x79nu+P3eec+P3cUHY cenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yp pqKqurqa2bJbWWDRvWCSlOZ9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdfsvVN+e3R Y+XHdPslfNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQI RhbEE50/ALZsaD3HuHplReKRF4J4aLjUMz/qlvDKkZobjmxNBkDj58lJYYoqTiJ2WRkpfDt k1RZTMrWTuuWs2bGgnQd38Ngxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTNgtjtr yc7OYePGjfl3+atlJFX/UfmXDFoxmFvBs13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGB wjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfnvXvS3Kc3Ta Q+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;0206705-24.2022.8.06.0064 - &#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: RAIMUNDA MOTA ROCHA, MARIA LINDETE MOTA DA ROCHA, OSVALDO TEIXEIRA DA ROCHA</p><p> APELADO: CORNELIO CARMO DE ALBUQUERQUE</p><p>
 </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Ementa >Direito civil. Recurso de apelação cível. Ação reivindicatória. Sentença procedente. Comprovação do domínio pela matrícula imobiliária. Individualização precisa do imóvel. Usucapião extraordinária arguida em sede de defesa. Posse mansa, pacífica, contínua com animus domini. Comprovação. Prova documental e testemunhal. Posse justa caracterizada. Recurso conhecido e provido. Sentença reformada integralmente. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Vistos, relatados e discutidos estes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso, para DAR-LHE PROVIMENTO, nos termos do voto do desembargador relator. Fortaleza, data da assinatura digital. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center">

Processo	0206705-24.2022.8.06.0064
	DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator &#160; RELATÓRIO Trata-se de Recurso de Apelação Cível interposto por MARIA LINDETE MOTA DA ROCHA, RAIMUNDA MOTA DA ROCHA e OSVALDO TEIXEIRA DA ROCHA, adversando sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Caucaia, que, nos autos da ação reivindicatória, manejada por CORNÉLIO CARMO DE ALBUQUERQUE em desfavor dos ora recorrentes, julgou parcialmente procedente a ação, deferindo a posse do imóvel descrito nos autos ao promovente (id. 16010182). Em suas razões, os réus/recorrentes aduzem que a parte promovida, Sra. Raimunda Mota da Rocha, recebeu o referido imóvel em litígio no ano de 1987, de “um colega de sua família”, Sr. Agenor, já falecido, tendo, desde então, estado na posse do bem, juntamente com seu esposo, o Sr. Osvaldo Teixeira da Costa, sem nunca ter tal posse questionada. Alegam que a posse no imóvel restou fartamente comprovada, através das testemunhas, notadamente o Sr. Antônio Costa Silva afirmou que conheceu a promovida no ano de 1992, quando comprou um terreno próximo, e no ano de 1997 construiu sua casa nesse terreno, e lá passou a morar, afirmando, ainda, que, desde que passou a viver ali, a promovida Raimunda Mota da Rocha já morava no imóvel. Ressaltam que ajudam a corroborar, como prova da posse do imóvel, as declarações de titularidade emitidas pela concessionária de energia elétrica ENEL e pela CAGECE, que registram a titularidade em nome do recorrente Sr. Osvaldo Teixeira da Costa desde o ano de 1998, assim como pelas reformas no imóvel realizadas pelo casal durante todos esses anos. Sustentam que: i) “em se tratando da prescrição aquisitiva, sabe-se que esta consiste na aquisição de um direito real sobre um bem pelo decurso do prazo, que começa a contar do exercício da posse ad usucapionem, e não quando o titular do imóvel toma conhecimento da ocupação do bem”; ii) “o ônus da prova recai sobre a parte autora, e é ela quem tem que provar as alegações por ela feitas, mas eximiu-se o mesmo de trazer ao processo quaisquer documentos que atestassem a posse injusta dos recorrentes”; iii) ao contrário do recorrido, os recorrentes provaram ao longo do processo via titularidade de contas de água e luz, testemunhas que os conhecem desde a época que já ocupavam o imóvel há mais de 20 anos, fotos, e que estão há todos esses anos vivendo como se donos fossem, sem qualquer oposição até então, oposição essa

Processo	0206705-24.2022.8.06.0064
	que só foi trazida em 2022; Pugnam pelo provimento do recurso a fim de que a sentença seja reformada para julgar a ação improcedente. Subsidiariamente, pedem que seja concedido o direito a indenização das benfeitorias realizadas pelos recorrentes. Contrarrazões apresentadas (id. 16010196). É o relatório. VOTO Conheço do recurso, eis que presentes os pressupostos de admissibilidade. Cinge-se o recurso em aferir o acerto da sentença que julgou procedente a Ação Reivindicatória, manejada por Cornélio Carmo de Albuquerque em desfavor dos ora recorrentes, notadamente por verificar presentes os requisitos legais. Asseveram os réus/recorrentes que exercem a posse sobre o imóvel vindicado, de forma mansa, pacífica e ininterrupta, sem oposição de quem quer que seja, desde o ano de 1987. Ressaltam que adentraram no imóvel, após o terem recebido de “um colega de sua família”, no ano de 1987, estando, desde então, na posse do bem, sem jamais sua posse ter sido questionada, até o ano de 2022 pelo ora autor. Pois bem, Insta registrar que o art. 1.228, caput, traz a previsão da ação reivindicatória, a qual se funda no reconhecimento da propriedade. Referido dispositivo legal protege o direito de propriedade, instituindo a solução para garantir o seu exercício, assegurando ao proprietário o direito de reivindicar o bem daquele que injustamente o possui. Costuma-se dizer que é a ação do proprietário não possuidor contra o possuidor não-proprietário, desde que este último detenha a posse sem causa justa.

Processo	0206705-24.2022.8.06.0064
	transparent;" align="justify"> Neste sentido, para efeito de argumentação, seguem os seguintes precedentes jurisprudenciais do colendo Superior Tribunal de Justiça:</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO REIVINDICATÓRIA. REQUISITOS LEGAIS NÃO DEMONSTRADOS. REEXAMÉ . IMPOSSIBILIDADE. SÚMULA 7/STJ. AGRAVO INTERNO IMPROVIDO. 1 . A reivindicatória, de natureza real e fundada no direito de sequela, é a ação própria à disposição do titular do domínio para requerer a restituição da coisa de quem injustamente a possua ou detenha (CC/1916, art. 524, e CC/2002, art. 1.228), exigindo a presença concomitante de três requisitos: a prova da titularidade do domínio pelo autor, a individualização da coisa e a posse injusta do réu (REsp 1.060.259/MG, Rel. Ministro Raul Araújo, quarta Turma, julgado em 4/4/2017, DJe de 4/5/2017). 2 . Alterar a conclusão do acórdão impugnado a respeito da ausência do requisito relativo à individualização da coisa reivindicada, porque fundado no conteúdo fático-probatório, é insindicável no âmbito desta Corte Superior, em razão do óbice da Súmula 7/STJ. 3. Agravo interno improvido. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (STJ - AgInt no AREsp: 2299457 GO 2023/0049616-0, Relator.: Ministro MARCO AURÉLIO BELLIZZE, Data de Julgamento: 19/06/2023, T3 - TERCEIRA TURMA, Data de Publicação: DJe 21/06/2023). </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> PROCESSO CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO REIVINDICATÓRIA. AGRAVO DE INSTRUMENTO . TUTELA DE URGÊNCIA. VIOLAÇÃO DOS ARTS. 489 E 1.022 DO NCPC . NÃO CONFIGURADA. IMPOSSIBILIDADE DE REEXAME FÁTICO-PROBATÓRIO. INCIDÊNCIA DA SÚMULA Nº 7/STJ. AGRAVO INTERNO NÃO PROVIDO . MANUTENÇÃO DA SENTENÇA RECORRIDA. 1. A reivindicatória, de natureza real e fundada no direito de sequela, é a ação própria à disposição do titular do domínio para requerer a restituição da coisa de quem injustamente a possua ou detenha (CC/1916, art. 524, e CC/2002, art. 1.228), exigindo a presença concomitante de três requisitos: a prova da titularidade do domínio pelo autor, a individualização da coisa e a posse injusta do réu (REsp 1.060.259/MG, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 4/4/2017, DJe de 4/5/2017). 2. Na hipótese dos autos, o Tribunal estadual, com base nos elementos fáticos-probatórios constantes dos autos, concluiu que o recorrido apresentou título idôneo, apto a comprovar a propriedade do bem, bem como consignou não estarem presentes os requisitos necessários à configuração da usucapião em favor dos recorrentes. Alterar tais conclusões demandaria o reexame de fatos e provas, inviável em recurso especial, a teor do disposto na Súmula nº 7/STJ . 3. A ausência de prequestionamento no processo enseja a aplicação da Súmula nº 211 do STJ. 4. Agravo interno negado provimento . </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (STJ - AgInt no AREsp: 1862247 RJ 2021/0086106-5, Data de Julgamento: 05/09/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 08/09/2022). </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO REIVINDICATÓRIA. PRESENÇA DOS REQUISITOS. NECESSIDADE DE REEXAME DE PROVA . IMPOSSIBILIDADE. INTELIGÊNCIA DA SÚMULA 7/STJ. DECISÃO MANTIDA. RECURSO NÃO PROVIDO . 1. A reivindicatória, de natureza real e fundada no direito de sequela, é a ação própria à disposição do titular do domínio para requerer a restituição da coisa de quem injustamente a possua ou detenha (CC/1916, art. 524, e CC/2002, art. 1.228), exigindo a presença concomitante de três requisitos: a prova da titularidade do domínio pelo autor, a individualização da coisa e a posse injusta do réu (REsp 1.060.259/MG, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 04/04/2017, DJe de 04/05/2017) . 2. O Tribunal estadual, mediante análise do acervo fático-probatório dos autos, entendeu não estarem presentes provas suficientes para corroborar a propriedade e a posse injusta em relação ao imóvel. De acordo com o acórdão recorrido e a sentença, o pedido é improcedente porque foi possível a individualização da coisa, mas não se conseguiu determinar o domínio e a posse injusta. 3 . A alteração das premissas fáticas estabelecidas no acórdão recorrido, tal como postulada nas razões do apelo

Processo	0206705-24.2022.8.06.0064
	especial, exigiria novo exame do acervo fático-probatório constante dos autos, o que se sabe vedado pela Súmula 7 do STJ. 4. Agravo interno a que se nega provimento. (STJ - AgInt no AREsp: 1259039 GO 2018/0052342-2, Relator.: Ministro LÁZARO GUIMARÃES (DESEMBARGADOR CONVOCADO DO TRF 5ª REGIÃO), Data de Julgamento: 07/06/2018, T4 - QUARTA TURMA, Data de Publicação: DJe 20/06/2018). Nesse contexto, o proprietário encontra-se autorizado a intentar ação reivindicatória contra qualquer pessoa que detenha o bem em seu poder e não só contra o possuidor de má-fé, mas também o de boa-fé, não importando o título que encontra em seu poder. Isso se dá em razão de ser o domínio um direito real, oponível em face de qualquer pessoa que impeça o exercício dos direitos inerentes à propriedade. Para a propositura de tal ação é necessário: 1) que o autor tenha a titularidade do domínio da coisa reivindicada; 2) que a coisa esteja injustamente em poder do réu; 3) que a coisa seja individualizada. Sobre o tema, a doutrina de Arnaldo Rizzardo faz a seguinte ponderação: "O primeiro pressuposto ou requisito necessário à reivindicação é a propriedade atual do titular. Deverá ele ter o jus possidendi, embora encontre perdido o jus possessionis. [...] O segundo elemento necessário é o tipo de posse exercida pelo réu. [...] O requisito para a ação é a posse injusta do réu, no sentido de falta de amparo ou de um título jurídico. Não tem ele o jus possidendi. De sorte que possuidor de boa ou má-fé, ou simples detentor, pode ser sujeito da pretensão da ação reivindicatória, que visa a restituição da coisa. [...] O terceiro requisito envolve a individuação do imóvel reivindicando, de modo a identificá-lo perfeitamente [...]" (Direito das coisas. Rio de Janeiro: Forense, 2006, p. 213/216). No caso dos autos, o primeiro e o terceiro requisitos encontram-se comprovados pela cópia da Matrícula nº 55.628 do Cartório de Registro de Imóveis de Caucaia (id. 16010031), que atesta ser o autor proprietário do imóvel residencial situado em parte do lote nº 24, da Quadra nº 60 do Loteamento Parque Tabapuá, Bairro, Alba, Distrito de Jurema – Caucaia/CE, atualmente Rua Olavo Bilac, nº 3424, bairro Parque Albano, Caucaia, Ceará, CEP 61.645-340, adquirido em 29/09/2022, estando, portanto, plenamente identificado o imóvel reivindicado. No tocante ao segundo requisito, qual seja, a existência de posse injusta do imóvel, insta salientar que é aquela exercida sem causa jurídica para tanto, sendo a comprovação de tal requisito ônus da parte autora. Neste prisma, leciona Arnaldo Rizzardo: "Esta é uma ação real, exercitável erga omnes, que objetiva a retomada da coisa de quem quer que injustamente a detenha. (...). Segundo é proclamado, trata-se de ação do proprietário sem posse contra o possuidor não proprietário, ficando a cargo do primeiro a prova do seu domínio e a posse injusta do segundo.

Processo	0206705-24.2022.8.06.0064
	transparent;">Decorre ela da parte final do art. 1.228 do Código, que assegura ao proprietário o direito de reaver os seus bens de quem injustamente os possua. Funda-se no direito de sequência, armando o titular do domínio de meios para buscar o bem em mãos alheias, retomá-lo do possuidor e recuperá-lo do detentor. Visa o proprietário a restituição da coisa, seja imóvel ou móvel, eis que perdido se encontra o jus possessionis, pedindo que se apanhe e retire a mesma, que se encontra no poder ou na posse de outrem, sem um amparo jurídico." (Direito das Coisas, Rio de Janeiro: Forense, 2013, p. 230). [Grifei]. Oportuno ressaltar que, na ação reivindicatória, o conceito de posse injusta é diferente do previsto no artigo 1.200 do Código Civil ¹ conforme entendimento sedimentado na jurisprudência do Supremo Tribunal Federal e do Superior Tribunal de Justiça, desde antes da vigência do Código Civil de 2002. Observe -se: AÇÃO REIVINDICATÓRIA. REQUISITO DA POSSE INJUSTA. Não há confundir o requisito da posse injusta a que se refere o art. 524 do Código Civil com a posse injusta definida no art. 489 do mesmo diploma legal. A que é injusta tão-somente pela razão de que, na disputa entre a posse e a propriedade, prevalece o direito do proprietário, a menos que se trate de posse "ad usucapionem". Não constitui requisito da ação reivindicatória que a posse do réu seja precária, clandestina ou violenta. A posse "ad interdicta" não constitui obstáculo à procedência da ação de reivindicação. Recurso extraordinário não conhecido. (STF, RE 100700, Relator: Min. SOARES MUNOZ, Primeira Turma, julgado em 14/10/1983, DJ 04-11-1983 PP-07148 EMENT VOL-01315-03 PP-00567 RTJ VOL-00107-03 PP-01324). [Grifei]. REIVINDICATÓRIA. PRESSUPOSTOS. POSSE INJUSTA. A injustiça na posse, para efeito de tutela reivindicatória fundada no artigo 524 do Código Civil, não pressupõe adequação ao contido no artigo 489 do mesmo diploma legal relativamente à posse injusta própria para os interditos possessórios. Recurso especial não conhecido. (STJ, REsp 151.237/MG, Rel. Ministro CESAR ASFOR ROCHA, QUARTA TURMA, julgado em 24/05/2000, DJ 07/10/2002, p. 259). Destarte, tratando-se de ação reivindicatória, a posse será injusta quando não houver título que a ampare ou justifique e não quando f or violenta, clandestina ou precária. No

Processo	0206705-24.2022.8.06.0064
	caso, os promovidos, ora apelantes, alegaram, em matéria de defesa, a aquisição originária do bem por usucapião, apontando que possuem a posse mansa, pacífica, sem qualquer objeção e com animus domni desde o ano de 1987, utilizando-o como moradia da família. A sentença julgou procedente a ação reivindicatória, por entender o douto magistrado a quo que a parte autora comprovou a posse injusta exercida pela ré, rejeitando a arguição da parte promovida de que estariam presentes os requisitos legais para aquisição originária do bem pela usucapião. Segue a fundamentação pertinente adotada pelo juízo primevo Na hipótese dos autos, os documentos acostados evidenciam que o promovente preencheu os requisitos legais previstos para o alcance de sua pretensão, nos termos do artigo 373, I, do Código de Processo Civil. Vejamos. a) a comprovação do direito de propriedade do autor sobre a coisa. Oportuno registrar que o promovente reivindica o direito ao imóvel registrado sob a matrícula nº 55.628 C.R.I de Caucaia, este situado na Rua Dona Heloísa esquina com Olavo Bilac, nº 3424, bairro Parque Albano (Jurema). A escritura pública no caso foi lavrada em 08.12.2004. A data de 2022 citada pelos promovidos diz respeito a escritura de aditamento, de modo que a escritura originária foi lavrada antes do falecimento dos proprietários, que ocorreram em 2006 e 2018 conforme documentos de fls. 132/133. b) a demonstração de que o réu possui ou detém a coisa injustamente. Já a posse dos promovidos mostra-se injusta, notadamente porque relatam que estão no imóvel desde 1998, que lhes foi cedido pelo Sr. Agenor, que cuidava do imóvel em questão, o que afasta a possibilidade de haver posse mansa e pacífica no caso em questão, pois o bem foi cedido. Outrossim, quem cedeu sequer tinha poder para tal porquanto sequer era proprietário do bem. Além disso, a posse por cessão é do tipo precária. Ademais, o direito de propriedade é perpétuo, ou seja, perdura enquanto o indivíduo viver. Esclarece que, mesmo sendo a posse não violenta, não clandestina ou não precária, além de haver a boa fé, será considerada injusta a detenção injusta da posse, mediante a falta de título que justifique esse fato. c) a individualização do bem. O bem foi devidamente individualizado na exordial, tendo o autor atendido o requisito supra.

Processo	0206705-24.2022.8.06.0064
	class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Devidamente comprovado os requisitos para a reivindicatória, sendo procedente o pleito no que pertine a retomada dos imóveis. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> II. 2- Da Prescrição aquisitiva pela Usucapião aventada pelo promovido. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É cediço na doutrina e jurisprudência que é cabível a tese da prescrição aquisitiva por usucapião, tanto em reintegração de posse quanto em reivindicatórias. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Neste sentido, afirmou o promovido que faz jus a usucapião do art. 1.238 do CC, paragrafo único. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nessa ordem de fatores, é indubitável que a propriedade alegada pela autora resta-se comprovada documentalmente nos autos, notadamente no que tange à averbação da compra e venda na matrícula do bem. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Quanto ao ponto, destaque, desde logo, que eventual reconhecimento da prescrição aquisitiva em favor dos réus apenas serviria como fato impeditivo da pretensão autoral, não ensejando declaração hábil para fins de transcrição em registro imobiliário, eis que a pretensão aquisitiva, para fins de registro imobiliário não pode ser reconhecida em outro procedimento que não seja a própria ação de usucapião, a qual possui rito próprio e exige, entre outras medidas: citação de confinantes, publicação de editais e intimação da Fazenda Pública. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> In casu, trata-se de pedido relativo à usucapião extraordinária, a respeito da qual passo a decidir. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Embora a parte ré tenha se empenhado em demonstrar o cumprimento dos requisitos inerentes à aquisição originária do imóvel litigioso através da prescrição aquisitiva, não resta patente o convencimento deste juízo quanto ao referido fato. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesses termos, para ser obtida a prescrição aquisitiva, indispensável a prova do requisito objetivo temporal, além do requisito subjetivo da posse ad usucapionem. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Ora, a posse de bens imóveis se caracteriza pela simples sujeição da coisa à vontade do possuidor, independentemente de sua efetiva ocupação. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Certo é que diante do arcabouço probatório presente nos autos, o demandado possuía tão somente posse injusta, inclusive porque dentre os documentos juntados, notadamente a questão atinente a titularidade de conta de energia e água não é hábil para afastar a questão atinente ao registro do imóvel juntada pelo autor. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> A ocupação, portanto, é manifestamente injusta. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> [...] </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Por fim, em que pese a realização de audiência de

Processo	0206705-24.2022.8.06.0064
	instrução com ouvida de testemunhas, tais depoimentos não tem o condão de afastar a pretensão autoral, notadamente porque a reivindicatória possui requisitos específicos, que já foram demonstrados nos autos. destaco dois trechos da ouvida das testemunhas ouvidas: Testemunha Antônio Costa Silva: segundo a promovida Raimunda Mota, <u>ela me falou que o dono do imóvel era o senhor Cornélio, o autor;</u> Testemunha Rita de Casse de Melo de Lira: o imóvel em questão é ocupado pela promovida Raimunda Mota e seu esposo, o senhor Osvaldo; no ano de 1997, eu fui ser vizinha do imóvel em questão, e atualmente a promovida continua nesse imóvel; eu não sei qual o contexto que a promovida Raimunda e seu marido e muitos filhos ocupava o imóvel (se como aluguel, se como emprestado, se como proprietária); eu só sei que o esposo da promovida ele trabalhava "catando lixo"; e através de vizinhos tomei conhecimento de que o imóvel que eles ocupavam e ainda ocupam, eles não eram os proprietários. [...] [Grifei]. Após a análise da documentação trazida pelas partes e a oitiva com detida atenção dos depoimentos das testemunhas arroladas pela parte promovida (o autor não arrolou), emerge nítido, diferentemente como entendeu o il. Juiz de 1º grau, que a exceção de usucapião procede. Os promovidos afirmaram que ingressaram no imóvel no ano de 1987, após o terem recebido de uma terceira pessoa (Sr. Agenor), sem precisa identificação. Referido fato não é impeditivo para o reconhecimento da prescrição aquisitiva, como quis fazer crer a sentença objurgada. Rememore-se que, dentre os requisitos da usucapião extraordinária, não há exigência de justo título nem de boa-fé. Assim, como se deu o início da posse pouco importa, contanto que os requisitos exigidos pela lei civil restem preenchidos: o exercício da posse, de forma mansa, pacífica, com ânimo de dono, ou sem sujeição a quem que seja, sem oposição de qualquer pessoa, pelo prazo de 15 anos, ou 10 anos, se utilizado para moradia ou ter realizado obras ou serviços de caráter produtivo (art. 1238, caput e parágrafo único, do CC). Não se olvida que diferente seria se o ingresso no imóvel pelos réus tivesse sido por permissão do proprietário, mas tal argumentação não foi carreada aos autos. Observe-se que é ônus da parte autora comprovar a posse injusta dos réus, e como não o fez é o tanto que basta para a improcedência da ação.

Processo	0206705-24.2022.8.06.0064
	family: Georgia, serif;">A parte autora não arrolou uma única testemunha. Sabedora, desde à época da aquisição do imóvel, que os réus fizeram dele sua moradia, era ônus do promovente comprovar que os promovidos exerciam a posse sem animus domini. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> No entanto, na exordial, limitou-se a defender seu direito de propriedade, o domínio comprovado pela matrícula imobiliária, e quanto à alegada posse injusta, destacou, sem concretude, que "As requeridas vêm ocupando o imóvel do autor de forma indevida e injusta, com sua oposição, sem nada pagar ao autor, o que é inadmissível", tese que não subsiste diante da robusta prova trazida pela parte promovida, o que se passa a analisar adiante. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Exceção de Usucapião </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> A exceção de usucapião é uma defesa substancial e muito utilizada em ações reivindicatórias, pois, se comprovada a posse mansa, pacífica e com "animus domini" pelo prazo legal, ela pode levar à improcedência do pedido do autor, que é o proprietário que não detém a posse do imóvel. Deve ser arguida em contestação para obstar a pretensão possessória na ação reivindicatória, conforme entendimento sumulado (STF, Súmula nº 237) e jurisprudência do STJ (AgRg no REsp 1.270.530/MG; AREsp 1.960.551/SC). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Embora a usucapião possa ser alegada em defesa, ela não concede o título de propriedade imediatamente; para isso, é necessária uma ação de usucapião autônoma. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> No caso, tem-se que autor comprovou o título de domínio e individualização do bem, e, do outro lado, os requeridos arguíram em defesa a usucapião do imóvel, o que tem, se comprovada, o condão de afastar a suposta posse injusta. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> As circunstâncias fáticas e jurídicas identificam a justa posse exercida pelos requeridos, ora apelantes, por tempo suficiente para configurar a usucapião alegada em contestação (artigo 1238, caput , do CC). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Vejam os. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Apesar de afirmarem os réus deterem a posse desde o ano de 1987, tal não restou provado. No entanto, trouxeram documentação, no caso, as Declarações da CAGECE e ENEL, as quais salientam que o promovido Sr. Osvaldo Teixeira da Rocha, CPF 256.709.053-34, é titular da conta de água/energia da unidade consumidora&#160; desde 24/06/1998 e 21/08/1998, respectivamente (id. 16010075). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Se não bastasse, as fotografias juntadas aos autos (id's. 16010068

Processo	0206705-24.2022.8.06.0064
	e também não sei em que contexto eles foram morar neste imóvel. Dada a palavra ao Defensor Público da parte promovida, perguntou: eu não tenho conhecimento de ninguém que tenha andado pelo imóvel pleiteando algum tipo de aluguel; eu não entendo dessas coisas de "escritura e registro", mas eu moro no meu imóvel há 27 anos; não conheço Maria Helena Medeiros de Lima e Antônio Alves de Lima; não sei quem construiu a casa que a promovida ocupa. Dada a palavra ao advogado da parte autora, perguntou: eu não sei qual a fonte de renda da promovida Raimunda Mota; eu não tenho conhecimento que a promovida tem imóveis alugados na mesma rua do imóvel em litígio.&#160; [Grifei].</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">&#160;</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Destaca-se que, apesar de o autor ter adquirido o imóvel das pessoas de Helena Medeiros de Lima e Antônio Alves de Lima, em 08/12/2004 (registrando somente em 2022 – vide Matrícula nº 55.628 do Cartório de Registro de Imóveis de Caucaia (id. 16010031), não realizou quaisquer atos visando retomar a posse, de modo a interromper o prazo prescricional, vindo somente no ano de 2022 a ajuizar a presente demanda. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Aplica-se ao caso vertente o brocardo "dormientibus non succurrit jus" &#160;(O direito não socorre aos que dormem). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Em conclusão, se o início do exercício da posse pelos requeridos se conta a partir de 1998 e a ação foi manejada em 2022 , pode-se assegurar que os réus/recorrentes, ao tempo do ajuizamento da presente actio , já tinham preenchido todos os requisitos legais para o reconhecimento da prescrição aquisitiva pela usucapião. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Ante ausência de prova em contrário, resta inequivocadamente comprovadas a posse mansa, pacífica e ininterrupta, sem oposição e com

Processo	0206705-24.2022.8.06.0064
	family: Georgia, serif;"> animus domini , por mais de 15 anos, pelos promovidos, estando aptos a ingressar com a ação de usucapião extraordinária (art. 1238, caput e parágrafo único, do Código Civil), que no caso específico dispensa o justo título e a boa-fé. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Acerca do assunto, colho da jurisprudência deste Egrégio Tribunal de Justiça:</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">&#160;</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> DIREITO CIVIL. APELAÇÃO CÍVEL. AÇÃO REIVINDICATÓRIA. POSSE JUSTA . EXCEÇÃO DE USUCAPIÃO ALEGADA EM CONTESTAÇÃO. ACOLHIMENTO. EXERCÍCIO DE POSSE PELA REQUERIDA COM ANIMUS DOMINI POR MAIS DE CINCO ANOS. IMPROCEDÊNCIA DO PEDIDO REIVINDICATÓRIO. TESE DA PRESCRIÇÃO AQUISITIVA NÃO IMPORTA NA AQUISIÇÃO DO DOMÍNIO. NECESSIDADE DE AÇÃO PRÓPRIA. RECURSO PARCIALMENTE PROVIDO. I . CASO EM EXAME. 1. Apelação interposta contra sentença de procedência em ação reivindicatória, ajuizada pelos autores com base em título dominial do imóvel, visando à retomada da posse de bem imóvel supostamente invadido pela ré. Em sua contestação, a parte apelante/requerida pleiteou a improcedência do pedido inicial, alegando o exercício de posse justa, animus domini, direito de retenção por benfeitorias, bem como a aquisição do imóvel por usucapião extraordinária, com base na posse contínua, mansa e pacífica desde 1998. II. QUESTÃO EM DISCUSSÃO. 2. Há duas questões em discussão: (i) definir se a posse exercida pela apelante configura-se como posse injusta, autorizando o pedido reivindicatório; (ii) estabelecer se a exceção de usucapião arguida em sede de contestação é apta a obstar a pretensão reivindicatória dos autores. III. RAZÕES DE DECIDIR. 3. A ação reivindicatória tem como pressupostos: (i) prova do domínio pelo autor, (ii) individualização do imóvel e (iii) posse injusta do réu, conforme jurisprudência consolidada do STJ (REsp 1 .003.305/DF; REsp 691.963/RS; REsp 195.476/MS). 4. A posse da apelante é devidamente comprovada desde 1998, mediante documentos de pagamento de energia, condomínio e reforma do imóvel, além de testemunhos coesos e consistentes que confirmam o abandono do imóvel pelos autores e a longa permanência da apelante no bem, com animus domini. 5. A exceção de usucapião pode ser arguida em contestação para obstar a pretensão possessória na ação reivindicatória, conforme entendimento sumulado (STF, Súmula 237) e jurisprudência do STJ (AgRg no REsp 1 .270.530/MG; AREsp 1.960.551/SC) . 6. A quitação do imóvel junto ao SFH em 2005 descaracteriza a natureza pública do bem, tornando inaplicável a Súmula 619 do STJ. 7. O reconhecimento da usucapião como matéria de defesa não gera efeitos erga omnes nem confere título hábil à transcrição da propriedade, sendo necessário o ajuizamento de ação própria, com observância do rito especial (STJ, REsp 652 .449/SP; AREsp 1.960.551/SC). 8 . Os autores não demonstraram a posse direta ou qualquer ato de oposição durante o período de ocupação da apelante, tampouco juntaram comprovantes de pagamento que indicassem a continuidade do vínculo contratual antes da anistia da dívida em 2005. IV. DISPOSITIVO E TESE. 9 . Recurso conhecido e parcialmente provido. Tese de julgamento: A exceção de usucapião pode ser arguida como matéria de defesa em ação reivindicatória, obstando a procedência do pedido possessório. O reconhecimento da posse mansa, pacífica, ininterrupta e com animus domini por período superior a 5 anos impede o reconhecimento de posse injusta, requisito essencial da ação reivindicatória. A procedência da exceção de usucapião não autoriza, por si só, o registro da propriedade, sendo imprescindível o ajuizamento da ação de usucapião com rito próprio.</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-CE - Apelação Cível: 00708835420058060001 Fortaleza, Relator.: CARLOS AUGUSTO GOMES CORREIA, Data de Julgamento: 21/05/2025, 1ª Câmara Direito Privado, Data de Publicação: 21/05/2025). [Grifei]. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">

Processo	0206705-24.2022.8.06.0064
	transparent;" align="justify">
 </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> CIVIL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO REIVINDICATÓRIA. PEDIDO DE DESOCUPAÇÃO DO IMÓVEL DEFERIDO PELO MAGISTRADO DE PISO EM SEDE DE TUTELA PROVISÓRIA. LIMINAR DEFERIDA EM DESACORDO COM A JURISPRUDÊNCIA DO STJ E DESTA CORTE. AUSÊNCIA DE COMPROVAÇÃO DA POSSE INJUSTA. RECURSO CONHECIDO E PROVIDO. DECISÃO REFORMADA . I. Caso em Exame Agravo de Instrumento interposto por Aldeniza de Oliveira Silva contra decisão interlocutória da 3ª Vara Cível da Comarca de Maracanaú, que deferiu tutela provisória de urgência para desocupação de imóvel em ação reivindicatória. A agravante alega residência no imóvel há 30 anos, posse justa e falta de direito de defesa. II . Questão em Discussão Análise da presença dos requisitos para a concessão da tutela antecipada em ação reivindicatória, especificamente a comprovação da posse injusta da parte demandada, considerando a possibilidade de usucapião e os direitos da agravante. III. Razões de Decidir A decisão de primeiro grau não demonstrou de forma convincente a posse injusta dos agravados, visto que a agravante reside no imóvel há mais de 30 anos com sua família, sem oposição. O aguardo do desfecho da ação de usucapião em curso é imprescindível para uma análise exauriente do mérito . A proteção da posse, em cognição sumária, prevalece em casos onde há indícios de constrição do direito. IV. Dispositivo e Tese Recurso conhecido e provido para revogar a decisão interlocutória que deferiu a desocupação do imóvel, ressaltando que a análise da posse e dos direitos da agravante será melhor realizada no curso da ação reivindicatória e da usucapião, em respeito ao princípio da segurança jurídica e à proteção da posse. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-CE - Agravo de Instrumento: 06228398820248060000 Maracanaú, Relator.: FRANCISCO BEZERRA CAVALCANTE, Data de Julgamento: 24/09/2024, 4ª Câmara Direito Privado, Data de Publicação: 24/09/2024). [Grifei]. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">
 </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> PROCESSUAL CIVIL E CIVIL. APELAÇÃO. AÇÃO REIVINDICATÓRIA. PRELIMINAR DE IMPUGNAÇÃO AO VALOR DA CAUSA. IMPOSSIBILIDADE DE LIVRE ESCOLHA. CRITÉRIO OBJETIVO. VALOR DO IMÓVEL. REQUISITOS NÃO ATENDIDOS. CONJUNTO PROBATÓRIO INDICA A REALIZAÇÃO DE NEGÓCIO JURÍDICO ENTRE AS PARTES COM DEPÓSITO DO VALOR EM CONTA CORRENTE DO APELANTE. PEDIDO CONTRAPOSTO DE USUCAPIÃO. POSSIBILIDADE. POSSE JUSTA E PACÍFICA COM BENEFÍCIOS DE CARÁTER PRODUTIVO POR MAIS DE 10 ANOS . APLICAÇÃO DO DISPOSTO NO ART. 1.242 DO CC/02. APELAÇÃO IMPROVIDA. 1. Cuidam os presentes autos de apelação cível interposta por Francisco Gil Cruz Alencar e Elda Maria Nogueira Alencar, contra sentença oriunda do Juízo da 2ª Vara Cível da Comarca de Juazeiro do Norte/CE, que julgou improcedente a ação reivindicatória c/c indenizatória por perda e danos manejada pelos ora recorrentes, bem como julgou procedente o pedido contraposto de usucapião do imóvel objeto da lide em favor da ré/recorrida Gesiely Ribeiro Pinheiro. 2. Da preliminar de impossibilidade de alteração do valor da causa para o valor do imóvel que se pretende reivindicar . 2.1. Retificação do valor da Causa. Possível a correção do valor da causa pelo juiz, a teor do art . 292, § 3º, CPC. Adequado o critério utilizado pelo juiz para modificação do valor causa com base na avaliação do imóvel para fins de ITBI (Agravo de Instrumento Nº 70072659311, Décima Nona Câmara Cível, Tribunal de Justiça do RS, Relator.: Mylene Maria Michel, Julgado em 31/08/2017). 2.2 . Preliminar Rejeitada. 3. Do mérito. 3 .1. Como bem consignou o Juiz em

Processo	0206705-24.2022.8.06.0064
	primeira instância, a instrução processual indicam a aquisição do imóvel de boa-fé por parte da ré/recorrida, bem como a parte apelada quitou ITBI e passou a exercer a posse de forma mansa e pacífica. Ressalte-se a existência de 04 comprovantes de depósito na conta corrente do autor/recorrente Francisco Gil Cruz Alencar no Banco Bradesco, conta esta indicada como destino de pagamento no aditivo no contrato de intermediação. 3.2. No mesmo sentido da prova documental, verificou-se, também, a prova testemunhal com o depoimento de José Adriano Ferreira de Oliveira que confirma a que a Socil teria poderes para vender terras localizadas na Fazenda Pedra de Fogo. As testemunhas Antônio Félix da Silva, Antônio Joaquim da Silva e outras também são no sentido acima. 3.3. Afora a prova documental acerca da validade do pacto, da quitação dos tributos devidos e dos depósitos bancários, deve-se destacar a correspondência eletrônica enviada pela filha dos recorrentes ao Sr. Henrique, intermediador do pacto, no qual ela confirma a validade da intermediação e do aditivo mencionado acima. Registre-se, ainda, que o referido e-mail não foi contestado pelos autores/apelantes. 3.4. Assim, diante do conjunto probatório não houve ferimento aos artigos 653 e 722 do CC/02. Bem como não foi constatada posse de má-fé, motivo pelo qual foi a declaração do a usucapião do imóvel em atenção ao previsto nos arts. 104 e 166, ambos do CC/02. 3.5. A ação reivindicatória funda-se no direito de sequela e requisita prova do domínio do reivindicado, individualização do bem e posse injusta do réu. - Circunstância dos autos em que a prova pericial concluiu não ter havido ofensa à propriedade do autor; e se impõe manter a sentença de improcedência. (Apelação Cível Nº 70079199014, Décima Oitava Câmara Cível, Tribunal de Justiça do RS, Relator: João Moreno Pomar, Julgado em 25/10/2018). 3.6. Por fim, qualquer vício formal ainda existente na transação que impossibilitasse a feitura de uma escritura pública de compra e venda foi sanado pelo reconhecimento do usucapião extraordinário, pois o recorrido possui de boa-fé e de forma mansa e pacífica o imóvel a mais de 10 (dez) anos, tendo inclusive realizado benfeitorias de caráter produtivo. Acertada a sentença ao aplicar corretamente o previsto no art. 1.242 ante o preenchimento dos requisitos. 3.7. APELAÇÃO CÍVEL. AÇÃO REIVINDICATÓRIA. AÇÃO DE USUCAPIÃO CONEXA. PRELIMINARES DE CONTRARRAZÕES. REJEITADAS. EXCEÇÃO DE USUCAPIÃO. POSSE AD USUCAPIONEM. PROVA QUE CONFORTA A TESE DEFENSIVA. MANUTENÇÃO DA SENTENÇA. (Apelação Cível Nº 70078856556, Décima Sétima Câmara Cível, Tribunal de Justiça do RS, Relator: Giovanni Conti, Julgado em 25/10/2018). 3.8. Por justo título, para efeito da usucapião ordinária, deve-se compreender o ato ou fato jurídico que, em tese, possa transmitir a propriedade, mas que, por lhe faltar algum requisito formal ou intrínseco (como a venda a non domino), não produz tal efeito jurídico. Tal ato ou fato jurídico, por ser juridicamente aceito pelo ordenamento jurídico, confere ao possuidor, em seu consciente, a legitimidade de direito à posse, como se dono do bem transmitido fosse ("cum animo domini") (REsp 652.449/SP, Rel. Ministro MASSAMI UYEDA, TERCEIRA TURMA, julgado em 15/12/2009, DJe 23/03/2010). 4. Apelação conhecida, mas improvida. (TJ-CE - AC: 00369538520148060112 CE 0036953-85.2014.8.06.0112, Relator: CARLOS ALBERTO MENDES FORTE, Data de Julgamento: 29/07/2020, 2ª Câmara Direito Privado, Data de Publicação: 29/07/2020). [Grifei]. DIREITO CIVIL. APELAÇÃO CÍVEL EM AÇÃO DE REIVINDICAÇÃO DE BEM IMÓVEL. SENTENÇA PROFERIDA SOB A ÉGIDE DO CPC/73. RECONHECIMENTO DA POSSE COMO JUÍZA PELO JUÍZO DE ORIGEM, P OIS FUNDADA EM ESCRITURA PARTICULAR DE COMPRA E VENDA. IMPOSSIBILIDADE DE PROCEDÊNCIA DA REIVINDICATÓRIA. ART. 1228 DO CC/2002. SENTENÇA MANTIDA. APELAÇÃO CÍVEL CONHECIDA E NÃO PROVIDA. 1. A ação reivindicatória, fundada no Art. 1.228 do Código Civil, exige a individualização da coisa, a prova do

Processo	0206705-24.2022.8.06.0064
	domínio do imóvel e a configuração da posse do detentor como injusta. 2. A posse fundada em escritura particular de compra e venda, ainda que não tenha sido levada ao registro notarial competente e que não se possa falar de transferência da propriedade nos termos da lei civil, se configura como justa. 3. Não se pode desconsiderar que o negócio jurídico gera efeitos perante as partes contratantes, razão pela qual não é possível considerar como injusta a posse indireta da apelada, o que obsta a pretensão reivindicatória dos apelantes, em conformidade com a jurisprudência deste e de outros tribunais, inclusive do Superior Tribunal de Justiça. 4. Sentença de mérito mantida. Recurso conhecido e não provido. (TJ-CE - Apelação Cível: 0033999-37.2012.8.06.0112 Juazeiro do Norte, Relator.: LIRA RAMOS DE OLIVEIRA, Data de Julgamento: 25/10/2017, 3ª Câmara Direito Privado, Data de Publicação: 25/10/2017). [Grifei]. Ressalte-se: os elementos probatórios permitem assegurar que, além de preenchido o lapso temporal, a posse exercida pelos demandados sempre se deu com animus dominii caso em que apesar da propriedade registral do autor, ora apelado, sobre o imóvel objeto da lide, tal circunstância não basta para autorizar a procedência do pedido reivindicatório, justamente porque a posse dos recorrentes não é injusta, já que fundada na aquisição da propriedade por intermédio da usucapião. Pelo acima exposto, impõe-se a reforma da sentença vergastada, com a fundamentação aqui esposada, porquanto afastada a posse injusta dos promovidos. Posto isso, DAR-LHE PROVIMENTO, reformando a sentença de 1º grau, para julgar o feito improcedente. É o voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO

Processo	0206705-24.2022.8.06.0064
	14pt;">Relator </p><p align="center">&#160;</p><div id="sdfootnote1"><p class="sdfootnote-western" style="text-indent: 0cm; margin-left: 0cm; background: transparent;" align="justify"> 1Art. 1.200, CC. É justa a posse que não for violenta, clandestina ou precária.&#160; &#160;</p></div><p style="text-indent: 8%; text-align: center;">
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 </p><p style="text-align: center;"> &#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>
Processo	0205188-47.2020.8.06.0001
Número de ordem	146
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Compra e Venda
Polo ativo	JOSE HOMERO TERTULIANO DE BRITO CAOA CHERY AUTOMOVEIS LTDA. PREMIUM COMERCIO DE VEICULOS E PECAS LTDA
Advogado(s) - Polo ativo	FRANCISCO ALEXSANDRO BATISTA SANTANA - (CE20128-A) FRANCISCO ALEXSANDRO BATISTA SANTANA - (CE20128-A)
Polo passivo	PREMIUM COMERCIO DE VEICULOS E PECAS LTDA CAOA CHERY AUTOMOVEIS LTDA. JOSE HOMERO TERTULIANO DE BRITO
Advogado(s) - Polo passivo	JORGE FERRAZ NETO - (CE6246-B) JORGE FERRAZ NETO - (CE6246-B)
Terceiros	Jose Alfredo Firmeza de Sousa

Processo	0205188-47.2020.8.06.0001
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	style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">II. QUESTÃO EM DISCUSSÃO: Há duas questões em discussão: (i) verificar se houve omissão do acórdão quanto à concessão da gratuidade da justiça em favor do Apelante; (ii) analisar se houve omissão no tocante à manutenção da condenação em danos morais.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> III. RAZÕES DE DECIDIR</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(i) Os embargos de declaração possuem finalidade restrita, cabendo apenas para sanar obscuridade, contradição, omissão ou erro material (CPC, art. 1.022).</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(ii) No intuito de assegurar maior clareza ao dispositivo e&#160; aos seus efeitos, mostra-se pertinente registrar a suspensão de exigibilidade dos ônus sucumbenciais&#160; em relação ao Embargante (art. 98, §3º, do CPC), não obstante a ausência de prejuízo em sua omissão.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(iii) O acórdão embargado foi claro ao reconhecer, na fundamentação, a caracterização do dano moral, sendo desnecessária a repetição expressa no dispositivo, que se limitou a registrar a extensão da reforma parcial.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">IV. DISPOSITIVO: Embargos de declaração parcialmente acolhidos sem efeitos infringentes, apenas para acrescentar, no dispositivo do acórdão embargado, a suspensão de exigibilidade dos ônus sucumbenciais em relação ao ora Embargante (art. 98, §3º, do CPC).</h3><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer dos embargos de declaração para lhes dar parcial provimento, sem efeitos infringentes, nos termos do voto do Desembargador Relator.</p><p style="line-height: 1.2; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">

Processo	0205188-47.2020.8.06.0001
	nove mil, novecentos e noventa reais). Porém, em 29/06/2019, o referido veículo passou a apresentar defeitos no câmbio, ocasião em que realizou serviços de reparação. Acrescenta que, em 17/12/2019, o carro ficou sem potência, sendo levado para a primeira requerida, mas sem previsão de entrega. Nesse contexto, alega a caracterização de vício oculto não reparado, razão pela qual postula a restituição dos valores pagos pelo bem (R\$ 69.990,00); indenização por danos materiais no valor de R\$ 100,00 (cem reais), referente à quantia despendida com serviço de reparo no veículo em questão; e indenização por danos morais em R\$ 20.000,00 (vinte mil reais). Na decisão (ID 17108835), o feito foi julgado parcialmente procedente, condenando-se as Promovidas nos seguintes termos: DIANTE DO EXPOSTO, julgo parcialmente procedente a ação para condenar as requeridas a pagarem ao requerente (I) restituição do valor de R\$ 69.990,00, (sessenta e nove mil, novecentos e noventa reais), acrescido de correção monetária pelo INPC desde o efetivo prejuízo e juros moratórios de 1% ao mês desde o evento danoso, desde que o requerente efetue a devolução do veículo comprado com este valor supra ou compense os valores recebidos por força do acidente que danificou o veículo, certificado as págs. 214-236, (II) indenização pelos danos materiais no valor de R\$ 100,00 (cem reais), acrescido de correção monetária pelo INPC desde o efetivo prejuízo e juros moratórios de 1% ao mês desde o evento danoso e (III) indenização pelos danos morais no valor de R\$ 3.000,00 (três mil reais), acrescido de correção monetária pelo INPC a partir deste arbitramento e de juros moratórios de 1% ao mês desde o evento danoso. Condeno as requeridas ao pagamento das custas processuais e dos honorários sucumbenciais, estes no valor de em R\$ 7.500,00 (sete mil e quinhentos reais), consoante art. 85, §2º, do CPC, acrescido de correção monetária pelo INPC desde a data da propositura da ação e de juros moratórios de 1% ao mês desde o trânsito em julgado da decisão. A Promovida Caa Chery interpôs recurso de apelação no ID 17108848, sustentando não estarem presentes os elementos da responsabilidade civil para a condenação nos termos fixados na sentença. Destacou a necessidade de perícia técnica para aferição das alegações do Autor, o que, contudo, restou prejudicado em razão do superveniente sinistro que ensejou a perda total do veículo. Alegou que os problemas mecânicos identificados foram integralmente reparados antes do referido sinistro e que não houve ato ilícito que ensejasse a reparação moral ou material, especialmente considerando que a indenização já fornecida pela seguradora é apta a cobrir a perda do bem. Acrescentou que, caso mantida, a indenização fixada a título de danos morais deve assumir valor razoável e proporcional ao suposto dano e que os danos materiais alegados não foram comprovados. Destacou, por fim, que eventual restituição de valores deve considerar a tabela FIPE. A Promovida Premium Comércio de Veículos e Peças Ltda. interpôs o seu recurso de apelação (ID 17108894), argumentando que os reparos realizados no veículo foram satisfatórios e dentro do prazo legal, razão pela qual não subsistiria pretensão para a rescisão contratual ou restituição do preço conforme artigo 18 do Código de Defesa do

Processo	0205188-47.2020.8.06.0001
	Consumidor. Alegou a desnecessidade de indenização por danos morais, apontando que não houve comportamento ilícito que caracterizasse, aos olhos da lei, tal obrigação. Além disso, questionou a possibilidade de pleno cumprimento da determinação de devolução do veículo no estado em que se encontrava no momento da venda, uma vez que o automóvel sofreu perda total. Pugna, ao fim, pela improcedência da demanda ou, subsidiariamente, pela redução do quantum indenizatório e pela avaliação do bem pela Tabela FIPE para fins de restituição. O Autor também interpôs recurso de apelação (ID 17108899), argumentando que a indenização fixada em R\$ 3.000,00 (três mil reais) é insuficiente à reparação dos danos morais, tendo em vista o abalo moral, as dificuldades enfrentadas e a necessidade de levar a questão para solução judicial. Argumentou que o valor da indenização deve ser majorado para R\$ 15.000,00 (quinze mil reais), aplicando os princípios de proporcionalidade e razoabilidade, considerando o sofrimento e as perdas decorrentes dos defeitos e consequente perda do bem. Além disso, busca a compensação da diferença entre o valor recebido da seguradora (R\$ 56.846,84) e o valor de mercado do bem à época do sinistro, estipulado em R\$ 69.990,00, o que corresponde a R\$ 13.143,16. Na sessão de julgamento realizada em 18 de junho de 2025, este Colegiado deu parcial provimento aos apelos das Promovidas, reformando parcialmente a sentença para: a) julgar improcedente o pedido de rescisão contratual com restituição dos valores pagos na compra do veículo, ante a impossibilidade fático-jurídico de estabelecer o status quo ante; b) julgar improcedente o pedido de indenização por danos materiais, em face da ausência de prova destes. Na oportunidade, negou-se provimento ao apelo do autor. Decidiu-se, portanto, nos seguintes termos ementa

Processo	0205188-47.2020.8.06.0001
	'Times New Roman',serif; color: #1a202c; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">e acórdão no ID 23881253):</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">EMENTA: DIREITO CIVIL E CONSUMERISTA. APELAÇÕES CÍVEIS EM AÇÃO REDIBITÓRIA C/C REPARAÇÃO DE DANOS. PRETENSÃO REDIBITÓRIA PREJUDICADA POR CULPA DO AUTOR. IMPOSSIBILIDADE DE RESTABELECIMENTO DO STATUS QUO ANTE. DANOS MORAIS CONSTATADOS. INDENIZAÇÃO PROPORCIONAL. DANOS MATERIAIS NÃO COMPROVADOS. SENTENÇA PARCIALMENTE REFORMADA.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> I. CASO EM EXAME: Apelações cíveis interpostas contra a sentença que&#160; julgou parcialmente procedente a ação redibitória c/c reparação de danos originária, condenando as Promovidas à restituição do preço pago pelo veículo objeto da lide (R\$ 69.996,00), bem como ao pagamento de indenização por danos morais no valor de R\$ 3.000,00 e por danos materiais no valor R\$ 100,00.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">II. QUESTÃO EM DISCUSSÃO: O cerne das controvérsias recursais reside na análise dos seguintes pontos: (i) se o Autor tem direito à rescisão contratual com devolução de valores pagos em face de vício redibitório; (ii) se restam caracterizados os elementos da responsabilidade civil das Promovidas na situação examinada, sob a ótica do Direito do Consumidor; (iii) se restou comprovado dano indenizável; (iv) se é cabível a majoração do quantum indenizatório arbitrado a título de danos morais.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> III. RAZÕES DE DECIDIR:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> (i) C onsiderando-se o quadro total do problema apresentado pelo veículo (desde sua primeira manifestação, em junho de 2019, até a efetiva solução do problema, em janeiro de 2020), é inegável que o problema apontado não foi solucionado a contento no prazo legal.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> (ii) A extrapolação do prazo de trinta dias para que o vício fosse sanado pode ser observada, inclusive, no cálculo do último período em que o automóvel permaneceu nas dependências da oficina da concessionária, uma vez que o veículo deu entrada em 18/12/2019 e só foi liberado em 25/01/2020, sem que fosse apresentada justificativa plausível para essa demora.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(iii) O </p>

Processo	0205188-47.2020.8.06.0001
	background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Autor detinha o direito potestativo de efetuar alguma das opções previstas no art. 18, §1º, do CDC, postulando, sob esse fundamento, a restituição do valor pago mais a reparação por eventuais perdas e danos. Não obstante isso, a pretensão redibitória restou prejudicada por culpa exclusiva do Autor, uma vez que a perda total do veículo no acidente de trânsito em que se envolveu o Demandante inviabilizou a devolução do bem à concessionária e, conseqüentemente, a restauração do status quo ante das partes. (iv) As opções elencadas no art. 18, §1º, do CDC não têm o condão de sancionar o fornecedor, mas sim de equilibrar a situação das partes, afastando o prejuízo dos interesses do consumidor sem abrir espaço para o seu enriquecimento sem causa. Dessa forma, não deve o fornecedor sofrer ônus superior ao que seria devido em razão de sua conduta, sob pena de distorção dos institutos de proteção consumerista. (v) Ao se envolver em acidente que resultou na perda total do veículo, o Promovente tornou juridicamente impossível a rescisão do contrato com restituição do valor pago, pois tal provimento resultaria em inequívoco prejuízo ilícito ao fornecedor. (vi) É oportuno recordar a premissa do Duty to Mitigate the Loss (ou dever de mitigação do próprio prejuízo), aplicável ao caso sob a perspectiva de que as partes devem guardar a boa-fé nas relações contratuais. No caso, por haver agravado a situação da fornecedora, o Autor não pode compeli-la a receber um veículo que sofreu perda total em razão de sinistro para o qual não concorreu, nem receber a restituição de valores pagos sem devolver veículo algum. (vii) São evidentes os relevantes transtornos resultantes dos problemas apresentados pelo veículo, o qual teve que ser levado várias vezes para avaliação e reparo. Além disso, observa-se perda de tempo útil da parte autora, que teve de acionar o Poder Judiciário para solucionar a contenda. (viii) O valor de R\$ 3.000,00 (dois mil reais) estipulado pelo Juízo a quo obedece aos critérios da proporcionalidade e da razoabilidade, bem como atende ao caráter dúplice da indenização por dano moral, qual seja, compensatório e pedagógico; e, ainda, às especificidades do caso concreto, não havendo fundamentos para sua modificação. (ix) A comprovação e a fundamentação do dano material alegado é imprescindível para a formação do convencimento do Julgador. De sua ausência, infere-se a inexistência do prejuízo em questão, o que elimina a obrigação de pagamento de indenização a título de dano material. (x) No caso, o Autor meramente enunciou despesas que teria experimentado com os deslocamentos para a concessionária para o reparo do veículo, a título de gastos com combustível ou com táxi, sem comprovar de forma específica tais gastos. Tratou-se, portanto, de uma mera estimativa no valor de R\$ 100,00 (cem reais), inexistindo elementos suficientes a lastrear tal valor.

Processo	0205188-47.2020.8.06.0001
	variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">IV. DISPOSITIVO: Apelo do Autor conhecido e desprovido. Apelos das Promovidas conhecidos e parcialmente providos.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 21pt; margin-bottom: 0pt; padding: 0pt 0pt 12pt 0pt;" dir="ltr">Inconformado, o Autor, ora Apelante opôs os Embargos de Declaração em tela (ID 24455891), argumentando, em síntese, que a decisão foi omissa quanto a: a) suspensão da exigibilidade dos ônus sucumbenciais fundados na concessão da gratuidade da justiça em seu favor e; b) a manutenção da condenação da parte requerida ao pagamento da indenização por danos morais.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr"> Postula, diante disso, que a Corte se pronuncie expressamente sobre esses pontos, suprimindo as omissões identificadas acima, a fim reconhecer, de forma expressa, a suspensão da exigibilidade das verbas de sucumbência impostas ao autor, nos termos do art. 98, § 3º, do CPC, em virtude da gratuidade da justiça concedida; e a confirmação da condenação das promovidas ao pagamento da indenização por danos morais no valor de R\$ 3.000,00, conforme mantido na fundamentação do voto do relator.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">Contrarrazões no ID 26765379.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">É o relatório.</p><p style="line-height: 1.3800000000000001; text-align: center; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Em

Processo	0205188-47.2020.8.06.0001
	matéria de processo civil, os embargos de declaração constituem um instrumento recursal manejável pela parte sempre que esta sentir a necessidade de um aperfeiçoamento formal da decisão judicial, desde que a situação se enquadre em pelo menos uma das hipóteses de cabimento previstas no art. 1.022 da Lei Adjetiva. Diz-se, por essa razão, que os embargos declaratórios são dotados de finalidade específica cognição restrita), não tendo como objeto a reforma ou a anulação da decisão impugnada, mas sim o esclarecimento de obscuridade, a eliminação de uma contradição, a integração de eventual omissão ou a correção de um erro material, como se pode observar a partir da previsão normativa constante no dispositivo acima apontado [grifo nosso]</p><p style="line-height: 1.2; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Art. 1.022 . Cabem embargos de declaração contra qualquer decisão judicial para:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr">I - esclarecer obscuridade ou eliminar contradição</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr">II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr">III - corrigir erro material.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> Parágrafo único. Considera-se omissa a decisão que:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> </p>

Processo	0205188-47.2020.8.06.0001
	size: 12pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">>I - deixe de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicável ao caso sob julgamento; margin-left: 113pt; text-align: justify; margin-top: 6pt; margin-bottom: 0pt;" dir="ltr"> >II - incorra em qualquer das condutas descritas no art. 489, § 1º. 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">>O objetivo do recurso em questão é, em outras palavras, o aperfeiçoamento da própria >jurisdictio>, de modo que a essencial função de >dizer o direito >seja concretizada de forma clara, precisa e completa, corrigindo-se eventual >error in procedendo >decorrente de obscuridade, contradição, omissão ou erro material.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">>No caso, alega-se que o acórdão foi omisso quanto à: >a>suspensão da exigibilidade das verbas de sucumbência impostas ao autor, nos termos do art. 98, § 3º, do CPC, em virtude da gratuidade da justiça concedida; >b>confirmação da condenação das promovidas ao pagamento da indenização por danos morais no valor de R\$ 3.000,00.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> >Quanto ao primeiro ponto, registro que não havia necessidade de manifestação expressa no acórdão embargado, porquanto o benefício já havia sido expressamente deferido pelo juízo de origem e mantido em segunda instância. A suspensão de exigibilidade prevista no art. 98, §3º, do CPC é consectário do benefício em questão, inexistindo prejuízo na ausência de sua menção expressa no dispositivo.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">

Processo	0205188-47.2020.8.06.0001
	Não obstante isso, no intuito de assegurar maior clareza ao dispositivo e&#160; aos seus efeitos e considerando os argumentos do Embargante, entendo que é pertinente registrar a suspensão de exigibilidade dos ônus sucumbenciais em relação ao Recorrente. Assim, o recurso merece acolhimento quanto a esse ponto, sem a atribuição de efeitos infringentes.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Quanto à alegada omissão sobre a manutenção dos danos morais, o pleito não merece prosperar. O acórdão embargado foi claro ao consignar, na fundamentação, que o dano moral restou caracterizado, mantido o reconhecimento do dever de indenizar. O dispositivo, ao concluir pelo parcial provimento do apelo, restringiu-se, corretamente, a consignar a reforma apenas naquilo que foi objeto de modificação, sendo desnecessário repetir, de forma expressa, os termos da sentença que foram mantidos.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Cumprе salientar que, em sede de técnica de elaboração de julgados, o dispositivo deve refletir a extensão da reforma ou manutenção do decisum recorrido, sendo suficiente, em situação de parcial provimento, a indicação daquilo que foi objeto de alteração na sentença, subsistindo, por consequência, os demais capítulos não modificados. Dessa forma, é possível constatar que inexistе qualquer vício decisório a ser suprido quanto a esse ponto.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Diante do exposto, CONHEÇO dos presentes embargos declaratórios para lhes DAR PARCIAL PROVIMENTO sem efeitos infringentes, apenas para acrescentar, no dispositivo do acórdão embargado, menção à suspensão de exigibilidade dos ônus sucumbenciais em relação ao ora Embargante (art. 98, §3º, do CPC).</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">É

Processo	0205188-47.2020.8.06.0001
	como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Fortaleza, data da assinatura digital.
</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Relator </p><p>
 </p><p>&#160;</p>

<p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0239653-43.2024.8.06.0001
Número de ordem	147
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Práticas Abusivas
Polo ativo	MARIA JACY DE OLIVEIRA
Advogado(s) - Polo ativo	GUILHERME CAMARAO PORTO - (CE27489-A) PEDRO EMMANUEL ALEXANDRINO DE ARRAES ALENCAR - (CE48596-A) TABITHA BRITO BARROS - (CE39082-A) THIAGO PARENTE CAMARA - (CE27631-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0239653-43.2024.8.06.0001
	IB9+912gQdthSgBm3PV1FnYCIOVrGESpcLAFnQSVlJ0OakY4GhoOGqtpRRYvAbHDKCo rhogMfDGcPQaNq3MQohiskggQUUnwz3kWWDDH44gR/lt4eDH4POSDUw8oE37C2hyebL9 Lo+CqaqzXKANYCzy3oTE4t/DuvQd3HDh6w/vFHhEHJVvrtBUxKfgx4YGX/m+efvveeytli Q1NAKVEajU8GcJSJ3WdDAXuqxBPau/FwNapa1xgJhmPxsch4JBEfjcciqVhcidVOaGDT w5a0VBBBIDYJsiKqRiWLBDBT3vDh4dwJauTBXhg01OMg+FtHNhZySnYM+wun8OV4fa6 nS6v2+1xOb3AkXa7w243gHgiD5eLtmI7WZ+3plZils6f+9AfH3nznbeuvvxS81/aVJLlWnSykh 2YorFjLU6W1YcfeezCiy+sK6CIRmKGTToXGQ5FYdDwUHBkbGx0fGwyP9wRH+sNjl/HRiB KP6IkEkjXWUMB8CCbFMhT8K9DIjsPYBsERxFhjBYz3buCdEykgl/IQZLmRFVAo/3Yr/dOK Ga9jhAi8YjZpUn0mrNK8jRkdu5HCy9izJn+PKzPcH8nyZOX5/TmYmmGYsum4JnnL7JtF9+J e/Ki8vXzBnOmY+TBDrMTRKbx5ZtCCRbaJvaUKICaHCP3zyuReLS8tWllyAtVdc/strL3/We DCsJUbIUeiPyPyq8xoFvrLIGtkl7CfFM1gHEk1BgKmlu3B818S7pfH9YcuwTzBP2PBZ6ix9 WHCBhQNiGJHYLpOhcGAY1KtqKT5ML2lzU3Bn3YwZMUqLNIr9VMKgxg02QYs672CITN FfZs+568lr5s2dBSrox3d8/5cPP1KSX5idAxaXweoLqyS8YZogdnRSRshjDLJQK4SMbeeGj V/0DQz+4v47VRU4mn3hrbd+9/nfUQq5eYogTM4IJZAEAbgfjkBS2skiAjlRUCcUyadYRs kgSS2E+QHH8wyLDvgL/A9xMQ0G0w5fQOhjkm+xusVsQqcpZvE6vhoUB2fSomUzKLTJvE YqpulJMz6kho711YX/Fnwy4xfFZUCDwLVXXPzAnx998re/ZK1NI8Z6+MmjIDbNikUQQhiW Naao5ta29zd89rN7b2cQWENm/WfbH9v8dm16zdhclPWEXGhicZylbJEfYbCvQpKWQMW3 JRJhkNsS1YVzbiab5hiKHD5N2IAiyUgTf2l+NVqJt4gwrEZEoDDDGNYF+A6gFLD4gUEyST oT4aAK/FIU0STb5qajv3vuqYfvvc/iFhfOnN7W2v3Qnx776Y/uNBEJcxjmV8Oi7ArtLNSaJkQ 8ofzxiWeuv/rSLL8PVn/sWMODb/xPb/EYzQu6AkvmUPpYLFyb3gYJauCtpjdAjtmkLWRCm 2k2sN6K32hF40y8IDPNmiC/iAfETH6hp/kF3oy5I22bKYskluThbznYLossyS319HbMFIWKp TcatxS/WPST276rMeZ31pzz4GP/89b7H1583jlvjgZnmzt4ksZMdm0IkqF/s0fHlmyeMGsqd M0TRkfi/ziusf2eduRWwLVj29glXHm5KUWBMm6gphHQhuc7zBNHNqkMfPjiHE6zoJVAo2j +sBBFAkCUJYHZZGA0ohOwLFOYCICZh2uTgdndFBTyrQMi0ksTn3ANzRBFbcwLXiSj VKSeOfBm5bqiSy5craPEbd+95sHfP1JRXDZ9enX6GcccfGJHi6j0yibfv6lVySHfc1ZK4EQ oCn+9MTTjUttjkelVE0BaUpSfA9WT0NHryBjNqOPhODKycs8Ogkyb8SkiWKHJ7GmRHz TQ4JD0tJ4kwmxAyYuoQK2sSzZ+WacIjWH3g+zOYDuQf07A2RZWhwUYiTRizYDIg+YGS 1B8++FtRXu68BVMy3c7rrr7iry+t/XnuPYEsn4Z0Ns0AEzJiWnQ30PY9B443N/3ozrtYGnQj8 7fx3n25dyNXLtQ02Rsr16ZH1VNEI5Cdk7wRjH+YPZqeODp8MoZIDlg0EIVG+B8/zWR4me ZThj0icCmDSWicYrAGVrAqz5g8K9t12W7GnKYq6pjd4aYAZ4B2ZtrYYo4gCoWYX0sf6ZbY m4ZuFR0QtQVkwCoE2xwBHcns/c3fnngs+1dFhVzkJpV3LF302DPP/eL+e1iGMBht6QATPR hN4OPu7m5/cOPbr3+yoDbCQTe+NmOR+7YgPFFKSpDmVM6jJ9e6GyZG6J1Ak2RIWkKCy OlxPGcO0nEKsCBDmc5YDg0fcfbg3+KUspszLOEco9QLvGTFTGTGMFG2z2UxyvwDpUVW E0OJE4MKFnJwTCTCMIGMu5kY1nMaKas2BUQTMC1WP9iFE82aBAwDrJmEnVvFV9Yc mupYZNYbEYnRoelXPrmVMPDTz/9u5/8WHLx5516WmtL1wtrX7/xmu8QK46BBTARwJ2R jyWePyFN884ddnkijJTZ44da3zo1aebckcpWjR1rboAdSqrne11IRDbpnRBXAjwLUE2QRc ZIBkEnvJYB4H+W0x5mfWx+BSVuNcvWZ2P+1JOLiMQmbx3PmZJ+S8qsaMM+BqMloJmi +Uj0wPhV/3/UJKjGvRcamrXWhszGw/Xtg6OpCNhouYpEPGesnQDThxlodeUgSsFwgmSr OqBU8wXeCNHJyCYckgRckZzNt9m4ufz7379u/SnHHZ9Vf++uFHNm/fsXzxQpOgLGZboXQ0 8qedffaOwIO+slcvASo0Of7ur8/scLVSEnCPHIEJQ3WVRuERZU2ejqrkuDcMzGnqnMYyTM 4TEAmQINZJ1AS7UOA6gcNAG64BJreJzjQzXerJ7iUr6OJS3bl9nd0CF6edSE9iowEj4ya0G cd3HzwQQRJoF2Fen61unj14rY/tDUo5rHRwN6uoXy9r8zQcDyTxcfAwLGDLe+9C9Oqifs2 BAmxdQimApzPTiDyngO9dyRDys/zDv/gtV+p+v2G675/eNP5WdnVVRUWL0TDpNev3FzZ 9/gb+67F3gxmTQee/bI9Yldej6D5RK0EbYRGpxFV0UcVIBcbzNq56GiGClOcjB4OSSHEKb ITGI9bHK6qKCMOiZryFtc6p98alHvjB8jLSJrgj3UyYlvi/o5SuGRBs5+QB5yKX07/bf6jlgKy5 NBWnvzMG7OdLlvnN+IFrBCVs+zdV5qXOkv6/GDGYqok90naMIYJyAGV9641rEmOMzRr4 vSDHmoZYODkW8UZRyOihD14qyi2dsaCmpKTO0vPPf/Kftb+890dOtwNjrabG9g8++eyB++ 4WBSYSib74+vvPtH0QLVlxtRxeQDNaBjMkJKozuowQzsr653Nk5RQZtJUsG9OdB+oBsF kYymzmVKQLTxoZhm53osurp1pL05s6klpjB5jkOhTB7CaZn02RLxaJE4KbRm31WqsW1DH 4biYjldAbp4W/3ib+3o57rJzmrz6Yr2m1v7Xg8G4Xq0GApwFvgZpoErylTTPGslkAE+H4 qDDBLJsNsgXXuen9ybafv/znH1z3VVQWLl80t7mz/emXX77zlu+yja1td//P03fddWt2wCenk pHB8Ec7t44xo0jwGOABMCpD8TqwlqvjTglg4y2yrhpOsqqbbM1lj2QopkY0PEBJVsemikfs4 1zOLrbAX55/9dXumpnGyHZVoUQwFBQDy3Pow4gRdMYtBlhGJ/MTe3emfFfLiMKqiBlciA 58yNrh6RZA/Zam5YAv55S5HhRiXL9D2ve/qV/Tz9S7EOTrBCpmQ5Y/UMFHilMauAQgl4u mp5mE2IATR/adbBux+4DIRWF8UT05issue+DhP7329vtsLBwJJ2Ljo0NUWYnBsO4c34+uux rxt9jOgRaUzTEKoT6LfSqaxogQ1CpwYUdV3KbtIY2O9upkKDmfAliEacB6sbalULATWJNbl XvzbWJ+sR4P23SKI54vR+PiC7cxluRcFgEHfcq0WBLZNoByU7YcmxZLARcib2X4fYcW3O W71gZ2AIErhweyTEpbJH+SdYZrg++2kk/f4o1Q72QOGwniB+DzN7/q5eGyDYxZccwWfov DSGBi4TaGprbpe+vuPSMVUuATHZJGotENNMGRihZ0yf8pv7f/T8q2/tOXLS9muudNqI0 1YudUmOHZ7x0C6hU/cimrhsphUgY3AOkYA9vbMyDg8raRCbGRQNYKYCWoUTU6hgp1K eM2Xlpb7RbCacTHFYaFVQJxKOA4PURRxaZFSq5GlaxIUabGH881bP+TylMTS4Ft4cpb0 6srXOs1oWchxKREElzHmKtS8Ovlwe3/d23o9fHzi71lj1vwxuyJA+VmKZ6EkSj3IH0QBDqxp GcywB/Bxj6Jqng793xhXfv+Vqu1OEA9p5oO6Nd95ZtnDe6acuZRMGq6go+eW9dzzyuv//fC ffi/9W7J87nkLZv1O+dH3n3mwzjGAAQR+BJY8BjuiWDlGf8HgO8qTwlyVx7mWWj2apaUyJ ok50nVxTfcmWl7LRnqiDt9nE6DFgFeEmCxDC+IBhk6pfn+EZdh2QLJRtpUYIKNI07JjCRRq cnjH8Vshb2OpXYtCKqIN6iEkLEw+Epp6sC6zDtDZr5dDyVOO98ZihTveS/pZKM+GseE9JN uGyAzzQnSBmqQRMYYAwG76CkXubm8jY33Xotb4fTod//9LPPNm257fprJtdUUGXsU0jX WEG46YarP16/8cE/PPqTH96R5fcsXjbn0Eb7173SF9V0iSEfYQ5BjWdDikpKwqYAE4s6N Chi1VHXc00LJjTM4LBSqvv8hXPTneLjnM4RjwLoc4HjshA3KhhLMcUBNOp8IMCnV5AvC H4aciznOlqGgikktM7qHkTvrCu93ihzSxWRKSQm+OeOvFCV2b8i8K8TkebRgSmUTNj52zs

Processo	0239653-43.2024.8.06.0001
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	pela embargante,&#160;demonstrou ter&#160;tomado ciência do saldo do PASEP &#160;ao realizar o saque por ocasião de sua&#160; aposentadoria, em 12 de março de 2002 </p> <p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p> <p style="text-align: justify;"> 3. É válido ressaltar que o vício de omissão ao qual se refere o inciso II do artigo 1.022 do Código de Processo Civil somente fica caracterizado quando i) o julgado não aprecia ponto ou questão relevante sobre a qual deveria ter se manifestado; ii) não estiver devidamente fundamentado (artigo 489, § 1º, do CPC); ou iii) deixar de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicáveis à hipótese (artigo 1.022, parágrafo único, I, do CPC). Com efeito, ao confrontar as alegações contidas nos embargos de declaração e o inteiro teor do acórdão impugnado, verifica-se, de plano, que são infundados os argumentos consistentes na omissão apontada. </p> <p style="text-align: justify;"> 4.&#160; Conforme esclarecido no <em style="font-family: &quot;times new roman&quot;, times; font-size: large; text-indent: 8%;>decisum , o termo inicial do prazo prescricional&#160;começa a fluir na data em que o titular toma ciência dos desfalques ocorridos na conta individual do PASEP, ou seja, quando recebe os extratos ou microfilmagens. No caso, a autora teve acesso aos extratos em 10 de novembro de 2023 e ajuizou a ação em 5 de junho de 2024, razão pela qual não há que se falar em prescrição, uma vez que o prazo legal foi devidamente observado.&#160; Posto isso, eventual inconformismo ou divergência de interpretação do entendimento firmado pelo órgão julgador não autoriza a rediscussão da matéria já apreciada, o que impõe o não acolhimento dos presentes embargos, por força do enunciado sumular nº &#160;18 desta e. Corte de Justiça.</p> <p style="text-align: justify;"> IV. DISPOSITIVO </p> <p style="text-align: justify;"> 5. Recurso desprovido. </p> <p align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer do recurso para, no mérito, negar-lhe provimento, mantendo inalterado o acórdão embargado, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p> <p align="justify">
 </p> <p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p> <p align="center"> Relator </p> <p align="center"> &#160; </p> <p align="center"> RELATÓRIO </p> <p align="center">
 </p> <p style="text-indent: 8%;" align="justify"> Trata-se de Embargos de Declaração opostos pelo Banco do Brasil S/A contra&#160;acórdão da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, que deu provimento ao recurso de apelação interposto pela parte ora embargada. </p> <p style="text-indent: 8%;" align="justify"> </p> <p style="text-indent: 8%;" align="justify"> Eis o teor da </p>

Processo	0239653-43.2024.8.06.0001
	ementa: </p><p align="justify">
 </p><p style="padding-left: 240px;" align="justify"> PROCESSUAL CIVIL. RECURSO DE APELAÇÃO. AÇÃO INDENIZATÓRIA POR DANOS MATERIAIS. DIFERENÇA DE VALORES NA CONTA VINCULADA AO PASEP. PRESCRIÇÃO INOCORRENTE. PRINCÍPIO DA ACTIO NATA. PRAZO QUE FLUI A PARTIR DO MOMENTO EM QUE A PARTE TOMA CIÊNCIA INEQUIVOCÁ DA IRREGULARIDADE NA SUA CONTA VINCULADA DO PASEP. TEMA 1.150 DO STJ. RECEBIMENTO DO EXTRATO OU DAS MICROFILMAGENS. RETORNO DOS AUTOS À VARA DE ORIGEM PARA O DEVIDO PROCESSAMENTO E JULGAMENTO DO LITÍGIO. RECURSO PROVIDO. SENTENÇA ANULADA. </p><p style="padding-left: 240px;" align="justify"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> No arrazoadado, alega a embargante, em síntese, que o recurso tem por finalidade sanar omissão contida no aresto, ao pontuar que o decisum fora omisso por não ter considerado prescrita a pretensão autoral, tendo em vista que a parte autora apresentou microfilmagens dos extratos do seu benefício e demonstrou que tomou conhecimento do seu saldo PASEP quando sacou na sua aposentadoria, em 12 de março de 2002. </p><p style="text-align: justify; text-indent: 8%;"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> Contrarrrazões apresentadas (ID 26924084). </p><p style="text-align: justify; text-indent: 8%;"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> É o relatório. </p><p style="text-align: justify; text-indent: 8%;"> &#160;</p><p align="center"> VOTO </p><p align="justify">
 </p><p style="text-align: justify; text-indent: 8%;"> Conheço do recurso de embargos de declaração, pois presentes os requisitos intrínsecos e extrínsecos ao transpasse para o juízo de mérito. </p><p style="text-align: justify; text-indent: 8%;"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> A princípio, interessa notar que o recurso de embargos de declaração consiste em uma espécie recursal com hipótese de cabimento vinculada à finalidade integrativa e de aperfeiçoamento das decisões judiciais, com expressa previsão nos incisos do art. 1.022 do CPC. </p><p style="text-align: justify; padding-left: 240px;"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> Quanto à admissibilidade e ao exame de mérito dos aclaratórios, discorre o doutrinador Humberto Theodoro Júnior: </p><p style="text-align: justify; padding-left: 240px;">&#160;</p><p style="text-align: justify; padding-left: 240px;"> O pressuposto de admissibilidade dessa espécie de recurso é a existência de obscuridade ou contradição na decisão; de omissão de algum ponto sobre que devia pronunciar-se o juiz ou tribunal, ou erro material (NCPC, art. 1.022, I, II e III). </p><p style="text-align: justify; padding-left: 240px;"> Se o caso é de omissão, o julgamento dos embargos supri-la-á, decidindo a questão que, por lapso, escapou à decisão embargada. No caso de obscuridade ou contradição, o decisório será expungido, eliminando-se o defeito nele detectado. Tratando-se de erro material, o juiz irá corrigi-lo. </p><p style="text-align: justify; padding-left: 240px;"> Em qualquer caso, a substância do julgado será mantida, visto que os embargos de declaração não visam à reforma do acórdão, ou da sentença. No entanto, será inevitável alguma alteração no conteúdo do julgado, principalmente quando se tiver de eliminar omissão ou contradição. O que, todavia, se impõe ao julgamento dos embargos de declaração é que não se proceda a um novo julgamento da causa, pois a tanto não se destina esse remédio recursal. As eventuais novidades introduzidas no decisório primitivo não podem ir além do estritamente necessário à eliminação da obscuridade ou

Processo	0239653-43.2024.8.06.0001
	contradição, ao suprimento da omissão ou à correção do erro material. (THEODORO JÚNIOR, Humberto. Curso de Direito Processual Civil – Execução forçada, processos nos tribunais, recursos e direito intertemporal– vol. III / Humberto Theodoro Júnior. 48. ed. rev., atual. e ampl. – Rio de Janeiro: Forense, 2016, p. 1.062-1.063). [Grifou-se]. No caso específico, o recurso visa a eliminar possível omissão na decisão colegiada, por não ter reconhecido a prescrição da pretensão autoral, visto que a parte autora, segundo alegado pela embargante, demonstrou ter tomado ciência do saldo do PASEP ao realizar o saque por ocasião de sua aposentadoria, em 12 de março de 2002. o julgado não aprecia ponto ou questão relevante sobre a qual deveria ter se manifestado; estiver devidamente fundamentado (artigo 489, § 1º, do CPC); ou deixar de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicáveis à hipótese (artigo 1.022, parágrafo único, I, do CPC). Com efeito, ao se confrontar as alegações expostas nos embargos de declaração com o teor do acórdão impugnado, verifica-se, de plano, que não há omissão a ser sanada, sendo infundada a arguição apresentada pela parte embargante. Conforme esclarecido no decisum, o termo inicial do prazo prescricional começa a fluir na data em que o titular toma ciência dos desfalques ocorridos na conta individual do PASEP, ou seja, quando recebe os extratos ou microfilmagens. No caso, a autora teve acesso aos extratos em 10 de novembro de 2023 (ID 17233326) e ajuizou a ação em 5 de junho de 2024, razão pela qual não há que se falar em prescrição, uma vez que o prazo legal foi devidamente observado. Posto isso, eventual inconformismo ou divergência de interpretação do entendimento firmado pelo órgão julgador não autoriza a rediscussão da matéria já apreciada. Neste aspecto, confira-se a jurisprudência do c. Superior Tribunal de Justiça, representada nas seguintes ementas: EMBARGOS DE DECLARAÇÃO. NÃO CABIMENTO. OMISSÃO, CONTRADIÇÃO, OBSCURIDADE E ERRO MATERIAL NÃO VERIFICADOS. Na hipótese dos autos, ausentes quaisquer dos vícios ensejadores dos aclaratórios, afigura-se patente o intuito infringente da presente irresignação, que objetiva não suprimir a omissão, afastar a obscuridade, eliminar a contradição ou corrigir o erro material, mas, sim, reformar o julgado por via inadequada. Embargos de declaração rejeitados. (STJ - EDcl no AgInt no AREsp: 1829294 SP 2021/0024117-5, Relator: Ministro RICARDO VILLAS BOAS CUEVA, Data de Julgamento: 14/03/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 18/03/2022). [Grifou-se]. PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. OMISSÕES INEXISTENTES. REDISCUSSÃO DE MATÉRIA DE MÉRITO. IMPOSSIBILIDADE. 1. A solução correta e integral da controvérsia, com lastro

Processo	0239653-43.2024.8.06.0001
	em fundamentos suficientes, não configura omissão. 2. Os Embargos de Declaração não constituem instrumento adequado para a rediscussão da matéria de mérito consubstanciada na decisão recorrida, quando não presentes os vícios de omissão, obscuridade ou contradição, nos termos do art. 1.022 do CPC. 3. Embargos de Declaração rejeitados. (STJ - EDcl no REsp: 1549458 SP 2014/0130168-2, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 11/04/2022, T2 - SEGUNDA TURMA, Data de Publicação: DJe 25/04/2022) [Grifou-se]. No mesmo sentido, colho da fonte jurisprudencial desta Corte de Justiça: EMBARGOS DE DECLARAÇÃO EM AGRAVO INTERNO EM APELO. PROCESSUAL CIVIL. TESES DE CONTRADIÇÃO E OMISSÃO QUE NÃO ENCONTRAM RESPALDO NA REALIDADE DOS AUTOS É NO JULGADO ATACADO. QUESTIONAMENTOS RECURSAIS AVALIADOS, COM COERÊNCIA E COMPLETUDE. AUSÊNCIA DOS REQUISITOS NECESSÁRIOS À CONCESSÃO DA LIMINAR PRETENDIDA. DECISÃO MANTIDA. RECURSO DESPROVIDO. 1. Da simples leitura da insurgência aclaratória, é possível verificar o mero inconformismo da embargante com o resultado do julgamento do agravo interno em apelo anteriormente manejado, limitando-se tão somente em expedir argumentos com visos a rediscutir questões já julgadas de forma colegiada. 2. Ao ventilar teses de contradição não são apontados no acórdão duas proposições conflitantes, mas uma suposta divergência entre o resultado e outro julgado deste Tribunal de Justiça, o que não se qualifica como sendo uma contradição para fins de aclaratórios. 3. Ademais, o acórdão é preciso, não sofrendo de omissão: "[...] o incêndio não atingiu efetivamente a casa da recorrente, bem como, não houve comprovação de nenhum dano físico ou prejuízo material. Desse modo, entendo que, sem perder de vista os postulados da razoabilidade e proporcionalidade, bem como o caráter pedagógico de tais indenizações, a quantia de R\$ 3.000,00 (três mil reais), arbitrada a título de danos morais mostra-se razoável." 5. Recurso conhecido, mas desprovido. (Embargos de Declaração Cível- 0003085-48.2019.8.06.0175, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 05/04/2023, data da publicação: 05/04/2023). [Grifou-se]. DIREITO CIVIL E PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. ALEGATIVA DE VÍCIO DE CONTRADIÇÃO NO ACÓRDÃO ADVERSADO. INEXISTÊNCIA. DECISÃO QUE SE MANIFESTOU DE FORMA CLARA E COERENTE SOBRE OS PONTOS ALEGADOS. INTUITO DE REDISCUSSÃO. APLICAÇÃO DA SÚMULA 18 DO TJCE. ACLARATÓRIOS CONHECIDOS E IMPROVIDOS. 1. Reexaminados os autos e do texto do acórdão adversado ao contexto dos embargos verifica-se que 2. De rememorar-se, então, que vício de fundamentação e motivação adversa não se confundem. Cada qual no seu quadrado normativo. E se a decisão recorrida não projeta as atecnias alegadas, torna-se impraticável "em sede de aclaratórios, rediscutir o entendimento adotado" (STJ, EDcl no AgRg no REsp 1361520/PA, Rel. Ministro JORGE MUSSI, QUINTA TURMA, julgado em 07/06/2018, DJe 15/06/2018). 3. É o caso, então, de aplicar-se a Súmula n.º 18 deste Tribunal, sendo indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. 4. Aclaratórios conhecidos e improvidos. (Embargos de Declaração Cível- 0156638-60.2016.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 29/03/2023, data da publicação: 30/03/2023). [Grifou-se]. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. CONTRADIÇÃO NÃO CONFIGURADA. MERO INCONFORMISMO. TENTATIVA DE MODIFICAÇÃO DO JULGADO. IMPOSSIBILIDADE NA VIA ESTREITA DOS ACLARATÓRIOS. SÚMULA 18/TJCE. RECURSO IMPROVIDO. ACÓRDÃO INALTERADO. 1. Como é cediço, cabe à parte que se sente prejudicada em face de qualquer decisão judicial opor embargos de declaração para que sejam sanados vícios de omissão, obscuridade, contradição ou erro material, e, assim, proporcionar o aperfeiçoamento da tutela jurisdicional. 2. A contradição que justifica o acolhimento dos embargos declaratórios é a interna, ou seja, quando os fundamentos da decisão são inconciliáveis ou incompatíveis com a conclusão, o que não ocorreu no caso em apreço. In casu, inexistente vício que reclame a integralização e/ou ajuste do decism. Na realidade, as matérias

1584

Processo	0141195-98.2018.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmWFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDjT9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3lxi UG4LT19z2wZ6B+iP9WeVIWYTYJQMhoz2DdvrYIz8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNRq 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfLk3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fnsFHHqjeh3WFOUu2ZXJlJxMkCMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOGPE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZMs6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJZUpPkjznXDKa2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGIPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY4nkdUvsnXNkIx410JEZMRU0ZDIFMjFvRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0141195-98.2018.8.06.0001
	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">II. QUESTÃO EM DISCUSSÃO: Há duas questões em discussão: (i) verificar se a sentença incorre em nulidade por ausência de fundamentação; (ii) aferir se houve cerceamento de defesa em desfavor da Autora, em virtude do indeferimento ou ausência de apreciação de pedidos de prova.</h3><h3 style="line-height: 1.3800000000000001; text-align: justify; margin-top: 14pt; margin-bottom: 4pt;" dir="ltr"> III. RAZÕES DE DECIDIR</h3><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 1. . A decisão concisa ou sintética que apresenta fundamentos fático-jurídicos suficientes não se confunde com decisão não fundamentada, inexistindo nulidade quando as razões do julgador permitem a compreensão do julgamento (CF/1988, art. 93, IX; CPC, art. 489).</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">2. O direito à prova é expressão do contraditório e da ampla defesa (CF/1988, art. 5º, LV), devendo ser assegurada sua produção quando pertinente e relevante ao deslinde do feito.</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">3. A intimação no despacho saneador para especificação de provas é etapa essencial do procedimento. A inércia da parte autora em se manifestar implicou a preclusão do direito de produzir provas adicionais, inclusive no que pertine a espécies requeridas anteriormente (CPC, art. 357, §1º; STJ, REsp 1.689.923/RS, Rel. Min. Herman Benjamin).</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">4. Embora a autora tenha se mantido silente e incorrido em preclusão do direito probatório, observa-se que os réus requereram oportunamente a produção de prova testemunhal e depoimento pessoal da parte contrária e manifestaram interesse na realização de audiência instrutória. O juízo, entretanto, não apreciou tal requerimento antes de prolatar a sentença, incorrendo em decisão surpresa em relação à parte promovida.</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">5. A manutenção desse cenário só seria possível diante de um julgamento integralmente favorável à parte apelada, com lastro na premissa oriunda do <span style="font-

Processo	0141195-98.2018.8.06.0001
	size: 13.99999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">pas de nullité sans grief. Porém, observam-se elementos passíveis de promover a reforma da sentença, com possibilidade de julgamento desfavorável aos apelados, ainda que parcialmente. 6. O julgamento sem o prévio e regular encerramento do saneamento processual e da fase de instrução configura nulidade, pois eventual reforma da sentença em prejuízo dos Réus demandaria exame prévio da pretensão probatória destes e oportunização do pleno contraditório, sob pena de decisão surpresa e afronta ao princípio da cooperação processual (CPC, arts. 6º e 7º). 7. Impõe-se, assim, a anulação da sentença de ofício, com retorno dos autos à origem para prosseguimento da fase de saneamento e instrução probatória. IV. DISPOSITIVO Sentença anulada de ofício. Recurso prejudicado. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de 13.99999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em anular de ofício a sentença apelada e, como consequência, declarar prejudicado o recurso de apelação, nos termos do voto do Desembargador Relator. Fortaleza, data e assinatura digital registradas no sistema processual eletrônico. <strong id="docs-internal-guid-7051370f-7fff-8f89-2ef3-6d44a63a985b" style="font-weight: normal;">

 Presidente/Relator

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	normal;">

 </p><p style="line-height: 1.3090909090909089; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 21pt 0pt 0pt 0pt;" dir="ltr">Trata-se de apelação cível interposta por Maria Ieda de Sousa Lima em face da sentença proferida pelo Juízo da 5ª Vara Cível da Comarca de Fortaleza nos autos da Ação de Obrigação de Fazer c/c Reparação de Danos proposta pela ora Apelante em desfavor de Maria do Socorro Lima Carvalho, posteriormente sucedida por seus herdeiros, ora Apelados.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 21pt 0pt 0pt 0pt;" dir="ltr">Na exordial, alega a parte autora, em síntese que: i) sua residência é vizinha à residência da ré, compartilhando o mesmo muro; ii) em janeiro de 2015, a ré iniciou uma construção em seu imóvel, mas tal construção possui diversas falhas, ocasionando vários danos ao imóvel da autora; iii) é evidente que os danos materiais foram causados pela obra da ré, pois a autora é proprietária do imóvel atingido há quase 50 anos e, até então, nunca havia surgido problemas em sua estrutura. Postulou, diante disso, a condenação da Promovida ao pagamento de indenização por danos materiais "a serem apurados através de perícias e avaliações" e indenização por danos morais.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 21pt 0pt 0pt 0pt;" dir="ltr">Na sentença (ID 20995886), o magistrado concluiu pela improcedência dos pedidos autorais, com base na ausência de provas suficientes que evidenciassem a relação entre os alegados danos materiais e morais e as obras realizadas pela ré em seu imóvel.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-

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	bottom: Opt; padding: 21pt Opt Opt Opt;" dir="ltr">Irresignada, a Autora interpôs recurso de apelação (ID 20995887) alegando que houve cerceamento de defesa, uma vez que suas solicitações para produção de provas, incluindo o depoimento pessoal da parte ré, foram desconsideradas pelo juízo de origem. Argumenta, ainda, que a sentença foi genérica e não fundamentada, incorrendo em violação ao devido processo legal, contraditório e ampla defesa previstos no artigo 5º, inciso LV, da Constituição Federal. Fundamenta seu recurso nos artigos 373 e 489 do Código de Processo Civil, que tratam do ônus probatório e da fundamentação das decisões judiciais. Ao final, requer que a sentença seja anulada, com a reabertura da instrução probatória, ou, alternativamente, que o Tribunal reforme a decisão para acolher seus pedidos iniciais, condenando a parte adversa ao pagamento de indenização por danos materiais e morais.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: Opt; margin-bottom: Opt; padding: 21pt Opt Opt Opt;" dir="ltr">Em contrarrazões (ID 20995899), a parte apelada sustenta que não houve cerceamento de defesa, uma vez que a autora foi regularmente intimada para manifestar-se sobre a produção de provas, mas optou por não fazê-lo. Destaca que a decisão de improcedência acertou ao concluir pela ausência de provas nos autos que demonstrassem os alegados danos ou a relação de causalidade com as obras realizadas e afirma que a decisão impugnada foi devidamente fundamentada, bem como observou todos os trâmites legais, motivo pelo qual deve ser mantida.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: Opt; margin-bottom: Opt; padding: 21pt Opt Opt Opt;" dir="ltr">É o relatório.</p><p style="line-height: 1.38; text-align: center; margin-top: 21pt; margin-bottom: Opt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: Opt;" dir="ltr">Consoante relatado, o presente recurso configura insurgência contra o decisum de Primeiro Grau que julgou improcedente a Ação de Obrigação de Fazer c/c Reparação de Danos originária, considerando a ausência de prova mínima de que os danos apontados na inicial tenham sido causados pela construção realizada pela parte&#160; ré.</p><p style="line-height:

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	style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">">II - empregar conceitos jurídicos indeterminados, sem explicar o motivo concreto de sua incidência no caso;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> ">III - invocar motivos que se prestariam a justificar qualquer outra decisão;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> ">IV - não enfrentar todos os argumentos deduzidos no processo capazes de, em tese, infirmar a conclusão adotada pelo julgador;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> ">V - se limitar a invocar precedente ou enunciado de súmula, sem identificar seus fundamentos determinantes nem demonstrar que o caso sob julgamento se ajusta àqueles fundamentos;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> ">VI - deixar de seguir enunciado de súmula, jurisprudência ou precedente invocado pela parte, sem demonstrar a existência de distinção no caso em julgamento ou a superação do entendimento.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> ">Impende ressaltar que, contudo, que a decisão não fundamentada não se confunde com a decisão sintética ou concisa. Essa última traz, de forma objetiva e curta, todos os fundamentos fático-jurídicos que levaram ao convencimento do Julgador, não obstante a ausência de menção expressa a pontos específicos da demanda considerados importantes pela parte.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> ">Ao contrário da decisão não fundamentada, portanto, a sintética não viola o art. 93, IX, da Constituição da República, haja vista que a fundamentação apresentada, apesar de reduzida, é juridicamente suficiente.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">">No caso do ">decisum ">apelado, vê-se que o vício arguido pela Apelante foi apontado de forma ">genérica">. Afirma-se, nas razões recursais, que ">a sentença recorrida não analisou aspectos essenciais do pedido da Apelante, como o depoimento pessoal dos Apelados, além de não apresentar uma motivação adequada para a improcedência do pedido. <span style="font-size: 13.999999999999998pt; font-family: 'Times New

Processo	0141195-98.2018.8.06.0001
	Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Porém, não é minimamente explicada a suposta inadequação dos motivos declinados pelo Juízo. Analisando-se os termos da sentença em questão, depreende-se clareza quanto aos motivos que levaram à improcedência do pleito autoral: No presente caso, a parte autora alega que construção no imóvel da ré causou diversos danos em seu imóvel, inclusive lhe gerando danos morais. Ocorre que não há mínima prova que os danos apontados na inicial tenham sido causados pela construção da ré. No corpo da petição inicial se verificam algumas fotografias que seriam correspondentes as avarias no imóvel da autora, mas não existe evidência mínima que tais avarias tenham sido causados pela construção da ré. Foi juntado com a inicial um auto de embargo que apenas comprova a inexistência de licença da prefeitura para a construção da ré mas, repito, sem que isto indique algum dano no imóvel da autora. Assim, não existindo prova nos autos capaz de comprovar os danos sofridos pela parte autora, tampouco tendo esta tencionado produção de outras provas e, sendo ônus da parte autora a prova do fato constitutivo de seu direito, a improcedência dos pedidos é medida que se impõe. Observo, no caso, prolação de sentença concisa ou sintética, com fundamentação juridicamente suficiente e, portanto, destituída de nulidade . Decisão não fundamentada é aquela que não permite compreender as razões que levaram o julgador à conclusão adotada, inviabilizando o controle jurisdicional e recursal, o que não é o caso. Quanto ao segundo ponto (violação de direito probatório das partes), recorde-se que, nos termos do art. 5º, LV, da Constituição da República, aos litigantes, em processo judicial ou administrativo, e aos acusados em geral são assegurados o contraditório e ampla defesa, com os meios e recursos a ela inerentes. No que pertine ao direito de produção probatória, leciona a doutrina processual civil que a prova é inadmissível tão somente se impertinente, irrelevante ou incontravérsia a alegação de fato. Havendo pertinência, relevância e controvérsia da alegação, há direito fundamental à produção da prova a

Processo	0141195-98.2018.8.06.0001
	weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Nesse contexto, a necessidade de consagração do direito positivado na norma do art. 5º, LV, da CR/88 repercute não apenas no dever de se oportunizar adequadamente a manifestação das partes, mas também de assegurar a produção das espécies probatórias relevantes ao deslinde do feito, conforme se vê, para fins persuasivos, nos julgamentos abaixo ementados:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">CERCEAMENTO DO DIREITO À PRODUÇÃO DE PROVA. AMPLA DEFESA. PREJUÍZO PROCESSUAL CARACTERIZADO. PRELIMINAR ACOLHIDA. A ampla defesa, constitucionalmente garantida, assegura à parte a produção da prova necessária à demonstração do direito perseguido ou resistido.O julgamento do mérito da causa contrário ao interesse da parte que postulou, em momento oportuno, a produção de prova oral capaz de, em tese, alterar o resultado da lide, revelaofensa aos direitos constitucionais à ampla defesa, ao contraditório e ao devido processo legal (art. 5º, LIV e LV, CRFB/88), consolidando-se o gravame do cerceamento de defesa praticado e impondo-se a nulidade do processo. (TRT-3 -ROT: 00104721620215030002 MG 0010472-16.2021.5.03.0002, Relator: Des.Antonio Gomes de Vasconcelos, Data de Julgamento: 11/08/2022, Decima Primeira Turma, Data de Publicação: 16/08/2022). [Grifei].</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">CIVIL - AÇÃO DE COBRANÇA DE SEGURO OBRIGATORIO - DPVAT - NÃO REALIZAÇÃO DE PROVA PERICIAL - IMPRESCINDIBILIDADE - CERCEAMENTO DE DEFESA - CONFIGURAÇÃO. Se ignorado o pedido de produção de prova pertinente e útil para comprovar alegação de fato formulada pelo litigante, resta configurada restrição indevida do direito probatório da parte e, portanto, afronta ao devido processo legal, o que impõe a desconstituição da sentença e o retorno dos autos à origem para regular instrução do feito. (TJ-SC

Processo	0141195-98.2018.8.06.0001
	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">- AC: 03083813620158240039 Lages 0308381-36.2015.8.24.0039, Relator: Luiz César Medeiros, Data de Julgamento: 03/10/2016, Quinta Câmara de Direito Civil). [Grifei]. Apelação Cível – Ação de Rescisão contratual c/c Devolução de Valores - Preliminar de cerceamento do direito de defesa – Ausência de intimação da parte adversa para se manifestar acerca da prova emprestada – Violação aos princípios do contraditório e da ampla defesa - Cerceamento configurado – Desconstituição da sentença. I - Indiscutível que o direito à prova é considerado direito fundamental, advindo dos princípios constitucionais do contraditório e da ampla defesa, sendo desdobramento do princípio do devido processo legal. Objetiva com isso disponibilizar às partes ampla oportunidade para que demonstrem os fatos alegados II - No que tange à possibilidade de uso da prova emprestada, é cediço que tal meio de prova é instrumento processual admitido pela legislação, com a finalidade de auxiliar o magistrado na formação de sua convicção. Trata-se de elemento probatório legítimo, inexistindo qualquer prejuízo que possa resultar no deslinde do processo. Ao contrário, uma vez assegurado o contraditório, a prova emprestada assume a mesma força das demais; III – À luz do caso concreto, perlustrando o processo de origem, é possível perceber que em nenhum momento houve intimação da construtora RMN a fim de se manifestar sobre a prova emprestada. [...] TJ-SE - AC: 00116346120168250001, Relator: Iolanda Santos Guimarães, Data de Julgamento: 27/01/2020, 1ª CÂMARA CÍVEL). [Grifei].</p> <p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Há de se considerar que a condução do processo deve guardar observância aos princípios da boa-fé e da cooperação, no intuito de se alcançar uma prestação jurisdicional efetiva e justa. Para tanto, é imprescindível que sejam assegurados, de forma inequívoca, os meios necessários à concretização do devido contraditório e da ampla defesa, para que não se dê ensejo a eventuais nulidades de cunho legal e/ou constitucional. Trata-se da dinâmica prevista, dentre outras normas, nos artigos inaugurais do Código Processual em vigor, a exemplo dos seguintes dispositivos:</p> <p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 5º Aquele que de qualquer forma participa do processo deve comportar-se de acordo com a boa-fé.</p> <p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 6º Todos os

Processo	0141195-98.2018.8.06.0001
	sujeitos do processo devem cooperar entre si para que se obtenha, em tempo razoável, decisão de mérito justa e efetiva Art. 7º É assegurada às partes paridade de tratamento em relação ao exercício de direitos e faculdades processuais, aos meios de defesa, aos ônus, aos deveres e à aplicação de sanções processuais, competindo ao juiz zelar pelo efetivo contraditório. [Grifo nosso]. In casu argumenta a Apelante que o Juízo ignorou os pedidos de produção probatória formulados por ambas as partes, o que evidenciaria a nulidade da sentença por cerceamento de defesa. Ocorre que, em detida análise dos autos, é possível constatar a prolação de despacho saneador após a regularização do polo passivo processual, com a sucessão da promovida por seus herdeiros em razão do seu falecimento no curso do processo. No referido despacho (ID 20995877), determinou-se a intimação das partes para que informassem eventual interesse em autocomposição e postulassem a produção de outras provas que não as constantes nos autos, justificando sua finalidade Na oportunidade, as partes ficaram advertidas de que falta de manifestação ocasionaria o julgamento do processo no estado em que se encontrava.

Processo	0141195-98.2018.8.06.0001
	family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Regularmente intimada da determinação, a parte autora, ora Apelante, nada apresentou. Por sua vez, os Apelados postularam a oitiva de testemunhas e o depoimento pessoal da parte contrária, com o fito de “esclarecer o descabimento do pedido indenizatório” (ID&#160; 20995883). Em seguida, sobreveio sentença, julgando-se improcedente o feito em comento.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Neste ensejo, impende ressaltar que o mero fato de a parte ter requerido a produção de provas na petição inicial, na contestação, na réplica ou em outra manifestação não a exime do dever de se manifestar quando intimada pelo despacho saneador para indicar se ainda tem interesse na produção de provas , sob pena de preclusão. Isso porque o silêncio da parte, nessa situação, é interpretado como uma renúncia à produção de novas provas.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Assim, é indispensável que o interessado, quando instado a fazê-lo, requeira oportunamente a produção de espécies probatórias além daquelas já produzidas nos autos e/ou reafirme o seu interesse na produção de espécies já requeridas. A inobservância da referida determinação enseja a preclusão do direito de produção probatória, conforme os preceitos legais, jurisprudenciais e doutrinários sobre o tema.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">O lastro jurídico de tal raciocínio repousa no art. 357, §1º, da Lei Adjetiva Civil, o qual consigna que, realizado o saneamento, as partes têm o direito de pedir esclarecimentos ou solicitar ajustes, no prazo comum de 5 (cinco) dias, findo o qual a decisão se torna estável. (Grifou-se)</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">

Processo	0141195-98.2018.8.06.0001
	baseline; white-space: pre-wrap;">No sentido do que ora se explana [grifo nosso]:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ORDINÁRIO EM MANDADO DE SEGURANÇA. A INDICAÇÃO DAS PROVAS A SEREM PRODUZIDAS, NA PETIÇÃO INICIAL OU NA CONTESTAÇÃO, NÃO AFASTA A NECESSIDADE DE RESPONDER AO CHAMADO DO JUÍZO PARA A ESPECIFICAÇÃO DAS PROVAS. INÉRCIA DA PARTE. PRECLUSÃO. MANDAMUS IMPETRADO CONTRA DECISÃO JUDICIAL. TERATOLOGIA DA DECISÃO IMPUGNADA NÃO EVIDENCIADA. INADEQUAÇÃO DA VIA ELEITA. PRECEDENTES DA CORTE ESPECIAL. 1. Recurso Ordinário em Mandado de Segurança impetrado contra decisão judicial que concluiu: “Em conformidade com firme orientação jurisprudencial do Superior Tribunal de Justiça, 'Não há cerceamento de defesa, quando, intimada a parte para especificar provas, esta se mantém silente, ocorrendo a preclusão. Assim sendo, não obstante o requerimento tenha-se dado por ocasião da petição inicial, entende-se precluso o direito à prova, na hipótese de a parte omitir-se, quando intimada para a sua especificação.' (REsp 1689923/RS, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, julgado em 03/10/2017, DJe 19/12/2017). 2. É genérico o protesto pela produção de prova pericial e testemunhal formulado na contestação, sem indicação da sua pertinência e necessidade para a solução da lide, mormente se destinadas à comprovação do valor de benfeitorias que sequer foram relacionadas, inviabilizando, inclusive, sua caracterização (útil, necessária ou voluptuária, sendo esta última sequer passível de indenização.” O recorrente sustenta que a aludida decisão é teratológica. 2. O Tribunal de origem decidiu em consonância com a jurisprudência do Superior Tribunal de Justiça, que entende que não há cerceamento de defesa quando, intimada a parte para especificar provas, esta se mantém silente, ocorrendo a preclusão. Assim sendo, não obstante o requerimento tenha-se dado por ocasião da petição inicial, entende-se precluso o direito à prova, na hipótese de a parte omitir-se quando intimada para a sua especificação. Precedentes: STJ, AgRg no REsp 1.376.551/RS, Rel. Ministro Humberto Martins, Segunda Turma, DJe 28/6/2013; STJ, AgRg nos EDcl no REsp 1.176.094/RS, Rel. Ministro Luis Felipe Salomão, Quarta Turma, DJe de 15/6/2012; AgRg no Ag 1.014.951/SP, Rel. Ministro Arnaldo Esteves Lima, Quinta Turma, DJe de 4/8/2008. 3.“Tendo em vista que a decisão judicial atacada está muito longe de ser considerada manifestamente ilegal ou absurda, deve ser reconhecida a inadequação do presente mandado de segurança, porquanto manejado como mero sucedâneo recursal. Precedentes: AgRg no MS 15.494/DF, Rel. Ministro Gilson Dipp, Corte Especial, DJe 18/10/2011; MS 16.078/AL, Rel. Ministro Castro Meira, Corte Especial, DJe 26/09/2011” (AgRg no RMS 36.493/SP, Rel. Ministro Benedito Gonçalves, Primeira Turma, DJe 9/3/2012). 4. Agravo Interno não provido. (STJ - AgInt no RMS: 61830 MS 2019/0272567-7, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 01/06/2020, T2 - SEGUNDA TURMA, Data de Publicação: DJe 19/06/2020<span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style:

Processo	0141195-98.2018.8.06.0001
	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">).</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANO MORAL C/C OBRIGAÇÃO DE FAZER E REPETIÇÃO DE INDÉBITO. EMPRÉSTIMO CONSIGNADO. PEDIDO GENÉRICO DE PROVA PERICIAL NA PETIÇÃO INICIAL. AUSÊNCIA DE MANIFESTAÇÃO DO PROMOVENTE QUANDO INTIMADO PARA DIZER SE PRETENDIA PRODUZIR OUTRAS PROVAS. PRECLUSÃO. CERCEAMENTO DE DEFESA NÃO CONFIGURADO. INSTRUMENTO CONTRATUAL VÁLIDO, COM A REMESSA DE VALORES À CONTA CORRENTE TITULARIZADA PELO AUTOR. INOCORRÊNCIA DE DANOS MATERIAIS E MORAIS. SENTENÇA DE IMPROCEDÊNCIA COM BASE NO ART. 487, I DO CPC/15. PRECEDENTES. APELAÇÃO CONHECIDA, PORÉM DESPROVIDA. 1. A insurgência vertida no apelo cinge-se à sentença que julgou improcedente o pedido formulado na peça vestibular, nos moldes do art. 487, I do CPC/15. 2. Preliminarmente, não se pode falar de cerceamento de defesa quando, devidamente intimado para manifestar-se sobre a necessidade de produzir outras provas, queda inerte o interessado 2. O núcleo do litígio estaria em averiguar se a operação financeira ora ventilada de fato foi firmada pelo consumidor e se o montante pactuado lhe foi entregue. 3. O contrato foi de fato assinado pela parte demandante, conforme semelhança cristalina entre as assinaturas da mesma, retratadas em várias passagens ao longo dos autos. 4. Comprovada a existência de contrato válido, não há que se falar em ato ilícito por parte do banco réu, devendo-se por via lógica de consequência manter a sentença quanto ao afastamento do dever de pagar danos materiais e morais. 5. Conheço do recurso para negar-lhe provimento, mantendo in totum a decisão vergastada.[...] (TJ-CE - Apelação Cível- 0050234-75.2021.8.06.0173, Rel. Desembargador(a) JOSE EVANDRO NOGUEIRA LIMA FILHO, 4ª Câmara Direito Privado, data do julgamento: 30/08/2022, data da publicação: 30/08/2022).</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Assim, o despacho saneador é a oportunidade específica e formal para que a parte reitere o seu interesse na produção de provas e especifique quais espécies deseja produzir. O não atendimento da intimação do despacho saneador pode ser interpretado como a desistência da prova anteriormente solicitada, permitindo tanto o julgamento antecipado da lide como a prolação de decisão desfavorável à parte que se manteve inerte, com base na ausência de prova para sustentar suas alegações.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No caso, a Autora afirma que pediu expressamente, mais de uma vez, a produção da prova específica de depoimento pessoal dos Apelados, o que teria sido ignorado pelo Juízo <span

Processo	0141195-98.2018.8.06.0001
	style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: italic; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">a quo. Porém, como dito, a ora Apelante quedou inerte em reiterar o pedido de produção probatória quando instada a fazê-lo pelo despacho saneador, o que foi interpretado como desistência da provas anteriormente requeridas e renúncia à produção de outras espécies probatórias. Inequívoca, portanto, a preclusão do direito em questão.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Quanto ao fato de que o Juízo ignorou o pedido probatório dos Promovidos, não se verifica, em um primeiro momento, nulidade na situação, porquanto evidente a ausência de prejuízo. Conforme registrado na petição de ID 20995883, o objetivo das provas requestadas era justamente demonstrar o não cabimento do pleito indenizatório, o que foi reconhecido em sentença independentemente da produção das espécies indicadas. Assim, a finalidade probatória dos Apelados já se encontra satisfeita, com o julgamento favorável à sua pretensão.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Ocorre que, em um exame mais detido das provas produzidas nos autos, é possível constatar indícios de inadequação da ratio decidendiao caso, do que se infere a possibilidade de reforma do provimento em sentido contrário à pretensão dos Apelados.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nos termos dos arts. 186 e 927 do Código Civil, aquele que causar dano a outrem em razão da prática de ato ilícito é obrigado a repará-lo. Trata-se da previsão da responsabilidade civil subjetiva, que constitui a regra na legislação civil.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Assim prevêem os referidos dispositivos (grifo nosso):</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 186. Aquele que, por ação ou omissão voluntária, negligência ou imprudência, violar direito e causar dano a outrem<span style="font-size: 12pt; font-

Processo	0141195-98.2018.8.06.0001
	family: 'Times New Roman',serif; color: #1a202c; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">, ainda que exclusivamente moral, comete ato ilícito.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Art. 927 . Aquele que, por ato ilícito (arts. 186 e 187), causar dano a outrem, fica obrigado a repará-lo.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No caso de danos oriundos de construção em imóvel vizinho, entende-se que a responsabilidade do dono da obra é objetiva, com fundamento nos preceitos do Código Civil [grifo nosso]:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Art. 1.311 . Não é permitida a execução de qualquer obra ou serviço suscetível de provocar desmoronamento ou deslocação de terra, ou que comprometa a segurança do prédio vizinho, senão após haverem sido feitas as obras acautelatórias.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">Parágrafo único. O proprietário do prédio vizinho tem direito a ressarcimento pelos prejuízos que sofrer, não obstante haverem sido realizadas as obras acautelatórias.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Art. 1.312. Todo aquele que violar as proibições estabelecidas nesta Seção é obrigado a demolir as construções feitas, respondendo por perdas e danos.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Depreende-se, de tais previsões normativas, os elementos configuradores da responsabilização civil em questão, constituídos por: a) conduta ilícita;

Processo	0141195-98.2018.8.06.0001
	pre-wrap;">b) dano; e d) nexo de causalidade entre os dois primeiros.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No caso, verifica-se que o único documento técnico apresentado pela Autora é um laudo pericial emitido por engenheiro contratado pela própria Promovida (ID 20995500), no qual restou confirmado que: (i) Dos pisos contíguos à nova edificação executada (955 e 935), foram observados pequenos recalques de acomodação, sem nenhum comprometimento estrutural; (ii) Das alvenarias contíguas à nova edificação executada (955 e 935), há trincas de trabalho à flexão, devido a pequenos recalques de acomodação do solonormal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">) iii) as cobertas foram danificadas devido aos recalques das áreas de recuo (955 e 935)pre-wrap;">.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">O documento atesta, ainda, que “as residências contíguas à obra recém construída à rua Eretides Martins 941, em São Gerardo, Fortaleza-CE são seguras estáveis e em nenhuma hipótese com risco de iminente ruína” [sic], mas o engenheiro atribui necessidade à realização da obra para reparação do desconforto visual gerado aos moradores como

Processo	0141195-98.2018.8.06.0001
	resultado das avarias ocasionadas pela edificação. Da documentação acostada, observa-se que não há lastro para grande parte das alegações autorais, sobretudo quanto aos danos supostamente decorrentes da perda de utensílios domésticos, uma vez que não há prova mínima da relação entre tal prejuízo e a obra em questão. Porém, não há como ignorar o registro quanto às trincas em alvenaria e às avarias nas cobertas apontadas no documento de vistoria 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">evidenciando elemento de prova em favor da Apelante quanto a esse ponto. Porém, eventual reforma da decisão para condenar a parte Apelada à reparação das avarias supracitadas modificará a conclusão tecida no tópico relativo ao cerceamento de direito probatório, uma vez que ensejará julgamento parcialmente desfavorável aos Promovidos 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">sem que lhes tenha sido oportunizado o pleno exercício do direito probatório. Recorde-se que, como mencionado anteriormente, os Apelados responderam tempestivamente à determinação constante no despacho saneador, afirmando, no petição de ID 20995883, 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">possuir interesse em produção adicional de provas , requerendo a realização de 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">audiência de instrução e pugnando pela 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">oitiva de testemunhas e pelo 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">depoimento pessoal 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">da parte contrária. Diante disso, eventual julgamento desfavorável aos Apelados deve ser precedido de decisão quanto à produção da provas requestadas e

Processo	0141195-98.2018.8.06.0001
	outras matérias porventura suscitadas com o deferimento/indeferimento dos pedidos em questão. A pendência do exame da petição mencionada evidencia que saneamento processual e a fase de instrução não foram propriamente encerrados e a manutenção desse cenário só seria possível diante de um julgamento integralmente favorável à parte apelada, com lastro na premissa oriunda do pas de nullité sans grief. Dessa forma, considerando-se a possibilidade de reversão, ainda que parcial, da conclusão adotada na sentença, impõe-se a cassação desta, com retorno do feito à origem para apreciação do pedido formulado na petição de ID 20995883 e eventual prosseguimento da fase instrutória. Entendimento diverso redundaria em prejuízo à parte ora apelada como resultado de uma “decisão surpresa”, em manifesta afronta ao princípio cooperativo e ao pleno exercício do direito de defesa. Ex positis, ANULO DE OFÍCIO a sentença objurgada e determino o retorno do feito à origem para que se proceda ao regular prosseguimento do saneamento e da instrução processuais, com atenção ao petitório de ID 20995883. Como consequência, declaro PREJUDICADO o recurso apelatório da Autora. É como voto. Fortaleza, data e assinatura digital registradas no sistema eletrônico. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO

Processo	0141195-98.2018.8.06.0001
	13.9999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Relator
Processo	0203450-59.2023.8.06.0117
Número de ordem	149
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Efeito Suspensivo / Impugnação / Embargos à Execução
Polo ativo	COMERCIAL DE ALIMENTOS WNETO LTDA JOSE CLENILDO TEIXEIRA DO NASCIMENTO
Advogado(s) - Polo ativo	HAROLDO GUTEMBERG URBANO BENEVIDES - (CE28242-A)
Polo passivo	ITAU UNIBANCO S.A.
Advogado(s) - Polo passivo	CARLOS ALBERTO MIRO DA SILVA FILHO - (CE42654-A)
Terceiros	Não informado

Processo	0203450-59.2023.8.06.0117
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJBzVzfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiwK7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmlV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmWFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWYTYJQMhoz2DdvrYIz8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvlgRLkiu3cCAWl2fns5FHgkY3WFOUu2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJElVfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznXDKa2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkIx410JEZMRU2DIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

Processo	0203450-59.2023.8.06.0117
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Processo	0203450-59.2023.8.06.0117
	indent: 8%;>regularidade da extinção do feito com&#160; fundamento &#160;no art. 290 do Código de Processo Civil , sendo inviável perquirir &#160; matérias não submetidas à &#160; apreciação &#160;do juízo primeiro grau. III. RAZÕES DE DECIDIR 3. Quanto ao pedido de concessão da gratuidade da justiça, observa-se que a matéria fora objeto de apreciação em Agravo de Instrumento anteriormente&#160;distribuído a este Relator sob o nº 0638550-70.2023.8.06.0000, com trânsito em julgado em 10 de fevereiro de 2025 e arquivamento definitivo em 14 de fevereiro de 2025. Isso evidencia que a questão abordada neste recurso foi decidida em caráter definitivo, não sendo possível a rediscussão por esta via recursal, sob pena de ofensa à coisa julgada, nos termos dos arts. 507 e 508 do Código de Processo Civil. 4. Dito isso, é indiscutível que a matéria relativa à concessão da justiça gratuita foi definitivamente apreciada em Agravo de Instrumento anteriormente interposto, operando-se a preclusão da questão nele examinada e tornando juridicamente inviável sua rediscussão por esta instância revisora, o que impõe, por conseguinte, a manutenção da r. sentença recorrida. IV. DISPOSITIVO 5. Recurso conhecido em parte e, na extensão conhecida, desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer parcialmente do recurso interposto, para, na parte conhecida, negar-lhe provimento, no sentido de manter inalterada a sentença recorrida, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. &#160; DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator &#160; &#160; RELATÓRIO &#160; Cuida-se de recurso de Apelação Cível interposto pelo Comercial de Alimentos Wneto Ltda. e José Clenildo Teixeira do Nascimento contra sentença prolatada pelo MMº. Juiz de Direito Luiz Eduardo Viana Pequeno, da 2ª Vara Cível da Comarca de Maracanaú, que extinguiu, sem resolução de mérito, os Embargos à Execução opostos em face do Itaú Unibanco S/A, na forma do art. 485, incisos I e IV, combinado com o art. 290, do Código de Processo Civil. &#160; Nas razões recursais, os apelantes aduzem, em síntese, que a r. decisão de primeiro grau merece reforma por ter indeferido, de modo equivocado, o pedido de gratuidade da justiça. Alegam que foi devidamente demonstrada a insuficiência de recursos da empresa para arcar com as custas processuais, situação agravada por uma crise econômica que comprometeu a manutenção de suas atividades, exigindo, inclusive, a demissão de funcionários e a redução de operações. Argumentam que a negativa do benefício violou o disposto no art. 5º, inciso LXXIV, da Constituição Federal, bem como no art. 98 do Código de Processo Civil, além de contrariar o entendimento consolidado na Súmula 481 do STJ, que admite a

Processo	0203450-59.2023.8.06.0117
	concessão da gratuidade à pessoa jurídica quando comprovada a sua hipossuficiência financeira. Os apelantes impugnam a validade do título executivo extrajudicial que embasa a execução, sob o fundamento de que o documento carece das assinaturas de duas testemunhas, o que comprometeria sua eficácia executiva, conforme exigência expressa do art. 784 do Código de Processo Civil. Asseveram que, ausente tal requisito formal, o instrumento particular não possuiria força executiva, devendo ser reconhecida sua nulidade para fins de execução. Além disso, apontam a existência de encargos contratuais abusivos, mencionando a cobrança de juros excessivos e a prática de anatocismo, em desacordo com os princípios da legalidade e da função social do contrato. Defendem a necessidade de realização de perícia contábil para apuração do eventual excesso de execução, com fundamento, entre outros termos, na Lei da Usura e no art. 173 da Constituição Federal, que impõe limites à atividade econômica em benefício da ordem pública. Ao final, requerem o provimento do recurso, para que seja i) deferida a gratuidade da justiça; ii) reconhecida a nulidade do título executivo por ausência dos requisitos legais; e iii) determinada a revisão dos encargos contratuais alegadamente abusivos, com apuração de eventual excesso de execução. Em contrarrazões, a parte apelada defende a manutenção da sentença, ao alegar que o pedido de gratuidade já foi indeferido em agravo de instrumento anterior, por ausência de prova da hipossuficiência financeira; decisão que já transitada em julgado, o que impede nova análise por força da coisa julgada. Sustenta, ainda, que a alegação de nulidade do título, excesso de execução e encargos abusivos configuram inovação recursal, pois não foram suscitadas no juízo de origem. No mérito, afirma que, nos termos da Lei nº 10.931/2004, a cédula de crédito bancário dispensa a assinatura de testemunhas para ter força executiva, rebatendo, também, a alegação de abusividade dos encargos, acrescentando não existe prova ou elementos concretos que justifiquem eventual perícia contábil. É o relatório. VOTO O relator, inicialmente, é preciso averiguar a presença dos pressupostos intrínsecos e extrínsecos de admissibilidade, sem os quais não seria viável prosseguir com o exame de mérito do recurso. Com base no que se infere da r. sentença, os embargos à execução foram extintos sem resolução de mérito, sendo determinado o cancelamento da distribuição do feito, decorrente da ausência de recolhimento das custas iniciais, conforme previsto no art. 290 do Código de Processo Civil. Ou seja, a análise da tese recursal limitar-se-á ao exame da matéria efetivamente apreciada pelo d. juízo de primeiro grau visto que somente após deliberação do magistrado singular, ou de injustificada demora em fazê-lo, caberia aos recorrentes buscarem a tutela jurisdicional de segundo grau, sob pena de indevida supressão de instância. Ao examinar as razões recursais, é notório que as alegações relativas à nulidade do título executivo e à cobrança de encargos abusivos não guardam pertinência com a fundamentação da sentença, a qual

Processo	0203450-59.2023.8.06.0117
	se limitou a extinguir o feito sem resolução de mérito, com base no art. 290 do CPC, em razão da ausência de recolhimento das custas processuais iniciais. &#160; Logo, adstrito ao conteúdo do decisum adversado, a análise recursal limitar-se-á ao exame da regularidade da extinção do feito com fundamento no art. 290 do Código de Processo Civil, sendo inviável perquirir&#160;matérias não submetidas à&#160;apreciação do juízo primeiro grau. &#160; Quanto ao pedido de concessão da gratuidade da justiça, observa-se que a matéria fora objeto de apreciação em Agravo de Instrumento anteriormente&#160;distribuído a este Relator sob o nº 0638550-70.2023.8.06.0000, com trânsito em julgado em 10 de fevereiro de 2025 e arquivamento definitivo em 14 de fevereiro de 2025, conforme se depreende das fls. 284 e 288 dos autos supracitados. Isso evidencia que a questão abordada neste recurso foi decidida em caráter definitivo, não sendo possível a rediscussão por esta via recursal, sob pena de ofensa à coisa julgada, nos termos dos arts. 507 e 508 do Código de Processo Civil: &#160; Art. 507. É vedado à parte discutir no curso do processo as questões já decididas a cujo respeito se operou a preclusão. &#160; Art. 508. Transitada em julgado a decisão de mérito, considerar-se-ão deduzidas e repelidas todas as alegações e as defesas que a parte poderia opor tanto ao acolhimento quanto à rejeição do pedido. &#160; Nesse sentido [grifou-se]: &#160; APELAÇÃO CÍVEL. AÇÃO EMBARGOS À EXECUÇÃO. INDEFERIMENTO DA JUSTIÇA GRATUITA. INTERPOSTO RECURSO DE AGRAVO DE INSTRUMENTO, O QUAL FOI JULGADO IMPROCEDENTE COM MANUTENÇÃO DA DECISÃO AGRAVADA. TRÂNSITO EM JULGADO. CANCELAMENTO DA DISTRIBUIÇÃO. INSISTÊNCIA NA CONCESSÃO DA JUSTIÇA GRATUITA. IMPOSSIBILIDADE DE REDISCUSSÃO DE MATÉRIA TRANSITADA EM JULGADO. PRECLUSÃO CONSUMATIVA. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA CONFIRMADA. &#160; (TJ-CE - Apelação Cível: 0200995-68.2022.8.06 .0049 Beberibe, Relator.: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 15/05/2024, 1ª Câmara Direito Privado, Data de Publicação: 15/05/2024). &#160; APELAÇÃO CÍVEL. PROCESSUAL CIVIL. AÇÃO DE EMBARGOS À EXECUÇÃO. AUSÊNCIA DE RECOLHIMENTO DAS CUSTAS E DESPESAS DE INGRESSO . CANCELAMENTO DA DISTRIBUIÇÃO. INTIMAÇÃO DO CAUSÍDICO EFETIVADA. INÉRCIA. DESNECESSÁRIA INTIMAÇÃO PESSOAL DA PARTE. PRECEDENTES DO STJ E DESTES SODALÍCIO. JUSTIÇA GRATUITA. MATÉRIA ENFRENTADA EM RECURSO ANTERIOR JÁ COM TRÂNSITO EM JULGADO. PRECLUSÃO VERIFICADA . INEXISTÊNCIA DE ALEGATIVA DE SITUAÇÃO NOVA CAPAZ DE ENSEJAR A CONCESSÃO DO BENEFÍCIO. RECURSO CONHECIDO E IMPROVIDO. SENTENÇA MANTIDA. 1. Parte embargante que não se desincumbiu do ônus de comprovar o recolhimento das custas no prazo estabelecido, referente ao parcelamento deferido, apesar de devidamente intimada para tanto . 2. Em se tratando de extinção do processo sem julgamento do mérito, com base nos arts. 290 e 485, IV, ambos do CPC, não há que se falar em intimação pessoal da parte, exigência esta necessária somente quando da extinção por abandono da causa (art. 485, III, do CPC), o que não é o caso dos autos. 3 Quanto à justiça gratuita, verifica-se que se trata de matéria preclusa, a qual foi decidida através do Agravo de Instrumento de nº 0634034-46 .2019.8.06.0000, já com trânsito em julgado, não se verificando nas razões recursais a alegação de qualquer situação nova capaz de ensejar a

Processo	0203450-59.2023.8.06.0117
	concessão do benefício. 4 - Recurso conhecido e improvido. Sentença mantida. </p><p style="padding-left: 150px;" align="justify"> (TJ-CE - Apelação Cível: 0191336-92.2016.8.06 .0001 Fortaleza, Relator.: MARIA DO LIVRAMENTO ALVES MAGALHÃES, Data de Julgamento: 04/07/2023, 4ª Câmara Direito Privado, Data de Publicação: 04/07/2023). </p><p style="padding-left: 150px;" align="justify">
 </p><p style="padding-left: 150px;" align="justify"> AGRAVO DE INSTRUMENTO. AÇÃO DE INVENTÁRIO. INDEFERIMENTO DO PEDIDO DE JUSTIÇA GRATUITA. MATÉRIA PRECLUSA. INCIDÊNCIA DO DISPOSTO 507, DO CÓDIGO DE PROCESSO CIVIL. RECURSO NÃO CONHECIDO. 1. Constata-se da detida análise dos autos originários. Ação de Inventário - Processo Nº 0206404-09 .2024.8.06.0064 ¿ que ao receber a petição inicial, em 14 de novembro de 2024, o Magistrado a quo, indeferiu o pedido de justiça gratuita e determinou a intimação dos autores para efetuarem o recolhimento das custas processuais, além do cumprimento de outras deliberações para a regular tramitação do feito. 2. Sucede que, devidamente intimados, os promoventes, não cumpriram a decisão inaugural e não apresentaram insurgência em relação ao indeferimento do pedido de gratuidade da justiça, tendo o Julgador Plânico em despacho exarado, em 24 de fevereiro de 2025, determinado o cumprimento da decisão inaugural, inclusive, em relação ao recolhimento das custas processuais, da qual os autores interpuseram o presente agravo de instrumento. 3. Nesse contexto, conclui-se que o direito dos agravantes de se insurgirem contra a decisão que indeferiu o pedido de justiça precluiu porque interpuseram recurso de decisão que apenas determinou o cumprimento de decisão anterior, quando deviam ter interposto da decisão preliminar que indeferiu o pedido de justiça gratuita, sendo que, de acordo com o artigo 507, do Código de Processo Civil, é vedada a discussão no curso do processo de questões já decididas a cujo respeito se operou a preclusão. 4. Desse modo, reconhecida a preclusão para a interposição do recurso, o não conhecimento do presente agravo de instrumento é a medida que se impõe. 5. Recurso não conhecido. </p><p style="padding-left: 150px;" align="justify"> (TJ-CE - Agravo de Instrumento: 06228204820258060000 Fortaleza, Relator.: MARIA DE FÁTIMA DE MELO LOUREIRO, Data de Julgamento: 02/04/2025, 2ª Câmara Direito Privado, Data de Publicação: 02/04/2025). </p><p align="justify"> &#160;</p><p style="text-indent: 8%;" align="justify"> Dito isso, é indiscutível que a matéria relativa à concessão da justiça gratuita foi definitivamente apreciada em agravo de instrumento anteriormente interposto, operando-se a preclusão da questão nele examinada e tornando juridicamente inviável sua rediscussão por esta instância revisora, o que impõe, por conseguinte, a manutenção da r. sentença recorrida. </p><p style="text-indent: 8%;" align="justify"> &#160;</p><p style="text-indent: 8%;" align="justify"> Ante o exposto, com base na fundamentação apresentada, conheço parcialmente do recurso de apelação para, na extensão conhecida, negar-lhe provimento, no sentido de manter inalterada a r. sentença recorrida. </p><p style="text-indent: 8%;" align="justify"> &#160;</p><p style="text-indent: 8%;" align="justify"> É como voto. </p><p style="text-align: justify;">&#160;</p><p style="text-align: justify; text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: center;"> font-size: small;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> </p></p></td></tr></table>

Processo	0203450-59.2023.8.06.0117
	times;">Relator </p><p> </p><p> </p> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	3008648-02.2025.8.06.0000
Número de ordem	150
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Agência e Distribuição
Polo ativo	VANESSA GIBIN JULIOLI LIMA
Advogado(s) - Polo ativo	SEBASTIAO AGUIAR DA CRUZ - (CE14454-A)
Polo passivo	VILLA EMPREENDIMENTOS E PARTICIPACOES LTDA - EPP
Advogado(s) - Polo passivo	RICARDO WAGNER OLIVEIRA SANTOS - (CE17066-A) SAULO GADELHA SANTOS - (CE26530-A) LISSA SOARES CAMARA VALE - (CE24659-A) FELIPE LINHARES DINIZ JUSTINO - (CE34078-A)
Terceiros	Não informado

Processo	3008648-02.2025.8.06.0000
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	PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 3008648-02.2025.8.06.0000 AGRAVO DE INSTRUMENTO (202) AGRAVANTE: VANESSA GIBIN JULIOLI LIMA. AGRAVADO: VILLA EMPREENDIMENTOS E PARTICIPAÇÕES LTDA. - EPP. EMENTA: AGRAVO DE INSTRUMENTO EM APELAÇÃO CÍVEL. RECURSO INTERPOSTO EM FACE DE DECISÃO MONOCRÁTICA DE RELATOR. MANIFESTA INADMISSIBILIDADE. ERRO GROSSEIRO. INTELIGÊNCIA DO ART. 1.015 DO CÓDIGO DE PROCESSO CIVIL. RECURSO NÃO CONHECIDO. I) CASO EM EXAME 1. Trata-se de agravo de instrumento interposto por Vanessa Gibin Julioli Lima contra decisão monocrática proferida nos autos da Apelação Cível nº 0110852-90.2016.8.06.0001, que deixou de conhecer daquele recurso por ser inadmissível. II) QUESTÃO EM DISCUSSÃO: 2. O cerne da

Processo	3008648-02.2025.8.06.0000
	controvérsia consiste em verificar se o presente recurso deve ou não ser admitido e, posteriormente, em caso positivo, se a decisão monocrática deve ser reformada ou não. III) RAZÕES DE DECIDIR: 3. Este recurso de Agravo de Instrumento desafia decisão unipessoal de relator em Tribunal, em descompasso com a regra do art. 1.015 do Código de Processo Civil, que estabelece, como pressuposto para a interposição deste recurso, que exige que a decisão combatida tenha sido proferida por juiz de primeiro grau. 4. A apresentação deste recurso configura erro grosseiro, que desafia o seu não conhecimento de acordo com o art. 932, III, do CPC. IV) DISPOSITIVO 5. Recurso não conhecido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em não conhecer do recurso interposto, nos termos do voto do relator. Fortaleza, data da assinatura digital. &#160; DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator &#160; RELATÓRIO &#160; Trata-se de agravo de instrumento interposto por Vanessa Gibin Julioli Lima contra decisão monocrática proferida nos autos da Apelação Cível nº 0110852-90.2016.8.06.0001, que deixou de conhecer daquele recurso por ser inadmissível. &#160; &#160; Irresignada com tal decisão, neste recurso (ID 21388140), argumenta que a decisão monocrática deve ser reformada para que seja reconhecido o direito do agravante aos seus honorários advocatícios, de acordo com o art. 22 do Estatuto da OAB. &#160; &#160; Ao final, pleiteia que seja dado provimento ao presente recurso, a fim de reformar a decisão monocrática, determinando o seguimento com a modificação da sentença no recurso de apelação. &#160; &#160; Decisão interlocutória no ID 24436747, determinando a redistribuição do feito à minha relatoria em virtude da prevenção gerada pela Apelação Cível nº 0110852-90.2016.8.06.0001 &#160; &#160; &#160; VOTO &#160; &#160; O cerne da controvérsia consiste em verificar se o presente recurso deve ou não ser admitido e, posteriormente, em caso positivo, se a

Processo	3008648-02.2025.8.06.0000
	<p>decisão monocrática deve ser reformada ou não.</p> <p justify"="" style="text-indent: 8%; align="> #160; </p><p style="text-indent: 8%;" align="justify"> Prefacialmente, antes de analisar o mérito, deve-se averiguar a presença dos pressupostos intrínsecos e extrínsecos de admissibilidade, sem os quais resta inviabilizado o conhecimento do recurso. </p><p style="text-indent: 8%;" align="justify"> #160; </p><p style="text-indent: 8%;" align="justify"> Nesse contexto, verifica-se a existência de óbices para o regular processamento e julgamento deste agravo de instrumento, conforme será a seguir demonstrado. </p><p style="text-indent: 8%;" align="justify"> #160;</p><p style="text-indent: 8%;" align="justify"> Verifica-se que o presente recurso de Agravo de Instrumento desafia decisão unipessoal de relator em Tribunal, em descompasso com a regra do art. 1.015 do Código de Processo Civil, que estabelece, como pressuposto para a interposição deste recurso, que exige que a decisão combatida tenha sido proferida por juiz de primeiro grau. </p><p style="text-indent: 8%;" align="justify"> #160; </p><p style="text-indent: 8%;" align="justify"> Diante disso, a apresentação deste recurso configura erro grosseiro, que leva necessariamente ao seu não conhecimento de acordo com o art. 932, III, do CPC, pois o recurso cabível seria o agravo interno. </p><p style="text-indent: 8%;" align="justify"> #160; </p><p style="text-indent: 8%;" align="justify"> #160; </p><p style="text-indent: 8%;" align="justify"> #160; </p><p style="text-indent: 8%;" align="justify"> Fortaleza, data da assinatura digital. </p><p align="center"> #160;</p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Relator </p><p align="justify"> #160; </p><p>#160;</p>

<p>#160;</p><p style="text-align: center;"> #160; </p></p>
Processo	0185899-02.2018.8.06.0001
Número de ordem	151
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Dissolução
Polo ativo	MARIA HELENA NASCIMENTO
Advogado(s) - Polo ativo	ADONIS MARTINS LIMA E SILVA - (CE35778)
Polo passivo	EDILSON GOMES DO NASCIMENTO
Advogado(s) - Polo passivo	CRISTIANE PINHEIRO DIOGENES - (CE13446-A) IRACEMA NOGUEIRA DIOGENES SALDANHA - (CE26711-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0185899-02.2018.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmlV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWvZtqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWj+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEkikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZMs6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4Ss89Ta/NzDL7fJ5XC6H02kXbY41nUvXNkIx410JEZMRU0ZDIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0185899-02.2018.8.06.0001
	roman&quot;, times;"/>PODER JUDICIÁRIO tribunal de justiça gabinete de desembargador patrocínio processo: 0185899-02.2018.8.06.0001 apelação cível apeloante: maria helena nascimento apelado: edilson gomes do nascimento ementa EMENTA I. CASO EM EXAME Apelação interposta por ex-esposa contra sentença que decretou o divórcio, determinou a partilha igualitária apenas dos bens comprovados (apartamento), fixou alimentos em um salário mínimo em seu favor e arbitrou honorários advocatícios em 10% sobre o valor da causa. A apelante pleiteia: (i) inclusão, na partilha, de terreno, aplicações financeiras e veículo Toyota Hilux; (ii) majoração da pensão alimentícia; e (iii) majoração dos honorários sucumbenciais.

Processo	0185899-02.2018.8.06.0001
	height: 1.38; text-align: justify; margin-top: 14pt; margin-bottom: 4pt;" dir="ltr">II. QUESTÃO EM DISCUSSÃO: Há três questões em discussão: (i) definir se é cabível incluir, na partilha, bem cuja existência e individualização não restou minimamente demonstrada nos autos; (ii) verificar a pertinência da majoração da pensão alimentícia devida pelo ex-marido à Apelante; (iii) avaliar a adequação dos honorários advocatícios fixados na sentença.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 14pt; margin-bottom: 4pt;" dir="ltr">III. RAZÕES DE DECIDIR</h3><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">1. A partilha exige comprovação da existência e da individualização dos bens (CC, art. 1.658). Não comprovados a existência e as características de terreno alegado, bem como a relação das partes com o referido bem (posse, propriedade), não se admite sua inclusão.</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">2. A pesquisa de bens por meio de consulta nos sistemas de cooperação com o Judiciário (Sisbajud, Renajud) é admissível em sede de ação de divórcio com o fito de assegurar a transparência e concretizar uma justa partilha, desde que lastreada em indícios concretos de patrimônio oculto.&#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">3. No caso, a Promovente/Apelante não explicou nem demonstrou minimamente os alegados indícios da existência de aplicações financeiras e veículo automotor em nome do Apelado, razão pela qual não há irregularidade no indeferimento das pesquisas em questão.&#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">4. Eventual sobrepilha será possível caso surjam indícios concretos de ocultação patrimonial (STJ, REsp nº 1.651.270/SP).

Processo	0185899-02.2018.8.06.0001
	weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">
 &#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr"> 5. O dever de mútua assistência (CC, art. 1.566, III) e a regra dos alimentos entre cônjuges (CC, art. 1.694) autorizam a fixação de pensão em caráter excepcional e proporcional à necessidade e possibilidade. No caso, a autora é idosa, sempre se dedicou ao lar e não possui expectativa de inserção laboral, evidenciando a necessidade de alimentos por prazo indeterminado.</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">6. O alimentante é militar inativo com rendimentos brutos superiores a R\$ 15.000,00, e inexistente prova de compromissos financeiros que inviabilizem o aumento da pensão. Assim, mostra-se razoável fixar a verba em 20% da remuneração bruta, deduzidos apenas os descontos obrigatórios.</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">7. Os honorários sucumbenciais fixados em 10% sobre valor da causa resultam em montante irrisório (aproximadamente R\$ 300,00), incompatível com o trabalho desempenhado. Cabe aplicação do art. 85, §§2º e 8º, CPC, para fixação equitativa, arbitrando-os em R\$ 5.000,00.</p><h3 style="line-height: 1.38; text-align: justify; margin-top: 14pt; margin-bottom: 4pt;" dir="ltr">IV. DISPOSITIVO: Recurso conhecido e parcialmente provido.</h3><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">ACÓRDÃO:&#160; Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação para lhe dar parcial provimento, nos termos do voto do Desembargador Relator.&#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e assinatura digital registradas no sistema processual

Processo	0185899-02.2018.8.06.0001
	eletrônico. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator Trata-se de recurso de Apelação interposto por Maria Helena Nascimento contra a sentença prolatada pelo Juízo da 13ª Vara de Família da Comarca de Fortaleza nos autos da Ação de Divórcio c/c Partilha de Bens e Alimentos proposta pela ora Apelante em desfavor de Edilson Gomes do Nascimento. Na sentença (ID 21462532), o feito foi julgado parcialmente procedente. O magistrado decretou o divórcio entre as partes, determinou a partilha igualitária do patrimônio comum comprovado e fixou alimentos definitivos em favor da Autora no valor de um salário mínimo. A divisão dos bens incluiu um apartamento localizado em Fortaleza, mas excluiu um terreno, aplicações financeiras e uma camionete Toyota Hilux, devido à falta de comprovação de existência dos mesmos. A decisão relativa aos alimentos levou em consideração a idade da autora e sua dedicação ao lar durante o período matrimonial, conforme o disposto nos artigos 1.658, 1.694, 1.695 e 1.704 do Código Civil e jurisprudência relevante do Superior Tribunal de Justiça referente a alimentos entre ex-cônjuges. (ID 21462532), o feito foi julgado parcialmente procedente. O magistrado decretou o divórcio entre as partes, determinou a partilha igualitária do patrimônio comum comprovado e fixou alimentos definitivos em favor da Autora no valor de um salário mínimo. A divisão dos bens incluiu um apartamento localizado em Fortaleza, mas excluiu um terreno, aplicações financeiras e uma camionete Toyota Hilux, devido à falta de comprovação de existência dos mesmos. A decisão relativa aos alimentos levou em consideração a idade da autora e sua dedicação ao lar durante o período matrimonial, conforme o disposto nos artigos 1.658, 1.694, 1.695 e 1.704 do Código Civil e jurisprudência relevante do Superior Tribunal de Justiça referente a alimentos entre ex-cônjuges. Irresignada, a Autora interpôs

Processo	0185899-02.2018.8.06.0001
	space: pre-wrap;">recurso de apelação (ID 21462495),&#160; argumentando que o valor dos alimentos é insuficiente para sua manutenção em conformidade com o padrão de vida anterior e solicitou a majoração da pensão alimentícia para 20% a 30% do salário do réu, ou, no mínimo, dois salários mínimos. Além disso, argumentou que a sentença excluiu indevidamente da partilha o terreno, as aplicações financeiras e a camioneta, não lhe permitindo acesso a possíveis pesquisas que comprovassem a existência desses bens. Solicitou, ainda, a revisão do percentual de honorários advocatícios fixados em 10%, por considerar o montante ínfimo frente ao trabalho realizado, pedindo sua majoração.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: Opt; margin-bottom: Opt; padding: 21pt Opt Opt Opt;" dir="ltr">Emcontrarrazões (ID 21462624), o apelado sustenta a manutenção do decisum de primeiro grau. Afirma que não houve comprovação da existência das aplicações financeiras e da caminhonete e que o terreno não foi individualizado, não sendo possível a inclusão desses bens na partilha. Sobre os alimentos, argumenta que a fixação em um salário mínimo está adequada, considerando sua própria condição financeira e a idade avançada. Postulou, assim, o desprovemento do recurso.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: Opt; margin-bottom: Opt; padding: 21pt Opt 12pt Opt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.38; text-align: center; margin-top: 21pt; margin-bottom: Opt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: Opt;" dir="ltr">Consoante relatado, o presente recurso configura insurgência contra o decisum de Primeiro Grau que julgou parcialmente procedente a ação de divórcio c/c partilha de bens e alimentos.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: Opt;" dir="ltr">Em síntese, o cerne da controvérsia recursal consiste em examinar se: (a) é cabível a inclusão, na partilha, de bens cuja existência não restou

Processo	0185899-02.2018.8.06.0001
	comprovada nos autos (ativos financeiros, veículo Toyota Hilux) e de um terreno que não foi individualizado pelas partes; (b) (c) é pertinente a majoração dos alimentos fixados em favor da ex-cônjuge, ora Apelante; é cabível a majoração dos honorários sucumbenciais estipulados em sentença. 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> I - Da Partilha de Bens 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Analisando-se os autos, é possível constatar que a Autora arrolou, na exordial, os seguintes bens para fins de partilha: a) o apartamento residencial que figurou com moradia do então casal (escritura no ID 21462499); b) um terreno, mas não soube precisar "seu local, dimensões, modalidade aquisitoria e outras qualificações". 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Na contestação, o Promovido concordou com a partilha igualitária do apartamento e do terreno, mas não acostou documentação relativa a esse último, nem apresentou informações aptas a sua individualização. 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Em petição posterior, a Autora afirma a existência de indícios de que o Requerido possui aplicações financeiras e uma camioneta de marca Toyota, modelo Hilux. Postula, diante disso, a realização de buscas nos Sistemas BACENJUD e RENAJUD com o fito de identificar a propriedade de tais bens (ID 21462415). O pedido, contudo, não foi apreciado pelo Juízo. 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> No despacho de ID 21462491, o Juízo 160; a&#160; quo

Processo	0185899-02.2018.8.06.0001
	baseline; white-space: pre-wrap;">anunciou o julgamento do feito no estado em se encontrava, determinando a intimação das partes na forma do art. 355 do CPC. Ambas deixaram transcorrer in albis o prazo conferido para manifestação.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Posteriormente o Autor alegou fato novo passível de influenciar no julgamento do feito (locação do apartamento do casal e percepção integral do aluguel pela Promovente), havendo-se oportunizado à Autora manifestação sobre o conteúdo do petitório, o que foi efetivado na petição de ID 21462410. Nessa oportunidade, a Autora reiterou o pedido de pesquisa de bens e de revisão da verba alimentar provisória.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> No despacho de ID 21462423, o Juízo indeferiu os pedidos formulados pela Autora na manifestação de ID 21462410 e consignou novo anúncio do julgamento do feito conforme o seu estado, determinando a intimação das partes para razões finais.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Nas razões do presente apelo, a Autora se insurge contra a exclusão do terreno, do veículo Toyota Hilux e das aplicações financeiras do patrimônio comum a ser partilhado. Tal exclusão, como dito, se deu em razão da ausência de prova mínima sobre os bens em questão.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Do cotejo dos elementos constantes nos autos, é possível observar que o Autor admite a existência do terreno, concordando com a partilha igualitária. Porém, nenhuma das partes trouxe informações mínimas sobre o imóvel em questão, não se sabendo onde está localizado ou quais são suas características. Também inexistente informação quanto à matrícula imobiliária do bem, razão pela qual não foi viável aferir se este se encontra em nome de umas das partes ou de terceiro. Da mesma forma, não há elementos mínimos que evidenciem sequer a posse das partes sobre o bem, não havendo como se afastar, diante disso, a possibilidade de uma mera detenção.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nesse contexto, é inviável a inclusão do terreno em questão na partilha efetuada no feito originário. Ambas as partes foram omissas em trazer informações e provas mínimas quanto ao bem, cuja individualização se mostrou inviável.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Quanto ao veículo Toyota Hilux e as aplicações financeiras, observo que a ora Apelante postulou, em diversas ocasiões: a) <span style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-

Processo	0185899-02.2018.8.06.0001
	space: pre-wrap;">a realização de buscas no sistema BACENJUD a respeito das aplicações financeiras do Requerido a partir de 2018 (ano da propositura da ação);b) consulta ao RENAJUD para verificar a existência de veículos em nome do ora Apelado; c) ordem judicial instado o Promovido a apresentar o seis últimos contracheques para comprovar a sua renda mensal, visando à majoração da verba alimentar por meio da comprovação do poder aquisitivo real do Alimentante.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Não obstante o decurso de prazo da Autora para manifestação relativa ao primeiro despacho de saneamento, observo que, após petição acostada pelo Promovido, o Juízo reverteu implicitamente o anúncio de julgamento do feito e deu regular prosseguimento. Isso pode ser constatado a partir da decisão que indeferiu os pedidos de pesquisa da Autora (despacho de conteúdo decisório de ID 21462423). Tal indeferimento não se fundamentou na preclusão desfavorável à Autora, mas na suposta desnecessidade de outras diligências para o deslinde do feito. Além disso, foi feito um novo anúncio do julgamento do feito conforme o seu estado, corroborando a ideia de que o anúncio anterior havia sido desconsiderado.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Considerando-se o distanciamento entre as partes e o fato de que o patrimônio comum permanecia no domínio do Promovido (de quem a Autora permaneceu economicamente dependente), admite-se, a priori, que a Apelante não possui meios próprios para confirmar a existência de eventuais outros bens em nome do Requerido.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Em situações como tal, mostra-se cabível a utilização dos convênios disponibilizados ao Poder Judiciário, como Sisbajud (antigo BacenJud) e o RenaJud, de modo a aprofundar o exame do patrimônio real a ser partilhado, desde que haja indícios concretos quanto à existência de patrimônio ocultado. Nessas condições, a pesquisa é legítima, a fim de assegurar a transparência patrimonial e a justa partilha.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nesse sentido, orienta-se a jurisprudência pátria (grifo nosso):</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New

Processo	0185899-02.2018.8.06.0001
	Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">DIREITO CIVIL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. UNIÃO ESTÁVEL. DISSOLUÇÃO E PARTILHA DE BENS . DILIGÊNCIAS PARA LOCALIZAÇÃO DE PATRIMÔNIO. HIPOSSUFICIÊNCIA DA PARTE AUTORA. PRINCÍPIO DA COOPERAÇÃO. RECURSO PROVIDO . I. CASO EM EXAME 1. Agravo de Instrumento interposto por Renata Carmona Valerio contra decisão interlocutória que indeferiu pedido de expedição de ofícios e acesso a sistemas judiciais e administrativos (COAF, RIF, SENSEC, SREI, SISBAJUD, RENAJUD, INFOJUD, entre outros) com a finalidade de localizar bens do agravado, José Nazareno Xavier da Silva, supostamente omitidos para fins de partilha em ação de dissolução de união estável. A agravante alegou hipossuficiência, grave enfermidade e impossibilidade de acesso direto às informações protegidas por sigilo .II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se é cabível a expedição de ofícios e autorização de diligências judiciais para localização de bens do agravado, diante da alegada hipossuficiência da agravante e da existência de indícios de ocultação patrimonial. III . RAZÕES DE DECIDIR 3. O indeferimento do pedido de diligências com base exclusiva no ônus da prova (art. 373, I, do CPC) desconsidera o princípio da cooperação (art. 6º do CPC), segundo o qual o magistrado deve atuar proativamente na busca da verdade real . 4. A jurisprudência é pacífica no sentido de que, diante de indícios concretos de existência de patrimônio e da hipossuficiência da parte, o juízo deve viabilizar meios de localização de bens, inclusive por expedição de ofícios e utilização de sistemas judiciais como SISBAJUD, RENAJUD e INFOJUD. 5. A agravante apresentou elementos objetivos, como registro de embarcação, contas de energia e indícios de movimentação empresarial, que apontam para a existência de bens a serem partilhados . 6. As diligências requeridas não substituem o ônus probatório, mas viabilizam sua efetivação, conforme previsto no art. 139, IV, do CPC, devendo o juízo adotar medidas sub-rogatórias e indutivas para garantir a prestação jurisdicional adequada. 7 . A negativa das diligências solicitadas compromete o acesso à justiça e o direito da agravante à efetiva partilha do patrimônio comum, especialmente em contexto de risco de dilapidação patrimonial. IV. DISPOSITIVO E TESE 8. Recurso provido . Tese de julgamento: 1. O juiz deve determinar diligências para localização de bens a serem partilhados quando demonstrada a hipossuficiência da parte e a existência de indícios objetivos de ocultação patrimonial. 2. O princípio da cooperação impõe ao magistrado o dever de atuação proativa para assegurar a efetividade da tutela jurisdicional em ações de partilha . 3. A utilização de sistemas judiciais e administrativos para busca de bens constitui instrumento legítimo de superação de assimetrias processuais, sem violar o princípio da imparcialidade. [...] ACÓRDÃO Vistos, relatados e discutidos estes autos, onde figuram como partes as acima identificadas, acordam os Excelentíssimos Senhores Desembargadores membros da Colenda 2ª Turma de Direito Privado do Egrégio Tribunal de Justiça do Estado do Pará em plenário virtual, por unanimidade de votos, em CONHECER e DAR PROVIMENTO ao Recurso de Agravo de Instrumento, nos termos do voto da Exmo. Desembargador ntiy-person" > Alex Pinheiro Centeno. Alex Pinheiro Centeno Desembargador Relator TJ-PA

Processo	0185899-02.2018.8.06.0001
	#000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">- AGRADO DE INSTRUMENTO: 08119402520248140000 26094428, Relator.: ALEX PINHEIRO CENTENO, Data de Julgamento: 01/04/2025, 2ª Turma de Direito Privado)</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">In casu, verifico que a Apelante formulou os pedidos de pesquisa de bens em questão por meio de petição protocolada após a peça contestatória, afirmando, de forma genérica, haver indícios de que o Requerido possui aplicações financeiras e um veículo Toyota Hilux em seu nome. Não restou explicado, porém, na referida petição ou em quaisquer dos requerimentos de pesquisa posteriores, quais indícios são esses, que só teriam sido constatados em momento posterior ao protocolo da exordial e de sua emenda.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nesse cenário, não se verifica lastro mínimo ao acolhimento do pedido em questão. Como já mencionado, a determinação de diligências judiciais para localização de bens da parte deve ser fundamentada em indícios concretos quanto à existência do patrimônio não revelado pela outra parte, sob pena de se incorrer no risco de uma busca aleatória de bens sem demonstração mínima de ocultação.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Diante disso, não vislumbro motivos para a reforma da decisão objurgada. Impende registrar, contudo, que não há prejuízo de eventual sobrepartilha, caso a Demandante venha a reunir indícios minimamente sólidos quanto ao patrimônio alegado e os apresente em juízo.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Como já se manifestou o STJ, a “sobrepartilha é utilizada especificamente nas ações de divórcio, nos casos em que a separação e a divisão dos bens do casal já foram devidamente concluídas, porém uma das partes descobre que a outra possuía bens que não foram partilhados”. (REsp n. 1.651.270/SP, relator Ministro Ricardo Villas Bôas Cueva , Terceira Turma, julgado em 19/10/2021, DJe

Processo	0185899-02.2018.8.06.0001
	de 21/10/2021). No caso, apesar de a Autora ponderar a possibilidade de outros bens, não demonstrou precisão suficiente quanto à ciência da efetiva existência destes, tanto que sequer foi capaz de apresentar informações ou elementos mínimos nesse sentido. Não há, portanto, como se afirmar que a Autora possui prévia ciência quanto aos bens em questão, tratando-se, na verdade, de meras ilações. Nessa toada, caso venha a constatar&#160; efetivos indícios de ocultação patrimonial pelo Requerido, inclusive quanto aos bens supostos, sua pretensão pode ser exercida mediante processo de sobrepartilha, uma vez que o direito à meação do patrimônio comum já está assegurado em sentença.</p> <p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> II - Dos Alimentos</p> <p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Sobre o assunto, recorde-se que, nos termos do caput do art. 1.694 do Código Civil, podem os parentes, os cônjuges ou companheiros pedir uns aos outros os alimentos de que necessitem para viver de modo compatível com a sua condição social, inclusive para atender às necessidades de sua educação. Citando Orlando Gomes, explana Maria Helena Diniz <sup>1</sup>:</p> <p style="line-height: 1.4400000000000002; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> [...] alimentos são prestações para satisfação das necessidades vitais de quem não pode provê-las por si. Compreende o que é imprescindível à vida da pessoa, como alimentação, vestuário, habitação, tratamento médico, transporte, diversões, e, se a pessoa alimentada for menor de idade, ainda verbas para sua instrução e educação [...]</p> <p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> [Grifei]</p>

Processo	0185899-02.2018.8.06.0001
	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">No caso de alimentos entre ex-cônjuges, a regra é que a prestação material exija efetiva comprovação da necessidade do(a) alimentando(a) e tenha caráter transitório ou seja, tenha termo certo, visando apenas a assegurar ao beneficiário tempo hábil para que reingresse ou se recoloca no mercado de trabalho. Em situações excepcionais, contudo, é possível a fixação de alimentos por tempo indeterminado, quando observado que o(a) alimentando(a) não tem condições para adquirir (ou readquirir) meios próprios para sua manutenção. 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr"> Versando sobre o tema, eis uma amostra da jurisprudência pátria, ilustrativa do entendimento supramencionado (grifo nosso): 1.4400000000000002; margin-left: 113pt; text-align: justify; background-color: #ffff; margin-top: 21pt; margin-bottom: 0pt; dir="ltr"> AGRAVO DE INSTRUMENTO. DIREITO DE FAMÍLIA. PENSIONAMENTO ENTRE EX-CÔNJUGES. EXCEPCIONALIDADE. IMPOSSIBILIDADE NA ESPÉCIE. FIXADOS EM BENEFÍCIO DA FILHA MENOR. MAJORAÇÃO. INDEFERIMENTO. RECURSO IMPROVIDO. 1. Compulsando os autos, observa-se que os argumentos e os documentos colacionados não permitem formular um juízo de probabilidade acerca da existência do direito alegado pelas agravantes, pois as recorrentes não comprovaram as suas alegações de forma suficiente a ensejar a reforma da decisão para fixar alimentos a ex-consorte e para majorar os alimentos fixados à filha do ex-casal. 2. Como bem ressaltou o Min. Luiz Felipe Salomão no Resp 1.454.263/CE o pensionamento entre ex-cônjuges "é excepcional, de modo que, quando devidos, ostentam, ordinariamente, caráter assistencial e transitório, persistindo apenas pelo prazo necessário e suficiente ao soerguimento do alimentado, com sua reinserção no mercado de trabalho ou, de outra forma, com seu autossustento e autonomia financeira." 3 Para que fosse fixada a obrigação alimentar entre ex-cônjuges seria indispensável a prova da incapacidade financeira de prover o seu autossustento, ou da impossibilidade laboral, ou da dificuldade de reinserção no mercado

Processo	0185899-02.2018.8.06.0001
	de trabalho, em razão da idade ou da falta de qualificação, requisitos estes não evidenciados na presente lide Afinal, a primeira agravante é uma pessoa jovem de 33 (trinta e três) anos, graduada em Engenharia de Pesca, que goza de saúde, transparecendo, assim, ser capaz de manter a sua própria subsistência, motivo pelo qual não se pode reformar a decisão do Juízo a quo. 4. Quanto ao pleito para majorar os alimentos da segunda agravante, é cediço que a obrigação alimentar possui o caráter de variabilidade, devendo coadunar-se com o binômio da necessidade do alimentado e a possibilidade do alimentante. 5. Afinal, o Código Civil, em seu art. 1.694, dispõe que os alimentos devem ser fixados na proporção das necessidades do alimentando e dos recursos do alimentante, o que significa dizer que a verba alimentar deve ser arbitrada observando-se a justa ponderação do binômio necessidade e possibilidade, em atenção, desta forma, ao princípio da proporcionalidade. 6. Ao se compulsar os autos, observa-se que os elementos probatórios não autorizam a alteração dos alimentos para o montante de 10 (dez) salários-mínimos, já que o alimentante não sobeja ter a capacidade financeira alegada pelas agravantes, sobretudo quando se analisa o contracheque de 09/2020 do agravado, fl. 468, o qual demonstra que o alimentante percebe uma remuneração de R\$ 13.439,00 (treze mil, quatrocentos e trinta e nove reais). 7. Recurso improvido. [...] TJ-CE Al: 06374456320208060000 CE 0637445-63.2020.8.06.0000, Relator: CARLOS ALBERTO MENDES FORTE, Data de Julgamento: 11/08/2021, 2ª Câmara Direito Privado, Data de Publicação: 11/08/2021). Ação de reconhecimento e dissolução de união estável. Decisão pela qual foi indeferida a tutela de urgência requerida para fixar alimentos para a agravante, bem como para estabelecer a guarda dos animais de estimação adquiridos pelo casal, remetendo-se a questão ao Juízo Cível. Animais de estimação. Relação de afeto nutrida entre o animal e seu dono. Competência do Juízo da Família para dirimir a questão. Precedentes do Egrégio Superior Tribunal de Justiça e desta Corte. Alimentos provisórios “Times New Roman”, serif, color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;”. A obrigação alimentar entre os companheiros, maiores e adultos é recíproca e está vinculada à efetiva necessidade, não mais se presumindo a necessidade da mulher aos alimentos, sendo imprescindível, portanto, a comprovação da necessidade dos alimentos “Times New Roman”, serif, color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;”. Agravante que é jovem e não demonstrou incapacidade para o exercício de qualquer profissão. Observância do contraditório. Decisão parcialmente reformada. Recurso parcialmente provido. “Times New Roman”, serif, color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;” TJ-SP “Times New Roman”, serif, color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;”- Al: 20693057120228260000 SP 2069305-71.2022.8.26.0000, Relator: Christiano Jorge, Data de Julgamento: 23/08/2022, 6ª Câmara de Direito Privado, Data de Publicação: 23/08/2022). “Times New Roman”, serif, color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;” APELAÇÃO CÍVEL. FAMÍLIA. AÇÃO DE EXONERAÇÃO DE ALIMENTOS. EX-EXPOSA. “Times New Roman”, serif, color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;” INCAPACIDADE LABORAL NÃO COMPROVADA.

Processo	0185899-02.2018.8.06.0001
	align: baseline; white-space: pre-wrap;">PERCEPÇÃO BENEFÍCIO INSS. MODIFICAÇÃO DA SITUAÇÃO FINANCEIRA. AUSÊNCIA DE NECESSIDADE DOS ALIMENTOS. PERPETUAÇÃO DO ENCARGO. IMPOSSIBILIDADE. RECURSO CONHECIDO E NÃO PROVIDO. 1. O encargo alimentar entre ex-cônjuges é excepcional, pois se presume que cada um é capaz de arcar com seu próprio sustento, somente se justificando a imposição ônus quando comprovada a incapacidade de um deles prover a própria manutenção. 2. Não comprovada a incapacidade laborativa do cônjuge virago e constatado que passou a perceber benefício do INSS após o término da relação, não há que se falar na necessidade de continuar a receber pensão do ex-cônjuge. 3. Se os alimentos já vêm sendo pagos há tempo suficiente para que a alimentanda busque inserção no mercado de trabalho, a exoneração da obrigação alimentar é medida que se impõe, mormente ao se considerar a excepcionalidade do encargo. TJ-MG Apelação Cível n. 1.0000.21.073984-3/001, Relator(a): Des.(a) Bitencourt Marcondes, 19ª CÂMARA CÍVEL, julgamento em 01/07/2021, publicação da súmula em 06/07/2021). 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Assim, a fixação de alimentos em favor do ex-cônjuge fundamenta-se no dever de mútua assistência, previsto no artigo 1.566, III, do Código Civil 2 Da mesma forma, o artigo 1.694 do Código Civil estabelece que os cônjuges podem pedir alimentos uns aos outros, de modo compatível com a sua condição social. Todavia o arbitramento depende de prova inequívoca da necessidade do auxílio. 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;">In casu 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">restou comprovado que a Autora é economicamente dependente do Apelado e não detém expectativa de inserção no mercado laboral, tratando-se de pessoa idosa e sem capacitação profissional, que sempre se dedicou ao lar. Diante disso, foi arbitrada pensão alimentícia no valor de um salário mínimo, considerando-se a renda do Alimentante comprovada nos autos. 1.7999999999999998pt; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;">Conforme documentação no ID 21462424 e ID 21462515, o Alimentante é militar federal inativo e recebe proventos que correspondiam, em 2021, ao valor bruto de aproximadamente R\$ 13.856,66. Em consulta atual ao Portal da Transparência do Governo Federal 14pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; white-space: pre-wrap;">3 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">constata-se que o Alimentante 13.999999999999998pt; font-family: 'Times New Roman', serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">aufere,

Processo	0185899-02.2018.8.06.0001
	atualmente, remuneração bruta no importe de R\$ 15.340,92 (quinze mil, trezentos e quarenta reais e noventa e dois centavos).&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Considerando-se a ausência de notícia quanto ao contingenciamento da verba alimentar do Recorrido com outras despesas necessárias, mostra-se possível, de fato, uma majoração da pensão estipulada na sentença, de modo a assegurar o custeio de despesas básicas e essenciais para subsistência digna da ora Apelante.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Além disso, a existência de vínculo formal do Alimentante com sua fonte pagadora evidencia a pertinência da fixação do quantum alimentar por meio de porcentual incidente em sua remuneração bruta, como postula a Recorrente.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nessa toada, considero razoável e proporcional a estipulação de verba alimentar equivalente a 20% (vinte por cento) da remuneração bruta do Requerido/Apelado, deduzidos apenas os descontos obrigatórios.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> III - Dos Honorários Advocatícios</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> No que pertine aos honorários de sucumbência, entendo que merece prosperar a pretensão da Recorrente. Isso porque, havendo o juízo singular fixado os honorários em questão em 10% (dez por cento) sobre o valor da causa, a verba corresponderia a um valor nominal de aproximadamente de R\$ 300,00 (trezentos reais).&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Assim, os parâmetros utilizados pelo órgão judicante resultam em valor, de fato, irrisório e incapaz de remunerar devidamente o trabalho do profissional da advocacia. A manutenção do critério adotado na sentença ensejará, no presente caso, estipulação de honorários ínfimos, em desprestígio do esforço despendido pelo causídico.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Sobre o assunto, vale recordar o disposto nas normas constantes no art. 85 do Código Processual Civil em vigor, notadamente os seguintes dispositivos:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: &quot;Times New Roman&quot;; serif; color: #000000; background-color: transparent; font-weight: 400;

Processo	0185899-02.2018.8.06.0001
	font-style: normal; font-variant: normal; text-decoration-skip-ink: none; vertical-align: baseline; white-space: pre-wrap; text-decoration: underline;">Art. 85 . A sentença condenará o vencido a pagar honorários ao advogado do vencedor.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> § 1º São devidos honorários advocatícios na reconvenção, no cumprimento de sentença, provisório ou definitivo, na execução, resistida ou não, e nos recursos interpostos, cumulativamente.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> § 2º Os honorários serão fixados entre o mínimo de dez e o máximo de vinte por cento sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa, atendidos:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> I - o grau de zelo do profissional;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> II - o lugar de prestação do serviço;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> III - a natureza e a importância da causa;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> IV - o trabalho realizado pelo advogado e o tempo exigido para o seu serviço.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> § 6º Os limites e critérios previstos nos §§ 2º e 3º aplicam-se independentemente de qual seja o conteúdo da decisão, inclusive aos casos de improcedência ou de sentença sem resolução de mérito.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> § 6º-A. Quando o valor da condenação ou do proveito econômico obtido ou o valor atualizado da causa for líquido ou liquidável, para fins de fixação dos honorários advocatícios, nos termos dos §§ 2º e 3º, é proibida a apreciação equitativa, salvo nas hipóteses expressamente previstas no § 8º deste artigo.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">§ 8º Nas causas em que for inestimável ou irrisório o proveito econômico ou, ainda, quando o valor da causa for muito baixo, o juiz fixará o valor dos honorários por apreciação equitativa, observando o disposto nos incisos do § 2º. [Grifou-se].</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Assim, considerando as circunstâncias concretas do caso (efetivo trabalho realizado pelo advogado, o tempo exigido para o seu serviço, grau

Processo	0185899-02.2018.8.06.0001
	de zelo do profissional, lugar de prestação do serviço, a natureza e a importância da causa (art. 85, §2º, I a IV, e §8º, do CPC), considero pertinente a fixação equitativa dos honorários sucumbenciais, razão pela qual os arbitro no patamar de R\$ 5.000,00 (cinco mil reais). IV - Dispositivo Ex positis do recurso de apelação para lhe DAR PARCIAL PROVIMENTO reformando a sentença recorrida exclusivamente para a majorar a verba alimentar estipulada em favor da Apelante, fixando-a no valor correspondente a 20% (vinte por cento) da remuneração bruta do Apelado deduzidos os descontos obrigatórios; e b arbitrar os honorários sucumbenciais sob o critério da equidade, fixando-os no patamar de R\$ 5.000,00 (cinco mil reais). É como voto. Fortaleza, data e assinatura digital registradas no sistema

Processo	0185899-02.2018.8.06.0001
	eletrônico. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator <strong style="font-weight: normal;"> </p> <p style="text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <sup>1</sup> DINIZ, Maria Helena. Curso de Direito Civil Brasileiro. Vol. 5. 23. ed. São Paulo: Saraiva: 2008, fl. 558.</p> <p style="text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <sup>2</sup> Art. 1.566. São deveres de ambos os cônjuges: [...] III - mútua assistência;</p> <p style="text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> &#160; <sup>3</sup> Disponível em: &lt;https://portal.datransparencia.gov.br/servidores/736093&gt;, acesso em 09.09.25.</p> <div>
 </div> <p align="justify">&#160;</p>
 <p>&#160;</p> <p style="text-align: center;"> &#160; </p>
Processo	0009519-21.2017.8.06.0176
Número de ordem	152
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Seguro
Polo ativo	Franco Robson Moraes Xavier
Advogado(s) - Polo ativo	HILTON RANKLIN LIMA FONTENELE - (CE39459-A)
Polo passivo	INSTITUTO DE PESQUISA E ENSINO MEDICO DO ESTADO DE MINAS GERAIS LTDA.
Advogado(s) - Polo passivo	JULIO DE CARVALHO PAULA LIMA - (CE34725-A) HUMBERTO ROSSETTI PORTELA - (MG91263-A) IGOR GOES LOBATO - (SP307482-A)
Terceiros	Não informado

Processo	0009519-21.2017.8.06.0176
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Processo	0009519-21.2017.8.06.0176
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Processo	0009519-21.2017.8.06.0176
	roman&quot;, times;">PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;">TRIBUNAL DE JUSTIÇA</p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;">GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;">
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</p><p>PROCESSO: 0009519-21.2017.8.06.0176</p><p style="text-align: justify;">APELAÇÃO CÍVEL (198)</p><p style="text-align: justify;">APELANTE: FRANCO ROBSON MORAIS XAVIER.</p><p style="text-align: justify;">APELADO: INSTITUTO DE PESQUISA E ENSINO MÉDICO DO ESTADO DE MINAS GERAIS LTDA.</p><p align="justify">
</p><p align="justify">EMENTA: DIREITO PROCESSUAL CIVIL E DO CONSUMIDOR. AÇÃO ORDINÁRIA DE COBRANÇA. CONTRATO DE PRESTAÇÃO DE SERVIÇOS EDUCACIONAIS. DEMANDA AJUIZADA NO FORO DO DOMICÍLIO DO RÉU INDICADO NO CONTRATO. ALTERAÇÃO DO DOMICÍLIO NO CURSO DA EXECUÇÃO DO CONTRATO. NECESSÁRIA COMUNICAÇÃO AO FORNECEDOR. OBSERVÂNCIA DOS PRINCÍPIOS DA BOA-FÉ OBJETIVA E DA PERPETUATIO JURISDICTIONIS. PRESCRIÇÃO DA COBRANÇA. INOCORRÊNCIA. SÚMULA 106 DO STJ. RECURSO DESPROVIDO. REDIMENSIONAMENTO DOS HONORÁRIOS DE SUCUMBÊNCIA, DE OFÍCIO.</p><p align="justify">I. CASO EM EXAME</p><p align="justify">>1. Cuida-se de recurso de Apelação Cível interposto contra sentença proferida pelo Juízo da Vara Única da Comarca de Ubajara, que, nos autos da Ação Ordinária de Cobrança, julgou parcialmente procedentes os pedidos formulados na petição inicial.</p><p align="justify">>II. QUESTÃO EM DISCUSSÃO</p><p align="justify">>2. O cerne da controvérsia recursal consiste em examinar a arguição de incompetência absoluta do juízo de origem para processar e julgar a demanda, bem como valer se houve prescrição da pretensão de cobrança do débito discutido nos autos.</p><p align="justify">>III. RAZÕES DE DECIDIR

Processo	0009519-21.2017.8.06.0176
	3. De acordo com o entendimento consolidado pelo colendo Superior Tribunal de Justiça, nas ações propostas pelo fornecedor de bens ou serviços contra o consumidor, prevalece a competência do foro de domicílio do réu, ressalvando-se, contudo, que, havendo alteração do domicílio no curso da relação jurídica mantida entre as partes, referida modificação deve ser comunicada ao fornecedor. 4. Como se observa dos autos, a ação de cobrança foi ajuizada no foro indicado como domicílio do réu no momento da celebração do contrato de prestação de serviços educacionais. Ou seja, tal endereço corresponderia ao domicílio do consumidor à época da constituição da relação jurídica contratual, razão pela qual não houve violação ao disposto no Código de Defesa do Consumidor no momento de propositura da demanda, visto que, ao ajuizar a ação no local indicado contratualmente como residência do consumidor, observou-se rigorosamente o disposto na legislação aplicável ao caso. 5. Aliado a isso, o consumidor não se desincumbiu do ônus de demonstrar que, à época da propositura da ação, já havia alterado seu domicílio, tampouco comprovou nos autos que referida mudança tenha sido efetiva e tempestivamente comunicada ao fornecedor, o que evidencia o descumprimento do dever de cooperação e a infringência ao princípio da boa-fé objetiva, que regem tanto a relação contratual quanto processual. 6. Logo, inexistindo demonstração de que o réu / apelante tenha formalmente comunicado a alteração de seu domicílio, e considerando que a ação foi ajuizada no foro informado contratualmente como endereço do consumidor, não se verifica qualquer irregularidade ou afronta ao disposto na legislação de regência. Deve-se, portanto, observar a regra da <i>perpetuatio jurisdictionis</i>, bem como o princípio da boa-fé objetiva, que impõe às partes o dever de agir com lealdade e cooperatividade antes, durante e após a relação contratual estabelecida. 7. De igual modo, não prospera a alegada prescrição da pretensão de cobrança. Conforme ressaltado pelo il. juízo de primeiro grau, a presente ação foi ajuizada dentro do prazo prescricional de cinco anos, previsto no art. 206, § 5º, inciso I, do Código Civil, tendo sido protocolada em 1º de novembro de 2017, com o objetivo de cobrar parcelas inadimplidas do contrato de prestação de serviços educacionais referentes aos meses de setembro de 2013 a julho de 2014. 8. O simples fato de a citação ter se concretizado apenas no ano de 2022 não configura a ocorrência da prescrição, uma vez que a demanda foi ajuizada antes de consumado o prazo legalmente previsto para o exercício da pretensão. Além disso, o retardamento dos atos processuais decorreu de fatores inerentes aos mecanismos do Poder Judiciário, o que reforça a insubsistência da arguição de prescrição, conforme dispõe o enunciado nº 106 da súmula da jurisprudência do Superior Tribunal de Justiça, <i>verbis</i>: <i>"proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da Justiça, não justifica o acolhimento da arguição de prescrição ou decadência"</i>. 9. De ofício, impõe-se o redimensionamento dos honorários de sucumbência para 10% (dez por cento) sobre o valor da condenação, de acordo com o art. 85, § 2º, do Código de Processo Civil. IV. DISPOSITIVO 10. Recurso desprovido. Honorários de sucumbência redimensionados, de ofício. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer do recurso de apelação cível para, no mérito, negar-lhe provimento, no sentido de manter inalterados os termos da sentença quanto ao mérito recursal, mas readequar, de ofício, os honorários de sucumbência, conforme o voto do Desembargador Relator. Fortaleza, data da assinatura digital. &#160; DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator &#160;

Processo	0009519-21.2017.8.06.0176
	&#160;</p><p align="center"> RELATÓRIO </p><p align="justify"> &#160;</p><p style="text-indent: 8%;" align="justify"> Cuida-se de recurso de Apelação Cível interposto por Francisco Robson Moraes Xavier contra sentença proferida pelo Juízo da Vara Única da Comarca de Ubajara, que, nos autos da Ação Ordinária de Cobrança proposta pelo Instituto de Pesquisa e Ensino Médico de Minas Gerais Ltda., julgou parcialmente procedentes os pedidos formulados na petição inicial. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Na sentença, o d. magistrado reconheceu o débito referente às parcelas vencidas de 10 de setembro de 2013 a 10 de junho de 2014, cada uma no valor de R\$ 1.615,30, condenando o réu ao pagamento do montante, corrigido monetariamente pelo INPC, a partir do vencimento de cada parcela, acrescido de juros moratórios de 1% ao mês, a partir da citação, sem prejuízo da aplicação de multa contratual de 2%. Ainda, declarou a abusividade da cláusula contratual que previa juros de mora superiores a 12% ao ano, limitando-os a 1% ao mês. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Ao examinar recurso de embargos de declaração opostos pelo Instituto de Pesquisa e Ensino Médico de Minas Gerais, o juízo singular acolheu parcialmente a irresignação, para acrescentar à condenação o débito referente à multa cobrada no dia 10 de julho de 2014, com a incidência dos mesmos consectários legais acima indicados. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> A parte ré, inconformada com a sentença, interpôs recurso de apelação alegando, em síntese, a incompetência territorial do juízo de origem para processar e julgar a demanda, ao ressaltar que não mais residia no município de Ubajara desde antes do ajuizamento da vertente ação, o que, segundo afirma, corrobora a tese de incompetência. Argumenta, ainda, que, em se tratando de relação de consumo, a competência territorial assumiria natureza absoluta, consoante o disposto no Código de Defesa do Consumidor. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Prosseguir ao suscitar a prescrição da ação cobrança, em face do decurso do prazo quinquenal previsto no art. 206, § 5º, inciso I, do Código Civil, tendo em vista que a citação válida somente ocorreu em 2022, quando já transcorrido o prazo prescricional. Neste ponto, destaca que o retardamento da citação teria sido motivado pela inércia exclusiva da parte autora, que não teria indicado corretamente o endereço do réu, circunstância que, segundo seu entendimento, não interrompeu o prazo prescricional. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Diante desses fundamentos, requer o provimento do recurso, para que seja reconhecida a incompetência absoluta do juízo de origem, ou, subsidiariamente, declarada a prescrição da cobrança. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Preparo recolhido (IDs 22593622 e 22593620). </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Em contrarrazões, a parte recorrida defende, de forma preliminar, a insuficiência do preparo recursal, cuja complementação seria necessária como medida de saneamento. Quanto ao mérito, requer a manutenção da sentença, ao destacar que a ação teria sido proposta no foro de domicílio do réu constante do contrato, e que não houve prescrição, pois o ajuizamento da ação e o despacho de citação ocorreram antes de decorrido o prazo prescricional, salientando que a demora na citação não poderia ser atribuída à parte demandante, que tomou as medidas necessárias para localização do réu. </p>

Processo	0009519-21.2017.8.06.0176
	style="font-family: &quot;times new roman&quot;; times;">PROCESSO CIVIL. CONFLITO NEGATIVO DE COMPETÊNCIA. AÇÃO DE EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. ESCOLHA DO FORO DE DOMICÍLIO DOS RÉUS. COMPETÊNCIA TERRITORIAL. PRINCÍPIO DA PERPETUATIO JURISDICTIONIS . COMPETÊNCIA DO JUÍZO SUSCITADO. 1. A competência determina-se no momento da propositura da ação (art. 87 do CPC) e, por força do art. 576 do CPC, as regras gerais de competência - previstas no Livro I, Título IV, Capítulos II e III – aplicam-se à ação de execução de título extrajudicial. 2. Em conformidade com o art. 100, IV, “d” do CPC, o juízo competente para processar e julgar ação de execução de título extrajudicial é o do lugar do pagamento do título. O exequente pode, todavia, optar pelo foro de eleição ou pelo foro de domicílio do réu, como ocorreu na hipótese em exame. Precedentes. 3. Em se tratando de hipótese de competência relativa, o art. 87 do CPC institui, com a finalidade de proteger a parte, a regra da estabilização da competência (perpetuatio jurisdictionis), evitando-se, assim, a alteração do lugar do processo, toda a vez que houver modificações supervenientes do estado de fato ou de direito. 4. A aquisição do ativo do banco exequente pelo Estado de Alagoas em nada altera o exposto, porquanto não se trata de posterior supressão do órgão judiciário ou alteração da competência em razão da matéria ou da hierarquia, situações admitidas pelo art. 87 do CPC como exceções à perpetuação da competência. 5. Ademais, confirmando a autonomia do direito processual relativamente ao direito material, preconiza a regra contida no art. 42 do CPC que as alterações ocorridas no direito material não interferem no teor da relação jurídica processual, verificando-se, com a citação válida, a perpetuatio jurisdictionis . 6. Conflito conhecido para o fim de declarar a competência do Juízo de Direito da 7ª Vara Cível de Aracaju-SE, foro de domicílio dos réus. (CC 107.769/AL, Rel. Ministra NANCY ANDRIGHI, unânime, DJe de 10.9.2010). </p><p align="justify"> ¶</p><p style="text-indent: 8%;" align="justify"> Como se observa dos autos, a ação de cobrança foi ajuizada no foro indicado como domicílio do réu no momento da celebração do contrato de prestação de serviços educacionais (vide IDs 22593359 a 22593359). Ou seja, tal endereço corresponderia ao domicílio do consumidor à época da constituição da relação jurídica contratual, razão pela qual não houve violação ao disposto no Código de Defesa do Consumidor no momento da propositura da demanda, visto que, ao ajuizar a ação no local indicado contratualmente como residência do consumidor, observou-se rigorosamente o disposto na legislação aplicável ao caso. <p align="justify"> ¶</p><p style="text-indent: 8%;" align="justify"> Aliado a isso, o consumidor não se desincumbiu do ônus de demonstrar que, à época da propositura da ação, já havia alterado seu domicílio, tampouco comprovou nos autos que referida mudança tenha sido efetiva e tempestivamente comunicada ao fornecedor, o que evidencia o descumprimento do dever de cooperação e a infringência ao princípio da boa-fé objetiva, que regem tanto a relação contratual quanto processual. <p style="text-indent: 8%;" align="justify"> ¶</p><p style="text-indent: 8%;" align="justify"> Nesse contexto, deve-se privilegiar a estabilização do feito no local onde correspondia ao domicílio do consumidor à época da distribuição do processo. Do contrário, tem-se o risco de estimular a instabilidade da relação processual e de comprometer a segurança jurídica, especialmente em ações cuja tramitação se estende por um lapso temporal considerável. <p style="text-indent: 8%;" align="justify"> ¶</p><p style="text-indent: 8%;" align="justify"> Oportuno frisar, ainda, que a parte autora / apelada atuou com diligência, utilizando-se das informações válidas e disponíveis no momento do ajuizamento da ação, não podendo ser penalizada pela omissão da parte contrária. <p style="text-indent: 8%;" align="justify"> ¶</p><p style="text-indent: 8%;" align="justify"> Logo, inexistindo demonstração de que o réu / apelante tenha formalmente comunicado a alteração de seu domicílio, e considerando que a ação foi ajuizada no foro informado contratualmente como endereço do consumidor, não se verifica qualquer irregularidade ou afronta ao disposto na legislação de regência. Deve-se, portanto, observar a regra da perpetuatio jurisdictionis, bem como o princípio da boa-fé objetiva, que impõe às partes o dever de agir com lealdade e cooperatividade antes,

Processo	0009519-21.2017.8.06.0176
	durante e após a relação contratual estabelecida. A propósito, seguindo a mesma linha de raciocínio, destacam-se precedentes dos Tribunais de Justiça dos Estados, para fins persuasivos [grifou-se]: CONFLITO NEGATIVO DE COMPETÊNCIA. JUÍZES EM EXERCÍCIO NO PRIMEIRO GRAU DE JURISDIÇÃO. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. CONTRATO DE PRESTAÇÃO DE SERVIÇOS EDUCACIONAIS. ALTERAÇÃO DO DOMICÍLIO DO RÉU APÓS A PROPOSITURA DA AÇÃO. COMPETÊNCIA FIXADA NO MOMENTO PROPOSITURA DA AÇÃO. PERPETUATIO JURISDICTIONIS. APLICAÇÃO DO ARTIGO 43 DO CPC. COMPETÊNCIA DO JUÍZO SUSCITADO. CONFLITO DE COMPETÊNCIA PROCEDENTE. (TJ-PR - CC: 00319623720158160182 Curitiba 0031962-37.2015.8.16.0182 (Acórdão), Relator.: Fernanda Bernert Michielin, Data de Julgamento: 10/03/2023, 2ª Turma Recursal, Data de Publicação: 12/03/2023). AGRAVO DE INSTRUMENTO – EXECUÇÃO DE TÍTULO EXTRAJUDICIAL – AÇÃO PROPOSTA NA COMARCA DO ENDEREÇO INFORMADO PELO EXECUTADO NO CONTRATO – DECLÍNIO DE COMPETÊNCIA APÓS REITERADAS TENTATIVAS DE LOCALIZAÇÃO – FORO DO DOMICÍLIO DO CONSUMIDOR – OFENSA AO PRINCÍPIO DA PERPETUATIO JURISDICTIONIS – RECURSO CONHECIDO E PROVIDO. 1. Extraí-se do feito originário que, diante do insucesso nas sucessivas tentativas de citação do Agravado, ora Executado, o juízo de origem efetuou busca junto ao sistema “SerasaJud” e obteve a informação de que referida parte reside na comarca de Rio das Ostras/RJ, tendo ocorrido o reconhecimento da relação de consumo e o declínio da competência com fundamento na facilitação da defesa do consumidor. 2. Embora exista cláusula de eleição foro firmada em Vitória nas condições gerais da avença firmada entre as partes, a Agravante, ora Autora na origem, ajuizou a ação na comarca de Guarapari, local de endereço do Executado informado no contrato, o que, ao menos pela devolutividade restrita do recurso, indica que foi respeitada a competência do foro do domicílio do consumidor. 3. O só fato de se ter conhecimento a respeito da mudança de endereço do Agravado para outra localidade, após o registro, a distribuição e o impulsionamento do feito, não justifica o declínio de competência, por ofensa ao princípio da perpetuatio jurisdictionis, notadamente porque se trata de endereço informado pelo próprio Executado quando da formação da avença sem que, aparentemente, fosse notificada eventual modificação de localidade junto à instituição Agravante (CPC, art. 43). 4. Recurso conhecido e provido. (TJ-ES - AGRAVO DE INSTRUMENTO: 5013656-37.2023.8.08.0000, Relator.: MARIANNE JUDICE DE MATTOS, 1ª Câmara Cível). De igual modo, não prospera a alegada prescrição da pretensão de cobrança. Conforme ressaltado pelo il. juízo de primeiro grau, a presente ação foi ajuizada dentro do prazo prescricional de cinco anos, previsto no art. 206, § 5º, inciso I, do Código Civil, tendo sido protocolada em 1º de novembro de 2017, com o objetivo de cobrar parcelas inadimplidas do contrato de prestação de serviços educacionais referentes aos meses de setembro de 2013 a julho de 2014. O simples fato de a citação ter se concretizado apenas no ano de 2022 não configura a ocorrência da prescrição, uma vez que a demanda foi ajuizada antes de consumado o prazo legalmente previsto para o exercício da pretensão. Além disso, o retardamento dos atos processuais decorreu de fatores inerentes aos mecanismos do Poder Judiciário, o que reforça a insubsistência da

Processo	0009519-21.2017.8.06.0176
	arguição de prescrição, conforme dispõe o enunciado nº 106 da súmula da jurisprudência do Superior Tribunal de Justiça, verbis: "proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da Justiça, não justifica o acolhimento da arguição de prescrição ou decadência". Assim, ao constatar que a parte autora / apelada atuou com diligência na tentativa de localizar o réu, apresentando, sempre que instada pelo juízo, novos meios e alternativas com o objetivo de promover a citação (IDs 22593503 e 22593507), a demora em efetivá-la não pode ser confundida com desídia processual, pois teve relação com a dinâmica dos mecanismos de funcionamento do Poder Judiciário, somada à dificuldade prática de localização do demandado, que, conforme mencionado, alterou seu domicílio sem a devida comunicação ao fornecedor. Em conclusão, embora as partes não tenham apresentado qualquer insurgência quanto à fixação do ônus de sucumbência, a jurisprudência do Superior Tribunal de Justiça reconhece que os honorários advocatícios, "enquanto consectários legais da condenação principal, possuem natureza de ordem pública, podendo ser revistos a qualquer momento e até mesmo de ofício, sem que isso configure reformatio in pejus" (AgInt no REsp n. 1.722.311/RJ, relator Ministro Mauro Campbell Marques, Segunda Turma, julgado em 21/6/2018, DJe de 28/6/2018). Quanto aos parâmetros de fixação dos honorários, o entendimento jurisprudencial da Segunda Seção do STJ, firmado por ocasião do julgamento do REsp 1.746.072/PR, em 13/02/2019, é no sentido de que a verba deve ser estabelecida, em regra, com observância dos percentuais e da ordem de gradação da base de cálculo estabelecida pelo art. 85, § 2º, do Código de Processo Civil, que preleciona [grifou-se]. Art. 85. A sentença condenará o vencido a pagar honorários ao advogado do vencedor. I - o grau de zelo do profissional; II - o lugar de prestação do serviço; III - a natureza e a importância da causa; IV - o trabalho realizado pelo advogado e o tempo exigido para o seu serviço. Desse modo, o Código de Processo Civil apresenta uma ordem preferencial quanto ao parâmetro a ser utilizado para fixação dos honorários de sucumbência, conforme conjugação dos §§ 2º e 8º do art. 85 do mencionado diploma: (a) primeiro, quando houver condenação, devem ser fixados entre 10% e 20% sobre o montante desta (art. 85, § 2º); (b) segundo, não havendo condenação, serão também fixados entre 10% e 20%, das seguintes bases de cálculo: (b.1) sobre o proveito econômico obtido pelo vencedor (art. 85, § 2º); ou (b.2) não sendo possível mensurar o proveito econômico obtido, sobre o valor atualizado da causa (art. 85, § 2º); (c) havendo ou não condenação, nas causas em que for inestimável ou irrisório o proveito econômico ou em que o valor da causa for muito baixo, deverão, só então, ser fixados por apreciação equitativa (art. 85, § 8º).

Processo	0009519-21.2017.8.06.0176
	#160;</p><p style="text-indent: 8%; align="justify"> No caso sob análise, a parte ré / apelante fora condenada ao pagamento das prestações inadimplidas do contrato celebrado com a parte adversa, e, por isso, a base de cálculo dos honorários de sucumbência deve incidir sobre o valor da condenação, seguindo a ordem de preferência supracitada. </p><p style="text-indent: 8%; align="justify"> #160;</p><p style="text-indent: 8%; align="justify"> Logo, hei por bem readequar os honorários de sucumbência, fixando-os em 10% (dez por cento) sobre o valor da condenação, na forma do art. 85, § 2º, do Código de Processo Civil. </p><p style="text-indent: 8%; align="justify"> #160;</p><p style="text-indent: 8%; align="justify"> Ante o exposto, pelos motivos de fato e de direito acima delineados, conheço do recurso de apelação para, no mérito, negar-lhe provimento, no sentido de manter inalterada a r. sentença quanto ao mérito das questões debatidas no curso do processo. De ofício, redimensiono os honorários de sucumbência para 10% (dez por cento) sobre o valor da condenação, de acordo com o art. 85, § 2º, do Código de Processo Civil. </p><p style="text-indent: 8%; align="justify"> #160;</p><p style="text-indent: 8%; align="justify"> Considerando a sucumbência recursal, majoro os honorários advocatícios para 12% (doze por cento) do valor da condenação, na forma do art. 85, § 11, do Código de Processo Civil.</p><p style="text-indent: 8%; align="justify"> #160;</p><p style="text-indent: 8%; align="justify"> É como voto.</p><p style="text-align: justify; text-indent: 8%;> Fortaleza, data da assinatura digital. </p><p style="text-align: justify; text-indent: 8%;>
 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="text-align: center;"> Relator</p><p>
 </p><p>#160;</p>

<p>#160;</p><p>#160;</p><p style="text-align: center;"> #160;</p>
Processo	0226150-57.2021.8.06.0001
Número de ordem	153
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	LUANA ANDREZA MOURA BROCK
Advogado(s) - Polo ativo	ERIKA RIBEIRO DE ALBUQUERQUE - (CE8864-A)
Polo passivo	HYUNDAI MOTOR BRASIL MONTADORA DE AUTOMOVEIS LTDA CAOA MOTOR DO BRASIL LTDA

Processo	0226150-57.2021.8.06.0001
Advogado(s) - Polo passivo	CARLOS FERNANDO DE SIQUEIRA CASTRO - (CE14326-A)
Terceiros	JOAO MARCELO BRASIL DE SOUZA DANIEL SILVEIRA FERREIRA MARCELO BEAUCHAMP LEME

Processo	0226150-57.2021.8.06.0001
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	margin-top: 14pt; margin-bottom: 4pt;" dir="ltr">II. QUESTÃO EM DISCUSSÃO: Há duas questões em discussão: (i) verificar se o valor arbitrado a título de danos morais (R\$ 10.000,00) deve ser majorado; (ii) analisar se estão presentes os requisitos para a condenação ao pagamento de lucros cessantes.</h3><h3 style="line-height: 1.3800000000000001; text-align: justify; margin-top: 14pt; margin-bottom: 4pt;" dir="ltr"> III. RAZÕES DE DECIDIR</h3><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">1. O arbitramento do valor da indenização por danos morais deve observar os princípios da proporcionalidade e razoabilidade, considerando a gravidade da lesão, a capacidade econômica das partes e o caráter pedagógico da reparação.</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">2. No caso, a indenização fixada em R\$ 10.000,00 atende a tais critérios, não se mostrando irrisória nem excessiva, de modo que não há justificativa para a majoração.</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">3. O Código Civil dispõe que as perdas e danos abrangem o que o credor efetivamente perdeu e o que razoavelmente deixou de lucrar (arts. 402 e 403), sendo imprescindível a prova concreta do prejuízo.</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">4. Não se admite indenização por lucros cessantes meramente presumidos ou hipotéticos, conforme reiterada jurisprudência do STJ (AgInt no REsp 1963583/SP, Rel. Min. Marco Buzzi, Quarta Turma, j. 13.06.2022).</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">5. A apelante não comprovou minimamente a existência e a extensão dos alegados lucros cessantes, apresentando apenas estimativa genérica, o que impede a procedência do pedido.</p><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> IV. DISPOSITIVO <span style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000;

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	background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap,">: Recurso conhecido e desprovido.</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">ACÓRDÃO:&#160; Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação para lhe negar provimento, nos termos do voto do Desembargador Relator.&#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e assinatura digital registradas no sistema processual eletrônico.</p><p style="text-align: justify;"> <strong id="docs-internal-guid-9bab85ab-7fff-1fdf-6a47-0c320620614b" style="font-weight: normal;">
 </p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Presidente/Relator</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;"> <strong style="font-weight: normal;">
 </p><p style="line-height: 1.3090909090909089; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 21pt 0pt 0pt 0pt;" dir="ltr">Trata-se de recurso de Apelação interposto por Luana Andreza Gomes Moura contra a sentença prolatada pelo Juízo da 21ª Vara Cível da Comarca de Fortaleza/CE nos autos da Ação Declaratória c/c Cobrança e Indenização por Danos Morais e Materiais proposta pela ora Apelante em desfavor de Hyundai Motor Brasil Montadora de Automóveis Ltda. e CAO A Motor do Brasil Ltda.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 21pt 0pt 0pt 0pt;" dir="ltr">Em sua exordial, alegou Promovente que: (i) em 18/02/2020,

Processo	0226150-57.2021.8.06.0001
	adquiriu um veículo de modelo HB20, placa QQO-2E68, ano 2019/2020 junto à concessionária da requerida; (ii) o veículo apresentou aquecimento e, em seguida, foi levado para concessionária para conserto, quando foi reconhecido um defeito na bomba d'água, procedendo-se à substituição desta em 14/01/2021; (iii) após a substituição do equipamento, teria sido observada insuficiência na própria peça, razão pela qual o veículo foi novamente encaminhado para avaliação; (iv) em 11/02/2021, foi informada de que teria sido negada a complementação dos serviços a serem prestados através da garantia de fábrica, sendo necessário o reparo adicional do veículo mediante pagamento do valor total de R\$ 9.889,99 (nove mil, oitocentos e oitenta e nove reais e noventa e nove centavos); (v) o veículo permaneceu na concessionária da Hyundai, CAO A MOTOR BRASIL, sem condições de uso, razão pela qual a Demandante estaria se deslocando por meio de Uber. Diante disso, postulou tutela de urgência, para que a Requerida fornecesse, de imediato, um carro reserva similar ao seu. No mérito, pugnou pela condenação das Demandadas ao pagamento de danos morais no valor de R\$ 100.000,00 (cem mil reais), R\$50.000,00 para cada delas; bem como danos materiais e lucros cessantes no valor total de R\$ 10.000,00 (dez mil reais). Na< (ID 22852616), foram julgados parcialmente procedentes os pedidos da autora, condenando-se a parte promovida a ressarcir danos materiais no valor de R\$ 857,59; bem como danos morais no valor de R\$10.000,00 (dez mil), ambos devidamente corrigidos. Os lucros cessantes foram afastados, em razão da ausência de provas. Na fundamentação jurídica, a sentença destacou o reconhecimento da relação de consumo e a responsabilidade objetiva das rés, com base no Código de Defesa do Consumidor (CDC), especialmente no art. 18 sobre vício do produto e no art. 6º sobre a reparação de danos. A sentença também rejeitou as preliminares de ilegitimidade passiva e decadência, sustentando a solidariedade das rés na obrigação de indenizar, conforme art. 25, §1º do CDC.

Processo	0226150-57.2021.8.06.0001
	13.99999999999998pt; font-family: 'Times New Roman',serif; color: #1a202c; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Irresignada, a Autora interpôs recurso de apelação (ID 22852617), afirmando que a sentença não considerou adequadamente os dois erros de serviço cometidos pelas rés nem as condições pessoais e econômicas da autora durante a pandemia, que resultaram em mais de 180 dias sem uso do veículo. Sustenta que o valor arbitrado a título de danos morais é irrisório e pede a sua majoração, invocando jurisprudência que reconhece a necessidade de um quantum indenizatório suficiente para desencorajar práticas lesivas. A apelante também reitera o pedido de indenização por lucros cessantes, argumentando que a falta do veículo prejudicou sua atividade profissional e gerou gastos extras, que não foram devidamente apreciados pelo juízo. Ao final, a autora pediu a majoração da indenização por danos morais para R\$100.000,00 (cem mil reais), bem como o reconhecimento e o ressarcimento dos lucros cessantes. Em contrarrazões (ID 23405243), a CAO A Motor do Brasil Ltda. alegou que as pretensões da apelante carecem de respaldo fático e jurídico, destacando que a sentença já foi cumprida com o pagamento dos valores pela Hyundai Motor Brasil Ltda. Defende a perda superveniente do interesse recursal, posto que a apelante já teria inclusive solicitado o levantamento dos valores depositados, o que configuraria aceitação da decisão judicial. Alternativamente, em caso de não acolhimento desse pedido, pleiteia o desprovisionamento do recurso, sustentando que a decisão de primeiro grau foi justa e apropriada. Devidamente intimada, a apelada Hyundai Motor Brasil Ltda. não apresentou contrarrazões. É o relatório. VOTO Consoante relatado, o presente recurso configura insurgência contra o

Processo	0226150-57.2021.8.06.0001
	wrap;">decisum de Primeiro Grau que julgou parcialmente a ação declaratória originária, reconhecendo o defeito no veículo de propriedade da Autora e condenando, por conseguinte, as Promovidas a ressarcir os danos materiais experimentados pelo consumidor, bem como indenização por danos morais no valor de R\$10.000,00 (dez mil), afastando-se, contudo o pleito de reparação em lucros cessantes.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Em síntese, o cerne da controvérsia reside em dois pontos: (i) examinar se a indenização por danos morais foi estipulada em valor proporcional e razoável; (ii) aferir o cabimento da condenação das Peladas em lucros cessantes.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">I - Do Dano Moral</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Sobre o tema em exame, recorde-se que o dano moral só é constatado quando houver lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, o bom nome etc., como se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">A respeito da configuração do dano moral, assim explana o doutrinador Humberto Theodoro Júnior </p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Para, no entanto, chegar-se à configuração do dever de indenizar, não será suficiente ao ofendido demonstrar sua dor. Somente ocorrerá a responsabilidade civil se se reunirem todos os seus elementos essenciais: dano, ilicitude e nexo causal. Se o incômodo é pequeno (irrelevância) e se, mesmo sendo grave, não corresponde a um comportamento indevido (licitude), obviamente não se manifestará o dever de indenizar (ausência da responsabilidade civil cogitada no art. 186 do CC).</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-

Processo	0226150-57.2021.8.06.0001
	top: 12pt; margin-bottom: 0pt;" dir="ltr">[...] Em outras palavras, 'para ter direito de ação, o ofendido deve ter motivos apreciáveis de se considerar atingido, pois a existência da ofensa poderá ser considerada tão insignificante que, na verdade, não acarreta prejuízo moral'. Para que se considere ilícito o ato que o ofendido tem como desonroso é necessário que, segundo um juízo de razoabilidade, autorize a presunção de prejuízo grave, de modo que "pequenos melindres", insuficientes para ofender os bens jurídicos, não devem ser motivo de processo judicial. De minimis non curat praetor, já ressaltavam as fontes romanas.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No que pertine ao valor da indenização por danos morais, considerada a inexistência de parâmetros legais, impõe-se que o julgador se atenha aos princípios da razoabilidade e da proporcionalidade, não podendo a indenização servir para o enriquecimento ilícito do beneficiado. Por outro lado, tampouco poderá a reparação ser insignificante, a ponto de não efetivamente recompor os prejuízos sofridos, ou deixar de atender ao seu caráter eminentemente pedagógico, essencial ao balizamento das condutas sociais.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">O valor da indenização por dano moral sujeita-se ao controle do Superior Tribunal de Justiça, sendo certo que, na fixação da indenização a esse título, é recomendável que o arbitramento seja feito com moderação, proporcionalmente ao grau de culpa, ao nível socioeconômico do autor ao porte econômico do réu, orientando-se o juiz pelos critérios sugeridos pela doutrina e pela jurisprudência e valendo-se de sua experiência e bom senso, atento à realidade da vida e às peculiaridades de cada caso.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">A esse respeito, vale trazer a lição de Sérgio Cavalieri Filho (grifo nosso):</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Para que a decisão seja razoável, é necessário que a conclusão nela estabelecida seja adequada aos motivos que a determinaram; que os meios escolhidos sejam compatíveis com os fins visados; que a sanção seja proporcional ao dano. Importa dizer que o juiz, ao valorar o dano moral, deve arbitrar uma quantia que, de acordo com o seu prudente arbítrio, seja compatível com a reprovabilidade da conduta ilícita, a intensidade e duração do sofrimento experimentado pela vítima, a capacidade econômica do causador do dano, as condições sociais do ofendido, e outras circunstâncias mais que se fizerem presentes. <span style="font-size: 11pt; font-

Processo	0226150-57.2021.8.06.0001
	family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(CAVALIERI FILHO, Sérgio. Programa de Responsabilidade Civil. 8 ed. Atlas, 2009, p. 91/93) 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: Opt;" dir="ltr">Ressalte-se que, no que diz respeito ao dano proveniente da relação de consumo, a Codificação regente assegura, de forma expressa, o ressarcimento em sua integralidade, prevendo o art. 6º, VI, do CDC como direito básico do consumidora efetiva prevenção e reparação de danos patrimoniais e morais, individuais, coletivos e difusos.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: Opt;" dir="ltr">No que pertine ao valor da indenização, o STJ tem trilhado o caminho do critério bifásico de fixação dos danos extrapatrimoniais: "na primeira etapa, deve-se estabelecer um valor básico para a indenização, considerando o interesse jurídico lesado, com base em grupo de precedentes jurisprudenciais que apreciaram casos semelhantes. (...) na segunda etapa, devem ser consideradas as circunstâncias do caso, para fixação definitiva do valor da indenização, atendendo a determinação legal de arbitramento equitativo pelo juiz" (REsp nº 1.152.541/RS, Relator Ministro Paulo de Tarso Sanseverino, j. em 13.09.2011).</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: Opt;" dir="ltr"> A verba, portanto, deve ser suficiente para a efetiva reparação do dano moral suportado pelo ofendido, sem que caracterize enriquecimento indevido; e bastante para alertar ao ofensor para que não reitere no ilícito, de modo a atender o caráter pedagógico do instituto.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: Opt;" dir="ltr">No caso, a indenização foi arbitrada no patamar de R\$ 10.0000,00 (dez mil reais), acrescida de juros e correção. Considerando-se as premissas supracitadas, não vislumbro motivos para sua majoração.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: Opt;" dir="ltr">Não se refuta os diversos transtornos resultantes da situação vivenciada pela Apelante, que passou meses sem o seu veículo e encontrou entraves na resolução tempestiva e adequada do defeito constatado. Porém, não há notícia de circunstâncias passíveis de ocasionar um abalo moral anormal, apto a autorizar uma reparação superior ao valor arbitrado, o qual se mostra razoável e já foi definido em valor considerável.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: Opt;" dir="ltr">Dessa forma, indefiro o pleito de majoração do quantum indenizatório

Processo	0226150-57.2021.8.06.0001
	relativo aos danos morais. II - Dos Lucros Cessantes Na exordial do feito, a Autora reivindica o ressarcimento de valores que deixou de auferir em razão da dificuldade de deslocamento causada pela ausência prolongada do veículo em questão. Relatou que, impossibilitada de usar o carro por mais de 180 dias, em período crítico (pandemia), a Promovente teve que interromper algumas de suas atividades como engenheira, bem como dispensar novos alunos que preferiam aulas presenciais em seu serviço como professora particular. Diante disso, pugnou pela condenação das Promovidas em lucros cessantes. Em matéria de lucros cessantes, vale recordar o disposto na Lei Substantiva Civil, que assim prescreve: Art. 402 Salvo as exceções expressamente previstas em lei, as perdas e danos devidas ao credor abrangem, além do que ele efetivamente perdeu, o que razoavelmente deixou de lucrar. [Grifei]. Art. 403 Ainda que a inexecução resulte de dolo do devedor, as perdas e danos só incluem os prejuízos efetivos e os lucros cessantes por efeito dela direto e imediato [Grifei]. A lei é clara ao dispor que só serão indenizáveis os danos materiais efetivamente comprovados, tanto no que diz respeito à sua existência quanto ao seu valor, o que, naturalmente, aplica-se aos lucros cessantes.

Processo	0226150-57.2021.8.06.0001
	style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nesse contexto, impende recordar sólido entendimento no sentido de que no período do dano. Nesse sentido:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">AGRAVO INTERNO NO RECURSO ESPECIAL. AÇÃO DE REPARAÇÃO DE DANOS. PERDA DE IMÓVEL. LUCROS CESSANTES. PRESUNÇÃO. IMPOSSIBILIDADE. NECESSIDADE DE COMPROVAÇÃO. SÚMULA 83/STJ. AGRAVO INTERNO NÃO PROVIDO. 1. As razões apresentadas pela agravante são insuficientes para a reconsideração da decisão. 2. A jurisprudência do STJ não admite a indenização de lucros cessantes sem comprovação, rejeitando os lucros hipotéticos, remotos ou presumidos. 3. Agravo interno não provido. (STJ - AgInt no REsp: 1963583 SP 2021/0025527-6, Data de Julgamento: 13/06/2022, T4 - QUARTA TURMA, Data de Publicação: DJe 17/06/2022). [Grifei].</p><p style="line-height: 2.148; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Dessa forma, o cálculo dos lucros cessantes deve levar em conta robusto aparato probatório, formado por documentação apta a lastrear, com segurança, o cálculo dos valores que o indivíduo lesado razoavelmente deixou de auferir. Não se olvide que o cálculo e a comprovação dos lucros cessantes levam em conta a média da receita no período correspondente ao dano, descontadas as

Processo	0226150-57.2021.8.06.0001
	normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">despesas inerentes ao exercício da atividade.</p><p style="line-height: 2.148; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No caso, observa-se que não há qualquer especificação nesse sentido. O valor sugerido é meramente estimado e não foi minimamente comprovado por qualquer documentação comprobatória da média auferida pela Apelante. Da mesma forma, não há provas do efetivo decurso remuneratório como decorrência direta do impedimento de deslocamentos (trabalhos que deixou de assumir, quanto receberia por cada um dos trabalhos rejeitados, etc.). Em síntese, não lastro suficiente para a constatação do prejuízo e do respectivo nexo de causalidade para o fim de condenação das promovidas em lucros cessantes.</p><p style="line-height: 2.148; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Em síntese, portanto, a alegação da Promovente/Apelante quanto aos lucros cessantes é genérica e destituída do aparato probatório exigido, circunstância apta a impedir o seu acolhimento, impondo-se a rejeição da pretensão recursal.</p><p style="line-height: 2.148; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> III - Do Dispositivo</p><p style="line-height: 2.148; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Ex positis, CONHEÇO do recurso de apelação para lhe NEGAR PROVIMENTO, mantendo incólume a decisão objurgada.</p><p style="line-height: 2.148; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> </p>

Processo	0226150-57.2021.8.06.0001
	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Em face da sucumbência recursal, majoro em 2% (dois por cento) os honorários arbitrados na origem, sem prejuízo da suspensão de exigibilidade oriunda da concessão da gratuidade judiciária à Autora/Apelante. É como voto. Fortaleza, data e assinatura digital registradas no sistema eletrônico. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator AGRAVO DE INSTRUMENTO Prestitação de Contas PAULO CESAR JATAI COSTA IVALDO JOSE MAGALHAES DE SOUSA - (CE6708-A) NILCE JATAHY DE ALBUQUERQUE DAVID DE QUEIROZ CHAVES - (CE15780-A) PROCURADORIA GERAL DE JUSTICA
Processo	3009311-48.2025.8.06.0000
Número de ordem	154
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Prestitação de Contas
Polo ativo	PAULO CESAR JATAI COSTA
Advogado(s) - Polo ativo	IVALDO JOSE MAGALHAES DE SOUSA - (CE6708-A)
Polo passivo	NILCE JATAHY DE ALBUQUERQUE
Advogado(s) - Polo passivo	DAVID DE QUEIROZ CHAVES - (CE15780-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	3009311-48.2025.8.06.0000
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	font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Agravado de instrumento interposto contra decisão da 21ª Vara Cível da Comarca de Fortaleza que julgou procedente a primeira fase da ação de exigir contas ajuizada em desfavor do ora Agravante, reconhecendo o direito da parte promovente de exigir contas e o dever do promovido de prestá-las, relativamente à administração de imóveis comuns. 1.38000000000000001; text-align: justify; margin-top: 14pt; margin-bottom: 4pt; dir="ltr">II. QUESTÃO EM DISCUSSÃO:O cerne da controvérsia consiste em definir se recai sobre o agravante a obrigação de prestar contas em razão da administração dos imóveis em questão. 1.38000000000000001; text-align: justify; margin-top: 14pt; margin-bottom: 4pt; dir="ltr">III. RAZÕES DE DECIDIR</h3><p style="line-height: 1.38000000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt; dir="ltr">1.O agravante atuou como administrador dos bens comuns, conforme contrato de locação que o identifica como locador e recibos de aluguel, além de confissão de exercício da gestão.<p style="line-height: 1.38000000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt; dir="ltr">2.O dever de prestar contas não depende de convenção expressa, pois épropter officium:nasce automaticamente quando alguém assume a administração de patrimônio comum ou alheio.<p style="line-height: 1.38000000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt; dir="ltr">3.A alegação de inexistência de valores a prestar se resolve na segunda fase da ação de exigir contas, não afastando a obrigação declaratória de prestar contas.<p style="line-height: 1.38000000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 12pt; dir="ltr">4.Ausente demonstração de irregularidade no decurso de primeiro grau, mantém-se a decisão que reconheceu o dever do agravante de prestar contas (CPC, art. 550).<p style="line-height: 1.38000000000000001; text-align: justify; margin-top: 10pt; margin-bottom: 0pt; dir="ltr">

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	baseline; white-space: pre-wrap;">IV. DISPOSITIVO Recurso conhecido e desprovido. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do agravo de instrumento para lhe negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data e assinatura digital registradas no sistema processual eletrônico. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de agravo de instrumento interposto por Paulo César Jataí Costa contra decisão proferida pelo Juízo da 21ª Vara Cível da Comarca de Fortaleza nos autos da Ação de Exigir Contas nº 0401190-39.2010.8.06.0001 proposta por pelo espólio de Nilce Jathay de Albuquerque em desfavor do ora Agravante. decisão

Processo	3009311-48.2025.8.06.0000
	baseline; white-space: pre-wrap;">agravada (ID 136851263 dos autos de origem), o Juízo declarou o direito da parte promovente de exigir as contas em questão, bem como a obrigação do Promovido, ora Agravante, de prestá-las. Diante disso, julgou procedente a primeira fase da ação.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">O decisum confirmado por ocasião da apreciação dos embargos declaratórios (Id nº 152078560).&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">Irresignado, o Promovente interpôs o agravo de instrumento em tela, sustentando, em síntese, que os pedidos formulados na ação são genéricos e que não resta evidenciado o dever de prestar contas. Alega que não possui a posse dos imóveis discutidos, apenas tendo cuidado dos bens por um tempo. Assevera que os imóveis sequer estariam arrolados e discriminados no inventário dos falecidos. Pugnou, por fim, pela suspensão da decisão impugnada e, no mérito, pela sua reforma, reconhecendo a inexistência de obrigação legal em prestar contas.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">Na decisão de ID 23361780, o e. Relator antecessor, Des. Antônio Abelardo Benevides Moraes, indeferiu o pleito liminar do Agravante, considerando ausentes os pressupostos legais para a concessão da medida.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">Sem contrarrazões.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.38; text-align: center; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Consoante relatado, o presente recurso configura insurgência contra o

Processo	3009311-48.2025.8.06.0000
	decisum de Primeiro Grau que julgou procedente a primeira fase da ação de exigir contas originária, declarando a obrigação do ora Agravante de prestar contas à parte promovidas no que pertine à administração da locação dos imóveis objeto da lide.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">¶No caso, verifico que a discussão versa sobre imóveis situados na Rua Princesa Isabel nºs. 607, 611 e 615, detendo a parte promovente propriedade sobre eles à razão de 33,333%.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 21pt 0pt 12pt 0pt;" dir="ltr">Depreende-se dos autos que a então viva Nilce Jathay de Albuquerque (promovente da ação exigir contas originária) e seus dois irmãos, Sr. Ilo Jataí e Maria Clery Jataí Costa (genitora do promovido) possuíam, em condomínio, bens imóveis herdados do Espólio de Mário Jatahy (seu pai), conforme certidão acostada no ID nº 132908825 dos autos de Primeiro Grau. Dentre tais bens, inclui-se o imóvel de nº. 607 da Rua Princesa Isabel.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">Na referida certidão, consta, ainda, que a Sra. Maria da Silva Jataí (genitora da Sra. Nilce, do Sr. Ilo e da Sra. Maria Clery), recebeu como meação os imóveis de nº. 1514 da Rua Barão do Rio Branco e de nº. 611 da citada Rua Princesa Isabel.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">Além disso, consta nos autos (ID 132908828) testamento emitido por Rosa Jatahy da Costa em 28/03/1944, por meio do qual legou o imóvel situado na Rua Santa Izabel. nº. 615, bem como a metade da casa de número nº 607 da mesma rua, para o seu irmão, Sr. Mário Jatahy (pai da Promovente), dele fazendo seu herdeiro universal.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">Verifica-se, portanto, diante de tal documentação, direito real da falecida Promovente sobre os bens

Processo	3009311-48.2025.8.06.0000
	discutidos. No caso do Promovido, conforme bem registrado no decisum agravado, trata-se de um dos herdeiros dos imóveis em questão, no que pertine ao quinhão que seria destinado à sua genitora (Maria Clery Jataí Costa). Não obstante buscar afastar o direito da Promovente de exigir as contas em questão, o Agravante admite que se trata de bens pertencentes à família, o que restou consignado em seu depoimento pessoal, conforme destacado no decisum Analizando-se os autos, é possível conferir cópia de um Contrato de Locação do imóvel de nº. 607 (ID 132908836), constando o Agravante como locador da unidade; bem como recibos de aluguel referentes à locação dos imóveis em questão (IDs 132908839 e 132908846). Verificam-se, portanto, elementos aptos a confirmar que o Agravante atuou como administrador da locação dos ditos imóveis. Isso não é por ele refutado, considerando-se que haver admitido que exercia a administração dos bens há cerca de 15 (quinze) anos. Sua insurgência à prestação de contas se pauta, precipuamente, na alegada ausência de recebimento dos alugueis, o que se confirma na petição de ID 160838010, no qual atesta uma prestação negativa das contas em questão: [...] Conforme demonstrado durante toda a instrução, o promovido não tem contas a prestar, pois não recebeu os valores apontados pelos promoventes na exordial e nas demais investidas destes Na realidade cuidou de um imóvel que estava entregue às intempéries do tempo, sob sol e chuva, abandonado durante anos para que não fossem invadidos e ofertando conservação e manutenção diante de sua posse precária, sem qualquer ajuda financeira e/ou a qualquer título por parte dos acionantes que sempre agiram com total descaso na dita conservação do bem Caso contrário teria ruído, desmoronado há anos. A locação alegada pelos promoventes representou apenas ter cedido uma moradia para a apontada locatária para que, presencialmente, cuidasse do imóvel, desconfigurando eventual alegativa de usucapião e evitasse invasões, a título voluntário e em contraprestação pela ocupação da edificação, que se encontrava praticamente em ruínas no centro de Fortaleza, que, como é cediço tem

Processo	3009311-48.2025.8.06.0000
	encravado imóveis com décadas de construção. [...] (Grifou-se). Tal questão, contudo, não prejudica a declaração do direito de prestar contas, mas integra o próprio objeto da ação em comento. A apuração da existência de valores eventualmente recebidos pelo administrador ou do emprego de despesas na manutenção do bem deve ser realizada no bojo da instrução do feito, não se confundindo com a aferição da própria obrigação de prestar contas. Trata-se de um dever propter officium e não depende de convenção expressa, bastando que alguém assuma a gestão de patrimônio comum para nascer o dever correlato de prestar contas. No exercício da obrigação, o responsável presta contas periódicas sobre receitas, despesas e investimentos e poderá demonstrar eventual saldo, seja a favor ou contra si, em relação aos demais interessados. Caso se verifique inobservância dessa prestação periódica, admite-se a procedência da fase declaratória da ação proposta pelo interessado, como ocorreu no caso em tela. Dessa forma, não se verifica irregularidade apta a reformar o decisum objurgado. Como dito, não há controvérsia quanto à condição do Agravante de administrador dos bens comuns discutidos, e o Recorrente não demonstrou o regular cumprimento da obrigação inerente a essa condição. Isso deu ensejo à pretensão da parte agravada de exigir as contas relativas a essa administração (art. 550 do CPC), mostrando-se pertinente o regular trâmite da demanda para apuração de eventuais saldos, ainda que em favor do Recorrente, como defende este no feito de Primeiro Grau. Ex positis CONHEÇO do agravo de instrumento para lhe

Processo	3009311-48.2025.8.06.0000
	baseline; white-space: pre-wrap;">NEGAR PROVIMENTO, mantendo incólume a decisão objurgada.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e assinatura digital registradas no sistema eletrônico.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relator</p><div>
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<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0637732-84.2024.8.06.0000
Número de ordem	155
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Expurgos Inflacionários / Planos Econômicos
Polo ativo	BANCO DO BRASIL SA
Advogado(s) - Polo ativo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Polo passivo	MARIA DO SOCORRO CARVALHO
Advogado(s) - Polo passivo	RAFAEL MOTA REIS - (CE27985-A) AUDIC CAVALCANTE MOTA DIAS - (CE16100-A)
Terceiros	Não informado

Processo	0637732-84.2024.8.06.0000
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJBzVzfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RDl82dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDjT9kwIFvV33tG5s0skN9gLJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LTl9z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WYOGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZMs6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkIx410JEZMRU0ZDIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	uppercase;">&#160; </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 1. Agravo de instrumento com pedido de efeito suspensivo interposto contra decisão interlocutória proferida às fls. 597/599 dos autos do pedido de liquidação de sentença nº 0004389-45.2014.8.06.0050, que homologou os cálculos realizados pela Contadoria do Foro e determinou a complementação do depósito da quantia exequenda, no prazo 15 (quinze) dias, sob pena de incidência de multa e condenação ao pagamento de honorários advocatícios.</p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> II. QUESTÕES EM DISCUSSÃO </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 2. As questões em discussão são: (i) necessidade do sobrestamento do feito em razão do Tema repetitivo nº 685; (ii) extinção do processo sem resolução do mérito em razão do falecimento da parte autora/agravada; (iii) impossibilidade de determinação de pagamento e de fixação de multa na fase de liquidação; (iv) houve indevida atualização de valores após a realização do depósito judicial por parte do banco, pois não havia mora; e (v) índice de correção de 10,14% para fevereiro de 1989. </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 3. Duas das questões versadas no presente agravo de instrumento já foram objeto de debate anteriormente e se encontram acobertadas pelo fenômeno da preclusão, que são sobre o termo inicial dos juros de mora e sobre a inclusão dos expurgos inflacionários dos demais planos econômicos. Essas questões foram alvo de julgamento monocrático por esta Relatoria no recurso de apelação interposto nos autos da ação originária. Desse modo, e porque “é vedado à parte discutir no curso do processo as questões já decididas a cujo respeito se operou a preclusão”, não se pode admiti-las no presente agravo. </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 4. Não prospera o pedido de sobrestamento do feito com fundamento no Tema 685 do STJ, vez que o recurso especial repetitivo a ele vinculado (nº 1.370.899/SP) já foi julgado pela Corte Especial daquele Tribunal, em 21.05.2014, com acórdão publicado em 16.10.2014, ataindo, assim, a norma do art. 1040, inciso III, do CPC. </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 5. O Código de Processo Civil preceitua que, ao tomar conhecimento da morte, o juiz determinará a suspensão do processo e a intimação de seu espólio, de quem for o sucessor ou, se for o caso, dos herdeiros, para que manifestem interesse na sucessão processual e promovam a respectiva habilitação no prazo designado. É o que dispõe o seu art. 313, § 2º, inciso II. No caso concreto, há pedido pendente de decisão no juízo a quo para dilação do prazo para habilitação dos herdeiros da credora falecida. Dessa forma, não há como acolher o pedido de extinção do processo sem resolução do mérito, de plano, sem que haja uma resposta ao que fora postulado pela parte, sob pena de violação aos princípios da vedação à decisão surpresa e da ampla defesa. </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 6. Conforme exegese do artigo 513, §§ 1º e 2º, do CPC, na sentença proferida na fase de liquidação, não cabe determinar o pagamento da dívida no prazo legal de 15 dias, previsto no artigo 523 do CPC, pois esse prazo se aplica somente após a intimação do devedor no cumprimento de sentença, que, por sua vez, inicia-se a requerimento do credor, depois do trânsito em julgado da sentença de liquidação. </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 7. Nos termos da jurisprudência do c. STJ, aplica-se o índice de 10,14% para a correção do mês de fevereiro de 1989, vez que era o previsto na legislação revogada pelo Plano Verão. </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> IV. DISPOSITIVO </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 8. Recurso parcialmente conhecido e, na extensão conhecida, parcialmente provido. </p><p class="EmentadoAcrdo" style="text-align:justify"> &#160; </p><p class="EmentadoAcrdo" style="text-align:justify"> </p>

Processo	0637732-84.2024.8.06.0000
	ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>&nbsp;MERGEFIELD &Oacute;rg&atilde;o Julgador#Retorna o nome da vara onde est&aacute; o processo=8@PROC <!--[endif]>> 1ª Câmara Direito Privado<!--[if supportFields]><!--[endif]>> do Tribunal de Justiça do Estado do Ceará, em conhecer parcialmente do agravo de instrumento, para, na extensão conhecida, dar-lhe parcial provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p align="center"> &#160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Presidente/Relator </p><p align="center">
 </p><p align="center"> &#160; </p><p align="center"> RELATÓRIO </p><p align="center">
 </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Trata-se de agravo de instrumento com pedido de efeito suspensivo interposto pelo Banco do Brasil S/A, objetivando a reforma da decisão interlocutória proferida pelo Juízo da Vara Única da Comarca de Bela Cruz, que, às fls. 597/599 dos autos do pedido de liquidação de sentença nº 0004389-45.2014.8.06.0050, homologou os cálculos realizados pela Contadoria do Foro e determinou a complementação do depósito da quantia exequenda, no prazo 15 (quinze) dias, sob pena de incidência de multa e condenação ao pagamento de honorários advocatícios.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Nas razões do presente recurso, o agravante aduz, em suma: (i) a necessidade do sobrestamento do feito em razão do Tema repetitivo nº 685; (ii) falecimento da parte autora/agravada; (iii) impossibilidade de determinação de pagamento e de fixação de multa na fase de liquidação; (iv) houve indevida atualização de valores após a realização do depósito judicial por parte do banco, pois não havia mora; (v) os juros de mora devem ser computados a partir da citação na presente de liquidação; (vi) índice de correção de 10,14% para fevereiro de 1989; e (vii) indevida inclusão dos expurgos inflacionários dos demais planos econômicos.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Preparo recursal comprovado às fls. 22/23.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p></td>

Processo	0637732-84.2024.8.06.0000
	style="font-size: 12pt; font-family: "Times New Roman"; serif;">Em decisão interlocutória proferida por esta Relatoria no Id 23093460, deferindo em parte o pedido de efeito suspensivo, para oportunizar a habilitação do espólio ou herdeiros da extinta.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Agravado interno interposto pelo Banco do Brasil S.A. no Id 23093487, sob os seguintes argumentos: (i) a manutenção da decisão agravada implicará no desembolso de valores em prol da agravada, o que lhe causará grave dano quando da reforma da decisão, tendo em vista que não reaverá a quantia dispendida; (ii) o pagamento do valor principal da dívida e da multa cancelaria o enriquecimento indevido da parte agravada; e (iii) o procedimento de liquidação não envolve pagamento ou penalidade, pois não se confunde com o cumprimento de sentença.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Contrarrrazões ao agravo de instrumento no Id 23093471.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Contrarrrazões ao agravo interno no Id 23093474.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> É o relatório.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; text-indent: 8%; line-height: normal;" align="center"> VOTO ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> 1 – Admissibilidade </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> ¶</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> De início, registro que duas das questões versadas no presente agravo de instrumento já foram objeto de debate anteriormente e se encontram acobertadas pelo fenômeno da preclusão, que são sobre o termo inicial dos juros de mora e sobre a inclusão dos expurgos inflacionários dos demais planos econômicos.</p><p class="Standard" style="text-align: justify; text-indent: 70.85pt;"> ¶</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Essas questões foram alvo de julgamento no recurso de apelação interposto nos autos da ação originária (vide fls. 424/446), em que esta Relatoria decidiu, monocraticamente, que os juros de mora devem incidir a partir da citação do devedor no processo de conhecimento da Ação Civil Pública, conforme tese vinculada ao Tema 685 do c. STJ, e que se deve computar os demais expurgos ocorridos no período a ser atualizado, nos termos da tese firmada pelo STJ no Tema Repetitivo 891.</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> ¶</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Desse <span style="font-size: 12pt; font-family: </p>

Processo	0637732-84.2024.8.06.0000
	&#160; 2.1. Necessidade de s obrestamento do feito No arrazoadado, sustenta o agravante que o STJ, por meio do REsp nº Repetitivo nº 1.370.899/SP (Tema 685) determinou a suspensão de todos os processos enquanto se aguarda o pronunciamento definitivo do termo inicial da incidência dos juros moratórios. Contudo, e m simples consulta ao sítio eletrônico do c. STJ, na página dos precedentes qualificados, verifica-se que não mais subsiste a ordem de suspensão. De acordo com a Anotação NUGEPNAC, “Em nova decisão publicada no DJe de 20/9/2023 nos Recursos Especiais n. 1.370.899/SP e 1.361.800/SP, foi determinada a reforma da ordem de suspensão e a retomada do regular andamento processual dos referidos processos”. Ademais, o referido recurso especial repetitivo já foi julgado pela Corte Especial do Superior Tribunal de Justiça, em 21.05.2014, com acórdão publicado em 16.10.2014, atraindo, assim, a norma do art. 1040, inciso III, do CPC, que reza: Art. 1.040. Publicado o acórdão paradigma: III - os processos suspensos em primeiro e segundo graus de jurisdição retomarão o curso para julgamento e aplicação da tese firmada pelo tribunal superior; [Grifei] Portanto, não merece respaldo a tese de sobrestamento. Da extinção do feito em razão do falecimento da parte autora Na decisão proferida no Id 23093460, esta relatoria entendeu por bem deferir em parte o efeito suspensivo postulado pelo agravante, para oportunizar a habilitação do espólio ou herdeiros da credora falecida,

Processo	0637732-84.2024.8.06.0000
	devendo o d. juízo de primeiro grau realizar as providências necessárias para tal fim, inclusive designar o prazo de suspensão. </p><p class="Standard" style="text-align: justify; text-indent: 8%;> #160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;> Examinando os autos de origem, verifiquei que o processo ainda está suspenso, mas pendente de decisão do pedido de dilação de prazo para habilitação dos herdeiros da falecida. Nesse cenário, e considerando que o prazo para o cumprimento da diligência não é peremptório, entendo que não há como extinguir o processo de plano, sem que haja uma resposta ao que fora postulado pela parte, sob pena de violação aos princípios da vedação à decisão surpresa e da ampla defesa. </p><p class="Standard" style="text-align: justify; text-indent: 8%;> #160;</p><p class="Standard" style="text-align: justify; text-indent: 8%;> Vale dizer que o Código de Processo Civil preceitua que, ao tomar conhecimento da morte, o juiz determinará a suspensão do processo e a intimação de seu espólio, de quem for o sucessor ou, se for o caso, dos herdeiros, para que manifestem interesse na sucessão processual e promovam a respectiva habilitação no prazo designado. É o que dispõe o art. 313, § 2º, inciso II, verbis: #160; </p><p class="Standard" style="text-align: justify; text-indent: 70.9pt"> #160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none"> #160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none"> Art. 313. Suspende-se o processo:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none"> I - pela morte ou pela perda da capacidade processual de qualquer das partes, de seu representante legal ou de seu procurador;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none"> [...]</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none"> § 1º Na hipótese do inciso I, o juiz suspenderá o processo, nos termos do art. 689 </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none"> § 2º Não ajuizada ação de habilitação, ao tomar conhecimento da morte, o juiz determinará a suspensão do processo e observará o seguinte:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none"> I - falecido o réu, ordenará a intimação do autor para que promova a citação do respectivo espólio, de quem for o sucessor ou, se for o caso, dos herdeiros, no prazo que designar, de no mínimo 2 (dois) e no máximo 6 (seis) meses;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none"> II - falecido o autor e sendo transmissível o direito em litígio, determinará a intimação de seu espólio, de quem for o sucessor ou, se for o caso, dos herdeiros, pelos meios de divulgação que reputar mais adequados, para que manifestem interesse na sucessão processual e promovam a respectiva habilitação no prazo designado, sob pena de extinção do processo sem resolução de mérito. [Grifou-se].</p><p class="Standard" style="text-align: justify"> #160;</p><p class="Standard" style="text-align: justify; text-indent: 8%;> Desse modo, por ter sido determinada a intimação dos herdeiros e havendo pedido pendente de decisão no juízo a quo para dilação do prazo, não há como acolher o pedido de extinção do processo sem resolução do mérito. A

Processo	0637732-84.2024.8.06.0000
	sucessão processual ainda pode ser realizada. No azo, colaciono recente decisão desta e. Corte de Justiça, em que se verificou a possibilidade de dilação de prazo para habilitação de herdeiros. DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. SENTENÇA DE EXTINÇÃO SEM RESOLUÇÃO DO MÉRITO. FALECIMENTO DA PARTE AUTORA NA FASE DE CUMPRIMENTO DE SENTENÇA. PEDIDO DE HABILITAÇÃO DE HERDEIROS. JUSTIFICATIVAS PLAUSÍVEIS PARA A DILAÇÃO DE PRAZO. INEXISTÊNCIA DE PRAZO FATAL PARA SUCESSÃO PROCESSUAL. AUSÊNCIA DE DESIDIA OU MÁ-FÉ. SENTENÇA ANULADA. RECURSO CONHECIDO E PROVIDO. I. CASO EM EXAME: 1. Trata-se de apelação cível interposta por Antônia da Silva Nogueira e outros, sucessores de Maria Nogueira da Silva, contra sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Acopiara, que extinguiu o processo sem resolução do mérito, com base nos arts. 313, §2º, II, e 485, IV, do CPC, diante da não habilitação dos herdeiros da parte autora dentro do prazo fixado judicialmente. II. QUESTÃO EM DISCUSSÃO: 2. A controvérsia recursal consiste em: (i) examinar se a ausência de habilitação dos sucessores no prazo fixado judicialmente justifica a extinção do feito sem julgamento do mérito, à luz do ordenamento jurídico processual e dos princípios constitucionais que regem o devido processo legal e o acesso à justiça. III. RAZÕES DE DECIDIR: 3. O falecimento da parte autora foi comunicado nos autos com o respectivo pedido de suspensão do processo, conforme previsto no art. 313 do CPC. 4. A parte autora apresentou justificativas plausíveis para a demora na habilitação dos herdeiros, notadamente a existência de 21 sucessores, dispersos em localidades de difícil acesso ou em outros estados. 5. O juízo de origem concedeu prorrogação de prazo para habilitação, mas, antes de decidir sobre o último pedido de dilação, extinguiu o feito, desconsiderando a diligência processual dos requerentes. 6. A jurisprudência do Superior Tribunal de Justiça é pacífica no sentido de que não há prazo fatal para habilitação de herdeiros, nem prescrição intercorrente para o ato. 7. A extinção do feito, nesse contexto, configura medida desproporcional e violadora dos princípios do devido processo legal, da inafastabilidade da jurisdição e do aproveitamento dos atos processuais. 8. Constatando-se ausência de má-fé, inexistência de prejuízo à parte adversa e existência de justificativas razoáveis, impõe-se a anulação da sentença e o retorno dos autos para regular processamento da habilitação sucessória. IV. DISPOSITIVO: 9. Recurso CONHECIDO E PROVIDO. Sentença anulada para que os autos retornem à origem, com o fim de processar a habilitação dos herdeiros e dar prosseguimento à demanda. Tese de julgamento: "1. A ausência de prazo legal fatal para a habilitação de herdeiros afasta a extinção do processo por pretensa preclusão temporal, especialmente quando demonstradas razões plausíveis e ausência de má-fé." "2. A extinção do feito sem resolução do mérito, diante da morte da parte autora, deve ser afastada quando a sucessão processual é viável e os herdeiros demonstram diligência no atendimento da providência, respeitando os princípios do devido processo legal e da efetividade da jurisdição." Dispositivos relevantes citados: CPC, arts. 110, 313, §2º, II, 485, IV, 687 a 692. Jurisprudência relevante citada: STJ, REsp 1843437/CE, Rel. Min. Og Fernandes, 2ª Turma, DJe 05/12/2019; STJ, AgRg no AREsp 452257/CE, Rel. Min. Napoleão Nunes Maia Filho, DJe 21/05/2015; TJ-GO, Apelação Cível nº 0361811-37.2008.8.09.0144, Rel. Des. Silvânio Divino de Alvarenga, 1ª Câmara Cível, j. 07/07/2022. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso apelatório nº 0004619-77.2016.8.06.0063 para dar-lhe provimento nos termos do voto do proferido pelo Excelentíssimo Desembargador Relator. Fortaleza, data indicada no sistema. DESEMBARGADOR EVERARDO LUCENA SEGUNDO Relator (assinado digitalmente) (Apelação Cível nº 0004619-77.2016.8.06.0063, Rel. Desembargador(a) EVERARDO LUCENA SEGUNDO, 2ª Câmara Direito Privado, data do julgamento: 06/08/2025, data da publicação: 07/08/2025) [Grifou-se] Por esse motivo, rejeito a tese de extinção da ação principal.

Processo	0637732-84.2024.8.06.0000
	 2.3. Da determinação de pagamento na fase de liquidação. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> ¶ </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> No presente recurso, a agravante defende que a decisão agravada deve ser reformada para lhe retirar a determinação de pagamento sob pena de multa, vez que o procedimento de liquidação de sentença não se confunde com o cumprimento de sentença. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> ¶ </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> A irrisignação da agravante tem fundamento. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> ¶ </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Na sentença proferida na fase de liquidação, não cabe determinar o pagamento da dívida no prazo legal de 15 dias, previsto no artigo 523 do CPC, pois esse prazo se aplica somente após a intimação do devedor no cumprimento de sentença. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> ¶ </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Vale lembrar que a liquidação tem por objetivo apurar o valor da condenação quando este não foi definido na sentença proferida na fase de conhecimento. Desse modo, só depois de liquidado o valor (por arbitramento ou por artigos), é que se inicia a fase de cumprimento de sentença, que, nos termos do artigo 513, §§ 1º e 2º, do CPC, demanda iniciativa da exequente, se não, vejamos:</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> ¶ Art. 513. O cumprimento da sentença será feito segundo as regras deste Título, observando-se, no que couber e conforme a natureza da obrigação, o disposto no Livro II da Parte Especial deste Código.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> ¶ § 1º O cumprimento da sentença que reconhece o dever de pagar quantia, provisório ou definitivo, far-se-á a <strong style="font-family: &quot;Times New Roman&quot;, serif; font-size: 10pt;">requerimento do exequente.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> § 2º O devedor será intimado para cumprir a sentença: [...]</p><p class="Standard" style="text-align: justify; text-indent: 70.9pt"> ¶ </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Veja-se que o prazo para cumprimento da obrigação só começa depois da intimação específica no cumprimento de sentença, que, por sua vez, inicia-se a requerimento do credor, após o trânsito em julgado da sentença de liquidação. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Nesse sentido, confira-se da fonte jurisprudencial: ¶</p><p class="Standard" style="text-align: justify; text-indent: 70.9pt"> ¶</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> EMENTA: AGRAVO DE INSTRUMENTO - AÇÃO DE DISSOLUÇÃO DE SOCIEDADE - FASE DE CUMPRIMENTO DE SENTENÇA - INSTAURAÇÃO DE OFÍCIO, SEM EXPRESSO REQUERIMENTO DA PARTE EXEQUENTE - IMPOSSIBILIDADE - ARTIGO 523, DO CÓDIGO DE PROCESSO CIVIL - INOBSERVÂNCIA - NULIDADE DECRETADA. - Segundo o disposto no art. 523, do CPC, no caso de condenação em quantia certa, o cumprimento de sentença deve ser iniciado a requerimento da parte</p>

Processo	0637732-84.2024.8.06.0000
	exequente. Instaurado de ofício, deve ser reconhecida a nulidade de todos os atos processuais praticados, desde a sua deflagração .</p><p class="Standard" style="margin-left:4.0cm;text-align:justify"> (TJ-MG - Agravo de Instrumento: 1734674-06.2023.8.13 .0000, Relator.: Des.(a) Adriano de Mesquita Carneiro, Data de Julgamento: 22/11/2023, 21ª Câmara Cível Especializada, Data de Publicação: 27/11/2023) [Grifouse]</p><p class="Standard" style="text-align:justify;text-indent:70.9pt"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Portanto, no contexto dos autos, em que o d. juízo a quo determinou o pagamento na mesma decisão que homologou o cálculo judicial e fixou o valor da execução, há de se acatar o pedido de reforma da sentença, para que seja excluída a referida determinação. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> 2.4. Da atualização de valores após a realização do depósito judicial </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> A insurgência recursal no que tange à incidência de encargos de mora após o depósito judicial efetuado para garantia do juízo não merece guarida. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> A questão deve ser apreciada à luz do entendimento firmado pelo c. STJ no Tema Repetitivo 677, cuja tese restou assim consignada, originalmente: </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; &#160;</p><p class="Standard" style="margin-left:4.0cm;text-align:justify"> RECURSO ESPECIAL REPRESENTATIVO DE CONTROVÉRSIA. CIVIL E PROCESSUAL CIVIL. COMPLEMENTAÇÃO DE AÇÕES. CUMPRIMENTO DE SENTENÇA. DEPÓSITO JUDICIAL. JUROS DE MÓRA E CORREÇÃO MONETÁRIA. ENCARGO DA INSTITUIÇÃO DEPOSITÁRIA. 1. Para fins do art. 543-C do CPC: "Na fase de execução, o depósito judicial do montante (integral ou parcial) da condenação extingue a obrigação do devedor, nos limites da quantia depositada". 2. Aplicação da tese ao caso concreto. 3. RECURSO ESPECIAL PROVIDO.</p><p class="Standard" style="margin-left:4.0cm;text-align:justify"> (STJ - REsp: 1348640 RS 2012/0214050-3, Relator.: Ministro PAULO DE TARSO SANSEVERINO, Data de Julgamento: 07/05/2014, CE - CORTE ESPECIAL, Data de Publicação: DJe 21/05/2014)</p><p class="MsoNormal" style="margin-bottom:0cm;line-height:normal;mso-layout-grid-align:none;text-autospace:none"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Segundo esse entendimento, uma vez efetuado o depósito em garantia da execução, cessaria a incidência dos consectários da mora, tendo em vista que a quantia depositada seria atualizada e remunerada pelos índices dos depósitos judiciais a cargo da instituição financeira depositante. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Contudo, em razão de prolação de decisões em sentido divergente, o c. STJ verificou a necessidade de revisão da tese repetitiva, que foi concluída com o julgamento do REsp nº 1.820.963/SP, em 19/10/2022, conferindo-se nova redação ao Tema 677/STJ, verbis: &#160;</p><p class="Standard" style="text-align:justify;text-indent:70.9pt"> &#160;</p><p class="Standard" style="margin-left:4.0cm;text-align:justify"> Na execução, o depósito efetuado a título de garantia do juízo ou decorrente da penhora de ativos financeiros não isenta o devedor do pagamento dos

Processo	0637732-84.2024.8.06.0000
	consectários de sua mora, conforme previstos no título executivo, devendo-se, quando da efetiva entrega do dinheiro ao credor, deduzir do montante final devido o saldo da conta judicial. Como se vê, a questão restou pacificada na Corte Superior em sentido contrário ao defendido pelo banco agravante, de que não gera efeito liberatório o depósito judicial para a mera garantia do juízo. Portanto, agiu com acerto o d. juízo ao não afastar do cálculo judicial os encargos de mora. É plenamente cabível a sua cobrança sobre o valor do débito, mesmo após o depósito judicial pelo devedor, podendo ser deduzido o seu saldo do total devido à credora quando do efetivo pagamento. 2.5. Do índice de correção de 10,14% para fevereiro de 1989 No que concerne ao índice de 10,14% para o mês de fevereiro de 1989, destaco que o STJ reconheceu a sua aplicação, vez que era o previsto na legislação revogada pelo Plano Verão. Nesse sentido, vejamos precedentes da Corte Superior: PROCESSUAL CIVIL. INCIDÊNCIA. CORREÇÃO MONETÁRIA. EXPURGOS INFLACIONÁRIOS. AUSÊNCIA. OMISSÃO, ART. 535, II, DO CPC. COISA JULGADA. REEXAME DE PROVAS. SÚMULA 7 DO STJ. QUESTÃO PACIFICADA NO SUPERIOR TRIBUNAL DE JUSTIÇA. 1. Não se configura a ofensa ao art. 535 do Código de Processo Civil, uma vez que o Tribunal a quo julgou integralmente a lide e solucionou a controvérsia, tal como lhe foi apresentada. 2. O Superior Tribunal de Justiça reviu seu entendimento para concluir que a correção monetária das movimentações financeiras no ano-base de 1989 deverá se pautar pela legislação revogada pelo Plano Verão, sendo aplicáveis, portanto, os índices de 42,72% em janeiro de 1989 com reflexo de 10,14% em fevereiro de 1989, percentuais consagrados na jurisprudência desta Casa. 3. O acolhimento da pretensão recursal, relativamente à suposta ofensa de coisa julgada, demanda o reexame do contexto fático-probatório, mormente de autos de outra demanda, como consignado pela Corte a quo. Incide, in casu, o óbice da Súmula 7/STJ. 4. Recurso Especial parcialmente conhecido e, nessa parte, não provido.

Processo	0637732-84.2024.8.06.0000
	autospace:none"> (REsp n. 1.588.664/SP, relator Ministro Herman Benjamin, Segunda Turma, julgado em 14/6/2016, DJe de 5/9/2016) [Grifou-se].</p><p class="MsoNormal" style="margin-top:0cm;margin-right:0cm;margin-bottom:0cm;margin-left:4.0cm;text-align:justify;line-height:normal;page-break-after:avoid;mso-layout-grid-align:none;text-autospace:none"> &#160;</p><p class="MsoNormal" style="margin-top:0cm;margin-right:0cm;margin-bottom:0cm;margin-left:4.0cm;text-align:justify;line-height:normal;mso-layout-grid-align:none;text-autospace:none"> AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. AÇÃO CIVIL PÚBLICA. EXPURGOS INFLACIONÁRIOS. POUPANÇA. PLANO VERÃO (JANEIRO DE 1989). EXECUÇÃO INDIVIDUAL. CONDENAÇÃO GENÉRICA. AUSÊNCIA DE LIQUIDEZ. LIQUIDAÇÃO. ÍNDICE DE CORREÇÃO MONETÁRIA (FEVEREIRO DE 1989).</p><p class="MsoNormal" style="margin-top:0cm;margin-right:0cm;margin-bottom:0cm;margin-left:4.0cm;text-align:justify;line-height:normal;mso-layout-grid-align:none;text-autospace:none"> 1. O cumprimento de sentença coletiva demanda fase prévia de liquidação. Precedentes.</p><p class="MsoNormal" style="margin-top:0cm;margin-right:0cm;margin-bottom:0cm;margin-left:4.0cm;text-align:justify;line-height:normal;mso-layout-grid-align:none;text-autospace:none"> 2 . O índice de correção monetária, aplicável a fevereiro de 1989, é de 10,14%. Precedentes.</p><p class="MsoNormal" style="margin-top:0cm;margin-right:0cm;margin-bottom:0cm;margin-left:4.0cm;text-align:justify;line-height:normal;mso-layout-grid-align:none;text-autospace:none"> 3. Agravo interno a que se nega provimento.</p><p class="MsoNormal" style="margin-top:0cm;margin-right:0cm;margin-bottom:0cm;margin-left:4.0cm;text-align:justify;line-height:normal;mso-layout-grid-align:none;text-autospace:none"> (AgInt nos EDcl no REsp n. 1.980.241/RS, relatora Ministra Maria Isabel Gallotti, Quarta Turma, julgado em 24/10/2022, DJe de 27/10/2022) [Grifou-se].</p><p class="Standard" style="text-align:justify;text-indent:70.9pt;page-break-after:avoid"> &#160;</p><p class="Standard" style="text-align:justify;text-indent:8%; break-after: avoid;"> Este Tribunal de Justiça vem adotando o mesmo entendimento, se não, vejamos: </p><p class="Standard" style="text-align:justify;text-indent:70.9pt;page-break-after:avoid"> &#160;</p><p class="MsoNormal" style="margin-top:0cm;margin-right:0cm;margin-bottom:0cm;margin-left:4.0cm;text-align:justify;line-height:normal;mso-layout-grid-align:none;text-autospace:none"> AGRAVO DE INSTRUMENTO. CUMPRIMENTO DE SENTENÇA CONVERTIDA EM LIQUIDAÇÃO PELO JULGADOR. EXPURGOS INFLACIONÁRIOS. ILEGITIMIDADE ATIVA E INCOMPETÊNCIA TERRITORIAL. TESES JÁ SUPERADAS. TEMAS 723 E 724 DO STJ E 1.075 DO STF. ÍNDICE DE 10,14% A SER APLICADO NO MÊS DE FEVEREIRO DE 1989, COMO CONSEQUÊNCIA LÓGICA DA APLICAÇÃO DO PERCENTUAL DE 42,72% NO MÊS DE JANEIRO DE 1989. TESE ACOLHIDA. PRECEDENTE DO STJ E DESTA CORTE. EXCESSO DE EXECUÇÃO A SEREM VERIFICADOS EM CÁLCULOS A SEREM EFETUADOS POR CONTADORIA JUDICIAL. RECURSO CONHECIDO E PROVIDO PARCIALMENTE. 1.Trata-se de Agravo de instrumento com Pedido de Efeito Suspensivo, proposto por Banco do Brasil S/A, contra decisão do Juízo da 2ª Vara da Comarca de Aracoiaba, que rejeitou em parte a impugnação interposta na execução movida por Murilo Monteiro de Oliveira. Na decisão foi acolhida parcialmente a impugnação, apenas no que tange aos juros remuneratórios e rejeitadas as demais questões. Fixados os honorários advocatícios em 10% do valor da execução. 2. O cumprimento individual teve como amparo a sentença coletiva proferida nos autos da Ação Civil pública referente aos expurgos inflacionários do período de janeiro de 1989 (Plano Verão), que tramitou perante a 12ª Vara Cível da Circunscrição Judiciária de Brasília/DF sob n.º 1998.01.1.016798-9, em face da referida instituição financeira. 3. Registra-se, a evitar questionamentos futuros, que, muito embora tenha o autor ingressado com ação de cumprimento de sentença, o magistrado a converteu em liquidação, como consta do despacho desta relatoria que levantou o sobrestamento. Portanto, a matéria não se encontra dentre a suspensão determinada pelo Tema Repetitivo 1169 do STJ, e nem foi objeto do presente recurso, restando preclusa. 4. Quanto a prescrição, insubsistente o pedido da agravante de extinção, pois ajuizada no prazo, ou seja, em 28/10/2014, como consta no registro do carimbo de protocolo da secretaria da comarca, às fls.2 dos autos digitalizados. Não há, portanto, qualquer motivo para abordar a legitimidade ou não do MPDFT referente a Ação Cautelar de Protesto a suspender prazo prescricional das ações

Processo	0637732-84.2024.8.06.0000
	executivas após essa data, eis que não se aplica ao caso. 5. Os questionamentos com relação às preliminares de ilegitimidade ativa e incompetência, encontram-se superados. Com os julgamentos dos Temas 723 e 724 do STJ, foi resolvida a legitimidade dos poupadores ou de seus sucessores, independente de fazerem parte dos quadros do IDEC, de ajuizarem o cumprimento individual da sentença proferida na ação civil pública nº 1998.01.1.016798-9 pelo Juízo da 12ª Vara Cível da Circunscrição Especial Judiciária de Brasília/DF, independente de sua residência ou domicílio no Distrito Federal. Também o tema 1.075 do STF (Leading;Case RE 1101937) firmou o entendimento de ser inconstitucional a delimitação dos efeitos da sentença proferida em sede de ação civil pública aos limites da competência territorial de seu órgão prolator. 6. Os juros de mora foram determinados de forma acertada. Tendo sido ajuizada a ação civil pública à época do Código Civil de 1916, referida taxa deve ser de 0,5% (meio por cento) ao mês, nos termos do artigo 1.062 do Código Civil de 1916, desde a citação na ação civil pública, datada de 08/06/1993, até o início da vigência do Código Civil de 2002, quando então deverá passar a incidir os juros no percentual de 1% (um por cento) ao mês (artigo 406 do CC/2002). 7. Não procede a irrisignação para sejam computados os juros de mora a partir do ajuizamento desta demanda. A questão encontra-se firmada no Tema 685 do STJ: Tese Firmada: Os juros de mora incidem a partir da citação do devedor no processo de conhecimento da Ação Civil Pública quando esta se fundar em responsabilidade contratual, cujo inadimplemento já produza a mora, salvo a configuração da mora em momento anterior. 8. Já a correção monetária é uma mera recomposição do valor em virtude da inflação de determinado período. Nesse sentido, a jurisprudência do STJ entende que não constitui ofensa aos institutos da coisa julgada e da preclusão a inclusão dos expurgos inflacionários subsequentes no cálculo, mesmo não tendo sido debatida no processo de conhecimento, de acordo com a Tese firmada no tema 887 do STJ, no julgamento do REsp n.º 1.392.245/DF, transitada em julgado em: 03/06/2020 e no tema 891 do STJ (REsp 1314478/RS). 9. Porém, há amparo no pedido de aplicação do índice de 10,14% para a correção monetária no mês de fevereiro de 1989, como consequência lógica do reconhecimento do índice de 42,72% no mês de janeiro de 1989, sendo este o entendimento do STJ e na jurisprudência desta Corte. 10. Os cálculos de fls.16-20 devem ser refeitos pela Contadoria Judicial a fim de melhor demonstrar os parâmetros, pois, apesar de afastados os juros remuneratórios na decisão, na primeira planilha, objeto da decisão, estão contidos, e também para fins de obediência à correção aplicada ao mês de fevereiro de 1989. 11. Recurso conhecido e provido em parte. Decisão modificada apenas para aplicação da incidência da correção monetária referente ao mês de fevereiro de 1989, e envio à contadoria judicial. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso de agravo de instrumento e dar-lhe provimento em parte, para acolher a tese de aplicação do índice de 10,14% para a correção monetária no mês de fevereiro de 1989, como consequência lógica do reconhecimento do índice de 42,72% no mês de janeiro de 1989, e realização dos cálculos por contadoria judicial, tudo nos termos do relatório e do voto que passa a fazer parte integrante deste acórdão. Fortaleza, DESEMBARGADOR JOSÉ EVANDRO NOGUEIRA LIMA FILHO Presidente do Órgão Julgador e Relator (Agravante Instrumento;- 0631126-50.2018.8.06.0000, Rel. Desembargador(a) JOSE EVANDRO NOGUEIRA LIMA FILHO, 4ª Câmara Direito Privado, data do julgamento: 18/06/2024, data da publicação: 19/06/2024) [Grifou-se] Portanto, neste ponto, acolho a tese do recorrente, para aplicar o índice de 10,14% para a correção do mês de fevereiro de 1989. Dispositivo Diante do exposto, CONHEÇO do recurso interposto pelo Banco do Brasil S.A., para lhe DAR PARCIAL PROVIMENTO, no sentido de excluir a determinação de complementação do depósito de fl. 122 dos autos principais, sob pena de incidência de multa e de honorários advocatícios, e de reconhecer a adoção do índice de 10,14% para o mês de fevereiro de 1989, conforme fundamentação supra.

Processo	0637732-84.2024.8.06.0000
	class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: normal; text-indent: 8%;">É como voto. &#160; class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: normal; text-indent: 8%;">Fortaleza, data da assinatura digital.
</p> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p> Relator</p>
</p> &#160;</p> &#160;</p> &#160;</p> &#160;</p>
Processo	0052879-96.2020.8.06.0112
Número de ordem	156
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigaç�o de Fazer / N�o Fazer
Polo ativo	ALEX ALVES DE MORAIS
Advogado(s) - Polo ativo	ANDRE JORGE ROCHA DE ALMEIDA - (CE31463-A)
Polo passivo	FRANCINILMA PEREIRA SANTOS ANTONIO MOESIO DE MORAES SANTOS
Advogado(s) - Polo passivo	JOAO BRUNO TAVARES LACERDA - (CE27179-A)
Terceiros	N�o informado

Processo	0052879-96.2020.8.06.0112
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCIQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlx8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBl4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacnJfWCSwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkccq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBttau2dl/XHeucK8dTVUpljdzg72jpb67snTSt2uMX3X MxjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTVUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwcnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcvwlqRLkiu3cCAWl2fn5FHqieh3YUFWUuZ2XJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEkikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y9ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc3tLV1D/CfYwcnODHQM+5 qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssADLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGd425NbR9LZQW6GzT9CdPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TU8mS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nkdUvsnXNkIx410JEZMRUZOZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0052879-96.2020.8.06.0112
	class="EmentadoAcordo" style="margin-bottom:6.0pt;text-align:justify"> 2. As questões em discussão são a possível existência de omissão e obscuridade no acórdão em relação ao prazo prescricional e aos termos da condenação de obrigação de fazer. </p><p class="EmentadoAcordo" style="margin-bottom:6.0pt;text-align:justify"> III. RAZÕES DE DECIDIR </p><p class="Standard1" style="margin-bottom:6.0pt;text-align:justify"> 3. Não se constata a alegada omissão, vez que o aresto se manifestou, expressamente, no item 2.2 do voto, que o prazo prescricional a ser considerado no caso dos autos não é o de cinco anos, do art. 618 do Código Civil, como defendeu o embargante/apelante, mas sim o de dez anos, conforme entendimento pacificado do c. Superior Tribunal de Justiça. </p><p class="Standard1" style="margin-bottom:6.0pt;text-align:justify"> 4. Quanto às alegadas obscuridades, importante mencionar, primeiramente, que não há dúvida sobre as cerâmicas a serem substituídas. O aresto especificou, claramente, que o réu deverá reparar os pisos cerâmicos trincados e ocios, constatados em diversos cômodos da casa pelo perito do juízo. </p><p class="Standard1" style="margin-bottom:6.0pt;text-align:justify"> 5. Igualmente não se verifica obscuridade por possível conflito da tabela de fl. 54 com o laudo pericial judicial, pois a planilha em referência especifica os serviços de reparo a serem executados e os valores unitários, e porque o decisum previu que, em caso de conversão em perdas e danos, a apuração da quantia dar-se-á em sede de liquidação da sentença. </p><p class="Standard1" style="margin-bottom:6.0pt;text-align:justify"> 6. Por fim, em relação à alegada obscuridade sobre o que deverá ser reparado ou indenizado, não há qualquer margem para dúvida ou interpretação dúbia. O decisum é bastante claro que a condenação é em obrigação de fazer, consistente em efetuar os reparos necessários no imóvel objeto da lide ou, em caso de impossibilidade, que o réu pague a quantia de R\$ 44.017,27, por danos materiais. </p><p class="Standard1" style="margin-bottom:6.0pt;text-align:justify"> 7. Inexistindo, no acórdão embargado, qualquer dos vícios elencados no art. 1.022 do CPC, não merecem ser acolhidos os embargos de declaração, que, em verdade, revelam o inconformismo da parte embargante com as conclusões do decisum, aplicando-se, ao caso, a Súmula nº 18 desta Corte. </p><p class="Standard1" style="margin-bottom:6.0pt;text-align:justify"> 8. Consigne-se que "consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de pré-questionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade" (art. 1.025, CPC). </p><p class="Standard1" style="margin-bottom:6.0pt;text-align:justify"> IV. DISPOSITIVO </p><p class="EmentadoAcordo" style="margin-bottom:6.0pt;text-align:justify"> 9. Embargos de declaração conhecidos e desprovidos. </p><p align="justify">&#160;</p><p class="EmentadoAcordo" style="text-align:justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>&nbsp;MERGEFIELD <!--[endif]> do Tribunal de Justiça do Estado do Ceará, em conhecer dos presentes embargos de declaração, para lhes negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p align="center"> &#160; </p><p align="center">

Processo	0052879-96.2020.8.06.0112
	medium;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Presidente/Relator </p><p align="center">
 </p><p align="center"> &#160; </p><p align="center"> RELATÓRIO </p><p align="center">
 </p><p class="Standard1" style="text-align: justify; text-indent: 8%;"> Trata-se de embargos de declaração opostos por Alex Alves Moraes, objetivando a correção do acórdão prolatado por esta Primeira Câmara de Direito Privado, no Id 23114335, que deu parcial provimento ao recurso de apelação interposto pelo ora embargante, nos termos a seguir ementados: </p><p class="Standard1" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> DIREITO DO CONSUMIDOR E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. COMPRA E VENDA DE IMÓVEL. PRELIMINAR DE NULIDADE DA SENTENÇA. REJEITADA. PREJUDICIAL DE MÉRITO. PRESCRIÇÃO. NÃO CONFIGURADA. VÍCIOS DE CONSTRUÇÃO. PROVA PERICIAL ELUCIDATIVA. DEFEITOS NÃO SANADOS PELO VENDEADOR. DEVER DE REPARAR. DANOS MORAIS CONFIGURADOS. MINORAÇÃO. DESCABIMENTO. RECURSO PARCIALMENTE PROVIDO. </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> I. CASO EM EXAME </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> 1. Recurso de apelação cível interposto contra a sentença proferida às fls. 275/283, que julgou procedente a ação de obrigação de fazer c/c indenização por danos morais e materiais, ajuizada em face do ora recorrente. </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> II. QUESTÕES EM DISCUSSÃO </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> 2. As questões em discussão são: (i) possível nulidade da sentença; (ii) ocorrência de prescrição; (iii) responsabilidade do réu/apelante sobre os defeitos apresentados no imóvel adquirido pelos autores/apelados; (iv) se o valor dos danos materiais está superestimado; e (v) se houve dano moral. Tudo isso será analisado nos tópicos que seguem. </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> III. RAZÕES DE DECIDIR </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> 3. O c. Superior Tribunal de Justiça possui entendimento pacífico de que o magistrado não é obrigado a responder a todas as alegações das partes se já tiver encontrado motivo suficiente para fundamentar a decisão, nem é obrigado a ater-se aos fundamentos por elas indicados. Assim, no caso concreto, em que pese os respeitáveis argumentos do apelante, vê-se que a sentença se encontra bem fundamentada, pois enfrentou as principais questões postas a julgamento, de forma que não se considera passível de nulidade. </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> 4. De acordo com o STJ, o prazo prescricional para alegar vícios de construção se submete à regra geral do art. 205 do Código Civil, ou seja, é decenal, que não decorreu no caso em tela. </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> </p>

Processo	0052879-96.2020.8.06.0112
	&quot;, times;>&#160; </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> Se o caso é de omissão, o julgamento dos embargos supri-la-á, decidindo a questão que, por lapso, escapou à decisão embargada. No caso de obscuridade ou contradição, o decisório será expungido, eliminando-se o defeito nele detectado. Tratando-se de erro material, o juiz irá corrigi-lo. </p><p class="Standard1" style="margin-left: 4cm; text-align: justify;"> Em qualquer caso, a substância do julgado será mantida, visto que os embargos de declaração não visam à reforma do acórdão, ou da sentença. No entanto, será inevitável alguma alteração no conteúdo do julgado, principalmente quando se tiver de eliminar omissão ou contradição. O que, todavia, se impõe ao julgamento dos embargos de declaração é que não se proceda a um novo julgamento da causa, pois a tanto não se destina esse remédio recursal. As eventuais novidades introduzidas no decisório primitivo não podem ir além do estritamente necessário à eliminação da obscuridade ou contradição, ao suprimento da omissão ou à correção do erro material. &#160; </p><p class="Standard1" style="margin-left: 4cm; text-align: justify; text-indent: 8%;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: normal; text-indent: 8%;"> E, ainda, conforme as lições de Luiz Guilherme Marinoni, Sérgio Cruz Arenhart e Daniel Mitidiero, quanto às hipóteses de cabimento dos embargos de declaração, " tem-se obscuridade quando há comprometimento da adequada compreensão da ideia exposta na decisão judicial; a decisão contraditória encerra duas ou mais premissas ou dois ou mais enunciados inconciliáveis; por sua vez, o erro material, configura-se quando o ato judicial contém falha de expressão escrita" <!--[if !supportFootnotes]--> [2] <!--[endif]--> (Grifei).</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Na espécie, de acordo com os embargantes, houve omissão e obscuridades no acórdão em relação ao prazo prescricional e aos termos da condenação de obrigação de fazer. Todavia, analisando detidamente os termos do aresto embargado, não vislumbro os apontados vícios. Explico. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Em relação à alegada omissão, confira-se que o aresto se manifesta, expressamente, que o prazo prescricional a ser considerado no caso dos autos não é o cinco anos, do art. 618 do Código Civil, como defendeu o embargante/apelante, mas sim o de dez anos, conforme entendimento pacificado do c. Superior Tribunal de Justiça: </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> <!--[if gte vml 1]><v:shapetype id="_x0000_t75" coordsize="21600,21600" o:spt="75" o:preferrelative="t" path="m@4@5l@4@11@9@11@9@5xe" filled="f" stroked="f"> <v:stroke joinstyle="miter" /> <v:formulas> <v:f eqn="if lineDrawn pixelLineWidth 0" /> <v:f eqn="sum @0 1 0" /> <v:f eqn="sum 0 0 @1" /> <v:f eqn="prod @2 1 2" /> <v:f eqn="prod @3 21600 pixelHeight" /> <v:f eqn="sum @0 0 1" /> <v:f eqn="prod @6 1 2" /> <v:f eqn="prod @7 21600 pixelWidth" /> <v:f eqn="sum @8 21600 0" /> <v:f eqn="prod @7 21600 pixelHeight" /> <v:f eqn="sum @10 21600 0" /> </v:formulas> <v:path o:extrusionok="f" gradientshapeok="t" o:connecttype="rect" /> <o:lock v:ext="edit" aspectratio="t" /> </v:shapetype><v:shape id="_x0000_i1027" type="#_x0000_t75" alt="Interface gráfica do usu&aacute;rio, Texto&#10;&#10;O conte&uacute;do gerado por IA pode estar incorreto." style="width:425.25pt;height:141.75pt;visibility:visible;mso-wrap-style:square">

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O conteúdo gerado por IA pode estar incorreto" /> </v:shape><![endif]--><!--[if vml]--> <img src="data:image/png;base64,R0lGODdhNwK9AHcAACh+GINvZnR3YXJlOiBNaWNybnNv ZnQgT2ZmaWNlACwAAAAANwK9AIf/////9+/v9//e9//39++97/eMnJz/99693u/35ta1HuMjJzv zqXm5u/epYSc5ve9jGMIEBne5tZCOlJKWlpj5uaMnBBra5Sczu+MUilKKSm9a0q1tXMZWn vevZx7hIT33qUHEBICY5wQEDoZOnO91qW1nOYpWpyMrcW15nPm1kiZY1Lm1hDmnBn ma+aEvXPmELWtWhBCKTqtteWMIEJzjJxjva1j763enEq9nBISIM6Mxe+lnJwxnK1zEBDMY zpCGe9CaxkQWu8QGe9zEErmYxBCGcUQWsuUQGcXmY2MQShICEBBCEEpzOhnW5vd Kc5zFtZwxnN5SnHutraXWztb35r1jMRIS3nutMVlx3uZS3jG1MYxSnDEZnHsZ3nutMRkx3q 0Z3jF7MYwZnDG9xc6cjGvezu8ZKVqMa1K93s61YzFrY1rmMXNKY3vma63mEOa9hErWp Wtzc3vm9++cYzHmnOaE73PmQrXm3rVrnNZCc7VrUilLexbVSjl2UjIRSI0Z3jKvR0jHv1oxz ILWMteZKIRDmY4QQaxmMIMX3986lc1Lv97W9zu/vpWvmzs6cxZteaMUhBCUnvmnK0p OlrmQua1zhCEzhDmvXNrUjFKOjEZKUK9IJyEWkprWhDmvYwQEFprWnM6QnO1zkLmED qEzkLmEBDMEGOCwkoQOlo6KVKUzqVaveZCa+YQEJy17xCE7xCU76VCEJxCSuYQEH tCEHsplSGUY5QQY5y1a++9Y5y1Ke97a+97Ke8QOpS1a8W1KcV7a8V7KcUQra0QreZSr VpS71q9EFIQ7+ZS7x1EJxSrRAZrVoZ71q9EBkQ760Z7x7B7EJwZrRC1Su+9Y3u1CO97S u97CO+1SsW1CMV7SsV7CMUQjK0QjOZSjFpSzlqcEFIQZuZSzhC1EHTSjBAZjFoZzlqcEB kQzq0ZzhB7EHsZjBCUa3NrnOaMIOZ7jGu9nEjZMVJCQhBCOpSU5s6170LmMTqE70Lm MRDm9yHmEIS1IMVCUR3m3mvm93P/9/8I/wABCBxIsKDBgwgTKlZIsKHDhxAjSpxlsaLFixg zatZIsaPHjyBDihxJsQJkyhTqlZJsQXLlZBjypxJs6bNmzhz6tZJs6fPn0CDCh1KtKjRo0ITK13Kt KnTp1CjSp1KtarVq1iz7mSwZ8KgAQY9dKL0FeEBTnLS+qkxQ4DEAA4oQMII6oRy4DwJ EE9mACT1oDCx6ME8Sad5ki6OkR0PCHTEWHwzWqZCkr1QUaJKEQKkgJTofyfgL9ks8jx gQUaD0AYUTwrBjyZJhZGAAGo2PSAihYyAA2pS7T5YxUCPAACEYFpyAnXDRVbyALYI QlOenHz4IKGAYvrs7+DDT//8NZCOquECyQuMwwR9wSpWRDBWFIvEvcj4zEHl/P4OKW+ h/CNRAAv0BlgAfZDTQgFsSINHABJQ4YAmfQAw4Ay+ERRAAIQmCGHDXbGIR+dAZA IFY6UuGF+yEXoSIIcAtZghhDi9yCB/omn4448DhQABPJNBqRzA4FghWQCYRKCDol08gQ Hmsw1UCJoPCnDdYsEct0BChhQhiahfdLGDlrI0MYjDkxgQCfy1dXGFJ1EAEkAirwZSGgD 8WFFB2sUskfbByiCQUa9OGIHzyScR4DrSnyxACJsFNDGTIM4KEholCgyiqBkDAALxdMU WgDe02xxxOIRFqJkj26Oqrg4H/wA4GCFWxBq21FoLQErqwcCsVYQSZGOhVCSCAIA CIADbSCARwa+SECHHsla8ccBZQwyBxxnPADCBDsAwIAGeVBJSJA0dMAYcN0eEEEm3o +UhQQJo2EDFuHrEMcEDB/iGA7KB5nFABiSkIYFeJBTwSSgP1PWEBlpAkoAansbBGQC C2HldrBx3TBWXGxvEJSIKFddqlyEEmMAUCmhALUEECuDYAis08UcAG3QwxRQYJpLBC QLAF9oBfEYBCiUlwCEKWCDcCUACUEXhRXM+0hEkJrZAwOAM4S4SzxM794eHFZvU4E QAGeApkM8v6+XLtkvDPAMHeyQcA9WJNAG0x3z3/61UAFB0N1ng+7135INqjLDDluwMI m2rVUgqLbJZCryBLw8K8MKEEDBMFyhoEIJGhsIB0B1edBZAwI5o0YHX+JjYkqhAAAnd oBCJCilkv4kkYG6gqUwAFW96V0AXBQspsACSSgwAWM4CDKHNC+NjCyfmevPVCALzB AAI5QAQCCbjlgwGvhj5/hQPC1HYct1MYxwgpQPfHaerrLIUIBWbYDAA4h6IMEAjaCBIygp 0ztQGi49Yg4hOA648rD7HZAvLcBBjcneE0cKFFATYQrADE4AwokwDMYMAIAmOAaHEY gLw4gYg7FQw4OMNcrBPDBACVYAisCQleEwWETtQtWyP+2R8Qi0qQuS9iEKjSxCUgcA BUdclIDNzEBJhICbvQTYAegsIRUGMAPftAEIMaICA1QggdWSEW4GIOIMwZiEztYDi6cAJ wIDoORAtjAoNYgBxQqbwQ1UIQtADEHVNjicYIUwdhSUYYMMbEJwAslNDaawhituQDFMs 0IEVNEsfRIAAfarQgY2+QQECMIKoKBVliKhuECFQBUUEtEWNMJje1OFAsOQw2IZMRe +hllASgaD4aJx2CeUJg8MMAMvocH2/jiETsjA35KJJcIiYBA3rGmBgBqQERMwTe3idoJAR CHd3xADmtoAwYOAIVHJMCEAGAnhkg0h5WRgUD3Q87rHsH/hxMGAA/fNBDPrNcfKvRF np1h5yMagBwozOA1bsKVpEfAzXj2Zn2/zKhGSdKAKRhgmMME40f98FEDTGGYX1wAD8 DI0o+inKQsDell/fABMIY0pCrlwQJIClI/sGMCF/jilySh0gXM1KXJXKILXVpTL2kiFR846jB3yt Nk2pSkLe2pUVfgh5yy9EsX2GLOZ6rSkvphMctNq103loEFmPMDckUpTWtK17jaFAS8475 opXus5Vrnj9a135Cic0RCACFJjABCgARr8CVq95FWxN5TGCug72roJ9bGYDa1c/rMEWot AsZ2kqhW/MYK2oTe1E3MLa3AmAobC1EADmInSf//1DALd1yxxyexvcAkAAblmQa4HL2+ HCTrfmQMeFLAWcMZZ2QcDN3T9um7sA1PY2c+ADO1rz2ttet7YWyq2Fgntd4kYXuK/IQxpo O4fXgte9DLWuauDLX6YUriLyra9+98vf/vr3vwAOSIAHTOACG/jACE6wghfM4AY7+MEQjrC EJ0zhClv4whjOSiY3zOE0e/jDIA6xiEdM4hKb+MQoTrGKV8ziFrv4xTCOSYxnTOMa2/jGOM 6xjnfM4x77+MdADrKQh0zkIhV5yEgmTO6QEGD1jGTJC2FoTJwck/zqV8obobKQgsVIUKSJ YlQwAceoOWfBJMd0hHJmVHASy1CYf9WMAFBKFBakziU0ilQjtjJMDsCBC1AzlwxYAx579 KwRDGIGCsJEXVqCM8UZRRCF2JtIIJ3FyThQB/fNSACwrJAE+GHQMvHAAu73F5IsuiJ4Q IOaUCA+j2w60wn5R11CYJ+NeBovrgpOAQTIaVS6JyUpXCNR0PYykVvyzY2JEkgAR+ejJ MB7oSbZRII5hZ+azdWcwHVE/vEJDdRuvxvofq8iAxbw5Ugh4MPoAahwbghRQcrMG5AE3 MKhT6hies+t0LyfcElwTsBDVg3QznEabOwG9Y+ksDv2ha+vgC8AY4Y+LsFxCfQApzgCcc Dq8DCIX0nQAIRFMgcwofwgmwoQQL/cfeCPKA3/zCPRAKJtwQALGspdxzhm25AhNY584/f xt8p97fNUW4hgBt00/8g3hkW+o9EcLPkN1flgHR+7ot35uRMC0QHyMBxErnlHwkYQixEHj4 pK/ehBjp4IN9Jc6e/+51UmEO3n5AGEqdolBef7oZ+g9ByEBKC+m5QQcC8XPX/LcEL7IWc KO8lqXRCYkgaSckQebJ8GEPg1CECDrgQ/w4FSQel4ZJkCiLU6gDVMbQBwuwIlnMzA8A nU9UG/J5kNizKfQXUMAUEqevJ5RBAzpDgww68GeT214EtDdIoA0gSGpFfk2XcYAGAME OeYgCBWiWBDw+9ATNXFEbMjin/zwYKCSJIWEJepB7Gz7/KMDJwQB0kNpP2GEANEgC VwtxngF+OicoLMBUjyAzW9cAENAGfrAHEQMIqVAOmTB9fwcXBrgG3IQiYAKFCAHTaAY DQAFmtAGnUIGCrAAaCAKDaMAiMABxRIACIADupchVWCBa9CAAdOALTgACGXAGjvM8 BzglmUYZ6wd6CAECnSAK76ABhkaAZqJlIiABITiCj9BrJNAW/vcleZAAX1IDewA/c1AFfoA

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Processo	0052879-96.2020.8.06.0112
	trechos que enfrentaram essa matéria. Quanto ao outro ponto dito obscuro, de possível conflito da tabela de fl. 54 com o laudo pericial judicial, igualmente não se verifica qualquer dificuldade de compreensão, especialmente porque a planilha em referência especifica os serviços de reparo a serem executados e os valores unitários, e porque o decisum previu que, apenas no caso de impossibilidade do réu efetuar os reparos, é que serão convertidos os serviços em perdas e danos, havendo apuração da quantia em sede de liquidação da sentença. Dessa forma, entende-se prescindível maiores explicações sobre uso da tabela. Há, na verdade, claro intuito de rediscutir a decisão, neste ponto, a fim de excluir o orçamento apresentado pelos autores/embargados. Por fim, em relação à alegada obscuridade sobre o que deverá ser reparado ou indenizado, não há qualquer margem para dúvida ou interpretação dúbia. O decisum é bastante claro que a condenação é em obrigação de fazer, consistente em efetuar os reparos necessários no imóvel objeto da lide ou, em caso de impossibilidade, que o réu pague a quantia de R\$ 44.017,27 (quarenta e quatro mil e dezessete reais e vinte e sete centavos), por danos materiais. Como se vê, o aresto foi claro e não se omitiu sobre as matérias apontadas pelo embargante. Na verdade, houve pleno enfrentamento das questões controvertidas. Por tudo isso, depreende-se que o recorrente tem o intuito de rediscutir o mérito da decisão, lançando suas teses para convencer este juízo de que deveria ter sido reformada a sentença, para reconhecer a prescrição ou para reduzir os serviços a serem executados, ou ainda para afastar o orçamento apresentado pelos autores, mas essa estratégia não pode ser aceita por esta modalidade de recurso, de fundamentação vinculada. PROCESSO CIVIL. EMBARGOS DE DECLARAÇÃO EM EMBARGOS DE DIVERGÊNCIA EM RECURSO ESPECIAL. OBSCURIDADE. CONTRADIÇÃO. AUSÊNCIA. OMISSÃO E ERRO MATERIAL RECONHECIDOS. 1. Embargos de declaração que apontam a existência de obscuridade, omissão, contradição e erro material. 2. Não há obscuridade, eis que a inconformidade relativa à incidência da Súmula 158/STJ e os motivos a ela atrelados já foram analisados e afastados por esta Corte Especial. 3. A omissão

Processo	0052879-96.2020.8.06.0112
	que permite o provimento dos embargos de declaração se apresenta quando o julgador não analisa pontos ou questões que estão contidas nos autos. Ou seja, conforme a dicção legal, cabem embargos de declaração quando há "omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento" (art. 1.022, II, do CPC). In casu, o aresto embargado é expresso quanto à existência de similitude fática entre os acórdãos confrontados, bem como inexistência de omissão quanto ao conteúdo do REsp 201.563/RJ e à fixação de honorários por equidade. Lado outro, impõe-se o acolhimento da irresignação, para dizer da não incidência da Súmula 598/STF. 4. A contradição que autoriza a oposição de embargos declaratórios é aquela interna ao julgado, relativa a seus fundamentos e dispositivo, e não a contradição entre este e o entendimento da parte, ou o que ficara decidido na origem, ou, ainda, quaisquer outras decisões do STJ. Precedentes. No particular, revela-se nítida a pretensão da embargante de rediscutir matéria já decidida, fazendo com que prevaleça o seu entendimento sobre o tema. 5. Este Órgão Julgador firmou orientação de que a interposição de Embargos de Divergência em Recurso Especial dá início a novo grau recursal, de modo que, ao questionar decisão publicada na vigência do novo Diploma Processual Civil, a parte embargante está sujeita à majoração dos honorários de sucumbência caso indeferidos liminarmente pelo relator ou se o colegiado deles não conhecer ou negar-lhes provimento (AgInt nos EAREsp 762.075/MT, Corte Especial, DJe 07/03/2019). No caso, o acórdão que ensejou a interposição dos embargos de divergência foi publicado antes da vigência do novo CPC, circunstância que afasta a incidência do art. 85, § 11, do CPC/2015. 6. Os embargos de declaração interpostos pela parte recorrente não possuem intuito protelatório, razão pela qual não é caso de aplicação da multa inserta no art. 1.026, § 2º, do CPC/2015. 7. Embargos de declaração parcialmente acolhidos, para sanar a omissão relativa à não incidência da Súmula 598/STF e corrigir erro material, afastando a majoração dos honorários de sucumbência. (EDcl nos EREsp 1411420/DF, Rel. Ministra NANCY ANDRIGHI, CORTE ESPECIAL, julgado em 18/11/2020, DJe 26/11/2020, GN). EMBARGOS DE DECLARAÇÃO NO AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO MONITÓRIA. IMPROCEDÊNCIA DO PEDIDO. OMISSÃO NÃO CARACTERIZADA. REDISCUSSÃO. IMPOSSIBILIDADE. EMBARGOS REJEITADOS. 1. Os embargos de declaração têm como objetivo sanar eventual existência de obscuridade, contradição, omissão ou erro material (CPC/2015, art. 1.022). É inadmissível a sua oposição para rediscutir questões tratadas e devidamente fundamentadas na decisão embargada, já que não são cabíveis para provocar novo julgamento da lide. 2. Embargos de declaração rejeitados. (EDcl no AgInt no AREsp 1728757/DF, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 25/10/2021, DJe 26/11/2021, GN). AGRAVO INTERNO NOS EMBARGOS DE

Processo	0052879-96.2020.8.06.0112
	DECLARAÇÃO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO MONITÓRIA. FUNDAMENTAÇÃO DO ACÓRDÃO RECORRIDO. SUFICIÊNCIA. ÔNUS DO DEVEDOR. VERIFICAÇÃO. SÚMULA 7 DESTA CORTE. DOCUMENTO NOVO. NÃO CARACTERIZAÇÃO. AGRAVO NÃO PROVIDO. 1. Não há violação aos arts. 489 e 1.022 do CPC/2015, tendo em vista que o v. acórdão recorrido adotou fundamentação suficiente, decidindo integralmente a controvérsia. É indevido conjecturar-se a existência de omissão, obscuridade ou contradição no julgado apenas porque decidido em desconformidade com os interesses da parte. 2. Ante as provas acostadas aos autos, a Corte de origem reconheceu que o contrato foi rescindido por determinação do DNIT, e não por culpa dos contratantes, razão pela qual não enseja a aplicação da cláusula penal. Nesse contexto, a modificação de tal entendimento lançado no v. acórdão recorrido demandaria o revolvimento de suporte fático-probatório dos autos, o que é inviável em sede de recurso especial. 3. Nos termos do art. 396 do CPC/73 (art. 434 do CPC/2015), cabe à parte instruir a inicial ou a contestação com os documentos que forem necessários para provar o direito alegado. 4. Na hipótese, foi consignado pelas instâncias ordinárias que os documentos apresentados são antigos e, não tendo sido apresentados no momento oportuno, operou-se a preclusão. 5. Agravo interno não provido. (AgInt nos EDcl no AREsp 1573807/MG, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 20/04/2020, DJe 04/05/2020, GN). Portanto, inexistente razão para os embargos em comento, pois não há pontos obscuros nem omissos a serem sanados na decisão embargada. Os embargos declaratórios, como já dito, prestam-se apenas para afastar dúvida, omissão, contradição ou erro material na prestação jurisdicional, e não para reanalisar o decisum. Vale lembrar que não se pode considerar que houve vício na decisão somente por ter formulado seus fundamentos de maneira diversa da expectativa das partes, até porque o julgador outorga o direito diante dos fatos que lhe são apresentados, corolário da máxima latina juria novit e dabi mihi factum dabo tibi jus. Nesse esteio, o enunciado sumular desta e. Corte de Justiça assenta que: Súmula 18 - TJCE: "São indevidos os embargos de declaração que têm por única finalidade o reexame de controvérsia jurídica já apreciada" Não se pode considerar que houve vício na decisão somente por ter formulado seus fundamentos de maneira diversa da expectativa das partes, até porque o julgador outorga o direito diante dos fatos que lhe são apresentados, corolário da máxima latina juria novit e dabi mihi factum dabo tibi jus. Por fim, consigno que "consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de pré-questionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade" (art. 1.025, CPC).

[illegible]

Processo	0621027-74.2025.8.06.0000
Número de ordem	157
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Tutela de Urgência
Polo ativo	LUCAS FREITAS DE LACERDA
Advogado(s) - Polo ativo	MARA THAYS MAIA FERREIRA - (CE19462-A)
Polo passivo	ANTONIO DE PADUA CASTRO ALENCAR JUNIOR
Advogado(s) - Polo passivo	BEATRIZ CHAVES BITTENCOURT DE ALBUQUERQUE - (CE44118-A) MARCUS VINICIUS FREIRE FERNANDES - (CE49772) MARIANA OLIVEIRA LEMOS - (CE37777-A)
Terceiros	Não informado

Processo	0621027-74.2025.8.06.0000
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJFfWcWvZtqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNHEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmWfGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsquxatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvrYIz8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfLk3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fn5FHqieh3YwFUUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOGPE pw1t9ofclZHE21NneWVeWBxJJElVfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qikym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfn1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGP3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkIX410JEZMRU0ZDIFMjFvRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0621027-74.2025.8.06.0000
	PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 0621027-74.2025.8.06.0000 AGRAVO DE INSTRUMENTO (202) AGRAVANTE: LUCAS FREITAS DE LACERDA AGRAVADO: ANTONIO DE PÁDUA CASTRO ALENCAR JÚNIOR EMENTA: DIREITO EMPRESARIAL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO DE DISSOLUÇÃO PARCIAL DE SOCIEDADE C/C PEDIDO DE TUTELA DE URGÊNCIA. PRETENSÃO DE AFASTAMENTO DE SÓCIO ADMINISTRADOR. AUSÊNCIA DE ELEMENTOS PROBATÓRIOS SUFICIENTES. INEXISTÊNCIA DOS REQUISITOS AUTORIZADORES DA MEDIDA EXCEPCIONAL. RECURSO CONHECIDO E DESPROVIDO. I) CASO EM EXAME 1. Trata-se de recurso de agravo de instrumento interposto por Lucas Freitas de Lacerda contra decisão proferida pelo Juízo da 1ª Vara Empresarial, de Recuperação de Empresas e de Falências da Comarca de Fortaleza, que, nos autos da ação de dissolução parcial de sociedade c/c pedido de tutela de urgência, indeferiu a liminar de afastamento do agravado da administração da sociedade empresária At Home Store Ltda., determinando apenas

Processo	0621027-74.2025.8.06.0000
	que este não obstaculizasse o exercício dos direitos societários pelo agravante. I) QUESTÃO EM DISCUSSÃO 2. A questão a ser decidida consiste em verificar se estão presentes os requisitos legais para o afastamento do sócio-administrador da empresa, com a consequente suspensão do pagamento de pro labore. III) RAZÕES DE DECIDIR 3. Não restou demonstrada a probabilidade do direito alegado, haja vista que a documentação apresentada não comprova, de forma idônea, a ocorrência de má gestão ou de desvio de recursos pelo sócio agravado. 4. Além disso, a concessão da medida implicaria afastar o sócio-administrador antes mesmo de oportunizada a apresentação de defesa, o que se mostra temerário. 5. Destaca-se, ainda, que parte do pleito recursal encontra-se prejudicada, pois o próprio juízo de origem já assegurou ao agravante o acesso aos documentos e sistemas da sociedade empresarial, sob pena de multa. 6. Quanto ao pedido de segredo de justiça, não há previsão legal que autorize a interposição de agravo de instrumento contra decisão que o indefere, ausentes também os requisitos do art. 189 do CPC. IV) DISPOSITIVO 7. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para lhe negar provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Cuida-se de Agravo de Instrumento interposto por Lucas Freitas de Lacerda contra decisão interlocutória proferida pelo juízo da 1ª Vara Empresarial, de Recuperação de Empresas e de Falências da Comarca de Fortaleza nos autos da Ação de Dissolução Parcial de Sociedade c/c Pedido de Tutela de Urgência, que fora ajuizada pelo ora agravante em desfavor de Antônio de Pádua Castro. Em suma, a decisão indeferiu a liminar pleiteada no início do processo, por não estarem presentes os requisitos da medida. O dispositivo constou da seguinte forma: Ante o exposto, indefiro a tutela de urgência de afastamento do requerido da administração da sociedade AT HOME STORE LTDA Determino,

Processo	0621027-74.2025.8.06.0000
	porém, com fundamento no art. 297 do Código de Processo Civil, que Antônio de Pádua Castro Alencar Júnior (requerido) se abstenha de criar obstáculos ao acesso do requerente – Lucas Freitas Lacerda – às instalações da sociedade AT HOME STORE LTDA, documentos de qualquer natureza, mensagens eletrônicas (e-mail, redes sociais), contas bancárias de titularidade da sociedade, bem como qualquer outra faculdade ou direito inerente à condição de sócio e administrador deste segundo, notadamente o pagamento de credores, empregados e fornecedores da sociedade, sob pena de multa diária de R\$ 1.000,00(mil reais). Indefiro o segredo de Justiça porque o caso dos autos não se amolda às hipóteses do art. 186 do Código de Processo Civil. Defiro o parcelamento das custas processuais, tendo em vista as dificuldades de liquidez alegadas pelo requerente. Cite-se o requerido para se manifestar, em 15(quinze) dias, para a presente ação, nos termos do art. 601 do Código de Processo Civil. Cite-se o requerido para se manifestar, em 15 (quinze) dias, sobre a presente ação, nos termos do art. 601 do Código de Processo Civil. O mandado também deverá intimar o requerido para que se abstenha de criar obstáculos ao acesso do requerente – Lucas Freitas Lacerda – às instalações da sociedade AT HOME STORE LTDA, documentos de qualquer natureza, mensagens eletrônicas (e-mail, redes sociais), contas bancárias de titularidade da sociedade, bem como qualquer outra faculdade ou direito inerente à condição de sócio e administrador deste segundo, notadamente o pagamento de credores, empregados e fornecedores da sociedade, sob pena de multa diária de R\$ 1.000,00 (mil reais). Neste recurso (ID 23118263), o agravante alega que a decisão deve ser reformada, pois o agravado praticou atos gravíssimos e reiterados de má gestão e de violação dos deveres fiduciários, tais como: i) realização de desvios financeiros e transações suspeitas, superiores a R\$ 3.700.000,00 (três milhões e setecentos mil reais), conforme apurado em auditoria contábil; ii) obstaculizou os acessos do agravante às contas bancárias, e-mails corporativos e outros sistemas de gestão da empresa; iii) comprometeu a saúde financeira da empresa, com atrasos injustificados em pagamentos e em cobranças a devedores, incluindo o corte de fornecimento de serviços essenciais, como de energia elétrica; iv) demonstrou, por sua conduta reiterada, falta de transparência e violação das obrigações de prestação de contas. Salienta, ademais, que a auditoria contábil realizada se encontra assinada pela responsável técnica, bem como os extratos bancários, os quais foram apresentados em sua integralidade com o código de autenticação. Desse modo, ratifica a necessidade de afastamento do agravado do poder de gestão da empresa, além de suspender o pagamento do seu pro-labore. Reafirma o seu pedido de concessão de sigilo ao processo, por conter dados bancários sigilosos da sociedade e outros documentos da empresa e de seus sócios.

Processo	0621027-74.2025.8.06.0000
	 A) as despesas reputadas como irregulares ao requerido na gestão da sociedade foram realizadas, em sua maioria, quando o requerente não era sócio da At Home Store Ltda, o que lhe retiraria a legitimidade para impugnar os atos realizados à época; B) ainda que estivesse configurada a legitimidade, os extratos bancários seriam insuficientes para conferir irregularidade às transações financeiras contestadas, haja vista não ser possível, por meio deles, aferir-se se os beneficiários das transações se tratavam de fornecedores, empregados, credores ou terceiros em conluio com o requerido; C) o documentos nomeado como "auditoria contábil" na inicial (fls. 99-157), na verdade, trata-se de análise de extratos bancários apócrifa, que não identifica quem a elaborou; D) o extrato do Banco do Brasil (fls. 158-337), que indica como cliente Martha C F Lacerda, não indica se era referente a pessoa física ou jurídica (empresária individual) que antecedeu a sociedade, revelando a mesma precariedade a fatura do cartão de crédito SICOBCARD (fls. 498-553); E) os extratos do Banco Bradesco (fls. 338-460, 481-496 e 647-650) são frágeis como prova do suposto desvio de recurso, pois não possuem identificação do nome do cliente; F) os extratos do SICOOB não fazem menção à mesma sociedade empresária, tendo em vista que se referem ora à sociedade At Home Store Franchising Ltda e ora a AT H Licenciamentos (fls. 473-480 e 636-645). &#160; De fato, os fundamentos apresentados pelo juízo a quo para indeferimento da medida pleiteada se mostram plausíveis. É de se destacar que o deferimento da tutela nos moldes requeridos não se mostra prudente nessa fase, posto que o promovido, ora agravado, antes mesmo de ter o direito de apresentar sua defesa no processo, seria colocado em posição alheia à administração dos atos da empresa e impedido de receber a contraprestação pelos serviços realizados em benefício da sociedade empresária. Tudo isso sopesado, não se vislumbra a presença dos requisitos à tutela recursal pretendida, vez que, a fim de justificar a concessão de tutela provisória, é indispensável a ocorrência do risco de dano anormal cuja consumação possa comprometer, substancialmente, a satisfação do direito subjetivo da parte, e a plausibilidade da fundamentação, requisitos que não restaram

Processo	0621027-74.2025.8.06.0000
	evidenciados até o presente momento. Saliento, ademais, que o pleito do item "b" da petição inicial do agravo, relativo à devolução imediata dos acessos às contas bancárias, e-mails corporativos e outros sistemas de gestão ao Agravante, já foi deferido pelo juízo de primeiro grau, o qual, inclusive, impôs multa cominatória para a hipótese de não cumprimento da obrigação pelo demandado. A sua análise resta, portanto, prejudicada. Finalmente, quanto ao pedido de concessão de segredo de justiça à tramitação deste recurso e dos autos originários, entendo não ser o caso, por não figurar a presença de quaisquer dos requisitos do art. 189 do CPC. Além disso, em razão da taxatividade mitigada do art. 1015 do CPC, não cabe agravo de instrumento contra decisão que indefere a tramitação de processo judicial sob segredo de justiça. Nesse sentido: AGRAVO DE INSTRUMENTO. AÇÃO INDENIZATÓRIA. ALEGAÇÃO DE ERRO MÉDICO. INDEFERIMENTO DE TRAMITAÇÃO DO FEITO EM SEGREDO DE JUSTIÇA E DEFERIMENTO DO PEDIDO DE INVERSÃO DO ÔNUS DA PROVA. Insurgência da parte ré. Decisão que indefere atribuição de segredo de justiça e defere a inversão do ônus da prova em favor da agravada. Interposição fora das hipóteses previstas no rol do art. 1.015, do CPC, no tocante a pretensão de tramitação do feito em segredo de justiça. Taxatividade mitigada reconhecida no julgamento do Resp. nº 1.704.520. Excepcionalidade. Inexistência de urgência ou de inutilidade do julgamento da questão em eventual recurso de apelação. Descabimento. Recurso inadmissível. Deferimento da inversão do ônus da prova. A regra da inversão do ônus da prova está prevista no art. 6º, VIII do CDC, e tem por escopo igualar as partes que ocupam posições não isonômicas, sendo nitidamente posta a favor do consumidor, cujo acionamento fica a critério do juiz, mas sempre que houver verossimilhança na alegação ou quando o consumidor for hipossuficiente, segundo as regras ordinárias da experiência. Verossimilhança da alegação do consumidor ou sua hipossuficiência são requisitos que devem ser sopesados pelo Magistrado, com base em regras ordinárias de experiência. Súmula nº 227 do TJRJ preceitua que a decisão que deferir ou rejeitar a inversão do ônus da prova somente será reformada se teratológica, o que não é a hipótese dos autos. Inversão do ônus da prova que não dispensa o consumidor da prova mínima do fato constitutivo do direito pleiteado. Decisão mantida. NÃO CONHECIMENTO DO RECURSO NO TOCANTE AO INDEFERIMENTO DA TRAMITAÇÃO DO FEITO EM SEGREDO DE JUSTIÇA E NEGATIVA DE PROVIMENTO AO RECURSO NO QUE TANGE AO DEFERIMENTO DA INVERSÃO DO ÔNUS DA PROVA. (TJ-RJ - AI: 00153872120218190000, Relator: Des(a). EDUARDO DE AZEVEDO PAIVA, Data de Julgamento: 05/05/2021, DÉCIMA OITAVA CÂMARA CÍVEL, Data de Publicação: 06/05/2021). [Grifei]. AGRAVO DE INSTRUMENTO – INDEFERIMENTO DE SEGREDO DE JUSTIÇA - NÃO CABIMENTO - As hipóteses de cabimento do Agravo de Instrumento são previstas taxativamente no art. 1.015 do CPC - A decisão interlocutória que indefere o pedido de segredo de justiça não é recorrível por Agravo de Instrumento - Falta de previsão de hipótese de cabimento - Ausência de pressuposto recursal - Agravo de Instrumento não conhecido. (TJ-SP 20183740620188260000 SP 2018374-06.2018.8.26.0000, Relator: Ana Liarte, Data de Julgamento: 23/04/2018, 4ª Câmara de Direito Público, Data de Publicação: 26/04/2018). [Grifei]. Diante disso, conheço do presente recurso para lhe negar provimento, mantendo a decisão interlocutória de primeiro grau em todos os seus termos.

Processo	0621027-74.2025.8.06.0000
	Comunique-se ao d. juízo singular sobre o teor deste julgamento, para os devidos fins. É como voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator
Processo	0201298-24.2023.8.06.0154
Número de ordem	158
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Prestação de Serviços
Polo ativo	FRANCISCO RODRIGUES DA SILVA
Advogado(s) - Polo ativo	ELAYNE DA SILVA ROCHA - (CE35050-A)
Polo passivo	BANCO DO BRASIL SA BANCO DO BRASIL SA
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0201298-24.2023.8.06.0154
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCIQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiwK7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRSrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJFBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJASvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkccq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmWGFidQYKAYKCMg2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDjT9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsquxatW0YlaGYnMWb Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsPOONGNYVgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOW1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOe1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvlgRLkiu3cCAWl2fnsFHHqjeh3YwFUFUwU2ZJXJjXmKACMg2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJ1VfDrTECR2H3TDT2IZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qikym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutlBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNfOWu+q8CLjMCzGAkx2F9hw SnBERGDhfMDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjpg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41gnkUvXNkX410jEZmRZUDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> II. QUESTÃO EM DISCUSSÃO </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 2. A questão em discussão é a suposta omissão no acórdão em relação às teses de ilegitimidade passiva e incompetência do juízo, que foram versadas nas contrarrazões ao apelo, apresentadas pelo banco ora embargante. </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 3. O acórdão discorreu expressamente sobre as questões da legitimidade passiva do banco (inclusive, citando as teses fixadas pela Súmula 1150 do STJ) e da competência do juízo. Portanto, em relação a esses dois temas, não há falar em omissão. Houve pleno enfrentamento, muito embora de forma sucinta, mas com fundamentação suficiente para superá-las. </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 4. Inexistindo, no acórdão embargado, qualquer dos vícios elencados no art. 1.022 do CPC, não merecem ser acolhidos os embargos de declaração, que, em verdade, revelam o inconformismo da parte embargante com as conclusões do decisum, aplicando-se, ao caso, a Súmula nº 18 desta Corte. </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> 5. Consigne-se que "consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de pré-questionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade" (art. 1.025, CPC). </p><p class="EmentadoAcrdo" style="margin-bottom:6.0pt;text-align:justify"> IV. DISPOSITIVO </p><p class="Standarduser" style="margin-bottom:6.0pt;text-align:justify"> 6. Embargos de declaração conhecidos e desprovidos. </p><p class="Standarduser" style="margin-bottom:6.0pt;text-align:justify"> #160;</p><p align="justify">#160;</p><p class="EmentadoAcrdo" style="text-align:justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>&nbsp;MÉRITO<!--[endif]> 1ª Câmara Direito Privado<!--[if supportFields]><!--[endif]> do Tribunal de Justiça do Estado do Ceará, em conhecer dos embargos de declaração, para lhes negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p align="center"> #160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Presidente/Relator </p><p align="center">
 </p><p align="center"> #160; </p><p align="center"> RELATÓRIO </p></p>

Processo	0201298-24.2023.8.06.0154
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 </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Trata-se de embargos de declaração opostos pelo Banco do Brasil S.A., objetivando a integração do acórdão prolatado por esta Primeira Câmara de Direito Privado, no Id 23131698, que cassou a sentença recorrida e julgou prejudicado o recurso de apelação interposto por Francisco Rodrigues da Silva, ora embargado, nos seguintes termos ementados: </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;">&#160;</p><p class="Standarduser" style="margin-left: 4cm; text-align: justify;"> DIREITO PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER C/C REPARAÇÃO CIVIL. PASEP. ALEGADA MÁ GESTÃO DOS RECURSOS DEPOSITADOS. IMPROCEDÊNCIA. PRELIMINARES DE VIOLAÇÃO AO PRINCÍPIO DADIALETICIDADE, DE REVOGAÇÃO DA GRATUIDADE JUDICIÁRIA, DE INCOMPETÊNCIA DA JUSTIÇA ESTADUAL E DE ILEGITIMIDADE PASSIVA. REJEIÇÃO. PROVA PERICIAL CONTÁBIL. NECESSIDADE. PRECEDENTES DESTAC. PRIMEIRA CÂMARA DE DIREITO PRIVADO. SENTENÇA ANULADA. RECURSO PREJUDICADO. </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> I. CASO EM EXAME </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> 1. Trata-se de recurso de apelação interposto contra a sentença prolatada às fls. 179/192, que julgou improcedente a Ação de Obrigação de Fazer c/c Indenização por Danos Materiais e Morais. <p class="Standarduser" style="margin- left: 4.0cm; text-align: justify;"> II. QUESTÕES EM DISCUSSÃO </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> 2. As questões em discussão consistem em analisar se o recurso contém irregularidades formais capazes de obstar sua admissão e, caso superado isso, se merece reforma a sentença que julgou improcedentes os pedidos autorais. </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> III. RAZÕES DE DECIDIR </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> 3. Em sede de contrarrazões, o banco apelado suscitou preliminares de violação ao princípio da dialeticidade, de revogação do benefício da justiça gratuita, de ilegitimidade passiva e de incompetência absoluta da justiça estadual. Porém, tais preliminares não comportam acolhimento. </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> 4. Quanto à alegada ofensa ao princípio da dialeticidade, tal alegação não prospera, vez que, em exame à peça recursal, confere-se que as alegações do apelante estão voltadas aos fundamentos da sentença, no intuito de convencer este juízo ad quem de que houve desfalques na sua conta vinculada do PASEP. Portanto, a intenção de reverter o resultado do julgamento que lhe foi desfavorável é nítida e deve ser considerada. E embora haja repetição de argumentos de alguns trechos lançados na exordial, isso não chega a prejudicar o conhecimento do apelo, havendo entendimento pacificado do c. STJ de que isso não significa malferimento ao princípio da dialeticidade. </p><p class="Standarduser" style="margin-left: 4.0cm; text- align: justify;"> 5. No tocante à impugnação da concessão de justiça gratuita, nota- se que tal questão se encontra preclusa, pois o apelado já havia apresentado a impugnação em sede de contestação e a questão foi resolvida em sentença, em que se rejeitou suas alegações. Assim, e por não ter o banco apresentado recurso de apelação pugnando pela reforma do capítulo da sentença pertinente a essa matéria, não cabe mais discuti-la como impugnação. </p><p class="Standarduser" style="margin- left: 4.0cm; text-align: justify;"> 6. A questão da legitimidade passiva ad causam do Banco do Brasil restou pacificada no Tema Repetitivo 1150 do STJ, com trânsito em julgado em 17 de outubro de 2023, cuja tese (i) é de que "o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao PASEP, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa". </p><p class="Standarduser" style="margin-left: 4.0cm; text-align: justify;"> 7. A legitimidade passiva do banco apelado atrai a competência da Justiça Comum para

Processo	0201298-24.2023.8.06.0154
	processar e julgar o litígio, não se aplicando o disposto no art. 109, I, da Constituição Federal. 8. No caso concreto, verifica-se que houve o indeferimento da prova pericial e o anúncio do julgamento antecipado do mérito, com fundamento no art. 355, I, do CPC, sem prévio despacho saneador. Entendeu o il. magistrado sentenciante que a controvérsia poderia ser dirimida apenas sob o enfoque das teses do Tema Repetitivo 1150 do STJ e documentos anexados aos autos. Todavia, a prova pericial contábil se revela indispensável para a aferição de eventual saldo a receber pela parte autora decorrente de má gestão dos valores depositados na conta PASEP, por parte do promovido, pois somente por ela será possível constatar se o valor recebido pelo demandante, na data do saque, corresponde ao montante realmente devido, ou seja, se estava em conformidade com a sistemática e índices pertinentes ao cálculo do saldo. 9. Assim, notório que os presentes autos não estavam em condições de julgamento antecipado, sobretudo pela necessidade de prosseguir com a dilação probatória relativa à imputação de má gestão do Programa PASEP, atendo-se às recomendações contidas na Nota Técnica 07/2024, emitida por esta Corte de Justiça. Precedentes. IV. DISPOSITIVO 10. Recurso prejudicado. Sentença anulada. 11. Nas razões do presente recurso (Id 23131834), o embargante alega existir omissão no acórdão em relação às teses de ilegitimidade passiva do banco e de incompetência absoluta da Justiça Estadual. Requer, com base nisso, a correção do julgado, conforme vícios apontados. Nas razões do presente recurso (Id 23131834), o embargante alega existir omissão no acórdão em relação às teses de ilegitimidade passiva do banco e de incompetência absoluta da Justiça Estadual. Requer, com base nisso, a correção do julgado, conforme vícios apontados. Sem contrarrazões, conforme certidão de decurso de prazo de Id 23131721. É o relatório. VOTO 1 – Admissibilidade: Registro que se encontram presentes os pressupostos de admissibilidade do recurso, motivo pelo qual o conheço e passo a analisar suas razões. Ademais, cumpre esclarecer que não é caso de suspensão do feito em razão do Tema Repetitivo nº 1.300 do Superior Tribunal de Justiça, como peticionou o embargante no Id 23131709, pois ele se delimita às causas em que há discussão sobre o ônus de provar o destino dos lançamentos a débito nas contas individualizadas do PASEP, na forma do art. 1.037, II, do CPC, questão não controvertida nesta instância recursal, sendo possível o reexame da matéria em juízo de primeiro grau, se confirmada a nulidade da sentença.

Processo	0201298-24.2023.8.06.0154
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[illegible]

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Processo	0201298-24.2023.8.06.0154
	style="margin-left: 106.3pt; text-align: justify;"> 1. Embargos de declaração que apontam a existência de obscuridade, omissão, contradição e erro material. </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> 2. Não há obscuridade, eis que a inconformidade relativa à incidência da Súmula 158/STJ e os motivos a ela atrelados já foram analisados e afastados por esta Corte Especial. </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> 3. A omissão que permite o provimento dos embargos de declaração se apresenta quando o julgador não analisa pontos ou questões que estão contidas nos autos. Ou seja, conforme a dicção legal, cabem embargos de declaração quando há "omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento" (art. 1.022, II, do CPC). In casu, o aresto embargado é expresso quanto à existência de similitude fática entre os acórdãos confrontados, bem como inexiste omissão quanto ao conteúdo do REsp 201.563/RJ e à fixação de honorários por equidade. Lado outro, impõe-se o acolhimento da irresignação, para dizer da não incidência da Súmula 598/STF. </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> 4. A contradição que autoriza a oposição de embargos declaratórios é aquela interna ao julgado, relativa a seus fundamentos e dispositivo, e não a contradição entre este e o entendimento da parte, ou o que ficara decidido na origem, ou, ainda, quaisquer outras decisões do STJ. Precedentes. No particular, revela-se nítida a pretensão da embargante de rediscutir matéria já decidida, fazendo com que prevaleça o seu entendimento sobre o tema. </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> 5. Este Órgão Julgador firmou orientação de que a interposição de Embargos de Divergência em Recurso Especial dá início a novo grau recursal, de modo que, ao questionar decisão publicada na vigência do novo Diploma Processual Civil, a parte embargante está sujeita à majoração dos honorários de sucumbência caso indeferidos liminarmente pelo relator ou se o colegiado deles não conhecer ou negar-lhes provimento (AgInt nos EAREsp 762.075/MT, Corte Especial, DJe 07/03/2019). No caso, o acórdão que ensejou a interposição dos embargos de divergência foi publicado antes da vigência do novo CPC, circunstância que afasta a incidência do art. 85, § 11, do CPC/2015. </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> 6. Os embargos de declaração interpostos pela parte recorrente não possuem intuito protelatório, razão pela qual não é caso de aplicação da multa inserta no art. 1.026, § 2º, do CPC/2015. </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> 7. Embargos de declaração parcialmente acolhidos, para sanar a omissão relativa à não incidência da Súmula 598/STF e corrigir erro material, afastando a majoração dos honorários de sucumbência. </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> (EDcl nos EREsp 1411420/DF, Rel. Ministra NANCY ANDRIGHI, CORTE ESPECIAL, julgado em 18/11/2020, DJe 26/11/2020, GN). </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> &#160; </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> EMBARGOS DE DECLARAÇÃO NO AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO MONITÓRIA. IMPROCEDÊNCIA DO PEDIDO. OMISSÃO NÃO CARACTERIZADA. REDISCUSSÃO. IMPOSSIBILIDADE. EMBARGOS REJEITADOS. </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;"> 1. Os embargos de declaração têm como objetivo sanar eventual existência de obscuridade, contradição, omissão ou erro material (CPC/2015, art. 1.022). É inadmissível a sua oposição para rediscutir questões tratadas e devidamente fundamentadas na decisão embargada, já que não são cabíveis para provocar novo julgamento da lide. </p><p class="Standarduser" style="margin-left: 106.3pt; text-align: justify;">

Processo	0201298-24.2023.8.06.0154
	medium;"> Vale lembrar que não se pode considerar que houve vício na decisão somente por ter formulado seus fundamentos de maneira diversa da expectativa das partes, até porque o julgador outorga o direito diante dos fatos que lhe são apresentados, corolário da máxima juria novit e dabi mihi factum dabo tibi jus. </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> #160;</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Nesse esteio, o enunciado sumular desta e. Corte de Justiça assenta que: Súmula 18 - TJCE: “São indevidos os embargos de declaração que têm por única finalidade o reexame de controvérsia jurídica já apreciada” . </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Por fim, consigno que “consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de pré-questionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade” (art. 1.025, CPC). </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> #160;</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> #160;</p><p class="Standard1" style="text-align: justify; text-indent: 8%;"> Assim, com fulcro no art. 1.022 do Código de Processo Civil, CONHEÇO dos embargos de declaração, para lhes NEGAR PROVIMENTO, por não estarem presentes quaisquer dos requisitos indicados pela lei, nem serem apropriados à rediscussão do julgado, mantendo hígido o acórdão atacado. </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> #160;</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> É como voto. </p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> #160;</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p align="center">
 </p><div>
 </div><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Relator </p><p>
 </p><p> #160;</p><div id="ftn1"> <p class="Footnoteuser"> [1] #160;Curso de Direito Processual Civil – Execução forçada, processos nos tribunais, recursos e direito intertemporal – Vol. III / Humberto Theodoro Júnior. 48. ed. rev., atual. e ampl. – Rio de Janeiro: Forense, 2016, p.

Processo	0201298-24.2023.8.06.0154
	1.062-1.063). </p></div><p>#160;</p> <p>#160;</p><p>#160;</p><p style="text-align: center;"> #160; </p>
Processo	0224666-70.2022.8.06.0001
Número de ordem	159
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Tutela de Urgência
Polo ativo	FACEBOOK SERVICOS ONLINE DO BRASIL LTDA.
Advogado(s) - Polo ativo	CELSO DE FARIA MONTEIRO - (CE30086-A)
Polo passivo	PAULO SERGIO DE BRITO
Advogado(s) - Polo passivo	GUSTAVO CARVALHO ESPINDOLA - (CE43092-A)
Terceiros	Não informado

Processo	0224666-70.2022.8.06.0001
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Processo	0224666-70.2022.8.06.0001
	PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 0224666-70.2022.8.06.0001 APELAÇÃO CÍVEL (198) APELANTE: FACEBOOK SERVICOS ONLINE DO BRASIL LTDA. APELADO: PAULO SÉRGIO DE BRITO. EMENTA: EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER C/C REPARAÇÃO POR DANOS MORAIS. OMISSÃO INEXISTENTE. INTENÇÃO DE REDISCUTIR O JULGADO. VEDAÇÃO. SÚMULA 18 DO TJCE. FINS DE PREQUESTIONAMENTO. RECURSO CONHECIDO E DESPROVIDO. I) CASO EM EXAME: 1. Cuida-se de Embargos de Declaração opostos por Paulo Sérgio de Brito contra o acórdão da Apelação Cível (ID 23156402), que conheceu daquele recurso para lhe dar provimento. II) QUESTÃO EM DISCUSSÃO: 2. Segundo a embargante, o acórdão padece do

Processo	0224666-70.2022.8.06.0001
	vício de omissão relativa à configuração de ato ilícito por parte da requerida, do dever de indenizar e, também, da fixação de astreintes. III) RAZÕES DE DECIDIR: 3. Os presentes embargos de declaração foram analisados sob a ótica do artigo 1.022 do Código de Processo Civil, que dispõe sobre as hipóteses cabíveis para o manejo de embargos de declaração: esclarecer obscuridade, eliminar contradição, suprir omissão ou corrigir erro material. 4. Observa-se que, apesar de o recorrente ter apontado omissões no acórdão, não logrou êxito em comprová-las, pretendendo, na verdade, a rediscussão do que fora decidido por este juízo em quem, o que é vedado pela Súmula 18 do TJCE: "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada." IV) DISPOSITIVO: 5. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do presente recurso para lhe negar provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator RELATÓRIO Cuida-se de Embargos de Declaração opostos por Paulo Sérgio de Brito contra o acórdão da Apelação Cível (ID 23156402), que conheceu daquele recurso para lhe dar provimento. No recurso de ID 23156545, o embargante apresenta este recurso com nítidos fins de prequestionamento. Argumenta, então, que houve omissão em relação ao ato ilícito praticado pela requerida ao violar o dever de segurança da rede social do autor, o que teria infringido os arts. 186 e 927 do Código Civil. Também alega que houve omissão quanto à legitimidade da multa cobrada pelo descumprimento da liminar, nos termos do art. 537 do CPC. Assim, pugna pelo conhecimento e provimento do recurso, a fim de sanar as omissões mencionadas. Contrarrazões recursais oferecidas no ID 23156409, em que o Facebook alega que não houve vícios no acórdão e que a insurgência recursal manifesta mero inconformismo do embargante quanto ao mérito. Requer, portanto, a rejeição dos embargos. É o relatório. VOTO

Processo	0224666-70.2022.8.06.0001
	</p><p align="center"> &#160; </p><p style="text-indent: 8%;" align="justify"> Com base na lei processual civil, art. 1.022, os embargos de declaração são cabíveis nas hipóteses taxativamente ali previstas, quais sejam: </p><p align="justify"> &#160; </p><p style="padding-left: 150px;" align="justify"> I - esclarecer obscuridade ou eliminar contradição; </p><p style="padding-left: 150px;" align="justify"> II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; </p><p style="padding-left: 150px;" align="justify"> III - corrigir erro material. </p><p style="padding-left: 150px;" align="justify"> Parágrafo único. Considera-se omissa a decisão que: </p><p style="padding-left: 150px;" align="justify"> I - deixe de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicável ao caso sob julgamento; </p><p style="padding-left: 150px;" align="justify"> II - incorra em qualquer das condutas descritas no art. 489, § 1<sup>o</sup></p><p align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Sobre o assunto, discorre o processualista Humberto Theodoro Júnior: </p><p align="justify"> &#160; </p><p style="padding-left: 150px;" align="justify"> Se o caso é de omissão, o julgamento dos embargos supri-la-á, decidindo a questão que, por lapso, escapou à decisão embargada. No caso de obscuridade ou contradição, o decisório será expungido, eliminando-se o defeito nele detectado. Tratando-se de erro material, o juiz irá corrigi-lo. </p><p style="padding-left: 150px;" align="justify"> Em qualquer caso, a substância do julgado será mantida, visto que os embargos de declaração não visam à reforma do acórdão, ou da sentença. No entanto, será inevitável alguma alteração no conteúdo do julgado, principalmente quando se tiver de eliminar omissão ou contradição. O que, todavia, se impõe ao julgamento dos embargos de declaração é que não se proceda a um novo julgamento da causa, pois a tanto não se destina esse remédio recursal. As eventuais novidades introduzidas no decisório primitivo não podem ir além do estritamente necessário à eliminação da obscuridade ou contradição, ao suprimento da omissão ou à correção do erro material. (in Curso de Direito Processual Civil – Execução forçada, processos nos tribunais, recursos e direito intertemporal – vol. III / Humberto Theodoro Júnior. 48. ed. rev., atual. e ampl. – Rio de Janeiro: Forense, 2016, p. 1.062-1.063). </p><p align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> No caso, a alegação do recorrente diz respeito tão somente ao prequestionamento de alguns artigos legais, mas, na verdade, a sua intenção é de rediscutir o mérito da ação, alegando que houve ato ilícito por parte da requerida e que, por isso, ficou configurado o dever de indenizar. Sustenta, também, ser o caso de manutenção das astreintes, porque “o argumento de que o autor não forneceu um novo e-mail seguro não pode ser utilizado para justificar o descumprimento da obrigação da ré”. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Ou seja, observa-se que, apesar de a recorrente ter apontado omissões no acórdão, não logrou êxito em comprová-las, pretendendo, na verdade, a rediscussão do que fora decidido por este juízo ad quem, o que é vedado pela Súmula 18 do TJCE: “São indevidos embargos

Processo	0224666-70.2022.8.06.0001
	de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada." </p><p style="text-indent: 8%; align="justify"> &#160; </p><p style="text-indent: 8%; align="justify"> Assim, inexistindo vícios a inquinar a validade do julgamento, de acordo com o art. 489 do CPC, e considerando que a embargante se limitou a utilizar deste recurso para fins de prequestionamento, conclui-se que este recurso não merece ser provido.</p><p style="text-indent: 8%; align="justify"> &#160; </p><p style="text-indent: 8%; align="justify"> Assim, com fulcro no art. 1.022 do código de processo civil, conheço dos embargos de declaração e lhes nego provimento, por não estarem presentes quaisquer dos requisitos indicados pela lei, nem serem apropriados à rediscussão da lide, mantendo inalterado o acórdão. </p><p style="text-indent: 8%; align="justify"> &#160; </p><p style="text-indent: 8%; align="justify"> É como voto. </p><p style="text-indent: 8%; align="justify"> &#160; </p><p style="text-indent: 8%; align="justify"> Fortaleza, data da assinatura digital. </p><p align="justify"> &#160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Relator</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0630792-40.2023.8.06.0000
Número de ordem	160
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Revisão
Polo ativo	C. M. D. S. A. R. P. J. D. S. B. D. P. D. S. A.
Advogado(s) - Polo ativo	VANESSA CRISTINA ANDRE DE PAIVA - (SP376391)
Polo passivo	CICERO RANIERE ALVES DA SILVA
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0630792-40.2023.8.06.0000
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0tyK7SIVIA LFCIQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJBzVzfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUJZReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RfYvY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBl4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacnJfWcSwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VsjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBttau2dl/XHeucKd7W0vVrDwGFiQAYKCAKMG2 MkxjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWb Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3lxi UG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVgiAooWj+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwcnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPf+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZXoLO1c+euYwLFDgyGNry36ewLV0bGvFOW1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNRq 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCUIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc3tLV1D/CfYwcnODHQM+5 qWo3WcjW850dTZ1mu3M6qikym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssADLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo ZOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGd425NbR9LZQW6JzC9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nkdUvsnXNkX410JezMZRUDZIFMjFvRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0630792-40.2023.8.06.0000
	genitor/alimentante. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão é a possibilidade de majoração do valor da pensão alimentícia devida pelo agravado aos seus filhos, em sede de tutela provisória, diante da alegada modificação da situação financeira das partes. III. RAZÕES DE DECIDIR 3. De acordo com o art. 1.699 do Código Civil, “Se, fixados os alimentos, sobrevier mudança na situação financeira de quem os supre, ou na de quem os recebe, poderá o interessado reclamar ao juiz, conforme as circunstâncias, exoneração, redução ou majoração do encargo”. Todavia, no caso concreto, não se vislumbra prova mínima de que a situação das partes se modificou após a realização do acordo que fixou a verba alimentar. 4. No tocante às possibilidades do genitor, há de se destacar que o agravado já possuía o estabelecimento comercial apontado pelos recorrentes desde a época da transação. Ademais, como os próprios agravantes afirmam, o agravado não vem honrando integralmente com seu encargo alimentar, pois vem deixando de pagar as mensalidades escolares, fato esse que requer um juízo mais aprofundado da situação financeira do alimentante, para confirmar uma possível insuficiência de recursos ou se o caso é de mero descumprimento voluntário da obrigação. Assim, em sede de cognição sumária, ausentes provas concretas de que a majoração dos alimentos não comprometerá a subsistência do alimentante, a verba alimentar deve ser mantida no patamar acordado anteriormente. 5. Some-se a isso o fato de que não há elementos suficientes para precisar o <i>quantum</i> efetivamente os menores necessitam. Muito embora suas despesas sejam presumidas e que haja uma natural majoração com o decurso de tempo, devido às demandas de seu desenvolvimento, há de se atentar que os alimentos em pecúnia são reajustados periodicamente, já que acompanham o salário mínimo oficial, bem como que os alimentos <i>in natura</i> não são fixos, havendo alteração conforme as mensalidades escolares são corrigidas. 6. Diante disso, é possível concluir que a análise relativa à alteração da possibilidade econômica do alimentante e da genitora dos menores, e ainda das necessidades dos infantes, não autorizam, neste momento processual, a majoração dos alimentos nos termos postulados. Para tanto, mostra-se necessário maior aprofundamento cognitivo-probatório, o que já começou a ser realizado no juízo de origem, conforme termo de audiência de instrução de Id 140269941. IV. DISPOSITIVO 7. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso e lhe negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital.

Processo	0630792-40.2023.8.06.0000
	&#160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Presidente/Relator</p><p align="center">
</p><p align="center">&#160;</p><p align="center">RELATÓRIO</p><p align="center">
</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">Trata-se de recurso de agravo de instrumento com pedido de efeito suspensivo interposto por Cícero Matheus de Souza Alves e Davi Pietro de Souza Alves, objetivando a reforma da decisão interlocutória prolatada pelo MM. Juiz de Direito Miguel Feitosa Cardoso, da 1ª Vara de Família e Sucessões da Comarca de Juazeiro do Norte/CE, no Id 140266359 dos autos da Ação Revisional de Pensão Alimentícia nº 0202969-14.2023.8.06.0112, ajuizada pelos recorrentes em desfavor de Cícero Raniere Alves da Silva.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">Na decisão recorrida, o magistrado a quo indeferiu o pedido provisório da parte autora, de majoração da pensão alimentícia devida mensalmente pelo agravado, nos seguintes termos [grifos no original]:</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">&#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Admite-se a revisão, de plano, da decisão judicial que estabeleceu a pensão, apenas quando demonstrado, através de elementos probatórios, o provável advento de novas circunstâncias modificadoras das condições financeiras das partes.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Do exame dos autos, todavia, verifica-se que, a princípio, não restou evidenciada uma alteração no binômio possibilidade-necessidade capaz de ensejar a revisão, em sede de tutela antecipada, do pensionamento suportado pelo alimentante, já que não foram apresentados elementos probatórios capazes de convencer o Juízo acerca da modificação da situação das partes.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 4.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">É que pelos elementos juntados aos autos não restou clara a atividade econômica do réu anterior àquela que atualmente exerce, o que dificulta uma melhor análise da alteração em seu padrão de vida, sem deixar de mencionar que parte da documentação colacionada carece do contraditório para uma melhor ponderação quanto à presença dos requisitos para a concessão da tutela de urgência.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Assim, entendendo não estarem presentes os requisitos autorizadores da medida (art. 300 do CPC), INDEFIRO a concessão da tutela antecipada pretendida relativa aos alimentos e, por conseguinte, deixo de majorar o valor anteriormente fixado a título de obrigação alimentar, ao menos no presente momento.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-

Processo	0630792-40.2023.8.06.0000
	size: 12pt; font-family: "Times New Roman";, serif;">&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Além disso, como os próprios agravantes afirmam, o agravado não vem honrando integralmente com seu encargo alimentar, pois vem deixando de pagar as mensalidades escolares, fato esse que requer um juízo mais aprofundado da situação financeira do alimentante, para confirmar uma possível insuficiência de recursos ou se o caso é de mero descumprimento voluntário da obrigação. Assim, em sede de cognição sumária, ausentes provas concretas de que a majoração dos alimentos não comprometerá a subsistência do alimentante, a verba alimentar deve ser mantida no patamar acordado anteriormente.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Também é importante frisar que não restou demonstrada a capacidade de contribuição da genitora dos menores, nem mesmo foi informado um valor aproximado de sua renda, a fim de que se pudesse avaliar a proporção de quanto cada um dos responsáveis pode custear.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Some-se a isso o fato de que não há elementos suficientes para precisar o quantum efetivamente os menores necessitam. Muito embora suas despesas sejam presumidas e que haja uma natural majoração com o decurso de tempo, devido às demandas de seu desenvolvimento, há de se atentar que os alimentos em pecúnia são reajustados periodicamente, já que acompanham o salário mínimo oficial, bem como que os alimentos in natura não são fixos, havendo alteração conforme as mensalidades escolares são corrigidas.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Também importa salientar que o pedido dos agravantes é de majoração da pensão alimentícia para três salários mínimos mais a mensalidade da escola, sendo que o total dos custos mensais expostos pelos recorrentes, em seu arrazoado, não chegam a tal valor, sem contar que foi acrescida a despesa com a mensalidade escolar do valor em pecúnia, de forma que esse custo está sendo computado duas vezes (em pecúnia e in natura). Mais a mais, como dito acima, não estão sendo considerados os recursos da genitora, ainda que mínimos.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Diante disso, é possível concluir que a análise relativa à alteração da possibilidade econômica do alimentante e da genitora dos menores, e ainda das necessidades dos infantes, não autorizam, neste momento processual, a majoração dos alimentos nos termos postulados. Para tanto, mostra-se necessário maior aprofundamento cognitivo-probatório, o que já começou a ser realizado no juízo de origem, conforme termo de audiência de instrução de Id 140269941.</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Por fim, consigno que, embora a ação originária já tenha avançado na produção de provas, ainda carece de maiores elementos que demonstrem a efetiva alteração da situação financeira das partes, especialmente do aumento da capacidade contributiva do agravado, como defendem os recorrentes, não sendo prudente deferir a majoração provisória da pensão neste juízo de cognição precário dos autos. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Ness e sentido, extraio outras decisões da fonte jurisprudencial, para fins ilustrativos (grifos nossos):</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">

Processo	0630792-40.2023.8.06.0000
	New Roman", serif;">(TJ-PE - AGRAVO DE INSTRUMENTO: 0000183-98 .2023.8.17.9480, Relator: LUCIANO DE CASTRO CAMPOS, Data de Julgamento: 20/11/2023, Gabinete do Des . Luciano de Castro Campos (1ª TCRC))</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text- autospace: none;"> #160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> #160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text- autospace: none;"> EMENTA: AGRAVO DE INSTRUMENTO - REVISIONAL DE ALIMENTOS - MAJORAÇÃO - TUTELA DE URGÊNCIA INDEFERIDA - ALTERAÇÃO DA SITUAÇÃO FINANCEIRA DAS PARTES - AUSÊNCIA DE PROVAS SUFICIENTES - DILAÇÃO PROBATORIA - MANUTENÇÃO DA DECISÃO RECORRIDA - RECURSO DESPROVIDO. - A ação revisional de alimentos tem como objeto a exoneração, redução ou majoração do encargo, diante da modificação da situação financeira de quem presta os alimentos, ou os recebe, nos termos do que dispõe o art. 1.699 do Código Civil/2002; - Incumbe à parte autora o ônus de comprovar a alteração da situação fática, de forma a justificar a majoração dos alimentos antes fixados; - Inexistindo provas suficientes no atual estágio processual de melhora na capacidade financeira do alimentante ou da existência de necessidades extraordinárias supervenientes e inesperadas, de modo a justificar o aumento do quantum alimentar arbitrado aos filhos menores, mantém-se a verba alimentar antes fixada em observância ao trinômio alimentar proporcionalidade-necessidade-possibilidade.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text- align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> (TJ-MG - Agravo de Instrumento: 20713149520248130000, Relator.: Des.(a) Delvan Barcelos Júnior, Data de Julgamento: 26/09/2024, Câmaras Especializadas Cíveis / 8ª Câmara Cível Especializada, Data de Publicação: 28/09/2024)</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso- layout-grid-align: none; text-autospace: none;"> #160;</p><p class="Standard" style="text-align: justify; text-indent: 70.85pt;"> #160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> 3 – Dispositivo </p><p class="MsoNormal" style="margin-bottom: 0cm; text- align: justify; text-indent: 8%; line-height: normal;"> #160;</p><p class="Standarduser" style="text-align: justify; text-indent: 8%;"> Ante o exposto, pelas razões de fato e de direito acima alinhadas, CONHEÇO do agravo de instrumento e lhe NEGO PROVIMENTO, permanecendo inalterados os termos da decisão adversada.</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> #160; </p><p class="Standarduser" style="text- align: justify; text-indent: 8%;"> É como voto. </p><p style="text-indent: 8%; align="center">#160;</p><p class="Standard" style="text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify; text-indent: 8%;"> </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">

Processo	0630792-40.2023.8.06.0000
	times;">Relator </p><p> </p><p> </p> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	0621433-95.2025.8.06.0000
Número de ordem	161
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Responsabilidade dos sócios e administradores
Polo ativo	CLAUDIO JORGE FONTENELLE DE ALBUQUERQUE ROBERTO SCHNEIDER
Advogado(s) - Polo ativo	CARLOS HENRIQUE DA ROCHA CRUZ - (CE5496-A)
Polo passivo	GRANDE MOINHO CEARENSE SA
Advogado(s) - Polo passivo	TIAGO ASFOR ROCHA LIMA - (CE16386-A) ANASTACIO JORGE MATOS DE SOUSA MARINHO - (CE8502-A) CAIO CESAR VIEIRA ROCHA - (CE15095-A) AFONSO CARLOS LUSTOSA FILHO - (CE46140-A)
Terceiros	Não informado

Processo	0621433-95.2025.8.06.0000
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWvZtqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNhEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmJFQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDjT9kwIFvV33tG5s0skN9gLLjLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsquxatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsPOONGNYVgiAooWj+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvlqRLkiu3cCAWl2fn5FHgkY3WFOUu2ZXJlJxMkCAGMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2DltgIsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKFmzqRRvUHNchr8n5nMEXB6X08shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY4nkdUvsnXNkIx410JEZMRU0ZDIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0621433-95.2025.8.06.0000
	PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 0621433-95.2025.8.06.0000 AGRAVO DE INSTRUMENTO (202) AGRAVANTES: CLÁUDIO JORGE FONTENELLE DE ALBUQUERQUE e ROBERTO SCHNEIDER AGRAVADO: GRANDE MOINHO CEARENSE S/A EMENTA: DIREITO PROCESSUAL CIVIL E EMPRESARIAL. AGRAVO DE INSTRUMENTO. AÇÃO ANULATÓRIA DE DELIBERAÇÃO SOCIETÁRIA C/C REPARAÇÃO CIVIL. TUTELA DE URGÊNCIA. INDISPONIBILIDADE DE BENS. ALEGAÇÃO DE EXCESSO DE CONSTRIÇÃO. ACOLHIMENTO PARCIAL. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. AGRAVO INTERNO JULGADO CONCOMITANTEMENTE. RECURSO PREJUDICADO. I) CASO EM EXAME 1. Trata-se de agravo de instrumento interposto por Roberto Schneider e Cláudio Jorge Fontenele de Albuquerque contra decisão proferida pelo MM. Juiz de Direito Daniel Carvalho Carneiro, da 3ª Vara Empresarial, de Recuperação de Empresas e de Falências do Estado do Ceará, nos autos da ação anulatória de deliberação de aprovação de contas c/c reparação civil contra ex-administradores com pedido de tutela de urgência cautelar. A decisão manteve a constrição de bens dos ora agravantes.

Processo	0621433-95.2025.8.06.0000
	new roman"; times;">II) QUESTÃO EM DISCUSSÃO 2. A questão a ser decidida consiste em definir se a indisponibilidade de bens determinada pelo Juízo a quo configurou excesso de constrição, em valor muito superior ao montante discutido na ação, e se deve haver a liberação parcial das constrições. III) RAZÕES DE DECIDIR 3. Preliminar de intempestividade recursal rejeitada. 4. Verificou-se que o valor dos bens constritos (cerca de R\$ 33.000.000,00) supera em mais do dobro o montante discutido na ação principal (R\$ 14.000.000,00), caracterizando excesso. 5. Restou evidenciado o perigo de dano na manutenção de bloqueios sobre veículos, em razão da depreciação, e sobre valores em contas bancárias, por se tratarem de recursos necessários à subsistência dos agravantes. 6. Entretanto, por ora, mostra-se razoável a manutenção da indisponibilidade dos imóveis, diante do seu valor superior e da necessidade de avaliação judicial ainda pendente. IV) DISPOSITIVO 7. Recurso conhecido e parcialmente provido, para confirmar a liberação dos valores bloqueados em contas bancárias e dos veículos, com a manutenção da indisponibilidade dos imóveis. Agravo Interno prejudicado. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para lhe dar parcial provimento, nos termos do voto do desembargador relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de Agravo de Instrumento interposto por Roberto Schneider e Cláudio Jorge Fontenele de Albuquerque em face de decisão proferida pelo MM. Juiz de Direito Daniel Carvalho Carneiro, da 3ª Vara Empresarial, de Recuperação de Empresas e de Falências do Estado do Ceará, nos autos da Ação Anulatória de Deliberação de Aprovação de Contas c/c Reparação Civil contra Ex-Administradores com Pedido de Tutela de Urgência Cautelar nº 0261686-61.2023.8.06.0001 (fls. 3066-3069), ajuizada por Grande Moinho Cearense S/A. O juízo a quo ao apreciar dois Embargos de Declaração, de fls. 3019-3022 e de fls. 1632-1639, manteve a decisão que determinou a constrição dos bens dos ora agravantes. Eis o dispositivo do decisum ora impugnado. Isto posto, CONHEÇO E DOU PROVIMENTO aos presentes

Processo	0621433-95.2025.8.06.0000
	embargos de declaração para, mediante a atribuição de efeitos infringentes, sanar a omissão vergastada de modo a CONHECER E NEGAR PROVIMENTO aos embargos de declaração de fls. 1632/1639, ante a inocorrência de omissão, contradição, obscuridade ou erro material que justifique a interposição do recurso, nos termos no art. 1.022, do CPC, razão pela qual mantenho inalterado o decisório de fls. 1645/1647. Prosseguindo, em atenção ao requerimento de fls. 3017/3018, PRORROGO, em 30 (trinta) dias, o prazo para a entrega do laudo pericial. OFICIE-SE o Cartório de Registro de Imóveis da 4ª Zona de Fortaleza requerendo a manutenção das indisponibilidades averbadas nas matrículas nº 14.704, nº 45.966, nº 48.727 e nº 48.728. Expedientes necessários. Nestas razões recursais (ID 23217111), os agravantes defendem a necessidade de liberação de bens e valores bloqueados em virtude de excesso de bens objeto da constrição judicial, pois o suposto débito discutido, conforme indicado na exordial, corresponde a R\$ 10.962.230,38 (dez milhões, novecentos e sessenta e dois mil, duzentos e trinta reais e trinta e oito centavos), enquanto que os bens bloqueados representam a quantia de R\$ 33.126.067,18 (trinta e três milhões, cento e vinte e seis mil, sessenta e sete reais e dezoito centavos). Alegam que a probabilidade do direito está evidenciada pelo manifesto excesso na constrição patrimonial, enquanto o perigo de dano se verifica na indisponibilidade excessiva do patrimônio dos agravados, no risco de deterioração dos veículos e no bloqueio das contas bancárias. Assim, requerem a concessão de tutela de urgência recursal para determinar que o bloqueio atinja somente até o limite do valor requestado na petição inicial da causa (R\$ 10.962.230,38). Subsidiariamente, requerem que seja determinada a liberação dos valores bloqueados e dos veículos, por se tratar de valores muito menores que os dos imóveis bloqueados e pelo fato de o seu bloqueio representar patente risco de dano para os recorrentes. Como provimento final do recurso, pugnam para que seja determinada a substituição dos valores, veículos e imóveis que se tornaram indisponíveis em razão do deferimento da tutela de urgência no processo originário pelos seguintes imóveis: "1) Matrícula nº 348.087 – 11º Cartório de Registro de Imóveis de São Paulo; 2) Matrícula nº 1024 – Registro de Imóveis de Guaramiranga/CE; 3) Matrícula nº 24393 – Cartório de Registro de Imóveis de Aquiraz/CE", por constituírem meio menos gravoso para a garantia dos valores em discussão e plenamente suficientes para, em caso de eventual condenação, satisfazer o crédito discutido na ação. De forma subsidiária, requerem seja reconhecido o excesso nas constrições, considerando que o conjunto de bens e valores bloqueados totalizam R\$ 33.126.067,18 (trinta e três milhões, cento e vinte e seis mil, sessenta e sete reais e dezoito centavos), de acordo com o valor de aquisição, determinando que tal constrição seja limitada ao valor pretendido a título de indenização buscado na ação, sugerindo, ainda, que seja estabelecido prazo para que os ora agravantes especifiquem quais bens totalizam o referido valor. Preparo recursal comprovado (IDs 23217112 e 23216380). Demais documentos nos IDs 23217101 a 23217100.

Processo	0621433-95.2025.8.06.0000
	style="text-indent: 8%; align="justify"> Em decisão interlocutória (ID 23215731), concedi parcialmente a tutela provisória recursal para determinar a imediata liberação da ordem de constrição dos valores bloqueados em contas bancárias e aplicações financeiras dos agravantes, bem como de seus veículos automotores, sendo mantida, no entanto, a ordem de indisponibilidade sobre os bens imóveis.</p><p style="text-indent: 8%; align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> Contrarrazões ao agravo de instrumento nos IDs 23215740 e 23216341, em que se pugna pelo não conhecimento do recurso por ser intempestivo e por esbarrar no óbice da preclusão consumativa. Requereu a agravada, de forma subsidiária, o desprovemento do recurso, com o restabelecimento do decreto de indisponibilidade de bens. </p><p style="text-indent: 8%; align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> Foi interposto agravo interno contra a decisão interlocutória proferida nestes autos recursais, conforme IDs 23217123 e 23217124. Em suma, a agravante pugnou pela reforma do decisum prolatado. </p><p style="text-indent: 8%; align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> Contrarrazões ao agravo interno no ID 23216370. </p><p align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> Na petição de ID 23216345, os agravantes alegaram fato novo relativo aos laudos de avaliação imobiliária, os quais comprovariam o excesso na medida cautelar. Diante disso, requereram a liberação parcial dos bens imóveis até o limite necessário para garantir o valor da causa. </p><p style="text-indent: 8%; align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> Manifestação dos agravantes a respeito da tempestividade do recurso, que consta no ID 25921179. </p><p style="text-indent: 8%; align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> É o relatório. </p><p align="justify"> &#160;</p><p align="center"> VOTO</p><p align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> 1 – Preliminarmente </p><p style="text-indent: 8%; align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> Antes de iniciar a análise do mérito, cumpre-me apreciar as questões formais que foram suscitadas pela agravada. </p><p style="text-indent: 8%; align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> A primeira delas diz respeito à suposta intempestividade do recurso, por já ter havido recurso anterior contra a tutela de urgência cautelar de indisponibilidade, qual seja, o Agravo de Instrumento nº 0638138-42.2023.8.06.0000, que faria esbarrar no óbice da preclusão consumativa, como também porque o último dia para sua interposição teria sido 10 de fevereiro de 2025, e não o dia 11 (quando efetivamente foi autuado). </p><p style="text-indent: 8%; align="justify"> &#160;</p><p style="text-indent: 8%; align="justify"> A esse respeito, os agravantes se manifestaram no ID 25921179, asseverando que, conquanto a disponibilização da decisão agravada tenha ocorrido em 7 de janeiro de 2025, a sua publicação somente ocorreu em 21 de janeiro de 2025, após o término do prazo de suspensão dos prazos processuais. Então a partir de 22

Processo	0621433-95.2025.8.06.0000
	INDISPONIBILIDADE dos bens dos promovidos ROBERTO SCHNEIDER (CPF:497.645.788-53) e CLAUDIO JORGE FONTENELLE DE ALBUQUERQUE (CPF:169.697.403-82), mediante a utilização dos sistemas SISBAJUD, RENAJUD e SNIPER. Cumprida a medida acima, considerando que a autora declarou expressamente que não tem interesse na realização de audiência de conciliação, INTIME-SE e CITEM-SE os promovidos, via postal, para apresentarem contestação, no prazo de 15 (quinze) dias úteis, contados da juntada do aviso de recebimento, bem como para dar ciência da indisponibilidade dos seus bens. Exp. Nec. Em virtude dessa ordem judicial, vieram a ser objeto de constrição/bloqueio judicial vários bens e valores pertencentes aos promovidos, como forma de resguardar eventual direito da empresa demandante, ora agravada. A penhora atingiu, assim, os seguintes bens e direitos: - Automóveis: R\$ 2.183.671,00 - I/PEUGEOT 3008 GT PACK. Modelo: 2022. SBB5A50. R\$ 215.324,00 - Cláudio Fontenelle; - CHEVROLET/ONIX 1.4 AT LTZ. Modelo:2019. POU6581.. R\$ 64.748,00 - Cláudio Fontenelle; - CHEV/SPIN 1.8L AT ACT. Modelo: 2018. GIU7B71. R\$ 60.003,00 - Roberto Schneider; - I/M.BENZ S500L. Modelo: 2016. POO0B01. R\$ 430.950,00 - Roberto Schneider; - I/BMW X5 XDRIVE30D. Modelo: 2017. PMH1703. R\$ 230.087,00 - Roberto Schneider; - I/AUD1 A8 LM 435CV. Modelo: 2016. FXZ1I46. R\$ 307.771,00 - Roberto Schneider; - I/M.BENZ S63LAMG4M, Modelo: 2015. FMZ6E44. R\$ 682.491,00 - Roberto Schneider; - I/LR DISCOVERY SDV6 SE. Modelo: 2014. PMD1B12. R\$ 169.997,00 - Roberto Schneider; - I/LR R.R SPT 3.0 SC HSE. Modelo: 2014. FTL3F18. R\$ 214.000,00 - Roberto Schneider; - I/PORSCHE PANAMERA T. S. Modelo: 2012. EXY8B81. R\$ 379.664,00 - Roberto Schneider; - I/HONDA CR-V LX. Modelo: 2011. OCD0693. R\$ 53.176,00 - Roberto Schneider; - GM/MERIVA EXPRESSION. Modelo: 2011. OCJ3381. R\$ 27.158,00 - Roberto Schneider; - FIAT/TEMPRA OURO 16V. Modelo: 1995. KCF1512. R\$ 9.339,00 - Roberto Schneider;

Processo	0621433-95.2025.8.06.0000
	1206/1213) Matrícula 300.412 do 11ª Cartório de Registro de Imóveis de São Paulo/SP. Apartamento no 17ª Andar, no 17ª Pavimento do Bloco "A", Varanda das Tulipas, Condomínio Edifício Reserva Tangará, situado na Estada Carlos Queiroz Telles, nº 101, loteamento Projeto Urbanístico Panamby, Chácara Tangará. R\$ 2.550.000,00 em 15/12/2022. Roberto Schneider; (Fls. 756/807) Matrícula 6.882 do Registro de Imóveis da 5ª Zona de Fortaleza/CE. Apartamento nº 2002, tipo B, da torre Superior, do empreendimento Absoluto Parque do Cocó, localizado à Rua Israel Bezerra, 1090 – Cocó. R\$ 1.300.000,00 em 21/08/2018. Cláudio Fontenelle; (Fls. 807/808) Matrícula 15.426 do Registro de Imóveis da 5ª Zona de Fortaleza/CE. Apartamento nº 402, tipo B, do 3º Pavimento do Edifício Port Kiev, localizado na Rua Vilebaldo Aguiar, nº 1400, Papicu, Fortaleza. R\$ 168.525,00 em 02/04/2012. Cláudio Fontenelle; (Fls. 817/819) Matrícula nº 45.966 do Registro de Imóveis da 4ª Zona de Fortaleza/CE. Apartamento nº 1001 do Condomínio San Genaro, Rua Senador Machado, nº 100, Bairro Mucuripe. R\$ 1.293.308,54 em 12/12/2014 - Matrícula nº 38.580 (Fls. 809/816). Cláudio Fontenelle; (Fls. 821/822) Matrícula nº 48.728 do Registro de Imóveis da 4ª Zona de Fortaleza/CE. Apartamento nº 1403 do Condomínio San Paolo, na Rua Frei Mansueto, nº 421, Mucuripe, Fortaleza. R\$ 1.538.184,44 em 24/08/2021. Cláudio Fontenelle; (Fls. 823/824) Matrícula nº 95.396 do Registro de Imóveis da 1ª Zona de Fortaleza/CE. Apartamento nº 101, tipo 1, Torre A, Pamplona, do empreendimento residencial Condomínio Portal de Leon, na Rua 01, nº 350, Loteamento Cidade Sul. R\$ 244.212,98 em 27/10/2016. Cláudio Fontenelle; (Fls. 825/827) Matrícula nº 185.706 do 4º Registro de Imóveis de São Paulo/SP. Apartamento nº 134, localizado no 13º pavimento do Edifício Move, Vila Olímpia, Rua Casa do Ator, nº 888, no 28º Subdistrito Jardim Paulista. R\$ 629.694,02 em 11/12/2013. Cláudio Fontenelle. Impende destacar, no entanto, que não se tem até agora evidências de que os requeridos, ora agravantes, cometeram ato ilícito na administração da empresa, tampouco está caracterizado o efetivo dano à pessoa jurídica e o nexo causal entre a conduta e o resultado. Ou seja, os elementos da responsabilização civil, em se tratando de processo de conhecimento, ainda serão perquiridos durante a instrução processual para, somente ao final, em sede de sentença, decidir-se sobre a existência de direito a indenização por danos materiais. Logo, não se trata, na origem, de ação de execução, mas de ação de conhecimento em que foi deferida tutela cautelar para resguardar eventual direito da demandante quanto à eventual restituição de valores que diz ter direito. Ora, é importante ressaltar que, ainda que se tratasse de ação de execução, <u>o que não é o caso</u>, essa deveria se dar pelo meio menos gravoso aos executados, consoante art. 805, caput, do CPC: "Quando por vários meios o exequente puder promover a execução, o juiz mandará que se faça pelo modo menos gravoso para o executado." Ocorre que os agravantes sustentam estar em desvantagem exagerada quanto à ordem de constrição determinada nos autos originários, pois, além de estarem desempregados, são pessoas idosas com

Processo	0621433-95.2025.8.06.0000
	dificuldades de realocação no mercado de trabalho e, em razão dos bloqueios que foram efetuados em seus bens, estão enfrentando dificuldades até mesmo na manutenção de sua subsistência, como o pagamento de despesas ordinárias. Ao analisar minuciosamente os autos, pode-se verificar, de fato, que houve um excesso de constrição pelo juízo de primeiro grau, tendo em vista que o suposto débito em discussão no feito originário, atualizado até março de 2024, estava calculado em R\$14.171.329,93 (quatorze milhões, cento e setenta e um mil, trezentos e vinte e nove reais e noventa e três centavos) (vide fl. 1590 dos autos de primeiro grau), ao passo que os bens constritos equivalem a aproximadamente R\$33.126.067,18 (trinta e três milhões, cento e vinte e seis mil, sessenta e sete reais e dezoito centavos), consistindo em mais que o dobro do valor discutido. Pode-se verificar, ainda, que tão somente os imóveis com ordem de intransferibilidade têm o seu valor venal calculado em R\$ 28.592.326,81 (vinte e oito milhões, quinhentos e noventa e dois mil, trezentos e vinte e seis reais e oitenta e um centavos), revelando-se mais do que suficiente para garantir eventual direito que possa vir a ser reconhecido à parte autora na ação de origem. Da mesma forma, evidenciado está o perigo da demora caso sejam mantidas as ordens de intransferibilidades sobre os veículos automotores, em razão da rápida depreciação a que esses bens estão submetidos perante o mercado. Por outro lado, não assiste razão aos agravantes quando rebatem a decisão agravada quanto à necessidade de se garantir, mediante a medida cautelar destes autos, a demanda indenizatória apresentada no processo nº 0213938-96.2024.8.06.0001, por meio da qual se busca indenização por danos materiais na quantia de R\$16.685.339,49 (dezesesseis milhões, seiscentos e oitenta e cinco mil, trezentos e trinta e nove reais e quarenta e nove centavos). Isso porque, naqueles autos, a decisão interlocutória inicial fez menção à tutela provisória que foi deferida no processo originário (nº 0261686-61.2023.8.06.0001), de forma que é possível vislumbrar que as constrições efetuadas neste feito visam a resguardar eventual direito da empresa Grande Moinho Cearense S/A nas duas ações, cujos valores da causa, somados, são de R\$27.647.569,87 (vinte e sete milhões, seiscentos e quarenta e sete mil, quinhentos e sessenta e nove reais e oitenta e sete centavos). Diante de todos esses fundamentos, entendo ser razoável, por ora, a liberação das constrições efetuadas nas contas bancárias e nos veículos automotores dos agravantes, pois evidenciados a probabilidade do direito e o perigo de dano com a manutenção da tutela, que tem trazido inúmeros prejuízos financeiros aos recorrentes. De outra ponta, entende-se que deve ser mantida a tutela provisória de urgência quanto à ordem de indisponibilidade de todos os imóveis que foram bloqueados no curso da ação, tanto porque visam a garantir os valores que estão sendo discutidos nos dois processos judiciais (nº 0213938-96.2024.8.06.0001 e 0261686-61.2023.8.06.0001), como porque ainda está pendente a realização de avaliação imobiliária idônea, por perito judicial, nos termos do art. 874, I, do Código de Processo Civil, em verbis [g.n.].

Processo	0621433-95.2025.8.06.0000
	 Art. 874. Após a avaliação, o juiz poderá, a requerimento do interessado e ouvida a parte contrária, mandar: </p><p style="padding-left: 150px;" align="justify"> I - reduzir a penhora aos bens suficientes ou transferi-la para outros, se o valor dos bens penhorados for consideravelmente superior ao crédito do exequente e dos acessórios; </p><p style="padding-left: 150px;" align="justify"> II - ampliar a penhora ou transferi-la para outros bens mais valiosos, se o valor dos bens penhorados for inferior ao crédito do exequente. </p><p style="text-indent: 8%;" align="justify">&#160;</p><p style="text-indent: 8%;" align="justify"> A propósito, quanto às novas provas juntadas em sede recursal pelos agravantes (ID 23216345), vê-se que os laudos de avaliação imobiliária não foram realizados por perito nomeado em juízo, mas contratados pelos próprios recorrentes com o objetivo de fundamentar suas alegações. Neste momento, contudo, trata-se de prova unilateral, que não pode ser tida como suficiente para embasar a pretensão dos agravantes no sentido de liberar os imóveis em questão, além do que, como ainda não foi analisada tal matéria pelo juízo de primeiro grau, isso implicaria em supressão de instância a sua apresentação diretamente perante este juízo ad quem. </p><p style="text-indent: 8%;" align="justify"> Com relação ao agravo interno, os argumentos nele expostos são os mesmos enfrentados por ocasião do julgamento do mérito recursal aqui desenvolvido, razão pela qual fica prejudicado. </p><p style="text-indent: 8%;" align="justify">&#160;</p><p style="text-indent: 8%;" align="justify"> Diante de todo o exposto, conheço do presente recurso de Agravo de Instrumento para lhe dar parcial provimento, a fim de confirmar a tutela provisória concedida no ID 23215731, e, por conseguinte, determinar que haja a liberação da ordem de constrição dos valores bloqueados em contas bancárias dos agravantes, bem como de seus veículos automotores, mantendo, contudo, por ora, a ordem de indisponibilidade sobre os bens imóveis. </p><p style="text-indent: 8%;" align="justify">&#160;</p><p style="text-indent: 8%;" align="justify"> Fica prejudicado o julgamento do Agravo Interno, em virtude do julgamento concomitante do recurso principal. </p><p style="text-indent: 8%;" align="justify"> Comunique-se ao juízo singular sobre os termos deste julgamento, para os devidos fins. </p><p style="text-indent: 8%;" align="justify">&#160;</p><p style="text-indent: 8%;" align="justify"> É como voto. </p><p style="text-indent: 8%;" align="justify"> &#160; </p><p style="text-indent: 8%;" align="justify"> Fortaleza, data da assinatura digital. </p><p align="justify"> &#160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Relator </p><p align="justify"> </p><p align="justify"> </p><p align="justify"> </p><p align="center"> &#160; </p>
Processo	0011240-98.2024.8.06.0099
Número de ordem	162
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado

Processo	0011240-98.2024.8.06.0099
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigação de Fazer / Não Fazer
Polo ativo	SAO3 PARTICIPACOES LTDA
Advogado(s) - Polo ativo	THALLES CANUTO FACUNDO - (CE37255-A) JOAO EVANGELISTA RODRIGUES DE CARVALHO - (CE48200-A)
Polo passivo	ITAITINGA CARTORIO DO PRIMEIRO E SEGUNDO OFICIO DE NOTAS E REGISTROS
Advogado(s) - Polo passivo	MICAELY TAVARES BEZERRA - (CE38374)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0011240-98.2024.8.06.0099
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	roman&quot;, times;"/>PODER JUDICIÁRIO line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> color: #000000;"/> font-family: Arial, serif;"/> font-size: small;"/> strong> font-size: large;"/> font-size: medium;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>TRIBUNAL DE JUSTIÇA line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> font-family: &quot;times new roman&quot;, times; font-size: small;"/> strong> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> font-size: large;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> font-family: &quot;times new roman&quot;, times;"/>PROCESSO: 0011240-98.2024.8.06.0099 text-align: justify;"/> font-family: Arial, serif;"/> font-size: small;"/> font-size: medium;"/> font-family: &quot;times new roman&quot;, times;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>APELAÇÃO CÍVEL (198) text-align: justify;"/> font-family: Arial, serif;"/> font-size: small;"/> font-size: medium;"/> font-family: &quot;times new roman&quot;, times;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>APELANTE: SAO3 PARTICIPACOES LTDA. text-align: justify;"/> font-family: Arial, serif;"/> font-size: small;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> font-size: medium;"/> font-family: &quot;times new roman&quot;, times;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>APELADO: ITAITINGA CARTÓRIO DO PRIMEIRO E SEGUNDO OFÍCIO DE NOTAS E REGISTROS text-align: justify;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> text-align: justify;"/> font-size: large;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> align="justify"/> font-size: large;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>E background-color: transparent; font-size: 14pt; font-family: &quot;Times New Roman&quot;, serif; font-weight: 700; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;"/>EMENTA: background-color: transparent; font-size: 14pt; font-family: &quot;Times New Roman&quot;, serif; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;"/>DIREITO CIVIL E REGISTROS PÚBLICOS. APELAÇÃO CÍVEL EM PROCESSO ADMINISTRATIVO DE DÚVIDA REGISTRAL. PROCURAÇÃO OUTORGADA ANTES DE ALTERAÇÃO CONTRATUAL. SUPERVENIÊNCIA DE ADITIVO COM ALTERAÇÃO DO QUADRO SOCIETÁRIO E IMPOSIÇÃO DA ASSINATURA CONJUNTA DOS ATOS DE ADMINISTRAÇÃO. INCOMPATIBILIDADE ENTRE O INSTRUMENTO DE MANDATO APRESENTADO E O CONTRATO SOCIAL VIGENTE. CESSAÇÃO DOS EFEITOS DO MANDATO (CC, ART. 682, III). NECESSIDADE DE ATUALIZAÇÃO DOCUMENTAL. SEGURANÇA JURÍDICA DO REGISTRO. RECURSO DESPROVIDO. id="docs-internal-guid-9d50aae3-7fff-db73-fa04-075bf3762baf"/> line-height: 1.38; text-align: justify; margin-top: 14pt; margin-bottom: 4pt; dir="ltr"/> font-size: 14pt; font-family: &quot;Times New Roman&quot;, serif; background-color: transparent; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates:

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	normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">I. CASO EM EXAME: Apelação interposta por São 3 Participações Ltda. contra sentença que julgou procedente o procedimento administrativo de dúvida registral suscitado pelo Cartório do 1º e 2º Ofícios de Itaitinga, que versa a respeito da possibilidade de registro da escritura pública de compra e venda apresentada pela ora Apelante. II. QUESTÃO EM DISCUSSÃO: A questão em discussão consiste em definir se a procuração outorgada antes da alteração contratual da empresa alienante permanece válida para fins de registro da escritura de compra e venda, apesar da superveniência de cláusula que exige assinatura conjunta dos administradores da sociedade. III. RAZÕES DE DECIDIR 1. O procedimento de dúvida registral visa assegurar a legalidade e a segurança jurídica dos atos, devendo ser apreciado nos termos da Lei de Registros Públicos (arts. 198 a 204). 2. A alteração contratual da sociedade vendedora estabeleceu administração conjunta da empresa alienante, exigindo que todos os atos fossem assinados pelos dois sócios administradores. 3. A procuração anterior tornou-se incompatível com o contrato social vigente, caracterizando cessação dos efeitos do mandato por inabilitação do mandante, nos termos do art. 682, III, do Código Civil. 4. A exigência de atualização documental para o ato de registro não configura formalismo

Processo	0011240-98.2024.8.06.0099
	excessivo, mas instrumento necessário para preservar a validade dos atos registraes e resguardar a segurança das relações jurídicas e de terceiros de boa-fé. IV. DISPOSITIVO: Recurso conhecido e desprovido. ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação para lhe negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data e assinatura digital registradas no sistema processual eletrônico. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de recurso de apelação interposto por São 3 Participações Ltda. contra a sentença prolatada pelo Juízo da 2ª Vara da Comarca de Itaitinga que julgou procedente a Suscitação de Dúvida encaminhada pelo Cartório do 1º e 2º Ofícios da Comarca de Itaitinga.

Processo	0011240-98.2024.8.06.0099
	color: transparent; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;"></p><p style="line-height: 1.8; text-indent: 70.8661pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt;" dir="ltr">Na sentença (ID 23654840), o Juízo a quo julgou procedente a dúvida registral, ressaltando que a procuração em comento, emitida em 28 de janeiro de 2022, outorgou poderes a Mário Binatti antes de sua admissão na sociedade. Após a entrada do mandatário no quadro societário, em 02 de fevereiro de 2022, ficou estipulado que todos os atos da empresa deveriam ser assinados conjuntamente por Mário Binatti e Davi Alexandre Rolim Nunes, o que invalidaria a procuração anterior, conforme o artigo 682, inciso III, do Código Civil. O juiz concluiu que tal situação impede o registro pretendido na forma enviada e determinou que a documentação seja atualizada.</p><p style="line-height: 1.8; text-indent: 70.8661pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt;" dir="ltr">Irresignada, a empresa São 3 Participações LTDA interpôs recurso de apelação (ID 23654764), alegando que a procuração permanece válida, mesmo após alteração no quadro societário, e que não há necessidade de retificação. Sustenta que a revogação da procuração não ocorreu, pois o novo sócio, Mário Binatti, atua como procurador, refletindo a continuidade da administração. Alega que a sentença desconsidera princípios como autonomia patrimonial e segurança jurídica, argumentando que a alteração no contrato social não implica revogação tácita da procuração. Ao final, pediu providências para que o registro seja efetivado conforme o requerido, declarando-se improcedente a dúvida suscitada pelo cartório e mantendo-se os efeitos da procuração.</p><p style="line-height: 1.8; text-indent: 70.8661pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt;" dir="ltr">Parecer

Processo	0011240-98.2024.8.06.0099
	ministerial no ID 23654745, em que o Ministério Público afirma que aceitar o registro conforme a procuração original ensejaria insegurança jurídica. Reforçou que a representação conjunta dos sócios deve ser respeitada, conforme o contrato social vigente, e opinou pela manutenção da sentença, negando-se provimento ao recurso.</p><p style="line-height: 1.8; text-indent: 70.8661pt; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt;" dir="ltr"> É o relatório.</p><p style="line-height: 1.38; text-align: center; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Consoante relatado, o presente recurso configura insurgência contra o decisum de Primeiro Grau que julgou procedente a dúvida registral quanto a uma escritura pública de compra e venda requerida pela ora Apelante, envolvendo os imóveis de matrícula n. 5928, 5927, 5924 e 5923.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Em síntese, argumenta a Apelante que permanece vigente e válida a procuração que conferiu poderes ao então mandatário da Rolim Construtora, Sr. Mário Binatti, não havendo motivos para a recusa do ato de registro da escritura em questão.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> No que pertine ao procedimento de dúvida registral, recordem-se as seguintes previsões da Lei de Registros Públicos:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Art. 198 . Se houver exigência a ser satisfeita, ela será indicada pelo oficial por escrito, dentro do prazo previsto no art. 188 desta Lei e de uma só vez, articuladamente, de forma clara e objetiva, com data, identificação e assinatura do oficial ou preposto responsável, para que:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: "Times New Roman"; serif; background-color: transparent; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal;

Processo	0011240-98.2024.8.06.0099
	font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">[...] V - o interessado possa satisfazê-la; ou VI - caso não se conforme ou não seja possível cumprir a exigência, o interessado requeira que o título e a declaração de dúvida sejam remetidos ao juízo competente para dirimi-la. § 1º O procedimento da dúvida observará o seguinte: I - no Protocolo, o oficial anotará, à margem da prenotação, a ocorrência da dúvida; II - após certificar a prenotação e a suscitação da dúvida no título, o oficial rubricará todas as suas folhas; III - em seguida, o oficial dará ciência dos termos da dúvida ao apresentante, fornecendo-lhe cópia da suscitação e notificando-o para impugná-la perante o juízo competente, no prazo de 15 (quinze) dias; IV - certificado o cumprimento do disposto no inciso III deste parágrafo, serão remetidos eletronicamente ao juízo competente as razões da dúvida e o título. 2º A inobservância do disposto neste artigo ensejará a aplicação das penas previstas no art. 32 da Lei nº 8.935, de 18 de novembro de 1994, nos termos estabelecidos pela Corregedoria Nacional de Justiça do Conselho Nacional de Justiça. Art. 199 Se o

Processo	0011240-98.2024.8.06.0099
	interessado não impugnar a dúvida no prazo referido no item III do artigo anterior, será ela, ainda assim, julgada por sentença. 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 200 - Impugnada a dúvida com os documentos que o interessado apresentar, será ouvido o Ministério Público, no prazo de dez dias.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 201 - Se não forem requeridas diligências, o juiz proferirá decisão no prazo de quinze dias, com base nos elementos constantes dos autos.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 202 - Da sentença, poderão interpor apelação, com os efeitos devolutivo e suspensivo, o interessado, o Ministério Público e o terceiro prejudicado.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 203 - Transitada em julgado a decisão da dúvida, proceder-se-á do seguinte modo:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> I - se for julgada procedente, os documentos serão restituídos à parte, independentemente de traslado, dando-se ciência da decisão ao oficial, para que a consigne no Protocolo e cancele a prenotação;</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> II - se for julgada improcedente, o interessado apresentará, de novo, os seus documentos, com o respectivo mandado, ou certidão da sentença, que ficarão arquivados, para que, desde logo, se proceda ao registro, declarando o oficial o fato na coluna de anotações do Protocolo.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 204 <span style="font-size: 12pt; font-family: "Times New Roman"; serif; background-color: transparent; font-variant-numeric: normal; font-

Processo	0011240-98.2024.8.06.0099
	variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">- A decisão da dúvida tem natureza administrativa e não impede o uso do processo contencioso competente.&#160;&#160;&#160;&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> No caso, a irregularidade que ensejou a recusa do ato de registro da escritura apresentada pela Apelante (Nota Devolutiva nº 151/2024) e o procedimento de suscitação de dúvida em comento consubstancia um inconsistência no instrumento que outorgou poderes ao mandatário da empresa alienante (Rolim Construtora). Conforme os autos, a procuração é datada de janeiro de 2022, quando a composição societária da referida empresa era diferente da atual.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Analisando-se os autos, é possível constatar que, até 02 de fevereiro de 2022 a empresa alienante - Rolim Construtora e Empreendimentos Imobiliários LTDA - tinha como único sócio o Sr. Davi Alexandre Rolim Nunes. Na referida data, porém, houve alteração do quadro societário, admitindo-se como sócia a empresa COBRIT – Assessoria e Consultoria LTDA, representada por seu sócio administrador Mário Binatti, que passou a deter 50% (cinquenta por cento) das quotas sociais (fl. 16 do ID 23654780).</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Como resultado dessa alteração, restou definido, no parágrafo primeiro da Cláusula Sétima do Aditivo Contratual (ID 23654786), que a administração da empresa seria exercida por Davi Alexandre Rolim Nunes e Mário Binatti e que deveriam ser assinados em conjunto todos os atos de administração:</p><p style="line-height: 1.38; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Os administradores, acima qualificados, representam a sociedade, EM CONJUNTO, ativa e passivamente, judicial e extrajudicialmente, inclusive perante quaisquer bancos e

Processo	0011240-98.2024.8.06.0099
	quaisquer repartições públicas federais, estaduais e municipais, e somente poderão assinar EM CONJUNTO todos os atos da administração da empresa. 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr"> 160; Sendo anterior ao aditivo contratual em questão e estando em clara dissonância com as regras expressas em sua cláusula, a procuração apresentada no ato de registro da escritura pública em comento não se mostra válida, sendo necessária a atualização documental. A outorga de poderes efetuada no instrumento do mandatário não é mais apta a produzir efeitos, em razão da atual ilegitimidade do então outorgante para assinar individualmente os atos da empresa. 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr"> Incidendo, no caso, a norma disposta no art. 682 do Código Civil, que assim prevê (grifo nosso): Art. 682 Cessa o mandato: I - pela revogação ou pela renúncia; II - pela morte ou interdição de uma das partes; III - pela mudança de estado que inabilite o mandante a conferir os poderes, ou o mandatário para os exercer; 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; padding: 8pt 0pt 0pt; dir="ltr">

Processo	0011240-98.2024.8.06.0099
	12pt; font-family: "Times New Roman", serif; background-color: transparent; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">IV - pelo término do prazo ou pela conclusão do negócio. (Grifo nosso)</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Vê-se que não é caso de revogação tácita ou expressa de mandato, e sim de cessação dos seus efeitos por inabilitação posterior do outorgante, pelo menos de forma individual. Em face disso, não é pertinente a linha argumentativa da Apelante.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Como o ato de registro da escritura de compra e venda será posterior à alteração da composição societária e à entrada em vigor das cláusulas do aditivo, impõe-se que estas sejam observadas, sob pena de invalidade do ato registral.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Impende ressaltar que a observância estrita às formalidades necessárias ao ato registral não é infundada, mas visa a assegurar a integridade e a segurança jurídica nos procedimentos notariais, de modo que estes não sejam objeto de distorção ou ilegalidades, passíveis de gerar insegurança jurídica no serviço registral e prejuízo a terceiros.&#160;&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Dessa forma, cabe à parte interessada regularizar a documentação do negócio jurídico objeto da escritura que visa a registrar, conforme a sentença proferida no procedimento administrativo em questão.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Ex positis,CONHEÇOdo recurso de apelação para lheNEGAR PROVIMENTO, mantendo incólume a decisão recorrida.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">É como voto.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">

Processo	0011240-98.2024.8.06.0099
	normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; vertical-align: baseline; white-space-collapse: preserve;">Fortaleza, data e assinatura digital registradas no sistema eletrônico.</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="line-height: 1.7999999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relator</p><div> </div><p> </p> <p> </p><p> </p><p style="text-align: center;"> </p></div>
Processo	3009819-91.2025.8.06.0000
Número de ordem	163
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Busca e Apreensão
Polo ativo	CARMEN ALICE ARRUDA MAGALHAES
Advogado(s) - Polo ativo	ATILA GOMES FERREIRA - (CE20506-A) CIRO DAHER DE FREITAS MENDES - (CE20507-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	Não informado

Processo	3009819-91.2025.8.06.0000
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Processo	3009819-91.2025.8.06.0000
	PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 3009819-91.2025.8.06.0000 AGRAVO DE INSTRUMENTO (202) AGRAVANTE: CARMEN ALICE ARRUDA MAGALHÃES AGRAVADO: BANCO DO BRASIL S/A EMENTA: AGRAVO DE INSTRUMENTO. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. ARRESTO ONLINE (PRÉ-PENHORA). POSSIBILIDADE APÓS TENTATIVAS INFRUTÍFERAS DE CITAÇÃO. EFETIVIDADE DA EXECUÇÃO. VALORES BLOQUEADOS DECORRENTES DE PROVENTOS DE APOSENTADORIA E PENSÃO. NATUREZA ALIMENTAR. IMPENHORABILIDADE RECONHECIDA. ART. 833, IV E X, DO CPC. ENTENDIMENTO CONSOLIDADO DO STJ. LIBERAÇÃO DOS VALORES BLOQUEADOS. RECURSO CONHECIDO E PROVIDO. CASO EM EXAME: 1. Trata-se de agravo de instrumento interposto por Carmen Alice Arruda Magalhães contra a decisão interlocutória proferida pelo MM. Juiz de Direito Renato Belo Vianna Velloso, atuante no Núcleo de

Processo	3009819-91.2025.8.06.0000
	Justiça 4.0 Execuções de Título Extrajudicial da Comarca de Fortaleza, que, nos autos da Ação de Execução de Título Extrajudicial nº 0382200-97.2010.8.06.0001, determinou a realização de arresto online (pré-penhora) de recursos existentes nas contas bancárias e em aplicações financeiras de titularidade dos promovidos. II) QUESTÃO EM DISCUSSÃO: 2. O cerne da controvérsia recursal consiste em verificar se deve ou não ser liberada a verba que foi penhorada a título de arresto online na conta da executada agravante, no valor de R\$ 17.868,79 (dezessete mil, oitocentos e sessenta e oito reais e setenta e nove centavos). III) RAZÕES DE DECIDIR: 3. É cabível a decretação de arresto online (pré-penhora) quando frustradas as tentativas de citação do executado, em atenção aos princípios da efetividade e celeridade da execução, conforme autorizado pelos arts. 830 e 854 do CPC e pela jurisprudência do STJ. 4. Todavia, os valores constritos que possuem natureza alimentar — oriundos de proventos de aposentadoria e pensão — são absolutamente impenhoráveis, nos termos do art. 833, IV, do CPC, sendo ainda aplicável a regra do inciso X do mesmo artigo, que estende a impenhorabilidade até o limite de 40 salários-mínimos, independentemente da modalidade de aplicação financeira. 5. Precedentes do STJ e desta Corte reforçam que a proteção visa assegurar o mínimo existencial e a dignidade da pessoa humana, afastando a constrição sobre quantias de caráter alimentar. IV) DISPOSITIVO: ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para lhe dar provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de agravo de instrumento interposto por Carmen Alice Arruda Magalhães contra a decisão interlocutória proferida pelo MM. Juiz de Direito Renato Belo Vianna Velloso, atuante no Núcleo de Justiça 4.0 Execuções de Título Extrajudicial da Comarca de Fortaleza, que, nos autos da Ação de Execução de Título Extrajudicial nº 0382200-97.2010.8.06.0001, determinou a realização de arresto online (pré-penhora) de recursos existentes nas contas bancárias e em aplicações financeiras de titularidade dos promovidos. Na decisão agravada (ID 130340386 dos autos de primeiro grau), o magistrado fundamentou que, mesmo sem a efetivação da citação dos devedores, a realização de penhora online seria cabível para

Processo	3009819-91.2025.8.06.0000
	<p>caderneta de poupança propriamente dita, CDB, RDB ou em fundo de investimentos, desde que a única reserva monetária em nome do recorrente, e ressalvado eventual abuso, má-fé ou fraude, a ser verificado caso a caso, de acordo com as circunstâncias do caso concreto (inciso X)." (REsp 1230060/PR, Rel. Ministra MARIA ISABEL GALLOTTI, SEGUNDA SEÇÃO, julgado em 13/08/2014, DJe 29/08/2014).</p> <p>3. A ressalva para aplicação do entendimento mencionado somente ocorre quando comprovado no caso concreto o abuso, a má-fé ou a fraude da cobrança, hipótese sequer examinada nos autos pelo Colegiado a quo. 4. Agravo interno não provido. (AgInt no AREsp 1315033/SP, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 06/11/2018, DJe 19/11/2018). [Grifei].</p> <p align="justify"> &#160; </p> <p style="text-indent: 8%;"> >A esse respeito, a Corte Especial do STJ, em 21 de fevereiro de 2024, ao julgar os Recursos Especiais nº.s. 1.660.671 e 1.677.144, sob a relatoria do il. Ministro Herman Benjamin, decidiu unanimemente que a impenhorabilidade é aplicável automaticamente em relação ao montante de até 40 salários mínimos depositado exclusivamente em caderneta de poupança e que, se a medida de penhora por meio do Sisbajud atingir valores mantidos em conta-corrente ou qualquer outra aplicação financeira, a garantia de impenhorabilidade poderá eventualmente ser estendida ao investimento, respeitado o teto de 40 salários-mínimos, desde que comprovado na ação que o montante constitui reserva de patrimônio destinado a assegurar o mínimo existencial <sup> </sup> </p> <p align="justify"> &#160; </p> <p style="text-indent: 8%;"> >Desse modo, observa-se que o montante bloqueado nas contas da recorrente, por ser relativo aos seus proventos mensais de aposentadoria e pensão, além de ser inferior a quarenta salários-mínimos, é impenhorável à luz dos incisos IV e X do art. 833 do Código de Processo Civil, que preceitua o seguinte: </p> <p align="justify"> &#160; </p> <p justify"="" style="padding-left: 150px; align="> >Art. 833. São impenhoráveis: </p> <p justify"="" style="padding-left: 150px; align="> >[...] </p> <p justify"="" style="padding-left: 150px; align="> >IV - os vencimentos, os subsídios, os soldos, os salários, as remunerações, os proventos de aposentadoria, as pensões, os pecúlios e os montepios, bem como as quantias recebidas por liberalidade de terceiro e destinadas ao sustento do devedor e de sua família, os ganhos de trabalhador autônomo e os honorários de profissional liberal, ressalvado o § 2º </p> <p justify"="" style="padding-left: 150px; align="> >[...] </p> <p justify"="" style="padding-left: 150px; align="> >X - a quantia depositada em caderneta de poupança, até o limite de 40 (quarenta) salários-mínimos. </p> <p justify"="" style="padding-left: 150px; align="> >Tudo isso sopesado, entendo que o valor questionado deve ser liberado em favor da executada, ora agravante, por expressa disposição legal. </p> <p align="justify"> </p>

Processo	3009819-91.2025.8.06.0000
	times;"&#160; </p><p style="text-indent: 8%; align="justify"> Por outro lado, quanto à alegação de impossibilidade de penhora eletrônica antes da citação válida do executado, saliento que não assiste razão à agravante. Isso porque quando a parte interessada não consegue obter quaisquer elementos quanto à localização da parte adversa, nada impede que o juiz autorize a expedição de ofício a órgãos públicos ou privados, no intuito de agilizar a prestação jurisdicional, ou que se utilize dos sistemas à disposição da Justiça para tal finalidade, a exemplo dos sistemas Renajud, Infojud e Sisbajud. Aliás, a requisição desse tipo de informação é condição prévia até mesmo do deferimento da citação por edital, nos termos do art. 256, §3º, do CPC. </p><p style="text-indent: 8%; align="justify"> Na hipótese, como já dito, os autos originários noticiam que já foram enviadas algumas tentativas de citação da demandada em endereços distintos, todas sem sucesso. </p><p style="text-indent: 8%; align="justify"> Na hipótese, como já dito, os autos originários noticiam que já foram enviadas algumas tentativas de citação da demandada em endereços distintos, todas sem sucesso. </p><p style="text-indent: 8%; align="justify"> Dessarte, em prestígio aos princípios da celeridade processual e da cooperação, entendo que a decisão interlocutória de primeiro grau deve ser mantida, tendo em vista que, para resguardar o princípio da máxima efetividade da execução, admite-se a realização de penhora on-line e de busca e ativos financeiros e outros bens porventura registrados em nome do executado. </p><p style="text-indent: 8%; align="justify"> Nesse sentido, aliás, colho julgados deste Egrégio Tribunal, autorizando medidas como a pleiteada pelo agravante. Vejamos:</p><p align="justify"> &#160; </p><p style="text-indent: 8%; align="justify"> AGRAVO DE INSTRUMENTO. AÇÃO DE BUSCA E APREENSÃO CONVERTIDA EM EXECUÇÃO. DECISÃO QUE DEFERIU O PEDIDO DE ARRESTO DE BENS PRÉVIO OU PRÉ-PENHORA. MEDIDA QUE PODE SER REALIZADA APÓS TENTATIVA INFRUTÍFERA DE CITAÇÃO DA PARTE EXECUTADA, NOS TERMOS DO ART. 830 C/C 854 DO CPC. DESNECESSIDADE DE EXAURIMENTO DAS TENTATIVAS DE CITAÇÃO. ARRESTO ON-LINE. POSSIBILIDADE. APLICAÇÃO ANALÓGICA DO ART. 854 DO CPC. AGRAVO DE INSTRUMENTO CONHECIDO E IMPROVIDO. DECISÃO DE PRIMEIRO GRAU MANTIDA. 1. Trata-se de agravo de instrumento interposto por Ismael Alves Batista, no intuito de reformar a decisão proferida pela Juízo da 20ª Vara Cível da Comarca de Fortaleza, que na ação originária de busca e apreensão convertida em execução nº 0137925-81.2009.8.06.0001, proposta por Alfa Financeira S.A. - Crédito, Financiamento e Investimentos, determinou o arresto on line nas contas bancárias do agravante/executado. 2. O arresto é medida processual que visa garantir a execução, uma vez que se converterá em penhora se o executado não adimplir com sua obrigação, podendo tal medida ser aplicada na hipótese de deverdor não ser encontrado. 3. A doutrina específica sobre o tema prevê no arresto executivo do art. 830 do CPC - também chamado por alguns de pré-penhora - a providência típica que inverte a ordem procedimental com o fito de resguardar o credor nos casos em que o deverdor não é encontrado. 4. A Lei Adjativa Civil possibilita a efetivação de medidas assecuratórias da execução, embora não integralizada a relação processual. Ademais, importa ressaltar que o diploma processual permite que as diligências que visam à satisfação do credor sejam realizadas mediante instrumentos virtuais, consoante art. 854 do CPC. 5. In casu, a execução do título extrajudicial, na verdade, encontra-se regularmente lastreada com a conversão da ação de busca e apreensão em demanda executiva nos autos de origem. E

Processo	3009819-91.2025.8.06.0000
	a tentativa de reaver o crédito dista do ano de 2009, quando foi movida a ação de busca e apreensão com base no Decreto-Lei 911/69, tendo sido realizadas inúmeras diligências todas infrutíferas no sentido de tentar localizar o devedor e o veículo dado em garantia por alienação fiduciária. 6. Agravo de instrumento conhecido e improvido. Decisão de primeiro grau mantida. ACÓRDÃO Vistos, relatados e discutidos os presentes autos de Agravo de Instrumento, em que figuram as partes acima referidas, ACORDAM os Senhores Desembargadores da 4ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, a unanimidade, em conhecer do recurso de Agravo de Instrumento para NEGAR-LHE PROVIMENTO, tudo nos termos do voto do Desembargador Relator. Fortaleza, 12 de março de 2024 FRANCISCO BEZERRA CAVALCANTE Presidente do Órgão Julgador DESEMBARGADOR FRANCISCO BEZERRA CAVALCANTE Relator (Agravo de Instrumento&#160;- 0634147-58.2023.8.06.0000, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento:&#160; 12/03/2024, data da publicação:&#160; 12/03/2024) </p> <p style="padding-left: 150px;" align="justify"> &#160; </p> <p style="padding-left: 150px;" align="justify"> DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. CUMPRIMENTO DE SENTENÇA. DECISÃO QUE INDEFERIU O PEDIDO DE CONSULTA DE BENS PASSÍVEIS DE PENHORA POR MEIO DOS SISTEMAS RENAJUD E INFOJUD, COMO TAMBÉM A PENHORA ON-LINE DE BENS MODALIDADE "TEIMOSINHA". FERRAMENTAS QUE POSSIBILITAM A LOCALIZAÇÃO DE BENS DA PARTE EXECUTADA E A RENOVAÇÃO AUTOMÁTICA DE CONSULTAS PARA BLOQUEIO DE ATIVOS FINANCEIROS. PRINCÍPIO DA COOPERAÇÃO E DA EFETIVIDADE. RECURSO PROVIDO DECISÃO DE PRIMEIRO GRAU REFORMADA . I - Da análise dos autos, verifica-se que o Juízo a quo indeferiu a utilização do sistema Sisbajud na modalidade "teimosinha". II - Em que pese a visão do douto julgador, é consabido que o Conselho Nacional de Justiça anunciou, dentre as novas funcionalidades do SISBAJUD, a plataforma &#160;teimosinha&#160;, que visa a permitir aos Juízes as chamadas replicações de penhora, permitindo a renovação automática de cumprimento de ordem judicial de bloqueio de ativos financeiros. Por meio da referida ferramenta, é possível acelerar o procedimento executivo e evitar a desnecessária reiteração das consultas. III - Ademais, a utilização da ferramenta prestigia o princípio da cooperação consagrado no art. 6º do CPC, segundo o qual: &#160;Todos os sujeitos do processo devem cooperar entre si para que se obtenha, em tempo razoável, decisão de mérito justa e efetiva.&#160; IV - A Lei Adjetiva Civil possibilita a efetivação de medidas assecuratórias da execução, embora não integralizada a relação processual. Ademais, importa ressaltar que o diploma processual permite que as diligências que visam à satisfação do credor sejam realizadas mediante instrumentos virtuais, consoante art. 854 do CPC. V - Sem a utilização de todos meios dispostos ao processo executivo, e aí está a utilização do Sisbajud, Renajud e Infojud, ele resultaria inócuo e distante do seu escopo final, frise-se, o adimplemento de dívida. VI - Acosto-me à doutrina específica sobre o tema, que vê no arresto executivo do art. 830 do CPC - também chamado, por alguns, de pré-penhora - providência típica que, invertendo a ordem procedimental, protege o credor nos casos em que o devedor não é encontrado. VII &#160; Recurso provido. Decisão interlocutória primeva alterada. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, em que figuram as partes acima referidas, ACORDAM os Senhores Desembargadores da Quarta Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, CONHECER do presente agravo de instrumento para, no mérito, DAR-LHE PROVIMENTO, tudo nos idênticos termos disposto no voto do Desembargador Relator, obedecidas as disposições de estilo. Fortaleza/CE, 19 de dezembro de 2023. DESEMBARGADOR FRANCISCO BEZERRA CAVALCANTE Relator (Agravo de Instrumento&#160;- 0625161-18.2023.8.06.0000, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento:&#160; 19/12/2023, data da publicação:&#160; 19/12/2023) </p> <p style="padding-left: 150px;" align="justify"> &#160; </p> <p style="padding-left: 150px;" align="justify"> AGRAVO DE INSTRUMENTO. AÇÃO DE EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. DECISÃO QUE INDEFERIU O PEDIDO DE ARRESTO DE BENS. PRETENSÃO DE ARRESTO PRÉVIO OU PRÉ-PENHORA. MEDIDA QUE PODE SER REALIZADA APÓS TENTATIVA INFRUTÍFERA DE CITAÇÃO DA PARTE EXECUTADA, NOS TERMOS DO ART. 830 C/C 854 DO CPC. DESNECESSIDADE DE

Processo	3009819-91.2025.8.06.0000
	EXAURIMENTO DAS TENTATIVAS DE CITAÇÃO. ARRESTO ONLINE. POSSIBILIDADE. APLICAÇÃO ANALÓGICA DO ART. 854 DO CPC. ENTENDIMENTO CONSOLIDADO PELO C. STJ. DECISÃO REFORMADA. RECURSO CONHECIDO E PROVIDO. 1. Cinge-se o debate meritório deste recurso em examinar o cabimento do pleito recursal formulado pelo exequente, no sentido de determinar a busca, e o posterior bloqueio, dos ativos financeiros eventualmente localizados nas contas bancárias do executado, com o objetivo de obter a satisfação do seu crédito. 2. O arresto executivo, também denominado de prévio ou pré-penhora, é uma medida que tem por finalidade garantir a futura penhora e evitar maiores prejuízos ao credor, mediante o bloqueio dos bens do executado. 3. Com efeito, o diploma processual civil permite o arresto dos bens antes da citação do executado, desde que haja uma tentativa infrutífera. Assim, significa dizer que o arresto de bens é o ato processual imediatamente seguinte à tentativa frustrada de citação do executado, podendo ser realizado pelo próprio oficial de justiça que não localiza o devedor. 4. Ressalta-se que, embora o referido dispositivo não mencione expressamente a modalidade <online>, a adoção da medida é plenamente viável, por aplicação analógica do art. 854 do CPC, o qual possibilita a penhora <online>, sem a prévia ciência da parte executada. 5. Neste sentido, têm-se precedentes desta Corte Estadual de Justiça, afirmando-se que a ausência de intimação da parte agravada para apresentar contrarrazões não obsta o julgamento do recurso, sobretudo porque não restou efetivada a relação processual pela citação. 6. Recurso conhecido e provido. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso interposto, para dar-lhe provimento, em conformidade com o voto do eminente relator. Fortaleza, data indicada no sistema DESEMBARGADOR FRANCISCO DARIVAL BESERRA PRIMO Relator (Agravado de Instrumento)&#160;- 0636342-21.2020.8.06.0000, Rel. Desembargador(a) FRANCISCO DARIVAL BESERRA PRIMO, 4ª Câmara Direito Privado, data do julgamento:&#160; 10/10/2023, data da publicação:&#160; 10/10/2023) </p><p> &#160; </p><p style="text-indent: 8%;" align="justify"> Por oportuno, anoto que esse entendimento se encontra em perfeita sintonia com a jurisprudência do c. Superior Tribunal de Justiça, que já se posicionou no sentido de permitir a realização de penhora antes de efetivada a citação do executado, independentemente do prévio exaurimento de diligências extrajudiciais, privilegiando a efetividade e a celeridade processual na procura do endereço ou bens do devedor. Observemos: </p><p align="justify"> &#160; </p><p style="text-align: justify; padding-left: 150px;"> PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL.&#160;SUBMISSÃO À REGRA PREVISTA NO ENUNCIADO ADMINISTRATIVO 3/STJ.&#160;ADMINISTRATIVO. EXECUÇÃO FISCAL. INFOJUD. DESNECESSIDADE DE ESGOTAMENTO DAS BUSCAS POR BENS DO DEVEDOR. </p><p style="text-align: justify; padding-left: 150px;"> 1.</p><p>Consoante orientação deste Superior Tribunal de Justiça, após a edição da Lei nº 11.382/2006, não mais se exige a comprovação do esgotamento das vias extrajudiciais em busca de bens penhoráveis para a utilização do Sistema BACENJUD, não havendo, pois, a obrigatoriedade de exaurimento de diligências por parte da exequente para a localização de bens do devedor (Nesse sentido: EREsp 1.086.173/SC, 1ª Seção, Rel. Min. Mauro Campbell Marques, DJe de 1º.2.2011). Esse mesmo entendimento deve ser aplicado também ao INFOJUD, porquanto se trata de meio colocado à disposição dos credores para simplificar e agilizar a busca de bens aptos a satisfazer os créditos executados. </p><p style="text-align: justify; padding-left: 150px;"> 2. Agravo interno não provido. </p><p style="text-align: justify; padding-left: 150px;"> (AgInt no AREsp 1398071/RJ, Rel. Ministro MAURO CAMPBELL MARQUES, SEGUNDA TURMA, julgado em 12/03/2019, DJe 15/03/2019) </p><p align="justify"> &#160; </p><p></p><p style="text-indent: 8%;" align="justify">

Processo	3009819-91.2025.8.06.0000
	times;">Isso porque a requerida não pôde ser localizada até o presente momento, inobstante as diversas tentativas de citação envidadas pelo Banco exequente. Cabível, portanto, o deferimento da pré-penhora como forma de resguardar o direito da parte exequente, a qual, todavia, no caso concreto, não deve ser mantida em razão de a verba ser impenhorável, como destacado anteriormente. </p><p style="text-indent: 8%;&#160;</p><p style="text-indent: 8%;Diante disso,conheço do presente recurso para lhe d a r provimento, confirmando a tutela provisória concedida, no sentido de determinar a imediata liberação dos valores bloqueados, por serem relativos a proventos de aposentadoria e, portanto, impenhoráveis. </p><p style="text-indent: 8%;&#160;</p><p style="text-indent: 8%;É como voto.</p><p style="text-indent: 8%;&#160;</p><p style="text-indent: 8%;Fortaleza, data da assinatura digital.</p><p align="center">&#160;</p><p align="center">DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p align="center">Relator</p><p align="justify">&#160;</p><p>1&#160;Notícia disponível em: https://www.migalhas.com.br/quentes/402246/corte-especial-do-stj-limita-penhora-online-em-conta-corrente.</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;">&#160;</p></p></td></tr><tr><td>Processo</td><td>3009865-80.2025.8.06.0000</td></tr><tr><td>Número de ordem</td><td>164</td></tr><tr><td>Órgão julgador</td><td>3º Gabinete da 1ª Câmara de Direito Privado</td></tr><tr><td>Órgão julgador colegiado</td><td>1ª Câmara de Direito Privado</td></tr><tr><td>Relator</td><td>JOSE RICARDO VIDAL PATROCINIO</td></tr><tr><td>Classe judicial</td><td>AGRAVO DE INSTRUMENTO</td></tr><tr><td>Assunto principal</td><td>Revisão de Juros Remuneratórios, Capitalização/Anatocismo</td></tr><tr><td>Polo ativo</td><td>MARIA SILENE LIMA DE ALMEIDA</td></tr><tr><td>Advogado(s) - Polo ativo</td><td>DJACI DO NASCIMENTO SILVA - (CE13014-A)</td></tr><tr><td>Polo passivo</td><td>BANCO BMG SA</td></tr><tr><td>Advogado(s) - Polo passivo</td><td>Não informado</td></tr><tr><td>Terceiros</td><td>Não informado</td></tr></table>

Processo	3009865-80.2025.8.06.0000
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Processo	3009865-80.2025.8.06.0000
	Vara Cível da Comarca de Juazeiro do Norte que indeferiu a tutela de urgência nos autos da Ação Declaratória de Nulidade de Contrato c/c Repetição de Indébito e Reparação de Danos nº 3002508-04.2025.8.06.0112, proposta pela ora Agravante em desfavor de Banco BMG S/A. II. QUESTÃO EM DISCUSSÃO: A questão em discussão consiste em definir se há elementos suficientes para reconhecer a ocorrência de vício de consentimento na contratação do cartão de crédito consignado, de modo a justificar a concessão da suspensão liminar dos descontos oriundos do contrato. III. RAZÕES DE DECIDIR: (i) O vício de consentimento não se presume, cabendo à parte autora o ônus de demonstrá-lo mediante prova robusta, ainda que se trate de relação de consumo. (ii) A documentação apresentada não comprova a alegada indução em erro, não havendo indícios de irregularidade na celebração do contrato que autorizem a suspensão imediata dos descontos. (iii) Considerando a ausência de lastro probatório mínimo no sentido da ocorrência de vício de consentimento, não há como acolher a tutela de urgência pleiteada. DISPOSITIVO: Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do agravo de instrumento para lhe negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data e assinatura digital registradas no sistema processual

Processo	3009865-80.2025.8.06.0000
	eletrônico. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator &#160; RELATÓRIO Trata-se de agravo de instrumento interposto por Maria Silene Lima de Almeida contra decisão interlocutória proferida pelo Juízo 2ª Vara Cível da Comarca de Juazeiro do Norte nos autos da Ação Declaratória de Nulidade de Contrato c/c Repetição de Indébito e Reparação de Danos nº 3002508-04.2025.8.06.0112, proposta pela ora Agravante em desfavor de Banco BMG S/A. Trata-se de agravo de instrumento interposto por Maria Silene Lima de Almeida contra decisão interlocutória proferida pelo Juízo 2ª Vara Cível da Comarca de Juazeiro do Norte nos autos da Ação Declaratória de Nulidade de Contrato c/c Repetição de Indébito e Reparação de Danos nº 3002508-04.2025.8.06.0112, proposta pela ora Agravante em desfavor de Banco BMG S/A. Na exordial do feito originário, alega a Autora que, em agosto de 2018, procurou um correspondente do Banco Promovido para contratar um empréstimo consignado vinculado ao seu benefício do INSS. Porém, não foi esclarecido na ocasião que a operação contratada seria, na realidade, um saque em cartão de crédito consignado – uma modalidade mais onerosa e de natureza distinta. Alega que percebeu tardiamente que fora induzida a erro, contratando uma operação abusiva e praticamente impagável. Postula, diante disso: a) a declaração nulidade do contrato, convertendo-o em empréstimo consignado com taxa de juros de 1,93% ao mês taxa máxima do INSS para Empréstimos Consignados (Instrução Normativa nº 28/INSS/2008); b) a declaração de quitação da dívida; c) a restituição em dobro dos valores pagos indevidamente; d) a condenação do Promovido à reparação dos danos morais em valor não inferior a dez mil reais. A título de tutela de urgência antecipada, pugna pela ordem de suspensão dos descontos no benefício previdenciário da Autora. Alega que percebeu tardiamente que fora induzida a erro, contratando uma operação abusiva e praticamente impagável. Postula, diante disso: a) a declaração nulidade do contrato, convertendo-o em empréstimo consignado com taxa de juros de 1,93% ao mês taxa máxima do INSS para Empréstimos Consignados (Instrução Normativa nº 28/INSS/2008); b) a declaração de quitação da dívida; c) a restituição em dobro dos valores pagos indevidamente; d) a condenação do Promovido à reparação dos danos morais em valor não inferior a dez mil reais. A título de tutela de urgência antecipada, pugna pela ordem de suspensão dos descontos no benefício previdenciário da Autora. Na decisão agravada (ID 24347911 dos presentes autos), restou indeferida a tutela de urgência requestada pela Autora, entendendo o Magistrado, após análise sumária dos documentos e alegações apresentados, que não foi possível concluir pela probabilidade do direito alegado.

Processo	3009865-80.2025.8.06.0000
	21pt; margin-bottom: 0pt;" dir="ltr">Na situação sub examine,aduz a agravante que buscou a instituição financeira, ora agravada, no intuito de obter um empréstimo consignado, mas foi induzida a celebrar um contrato de cartão de crédito consignado, sem ter conhecimento da real dimensão do negócio jurídico pactuado. Como resultado da referida contratação, vêm sendo realizados descontos extremamente onerosos no benefício da Agravante, comprometendo a sua dignidade.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Sustenta, pois, a agravante que foi induzida ao erro no momento da contratação, uma vez que pretendia obter um empréstimo consignado, e o banco, ora agravado, ludibriou a mesma sem apresentar as devidas informações, impondo à autora uma modalidade mais onerosa e inadequada ao seu perfil.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Alega, ainda, que a conduta da instituição financeira revela-se eivada de má-fé, porquanto afrontou o dever de transparência e impôs ao consumidor cláusulas manifestamente abusivas, em inequívoca violação às disposições do Código de Defesa do Consumidor.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Em análise a documentação acostada aos autos, contudo, verifico a ausência de lastro probatório mínimo no sentido de um vício de consentimento.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">No feito de origem, o Banco agravado acostou instrumento de contrato cujo título registra expressamente que o negócio versa sobre “Termo de Adesão Cartão de Crédito Consignado e Autorização para Desconto em Folha de Pagamento” (ID 167449718). As demais informações constantes no instrumento também evidenciam a natureza do negócio, não havendo como se acolher o argumento da Apelante de que não tinha ciência do formato contratual em questão.&#160;&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Não se verifica, portanto, lastro no argumento da suposta falha no dever de informação da instituição financeira, haja vista o exposto teor das cláusulas contratuais. Como consequência, não se verifica, por ora, a probabilidade do direito da Agravante.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> É oportuno recordar que o vício de consentimento não se presume, de modo que eventual arguição de tal questão deve ser sustentada em prova robusta, cujo ônus é da parte autora/gravada, ainda que se trate de relação de consumo.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">

Processo	3009865-80.2025.8.06.0000
	weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Sobre o vício de consentimento, em casos análogos, colho da fonte jurisprudencial (g.n.)</p><p style="line-height: 1.799999999999998; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">PROCESSO CIVIL. RECURSO DE APELAÇÃO EM AÇÃO ANULAÇÃO DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. COMPROVAÇÃO DE CONTRATAÇÃO DE CARTÃO DE CRÉDITO CONSIGNADO E DEMONSTRAÇÃO DO REPASSE DOS VALORES SACADOS PARA CONTA DE TITULARIDADE DO AUTOR. VÍCIO DE CONSENTIMENTO NÃO CONSTATADO. EXPOSIÇÃO CLARA DA RELAÇÃO JURÍDICA FIRMADA NO ATO DA CONTRATAÇÃO. AUSÊNCIA DE FALHA NA PRESTAÇÃO DE SERVIÇO. INEXISTÊNCIA DE DANOS MORAIS E MATERIAIS. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. 1. O douto magistrado singular entendeu pela improcedência dos pedidos autorais, uma vez que, não havendo demonstração de ilicitude da contratação, e restando demonstrada a expressa anuência do autor no aperfeiçoamento contratual, incabível se torna a condenação da instituição financeira/requerida em devolução de valores e em pagamento de danos morais. 2. Por certo, conforme entendimento firmado pela Segunda Seção do Superior Tribunal de Justiça, quando do julgamento do REsp 1197929 / PR submetido ao rito dos recursos repetitivos, as instituições bancárias respondem objetivamente pelos danos causados por fraudes ou delitos praticados por terceiros, como, por exemplo, abertura de conta-corrente ou recebimento de empréstimos mediante fraude ou utilização de documentos falsos, porquanto tal responsabilidade decorre do risco do empreendimento, caracterizando-se como fortuito interno. 3. Ocorre que, da análise dos autos, não verifico causas que maculem a regularidade da celebração do negócio jurídico discutido nestes autos, isto porque, o banco/apelado se desincumbiu do seu ônus probatório (artigo 373, II, do CPC), ao juntar documento apto a extinguir ou desconstituir o direito autoral (artigo 373, II, do CPC), ao juntar o contrato discutido nessa demanda (fls. 398/401), assinado a próprio punho pelo requerente/recorrente, acompanhado de cópia dos documentos pessoais do promovente (fls.404/405). 4. Demonstra, ainda, o banco/recorrido que o autor/apelante realizou saques de R\$ 1.223,60 (um mil, duzentos e vinte e três reais e sessenta centavos) em 24/12/2018, de R\$ 327,49 (trezentos e vinte e sete reais e quarenta e nove centavos) no dia 28/08/2020 e de R\$ 201,01(duzentos e um reais e um centavo) em 24/05/2021, conforme comprovantes constantes às fls. 328/330 dos autos. 5. Em que pese as alegações do autor/recorrente acerca do dever do prestador de serviços em proceder com todas as informações necessárias à compreensão do consumidor em virtude do negócio celebrado, não desconheço a previsão positivada no Código de Defesa do Consumidor, em seu art. 6º inciso III, que reconhece tal conduta como direito básico do consumidor. 6. Todavia, percebo que o dever de informação clara e adequada ao consumidor restou perfectibilizado, por parte do banco/apelado, na medida em que apresenta o instrumento contratual pactuado denominado Termos de Adesão Cartão de Crédito Consignado Emitido pelo Banco BMG S/A e Autorização para Desconto em Folha de Pagamento, devidamente assinado pelo promovente/recorrente. 7. Além disso, a própria resolução do INSS (Instrução Normativa INSS nº 28/2008, alterada pela Instrução Normativa INSS nº 39/2009), em seu art. 3º, inciso III, autoriza o desconto no benefício na adesão de cartão de crédito, quando seja dada autorização de forma expressa, por escrito ou por meio eletrônico, o que aconteceu nos presentes autos, tornando-se válido o contrato e a cláusula da Reserva de Margem Consignável (RMC). 8. Sendo assim, concluo pela regularidade do negócio jurídico celebrado entre as partes, não observando na espécie quaisquer indícios de vício de consentimento ou fraude, não tendo a Instituição Financeira cometido nenhum ilícito capaz de ensejar indenização por danos morais, bem como a devolução dos valores devidamente descontados. 9. Recurso conhecido e desprovido. Sentença confirmada. [...] (Apelação Cível - 0201008-88.2023.8.06.0160, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 16/10/2024, data da publicação: 16/10/2024) [Grifei].</p><p style="line-height: 1.799999999999998; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">

</p><p style="line-height: 1.799999999999998; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-

Processo	3009865-80.2025.8.06.0000
	color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">AGRAVO INTERNO EM APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE NULIDADE DE NEGÓCIO JURÍDICO C/C OBRIGAÇÃO DE FAZER E REPARAÇÃO POR DANOS. EMPRÉSTIMO CONSIGNADO. PRETENSÃO DE NULIDADE DO NEGÓCIO JURÍDICO, SOB ARGUMENTO DE SIMULAÇÃO E VÍCIO DE CONSENTIMENTO. NÃO COMPROVAÇÃO. ÔNUS DO AUTOR QUANTO AO FATO CONSTITUTIVO DO DIREITO. ARTIGO 373, INCISO I DO CPC. PERÍCIA GRAFOTÉCNICA QUE ATESTOU A VERACIDADE DA ASSINATURA DA AUTORA APOSTA DO CONTRATO. RECURSO CONHECIDO E NÃO PROVIDO. DECISÃO AGRAVADA CONFIRMADA. 1. Insiste a autora/ agravante não reconhecer a contratação (portabilidade), "vez que o contrato apresentado foi de cópia, o que pode haver manipulação de outro contrato que tenha a real assinatura da consumidora, o que se questiona nos autos e não foi enfrentado pela decisão monocrática é a composição dos valores após negociação entre o Banco Safra e o Itaú". Defende, inclusive, nas razões da apelação que "deve ser destacada a inteligência do Art. 167 do Código Civil de 2002, pois o mesmo dispõe acerca da nulidade de negócio jurídico simulado e em seu §1º, II, apresenta a hipótese de simulação quando a declaração não for verdadeira". 2. Insiste, outrossim, no presente apelo que "é caso de inversão do ônus da prova a luz do §VIII, do art. 6º, do CDC, de modo que havendo dúvidas a interpretação deve ser favorável ao consumidor hipossuficiente". 3. Como se extrai dos autos, a instituição financeira se desincumbiu do encargo de rechaçar as alegações autorais, comprovando fato impeditivo, modificativo ou extintivo do direito da requerente (art. 373, II, do CPC), na medida em que produziu prova robusta quanto à regularidade da contratação, colacionando aos autos o instrumento contratual de proposta de abertura de limite de crédito às fls. 38/40, com a assinatura associada a da autora. Na fl. 93 foi juntado o comprovante de TED no valor de R\$ 3.972,60 (três mil, novecentos e setenta e dois reais e sessenta centavos). 4. Realizada perícia grafotécnica, tendo o expert concluído que a assinatura do contrato objeto do litígio é realmente da Sra. Maria do Livramento (ver fls. 184/207). 5. A agravante defende que o contrato em discussão (portabilidade) teria sido simulado, vez que com ele não consentiu. Nesse contexto, com efeito, nos termos no art. 373, inciso I, do CPC, caber-lhe-ia a demonstração de que o banco réu/ agravado teria praticado negócio jurídico simulado, o que não ocorreu na hipótese. 6. Agravo interno conhecido e não provido. Decisão confirmada. [...] (TJCE. Agravo Interno Cível - 0143028-20.2019.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 25/05/2022, data da publicação: 25/05/2022) [Grifei] DIREITO DO CONSUMIDOR. APELAÇÃO. AÇÃO DE OBRIGAÇÃO DE FAZER C/C REPETIÇÃO DE INDÉBITO C/C DANOS MORAIS COM PEDIDO LIMINAR INAUDITA ALTERA PARS. SENTENÇA DE IMPROCEDÊNCIA. PREJUDICIAIS DE PRESCRIÇÃO E DECADÊNCIA. AFASTADAS. EFETIVA COMPROVAÇÃO DE CONTRATAÇÃO DE CARTÃO DE CRÉDITO CONSIGNADO. VÍCIO DE CONSENTIMENTO NÃO CONSTATADO. EXPOSIÇÃO CLARA DA RELAÇÃO JURÍDICA FIRMADA NO ATO DA CONTRATAÇÃO. AUSÊNCIA DE FALHA NA PRESTAÇÃO DE SERVIÇO. TAXA ANUAL DE JUROS ABUSIVA. REVISÃO CONTRATUAL QUE SE IMPÕE. RESTITUIÇÃO NA FORMA SIMPLES, E EM DOBRO PARA DESCONTOS REALIZADOS APÓS 30/3/2021. RECURSO PARCIALMENTE PROVIDO. I. CASO EM EXAME Apelação cível interposta por Walter Ferreira Campos contra sentença que julgou improcedente a Ação de Obrigação de Fazer c/c Repetição de Indébito e Danos Morais, ajuizada em face do Banco BMG S/A. O autor pleiteia a conversão de empréstimo consignado via cartão de crédito em empréstimo consignado comum, a correção da taxa de juros aplicada, a restituição do indébito em dobro e reparação por danos morais. Questões em discussão: (i) Examinar ocorrência das prejudiciais de prescrição e decadência, (ii) verificar a regularidade do contrato celebrado e respectivas taxas de juros aplicadas; (iii) verificar se houve violação do dever de informação no contrato; (iv) apurar a existência de dano moral decorrente de descontos no benefício previdenciário do autor. A prescrição não se verifica,

Processo	3009865-80.2025.8.06.0000
	pois trata-se de obrigação de trato sucessivo, com renovação mensal dos descontos. Assim, o prazo prescricional inicia-se na data da última parcela descontada, conforme o artigo 27 do Código de Defesa. A preliminar de decadência também não merece acolhida, isso porque o contrato versa sobre obrigações de trato sucessivo, e os supostos descontos irregulares só foram constatados em momento posterior, não sendo o caso de adotar o prazo de 4 (quatro) anos para anulação de negócio jurídico. Da análise dos autos, não verifico causas que maculem a regularidade da celebração do negócio jurídico discutido nestes autos, isto porque, o banco/ apelado se desincumbiu do seu ônus probatório (artigo 373, II, do CPC), ao juntar documento apto a extinguir ou desconstituir o direito autoral (artigo 373, II, do CPC). Foi acostado aos autos "Termo de adesão cartão de crédito consignado e autorização para desconto em folha de pagamento" (p. 371/372), "Termo de consentimento esclarecido do cartão de crédito consignado" (p. 373) e "Cédula de crédito bancário de saque mediante cartão de crédito consignado" (p. 374/377), assinados a próprio punho pelo requerente/ recorrente, acompanhado de cópia dos documentos pessoais e declaração de residência do mesmo (pp. 378/379). O banco recorrido demonstra que o autor/ apelante realizou o saque de R\$ 1.279,65 (p. 380) e ainda saques complementares nos valores de R\$ 76,55 (p. 386) e R\$ 201,16 (p. 398). Não se configurou qualquer ato ilícito passível de reposição por danos morais, visto que o contrato foi firmado regularmente e o autor estava ciente das condições pactuadas. A aferição de eventual abusividade dos juros remuneratórios previstos em contrato há de ter por parâmetro a taxa média de mercado vigente para o período contratado, não se podendo exigir, entretanto, que todos os empréstimos sejam feitos segundo essa taxa, sob pena de descaracterizá-la como média, passando a ser um valor fixo. Em outros termos, a taxa média de mercado serve como parâmetro para identificar eventuais abusividades, não como limite máximo permitido para os juros avençados, admitindo-se uma faixa razoável para variação dos juros. Após consulta à taxa média de mercado vigente para o período contratado, 11/9/2019, (https:// www3.bcb.gov.br/sgspub/consultarvalores/consultarValoresSeries.do?method=consultarValores), verifica-se abusividade somente quanto à taxa anual de juros, que foi pactuada em 54.24%, isto é, 5 pontos percentuais acima da taxa estabelecida pelo Bacen quando da contratação, de 24.07% ao ano. Dessa forma, devida a revisão de juros isoladamente para os percentuais anuais aplicados no contrato questionado. Os juros mensais contratados no patamar de 3.63% não se apresentam abusivos em cotejo à média do Banco central, de 1.63% ao mês. Recurso Parcialmente Provido Dispositivos relevantes citados : art. 373, II do CPC; art. 206, § 3º, IV e V do CC; CDC art. 27, 6.º III e 14 § 3.º; Instrução Normativa INSS nº 28/2008. Jurisprudência relevante relevante : TJ-CE - AC: 00506257820218060157 Reriutaba, Relator: JOSÉ RICARDO VIDAL PATROCÍNIO, Data de Julgamento: 29/03/2023; TJ-CE - APL: 01602690720198060001 CE 0160269-07.2019.8.06.0001, Relator: RAIMUNDO NONATOSILVA SANTOS, Data de Julgamento: 19/05/2020, 4ª Câmara Direito Privado; Apelação Cível - 0201008-88.2023.8.06.0160, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 16/10/2024; Apelação Cível - 0050485-66.2014.8.06.0035, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 25/09/2024; Apelação Cível - 0220532-63.2023.8.06.0001, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 09/10/2024. [...] (Apelação Cível - 0203301-07.2023.8.06.0071, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 23/10/2024, data da publicação: 23/10/2024) [Grifei] Desta feita, a prova documental acostada aos autos não é apta a sugerir defeito de vontade no negócio firmado, impondo-se aprofundamento cognitivo para o exame dessa questão, o que é incompatível com a restrição cognitiva das tutelas de urgência e desta via recursal. Registro, por oportuno, que a instituição financeira acostou comprovante de TED referente à liberação de valores com fulcro no contrato discutido (ID 167450925 dos autos de origem). Dessa maneira, não se vislumbra, até o presente momento, elementos probatórios aptos a evidenciar a nulidade do contrato, de modo que, neste momento processual, não há respaldo jurídico e probatório a consubstanciar a pretensão

Processo	0200422-71.2022.8.06.0100
Número de ordem	165
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Acidente de Trânsito
Polo ativo	M DIAS BRANCO S.A. INDUSTRIA E COMERCIO DE ALIMENTOS
Advogado(s) - Polo ativo	JULIANA DE ABREU TEIXEIRA - (CE13463-A)
Polo passivo	FABIO SOUSA VIANA
Advogado(s) - Polo passivo	ULIANA ARAUJO CAVALCANTE - (CE37365-A)
Terceiros	Não informado

Processo	0200422-71.2022.8.06.0100
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJBzVzfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmWfGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAhrRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxxH6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMKCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2IZMs6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJZUpPkjznXDKa2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXBY41nkdUvsnXNkIX410JEZMRUUDZIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0200422-71.2022.8.06.0100
	2. A insurgência recursal está voltada contra a sentença que reconheceu a culpa exclusiva da empresa ré, ora apelante, acerca do acidente de trânsito ocorrido em 09.11.2021, por volta das 7:00 h, no KM 100 da BR-222 (Barro Branco - Umirim/Ceará), envolvendo o veículo VW/GOL 1.6, placas OJK0B91 e o caminhão tipo "baú" de placas HWU9612, este conduzido por funcionário da empresa ré, que foi condenada ao pagamento de indenização por danos materiais e morais. III. RAZÕES DE DECIDIR 3. Com efeito, verificando as provas acostadas aos autos vislumbro que não foi possível concluir pela existência de conduta culposa do apelado, revelando-se inverossímil a versão apresentada pela promovida, especialmente diante do fato de que no veículo do autor eram transportadas duas mulheres grávidas. Assim, não há como admitir, sem qualquer respaldo mínimo em provas, a alegação de que o promovente teria tentado realizar ultrapassagem pelo acostamento. Aliado a isso, as fotografias anexadas pela própria ré corroboram as alegações feitas pelo autor, uma vez que a imagem de ID 24485750, pág. 01, evidencia que o carro do autor transitava logo atrás de um caminhão longo e à frente do veículo da ré. 4. Dessa forma, o conjunto fático-probatório da pasta processual nos indica que o condutor do caminhão foi, no mínimo, negligente e imprudente, deixando de observar o dever de cuidado imposto pelos artigos 28, 29 e 36 do Código de Trânsito Brasileiro CTB. De igual modo, verifica-se que o motorista da ré/apelante não agiu com a cautela necessária, não guardando a distância regulamentar para o veículo que trafegava à sua frente, vindo a colidir na lateral desse veículo. Desse modo, aplicando-se o art. 29, II, do CTB, presume-se que a culpa pelo acidente é do condutor que choca com seu veículo na lateral traseira de outro. 5. Dessa forma, pela análise das razões recursais apresentadas e pelo acervo probatório colacionado aos autos, não se verificam fundamentos para que seja reformada a sentença recorrida, visto que não há elementos que corroborem com a tese recursal para que seja afastada a culpa do motorista da empresa ré, ora apelante, pelo sinistro, devendo ser mantido o <i>decisum</i> proferido, em todos seus termos. 6. No que concerne ao pedido subsidiário de redução da indenização por danos morais decorrentes do ato ilícito, também não merece reproche a sentença recorrida. É cediço que a indenização por danos morais, conquanto não seja possível quantificar concretamente em valores monetários o desgaste subjetivo sofrido pela vítima do evento danoso, deve representar um modo efetivo de compensação daquele que sofreu determinada aflição, abalo emocional ou uma lesão psicofísica de modo geral. 7. Saliente-se que não se pode considerar mero aborrecimento ou dissabor normal do cotidiano ser vítima de acidente de trânsito em razão da imprudência de terceiro, sobretudo quando o autor transportava sua esposa, grávida de seis meses, para acompanhamento pré-natal. Ademais, os danos sofridos no veículo impediram sua utilização para o deslocamento do autor ao trabalho e para o cumprimento de seus compromissos diários. Dessa forma, tenho que o valor fixado pelo juízo <i>a quo</i> a título de indenização por danos morais (R\$ 8.000,00 – oito mil reais) seguiu os parâmetros legais de razoabilidade e proporcionalidade e deve, portanto, ser mantido. 8. Por fim, quanto ao termo inicial de incidência da correção monetária e dos juros de mora incidentes sobre a indenização por danos morais, a ré pugna que sejam contabilizados a partir da sua fixação. Destaca-se que, em se tratando de responsabilidade extracontratual, devem os juros de mora fluir a partir do evento danoso, em conformidade com a Súmula nº 54 do STJ, enquanto a correção monetária deve incidir a partir da data do arbitramento nos termos da Súmula 362 do STJ, como acertadamente já fixado pelo juízo <i>a quo</i>, razão pela qual não merece guarida o pedido recursal. IV. DISPOSITIVO 9. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do

Processo	0200422-71.2022.8.06.0100
	recurso, para, no mérito, negar-lhe parcial provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. &#160; DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator &#160; RELATÓRIO Trata-se de recurso de apelação cível interposto por M. Dias Branco S/A Industria e Comércio de Alimentos, objetivando a reforma da sentença de ID 24485777, proferida pelo juízo da 2ª Vara Cível da Comarca de Itapajé, nos autos da Ação de Reparação de Danos Materiais e Morais por Acidente de Trânsito, que fora ajuizada por Fábio Sousa Viana. Na sentença, os pedidos autorais foram julgados procedentes nos seguintes termos: Ante todo o exposto, JULGO PROCEDENTE a pretensão, extinguindo o feito com resolução de mérito, na forma do art. 487, inciso I, do Código de Processo Civil, a fim de condenar a parte requerida a pagar ao autor: (1) danos materiais no valor de R\$ 6.088,50, devidamente atualizada pelo INPC e juros legais, desde a data do desembolso, e (3) e danos morais no valor de R\$ 8.000,00 (oito mil reais), acrescidos de correção monetária (Súmula nº 362, do STJ) pelo INPC, a contar do arbitramento e juros de mora de 1% (um por cento) ao mês, a contar do evento danoso. Condeno a demandada ao pagamento das custas processuais e honorários advocatícios, que fixo em 10% (dez por cento) do valor da condenação, com base no art. 85, § 2º, do CPC. Publique-se. Intimem-se. Após o trânsito em julgado, cumpridas as determinações, e não havendo requerimento das partes, arquivem-se os presentes autos digitais com as cautelas de praxe. Cumpra-se sob as formas e penalidades da lei. &#160; Na razão do presente apelo (ID 24485795), a recorrente argumenta, em síntese, que demonstrou que o seu funcionário agiu de forma prudente e que não deu causa ao acidente, invalidando as alegações infundadas do autor. Entretanto, com a devida vênia, foi proferida uma sentença que não guarda relação com o contexto fático e probatório dos autos. Ademais, os princípios da defesa do consumidor em juízo, especialmente o da inversão do ônus da prova, não exoneram o autor do ônus de fazer prova mínima do fato constitutivo do alegado. Incumbia ao demandante demonstrar minimamente os fatos constitutivos do seu direito, conforme o art. 373, inciso I, do CPC, bem como a verossimilhança de suas alegações para viabilizar a inversão do ônus probatório. Exigir da empresa, por meio da inversão do ônus da prova, prova de algo que não ocorreu, ou seja, a prova de fato negativo - sendo do consumidor o ônus de comprovar - caracteriza a imposição de realização de prova negativa, vedada pelo ordenamento jurídico. Não comprovando a parte autora, com precisão e certeza, tudo aquilo a que faz referência, nada autoriza a concessão do direito pleiteado. Com efeito, deve-se esclarecer que as informações alegadas pela parte apelada na peça vestibular, uma vez contrapostas com as razões fáticas acima elencadas, não se mostram suficientes para demonstrar a prática de qualquer ato ilícito pela apelante, não ensejando, desta feita, qualquer imposição de obrigação à mesma, bem como responsabilização civil. Face ao narrado, pugna

Processo	0200422-71.2022.8.06.0100
	> >Ademais, em audiência de instrução (ID 24485772), foi colhido o depoimento de Francisco José de Sousa Gomes, ouvido na condição de declarante. Em suma, relatou que viajava no mesmo veículo do Sr. Fábio, com destino a Fortaleza, quando o acidente ocorreu nas proximidades de Barro Branco, KM 100, município de Umirim. Segundo sua narrativa, havia um caminhão de 32 metros à frente do automóvel em que estava e, logo atrás, um caminhão baú. Ao tentar realizar ultrapassagem, o caminhão baú avistou um carro em sentido contrário, reduziu a velocidade e tentou retornar à faixa de origem; contudo, sem tempo hábil, colidiu na traseira do veículo ocupado pelo declarante. Em razão do impacto, o automóvel girou, deslocou-se para a contramão e capotou. Acrescentou que o motorista do caminhão baú retornou ao local para prestar socorro e que, além dele, também estavam no carro sua esposa, grávida de seis meses, seu filho de 14 anos e a esposa de Fábio, grávida de seis semanas. > > >Com efeito, verificando as provas supracitadas vislumbro que não foi possível concluir pela existência de conduta culposa do apelado, revelando-se inverossímil a versão apresentada pela promovida, especialmente diante do fato de que no veículo eram transportadas duas mulheres grávidas. Assim, não há como admitir, sem qualquer respaldo mínimo em provas, a alegação de que o promovente teria tentado realizar ultrapassagem pelo acostamento. > > >Aliado a isso, as fotografias anexadas pela ré, corroboram as alegações feitas pelo autor, uma vez que a imagem de ID 24485750, pág. 01, evidencia que o carro do autor transitava logo atrás de um caminhão longo e a frente do veículo da ré. > > >Dessa forma, o conjunto fático-probatório da pasta processual nos indica que o condutor do caminhão foi, no mínimo, negligente e imprudente, deixando de observar o dever de cuidado imposto pelos artigos 28, 29 e 36 do Código de Trânsito Brasileiro CTB, que dispõem: > > >Art. 28. O condutor deverá, a todo momento, ter domínio de seu veículo, dirigindo-o com atenção e cuidados indispensáveis à segurança do trânsito. > > >Art. 29. O trânsito de veículos nas vias terrestres abertas à circulação obedecerá às seguintes normas: > > >[...] > > >II - o condutor deverá guardar distância de segurança lateral e frontal entre o seu e os demais veículos > > >em relação ao bordo da pista, considerando-se, no momento, a velocidade e as condições do local, da circulação, do veículo e as condições climáticas; > > >Art. 36. O condutor que for ingressar numa via, procedente de um lote lindeiro a essa via, deverá dar preferência aos veículos e pedestres que por ela estejam transitando. [Grifou-se]. > > >De igual modo, verifica-se que o motorista da Ré/Apelante não agiu com a cautela necessária, não guardando a distância regulamentar para o veículo que trafegava à sua frente, vindo a colidir na lateral do veículo. Desse modo, aplicando-se o art. 29, II, do CTB, acima transcrito, presume-se que a culpa pelo acidente é do condutor que choca com seu veículo na lateral traseira de outro. > > >É entendimento pacificado pela jurisprudência do c. Superior Tribunal de Justiça que, aquele que sofreu colisão na traseira de seu veículo, tem em seu favor presunção de culpa do outro condutor. > > >A propósito, para fins persuasivos, confira-se: > > >AGRAVO EM RECURSO ESPECIAL. ACIDENTE DE TRÂNSITO. COLISÃO TRASEIRA. RESPONSABILIDADE. REEXAME

Processo	0200422-71.2022.8.06.0100
	DOCONJUNTO FÁTICO-PROBATÓRIO DOS AUTOS. INADMISSIBILIDADE. SÚMULA N. 7/STJ. DECISÃO MANTIDA. 1. 'Aquele que sofreu a batida na traseira de seu automóvel tem em seu favor a presunção de culpa do outro condutor, ante a aparente inobservância do dever de cautela pelo motorista, nos termos do inciso II do art. 29 do Código de Trânsito Brasileiro. Precedentes' (AgInt no AREsp n. 483.170/SP, Relator Ministro MARCO BUZZI, QUARTATURMA, julgado em 19/10/2017, DJe 25/10/2017). 2. É inviável o exame de questões que impliquem revolvimento do contexto fático probatório dos autos, a teor do que dispõe a Súmula n. 7 do STJ. 3. No caso dos autos, o Tribunal de origem concluiu que a agravante não conseguiu produzir provas aptas ao afastamento da presunção de que o acidente ocorreu por sua culpa. Para entender de modo contrário, seria necessário o reexame dos elementos fáticos, incabível no especial. 4. Agravo interno a que se nega provimento" (AgInt no AREsp 1162733 / RS. Ministro ANTONIO CARLOS FERREIRA. DJe 19/12/2017). [Grifou-se].</p> <p style="text-align: justify;"> ¶</p> <p style="text-align: justify; text-indent: 8%;"> Nesse mesmo sentido, confira-se, para efeito de argumentação, a jurisprudência deste e. Tribunal de Justiça e demais tribunais pátrios em casos análogos: </p> <p style="text-align: justify;"> ¶</p> <p style="text-align: justify; padding-left: 120px;"> CIVIL E PROCESSO CIVIL. APELAÇÃO CÍVEL. AÇÃO DE RESSARCIMENTO JULGADA PROCEDENTE. ACIDENTE DE TRÂNSITO. DINÂMICA DA COLISÃO.</p> <p>PRESUNÇÃO DE CULPA DO CONDUTOR QUE CHOCA SEU VEÍCULO NA TRASEIRA DE OUTRO. PRECEDENTES. NÃO OBSERVÂNCIA AO DEVER DE CAUTELA. INTELIGÊNCIA DO ART. 29, INCISO II DO CÓDIGO DE TRÂNSITO BRASILEIRO. SUB-ROGAÇÃO DA APELADA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. Trata-se de Apelação Cível interposta por Transita Transportadora Itaitinga Ltda, em face de sentença prolatada pelo Juízo da 2ª Vara Cível da Comarca de Itaitinga, que, nos autos da Ação de Ressarcimento de Danos Causados em Acidente de Veículo ajuizada por Minas Truck Associação de Veículos Pesados, julgou procedente o pleito autoral, reconhecendo a culpa da requerida no evento danoso, devendo o valor da indenização ser pago, acrescido de correção monetária a partir da sentença e juros de mora de 1% ao mês a partir do evento danoso. 2. Emsuas razões recursais, alega a apelante, que: i) o acidente só ocorreu porque o veículo da apelada estava estacionado em local proibido, sem sinais luminosos; ii) em virtude do estacionamento em acostamento na madrugada, com sinais de alertas desligados, presume-se que ocorreria na realidade uma parada técnica para descanso; iii) o local escolhido não se tratava de um lugar visível, era próximo de uma curva, fato este que impossibilitou a percepção de que estavam parados ali, tendo em vista a baixa luminosidade da pista e o horário do acidente, qual seja, 3:30 h da madrugada. Ao final, pugna pela reforma da sentença. 3. Verificando a documentação acostada, não vislumbro comprovação das alegações quanto à existência de fato impeditivo, modificativo ou extintivo do direito do autor, deixando assim a parte ré/apelante de se desincumbir de seu ônus probatório, nos moldes do art. 373, II, do CPC. 4. Em análise aos documentos acostados pela parte autora, ora apelada, temos que no Boletim de Acidente de Trânsito acostado às fls. 36/47 consta que o veículo segurado pela parte autora estava parado no acostamento, quando foi colidido em sua traseira pelo veículo da parte ré, ora apelante, e que, com a colisão, o veículo segurado foi projetado para a frente e colidiu na traseira do caminhão do tipo reboque, que também estava parado no acostamento. Após a colisão, o caminhão segurado e o caminhão reboque pegaram fogo. A propósito, o &Laudo de Exame em Local de Ocorrência de Tráfego com Vítima Fatal&, nº 01.1416/11, realizado pelo Instituto de Criminalística do Rio Grande do Norte, acostado às fls. 97/111, também afirma a dinâmica do acidente, aduzindo que o veículo da empresa apelante entrou na faixa de acostamento da rodovia e impactou com o veículo segurado. 5. Desta forma, verifica-se que o motorista do veículo da ré/apelante não agiu com a cautela necessária, vindo a colidir na traseira do veículo que estava regularmente parado no acostamento. Cumpre aqui mencionar que, conforme consta no laudo, não havia marcas de frenagens, arrasto ou derrapagem, indicando a não ocorrência de uma ação abrupta do seu condutor para a mudança de faixa, o que pressupõe que não houve nenhum caso fortuito ou de força maior que forçasse o motorista da parte apelada a desviar abruptamente e colidir com o veículo segurado, ou seja, só corrobora com a presunção de falta de atenção e segurança na direção, conforme dispõem os artigos 28 e 29, II do CTB. 6. Nessa toada, ao ter que pagar pelo dano ao veículo segurado, a apelada sub-rogou-se no direito a buscar o ressarcimento. No presente caso, observa-se que a empresa apelada efetuou o pagamento do valor da indenização ao segurado Antônio Mauro Clemente no valor de R\$ 243.680,00 (duzentos e quarenta e três mil, seiscentos e oitenta reais), fls. 30/33, sub-rogando-se no direito a perquirir o crédito. 5. Recurso conhecido e desprovido. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara

Processo	0200422-71.2022.8.06.0100
	Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso interposto, para negar-lhe provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (Apelação Cível-0008388-24.2012.8.06.0099, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:26/04/2023, data da publicação: 26/04/2023). [Grifou-se]. #160; </p> <p style="text-align: justify; padding-left: 120px;"> APELAÇÃO CÍVEL - AÇÃO REGRESSIVA DE INDENIZAÇÃO - SEGURADORA - SUBROGAÇÃO POR PARTE DA SEGURADORA QUE COBRIU OS DANOS - ACIDENTE DE TRÂNSITO - COLISÃO TRASEIRA - PRESUNÇÃO IURIS TANTUM DE CULPA - PRECEDENTES - AUSÊNCIA DE PROVA EM CONTRÁRIO - DEVER DE RESSARCIMENTO CARACTERIZADO - DANOS MORAIS COMPROVADOS SENTENÇA MANTIDA. I - 'Aquele que sofreu a batida na traseira de seu automóvel temem seu favor a presunção de culpa do outro condutor, ante a aparente inobservância do dever de cautela pelo motorista, nos termos do inciso II do art. 29 do Código de Trânsito Brasileiro. Precedentes' (AgInt no AREsp n. 483.170/SP, Relator Ministro MARCO BUZZI, QUARTA TURMA, julgado em19/10/2017, DJe 25/10/2017). II - A presunção, no caso, é iuris tantum, somente sendo possível desconstituí-la mediante prova em contrário, o que não ocorreu na hipótese dos autos, pois o recorrente não se desincumbiu do ônus de provar a existência de fato impeditivo, modificativo ou extintivo do direito do autor, nos exatos termos do art. 373, II do CPC. III - Por outro lado, a Seguradora, ora apelada, carrou aos autos a prova da indenização que pagou à Segurada, bem como a realização dos servidões no veículo segurado por oficina especializada (fls. 59/66), o que demonstra a causa dos danos como decorrência do acidente em questão, o que lhe atribui direito à sub-rogação pleiteada. IV - Recurso conhecido e desprovido. (Apelação Cível Nº 202200730844 Nº único: 0057017-86.2021.8.25.0001-1ª CÂMARA CÍVEL, Tribunal de Justiça de Sergipe - Relator (a): Iolanda Santos Guimarães-Julgado em 07/10/2022) (TJ-SE-AC: 00570178620218250001, Relator: Iolanda Santos Guimarães, Data de Julgamento: 07/10/2022, 1ª CÂMARA CÍVEL). [Grifou-se]. #160; </p> <p style="text-align: justify; padding-left: 120px;"> APELAÇÃO CÍVEL. CONTRATO DE SEGURO, ACIDENTE DE TRÂNSITO. COLISÃO TRASEIRA NO VEÍCULO SEGURADO. PAGAMENTO DA INDENIZAÇÃO SECURITÁRIA. SUB-ROGAÇÃO DA COMPANHIA SEGURADORA. RESPONSABILIDADE CIVIL. SENTENÇA DE PROCEDÊNCIA. INCONFORMISMO DA RÉ. DECISÃO QUE SE MANTÉM RESPONSABILIDADE CIVIL. DIREITO DE REGRESSO. ARTIGO 786, DO CÓDIGO CIVIL. SÚMULA Nº 188 DO SUPREMO TRIBUNAL FEDERAL. COLISÃO TRASEIRA. PRESUNÇÃO DE CULPA DE QUEM COLIDE. PARTE RÉ QUE NÃO SE DESINCUMBIU DE PROVAR FATO IMPEDITIVO, MODIFICATIVO OU EXTINTIVO DO DIREITO DA AUTORA. ARTIGO 373, INCISO II, DO CÓDIGO DE PROCESSO CIVIL. DANOS MATERIAIS COMPROVADOS. PRECEDENTES DO SUPERIOR TRIBUNAL DE JUSTIÇA E DESTA CORTE ESTADUAL. INDENIZAÇÃO QUE DEVE SER CORRIGIDA, EIS QUE DO VALOR REFERIDO NA INICIAL JÁ FORA ABATIDA A FRANQUIA. MAJORAÇÃO DOS HONORÁRIOS ADVOCATÍCIOS EM GRAU RECURSAL EM DESFAVOR DO RÉU. PRIMEIRO RECURSO PROVIDO E DESPROVIDO O SEGUNDO RECURSO. (TJ-RJ - APL: 00210444320148190014, Relator: Des(a). FABIO DUTRA, Data de Julgamento: 01/07/2021, PRIMEIRA CÂMARA CÍVEL, Data de Publicação: 12/11/2021). [Grifou-se]. #160; </p> <p style="text-align: justify; padding-left: 120px;"> APELAÇÃO. SENTENÇA DE PROCEDÊNCIA DO PEDIDO DE RESSARCIMENTO. PRELIMINAR: CARÊNCIA DE AÇÃO. TRANSAÇÃO EXTRAJUDICIAL FIRMADA ENTRE O SEGURADO E O TERCEIRO ENVOLVIDO NO ABALROAMENTO AUTOMOBILÍSTICO. PRONTO RECHAÇO. MÉRITO: NO CASO, ACIDENTE DE VEÍCULO. DIVISADA A DINÂMICA DA COLISÃO. PRESUNÇÃO RELATIVA DE CULPA DO MOTORISTA QUE SE POSICIONA ATRÁS. INOBSERVÂNCIA DO DEVER DE CAUTELA. INCIDÊNCIA DO ART. 29, INCISO II, CÓDIGO DE TRÂNSITO BRASILEIRO. SUBROGAÇÃO DA SEGURADORA ASSEGURADA. PRECEDENTES DO COLENDO STJ E DO TJCE. CONHECIMENTO E DESPROVIMENTO DO RECURSO. I - É repelida a preliminar de carência de ação, pois a transação extrajudicial firmada pelo Segurado e a Apelante, para prevenir litígios, não contou com a anuência da Seguradora. Inteligência do disposto no art. 787, § 2º, do Código Civil. Ademais, o valor do suposto indenizatório é muito inferior à quantia quitada

Processo	0200422-71.2022.8.06.0100
	pela Seguradora, o que impede qualquer mitigação da norma jurídica. Precedentes, inclusive do excelso Superior Tribunal de Justiça, cujo excerto se segue: "(...) III. Transação celebrada entre o causador do dano e o segurado, depois do pagamento da indenização pela seguradora e contemplando valor muito menos, não obstrui a sub-rogação prevista no artigo 786 da Lei Civil. IV. Recurso conhecido e desprovido. (Tribunal de Justiça do Distrito Federal e Territórios TJ 0706335-58.2019.8.07.0001 DF 0706335-58.2019.8.07.0001 Rel. JAMES EDUARDO OLIVEIRA, QUARTA TURMA CÍVEL, julgado em 04/12/2019, DJe 06/02/2020). II - Mérito. Caso em que se consigna ação regressiva prevista no art. 786 e vizinhos, do Código Civil. A propósito, a matéria está assentada na Súmula nº 188, STF: "O segurador tem ação regressiva contra o causador do dano, pelo que efetivamente pagou, até ao limite previsto no contrato de seguro." Com efeito, na ação de regresso há sub-rogação legal da seguradora nos direitos de seu segurado, podendo, dessa forma, exigir indenização do causador do dano nos mesmos termos em que aquele (o segurado) poderia fazê-lo, e nos limites do dispêndio. III - No ponto, a prova dos autos remete a colisão com a parte posterior do veículo segurado. A matéria se subsume a paradigmas do colendo STJ, vazadas conforme excerto: "2. Abalroamento traseiro na condução de veículos automotores. Aquele que sofreu a batida na traseira de seu automóvel tem em seu favor a presunção de culpa do outro condutor, ante a aparente inobservância do dever de cautela pelo motorista, nos termos do inciso II do art. 29 do Código de Trânsito Brasileiro. Precedentes. Tribunal de origem que consignou a falta de atenção do motorista e a culpa pela colisão traseira que ensejou o engavetamento. Impossibilidade de revolvimento da matéria fática probatória dos autos. Incidência da Súmula 7/STJ. 2. No sistema da persuasão racional, adotado pela legislação processual civil (artigos 130 e 131 do CPC/1973 e 371 do CPC/2015), o magistrado é livre para examinar o conjunto fático-probatório produzido nos autos para formar sua convicção, desde que indique de forma fundamentada os elementos de seu convencimento. (...) 3. Agravo interno desprovido. (STJ, AgInt no AREsp 483.170/SP, Rel. Ministro MARCO BUZZI, QUARTA TURMA, julgado em 19/10/2017, DJe 25/10/2017). IV - Apelação conhecida e não provida. ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e negar provimento ao Recurso de Apelação interposto, tudo de conformidade com o voto do e. Desembargador Relator. Fortaleza, 16 de junho de 2021 DESEMBARGADOR FRANCISCO DARIVAL BESERRA PRIMO Relator (TJ-CE - AC: 01194547020168060001 CE 0119454-70.2016.8.06.0001, Relator: FRANCISCO DARIVAL BESERRA PRIMO, Data de Julgamento: 16/06/2021, 2ª Câmara Direito Privado, Data de Publicação: 16/06/2021). [Grifou-se]. #160; </p> <p style="text-align: justify; padding-left: 120px;"> APELAÇÃO. ACIDENTE DE TRÂNSITO. SEGURO FACULTATIVO. AÇÃO REGRESSIVA. COLISÃO TRASEIRA. RESPONSABILIDADE SOLIDÁRIA DO PROPRIETÁRIO DO VEÍCULO. DEVER DE INDENIZAR. APELAÇÃO DO RÉU IMPROVIDA. O proprietário do veículo responde, solidária e objetivamente, pelos atos culposos de terceiro condutor, consoante precedentes do Colendo Superior Tribunal de Justiça (STJ). APELAÇÃO. ACIDENTE DE VEÍCULO. SEGURO FACULTATIVO. AÇÃO REGRESSIVA. COLISÃO TRASEIRA. PRESUNÇÃO DE CULPA DO CONDUTOR QUE CHOCA SEU VEÍCULO NA TRASEIRA DE OUTRO. APLICAÇÃO DO ARTIGO 29, II, DO CÓDIGO DE TRÂNSITO BRASILEIRO (CTB). SENTENÇA MANTIDA. RECURSO DA RÉ IMPROVIDO. Age com imprudência, e, por conseguinte, com culpa, o condutor que, ao trafegar, despreza a possibilidade de o veículo que lhe vai à frente ter de frear repentinamente. Desse modo, por aplicação do art. 29, II, do CTB, presume-se a culpa desse condutor, até porque, no caso, inexistente, nos autos, qualquer prova capaz de afastar tal presunção. APELAÇÃO. ACIDENTE DE VEÍCULO. SEGURO FACULTATIVO. AÇÃO REGRESSIVA. JUROS DE MORA. TERMO INICIAL A PARTIR DA CITAÇÃO. INTELIGÊNCIA DO ART. 405 DO CÓDIGO CIVIL (CC). RECURSO DA AUTORA IMPROVIDO. Tratando-se de ação regressiva com suporte em contrato de seguro facultativo, a sub-rogação atinge o montante pago pela seguradora ao seu seguro a do por força de contrato. Então, os juros de mora devem incidir a partir da citação, sendo aplicável ao presente caso o disposto no art. 405 do Código Civil (CC). Nessa data é que o réu foi constituído legalmente em mora. (TJ-SP-AC: 10058298720188260268 SP 1005829-87.2018.8.26.0268, Relator: Adilson de Araujo, Data de Julgamento: 01/06/2021, 31ª Câmara de Direito Privado, Data de Publicação: 01/06/2021). [Grifou-se]. </p> <p style="text-align: justify; padding-left: 120px;"> #160; </p> <p style="text-align: justify; padding-left: 120px;"> APELAÇÃO CÍVEL. AÇÃO REGRESSIVA DE RESSARCIMENTO CONTRA O CAUSADOR DO DANO. SUBROGAÇÃO DA SEGURADORA. DIREITO DE REGRESSO. ACIDENTE DE TRÂNSITO. COLISÃO TRASEIRA. PRESUNÇÃO RELATIVA DE CULPA DO MOTORISTA DO

Processo	0200422-71.2022.8.06.0100
	VEÍCULO QUE SE POSICIONA ATRÁS. INOBSERVÂNCIA DO DEVER DE CAUTELA. INCIDÊNCIA DO ART. 28 E 29, II, CÓDIGO DE TRÂNSITO BRASILEIRO. PARTE RÉ QUE NÃO SE DESINCUMBIU DE PROVAR FATO IMPEDITIVO OU MODIFICATIVO DO DIREITO DO AUTOR (ART. 373, II, DO CPC). DANOS MATERIAIS COMPROVADOS. SENTENÇA MANTIDA. RECURSO CONHECIDO E NÃO PROVIDO. 1. Trata-se de recurso de apelação cível interposto em face de sentença proferida pelo juízo da 29ª Vara Cível da Comarca de Fortaleza/CE (fls. 106/114), que julgou procedente ação regressiva de ressarcimento. 2. Pelo conjunto probatório dos autos, conclui-se que a dinâmica do evento restou incontroversa, vez que, conforme bem pontuado pelo magistrado de piso, o parecer técnico do boletim de ocorrência (PM nº 81841) concluiu que, no caso concreto, o condutor do veículo V/W 24.220 EUROS 3 WORKER (placa nº: OCN 0788) deixou de observar o que preceituam os artigos 28 e 29 - II do Código de Trânsito Brasileiro (fls. 23/27). 3. Ademais, o artigo 786 do Código Civil estabelece que, paga a indenização, o segurador sub-roga-se, nos limites do valor respectivo, nos direitos e ações que competiriam ao segurado contra o autor do dano, podendo, assim, pleitear o ressarcimento, contra o culpado pelo acidente, das despesas que realizou para reparar o prejuízo suportado pelo segurado. Desta forma, restando demonstrado que a apelada cobriu todos os prejuízos sofridos pelo segurado em virtude do acidente ocorrido, está configurada a sub-rogação nos direitos da proprietária do veículo abalroado. Precedentes. 4. Com relação aos valores devidos a título de ressarcimento, observa-se que a autora/apelada trouxe aos autos nota fiscal eletrônica n.º 0000036216 no valor de R\$ 3.969,50 (três mil novecentos e sessenta e nove reais e cinquenta centavos) (fls. 33), nota fiscal eletrônica de serviços n.º 21347, no montante de R\$ 8.919,00 (oito mil novecentos e dezenove reais) (fls. 34/35), bem como recibo de quitação (fls. 36/37) no valor total de R\$ 12.888,50 (doze mil oitocentos e oitenta e oito reais e cinquenta centavos). Analisando a correlação entre as notas fiscais acima e o sinistro, observamos que os reparos realizados no veículo em comento condizem com os danos sofridos, conforme conclui-se das fotos juntadas às fls. 28/30. 5. Por fim, em se tratando responsabilidade extracontratual, sobre o valor a título de reparação de danos materiais pleiteados em ação indenizatória proposta pela seguradora, subrogando-se nos direitos da proprietária do veículo segurado, incidirá correção monetária pelo INPC, a partir da data do efetivo prejuízo, qual seja, o desembolso (Súmula 43 do STJ), assim como o juros de mora de 1% (um por cento) ao mês que deverá incidir a partir do evento danoso, ou seja, também desde o desembolso (art. 398 do CC/02 e Súmula 54 do STJ. Precedentes. 6. Recurso conhecido e não provido. Honorários advocatícios majorados para 15% (quinze por cento) sobre o valor da condenação, nos termos do artigo 85, § 11, do CPC/15. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer e NEGAR PROVIMENTO ao recurso de apelação interposto por URBI ENGENHARIA AMBIENTAL LTDA ME nos autos de nº 0917577-33.2014.8.06.0001, nos termos do voto do relator. Fortaleza, 16 de março de 2021. RAIMUNDO NONATO SILVA SANTOS Presidente do Órgão Julgador DESEMBARGADOR RAIMUNDO NONATO SILVA SANTOS Relator (TJ-CE - AC: 09175773320148060001 CE 0917577-33.2014.8.06.0001, Relator: RAIMUNDO NONATO SILVA SANTOS, Data de Julgamento: 16/03/2021, 4ª Câmara Direito Privado, Data de Publicação: 16/03/2021). [Grifou-se]. #160; </p> <p style="text-align: justify; text-indent: 8%;"> Pela análise das razões recursais apresentadas e pelo acervo probatório colacionado aos autos, não verifico fundamentos para que seja reformada a sentença guerreada, visto que não há elementos que corroborem com a tese recursal para que seja afastada a culpa do motorista da empresa ré, ora apelante, pelo sinistro, devendo ser mantido o decisum proferido, em todos seus termos.</p> <p style="text-align: justify; text-indent: 8%;"> No que concerne ao pedido subsidiário de redução da indenização por morais decorrentes do ato ilícito, também não merece reproche a sentença recorrida. </p> <p style="text-align: justify; text-indent: 8%;"> É cediço que a indenização por danos morais, conquanto não seja possível quantificar concretamente em valores monetários o desgaste subjetivo sofrido pela vítima do evento danoso, deve representar um modo efetivo de compensação daquele que sofreu determinada aflição, abalo emocional ou uma lesão psicofísica de modo geral. </p> <p style="text-align: justify; text-indent: 8%;"> Em verdade, a indenização por dano moral tem por finalidade levar ao prejudicado um bem da vida que lhe restitua parcialmente a sensação de justiça e, ainda, represente uma utilidade concreta. Aliada à compensação, a indenização por danos morais possui caráter punitivo-pedagógico, pois consiste em um meio de punir o causador do dano e dissuadir novas práticas lesivas, de modo que o valor arbitrado na condenação não deve levar a vítima ao enriquecimento sem causa, bem como não pode ser ínfimo ou

Processo	0200422-71.2022.8.06.0100
	insignificante para o ofensor, devendo ser arbitrado conforme os parâmetros de proporcionalidade e razoabilidade. Com efeito, "a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante." (STJ, AgRg no REsp 1.269.246/RS, Rel. Ministro Luís Felipe Salomão, Quarta Turma, julgado em 20/05/2014, DJe de 27/05/2014). Saliente-se que não se pode considerar mero aborrecimento ou dissabor normal do cotidiano ser vítima de acidente de trânsito em razão da imprudência de terceiro, sobretudo quando o autor transportava sua esposa, grávida de seis meses, para acompanhamento pré-natal. Ademais, os danos sofridos no veículo impediram sua utilização para o deslocamento do autor ao trabalho e para o cumprimento de seus compromissos diários. Dessa forma, tenho que o valor fixado pelo juízo a quo a título de indenização por danos morais (R\$ 8.000,00 – oito mil reais) seguiu os parâmetros legais de razoabilidade e proporcionalidade e deve, portanto, ser mantido. Por fim, quanto ao termo inicial de incidência da correção monetária e dos juros de mora incidentes sobre a indenização por danos morais, a ré pugna que sejam contabilizados a partir da sua fixação. Destaco que, em se tratando de responsabilidade extracontratual, devem os juros de mora fluir a partir do evento danoso, em conformidade com a Súmula nº 54 do STJ, enquanto a correção monetária deve incidir a partir da data do arbitramento nos termos da Súmula 362 do STJ, como acertadamente já fixado pelo juízo a quo, razão pela qual não merece guarida o pedido recursal. 3 – Dispositivo Diante de todo o exposto, conheço do recurso para negar-lhe provimento, mantendo integralmente a sentença apelada. Por fim, com base no parágrafo 11 do art. 85 do Código de Processo Civil, majoro os honorários advocatícios arbitrados na decisão apelada para 12% (doze por cento) sobre o valor atualizado da condenação. É como voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator
Processo	3000993-78.2024.8.06.0043
Número de ordem	166
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Oposição
Polo ativo	JOSE AIRTON PEDROCA MOREIRA

Processo	3000993-78.2024.8.06.0043
Advogado(s) - Polo ativo	PEDRO IVAN COUTO DUARTE - (CE5457-A) NATALIA TORRES SAMPAIO COUTO DUARTE - (CE54213-A)
Polo passivo	JOSE VIEIRA RODRIGUES MARIA LAURENI DA SILVA
Advogado(s) - Polo passivo	DANILO BRINGEL SAMPAIO - (CE33248-A)
Terceiros	Não informado

Processo	3000993-78.2024.8.06.0043
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Processo	3000993-78.2024.8.06.0043
	PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 3000993-78.2024.8.06.0043 APELAÇÃO CÍVEL (198) APELANTE: JOSÉ AIRTON PEDROCA MOREIRA APELADO: JOSÉ VIEIRA RODRIGUES, MARIA LAURENI DA SILVA EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OPOSIÇÃO EM USUCAPIÃO. INADMISSIBILIDADE. JUÍZO UNIVERSAL. AUSÊNCIA DE INTERESSE PROCESSUAL. RECURSO CONHECIDO E DESPROVIDO. I) CASO EM EXAME: 1. Trata-se de recurso de apelação cível interposto por José Airton Pedrosa Moreira contra a sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Barbalha, que, nos autos da Ação de Oposição nº 3000993-78.2024.8.06.0043, referente à Ação de Usucapião nº 0201515-75.2024.8.06.0043, julgou extinto o processo sem resolução de mérito, com fundamento no art. 485, VI, do CPC. II) QUESTÃO EM DISCUSSÃO:

Processo	3000993-78.2024.8.06.0043
	2. O cerne da controvérsia recursal consiste em verificar se é juridicamente cabível a oposição em ação de usucapião, ajuizada como forma de defesa por terceiro que alega ser proprietário do imóvel usucapiendo. III) RAZÕES DE DECIDIR: 3. A oposição, prevista nos arts. 682 e seguintes do CPC, pressupõe a existência de partes originárias distintas da figura do opoente. Entretanto, a ação de usucapião possui natureza de juízo universal, em que todos os interessados são convocados a integrar a lide por meio de edital (art. 259, I, do CPC), de modo que não há espaço para a figura do “terceiro”. 4. A defesa de eventual direito de propriedade ou posse deve ser exercida mediante contestação na ação de usucapião, e não por meio de ação de oposição. O Superior Tribunal de Justiça consolidou esse entendimento no REsp 1.726.292/CE, reafirmando a ausência de interesse processual para oposição em usucapião. 5. Recurso conhecido e desprovido. IV) DISPOSITIVO: 5. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para lhe negar provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de Apelação Cível interposta por José Airton Pedroca Moreira contra a sentença proferida pelo MM. Juiz de Direito Marcelino Emídio Maciel Filho, da 1ª Vara Cível da Comarca de Barbalha, nos autos da Ação de Oposição nº 3000993-78.2024.8.06.0043, referente à Ação de Usucapião nº 02015115-75.2024.8.06.0043. Na sentença (ID 24508967), o magistrado julgou extinto o processo sem resolução do mérito, com fundamento no art. 485, VI, do CPC, sob a justificativa de que não cabe oposição ou intervenção de terceiros na ação de usucapião, pois consiste em modo de aquisição originária de propriedade, não admitindo tal forma de impugnação, prevendo, inclusive, a citação de terceiros interessados, conforme o artigo 259, inciso I, do Código de Processo Civil. Assim, foi destacado que as alegações deveriam ser suscitadas na própria ação de usucapião, não sendo necessária uma ação autônoma para tal fim. Irresignado, em seu recurso (ID 24508975), o apelante sustentou que a sentença é contraditória ao não haver publicado o edital no processo originário, não citando o proprietário do imóvel, razão pela qual a ação de oposição foi a via escolhida para defesa de seu direito. Além disso, o apelante alegou que a sentença é omissa quanto aos pedidos

Processo	3000993-78.2024.8.06.0043
	align="justify"> &#160; </p><p style="text-indent: 8%," align="justify"> Assim, não há espaço para a figura do “terceiro” em usucapião, razão pela qual inexistente interesse processual para ajuizamento de oposição.</p><p style="text-indent: 8%," align="justify"> &#160; </p><p style="text-indent: 8%," align="justify"> A matéria já foi objeto de uniformização pelo c. Superior Tribunal de Justiça, que consolidou o entendimento de que não cabe oposição em ação de usucapião, sendo incabível reconhecer interesse processual para a via eleita. Confira-se [g.n.]: </p><p align="justify">&#160;</p><p style="padding-left: 150px;" align="justify"> RECURSO ESPECIAL. USUCAPÍO EXTRAORDINÁRIO. INTERVENÇÃO DE TERCEIROS. OPOSIÇÃO. NÃO CABIMENTO. NATUREZA JURÍDICA. AÇÃO DE CONHECIMENTO. INTERESSE PROCESSUAL. AUSÊNCIA. CONTESTAÇÃO. VIA ADEQUADA. NULIDADE. CITAÇÃO. VÍCIO. REEXAME DE PROVAS. INVIABILIDADE. SÚMULA Nº 7/STJ. </p><p style="padding-left: 150px;" align="justify"> 1. Recurso especial interposto contra acórdão publicado na vigência do Código de Processo Civil de 1973 (Enunciados Administrativos nºs 2 e 3/STJ). </p><p style="padding-left: 150px;" align="justify"> 2. As questões controvertidas no presente recurso podem ser assim resumidas: (i) se é cabível a intervenção de terceiros na modalidade de oposição na ação de usucapião e (ii) se há vício de nulidade do processo por falta de citação da recorrente para ação de usucapião na condição de confinante e proprietária do bem usucapiendo. </p><p style="padding-left: 150px;" align="justify"> 3. A oposição é instituto de intervenção de terceiros que tem natureza jurídica de ação judicial de conhecimento, de modo que o oponente deve preencher as condições da ação e os pressupostos processuais para o seu processamento. </p><p style="padding-left: 150px;" align="justify"> 4. Não cabe intervenção de terceiros na modalidade de oposição na ação de usucapião. </p><p style="padding-left: 150px;" align="justify"> 5. O oponente carece de interesse processual para o oferecimento de oposição na ação de usucapião porque, estando tal ação incluída nos chamados juízos universais (em que são convocados a integrar o polo passivo por meio de edital toda a universalidade de eventuais interessados), sua pretensão poderia ser deduzida por meio de contestação. </p><p style="padding-left: 150px;" align="justify"> 6. A previsão da convocação, por meio edital, de toda universalidade de sujeitos indeterminados para que integrem o polo passivo da demanda se assim desejarem elimina a figura do terceiro no procedimento da ação de usucapião. </p><p style="padding-left: 150px;" align="justify"> 7. Tendo a Corte de origem concluído, à luz da prova dos autos, que (i) nenhum dos imóveis objeto da lide se encontra registrado no nome da recorrente e (ii) não há nos autos nenhum lastro probatório que demonstre a posição de confinante da recorrente, inviável a inversão do julgado, por força da Súmula nº 7/STJ. </p><p style="padding-left: 150px;" align="justify"> 8. Recurso especial conhecido em parte e não provido. </p><p style="padding-left: 150px;" align="justify"> (REsp n. 1.726.292/CE, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 12/2/2019, DJe de 15/2/2019.) </p><blockquote>
 </blockquote><p style="text-indent: 8%," align="justify"> Diante disso, a sentença deve ser integralmente mantida, porquanto a parte apelante não apresentou fundamento apto a infirmar a conclusão de que inexistente interesse processual para oposição em usucapião. </p><p style="text-indent: 8%," align="justify"> Aliás, é válido ressaltar que o ora apelante, José Airton Pedroca

Processo	3000993-78.2024.8.06.0043
	Moreira, apresentou contestação na ação de usucapião em 11 de abril de 2025, conforme ID#160;150389114 dos autos processuais de nº#160;0201515-75.2024.8.06.0043, de forma que sua pretensão será analisada pelo juízo competente. Ante o exposto, conheço e nego provimento da presente apelação cível para manter incólume a sentença recorrida. Formado o contraditório na esfera recursal, condeno a parte autora ao pagamento de honorários advocatícios, os quais fixo em 10% (dez por cento) sobre o valor atualizado da causa, ressalvado o constante no § 3º do art. 98 do CPC. É como voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator
Processo	0201560-06.2024.8.06.0035
Número de ordem	167
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	FRANCISCO DO CARMO DO NASCIMENTO
Advogado(s) - Polo ativo	LISIANE DA COSTA FOGACA - (RS119268-A)
Polo passivo	BANCO BMG SA
Advogado(s) - Polo passivo	GABRIELA VITIELLO WINK - (RS54018-A)
Terceiros	Não informado

Processo	0201560-06.2024.8.06.0035
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJBzVzfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtTASGWRBttau2dl/XHeucKJdW0vVrDmGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQm+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfLk3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcvwlqRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WYOGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznXDKa2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41okUvsnXNkIx410JEZMRU0ZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	roman" >, times;">PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line- height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> <span style="font-family: &quot;times new roman&quot;,
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 </p><p> PROCESSO: 0201560- 06.2024.8.06.0035 </p><p style="text-align: justify;"> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"> APELANTE: FRANCISCO DO CARMO DO NASCIMENTO. </p><p style="text-align: justify;"> APELADO: BANCO BMG S.A. </p><p style="text-align: justify;">
 </p><p style="text-align: justify;"> EMENTA:&#160; APELAÇÃO CÍVEL. DIREITO DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE NULIDADE DE CONTRATO DE CARTÃO DE CRÉDITO COM MARGEM CONSIGNÁVEL C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. CONTRATAÇÃO DE CARTÃO DE CRÉDITO COM RESERVA DE MARGEM CONSIGNÁVEL. SENTENÇA DE IMPROCEDÊNCIA. ANUÊNCIA MEDIANTE ASSINATURA ELETRÔNICA. CONFIRMAÇÃO POR BIOMETRIA FACIAL E GEOLOCALIZAÇÃO/IP DO TERMINAL. CIÊNCIA DO TIPO DE CONTRATAÇÃO. CÉDULAS ESCRITAS COM CARACTERES EM DESTAQUE. COMPROVANTE DE REPASSE DO NUMERÁRIO PARA CONTA DE TITULARIDADE DO AUTOR. NEGÓCIO JURÍDICO VÁLIDO. INSTITUIÇÃO FINANCEIRA QUE SE DESINCUMBIU DO ÔNUS PROBATÓRIO. RECURSO CONHECIDO E DESPROVIDO.</p><p align="justify"> I) CASO EM EXAME</p><p align="justify"> 1.&#160; Trata-se de Apelação Cível interposta por Francisco do Carmo do Nascimento com o objetivo de reformar a sentença proferida pelo Juízo da 2ª Vara Cível da Comarca de Aracati, que julgou improcedente a Ação Declaratória de Nulidade de Contrato de Cartão com Reserva de Margem Consignável c/c Repetição do Indébito e Indenização por Danos Morais ajuizada pelo ora apelante em desfavor do Banco BMG S/A.</p><p align="justify"> II) QUESTÃO EM DISCUSSÃO</p><p align="justify"> <span style="font-family: &quot;times new roman&quot;, times; font-size:

Processo	0201560-06.2024.8.06.0035
	large;">2.&#160; O cerne da controvérsia consiste em verificar a validade do contrato de cartão de crédito com reserva de margem consignável celebrado entre a instituição financeira apelada e o autor, ora apelante.</p><p align="justify"> &#160; III) RAZÕES DE DECIDIR</p><p align="justify">3.&#160; An alisando os fólios desta pasta processual, verifico que a contratação do cartão de crédito com margem consignável ocorreu por meio eletrônico, tendo o banco colacionado a cópia dos documentos pessoais do autor (fls. 17/18 do ID. n.º 25029736); o Termo de Adesão às Condições Gerais de Emissão e Utilização do Cartão de Benefício Consignado, Assinado eletronicamente, contendo geolocalização IP/terminal (fls. 01/04 do ID. n.º 25029736); o Termo de Consentimento Esclarecido do Cartão de Benefício Consignado, assinado eletronicamente, contendo geolocalização IP/terminal (fl. 07 do ID. n.º 25029736); a Cédula de Crédito Bancário com Autorização de Saque Através do Cartão Consignado, assinada eletronicamente, contendo geolocalização IP/terminal (fls. 08/15 do ID. n.º 25029736) biometria facial <em style="background-color: transparent; white-space-collapse: preserve; font-family: &quot;times new roman&quot;; times; font-size: large;">selfie (fl. 16 do ID. n.º 25029736) e as faturas referentes ao cartão (ID. n.º 25029737). Além disso, há comprovação do recibo de transferência do repasse da quantia referente ao mútuo bancário para a conta corrente vinculada à agência na qual o autor/apelante recebe o benefício previdenciário (ID n.º 25029897).</p><p align="justify"> &#160; 4. Com base na cópia do instrumento contratual e cédula de crédito bancário&#160; (fls. 01/04 e 08/15 do ID. n.º 25029736) , confere-se os dados e as condições do negócio jurídico registrado sob o n.º ADE: 76841063, realizado no dia 11 de julho de 2022, com valor liberado de R\$ 1.164,10 (mil cento e sessenta e quatro reais e dez centavos) e reserva de R\$ 60,50 (sessenta reais e cinquenta centavos).&#160; Assim, observo que os instrumentos colacionados possuem título destacados que demonstram a anuência do consumidor com relação ao&#160; Termo de Adesão às Condições Gerais de Emissão e Utilização do Cartão de Benefício Consignado , inclusive com&#160; Termo de Consentimento Esclarecido do Cartão de Benefício Consignado &#160;(vide

Processo	0201560-06.2024.8.06.0035
	fls. 01/04, 07 e 08/15 do ID. n.º 25029736 devidamente subscritos eletronicamente pelo consumidor no ato da adesão. 5. Os referidos títulos estão escritos em letras maiúsculas e destacadas no topo dos documentos, de maneira que não há como acolher a tese do autor/apelante de que não estava ciente, inicialmente, do tipo de operação a que estava aderindo. Além disso, observam-se nos referidos documentos, também em destaque, o tipo de contratação e a forma de pagamento, sendo inseridas, por exemplo, cláusulas específicas relativas ao canal de disponibilização da fatura e de ciência acerca da contratação de cartão de crédito consignado, além de que o contratante autoriza expressamente o banco a realizar os descontos mensais em seu benefício, para pagamento do valor mínimo indicado na fatura do cartão de crédito (item II e cláusulas 1, 1.1, 1.2, 1.3, 1.3.1, 1.4, 1.4.1, 1.5 e 1.5.1 do Termo de Adesão ao Cartão Benefício Consignado e itens 1, 2, 3, 4, 5, 6, 7, 8, 9 e 10 da Cédula de Crédito Bancário - fls. 01/04 e 08/15 do ID. n.º 25029736). 6. Vale salientar que a assinatura eletrônica do consumidor na cédula bancária representa a expressa declaração de vontade em adquirir o serviço, bem como a aceitação aos seus termos e condições, vinculando-o ao compromisso ajustado. Posto isso, não prospera o argumento de que a parte recorrente não tinha conhecimento do negócio jurídico que estava celebrando, pois os documentos coligidos ao feito comprovam a livre e efetiva adesão ao contrato de cartão de crédito com margem consignável, confirmado mediante reconhecimento facial do contratante, que corrobora à transferência bancária realizada em favor do beneficiário. 7. Impende registrar que é plenamente viável a formalização do contrato mediante assinatura eletrônica, por meio da qual se utilizam combinações de códigos que permitem extrair o aceite entre o emissor e o receptor, a exemplo de senhas, e-mail, número de telefone, ou outras ações específicas. A esse respeito, conforme dito, o banco juntou comprovante de formalização digital, que reforça a regularidade da contratação mediante anuência do consumidor, indicando-se o horário e a geolocalização IP do terminal utilizado para efetivar o aceite dos termos do pacto negocial. Aliado a isso, verifica-se que os serviços contratados estão postos de forma clara, legível e de boa visualização, existindo cláusulas dispondo sobre as características do cartão de crédito com margem consignável e sendo a leitura de fácil compreensão (arts. 46 e 52 do CDC). 8. Por tudo isso, reputo a existência de elementos suficientes para comprovar a validade do negócio jurídico celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, de seu ônus probante, produzindo prova pertinentes à regularidade da contratação, como hipótese excludente de responsabilidade (art. 373, inciso II, CPC, c/c art. 14, § 3º, do CDC). Logo, ante a regularidade da contratação, não há que falar na ocorrência de ato ilícito por parte da instituição financeira, e, por consequência, em danos materiais ou morais capazes de ensejar o pagamento de indenização, nos termos do artigo 5º, inciso X,

Processo	0201560-06.2024.8.06.0035
	pela autora&#160; e indefiro o pedido contraposto de condenação da parte autora por litigância de má-fé. </p><p class="Standard" style="text-align: justify; margin-bottom: 8pt; line-height: 24px; text-indent: 8%; padding-left: 150px;"> &#160; <strong style="font-family: &quot;times new roman&quot;, times; font-size: medium; text-indent: 42.55pt;">Condeno a autora ao pagamento das custas processuais e honorários em favor do procurador do réu &#160; (estes no percentual de 10% do valor atualizado da causa), de exigibilidade condicionada à superveniência das hipóteses constantes no art. 98, § 3º, do CPC. </p><p align="center">&#160;</p><p style="text-align: justify; text-indent: 8%;">Irresignado, o Autor interpôs o recurso de apelação de ID n.º 25029909, postulando a reforma da sentença para julgar procedentes os pedidos contidos na inicial, sustentando, para tanto, que "a cobrança realizada pelo apelado é manifestamente indevida, pois não há consentimento válido por parte do apelante em relação às condições aplicadas ao contrato" e que houve " vício de consentimento falha no dever de informação", posto que o banco apelado não teria fornecido esclarecimentos suficientes acerca das características do contrato.</p><p style="text-align: justify; text-indent: 8%;"> &#160; Pugna, então, pelo conhecimento e provimento do recurso para reformar integralmente a sentença de origem, no sentido de julgar procedentes os pedidos autorais, declarando-se a nulidade do contrato de cartão com margem consignável, fixando-se condenação&#160;a título de danos morais e repetição do indébito em dobro.</p><p style="text-align: justify; text-indent: 8%;"> Preparo &#160; recursal &#160; dispensado ante o benefício da gratuidade da justiça .</p><p style="text-align: justify; text-indent: 8%;"> Contrarrrazões apresentadas pelo requerido no ID. n.º 25029913, nas quais&#160; postula o desprovimento do recurso.</p><p style="text-align: justify; text-indent: 8%;"> É o relatório.</p><p style="text-align: justify; text-indent: 8%;">
</p><p align="center"> VOTO </p><p align="center">&#160;</p><p align="center">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;, font-size: medium; text-indent: 8%;"> 1-&#160;Admissibilidade </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;, font-size: medium; text-indent: 8%;"> Presentes os pressupostos recursais de admissibilidade intrínsecos (legitimidade, interesse, cabimento e inexistência de fato impeditivo ou extintivo) e extrínsecos (tempestividade, preparo e regularidade formal), conheço do recurso.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;, font-size: medium; text-indent: 8%;"> 2 – Mérito recursal </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;, font-size: medium; text-indent: 8%;"> O cerne da controvérsia consiste em verificar a validade do contrato de cartão de crédito com reserva de margem consignável celebrado entre a instituição financeira apelada e o autor, ora

Processo	0201560-06.2024.8.06.0035
	apelante. alisando os folios desta pasta processual, verifico que a contratação do cartão de crédito com margem consignável ocorreu por meio eletrônico, tendo o banco colacionado a cópia dos documentos pessoais do autor (fls. 17/18 do ID. n.º 25029736) o Termo de Adesão às Condições Gerais de Emissão e Utilização do Cartão de Benefício Consignado, assinado eletronicamente, contendo geolocalização IP/terminal (fls. 01/04 do ID n.º 25029736) o Termo de Consentimento Esclarecido do Cartão de Benefício Consignado, assinado eletronicamente, contendo geolocalização IP/terminal (fl. 07 do ID n.º 25029736) a Cédula de Crédito Bancário com Autorização de Saque Através do Cartão Consignado, assinada eletronicamente, contendo geolocalização IP/terminal (fls. 08/15 do ID. n.º 25029736) e biometria facial (fl. 16 do ID. n.º 25029736) e as faturas referentes ao cartão (ID. n.º 25029737) Além disso, há comprovação do recibo de transferência do repasse da quantia referente ao mútuo bancário para a conta corrente vinculada à agência na qual o autor/apelante recebe o benefício previdenciário (ID n.º 25029897). Com base na cópia do instrumento contratual e cédula de crédito bancário (fls. 01/04 e 08/15 do ID. n.º 25029736) confere-se os dados e as condições do negócio jurídico registrado sob o n.º ADE: 76841063, realizado no dia 11 de julho de 2022, com valor liberado de R\$ 1.164,10 (mil cento e sessenta e quatro reais e dez centavos) e reserva de R\$ 60,50 (sessenta reais e cinquenta centavos). Assim, observo que os instrumentos colacionados possuem título destacados que demonstram a anuência do consumidor com relação ao Termo de Adesão às Condições Gerais de Emissão e Utilização do Cartão de Benefício Consignado inclusive com Termo de Consentimento Esclarecido do Cartão de Benefício Consignado (vide fls. fls. 01/04, 07 e 08/15 do ID. n.º 25029736)

Processo	0201560-06.2024.8.06.0035
	style="background-color: transparent; font-family: terminal, monaco; font-size: large;"> , devidamente subscritos eletronicamente pelo consumidor no ato da adesão.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> #160; Os referidos títulos estão escritos em letras maiúsculas e destacadas no topo dos documentos, de maneira que não há como acolher a tese do autor/apelante de que não estava ciente, inicialmente, do tipo de operação a que estava aderindo.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> #160; Além disso, observam-se nos referidos documentos, também em destaque, o tipo de contratação e a forma de pagamento, sendo inseridas, por exemplo, cláusulas específicas relativas ao canal de disponibilização da fatura e de ciência acerca da contratação de cartão de crédito consignado, além de que o contratante autoriza expressamente o banco a realizar os descontos mensais em seu benefício, para pagamento do valor mínimo indicado na fatura do cartão de crédito (item II e cláusulas 1, 1.1, 1.2, 1.3, 1.3.1, 1.4, 1.4.1, 1.5 e 1.5.1 #160;do Termo de Adesão ao Cartão Benefício Consignado e itens 1, 2, 3, 4, 5, 6, 7, 8, 9 e 10 da Cédula de Crédito Bancário - fls. 01/04 e 08/15 do ID. n.º 25029736). </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> #160; Vale salientar que a assinatura eletrônica do consumidor na cédula bancária representa a expressa declaração de vontade em adquirir o serviço, bem como a aceitação aos seus termos e condições, vinculando-o ao compromisso ajustado.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> #160; Posto isso, não prospera o argumento de que a parte recorrente não tinha conhecimento do negócio jurídico que estava celebrando, pois os documentos coligidos ao feito comprovam a livre e efetiva adesão ao contrato de cartão de crédito com margem consignável, confirmado mediante reconhecimento facial do contratante, que corrobora à transferência bancária realizada em favor do beneficiário.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Impende registrar que é plenamente viável a formalização do contrato mediante assinatura eletrônica, por meio da qual se utilizam combinações de códigos que permitem extrair o aceite entre o emissor e o receptor, a exemplo de senhas, #160; <em style="background-color: transparent; font-family: &quot;times new roman&quot;; times; font-size: large;">e-mail , número de telefone, ou outras ações específicas.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> A esse respeito, conforme dito, o banco juntou comprovante de formalização digital, que reforça a regularidade da contratação mediante anuência do consumidor, indicando-se o horário e a geolocalização IP do terminal utilizado para efetivar o aceite dos termos do pacto negocial.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Aliado a isso, verifica-se que os serviços contratados estão postos de forma clara, legível e de boa visualização, existindo cláusulas dispondo sobre as características do cartão de crédito com margem consignável e sendo a leitura de fácil compreensão (arts. 46 e 52 do CDC).</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Nesse contexto, insta salientar que a jurisprudência pátria, inclusive desta e. Corte de Justiça, tem se manifestado pela validade da contratação via eletrônica. Vejamos:</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 120px;">
 </p><p style="text-align: justify;">

Processo	0201560-06.2024.8.06.0035
	font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> APELAÇÃO CÍVEL. DIREITO DO CONSUMIDOR. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS.&#160; CONTRATAÇÃO DE CARTÃO DE CRÉDITO COM RESERVA DE MARGEM CONSIGNÁVEL. ANUÊNCIA MEDIANTE ASSINATURA ELETRÔNICA. CONFIRMAÇÃO POR BIOMETRIA FACIAL E GEOLOCALIZAÇÃO. CIÊNCIA DO TIPO DE CONTRATAÇÃO. CÉDULAS ESCRITAS COM CARACTERES EM DESTAQUE. COMPROVANTE DE REPASSE DO NUMERÁRIO PARA CONTA DE TITULARIDADE DO AUTOR. NEGÓCIO JURÍDICO VÁLIDO. INSTITUIÇÃO FINANCEIRA QUE SE DESINCUMBIU DO ÔNUS PROBATÓRIO.&#160;RECURSO DESPROVIDO. 1. O cerne da controvérsia consiste em verificar a validade do contrato de cartão de crédito com margem consignável nº 766133829, alvo de impugnação por ter sido realizado em meio virtual, que implicou descontos no benefício previdenciário do demandante / apelante, e, em seguida, avaliar o cabimento do pedido de indenização por danos materiais e morais, à luz das normas do Código de Defesa do Consumidor.&#160; 2. Analisando os fólios desta pasta processual, verifico que a contratação do cartão de crédito com margem consignável ocorreu por meio virtual, tendo o banco colacionado a cópia dos documentos pessoais do autor, o Termo de Adesão ao Cartão Benefício Consignado PAN, o Termo de Consentimento Esclarecido do Cartão Benefício Consignado, assinado digitalmente com fotografia selfie, contendo geolocalização.&#160;3.&#160; Além disso, há comprovação da solicitação de saque Cartão de Benefício Consignado assinado digitalmente com fotografia selfie e geolocalização, corroborado pelo dossiê de contratação e pela autorização de acesso aos dados da previdência social assinado digitalmente pela mesma modalidade acima indicada, sem olvidar o recibo de transferência do repasse da quantia referente ao mútuo bancário para a conta corrente vinculada à agência na qual o autor / apelante recebe o benefício previdenciário.&#160;4. observo que os instrumentos colacionados possuem título destacados que demonstram a anuência do consumidor com relação ao Termo de Adesão ao Cartão Benefício Consignado PAN, inclusive com Termo de Consentimento Esclarecido do Cartão Benefício Consignado PAN, devidamente subscritos eletronicamente pelo consumidor no ato da adesão. Os referidos títulos estão escritos em letras maiúsculas e destacadas no topo dos documentos, de maneira que não há como acolher a tese do autor / apelante de que não estava ciente, inicialmente, do tipo de operação a que estava aderindo. 5. Vale salientar que a assinatura do consumidor nas cédulas bancárias representa a expressa declaração de vontade em adquirir o serviço, bem como a aceitação aos seus termos e condições, vinculando-o ao compromisso ajustado. A esse respeito, conforme dito, o banco juntou comprovante de formalização digital, que reforça a regularidade da contratação mediante anuência do consumidor, indicando-se o horário e a geolocalização do dispositivo utilizado para efetivar o aceite dos termos do pacto negocial, além de conter o IP e as características do dispositivo eletrônico. 6. Por tudo isso, reputo a existência de elementos suficientes para comprovar a validade do negócio jurídico celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, de seu ônus probante, produzindo prova pertinentes à regularidade da contratação, como hipótese excludente de responsabilidade (art. 373, inciso II, CPC, c/c art. 14, § 3º, do CDC). 7. Logo, ante a regularidade da contratação, não há que falar na ocorrência de ato ilícito por parte da instituição financeira, e, por consequência, em danos materiais ou morais capazes de ensejar o pagamento de indenização, nos termos do artigo 5º, inciso X, da Constituição Federal. 8. Recurso desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação interposto, para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital.&#160; (Apelação Cível&#160; TJ-CE&#160;0200896-90.2024.8.06.0029, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO,&#160;1ª Câmara Direito Privado, data do julgamento:&#160; 11/09/2024, data da publicação:&#160;&#160; 11/09/2024). [Grifou-se]. </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> PROCESSUAL CIVIL.&#160; AÇÃO DECLARATÓRIA DE NULIDADE DE CONTRATO DE CARTÃO DE CRÉDITO COM MARGEM CONSIGNÁVEL (RMC) C/C REPARAÇÃO POR DANOS MATERIAIS E MORAIS. EM SUA DEFESA O BANCO ACIONADO COLACIONOU AOS AUTOS CÓPIA DO CONTRATO DE ADESÃO AO CARTÃO DE CRÉDITO. TERMO DE CONSENTIMENTO ESCLARECIDO DO CARTÃO DE CRÉDITO CONSIGNADO. TRANSFERÊNCIA VIA TED DE VALORES DEPOSITADOS NA CONTA DO APELANTE.&#160;RECURSO CONHECIDO E

Processo	0201560-06.2024.8.06.0035
	<p>IMPROVIDO. I. Perscrutando os autos, observa-se que o autor/apelante afirma ter efetuado o contrato, todavia, acreditava ser empréstimo diverso, sem prejuízo de seu benefício previdenciário.&#160; Descuidou-se que a instituição Banco BMG colacionou aos autos cópia do Contrato de Adesão a Cartão de Crédito Consignado, conforme se veem do TERMO DE CONSENTIMENTO ESCLARECIDO DO CARTÃO DE CRÉDITO CONSIGNADO (fs. 76); faturas de cartão de crédito (fs. 105/104); comprovantes de transferência TED às fs. 182/184. Ora, inegavelmente, os créditos na conta da parte autora/apelante, foram provenientes da contratação, fato que deu ensejo a incidência dos descontos em seus proventos dos valores mínimos fixados em reserva de margem consignável – RMC, não havendo, portanto, como alegar que houve fraude ou mesmo desconhecimento dos termos do contrato, até mesmo porque, sem nenhuma reclamação os valores foram transferidos para a conta de titularidade do apelante.&#160;II. Nesse considerar, pelos documentos estadeados nos autos, não há que se falar em nulidade contratual, de igual modo, em ressarcimento por danos, que alega ter experimentado. Portanto, não houve cobrança de quantia indevida, vez que o apelante firmou o contrato, bem como fez utilização do Cartão de Crédito Consignado, ensejando o regular desconto consignado. III. Recurso de Apelação conhecido e improvido. (TJ-CE&#160;- AC: 02315184720218060001 Fortaleza, Relator: INACIO DE ALENCAR CORTEZ NETO, Data de Julgamento: 25/05/2022,&#160; 2ª Câmara Direito Privado, Data de Publicação:&#160;26/05/2022). [Grifou-se].&#160; </p> <p style='text-align: justify; font-family: "Times New Roman"; font-size: medium; padding-left: 150px;'>&#160;</p><p style="text-align: justify; font-family: "Times New Roman"; font-size: medium; padding-left: 150px;"> APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA CONTRATUAL C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. PRELIMINAR CONTRARRECURSAL DE MALFERIMENTO AO PRINCÍPIO DA DIALETICIDADE RECHAÇADA. EMPRÉSTIMO CONSIGNADO. S ENTENÇA DE IMPROCEDÊNCIA. CONTRATO REALIZADO VIA AUTENTICAÇÃO DIGITAL. MEDIANTE BIOMETRIA FACIAL. AUSÊNCIA DE IRREGULARIDADE NA CONTRATAÇÃO. VALORES CREDITADOS NA CONTA DA PARTE AUTORA. AUSÊNCIA DE FALHÁ NA PRESTAÇÃO DO SERVIÇO PELA INSTITUIÇÃO FINANCEIRA. ATO ILÍCITO NÃO CONFIGURADO.&#160;RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. Inicialmente, em sede de contrarrazões, a instituição financeira recorrida suscitou preliminar de ausência de impugnação específica à sentença, contudo, não assiste razão à parte apelada, pois da análise das razões de apelação, verifica-se que o recorrente apresenta o seu inconformismo face aos termos da sentença que julgou improcedente a demanda. Preliminar rejeitada. 2. A parte autora ajuizou a presente demanda no afã de desconstituir empréstimo livremente por ela pactuado, sob o argumento de jamais ter assinado qualquer contrato. 3. A parte promovente, ora apelante, não provou o contexto do vício de consentimento capaz de ensejar a procedência do seu pleito inaugural, muito menos a existência de qualquer fraude a ocasionar a declaração de inexistência do negócio jurídico entabulado,&#160; sobretudo por se tratar de um contrato de empréstimo consignado realizado via digital - autenticação eletrônica, mediante biometria facial (¿selfie¿).&#160;4.&#160; Não obstante, o promovente ter deixado de refutar a contento as provas trazidas aos autos pela parte adversa, é imperioso destacar que o demandado trouxe à baila o comprovante de transferência de valores hospedado à fl. 158, em que comprova de maneira cristalina o depósito da quantia de R\$ 1.479,88 (mil quatrocentos e setenta e nove reais e oitenta e oito centavos) em conta bancária de titularidade do demandante, sendo esse o numerário constante no contrato impugnado, bem como no extrato de consignações acostado pelo autor.&#160;5.&#160; Outrossim, embora o apelante tenha alegado que inexistem elementos no contrato juntado aos autos que garantiriam a identificação do contratante, como geolocalização e endereço de IP, na verdade, é fácil observar que todas estas informações foram disponibilizadas na avença.&#160;6.&#160; Desta feita, a trilha digital e os reiterados pontos de autenticação levam a crer pela regularidade da contratação, visto que são múltiplas as provas de que a operação de crédito contratada foi efetivamente realizada pelo apelante.&#160;Diante disso, pode-se reconhecer, a exigibilidade da dívida, notadamente em razão dos documentos trazidos pela ré na contestação. 7. Recurso conhecido e desprovido. Sentença mantida. (Apelação Cível&#160; TJ-CE&#160; 0201254-57.2022.8.06.0051, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE,&#160; 4ª Câmara Direito Privado, data do julgamento:12/03/2024, data da publicação:&#160; 12/03/2024). [Grifou-se]. </p> <p style='text-align: justify; font-family: "Times New Roman"; font-size: medium; padding-left: 150px;'>&#160;</p><p style="text-align: justify; font-family: "Times New Roman"; font-size: medium; padding-left: 150px;"> <span style="font-family: "times new roman";</p>

Processo	0201560-06.2024.8.06.0035
	times;">Por tudo isso, reputo a existência de elementos suficientes para&#160; comprovar a validade do negócio jurídico celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, de seu ônus probante, produzindo prova pertinentes à regularidade da contratação, como hipótese excludente de responsabilidade (art. 373, inciso II, CPC, c/c art. 14, § 3º, do CDC). </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> &#160; Logo, ante a regularidade da contratação, não há que falar na ocorrência de ato ilícito por parte da instituição financeira, e, por consequência, em danos materiais ou morais capazes de ensejar o pagamento de indenização, nos termos do artigo 5º, inciso X, da Constituição Federal.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Nesse sentido, é assente a jurisprudência deste egrégio Tribunal de Justiça:</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium;">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> PROCESSO CIVIL. APELAÇÃO CÍVEL. DECLARATÓRIA DE NULIDADE CONTRATUAL C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO.&#160; CONTRATO COM&#160; AUTENTICAÇÃO ELETRÔNICA. BIOMETRIA FACIAL. DEMONSTRAÇÃO DO REPASSE DO VALOR PARA CONTA DE TITULARIDADE DA AUTORA. BANCO RÉU QUE SE DESINCUMBIU DO ÔNUS PROBANTE.&#160;ATO ILÍCITO NÃO DEMONSTRADO. REGULARIDADE DA CONTRATAÇÃO. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. Reclama o banco/recorrente da sentença do douto julgante da 2ª Vara da Comarca de Boa Viagem, que julgou parcialmente procedentes os pedidos contidos na ação Declaratória de Nulidade Contratual c/c Repetição de Indébito e Indenização por Danos Morais, declarando a inexistência do contrato apontado na exordial, condenando o banco a restituir, na forma simples, os valores descontados do benefício previdenciário da autora/recorrida, e ainda, ao pagamento da quantia de R\$ 2.000,00 (dois mil reais) a título de danos morais. 2. Por certo, conforme entendimento firmado pela Segunda Seção do Superior Tribunal de Justiça, quando do julgamento do REsp 1197929 / PR submetido ao rito dos recursos repetitivos, as instituições bancárias respondem objetivamente pelos danos causados por fraudes ou delitos praticados por terceiros e como, por exemplo, abertura de conta-corrente ou recebimento de empréstimos mediante fraude ou utilização de documentos falsos, porquanto tal responsabilidade decorre do risco do empreendimento, caracterizando-se como fortuito interno.&#160; 3. Ocorre que, cotejando o vertente caderno processual, não verifico causas que maculem a regularidade da celebração do negócio jurídico discutido nestes autos, isto porque o banco/apelante juntou o contrato discutido nesta demanda (fls. 90/99), assinado por meio de autenticação eletrônica, acompanhado de cópia dos documentos pessoais da autora e fotografia do momento da contratação.&#160;4. Para reforçar a validade da contratação, a instituição financeira/apelante, acostou aos autos o documento de fls. 91, onde consta dados de geolocalização e Id da sessão do usuário, com informação do dia e horário da coleta dos dados. 5. Destaco ainda, que o banco logrou êxito em comprovar que o contrato objeto da presente demanda tratar-se de um eRefinanciamento, conforme Quadro II do instrumento contratual (fls.92), sendo liberado o valor (troco), remanescente de R\$ 2.062,00 (dois mil, sessenta e dois reais), em conta de titularidade da autora/apelada, o que ficou comprovado através do documento de transferência constante às fls. 137 dos autos.&#160; 6. Sendo assim, concluo pela regularidade do negócio jurídico celebrado entre as partes, não observando na espécie quaisquer indícios de vício de consentimento ou fraude, não tendo a Instituição Financeira cometido nenhum ilícito capaz de ensejar indenização por danos morais, bem como a devolução dos valores devidamente descontados.&#160;7. Recurso conhecido e provido. Sentença reformada. (Apelação Cível&#160; TJ-CE&#160;0201553-34.2022.8.06.0051, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE,&#160; 1ª Câmara Direito Privado, data do julgamento: 21/02/2024, data da publicação:&#160; 22/02/2024). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> PROCESSUAL CIVIL. CONSUMIDOR. AÇÃO DECLARATÓRIA DE NULIDADE DE RELAÇÃO CONTRATUAL C/C REPETIÇÃO DE INDÉBITO E&#160;&#160; DANOS MORAIS.&#160; CONTRATOS DE EMPRÉSTIMOS BANCÁRIOS CONSIGNADOS. COMPROVAÇÃO DA FORMALIZAÇÃO DOS CONTRATOS. JUNTADA DAS TRANSFERÊNCIAS ELETRÔNICAS EM CONTA DE TITULARIDADE DA AUTORA NOS VALORES PACTUADOS. INEXISTÊNCIA DE ATO ILÍCITO PASSÍVEL DE REPARAÇÃO POR DANOS MORAIS.&#160;PEDIDO

Processo	0201560-06.2024.8.06.0035
	DE REALIZAÇÃO DE PERÍCIA GRAFOTÉCNICA. DESNECESSIDADE. RECURSO CONHECIDO E IMPROVIDO. SENTENÇA MANTIDA. 1 - Trata-se de Apelação Cível interposta por MARIA CORREIA DA SILVA OLIVEIRA em face de sentença proferida pelo Juízo da Vara Única da Comarca de Lavras da Mangabeira, que julgou improcedente Ação Declaratória de Nulidade Contratual c/c Repetição de Indébito e Reparação por Danos Morais ajuizada pela apelante em desfavor do Banco Itaú Consignado S/A. 2 - O recurso visa modificar sentença exarada pelo juízo a quo, a qual julgou improcedentes os pedidos de declaração de nulidade dos contratos de empréstimo consignado nº 611424551, 614275733 e 633003399, a repetição em dobro dos valores descontados e a condenação do réu ao pagamento de indenização por danos morais no valor de R\$ 30.000,00. 3 - O Código de Defesa do Consumidor, em seu art. 14, caput, estabelece a responsabilidade objetiva dos fornecedores de serviço pelos danos causados aos consumidores, por defeitos relativos à prestação dos serviços. 4 - In casu, em sede de contestação, o banco recorrido apresentou cópia dos instrumentos contratuais nº 611424551, 614275733 e 633003399, bem como comprovante de Transferência TED, em benefício da autora, reforçando a realização da contratação. Da análise dos autos, verifica-se que a assinatura constante na cópia dos contratos inclusos pelo banco requerido de fato guarda rigorosa semelhança com a do documento de identidade da parte apelante com a robusta prova acostada nos autos, resta comprovada a efetiva e válida formalização dos contratos aqui questionados. 5 - Quanto aos danos morais, estes são vistos como qualquer ataque ou ofensa à honra, paz, mentalidade ou estado neutro de determinado indivíduo, sendo, por vezes, de difícil caracterização devido ao seu alto grau subjetivo. É imperioso ressaltar que, para que este se configure, é necessário que efetivamente tenha existido ato ilícito passível de reparação moral e que este seja devidamente comprovado, acompanhado do nexo de causalidade. 6 - No caso dos autos, uma vez configurada a formalização dos contratos em avença, inexiste quaisquer dos requisitos autorizadores para o deferimento de pagamento de danos morais, vez que não restou comprovada qualquer conduta ilícita por parte da Instituição Bancária, muito menos resultado danoso para a apelante, razão pela qual, correto foi o entendimento do magistrado ao indeferir o pleito. 7 - Acrescento que, apesar de afirmar a recorrente que não reconhece a assinatura, entendo que julgou com acerto o Juízo a quo dada a similaridade da assinatura constante nos contratos apresentados pelo ente financeiro com as assinaturas dos documentos juntados pelo autor na exordial, quais sejam procuração, declaração de hipossuficiência e documento de identidade. Desse modo, diante do robusto conjunto probatório carreado aos fólios, tenho que não se faz necessária a realização de exame grafotécnico no presente caso. 8 - Apelação conhecida e improvida. Sentença mantida. (Apelação Cível nº TJ-CE 0200118-30.2022.8.06.0114, Rel. Desembargador(a) INACIO DE ALENCAR CORTEZ NETO, 2ª Câmara Direito Privado, data do julgamento: 31/05/2023, data da publicação: 31/05/2023). [Grifou-se]. Portanto, a sentença não merece reforma, ante a comprovação da realização do contrato de cartão de crédito com margem consignável. 3- Dispositivo Diante do exposto, CONHEÇO do recurso de apelação, para NEGAR-LHE PROVIMENTO mantendo hígida a sentença recorrida. Considerando a sucumbência recursal, majoro os honorários sucumbenciais para o patamar de 12% (doze por cento) sobre o valor da causa, conforme o disposto no art. 85, § 2º, do CPC, cuja exigibilidade ficará suspensa por ser a autora beneficiária da justiça gratuita.

Processo	0201560-06.2024.8.06.0035
	font-size: large;"]>É como voto.</p><p class="Paragraph SCXW230613761 BCX0" style="text-align: justify; font-family: "Times New Roman"; font-size: medium; -webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px -2px 10.6667px; padding-top: 0px; padding-right: 0px; padding-bottom: 0px; user-select: text; overflow-wrap: break-word; vertical-align: baseline; font-kerning: none; background-color: transparent; text-indent: 8%;" lang="PT-BR" xml:lang="PT-BR"> Fortaleza, data da assinatura digital.</p><p style="text-align: justify; text-indent: 8%;"> </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Presidente/Relator </p><p> </p><p> </p><p style="text-align: center;"> </p>

Processo	0201262-26.2022.8.06.0086
Número de ordem	168
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	JOSE RIBAMAR ALVES DE LIMA
Advogado(s) - Polo ativo	GIL SOUSA NOGUEIRA - (CE26842-A)
Polo passivo	D OLIVEIRA PROMOCAO DE VENDAS PROMOVE ADMINISTRADORA DE CONSORCIOS LTDA
Advogado(s) - Polo passivo	FRANCISCO DAYALESSON BEZERRA TORRES - (CE29634-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado

Processo	0638822-30.2024.8.06.0000
Número de ordem	169
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Regulamentação de Visitas
Polo ativo	SARAH ROCHA BAIMA
Advogado(s) - Polo ativo	FELIPE ANDERSON CELEDONIO - (CE33533-A)
Polo passivo	EDUARDO SILVA ARAUJO
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0638822-30.2024.8.06.0000
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Processo	0638822-30.2024.8.06.0000
	visitas.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">II. QUESTÃO EM DISCUSSÃO: A controvérsia consiste em definir se estão presentes elementos que justifiquem a restrição do regime de visitas fixado em primeiro grau, com limitação da convivência a locais públicos.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr"> III. RAZÕES DE DECIDIR</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(i) O direito de convivência familiar da criança constitui garantia constitucional e legal, devendo prevalecer o princípio do melhor interesse do menor</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(ii) A restrição ao direito de visitas exige indícios robustos ou prova concreta de risco à integridade física ou psicológica da criança, o que não restou evidenciado no caso.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(iii) O estudo psicossocial é medida indispensável para fornecer elementos técnicos que permitam avaliar as condições estruturais, psicológicas e sociais do ambiente familiar, em observância à proteção integral da criança.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">(iv) É pertinente a manutenção provisória do regime de visitas fixado, com a determinação de realização de estudo psicossocial, assegurando-se o equilíbrio entre a preservação do vínculo paterno-filial e a proteção ao bem-estar do menor.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 10pt; margin-bottom: 0pt;" dir="ltr">IV. DISPOSITIVO: Recurso conhecido e parcialmente provido.</h3><p style="line-height: 1.3800000000000001; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por

Processo	0638822-30.2024.8.06.0000
	unanimidade, em conhecer do agravo de instrumento para lhe dar parcial provimento, nos termos do voto do Desembargador Relator. Fortaleza, data e assinatura digital registradas no sistema processual eletrônico. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator 1.3800000000000001; RELATÓRIO Trata-se de agravo de instrumento interposto por Sarah Rocha Baima contra decisão interlocutória proferida pelo Juízo da 3ª Vara de Família da Comarca de Fortaleza na Ação de Modificação de Regulamentação de Visitas nº 0267893-76.2023.8.06.0001. Referida ação foi proposta por Eduardo Silva Araújo em face da ora Agravante, visando à alteração de cláusula do regime de visitação paterna estabelecido em relação ao filho menor das partes na Ação de Guarda e Regulamentação de Visitas nº 0262095-71.2022.8.06.0001, que definiu o direito de visitação do Autor em relação ao filho Carlos Eduardo Baima Araújo Na decisão agravada (fls. 39/44 dos autos originários), deferiu-se a tutela provisória requerida pelo Autor, ora Agravado, reformulando-se o direito de visitação nos seguintes termos: presentes os requisitos previstos no art. 300 do CPC, bem como o parecer Ministerial favorável, DEFIRO a tutela de urgência antecipada, para determinar, provisoriamente, a regulamentação de visitação do autor, o Sr. Eduardo Silva Araujo, ao filho C. E. B. A., a

Processo	0638822-30.2024.8.06.0000
	ser realizada da forma estabelecida em manifestação de fls. 181/184, qual seja: "o autor poderá conviver com o filho nos finais de semana alternados, pegando o menor nas sextas-feiras às 19hs e devolvendo aos domingos às 19hs, em algum local público a fim de evitar o descumprimento de medida protetiva ou o genitor poderá indicar um familiar seu para buscar e deixar a criança na casa da genitora; bem como nos feriados alternados, inclusive natal e reveillon; o genitor pode continuar tendo contato com o filho todas as quartas-feiras, das 19hs às 22hs, podendo levá-lo para passear, sem a presença de alguém da família materna; a criança ficará com o pai durante a metade das férias escolares; dia dos pais, dia das mães e aniversário dos genitores, a criança deve ficar com o homenageado; dia das crianças e aniversário da criança, devem ser alternados entre os genitores, de modo que nos anos pares, o genitor fique com o filho no seu aniversário e a mãe no dia das crianças, invertendo-se no ano seguinte. No aniversário dos avós paternos, a criança deve permanecer do pai, já no aniversário dos avós maternos, da mãe. A genitora deve comunicar previamente ao genitor quando for realizar alguma viagem, caso essas viagens sejam para fora do estado do Ceará, que haja a autorização do pai para a realização das mesmas." Irresignada, a Promovida interpôs o agravo de instrumento em tela, alegando que o Recorrido não possui as condições adequadas para receber o filho em sua residência, uma vez que não disporia dos acessórios e alimentos necessários e apropriados para a criança e que o local apresentaria más condições de higiene e de segurança, notadamente em face da presença de animais de estimação supostamente sem treinamento adequado e a existência de uma piscina sem proteção. Além disso, relata que, em situação na qual se encontrava responsável pelo menor, o genitor não respeitou as condições de saúde deste, levando-o à praia quando ele estava enfermo, o que teria resultado no agravamento do quadro clínico da criança. Sustenta, diante disso, que há grave risco à saúde e segurança da criança, impondo-se o resguardo dos interesses desta, com fulcro nos direitos constitucionais de proteção integral à criança previstos no artigo 227 da Constituição Federal. Solicita a realização de um estudo prévio por assistente social e psicólogo para avaliar as condições do agravado. Pleiteia a Recorrente, ao fim, a concessão de efeito suspensivo ao agravo e, no mérito, a reforma da decisão, para que as visitas ocorram apenas em locais públicos e seguros, até que a situação seja melhor averiguada. Pugna, além disso, pela realização de estudo social e psicológico das partes, para se avaliar a adequação do regime de visitas. Sem preparo recursal por ser o agravante beneficiário da justiça gratuita. Decisão interlocutória proferida por esta Relatoria (ID 25189857), em que foi deferida parcialmente o pleito do efeito suspensivo, a fim de determinar a realização do Estudo Psicossocial sobre o caso. Contraminuta no ID 25189869 pugnando pela manutenção da decisão.

Processo	0638822-30.2024.8.06.0000
	color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">Parecer do membro do Ministério Público (ID 26873307), manifestando-se pelo conhecimento e desprovemento do recurso.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt;" dir="ltr">É o relatório.</p><p style="line-height: 1.3800000000000001; text-align: center; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> VOTO</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Consoante relatado, o presente recurso configura insurgência contra odecisum de primeiro grau que concedeu, a título de tutela de urgência, pleiteado pelo Autor, ora Agravado, a reformulação do regime de convivência anteriormente estabelecido no caso.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Conforme o caderno processual de origem, o regime de visitação ora discutido foi inicialmente regulamentado na Ação de Guarda c/c Regulamentação de Visitas nº 0262095-71.2022.8.06.0001, trazendo as seguintes regras:</p><p style="line-height: 1.38; margin-left: 113.38582677165354pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> i) enquanto a criança está em período de amamentação, o pai visitará a criança nas noites de quarta-feira, na casa da genitora; ii) após o desmame, o pai poderá levar a criança para sua casa, buscando-a nas noites de quartas-feiras, e devolvendo-a na noite do dia seguinte (fica salientado que, durante o período de adaptação da criança na casa do pai, caso a criança apresente dificuldades na dormida, o pai entrará em contato com a genitora e, se necessário, devolverá a criança na casa da genitora). iii) Em festa de final de ano, as crianças passarão, nos anos pares, o Natal com o pai e o Ano Novo com a mãe, invertendo-se essa ordem nos anos ímpares. No Dia dos Pais, a criança passará com o genitor e no Dia das Mães, com a genitora. iv) no aniversário da criança, ambos os genitores terão acesso à companhia da criança, visando o melhor interesse desta.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Em sua exordial, o Autor/Agravado afirmou que, com o decurso do tempo desde então, o seu contato com o filho tem sido dificultado, sobretudo diante da existência de uma medida protetiva em favor da genitora da criança. Além disso, a mãe do menor estaria opondo dificuldades ao adequado contato deste com o pai.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Diante disso, pugnou o ora Recorrido pela modificação do regime de visitação, para que assim possa ter mais tempo de qualidade com o infante.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"><span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif;

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	color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">>Após certo trâmite do feito, com a oportunização do contraditório e a realização da instrução, o d. Juízo a quo houve por bem deferir o pleito de urgência do Promovente, deferindo novo regime de visitação no seguinte formato: O autor poderá conviver com o filho nos finais de semana alternados, pegando o menor nas sextas-feiras às 19hs e devolvendo aos domingos às 19hs, em algum local público a fim de evitar o descumprimento de medida protetiva ou o genitor poderá indicar um familiar seu para buscar e deixar a criança na casa da genitora; bem como nos feriados alternados, inclusive natal e reveillon; o genitor pode continuar tendo contato com o filho todas as quartas-feiras, das 19hs às 22hs, podendo levá-lo para passear, sem a presença de alguém da família materna; a criança ficará com o pai durante a metade das férias escolares; dia dos pais, dia das mães e aniversário dos genitores, a criança deve ficar com o homenageado; dia das crianças e aniversário da criança, devem ser alternados entre os genitores, de modo que nos anos pares, o genitor fique com o filho no seu aniversário e a mãe no dia das crianças, invertendo-se no ano seguinte. No aniversário dos avós paternos, a criança deve permanecer do pai, já no aniversário dos avós maternos, da mãe. A genitora deve comunicar previamente ao genitor quando for realizar alguma viagem, caso essas viagens sejam para fora do estado do Ceará, que haja a autorização do pai para a realização das mesmas. Contra essa decisão, insurge-se a Agravante, alegando: (i)comportamento supostamente explosivo do genitor;(ii)falta de cuidado adequado com o infante no momento da convivência paterna;(iii)ausência de estrutura apropriada na residência do Agravado para receber o infante.&#160;</p><p style="text-align: justify; margin-top: 21pt; margin-bottom: 0pt; direction: ltr">Analisando-se os autos, contudo, verifico que ainda não foi efetivamente comprovada circunstância apta a evidenciar risco ao infante como resultado do estreitamento do convívio com o genitor. Não obstante restar evidente que o relacionamento entre as partes é turbulento e dotado de alta litigiosidade, não há elementos suficientes a apontar tais características na relação entre o infante e o genitor, que, ao que parece, não possui traços que exorbitem a normalidade.&#160;</p><p style="text-align: justify; margin-top: 21pt; margin-bottom: 0pt; direction: ltr">Nesse contexto, não vislumbro,a priori,<span style="font-size: 13.999999999999998pt; font-family:

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	'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">fundamento suficiente para a reforma da decisão agravada. Apesar de se tratar de uma criança de tenra idade (quatro anos incompletos), ela não se encontra sob amamentação e é aparentemente saudável, não havendo notícia de particularidades que recomendem restrições a um convívio mais amplo com o pai, inclusive com pernoite. 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Impende recordar que o direito de convívio das crianças e adolescentes com seus parentes, voltado a assegurar seu pleno desenvolvimento psicossocial, está previsto na Constituição Federal e no Estatuto da Criança e Adolescente, devendo a sociedade, a família e o Estado devem ajudar na consolidação deste direito de criação e educação dos menores dentro do seu seio familiar. 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Nas questões familiares levadas ao Judiciário, impõe-se que o magistrado decida com base no Princípio do Melhor (ou Maior) Interesse da CriançaBest Interest of the Child),adotando os parâmetros de resolução que se mostrem mais favoráveis ao bem-estar e ao desenvolvimento psicossocial e estrutural do menor. Esse princípio é consagrado no art. 227 da Constituição da República de 1988 e no art. 4º da Lei nº 8.069, de 13 de julho de 1990 (Estatuto da Criança e do Adolescente), assim prevendo os referidos dispositivos, respectivamente: 1.38; margin-left: 111pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Art. 227. É dever da família, da sociedade e do Estado assegurar à criança, ao adolescente e ao jovem, com absoluta prioridade, o direito à vida, à saúde, à alimentação, à educação, ao lazer, à profissionalização, à cultura, à dignidade, ao respeito, à liberdade e à convivência familiar e comunitária, além de colocá-los a salvo de toda forma de negligência, discriminação, exploração, violência, crueldade e opressão. [...] 1.38; margin-left: 111pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Art. 4º É dever da família, da comunidade, da sociedade em geral e do poder público assegurar, com absoluta prioridade, a efetivação dos direitos referentes à vida, à saúde, à alimentação, à educação, ao esporte, ao lazer, à profissionalização, à cultura, à dignidade, ao respeito, à liberdade e à convivência familiar e comunitária. [...] 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Com base no ordenamento jurídico pátrio, portanto, evidencia-se que a definição do regime de convivência da criança e do adolescente com seus genitores deve levar em conta os parâmetros que mais favoreçam o bem-estar, a estabilidade e o desenvolvimento do menor de idade. Para tanto, é de suma importância que a criança ou o adolescente não seja privado de uma convivência de qualidade com ambos os genitores, atentando-se para que ele tenha uma rotina saudável, consoante as particularidades presentes no caso concreto. 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> <span 481="" 533="" 948="" 965"="" data-label="Page-Footer" style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif;</p> </td></tr> </table> </div> <div data-bbox=">1952

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	color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">>Assim, o adequado convívio da criança com o pai é indispensável para o pleno desenvolvimento dela, razão pela qual eventuais restrições a esse convívio devem ser efetuadas de forma cautelosa e excepcional, apenas em casos nos quais a presença do genitor represente perigo ao bem-estar e ao adequado desenvolvimento da criança.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">É oportuno registrar que, ao pai ou a mãe que não detenha a guarda do filho menor, é assegurado o direito de visitas, mantendo-se a convivência familiar, conforme disposto na legislação civilista (art. 1.589, caput). Cabe ao magistrado diante das peculiaridades do caso concreto, avaliar os vínculos afetivos e os laços familiares existentes, de modo a definir o regime de convivência que melhor atenda ao interesse da criança, em consonância com o princípio da proteção integral dos direitos infanto-juvenis.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Da análise detida dos autos, observo que a parte agravante postula que haja um estudo psicossocial do caso prévio à regulação das visitas. Requer, ainda, a reforma da decisão, para que as visitas ocorram apenas em locais públicos e seguros, até que a situação seja melhor averiguada, argumentando que o agravado não detém condições de assegurar quaisquer assistências ao menor, colocando inclusive, a sua saúde e integridade física em risco.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Contudo, verifico que não há lastro probatório mínimo que evidenciem situação de risco ao infante capaz de ensejar restrição ao direito de convivência entre o menor e o genitor. Assim, neste momento, as alegações constantes da peça recursal não foram devidamente comprovadas, tratando-se, portanto, de meras assertivas unilaterais, desprovidas de substrato probatório mínimo. Não há prova inequívoca de que a convivência paterna segundo os moldes discutidos é apta a trazer riscos à criança, razão pela qual permanece válido, por ora, o posicionamento favorável ao regime de visitação disposto no decism agravado</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Assim, diante da ausência de elementos concretos que evidenciem risco à integridade física ou psicológica do menor, entendo que deve ser preservado, no presente momento processual, o regime de convivência estipulado na decisão. Eventuais questões supervenientes ou fatos novos deverão ser oportunamente analisados no curso da demanda originária, quando da completa formação do conjunto probatório.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> A propósito:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">EMENTA: APELAÇÃO. DIREITO DE FAMÍLIA. AÇÃO DE ALIMENTOS C/C REGULAMENTAÇÃO DE GUARDA, VISITAS ASSISTIDAS. PRIMEIRA APELAÇÃO: PRELIMINAR DE NULIDADE DA SENTENÇA. REJEITADA. RECURSO NÃO PROVIDO. SEGUNDA APELAÇÃO: ALTERAÇÃO DA GUARDA COMPARTILHADA PARA UNILATERAL. CIRCUNSTÂNCIA EXCEPCIONAL QUE INVIABILIZA O EXERCÍCIO DA GUARDA COMPARTILHADA. GUARDA UNILATERAL CONCEDIDA EM FAVOR DA

Processo	0638822-30.2024.8.06.0000
	GENITORA. SUSPENSÃO DO DIREITO DE PERNOITE DA CRIANÇA COM O GENITOR. ESTUDO SOCIAL E RELATÓRIO PSICOLÓGICO. REGIME DE CONVIVÊNCIA ESTABELECIDO NA SENTENÇA DEVE SER MANTIDO. ATENÇÃO AO PRINCÍPIO DO MELHOR INTERESSE DO MENOR. RECURSO PARCIALMENTE PROVIDO. - Sempre que se tratar de interesse relativo à criança e ao adolescente, incluindo aí a concessão de guarda, o magistrado deve se ater ao interesse do menor, considerando, para tanto, primordialmente, o seu bemestar, conforme consagrado constitucionalmente, art. 227 da Constituição Federal -A existência medida protetiva em favor de um dos genitores caracteriza-se como circunstância excepcional que inviabiliza o exercício da guarda compartilhada - Assim sendo, é imperativo que se altere o regime de guarda para unilateral, em favor da segunda apelante, mas com a manutenção do regime de visitação, garantindo-se a convivência da menor com o genitor, apenas com a ressalva de respeito às medidas protetivas, enquanto estas forem eficazes, evitando-se o contato direto do primeiro apelante com a segunda apelante - A regulamentação de visitas objetiva garantir à parte que não tem a guarda do filho o direito de visitá-lo, cabendo ao julgador, na estipulação, sobretudo, das condições e do horário, considerar os elementos referentes à necessidade de convivência mínima, como forma de assegurar o melhor interesse da criança - Verifica-se que a sentença atende às recomendações dos estudos sociais elaborados pelos profissionais do Setor Técnico Judicial da Comarca de Lagoa Santa-MG, considerando a tenra idade da criança . A decisão estabelece um regime de visitas gradativo e monitorado, garantindo a segurança da criança e promovendo o desenvolvimento do vínculo afetivo com o pai e a família paterna de forma progressiva - Assim, não havendo razões para modificação da convivência paterna com a menor, a sentença que regulamentou a convivência paterno-filial deve ser confirmada - Primeira apelação: preliminar rejeitada, recurso não provido - Segunda apelação: recurso parcialmente provido.</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> (TJ-MG - Apelação Cível: 50023028620218130148 1.0000.23 .095350-7/002, Relator.: Des.(a) Paulo Rogério de Souza Abrantes (JD Convocado), Data de Julgamento: 19/07/2024, Câmara Justiça 4.0 - Especiali, Data de Publicação: 22/07/2024)</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">PROCESSUAL CIVIL. APELAÇÃO CÍVEL. DIREITO DE FAMÍLIA. MODIFICAÇÃO DE GUARDA CUMULADA COM AÇÃO DE EXONERAÇÃO DE ALIMENTOS. PEDIDO DE JUSTIÇA GRATUITA. DEFERIDO GUARDA COMPARTILHA. DEFERIDA. REGRA NO ORDENAMENTO JURÍDICO BRASILEIRO. PENSIONAMENTO ENTRE EX-CÔNJUGES. EXCEPCIONALIDADE. CARÁTER TRANSITÓRIO E TEMPORÁRIO. POSSIBILIDADE PRÁTICA DE INSERÇÃO NO MERCADO DE TRABALHO DA EX-CÔNJUGE. PESSOA JOVEM. SAUDÁVEL. CAPACIDADE POTENCIAL DE DESEMPENHO DE ATIVIDADE LABORAL. APELO CONHECIDO E PARCIALMENTE PROVIDO. 1. Conforme entendimento dominante do Superior Tribunal de Justiça e do Tribunal de Justiça do Estado do Ceará, os benefícios da justiça gratuita podem ser concedidos à parte que comprovar sua hipossuficiência financeira em arcar com as custas processuais, sem prejuízo de seu sustento próprio e de sua família, estando tal fato comprovado, já que a recorrente, apesar de ter capacidade laborativa, demonstrou, através de sua declaração do imposto de renda, que a sua única fonte de renda do ano de 2018 foi a pensão alimentícia adimplida pelo seu ex-marido, não tendo, portanto, capacidade financeira para arcar com as custas processuais. Comprovada a hipossuficiência financeira da recorrente, torna-se imprescindível a concessão do benefício da justiça gratuita. 2. O instituto da guarda compartilhada, com a vigência da Lei nº 13.058/2014, passou a ser regra no ordenamento jurídico brasileiro, sendo inviável apenas na hipótese de um dos genitores não estar apto ao exercício da guarda ou manifestar expressamente desinteresse em exercê-la, o que não restou configurado nos presentes autos. Ademais, não se pode olvidar os ensinamentos da autora Maria Berenice Dias, segundo a qual a existência de discordância entre os genitores do menor, após a dissolução do casamento, não acarretará a prevalência da vontade de qualquer deles, mas sim a guarda compartilhada por ser esta a regra, consoante dispõe o art. 1.584, § 2º, CC/02. 3. A regra da guarda compartilhada deve ser observada, mesmo no caso de inexistência de acordo

Processo	0638822-30.2024.8.06.0000
	entre os genitores, dado que deve ser priorizado o melhor interesse da criança, salvo quando a instituição desta possa comprometer o bem-estar e o desenvolvimento psíquico e emocional da criança. Assim, ausente a demonstração de atos de alienação parental por parte de um dos genitores, não se vislumbra motivo para reformar a decisão do magistrado de primeiro grau. 4. No que tange a obrigação alimentar, observa-se que esta possui o caráter da variabilidade, devendo coadunar-se com o binômio da necessidade do alimentado e possibilidade do alimentante. Com o esclarecimento que lhe é peculiar, expõe sobre o tema a profa. Maria Helena Diniz: O dever de prestar alimentos fundamenta-se na solidariedade familiar, sendo uma obrigação personalíssima devida pelo alimentante em razão de parentesco que o liga ao alimentando, e no dever legal de assistência em relação ao cônjuge (RT, 746:150) ou companheiro necessitado. (in DINIZ, Maria Helena. Código civil Anotado. 15ª ed. rev e atual. - São Paulo: Saraiva, 2010, pág. 1202.). 5. Deve-se observar que o valor da pensão alimentícia pode sofrer alterações quantitativas ou qualitativas, pois fixado logo após a verificação das necessidades das alimentadas e das condições financeiras do alimentante. Logo, somente se sobrevier mudança na situação financeira de quem paga ou na de quem a recebe, poderá o interessado interpor ação própria visando a exoneração, redução ou majoração do encargo. 6. Desta forma, em razão da guarda passar a ser compartilhada, pode o genitor custear diretamente todos os gastos das filhas, isto é ser o responsável pelas despesas diretas das filhas, podendo o julgador estabelecer pautas de alimentos para cumprimento direto e eficaz, desde que o pagamento direto feito pelo alimentante seja mais benéfico aos interesses das menores alimentandas, o que restou demonstrado nos autos. 7. Não se pode olvidar que o apelado continua a ser o único provedor de todas as despesas das filhas, ficando promovida, ora apelante, unicamente responsável pelo custeio da alimentação das crianças, quando estas estiverem em sua companhia, razão pela qual ficou estabelecido na sentença que o apelado ficaria obrigado a depositar na conta corrente da recorrente apenas o valor de 1 (um) salário mínimo para quando as menores estiverem sob sua responsabilidade. 8. Quanto a pensão alimentícia a ex-cônjuge, o Superior Tribunal de Justiça sedimentou o entendimento de que a pensão deve ser fixada com termo certo, assegurando ao beneficiário tempo hábil para que reingresse ou se recoloca no mercado de trabalho, possibilitando-lhe a manutenção pelos seus próprios meios. No caso em comento, respeitou-se tais premissas já que a apelante tem capacidade para se reinserir no mercado de trabalho, afinal é advogada e corretora de imóveis, e porque se estipulou um prazo razoável para o termo final da pensão devida a recorrente. 9. Apelo conhecido e parcialmente provido. (TJ-CE - AC: 02002014120158060001 CE 0200201-41. 2015.8.06.0001, Relator.: CARLOS ALBERTO MENDES FORTE, Data de Julgamento: 11/03/2020, 2ª Câmara Direito Privado, Data de Publicação: 11/03/2020) Frise-se o parecer da Procuradoria Geral de Justiça (PGJ), que reforça tal entendimento. Impende registrar, porém, que, com vistas a conferir a mais ampla proteção ao infante Promovida/Agravante , notadamente com a realização do estudo psicossocial do caso , para que sejam examinados aspectos psicológicos e comportamentais do genitor e da genitora, bem como do próprio infante, para que se apurem os efeitos que a convivência com genitor produzem sobre o bem-estar do infante. É pertinente, ainda, que o estudo social examine as

Processo	0638822-30.2024.8.06.0000
	condições estruturais da residência do genitor, para que sejam sanados os questionamentos suscitados a partir da narrativa da genitora do menor (elementos de perigo, tais como piscina descoberta e animais de suposta periculosidade não adestrados; ausência de estrutura para o recebimento da criança; etc.). Vejamos a jurisprudência sobre o tema: AGRAVO DE INSTRUMENTO. AÇÃO DE GUARDA E CONVIVÊNCIA. REGULAMENTAÇÃO DA CONVIVÊNCIA. CRIANÇA COM 3 ANOS. PERNOITE NA RESIDÊNCIA PATERNA. ALEGAÇÃO DE ALEITAMENTO NOTURNO E NEGLIGÊNCIA NOS CUIDADOS. PRINCÍPIO DO MELHOR INTERESSE DA CRIANÇA. AUSÊNCIA DE ELEMENTOS CONCRETOS QUE INDIQUEM RISCO. IMPORTÂNCIA DO FORTALECIMENTO DOS LAÇOS AFETIVOS E DO CONVÍVIO FRATERNAL. DECISÃO QUE PREVÊ ADAPTAÇÃO GRADUAL, COM SALVAGUARDA À ESTABILIDADE EMOCIONAL. REALIZAÇÃO DE ESTUDO SOCIAL. POSSIBILIDADE DE REVISÃO CASO SURJAM NOVOS ELEMENTOS 1. O direito à convivência familiar é prerrogativa da criança e deve ser exercido de modo a assegurar seu pleno desenvolvimento, observando-se o princípio do melhor interesse e a proteção integral. 2. Inexistindo provas de risco ou de prejuízo à menor, o pernoite na residência paterna, de maneira adaptativa e gradual, mostra-se compatível com sua idade e com a preservação do vínculo afetivo e fraterno. 3. Alegações de amamentação noturna e de suposta negligência paterna não se sustentam diante da ausência de comprovação e da possibilidade de ajustes no trato cotidiano. RECURSO DESPROVIDO. (Agravado de Instrumento, Nº 52257358220258217000, Primeira Câmara Especial Cível, Tribunal de Justiça do RS, Relator: Eduardo Augusto Dias Bainy, Julgado em: 11-08-2025). DIREITO DE FAMÍLIA. AGRAVO DE INSTRUMENTO. AÇÃO DE DIVÓRCIO. GUARDA E CONVIVÊNCIA DE MENOR. ALIMENTOS PROVISÓRIOS. MANUTENÇÃO DA DECISÃO DE ORIGEM. RECURSO DESPROVIDO. I. CASO EM EXAME: AGRAVO DE INSTRUMENTO INTERPOSTO CONTRA DECISÃO QUE DEFERIU PARCIALMENTE A TUTELA PROVISÓRIA DE URGÊNCIA EM AÇÃO DE DIVÓRCIO, DETERMINANDO A GUARDA UNILATERAL MATERNA DO MENOR, REGULAMENTAÇÃO DA CONVIVÊNCIA PATERNO-FILIAL E FIXAÇÃO DE ALIMENTOS PROVISÓRIOS. II. QUESTÃO EM DISCUSSÃO: HÁ DUAS QUESTÕES EM DISCUSSÃO: (I) A POSSIBILIDADE DE ALTERAÇÃO DA GUARDA UNILATERAL MATERNA PARA GUARDA UNILATERAL PATERNA; (II) A INVERSÃO DA OBRIGAÇÃO ALIMENTAR, PARA QUE PASSE A SER DE RESPONSABILIDADE DA GENITORA. III. RAZÕES DE DECIDIR: 1. A ALTERAÇÃO DA GUARDA É MEDIDA EXCEPCIONAL QUE REQUER COMPROVAÇÃO ROBUSTA DE MOTIVOS RELEVANTES, DEVENDO SEMPRE OBSERVAR O MELHOR INTERESSE DA CRIANÇA. 2. OS ELEMENTOS PROBATÓRIOS APRESENTADOS PELO AGRAVANTE NÃO SÃO SUFICIENTES PARA JUSTIFICAR A ALTERAÇÃO DA GUARDA PROVISÓRIA OU A INVERSÃO DA OBRIGAÇÃO ALIMENTAR. 3. A DECISÃO DE ORIGEM, QUE DEFERIU A GUARDA UNILATERAL MATERNA E FIXOU ALIMENTOS PROVISÓRIOS, ESTÁ ALINHADA COM O MELHOR INTERESSE DO MENOR, CONSIDERANDO O CENÁRIO PROCESSUAL ATUAL. 4. RECOMENDA-SE, COM URGÊNCIA, A REALIZAÇÃO DE AVALIAÇÃO PSICOSSOCIAL E ESTUDO SOCIAL COM AS PARTES ENVOLVIDAS PARA MELHOR INSTRUÇÃO DO FEITO. 5. AS QUESTÕES RELATIVAS À GUARDA E À REGULAMENTAÇÃO DA CONVIVÊNCIA PODERÃO SER REANALISADAS À LUZ DE NOVOS ELEMENTOS PROBATÓRIOS, SEM OFENSA AO AQUI DECIDIDO. IV. DISPOSITIVO E

Processo	0638822-30.2024.8.06.0000
	TESE:RECURSO DESPROVIDO. TESE DE JULGAMENTO: A ALTERAÇÃO DA GUARDA DE MENOR DEVE OBSERVAR O MELHOR INTERESSE DA CRIANÇA, SENDO NECESSÁRIA COMPROVAÇÃO ROBUSTA DE MOTIVOS RELEVANTES PARA JUSTIFICAR A MEDIDA. DISPOSITIVOS RELEVANTES CITADOS: NÃO CITADOS. JURISPRUDÊNCIA RELEVANTE CITADA: NÃO CITADA.(Agravado de Instrumento, Nº 50808004620258217000, Oitava Câmara Cível, Tribunal de Justiça do RS, Relator: Luiz Felipe Brasil Santos, Julgado em: 24-07-2025). Observa-se que o estudo em questão foi postulado pela Agravante na petição de ID 145745977, mas não houve a apreciação de tal pedido pelo d. juízo a quo. Ainda que não tenha havido reiteração oportuna pela Recorrente antes do encerramento da instrução, entendi pela ausência de prejuízo, uma vez que sua determinação pode se dar ex officio ante a necessidade de se assegurar a adequada proteção ao infante. O resultado da referida prova técnica permitirá uma análise mais justa e completa sobre o caso, conferindo maior segurança à formação de um convencimento para a confirmação, a reforma ou a revogação do regime de visitação em vigor, conforme o que for apurado. Trata-se da medida mais condizente com a consagração do Princípio do Melhor Interesse da Criança, por visar à obtenção de lastro para a decisão que melhor concilie a proteção à saúde e à integridade do infante com o adequado convívio do menor com o seu genitor. Sob tais premissas, deferi, na decisão liminar proferida nestes autos, o pedido de urgência voltado à realização do exame psicossocial, decisão que ora ratifico, no exercício do poder de cautela do Julgador. Em síntese, portanto, entendo que deve ser provisoriamente mantido o regime de visitas estipulado no decism agravado, uma vez que ainda não foram demonstrados nos autos circunstâncias aptas a tornar contraindicada a convivência estipulada, tais como a manifestação de conduta prejudicial à criança e ao seu desenvolvimento. Por outro lado, mostra-se imprescindível a realização de estudo psicossocial sobre o caso, sobretudo para apuração das condições sobreditas (aspectos psicológicos e comportamentais dos genitores e do infante, com enfoque para os efeitos que a convivência com genitor produzem sobre o bem-estar do menor; bem como exame das condições estruturais da residência do genitor quanto à eventual existência de elementos de perigo a uma criança de tenra idade). Diante do exposto, CONHEÇO DAR PARCIAL PROVIMENTO, confirmando a decisão liminar de ID 25189857 a fim de determinar a realização de

Processo	0638822-30.2024.8.06.0000
	um Estudo Psicossocial sobre o caso (Estudo Social e Avaliação Psicológica), destinado à apuração das circunstâncias acima delineadas, possibilitando, após sua conclusão, a possibilidade de reavaliação do regime provisório de visitas fixado pelo juízo de primeiro grau. Comunique-se É como voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator CICERO DA SILVA GADELHA DENIS ORTIZ JORDANI - (SP222729) BANCO DO BRASIL SA BANCO BRADESCO S/A BANCO SANTANDER (BRASIL) S.A. BANCO CSF S/A NU FINANCEIRA S.A. - SOCIEDADE DE CREDITO, FINANCIAMENTO E INVESTIMENTO ITAU UNIBANCO S.A. LUIZACRED S.A. SOCIEDADE DE CREDITO, FINANCIAMENTO E INVESTIMENTO BANCO MASTER S/A Não informado Não informado
Processo	3011681-97.2025.8.06.0000
Número de ordem	170
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Superendividamento
Polo ativo	CICERO DA SILVA GADELHA
Advogado(s) - Polo ativo	DENIS ORTIZ JORDANI - (SP222729)
Polo passivo	BANCO DO BRASIL SA BANCO BRADESCO S/A BANCO SANTANDER (BRASIL) S.A. BANCO CSF S/A NU FINANCEIRA S.A. - SOCIEDADE DE CREDITO, FINANCIAMENTO E INVESTIMENTO ITAU UNIBANCO S.A. LUIZACRED S.A. SOCIEDADE DE CREDITO, FINANCIAMENTO E INVESTIMENTO BANCO MASTER S/A
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3011681-97.2025.8.06.0000
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Processo	3011681-97.2025.8.06.0000
	PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO PROCESSO: 3011681-97.2025.8.06.0000 AGRAVO DE INSTRUMENTO (202) AGRAVANTE: CÍCERO DA SILVA GADELHA AGRAVADO: BANCO DO BRASIL S/A, BANCO BRADESCO S/A, BANCO SANTANDER (BRASIL) S/A, BANCO CSF S/A, NU FINANCEIRA S/A - SOCIEDADE DE CRÉDITO, FINANCIAMENTO E INVESTIMENTO, ITAÚ UNIBANCO S/A, LUIZACRED S/A - SOCIEDADE DE CRÉDITO, FINANCIAMENTO E INVESTIMENTO, BANCO MASTER S/A EMENTA: AGRAVO DE INSTRUMENTO. RECURSO INTERPOSTO EM FACE DE DECISÃO INTERLOCUTÓRIA PROFERIDA POR JUÍZO DA COMARCA DE PATOS, NO ESTADO DA PARAÍBA. INCOMPETÊNCIA ABSOLUTA DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ PARA PROCESSAR E JULGAR A DEMANDA. RECURSO NÃO CONHECIDO. I) CASO EM EXAME: 1. Trata-se de agravo de instrumento interposto por Cícero da Silva Gadelha contra decisão interlocutória proferida pelo d. Juízo da 4ª Vara Mista da

Processo	3011681-97.2025.8.06.0000
	Comarca de Patos/PB, nos autos de ação de reestruturação de dívidas com pedido de tutela de urgência nº 0803855-12.2025.8.15.0251. QUESTÃO EM DISCUSSÃO: 2. O cerne da controvérsia consiste em verificar se o presente recurso deve ou não ser admitido e, posteriormente, em caso positivo, se a decisão interlocutória de primeiro grau deve ser reformada ou não. III) RAZÕES DE DECIDIR: 3. O presente recurso de Agravado de Instrumento desafia decisão proferida pelo juízo da 4ª Vara Mista da Comarca de Patos/PB, pertencente ao Tribunal de Justiça da Paraíba, que está fora da jurisdição deste eg. Tribunal de Justiça do Ceará. IV) DISPOSITIVO 4. Recurso não conhecido. ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em não conhecer do recurso interposto, nos termos do voto do desembargador relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de agravo de instrumento interposto por Cícero da Silva Gadelha contra decisão interlocutória proferida pelo d. Juízo da 4ª Vara Mista da Comarca de Patos/PB, nos autos de ação de reestruturação de dívidas com pedido de tutela de urgência nº 0803855-12.2025.8.15.0251. Em suma, a decisão agravada indeferiu o pedido de tutela de urgência, em que a parte autora solicitava a suspensão das cobranças e a limitação dos descontos de suas dívidas a 30% de seu salário líquido. Como pedido principal, requer a concessão de efeito suspensivo ao agravo, além da antecipação de tutela recursal para suspender as cobranças de todas as dívidas pelo

Processo	3011681-97.2025.8.06.0000
	prazo de até cento e oitenta dias, ou até a realização de audiência de conciliação, com o afastamento da incidência de novos encargos moratórios. Subsidiariamente, busca a limitação dessas cobranças a no máximo 30% do salário líquido do agravante, pedindo ainda a imposição de multa diária para o caso de descumprimento pelos agravados e a determinação de exclusão de seu nome dos cadastros restritivos ao crédito durante o curso do processo. Após o despacho de ID 26609929, que intimou o agravante a se manifestar sobre eventual incompetência deste Tribunal para processar e julgar a demanda, o recorrente apresentou petição (ID 27753667), solicitando a desistência do recurso ao perceber que o agravo foi erroneamente interposto perante o tribunal cearense, quando deveria ter sido submetido ao Tribunal de Justiça da Paraíba. É o relatório. VOTO O cerne da controvérsia consiste em verificar se o presente recurso deve ou não ser admitido e, posteriormente, em caso positivo, se a decisão interlocutória de primeiro grau deve ser reformada ou não. Prefacialmente, antes de analisar o mérito, deve-se averiguar a presença dos pressupostos intrínsecos e extrínsecos de admissibilidade, sem os quais resta inviabilizado o conhecimento do recurso. Nesse contexto, verifica-se a existência de óbices para o regular processamento e julgamento deste agravo de instrumento, conforme será a seguir demonstrado. Verifica-se que o presente recurso de Agravo de Instrumento desafia decisão proferida pelo juízo da 4ª Vara Mista da Comarca de Patos/PB, pertencente ao Tribunal de Justiça da Paraíba, que está fora da jurisdição deste eg. Tribunal de Justiça do Ceará. Diante disso, DEIXO DE CONHECER do presente Agravo de Instrumento em virtude da minha incompetência absoluta, a teor do disposto no art. 932, III, do CPC. É como voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator

Processo	0200257-12.2024.8.06.0049
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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;0200257-12.2024.8.06.0049 - &#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: MELQUISEDECK FERREIRA</p><p> APELADO: BANCO INTERMEDIUM S/A, CAIXA ECONÔMICA FEDERAL, BANCO MERCANTIL DO BRASIL S/A, BANCO DO BRASIL S/A, ASSOCIAÇÃO DE POUPANCA E EMPRÉSTIMO POUPEX, BANCO SAFRA S/A</p><p>
 </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Ementa Direito&#160;processual&#160;cível e do consumidor. Recurso de apelação cível. Ação de&#160;repactuação de dívidas. Lei do superendividamento (lei nº 14.181/2021). Sentença de extinção do feito por ausência de interesse de agir. Inobservância do rito especial. Obrigatoriedade da fase de conciliação. Cerceamento de defesa. Recurso conhecido e provido. Sentença cassada. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado, à unanimidade de votos, em conhecer do recurso, para

Processo	0200257-12.2024.8.06.0049
	oitocentos e vinte e quatro reais e setenta e um centavos), equivalendo a 86% de sua renda líquida, estando o Apelante em déficit financeiro todos os meses, causando mais encargos e gerando demasiado desequilíbrio financeiro." </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Ressalta a ausência de constitucionalidade do Decreto 11.567/23, pois "a fixação do mínimo existencial em 42% do salário-mínimo (cf. art. 3º do Decreto 11.567/23) contrasta com qualquer realidade brasileira, notadamente porque ninguém com R\$ 600,00 (seiscentos reais) conseguirá dar continuidade às despesas de consumo necessárias à subsistência digna, com destaque às contas de água, energia elétrica, telefone, Internet, alimentação própria, educação formal, medicamentos, saúde e higiene" ; que ainda " a inconstitucionalidade decorre da fragmentação dos deveres fundamentais de proteção aos consumidores, na medida em que o 'mínimo existencial regulamentado' inviabilizará planos de pagamento e repactuações já ajustadas e em ajustamento." </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Defende que "deve prevalecer o entendimento que prevê o desconto limitado ao percentual de 35% dos vencimentos líquidos do devedor, evitando risco a sua subsistência e de sua família" e que " o fato de os descontos das parcelas de empréstimos pessoais serem efetuados em conta-corrente e os consignados em folha de pagamento, não afasta a necessidade de estabelecer o limite pretendido", já que se trata da conta em que o Apelante recebe seus vencimentos. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Aponta "a necessidade da designação da audiência conciliatória nos procedimentos referentes à Lei 14.181/2021 ("Lei do Superendividamento")" ; que não se pode postergar a audiência de conciliação, posto que "servirá para o início da negociação entre consumidor e os fornecedores", sendo apresentado e discutido o plano de pagamento. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Pugna pelo provimento do recurso, a fim de que a sentença seja cassada, determinando-se o retorno dos autos ao juízo de origem. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É o relatório. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="center"> VOTO </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Primeiramente ressalte-se que

Processo	0200257-12.2024.8.06.0049
	“Considerando a natureza concursal, compete à Justiça estadual ou distrital conhecer do processo de superendividamento previsto nos arts. 104-A e 104-B do Código de Defesa do Consumidor, com a redação da Lei n. 14.181/2021, e julgá-lo, ainda que um ente federal integre o polo passivo, tratando-se de exceção ao art. 109, I, da Constituição Federal” (STJ - CC: 192140 DF 2022/0316357-3, Relator.: JOÃO OTÁVIO DE NORONHA, Data de Julgamento: 10/05/2023, S2 - SEGUNDA SEÇÃO, Data de Publicação: DJe 16/05/2023). Aduz o autor na exordial que formula a causa de pedir e os pedidos de sua petição inicial utilizando como fundamento jurídico a Lei do Superendividamento (Lei nº 14.181/21), tendo em vista que se trata de pessoa superendividada, nos termos da própria Lei. Ressalta que não pretende esquivar-se do pagamento de suas dívidas, estando a utilizar a nova Lei do Superendividamento justamente para criar um plano de pagamento e permanecer adimplente com todos os seus credores. Aduz que se encontra em estado de insolvência, incapaz de pagar suas dívidas, visto que, ao adimplir com as obrigações, sua subsistência estaria prejudicada, impossibilitando-o de pagar por bens essenciais como comida, aluguel, água, luz e telefone. Sustenta que possui com as instituições financeiras rés as seguintes dívidas, sendo o total abatido mensalmente de seu salário o quantum de R\$ 5.271,36 (cinco mil, duzentos e setenta e um reais, trinta e seis centavos): i) com o credor BANCO INTER S/A, duas dívidas relacionadas a empréstimos consignados: a) em 72 parcelas de R\$ 200,00 cada, a vencer 51 prestações; b) em 72 parcelas de R\$ 35,79 cada, a vencer 65 prestações; ii) com o credor EMPRÉSTIMO POUPEX, uma dívida relacionada a empréstimo consignado em 72 parcelas de R\$ 625,40, a vencer 50 prestações; iii) com o credor BANCO DO BRASIL S/A, duas dívidas relacionadas a empréstimos consignados: a) em 72 parcelas de R\$ 3.126,58, a vencer 48 prestações; b) em 48 parcelas de R\$ 671,59, a vencer 10 prestações; iv) com o credor BANCO MERCANTIL DO BRASIL S/A, três dívidas relacionadas a empréstimo consignado: a) em 72 parcelas de R\$ 72,00 cada, a vencer 38 prestações; b) em 72 parcelas de R\$ 96,00 cada, a vencer 38 prestações; em 72 parcelas de R\$ 93,00 cada, a vencer 41 prestações; v) com a credora CAIXA ECONÔMICA FEDERAL, uma dívida relacionada a empréstimo consignado em 72 parcelas de R\$ 151,00, a vencer 66 prestações;

Processo	0200257-12.2024.8.06.0049
	Georgia, serif;">> vi) Com o credor BANCO SAFRA S/A, uma dívida relacionada a empréstimo consignado em 72 parcelas de R\$ 200,00, a vencer 53 prestações; </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> E salienta que, somadas, as dívidas hoje consomem mais de 56,82% de sua renda líquida, quando considerados os descontos obrigatórios, gerando demasiado desequilíbrio a sua vida financeira, estando este claramente em situação de superendividamento. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Despacho judicial determinando a intimação da parte autora para se manifestar acerca de sua manifesta ausência de interesse de agir, por entender o douto magistrado a quo que, se os débitos alegados comprometem cerca de 84,35% dos proventos líquidos do promovente, resta montante superior a R\$ 600,00 (seiscentos reais), patamar atual para o mínimo existencial, não estando caracterização do superendividamento. (id. 25465483). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Após a manifestação do promovente, quando defendeu que "A fixação do mínimo existencial em 42% do salário-mínimo (cf. art. 3º do Decreto 11.567/23) contrasta com qualquer realidade brasileira, notadamente porque ninguém com R\$ 600,00 (seiscentos reais) conseguirá dar continuidade às despesas de consumo necessárias à subsistência digna, com destaque às contas de água, energia elétrica, telefone, Internet, alimentação própria, educação formal, medicamentos, saúde e higiene" e pugnando pela realização da audiência (id. 25465486), foi proferida a sentença objurgada, extinguindo o processo sem resolução de mérito (art. 485, VI, do CPC), nos seguintes termos: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> [...]</p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> FUNDAMENTAÇÃO </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Dispõem os artigos 54-A, § 1º, e 104-A, caput, do CDC, o seguinte: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 5.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Art. 54-A, § 1º, CDC Entende-se por superendividamento a impossibilidade manifesta de o consumidor pessoa natural, de boa-fé, pagar a totalidade de suas dívidas de consumo, exigíveis e vincendas, sem comprometer seu mínimo existencial, nos termos da regulamentação. (Incluído pela Lei nº 14.181, de 2021) </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 5.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Art. 104-A, CDC. A requerimento do consumidor superendividado pessoa natural, o juiz poderá instaurar processo de repactuação de dívidas, com vistas à realização de audiência conciliatória, presidida por ele ou por conciliador credenciado no juízo, com a presença de todos os credores de dívidas previstas no art. 54-A deste Código, na qual o consumidor apresentará proposta de plano de pagamento com prazo máximo de 5 (cinco) anos, preservados o mínimo existencial, nos termos da regulamentação, e as garantias e as formas de pagamento originalmente pactuadas. (Incluído pela Lei nº 14.181, de 2021) </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Diante disso, para que seja instaurado o procedimento de repactuação, é necessário que haja dívida que comprometa o mínimo existencial do consumidor para a sua abertura. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse contexto, o Decreto 11.150/2022, após modificação pelo Decreto 11.567/2023, regulamentando as situações de superendividamento em dívidas de consumo, estabeleceu como, valor relativo ao tema,&#160; especificamente para as ações desta natureza, </p>

Processo	0200257-12.2024.8.06.0049
	 &#160o montante de R\$ 600,00 (seiscentos reais), valor inferior ao que ainda é disposto livremente pelo demandante, após o pagamento dos débitos, segundo a inicial, de modo que,&#160; para os fins deste procedimento, &#160não há comprometimento de seu mínimo existencial; >Art. 3º, Decreto 11.150/2022 No âmbito da prevenção, do tratamento e da conciliação administrativa ou judicial das situações de superendividamento, considera-se mínimo existencial a renda mensal do consumidor pessoa natural equivalente a R\$ 600,00 (seiscentos reais). (Redação dada pelo Decreto nº 11.567, de 2023) >§ 1º A apuração da preservação ou do não comprometimento do mínimo existencial de que trata o caput será realizada considerando a base mensal, por meio da contraposição entre a renda total mensal do consumidor e as parcelas das suas dívidas vencidas e a vencer no mesmo mês. >§ 2º O reajustamento anual do salário mínimo não implicará a atualização do valor de que trata o caput. >&#160;(Revogado pelo Decreto nº 11.567, de 2023) >§ 3º Compete ao Conselho Monetário Nacional a atualização do valor de que trata o caput. >Embora o demandante argua que o Decreto é inconstitucional, ressalto que atos normativos dessa natureza possuem presunção de constitucionalidade, sendo o conceito estabelecido estritamente para fins de procedimento desta natureza, o que deve ser levado em consideração ao se abarcar o conceito de mínimo existencial. Ainda, embora a questão tenha sido encaminhada para análise pelo Supremo Tribunal Federal, por meio da ADPF 1097, ressalto que nada ainda foi estabelecido pelo Tribunal Excelso, de modo que entendo que a norma deve continuar sendo aplicada. >A seguir, julgados da jurisprudência pátria, entendendo pela constitucionalidade do decreto ou mesmo aplicando o que foi trazido pelo decreto para aferição do mínimo existencial: >Direito Processual Civil E CIVIL. Agravo de Instrumento. AÇÃO ORDINÁRIA. LEI DO SUPERENDIVIDAMENTO. PEDIDO DE TUTELA ANTECIPADA. LIMITAÇÃO DOS DESCONTOS. NÃO CUMPRIMENTO DOS REQUISITOS LEGAIS PARA CONCESSÃO DE TUTELA DE URGÊNCIA. RECURSO PROVIDO. I. Caso em exame 1. Trata-se de Agravo de Instrumento contra decisão proferida, nos autos da Ação Ordinária, que deferiu o pedido de tutela antecipada. II. Questão em discussão 2. A questão posta em análise cinge-se em verificar se está correta a decisão interlocutória que deferiu o pedido de tutela antecipada de urgência para determinar que a agravante limite os descontos relativos a todos os empréstimos consignados em folha de pagamento ou debitados em conta-corrente, obrigações mensais e sucessivas descritos na inicial, dentro do limite total de 30% da renda líquida da parte requerente, devendo ainda se abster de incluir seu nome nos cadastros de inadimplentes. III. Razões de decidir 3. Como sabido, a Lei nº 14.181/2021 é destinada a aperfeiçoar a disciplina do crédito ao consumidor e dispor sobre a prevenção e o tratamento do superendividamento, que fica caracterizado em face da impossibilidade manifesta de o consumidor pessoa natural, de boa-fé, pagar a totalidade de suas dívidas de consumo, exigíveis e vincendas, sem comprometer seu mínimo existencial, nos termos da regulamentação (art. 54-A, § 1º). 4. Essa lei é clara ao dispor que a requerimento do consumidor superendividado pessoa natural, o juiz poderá

Processo	0200257-12.2024.8.06.0049
	instaurar processo de repactuação de dívidas, com vistas à realização de audiência conciliatória, presidida por ele ou por conciliador credenciado no juízo, com a presença de todos os credores de dívidas previstas no art. 54-A deste Código, na qual o consumidor apresentará proposta de plano de pagamento com prazo máximo de 5 (cinco) anos, preservados o mínimo existencial, nos termos da regulamentação, e as garantias e as formas de pagamento originalmente pactuadas, (art. 104-A). 5. Especificamente sobre a questão ora posta, o Tribunal da Cidadania estabeleceu por meio do Tema Repetitivo nº 1.085 que são lícitos os descontos de parcelas de empréstimos bancários comuns em conta-corrente, ainda que utilizada para recebimento de salários, desde que previamente autorizados pelo mutuário e enquanto esta autorização perdurar, não sendo aplicável, por analogia, a limitação prevista no § 1º do art. 1º da Lei n. 10.820/2003, que disciplina os empréstimos consignados em folha de pagamento. 6. Quanto aos empréstimos pessoais/comuns, deve ser observada a conclusão exposta no precedente do STJ, de observância obrigatória (art. 927, inciso III, do CPC), a qual evidência, de modo ostensivo e categórico, a impossibilidade de se aplicar os ditames da Lei nº 10.820/2003, por analogia. 7. Ademais, é importante destacar o Decreto nº 11.567/2023, que alterou o Decreto nº 11.150/2022 que regulamenta a preservação e o não comprometimento do mínimo existencial para fins de prevenção, tratamento e conciliação de situações de superendividamento, estabeleceu o valor de R\$ 600,00 (seiscentos reais) como o montante correspondente ao mínimo existencial da pessoa natural para a renda mensal. 8. Diante da ausência dos requisitos legais e cumulativos à concessão da tutela provisória de urgência (CPC, art. 300, caput), a decisão agravada deve ser reformada. IV. Dispositivo. 9. Recurso provido. Dispositivos relevantes citados: CPC, Art. 300; Lei nº 14.181/2021, Arts. 54-A e 104-A; § 1º do art. 1º da Lei n. 10.820/2003, Art. 1º, §1º. Jurisprudência relevante citada: REsp n. 1.863.973/SP, relator Ministro Marco Aurélio Bellizze, Segunda Seção, julgado em 9/3/2022, DJe de 15/3/2022; Apelação Cível - 0235538-13.2023.8.06.0001, Rel. Desembargador(a) MARCOS WILLIAM LEITE DE OLIVEIRA, 3ª Câmara Direito Privado, data do julgamento: 12/03/2025, data da publicação: 13/03/2025; Agravo de Instrumento - 0635461-39.2023.8.06.0000, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 3ª Câmara Direito Privado, data do julgamento: 04/12/2024, data da publicação: 05/12/2024; Agravo de Instrumento - 0624830-02.2024.8.06.0000, Rel. Desembargador(a) CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento: 04/12/2024, data da publicação: 04/12/2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do Agravo de Instrumento para dar-lhe provimento, nos termos do voto do Relator. Fortaleza, 26 de março de 2025. DESEMBARGADOR RAIMUNDO NONATO SILVA SANTOS Relator (TJCE, Agravo de Instrumento - 0626525-88.2024.8.06.0000, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 3ª Câmara Direito Privado, data do julgamento: 26/03/2025, data da publicação: 26/03/2025 – grifo nosso). APELAÇÃO CÍVEL. CONSUMIDOR. AÇÃO DE REPACTUAÇÃO DE DÍVIDAS. LEI N. 14.181/2021. SITUAÇÃO DE SUPERENDIVIDAMENTO NÃO CARACTERIZADO. SOMA DAS DÍVIDAS. GARANTIA DO MÍNIMO EXISTENCIAL. DECRETO N. 11.567/23. PRESUNÇÃO DE CONSTITUCIONALIDADE. SENTENÇA MANTIDA. 1. A Lei n. 14.181/2021 foi instituída para aperfeiçoar a disciplina do crédito ao consumidor e estabeleceu a garantia de práticas de crédito responsável, de educação financeira e de prevenção e de tratamento de situações de superendividamento, preservado o mínimo existencial, nos termos da regulamentação, por meio da revisão e da repactuação da dívida. 2. Para que seja instaurado o procedimento de repactuação das dívidas, deve estar evidenciada a situação de superendividamento do consumidor, com a impossibilidade de arcar com todas as dívidas que contraiu sem comprometer o mínimo para a sua sobrevivência.

Processo	0200257-12.2024.8.06.0049
	3. De acordo com o Decreto n. 11.567/23, considera-se mínimo existencial do consumidor a renda mensal correspondente R\$ 600,00 (seiscentos reais). A apuração da situação de superendividamento deve ser obtida considerando-se a renda total mensal do consumidor em conjunto com as dívidas vencidas e vincendas dos meses correspondentes. 4. Não demonstrada a situação de superendividamento constante do art. 54-A do CDC, é correto o processamento sob o procedimento comum. 5. É inviável a declaração de inconstitucionalidade de forma incidental quando não se verifica uma violação frontal à Constituição. A presunção de constitucionalidade das normas assegura que apenas violações evidentes e graves à Constituição resultem na declaração de inconstitucionalidade. 6. Recurso conhecido e não provido. (TJDFT, Acórdão 1970984, 0715623-70.2023.8.07.0007, Relator(a): SONÍRIA ROCHA CAMPOS D'ASSUNÇÃO, 6ª TURMA CÍVEL, data de julgamento: 12/02/2025, publicado no DJe: 06/03/2025 – grifo nosso). Ação de repactuação de dívida e revisão de contratos - art. 104-A do Código de Defesa do Consumidor - superendividamento - requisitos legais para aferição do comprometimento ou não do mínimo existencial - Lei nº 14.181/21 - previsão de regulamentação - Decreto nº 11.150/22 - definição do valor correspondente ao mínimo existencial (art. 3º) - empréstimos consignados excluídos de tal aferição (art. 4º, parágrafo único) - critérios que devem ser observados - presunção de constitucionalidade das leis e atos normativos - constitucionalidade do Decreto - inovação recursal - dívidas de cheque especial e cartão de crédito que superam a renda líquida do autor (excluídos os descontos compulsórios) - comprometimento do mínimo existencial caracterizado - plano de repactuação de dívida apresentado - retorno dos autos à origem para prosseguimento do feito - sentença anulada - recurso parcialmente provido para esse fim. (TJSP, Apelação Cível 1055622-88.2022.8.26.0224; Relator (a): Coutinho de Arruda; Órgão Julgador: 16ª Câmara de Direito Privado; Foro de Guarulhos - 1ª Vara Cível; Data do Julgamento: 07/02/2025; Data de Registro: 07/02/2025). Diante disso, a via escolhida pelo demandante mostra-se inadequada para a sua pretensão, havendo, portanto, ausência do interesse de agir. Assim, a extinção do feito é medida que se impõe. DISPOSITIVO Ante o exposto, EXTINGO o processo sem resolução de mérito, nos termos do artigo 485, VI, do Código de Processo Civil, tendo em

Processo	0200257-12.2024.8.06.0049
	vista o não comprometimento do mínimo existencial, impossibilitando o processamento da demanda, nos termos dos artigos 54-A, § 1º, e 104-A, do Código de Defesa do Consumidor, e do artigo 3º do Decreto 11.150/2022. Sem custas, nos termos do artigo 5º, II, da Lei Estadual 16.132/2016, em razão da gratuidade judiciária que ora defiro ao autor. Condeno o autor em honorários advocatícios devidos ao BANCO SAFRA S.A., tendo em vista a apresentação de peça defensiva, fixando-os em dez por cento do valor atualizado da causa, ficando a exigibilidade suspensa pelo prazo de cinco anos, nos termos do artigo 98, § 3º, do Código de Processo Civil. [...] Pois bem. A pretensão formulada na presente ação está fundamentada na Lei nº 14.181/2021, em que sustenta o autor não ter condições de continuar arcando com os empréstimos contraídos juntos à instituições financeiras rés. Como visto, o Juízo a quo a quo houve por bem extinguir o feito sem resolução de mérito, por entender ausente interesse de agir, não tendo havido sequer a citação dos promovidos. Art. 3º Fornecedor é toda pessoa física ou jurídica, pública ou privada, nacional ou estrangeira, bem como os entes despersonalizados, que desenvolvem atividade de produção, montagem, criação, construção, transformação, importação, exportação, distribuição ou comercialização de produtos ou prestação de serviços. [...] § 2º Serviço é qualquer atividade fornecida no mercado de consumo, mediante remuneração, inclusive as de natureza bancária, financeira, de crédito e securitária, salvo as decorrentes das relações de caráter trabalhista. Com isso, impõe-se sua análise dentro do microsistema protetivo instituído pela Lei nº 8.078/90, em especial quanto à vulnerabilidade material e a hipossuficiência processual dos consumidores. Pretende o promovente, amparado na Lei do Superendividamento (Lei 14.181/2021), a repactuação de suas dívidas para com os réus, para que lhe seja possível pagá-las sem comprometer seu mínimo existencial.

Processo	0200257-12.2024.8.06.0049
	align="justify"> Nessa senda, dispõem os artigos 104-A e 104-B,&#160; capu t, do Código de Defesa do Consumidor: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Art. 104-A. A requerimento do consumidor superendividado pessoa natural, o juiz poderá instaurar processo de repactuação de dívidas, com vistas à realização de audiência conciliatória, presidida por ele ou por conciliador credenciado no juízo, com a presença de todos os credores de dívidas previstas no art. 54-A deste Código, na qual o consumidor apresentará proposta de plano de pagamento com prazo máximo de 5 (cinco) anos, preservados o mínimo existencial, nos termos da regulamentação, e as garantias e as formas de pagamento originalmente pactuadas. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Art. 104-B.&#160; Se não houver êxito na conciliação&#160; em relação a quaisquer credores, o juiz, a pedido do consumidor, instaurará processo por superendividamento para revisão e integração dos contratos e repactuação das dívidas remanescentes mediante plano judicial compulsório e procederá à citação de todos os credores cujos créditos não tenham integrado o acordo porventura celebrado. [Grifou-se]. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Pela leitura do dispositivo legal acima, infere-se que a Lei nº 14.181/2021, conhecida como “Lei do Superendividamento”, promoveu modificações no Código de Defesa do Consumidor e estabeleceu&#160; um rito específico &#160;em que é possibilitada a repactuação de dívidas perante os credores. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Na primeira etapa&#160; deve ser observada a fase de conciliação, &#160;com a presença de todos os credores das dívidas afetas ao qualificado como superendividado, oportunidade na qual o consumidor deverá apresentar proposta de plano de pagamento com prazo máximo de 5 (cinco) anos, preservado o mínimo existencial, nos termos da regulamentação, e as garantias e as formas de pagamento originalmente pactuadas (art. 104-A do CDC). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Em não se obtendo êxito na conciliação é que se poderá instaurar uma segunda fase, com revisão e integração dos contratos e repactuação das dívidas remanescentes mediante plano judicial compulsório (art. 104-B do CDC). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse contexto, recebida a exordial,&#160; era de rigor a designação da audiência conciliatória supracitada&#160; para apresentação de plano voluntário de pagamento/repactuação das dívidas entre as partes envolvidas, o que não restou observado pelo d. Juízo de primeiro grau. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Há, dessa forma, um sistema bifásico de repactuação de dívidas (fase de conciliação/homologatória e a fase judicial/condenatória). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Com efeito, a inobservância do rito especial constitui flagrante violação ao devido processo legal, uma vez que cerceado o direito do autor de ver sua pretensão

Processo	0200257-12.2024.8.06.0049
	analisada nos termos propostos, ou seja, não teve a oportunidade de repactuação das suas dívidas, escopo do próprio rito eleito. Assim, de rigor a instauração de processo de repactuação no juízo de origem, com uma fase inicial conciliatória preventiva, pois, inicialmente, o que se almeja é a realização consensual da repactuação das dívidas do promovente perante os réus com a apresentação de plano de pagamento, evitando-se, assim, que essa se dê de forma contenciosa e compulsória. Nesse sentido, destaco os seguintes precedentes jurisprudenciais: AÇÃO DE REPACTUAÇÃO DE DÍVIDAS. PROCEDIMENTO PRÓPRIO ESTABELECIDO PELA LEI Nº 14.181/2021 E PELO CÓDIGO DE DEFESA DO CONSUMIDOR, O QUAL PREVEEM A REALIZAÇÃO DE AUDIÊNCIA DE CONCILIAÇÃO EM SEDE DA QUAL O DEVEDOR APRESENTARÁ PLANO DE REPACTUAÇÃO DE DÍVIDAS. EXTINÇÃO LIMINAR DA AÇÃO SEM A NECESSÁRIA MARCAÇÃO DA AUDIÊNCIA DE CONCILIAÇÃO PREVISTA NA LEGISLAÇÃO EM ESPÉCIE. NULIDADE. APELAÇÃO CONHECIDA E PROVIDA. 1. A respeito do superendividamento, a Lei nº 14.181/2021, promoveu alterações no Código de Defesa do Consumidor para aperfeiçoar a disciplina do crédito ao consumidor e dispor sobre a prevenção e o tratamento do superendividamento, introduzindo, dentre outros, regramento que trouxe ao consumidor a possibilidade de repactuar as dívidas por meio de audiência conciliatória e em procedimento próprio, que é o caso dos autos. 2. Contudo, o eminente julgador extinguiu a ação liminarmente, sem determinar a realização de audiência de conciliação (e sem determinar a citação dos demandados) em sede da qual o devedor, inclusive, pode apresentar o plano de repactuação não sendo lícito obrigar ao devedor, de logo, apresentar o referido plano de repactuação, até mesmo por ausente previsão legal para tanto. Pelo contrário, a lei faculta ao devedor a apresentação do plano por ocasião da realização da dita audiência de conciliação. 3. Creio, então, que mostrou-se aodada a extinção levada a efeito pela sentença, pelo que entendo deva proceder à anulação da sentença para que o processo siga o rito estabelecido na Lei nº 14.181/2021 e no Código de Defesa do Consumidor (CDC). 4. APELAÇÃO CONHECIDA E PROVIDA. (TJ-CE - Apelação Cível: 02327672820248060001 Fortaleza, Relator.: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 27/11/2024, 1ª Câmara Direito Privado, Data de Publicação: 29/11/2024). [Grifei]. Apelação Cível. Ação de repactuação de dívidas pela Lei do Superendividamento. Sentença de improcedência. Pedido formulado com base na Lei 14.181/2021, que inseriu o art. 104-A do CDC. Inobservância de procedimento inerente ao rito da sobredita lei. Ausência de determinação de realização de audiência de conciliação. Pedido de exibição de documentos que se mostra possível, a fim de viabilizar a apresentação do plano de repactuação. Anulação da r. sentença que é de rigor, para determinar o retorno dos autos ao primeiro grau, para designação de audiência de conciliação. Recurso provido, com determinação. (TJ-SP - Apelação Cível: 10048816720238260302 Jaú, Relator.: Hélio Nogueira, Data de Julgamento: 21/10/2024, 22ª Câmara de Direito Privado, Data de Publicação: 21/10/2024). [Grifei]. EMENTA: APELAÇÃO CÍVEL - AÇÃO DE REPACTUAÇÃO DE DÍVIDAS - SUPERENDIVIDAMENTO - ART. 104-A DO CDC - INOBSERVÂNCIA NO JUÍZO DE ORIGEM -

Processo	0200257-12.2024.8.06.0049
	NULIDADE POR ERROR IN PROCEDENDO. #160;De acordo com os artigos 104-A a 104-C do Código de Defesa do Consumidor, inseridos pela Lei nº 14.181/2021, a ação de repactuação de dívidas deve observar o trâmite processual legalmente previsto, com destaque à necessidade de realização prévia de audiência conciliatória . A inobservância do rito procedimental estabelecido pela Lei nº 14.181/2021 (Lei do Superendividamento) enseja a anulação da sentença, por error in procedendo. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-MG - Apelação Cível: 50118188320228130702 1.0000 .22.136996-0/002, Relator.: Des.(a) Mônica Libânio, Data de Julgamento: 03/07/2024, 11ª CÂMARA CÍVEL, Data de Publicação: 03/07/2024). [Grifei]. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Ementa: APELAÇÃO CÍVEL. PROCESSO CIVIL. CONSUMIDOR. SUPERENDIVIDAMENTO.&#160; AÇÃO DE REPACTUAÇÃO DE DÍVIDAS. LEI Nº 14.181/2021. PRELIMINAR. NULIDADE DA R. SENTENÇA. NÃO ADOÇÃO DO RITO DOS ARTIGOS 104-A E SEQUINTE DO CDC.&#160; COMPROVAÇÃO&#160;. PROCEDIMENTO ESPECIAL.&#160; AUDIÊNCIA DE CONCILIAÇÃO NÃO OPORTUNIZADA. SENTENÇA CASSADA.&#160; 1 . Com o advento da Lei nº 14.181/2021, o Código de Defesa do Consumidor passou a expressamente dispor sobre ações direcionadas à educação financeira do consumidor. O art. 4º, inciso X estipula o atendimento ao seguinte princípio consumerista: ?prevenção e tratamento do superendividamento como forma de evitar a exclusão social do consumidor? . 2. Sob essa ótica, a legislação objetiva a conciliação entre consumidor e instituição financeira e/ou de crédito, a ser realizada no âmbito judicial e extrajudicial. 3. Os artigos 104-A e seguintes do Código de Defesa do Consumidor estabelecem a possibilidade de ajuizamento de ação de repactuação de dívidas, com o fim de evitar o superendividamento do consumidor, mediante a realização de tentativa de conciliação judicial entre as partes; suspensão provisória da exigibilidade das dívidas e proposição de acordo de pagamento, assim como a adoção dos princípios e diretrizes contidas na legislação consumerista . 4. Nesse contexto, o procedimento de superendividamento contido na legislação consumerista diz respeito a procedimento especial binário, consubstanciado em etapas de conciliação, revisão e integração dos contratos e plano de pagamento. 5. No caso dos autos, estando a ação de repactuação de dívidas devidamente instruída e com o objetivo de revisão os contratos firmados e com a finalidade de obter um plano de pagamento com os credores, o prosseguimento do feito é medida que se impõe . 6. Há que se considerar, ainda, que deve ser oportunizada às partes a realização de audiência de conciliação, nos termos da legislação de regência, a fim de possibilitar a homologação de acordo de plano de pagamento dos débitos do consumidor. 7. Apelação conhecida e provida . Sentença cassada. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-DF 0706303-42.2022.8 .07.0003 1781635, Relator.: ANA MARIA FERREIRA DA SILVA, Data de Julgamento: 03/11/2023, 3ª Turma Cível, Data de Publicação: 20/11/2023). [Grifei]. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Diante do exposto, conheço do recurso, para DAR-LHE PROVIMENTO, cassando a sentença recorrida, a fim de que seja observado o procedimento de repactuação de dívida previsto nos artigos 104- A e 104-B, do Código de Defesa do Consumidor. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É o voto. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Fortaleza, data da assinatura digital. </p><p class="western" style="line-height: 200%; orphans: 2; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> <span style="letter-spacing: </p>

Processo	0200257-12.2024.8.06.0049
	normal;">DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Relator</p><p> </p><p> </p> <p> </p><p> </p><p style="text-align: center;"> </p></p>
Processo	0200946-39.2023.8.06.0066
Número de ordem	172
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	MARIA DE FATIMA SALES BANDEIRA SILVA BANCO PAN S.A.
Advogado(s) - Polo ativo	CASSIO ROBSON DE ALMEIDA BEZERRA - (PB25660-A) CASSIO ROBSON DE ALMEIDA BEZERRA - (PB25660-A)
Polo passivo	BANCO PAN S.A. MARIA DE FATIMA SALES BANDEIRA SILVA
Advogado(s) - Polo passivo	SERGIO SCHULZE - (SC7629-A) JOAO VITOR CHAVES MARQUES DIAS - (CE30348-A) SERGIO SCHULZE - (SC7629-A) JOAO VITOR CHAVES MARQUES DIAS - (CE30348-A)
Terceiros	Não informado

Processo	0200946-39.2023.8.06.0066
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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;0200946-39.2023.8.06.0066 - &#160;APELAÇÃO CÍVEL (198)</p><p> APELANTES/APELADOS: MARIA DE FÁTIMA SALES BANDEIRA SILVA e BANCO PAN S/A.</p><p>&#160;</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Ementa: &#160;Direito do consumidor. Recursos de apelação cível. Ação declaratória de inexistência de contrato com pagamento de indébito e indenização por danos morais. Preliminar de prescrição. Rejeição. Prazo que se inicia a partir da data do último desconto indevido. <span style="font-variant-numeric: normal;

Processo	0200946-39.2023.8.06.0066
	font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal;"> Prescrição das parcelas vencidas anteriormente ao quinquênio que precede o ajuizamento da ação. Reconhecimento na sentença. Ausência de interesse recursal. Juntada do instrumento contratual. Designação, de ofício, de perícia grafotécnica. Ônus da prova da parte ré de comprovar a veracidade do documento. Tema 1061 do stj. Preclusão. Contratação ilícita. Devolução dos valores de forma simples e em dobro em relação aos descontos eventualmente realizados após 30/03/2021. Entendimento firmado pelo stj em recurso repetitivo paradigma (earesp 676.608/rs) . Danos morais não configurados. Descontos ínfimos. Juros de mora. Termo a quo a data do evento danoso. Responsabilidade extracontratual. Incidência da súmula nº 54/stj. Apelo do réu parcialmente provido. Recurso da p romovente prejudicado . Sentença reformada em parte. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center">
 ACÓRDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso da instituição financeira para DAR-LHE PARCIAL PROVIMENTO, e julgar PREJUDICADO o apelo da autora, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Relator</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="left">

</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="center"> RELATÓRIO </p><p class="western" style="line-height: 200%; text-indent: 2.4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Trata-se de recursos de Apelação

Processo	0200946-39.2023.8.06.0066
	<p>Cível, interpostos pelo BANCO PAN S/A e por MARIA DE FÁTIMA SALES BANDEIRA SILVA, adversando sentença proferida pelo Juízo de Vara Única da Comarca de Cedro, que, nos autos da ação</p> <p>declaratória de inexistência contrato financeiro c/c pagamento de indébito e indenização por danos morais,</p> <p> julgou parcialmente procedente o feito para (id. 25475851):</p> <p class="western" justify"="" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align=">A) Declarar inexistente o débito indicado na atrial e reconhecer a incidência de ilícito na conduta perpetrada pela parte demandada;</p> <p class="western" justify"="" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align=">B) <u>CONDENAR</u> o requerido à restituição dos valores indevidamente descontados do benefício da parte autora, na forma simples até 30/03/2021, se houver, e em dobro após essa data, nos termos do entendimento firmado no EAREsp nº 676.608/RS. Os valores deverão ser corrigidos monetariamente pelo IPCA, a partir do efetivo prejuízo (Súmula 43 do STJ), e acrescidos de juros de mora pela taxa SELIC, contados do evento danoso (art. 398 do CC/02 e Súmula 54 do STJ), deduzida da correção pelo IPCA no período, em conformidade com as alterações trazidas pela Lei nº 14.905/2024.</p> <p><u>R</u></p> <p>essalte-se que deve ser observada a prescrição parcial das parcelas que se venceram há mais de 5 anos do ajuizamento da ação, nos termos do art. 206, §5, I do CC/02;</p> <p class="western" justify"="" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align=">C) Condenar ao pagamento da quantia no valor de <u>R\$ 4.000,00</u> (quatro mil reais), a título de danos morais,</p> <p> com correção monetária pelo IPCA a partir da data do arbitramento, e com incidência de juros moratórios de 1% (um por cento) ao mês, contados a partir do evento danoso, conforme Súmulas 54 e 362 do STJ.</p> <p class="western" justify"="" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align=">D) Por fim, deixo de determinar qualquer compensação de valores em face de inexistir qualquer comprovante de transferência dirigida a parte autora a fim de ensejar em seu proveito econômico.</p> <p class="western" justify"="" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align=">Em suas razões, requer a autora a majoração do dano moral para R\$ 6.000,00 (seis mil reais), tendo em vista ter vivido “na miséria durante anos até que fosse julgada tal demanda para ter o valor de seu benefício de volta”, sendo o valor cominado na sentença insuficiente para reparar o dano suportado.</p> <p class="western" justify"="" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align=">O banco réu em seu apelo aduz: i) a prescrição da pretensão autoral, posto que a ação foi proposta tão somente em 2023, mais de 05 (cinco) anos após a perfectibilização do contrato; ii) a prescrição das parcelas vencidas anteriormente ao quinquênio que precede o ajuizamento da ação; iii) no mérito, requereu a exclusão dos danos morais e a repetição de indébito na forma simples; iv) subsidiariamente, pugna pela minoração da indenização dos danos morais, a</p> <p>inaplicabilidade da Súmula nº 54 do STJ e vi) a compensação dos valores recebidos pela parte autora.</p> <p class="western" justify"="" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align=">Contrarrazões apresentadas (id's. 25475860 e 25475865).</p> <p>É o relatório.</p>

Processo	0200946-39.2023.8.06.0066
	style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="center"> VOTO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Conheço dos recursos de apelação, eis que presentes os pressupostos de admissibilidade. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Inicialmente, passo à análise da Preliminar de Prescrição, suscitada pelo banco recorrente.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Aduz a instituição bancária que restou configurada a prescrição da pretensão autoral, eis que a ação foi ajuizada em 11/12 /2023, quando já decorrido o prazo prescricional quinquenal, previsto no art. 203, §, V, do Código Civil, contado da data do contrato. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Acerca do termo inicial da prescrição quinquenal, o Colendo Superior Tribunal de Justiça firmou entendimento de que o início do prazo prescricional corresponde à data do último desconto realizado no benefício previdenciário da parte lesada. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Veja-se: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO CUMULADA COM REPETIÇÃO DE INDÉBITO E INDENIZATÓRIA POR DANOS MORAIS. PRESCRIÇÃO. TERMO INICIAL. HARMONIA ENTRE O ACÓRDÃO RECORRIDO E A JURISPRUDÊNCIA DO STJ. SÚMULA 83/STJ. AGRAVO INTERNO NÃO PROVIDO. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. A jurisprudência do Superior Tribunal de Justiça é no sentido de que, em se tratando de pretensão de repetição de indébito decorrente de descontos indevidos, por falta de contratação de empréstimo com a instituição financeira, ou seja, em decorrência de defeito do serviço bancário, aplica-se o prazo prescricional do art. 27 do CDC. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 2.&#160; </p> O termo inicial do prazo prescricional da pretensão de repetição do indébito relativo a desconto de benefício previdenciário é a data do último desconto indevido. Precedentes. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 3. O entendimento adotado pelo acórdão recorrido coincide com a jurisprudência assente desta Corte Superior, circunstância que atrai a incidência da Súmula 83/STJ. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 4. Agravo interno a que se nega provimento. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (STJ. AgInt no AREsp n. 1412088, Rel. Min. Raul Araújo, Quarta Turma, DJe 12.09.2019). [Grifei].&#160; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">

</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> PROCESSUAL CIVIL. CONSUMIDOR. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. IRRESIGNAÇÃO MANIFESTADA NA VIGÊNCIA DO NCPC. AÇÃO DECLARATÓRIA CUMULADA COM REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANO MORAL. EMPRÉSTIMO

Processo	0200946-39.2023.8.06.0066
	CONSIGNADO EM BENEFÍCIO PREVIDENCIÁRIO. PRAZO PRESCRICIONAL. CINCO ANOS. ART. 27 DO CDC. TERMO INICIAL. ÚLTIMO DESCONTO. DECISÃO EM CONFORMIDADE COM O ENTENDIMENTO DESTA CORTE. PRESCRIÇÃO RECONHECIDA NA ORIGEM COM BASE NOS FATOS DA CAUSA. REFORMA DO JULGADO. INCIDÊNCIA DA SÚMULA Nº 7 DO STJ. DISSÍDIO JURISPRUDENCIAL NÃO COMPROVADO ANTE A INCIDÊNCIA DOS ÓBICES SUMULARES. 1. Aplica-se o NCPC a este recurso ante os termos do Enunciado Administrativo nº 3, aprovado pelo Plenário do STJ na sessão de 9/3/2016: Aos recursos interpostos com fundamento no CPC/2015 (relativos a decisões publicadas a partir de 18 de março de 2016) serão exigidos os requisitos de admissibilidade recursal na forma do novo CPC. 2. O Tribunal a quo dirimiu a a controvérsia em conformidade com a orientação firmada nesta Corte, no sentido de que, para a contagem do prazo prescricional quinquenal previsto no art. 27 do CDC, o termo inicial a ser observado é a data em que ocorreu a lesão ou pagamento, o que, no caso dos autos, se deu com o último desconto do mútuo da conta do benefício da parte autora Incidência da Súmula nº 568 do STJ, segundo a qual, o relator, monocraticamente e no Superior Tribunal de Justiça, poderá dar ou negar provimento ao recurso quando houver entendimento dominante acerca do tema. 3. Para modificar o termo inicial firmado no acórdão recorrido, para efeito de contagem do início de fluência da prescrição nos autos, seria imprescindível derruir a afirmação contida no decisum atacado, o que, forçosamente, ensejaria em rediscussão de matéria fática, incidindo, na espécie, o óbice contido na Súmula nº 7 do STJ. 4. A jurisprudência desta Corte firmou o entendimento de que não é possível o conhecimento do recurso especial interposto pela divergência jurisprudencial na hipótese em que o dissídio é apoiado em fatos, e não na interpretação da lei. Isso porque a Súmula nº 7 do STJ também se aplica aos recursos especiais interpostos pela alínea c do permissivo constitucional. Precedente: AgRg no Ag 1.276.510/SP, Rel. Ministro PAULO FURTADO (Desembargador Convocado do TJ/BA), DJe 30/6/2010. 5. Em virtude de anterior advertência em relação a aplicabilidade do NCPC, aplica-se ao caso a multa prevista no art. 1.021, § 4º, do referido Código, no percentual de 3% sobre o valor atualizado da causa, ficando a interposição de qualquer outro recurso condicionada ao depósito da respectiva quantia, nos termos do § 5º daquele artigo de lei. 6. Agravo interno não provido, com imposição de multa. (STJ. AgInt no AREsp n. 1358910, Rel. Min. Moura Ribeiro, Terceira Turma, DJe 03.04.2019). [Grifei]. &#160; No mesmo sentido, já se pronunciou o e. Tribunal de Justiça ao assentar que o prazo prescricional para a reparação civil decorrente do defeito do serviço bancário é de 5 anos, nos termos do art. 27, do CDC, iniciando-se a contagem do prazo a partir do último desconto indevido na conta bancária, dado o caráter sucessivo da relação. Vejamos:

Processo	0200946-39.2023.8.06.0066
	style="font-size: 14pt; ">DIREITO CIVIL PROCESSUAL CIVIL E DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE RELAÇÃO CONTRATUAL C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. CONTRATO DE EMPRÉSTIMO BANCÁRIO CONSIGNADO. RELAÇÃO DE TRATO SUCESSIVO. TERMO INICIAL DO PRAZO PRESCRICIONAL. ÚLTIMA PÁRCELA. PRESCRIÇÃO. NÃO OCORRÊNCIA. RECURSO CONHECIDO E PROVIDO. </p><p class="western" style="line-height: 200%; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. Trata-se de Recurso de Apelação Cível interposto por Francisca Rodrigues de Sousa, nos autos da Ação Declaratória de Nulidade de Relação Contratual c/c Repetição de Indébito e indenização por Danos Morais, ajuizada em face do Banco Mercantil do Brasil S/A, com vistas a reformar a sentença prolatada pelo Juízo de Direito da 2ª Vara da Comarca de Acaraú/CE, que declarou a prescrição, extinguindo o feito, com resolução de mérito, nos termos do art. 487, inciso II, do CPC. </p><p class="western" style="line-height: 200%; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 2. O empréstimo consignado é uma modalidade de crédito bancário, em que o desconto da prestação é feito diretamente na folha de pagamento ou de benefício previdenciário do contratante. </p><p class="western" style="line-height: 200%; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 3. Esta modalidade contratual, por óbvio, é regida pelo Código de Defesa do Consumidor, conforme assinala a Súmula 297 do STJ, que dispõe sobre a aplicabilidade deste diploma legal às instituições financeiras. 4. À luz do disposto no art. 27 do CDC, verifica-se que, nas demandas envolvendo desconto em benefício previdenciário, o prazo prescricional é quinquenal, sendo que a jurisprudência tem adotado como critério para verificar o termo inicial da contagem a última parcela descontada indevidamente, por se tratar de relação de trato sucessivo. 5. Compulsando os autos, constata-se pelo documento de fl. 27, que, relativamente ao contrato objeto desta lide nº 007092722, o desconto da última parcela ocorreu em 09/2014, devendo ser esta última ser considerada para efeito de reconhecimento da prescrição. Por esta razão, é de se considerar que a presente ação foi interposta em 1º de dezembro de 2015, (fls. 02/21), ou seja, dentro do prazo prescricional, não evidenciando a ocorrência de prescrição. 6. Desse modo, afigura-se que a pretensão não se encontra atingida pelo lapso prescricional quinquenal, merecendo assim lograr êxito a tese recursal da apelante. </p><p class="western" style="line-height: 200%; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 7. Recurso conhecido e provido para anular a sentença, determinando o retorno dos autos à origem para o devido e regular processamento. </p><p class="western" style="line-height: 200%; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJCE. Apelação Cível n. 0007652-20.2015.8.06.0028, Rel. Des. Maria das Graças Almeida de Quental, 2ª Câmara Direito Privado, DJe 21.07.2022). </p><p class="western" style="line-height: 200%; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">

</p><p class="western" style="line-height: 200%; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> PROCESSO CIVIL E CONSUMIDOR. AÇÃO DE NULIDADE DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DE INDÉBITO. ALEGAÇÃO DE DESCONTOS EM CONTA BANCÁRIA DE VALORES RELATIVOS A "TARIFA BANCÁRIA CESTA FÁCIL ECONÔMICA", SEM AUTORIZAÇÃO DO CONSUMIDOR. SENTENÇA QUE RECONHECEU A PRESCRIÇÃO COM BASE NO § 3º DO ART. 206 DO CC/02. IMPOSSIBILIDADE. RELAÇÃO DE CONSUMO. POSSÍVEL FALHA NA PRESTAÇÃO DO SERVIÇO. PRAZO QUINQUENAL (05 ANOS) DO ART. 27, DO CDC. CONTAGEM DO PRAZO QUINQUENAL, SOMENTE TEM INÍCIO A PARTIR DO CONHECIMENTO DO DANO E SUA AUTORIA. RECURSO CONHECIDO E PROVIDO. SENTENÇA DESCONSTITUÍDA. RETORNO DOS AUTOS À ORIGEM. </p><p class="western" style="line-height: 200%; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. Cuida-se de apelação cível interposta em face de decisão prolatada pelo MM. Juiz de Direito da 1ª Vara da Comarca de Itapajé, nos autos de Ação de Nulidade de Negócio Jurídico C/C Repetição de Indébito, a qual o referido juízo extinguiu a ação, sob o fundamento de que o presente caso se encontrava prescrito, nos termos do § 3º do art. 206 do Código Civil Brasileiro de 2002. </p><p class="western" style="line-height: 200%; margin-left: 3.9cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 2. Irresignado com a sentença proferida pelo juízo a quo, a parte recorrente alega,

Processo	0200946-39.2023.8.06.0066
	em síntese, que não houve prescrição no presente caso, tendo em vista que se trata relação de consumo, devendo ser aplicado o art. 27 do CDC. 3. Com efeito, sabe-se que o Código de Defesa do Consumidor é aplicado as Instituições Financeiras, em conformidade com o enunciado de Súmula nº 297, do Superior Tribunal de Justiça. Assim, cabível é a utilização do prazo prescricional nele previsto, inserto no art. 27, do CDC, a qual prevê que prescreve em cinco anos a pretensão à reparação pelos danos causados por fato do produto ou falha na prestação do serviço, iniciando-se a contagem do prazo a partir do conhecimento do dano e de sua autoria. 4. Portanto, na hipótese de falha na prestação de serviços bancários, deve ser analisada sob a ótica do art. 27 do CDC, o qual estabelece prazo prescricional quinquenal, com início a partir do momento em que o consumidor toma conhecimento do dano e da sua autoria, razão pela qual, não há que se falar em prescrição no presente caso. 5. Recurso conhecido e provido. Sentença recorrida desconstituída. Retorno dos autos à origem para o seu regular prosseguimento. (TJCE. AC n. 0002883-05.2019.8.06.0100, Rel. Des. Francisco Bezerra Cavalcante, 4a Câmara Direito Privado, DJe 26.04.2022). DIREITO PROCESSUAL CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE NULIDADE DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. ALEGAÇÃO AUTURAL DE TARIFAS BANCÁRIAS NÃO CONTRATADAS PREVIAMENTE. APLICAÇÃO EQUIVOCADA DO PRAZO PRESCRICIONAL. OCORRÊNCIA. CASO CONCRETO QUE RECLAMA A INCIDÊNCIA DO ART. 27 DO DIPLOMA CONSUMERISTA. INÍCIO DO LAPSO QUINQUENAL A SER CONTADO DO ÚLTIMO DESCONTO. PRESCRIÇÃO. NÃO OCORRÊNCIA. PRECEDENTES DO STJ. APELO CONHECIDO E PROVIDO. ANULAÇÃO DA SENTENÇA. 1. Cuida-se de Apelação interposta em face de sentença que extinguiu o feito liminarmente, ante a suposta ocorrência de prescrição do pleito autoral. 2. Na hipótese, a relação entre as partes é consumerista, considerando que elas se enquadram perfeitamente nos conceitos de fornecedor de serviços e consumidor por equiparação previstos, respectivamente, nos artigos 3º e 17 do Código de Defesa do Consumidor. 3. Destaque-se que, na disputa em pauta, não cabe a adoção do artigo 206, § 3º, inciso IV, do Código Civil, dispositivo este que determina 03 (três) anos para a ação indenizatória. Isto porque a demanda relaciona-se à prestação de serviço bancário, portanto, possui natureza consumerista e, havendo disposição normativa especial acerca do tema (artigo 27, CDC), esta é que deverá ser aplicada. 4. O diploma consumerista estabelece que "prescreve em cinco anos a pretensão à reparação pelos danos causados por fato do produto ou do serviço, iniciando-se a contagem do prazo a partir do conhecimento do dano e de sua autoria" (artigo 27). 5. No que tange ao início da fruição do prazo prescricional, o Superior Tribunal de Justiça possui entendimento pacificado no sentido de que a última dedução indevida seria o começo do lapso da prescrição em demandas que tratam de restituição de indébito decorrente de contrato com ausência de aceite na pactuação. Confira-se: (STJ) AgInt no AREsp 1412088/MS . intentado oportunamente, pois antes de findar o quinquênio prescricional legalmente previsto na lei consumerista.

Processo	0200946-39.2023.8.06.0066
	align="justify"> 6. Desse modo, não se perze a perda do direito autoral de acionar o judiciário para perseguir o objeto pretendido, impondo-se, portanto, a anulação da sentença e, consequentemente, a devolução do feito ao juízo de origem para o regular processamento, tendo em vista que a causa não se encontra madura para julgamento.</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 7. Apelação conhecida e provida. Sentença anulada. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJCE. AC n. 0014812-69.2018.8.06.0100, Rel. Des. Heraclito Vieira de Sousa Neto, 1a Câmara Direito Privado, DJe 23.07.2021). </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;">&#160;</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> In casu, tem-se que a ação foi proposta em 11/12/2023, enquanto o suposto contrato de cartão de crédito consignado nº 0229015127910 teve início em 09/05/2017 e até a data da propositura da ação ainda estava ativo. Logo, não há que se cogitar de prescrição da pretensão autoral. Quanto à prescrição das parcelas vencidas anteriormente ao quinquênio que precede o ajuizamento da ação, carece a instituição de interesse recursal, posto que o pleito foi reconhecido na sentença, como se observa da leitura do dispositivo.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Sem mais preliminares, passa-se à análise do mérito.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> No caso em tela, cinge-se a controvérsia recursal em saber se o contrato de cartão de crédito com reserva de margem consignável (RMC), supostamente celebrado entre a instituição financeira e a parte autora, é válido ou não, em consonância com as provas produzidas na origem e se, desse contrato, existe dano passível de indenização. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Pois bem, passo à análise conjunta dos recursos. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Sobre o assunto, este e. Tribunal de Justiça firmou entendimento de que a confirmação da regularidade ou irregularidade do negócio depende de provas concretas sobre: (i) a anuência do consumidor sobre os descontos realizados e (ii) o recebimento do crédito por parte mutuário. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse contexto, incumbe ressaltar que a relação entre as partes é, de fato, consumerista, uma vez que a autora é a destinatária final dos serviços oferecidos pela instituição financeira ré, sem olvidar que a atividade bancária é considerada serviço para os fins legais. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> O artigo 3º, § 2º, do Código de Defesa do Consumidor, inclui, expressamente, a atividade bancária no seu conceito de serviço. Com relação ao assunto, o Superior Tribunal de Justiça editou a Súmula nº 297, que dispõe: “O Código de Defesa do Consumidor é aplicável às instituições financeiras.” </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Não por outra razão que se faz cabível a inversão do ônus probante em desfavor da instituição bancária. Tal medida se mostra adequada às ações deste tipo porque, considerando a impossibilidade de a autora constituir prova negativa da relação jurídica, compete à instituição financeira requerida trazer aos autos documentos hábeis a demonstrar a regularidade da relação contratual contestada na exordial, nos termos do artigo 373, II, do Código de Processo Civil.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Dito isto, rememorando o caso

Processo	0200946-39.2023.8.06.0066
	dos autos, a autora narra em sua exordial que é aposentada pelo INSS e nega que teria firmado o contrato guerreado. Devidamente citado, o Banco PAN S/A. apresentou o contrato (id. 25475784) e pugnou pela improcedência dos pedidos. Nos termos da decisão interlocutória (Id. 25475842), foi determinada a intimação das partes para produzir provas, notadamente, a perícia grafotécnica, tendo o Magistrado a quo salientado pela imprescindibilidade da produção de prova pericial (art. 480, do CPC) para solução do mérito da demanda. As partes foram intimadas e se mantiveram silentes (Id. 25475845). No despacho judicial (id. 25475848), o juiz determinou que as partes, em 05 (cinco) dias, para dizerem se pretendem ou não produzir outras provas, especificando a finalidade das mesmas, vedado o protesto genérico, sob pena de preclusão. Advertindo-as de que a omissão importará em julgamento antecipado da lide (art. 355, I, do CPC), Após o mencionado despacho, as partes permaneceram inertes (id. 25475850). Em vista disso, ao analisar as provas coligidas aos autos, o juízo de primeiro grau considerou que a instituição financeira não se desincumbiu do seu ônus probatório, tendo em vista que não requereu a realização da perícia grafotécnica, deixando de comprovar, portanto, a validade do instrumento contratual Preceitua o art. 429, II do CPC: Art. 429. Incumbe o ônus da prova quando: I - se tratar de falsidade de documento ou de preenchimento abusivo, à parte que a arguir; II - se tratar de impugnação da autenticidade, à parte que produziu o documento. Nessa linha de raciocínio, em julgamento submetido ao rito dos recursos repetitivos, a Segunda Seção do c. Superior Tribunal de Justiça firmou a seguinte tese jurídica (Tema 1.061): Na hipótese em que o consumidor/autor impugnar a autenticidade da assinatura constante em contrato bancário juntado ao processo pela instituição financeira, caberá a esta o ônus de provar a autenticidade (CPC, arts. 6º, 369 e 429, II).

Processo	0200946-39.2023.8.06.0066
	14pt;">Sendo o documento produzido pelo banco, a este competia demonstrar a sua autenticidade, havendo, no entanto, a preclusão para exercer o direito de produção de provas nesse sentido (art. 223, caput, do CPC), visto que, embora devidamente intimado, o banco ficou-se inerte. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse sentido, para efeito de argumentação, colho da fonte jurisprudencial deste Tribunal de Justiça e das demais cortes pátrias os julgamentos abaixo ementados: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> APELAÇÃO CÍVEL. EMPRÉSTIMO. DESCONTOS EM BENEFÍCIO PREVIDENCIÁRIO. APRESENTAÇÃO DO CONTRATO NOS AUTOS. AUTOR QUE IMPUGNOU A ASSINATURA. ÔNUS DE QUEM APRESENTOU O DOCUMENTO DE PROMOVER A COMPETENTE PERÍCIA GRAFOTÉCNICA (STJ - TEMA 1061). ASSINATURAS COMPLETAMENTE DIVERGENTES. RECONHECIMENTO DA IRREGULARIDADE DO NEGÓCIO JURÍDICO. REPETIÇÃO DO INDÉBITO NA FORMA SIMPLES E EM DOBRO EM RELAÇÃO AOS DESCONTOS EVENTUALMENTE REALIZADOS APÓS 30/03/2021. VALOR DOS DANOS MORAIS MANTIDO. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. Trata-se de Recurso de apelação interposto por Banco Bradesco S.A., em face de Cicero Veríssimo da Silva Sá contra sentença proferida pelo Juízo da 2ª vara Cível da Comarca de Acopiara/CE, que julgou procedente a ação anulatória de débito c/c danos morais ajuizada contra o apelante. 2. Cinge-se controvérsia na análise da validade do contrato de empréstimo, supostamente, pactuado pelo apelante, junto à autora, ora apelada. 3. A discussão acerca da sua validade do contrato deve ser analisada à base das disposições do Código de Defesa do Consumidor, nos termos da Súmula n.º 297 do Superior Tribunal de Justiça, segundo a qual: "o Código de Defesa do Consumidor é aplicável às instituições financeiras". 4. Nos termos do art. 6º, inciso VIII, do Código de Defesa do Consumidor, constitui dever da instituição financeira comprovar que a suposta quantia tomada de empréstimo fora depositada em favor do consumidor, caso contrário a perfectibilidade da relação contratual resta afastada. 5. Em que pese o contrato objeto da causa tenha sido juntado, percebe-se que as assinaturas são completamente diferentes das constantes nos documentos da parte. 6. O STJ sob o regime de recurso repetitivo - Resp 1846649/MA (tema 1061), decidiu que: "Na hipótese em que o consumidor/autor impugnar a autenticidade da assinatura constante em contrato bancário juntado ao processo pela instituição financeira, caberá a esta o ônus de provar a sua autenticidade (CPC, arts. 6º, 368 e 429, II)". 7. Cumpre à instituição financeira a responsabilidade pela comprovação da regularidade do instrumento contratual, podendo demonstrar a validade por meio de perícia grafotécnica e/ou outros meios de prova. 8. Ainda que se verifique a juntada do contrato aos autos, denota-se que a parte autora requereu a declaração de inexistência do contrato porquanto não realizou qualquer contrato de empréstimo junto à Instituição Financeira. 9. Como o requerente negou a contratação, ora discutida, incumbia ao promovido demonstrar fato que alterasse substancialmente o direito alegado. 10. No instrumento contratual anexado aos autos pelo promovido, as assinaturas constantes do contrato de empréstimo consignado (pág. 107/110), divergem das assinaturas do promovente constantes em sua identidade (pág. 111) e instrumento procuratório (pág. 16), como bem pontuou o juiz a quo em sua decisão. 11. Restou comprovado o ato ilícito praticado por ação da parte ré, a culpa do agente e o dano, configurados pela inexistência de contrato de empréstimo firmado pela parte autora, ausência de cautela da instituição financeira ao realizar os descontos relativos ao contrato e, descontos irregulares no benefício do autor, respectivamente. 12. Atento ao cotejo desses fatores: "nível econômico do autor da ação, sofrimento da vítima e o porte econômico da entidade bancária", considero consentâneo a fixação do valor da indenização do dano moral em R\$ 3.000,00 (três mil reais), incidindo correção monetária a partir do arbitramento e juros de mora a partir do evento danoso. 13. Através do julgamento do EAREsp 676.608 (paradigma, julgado em 30/03/2021) passou a se entender que não há necessidade de provar a má-fé, basta que a conduta do fornecedor seja contrária a boa-fé objetiva. Contudo, devendo ser observada a modulação dos efeitos a incidir a partir da publicação do acórdão, de modo que somente valerá para os valores pagos posteriormente à data de publicação do acórdão paradigma (30/03/2021). 14. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-CE - AC: 00540735520218060029 Acopiara, Relator: CARLOS AUGUSTO GOMES CORREIA, Data de Julgamento: 16/11/2022, 1ª Câmara Direito Privado, Data de Publicação: 16/11/2022). </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">

Processo	0200946-39.2023.8.06.0066
	0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO DE INSTRUMENTO. AÇÃO DE REVOGAÇÃO DE DOAÇÃO POR INEXECUÇÃO DE ENCARGOS. PRODUÇÃO DE PROVAS. PRECLUSÃO TEMPORAL CONFIGURADA. A preclusão temporal é a perda da faculdade de praticar determinado ato processual, quando decorrido o prazo para tanto, ou praticado a destempo. Segundo a jurisprudência majoritária em voga no Superior Tribunal de Justiça, configura preclusão a ausência de manifestação da parte acerca do despacho pelo qual é oportunizado momento para declinar pedido de produção de prova. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-MG - Agravo de InstrumentoCv 1.0000.22.149483-4/001, Relator (a): Des.(a) Cláudia Maia , 14a CÂMARA CÍVEL, julgamento em 10/11/2022, publicação da súmula em 10/11/2022). </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO DE INSTRUMENTO AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS INDEFERIMENTO DE PROVA DOCUMENTAL (FILMAGENS DE CÂMERAS DO CIRCUITO INTERNO DO ESTACIONAMENTO) PROVA NÃO REQUERIDA NO TEMPO E MOMENTO OPORTUNO OCORRÊNCIA DE PRECLUSÃO INEXISTÊNCIA DE CERCEAMENTO DE DEFESA DECISÃO MANTIDA RECURSO CONHECIDO E NÃO PROVIDO . 1. Discute-se no presente recurso, o acerto ou desacerto da decisão agravada que indeferiu o pedido de produção de prova documental filmagens das câmeras de segurança do estacionamento da empresa ré no momento do sinistro (furto do caminhão do requerente).. 2. Sabe-se que a preclusão consiste na perda, extinção ou consumação de uma faculdade processual em face do decurso do tempo (preclusão temporal), da prática de ato incompatível (preclusão lógica) e do efetivo exercício de determinada faculdade processual (preclusão consumativa). 3. O Superior Tribunal de Justiça tem entendimento firmado de que preclui o direito à prova se a parte, intimada para especificar as que pretendia produzir, não se manifesta oportunamente, e a preclusão ocorre mesmo que haja pedido de produção de provas na inicial ou na contestação, mas a parte silencia na fase de especificação. Precedentes do STJ. 4. No caso, tendo a parte autora sido intimada (em 22/07/2019 e em 17/01/2020 f. 184 e 566, na origem, respectivamente) para especificar as provas que pretendia produzir, no prazo de 5 (cinco) dias, limitou-se a requerer tão somente a produção de prova oral. Assim, conforme corretamente fundamentado na decisão recorrida, embora o autoragravante tenha requerido em sua inicial a produção de "todas as provas admitidas em direito", ficou inerte quando devidamente intimado para especificar e justificar eventuais provas que pretendesse produzir, mais precisamente a respeito da produção da referida prova documental (filmagens das câmeras de segurança), acarretando na preclusão desse direito. 5. Diante da preclusão consumativa, incabível a produção de prova não requerida quando da especificação de provas que a parte pretendia produzir. 6. Agravo de Instrumento conhecido e não provido. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJMS. Agravo de Instrumento n. 1410156-23.2021.8.12.0000, Brasília, 3a Câmara Cível, Relator (a): Des. Paulo Alberto de Oliveira, j: 10/08/2021, p: 16/08/2021). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Posto isso, considerando que o banco ficou silente quanto à realização de perícia grafotécnica, demonstrando a desídia em comprovar a regularidade do contrato, impera-se ratificar a declaração de invalidade do contrato impugnado, bem como a devolução das parcelas efetivamente descontadas do benefício previdenciário da parte autora. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Da repetição de indébito </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> A esse respeito, oportuno destacar o entendimento do Superior Tribunal de Justiça, no julgamento dos embargos de divergência em agravo em recurso especial (EAREsp 676.608/RS), de que a restituição em dobro do indébito seja aplicada apenas às cobranças indevidas realizadas a partir da publicação do acórdão que fixou a tese, ou seja, 30/03/2021. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> In verbis:

Processo	0200946-39.2023.8.06.0066
	EMBARGOS DE DIVERGÊNCIA EM AGRAVO EM RECURSO ESPECIAL. CIVIL. PROCESSUAL CIVIL. TELEFONIA FIXA. COBRANÇA INDEVIDA. AÇÃO DE REPETIÇÃO DE INDÉBITO DE TARIFAS. 1) RESTITUIÇÃO EM DOBRO DO INDÉBITO (PARÁGRAFO ÚNICO DO ARTIGO 42 DO CDC). DESINFLUÊNCIA DA NATUREZA DO ELEMENTO VOLITIVO DO FORNECEDOR QUE REALIZOU A COBRANÇA INDEVIDA. DOBRO CABÍVEL QUANDO A REFERIDA COBRANÇA CONSUBSTANCIAR CONDUTA CONTRÁRIA À BOA-FÉ OBJETIVA. 2) APLICAÇÃO DO PRAZO PRESCRICIONAL DECENAL DO CÓDIGO CIVIL (ART. 205 DO CÓDIGO CIVIL). APLICAÇÃO ANALÓGICA DA SÚMULA 412/STJ. 3) MODULAÇÃO PARCIAL DOS EFEITOS DA DECISÃO. CONHECIMENTO E PROVIMENTO INTEGRAL DO RECURSO. Fixação das seguintes teses. Primeira tese: A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva. Segunda tese: A ação de repetição de indébito por cobrança de valores referentes a serviços não contratados promovida por empresa de telefonia deve seguir a norma geral do prazo prescricional decenal, consoante previsto no artigo 205 do Código Civil, a exemplo do que decidido e sumulado no que diz respeito ao lapso prescricional para repetição de tarifas de água e esgoto (Súmula 412/STJ). Modulação dos efeitos: Modulam-se os efeitos da presente decisão - somente com relação à primeira tese - para que o entendimento aqui fixado quanto à restituição em dobro do indébito seja aplicado apenas a partir da publicação do presente acórdão. A modulação incide unicamente em relação às cobranças indevidas em contratos de consumo que não envolvam prestação de serviços públicos pelo Estado ou por concessionárias, as quais apenas serão atingidas pelo novo entendimento quando pagas após a data da publicação do acórdão. (STJ. EAREsp 676.608/RS, Rel. Ministro OG FERNANDES, CORTE ESPECIAL, julgado em 21/10/2020, DJe 30/03/2021). Dito isso, a forma de restituição do indébito terá como referência a data dos descontos indevidos. Na ocasião, ao vislumbrar a data de celebração do contrato que ocorreu em maio de 2017, a restituição dos valores debitados antes de 30/03/2021 se dará na forma simples, porém, a quantia referente aos descontos posteriores a essa data será restituída em dobro, conforme cálculo a ser apurado na fase de cumprimento de sentença, atentando-se à data da cessação dos descontos indevidos. Do dano moral Nesse tocante, a sentença vergastada merece reforma. É que referido dano somente ocorre quando houver lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, o bom nome etc., como se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal. A mera constatação dos descontos indevidos em conta bancária da autora, no valor de R\$ 46,85, não tem o condão de dar azo à alegada aflição psicológica ou angústia suportada pela demandante.

Processo	0200946-39.2023.8.06.0066
	asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Sobre o tema leciona Sérgio Cavalieri Filho: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">
 [...] só deve ser reputado como dano moral a dor, vexame, sofrimento ou humilhação que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. Mero dissabor, aborrecimento, mágoa, irritação ou sensibilidade exacerbada estão fora da órbita do dano moral, porquanto, além de fazerem parte da normalidade do nosso dia a dia, no trabalho, no trânsito, entre os amigos e até no ambiente familiar, tais situações não são intensas e duradouras, aponta de romper o equilíbrio psicológico do indivíduo. Se assim não se entender, acabaremos por banalizar o dano moral, ensejando ações judiciais em busca de indenizações pelos mais triviais aborrecimentos. (CAVALIERI FILHO, Sérgio. Programa de Responsabilidade Civil. 11ª ed. São Paulo: Atlas, 2014, p.111)." </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nessa perspectiva, “a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante.” (AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014). [Grifei]. </p><p class="western" style="line-height: 200%; text-indent: -0.1cm; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Não se desconhece que a situação possa eventualmente ter trazido algum desconforto, contudo, ela não foi capaz de atingir valores fundamentais do ser humano, tratando-se de meros aborrecimentos a que se está sujeito na vida em sociedade, o que afasta os danos morais indenizáveis, conforme reiteradamente tem decidido o c. Superior Tribunal de Justiça. Veja-se: </p><p class="western" style="line-height: 200%; text-indent: -0.1cm; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">
 AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL - AÇÃO DECLARATÓRIA C/C PEDIDO CONDENATÓRIO - DECISÃO MONOCRÁTICA QUE NEGOU PROVIMENTO AO RECLAMO. INSURGÊNCIA RECURSAL DO AUTOR.1. É pacífica a jurisprudência desta Corte no sentido de que os aborrecimentos comuns do dia a dia, os meros dissabores normais e próprios do convívio social não são suficientes para originar danos morais indenizáveis. Incidência da Súmula 83/STJ.1.1. No caso, a revisão do concluído pelo Tribunal a quo, no sentido de que não houve ofensa à honra, em decorrência do envio, não solicitado, de cartão de crédito, demandaria o revolvimento do acervo fático-probatório dos autos, situação que encontra óbice na Súmula 7/STJ.1.2. A incidência do referido óbice impede o exame de dissídio jurisprudencial, na medida em que falta identidade entre os paradigmas apresentados e os fundamentos do acórdão, tendo em vista a situação fática do caso concreto, com base na qual deu solução a causa a Corte de origem. Precedentes.2. Agravo interno desprovido.(AgInt no AREsp 1450347/MA, Rel. Ministro MARCO BUZZI, QUARTA TURMA, julgado em 27/05/2019, DJe 03/06/2019). </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; break-before: auto;" align="justify"> AGRAVO INTERNO NO RECURSO ESPECIAL. AÇÃO DE INDENIZAÇÃO. ENVIO DE CARTÃO DE CRÉDITO SEM SOLICITAÇÃO DO CONSUMIDOR. AUSÊNCIA DE NEGATIVAÇÃO OU COBRANÇA INDEVIDA. DANOS MORAIS NÃO CONFIGURADOS. MERO ABORRECIMENTO. AGRAVO DESPROVIDO.1. É pacífica a jurisprudência desta Corte

Processo	0200946-39.2023.8.06.0066
	no sentido de que os aborrecimentos comuns do dia a dia, os meros dissabores normais e próprios do convívio social não são suficientes para originar danos morais indenizáveis. Incidência da Súmula 83/STJ.[...]3. Agravo interno não provido. (STJ. AgInt no REsp 1655212/SP, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 19/02/2019, DJe 01/03/2019). Nesse ponto, a jurisprudência do Superior Tribunal de Justiça é assente no sentido de que se trata de mero aborrecimento o desconto indevido de valores incapazes de comprometer a subsistência da parte. A propósito, confira-se: AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITOS. RESTITUIÇÃO DE VALORES E INDENIZAÇÃO POR DANOS MORAIS. DESCONTO INDEVIDO. VALOR ÍNFIIMO. DANO MORAL INEXISTENTE. MERO ABORRECIMENTO. CONSONÂNCIA COM A JURISPRUDÊNCIA DESTA CORTE SUPERIOR. RECURSO DESPROVIDO. 1. Esta Corte Superior entende que a caracterização do dano moral exige que a comprovação do dano repercuta na esfera dos direitos da personalidade. A fraude bancária, nessa perspectiva, não pode ser considerada suficiente, por si só, para a caracterização do dano moral. (AgInt nos EDcl no AREsp 1.669.683/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 23/11/2020, DJe de 30/11/2020). 2. O Tribunal de origem concluiu que o desconto indevido de R\$ 70,00 (setenta reais) no benefício previdenciário da agravante não acarretou danos morais, considerando que foi determinada a restituição do valor, que a instituição financeira também foi vítima de fraude e que não houve inscrição do nome da agravante em cadastros de proteção ao crédito, de modo que ficou configurado mero aborrecimento. 3. "A jurisprudência desta Corte entende que, quando a situação experimentada não tem o condão de expor a parte a dor, vexame, sofrimento ou constrangimento perante terceiros, não há falar em dano moral, uma vez que se trata de mero aborrecimento ou dissabor, mormente quando a falha na prestação de serviços, embora tenha acarretado aborrecimentos, não gerou maiores danos ao recorrente, como ocorreu na presente hipótese" (AgInt no AREsp 1.354.773/MS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 02/04/2019, DJe de 24/04/2019). 4. Agravo interno desprovido. (STJ. AgInt nos EDcl no REsp n. 1.948.000/SP, relator Ministro Raul Araújo, Quarta Turma, julgado em 23/5/2022, DJe de 23/6/2022). Acrescente-se, ainda, que esta augusta Primeira Câmara de Direito Privado, na esteira do entendimento do c. STJ, tem reconhecido que os descontos em valor ínfimo, ainda que indevidos, não são capazes, por si só, de ensejar a reparação por dano moral. Confira-se: Acrescente-se, ainda, que esta augusta Primeira Câmara de Direito Privado, na esteira do entendimento do c. STJ, tem reconhecido que os descontos em valor ínfimo, ainda que indevidos, não são capazes, por si só, de ensejar a reparação por dano moral. Confira-se:

Processo	0200946-39.2023.8.06.0066
	align="justify">
 DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO EM APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE NULIDADE DE NEGÓCIO JURÍDICO C/C INDENIZAÇÃO POR DANOS MORAIS E REPETIÇÃO DE INDÉBITO. DANOS MORAIS NÃO CONFIGURADOS. DESCONTOS EM VALOR ÍNFIIMO. MEROS ABORRECIMENTOS. RESTITUIÇÃO NA FORMA SIMPLES. DESCONTOS OCORRIDOS ANTES DE 30/03/2021. AUSÊNCIA DE PROVA DA MÁ-FÉ. RECURSO CONHECIDO E DESPROVIDO. DECISÃO AGRAVADA MANTIDA. 1. Trata-se de Agravo Interno (fls. 01/12) interposto por Maria José Soares da Silva em face de Banco Bradesco Financiamentos S/A, objurgando decisão monocrática de fls. 159/170 dos autos da Ação Declaratória de Nulidade de Negócio Jurídico c/c Reparação por Danos Morais (Processo nº 0010329-33.2017.8.06.0099) que deu parcial provimento ao recurso de apelação do banco requerido para afastar a indenização por danos morais e deu parcial provimento ao apelo autoral tão somente para determinar a restituição simples dos valores descontados indevidamente do benefício da autora. 2. A jurisprudência do Superior Tribunal de Justiça entende que "a caracterização do dano moral exige que a comprovação do dano repercuta na esfera dos direitos da personalidade. A fraude bancária, nessa perspectiva, não pode ser considerada suficiente, por si só, para a caracterização do dano moral" (AgInt nos EDcl no AREsp 1.669.683/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 23/11/2020, DJe de 30/11/2020). 3. Ademais, a jurisprudência do Superior Tribunal de Justiça é assente no sentido de que se trata de mero aborrecimento o desconto indevido em benefício previdenciário de valores incapazes de comprometer a subsistência da parte. 4. Nessa toada, descontos em valor ínfimo - R\$ 8,98 (oito reais e noventa e oito centavos) – não correspondem a um dano à personalidade que enseje o pagamento de indenização por danos morais, sobretudo porque somente foram questionados anos após a ocorrência e não ensejaram maiores consequências negativas, como a inscrição do nome da consumidora nos cadastros de proteção ao crédito. 5. A restituição dos valores na forma simples, tal como determinado na decisão objurgada, revela-se adequada na espécie, haja vista que ausente prova de má-fé da instituição financeira no caso, bem como porque os descontos se deram antes de 30/03/2021, data de publicação do acórdão do STJ no EREsp nº 1.413.542. 6. Agravo interno conhecido e não provido.
 (TJCE. Agravo Interno Cível - 0010329-33.2017.8.06.0099, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 16/11/2022, data da publicação: 16/11/2022). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> No mesmo sentido, colho da fonte jurisprudencial: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> APELAÇÃO CÍVEL - AÇÃO DECLARATÓRIA DE NULIDADE E INEXISTÊNCIA DE NEGÓCIO JURÍDICO CUMULADA COM REPARAÇÃO POR DANOS MORAIS E MATERIAIS - CONTRATAÇÃO NÃO PROVADA - DESCONTO ÍNFIIMO - DANO MORAL - NÃO CONFIGURAÇÃO - MEROS ABORRECIMENTOS. 1 - O dever de indenizar pressupõe a confluência de três requisitos: a prática de uma conduta antijurídica, comissiva ou omissiva, a existência de um dano, bem como o nexo de causalidade entre esses dois primeiros elementos (artigos 186 e 927 do Código Civil). 2 - O desconto indevido em benefício previdenciário de parcelas de financiamento decorrente de contrato celebrado por falsários, sem maiores consequências à vítima, causa meros aborrecimentos.
 (TJMG - Apelação Cível 1.0000.22.029089-4/001, Relator(a): Des.(a) Claret de Moraes , 10ª CÂMARA CÍVEL, julgamento em 05/04/2022, publicação da súmula em 07/04/2022).

 Apelação Cível – AÇÃO ANULATÓRIA DE TARIFAS BANCÁRIAS C/C INDENIZAÇÃO POR DANOS MORAIS – SERVIÇO NÃO CONTRATADO – COBRANÇA INDEVIDA – DESCONTO EM CONTA BANCÁRIA – RESTITUIÇÃO DEVIDA – DANO MORAL NÃO CONFIGURADO – SOMENTE UM (1) DESCONTO EM VALOR ÍNFIIMO –

Processo	0200946-39.2023.8.06.0066
	RESTITUIÇÃO EM DOBRO – AUSÊNCIA DE ENGANO JUSTIFICÁVEL – APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. 1. Discute-se, no presente recurso: a) a ocorrência ou não de danos morais; e b) ser ou não, hipótese de devolução em dobro de valores. 2. O dano moral diz respeito à violação dos direitos referentes à dignidade humana de modo que tanto a doutrina quanto a jurisprudência dominante do Superior Tribunal de Justiça vêm sufragando entendimento no sentido de que a consequência do dano é inerente à própria ofensa, bastando, para a demonstração do dano moral, a realização da prova do nexo causal entre a conduta ilícita do agente ofensor, o resultado danoso e o fato. 3. Na espécie, ocorreu somente um (1) desconto indevido na conta bancária da apelante, no ínfimo valor de R\$ 17,99. A mera cobrança de valores por serviços não contratados não gera, por si só, danos morais indenizáveis, isto porque, no presente caso, a consumidora experimentou mero dissabor. [...] 5. Assim, na hipótese em que se alega a ocorrência de descontos indevidos, se não demonstrada a contratação válida do serviço em questão que legitimaria os descontos; ou, ainda, que os descontos eventualmente se amparam em contrato fruto de fraude para a qual a instituição financeira não concorreu, por ação ou omissão, é devida a restituição em dobro dos valores descontados indevidamente, por falta de demonstração de engano justificável. 6. Apelação Cível conhecida e parcialmente provida. (TJ-MS - AC: 08015700820208120024 MS 0801570-08.2020.8.12.0024, Relator: Des. Paulo Alberto de Oliveira, Data de Julgamento: 15/09/2021, 3ª Câmara Cível, Data de Publicação: 17/09/2021). AÇÃO REPARAÇÃO DE DANOS. SERVIÇO BANCÁRIO. COBRANÇA DE TARIFA SEM A PROVA DA CONTRATAÇÃO. COBRANÇA INDEVIDA. RESTITUIÇÃO DO INDÉBITO DE FORMA SIMPLES. DANO MORAL NÃO CONFIGURADO. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. In casu, observa-se que a cobrança da tarifa bancária denominada "Cesta B. Expresso", sem a prova da efetiva autorização, é irregular e não representa exercício regular do direito. 2. Em sendo assim, depreende-se dos autos que a parte apelada demonstrou através dos extratos acostados aos folios que a referida tarifa foi descontada de sua conta bancária, entretanto, a instituição financeira apelante não comprova, através de qualquer tipo de prova, a efetiva contratação ou autorização da tarifa combatida. 3. Desta forma, a imposição de serviços não solicitados constitui prática abusiva vedada pelo art. 39, III, do CDC, na medida em que macula o dever de informação e boa-fé objetiva dos negócios jurídicos, sobretudo porque não existe a manifestação de vontade da parte apelante. 4. No caso em comento, ainda que descontados os valores indevidamente, não restou comprovada má-fé a impor a restituição em dobro, logo não há dúvida de que o reembolso deverá ser efetuado de forma simples. 5. Melhor sorte assiste a apelante quanto a ausência de dano moral, porquanto o desconto indevido da conta da recorrida, por si só, não acarreta o reconhecimento de que existe um dano moral a ser reparado. Afinal, os descontos indevidos que totalizam a quantia de R\$ 51,80 (cinquenta e um reais e oitenta centavos), não enseja a dor, o sofrimento ou a humilhação, tampouco violação à honra, à imagem, à vida privada da apelada. 6. Recurso parcialmente provido. (TJCE. Relator (a): CARLOS ALBERTO MENDES FORTE; Comarca: Guaraciaba do Norte; Órgão julgador: Vara Única da Comarca de Guaraciaba do Norte; Data do julgamento: 03/02/2021; Data de registro: 04/02/2021). Posto isso, ausente a demonstração de que o indébito não ultrapassou meros aborrecimentos, impõe-se afastar a condenação do banco apelado ao pagamento de indenização por danos morais. Da Compensação

Processo	0200946-39.2023.8.06.0066
	transparent;";>A giu com acerto o douto Juiz de 1º grau ao negar a realização de compensação, eis que a instituição financeira não juntou comprovante de transferência bancária. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align="justify"> Dos Juros de Mora </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align="justify"> Não carece de reforma a sentença, eis que, sendo caso de responsabilidade extracontratual, a jurisprudência é pacífica no sentido de que o termo a quo dos juros de mora , relativo aos danos morais e materiais , é data do evento danoso (Súmula nº 54/STJ), e a correção monetária, pelo INPC, dos danos morais, incide a partir do arbitramento (Súmula nº 362/STJ) e, em relação aos danos materiais, conta-se de cada desconto indevido (Súmula nº 43/STJ). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align="justify"> Diante do exposto, conheço dos recursos, para DAR PARCIAL PROVIMENTO ao apelo do réu, modificando a sentença ora combatida tão somente para excluir a condenação do promovido ao pagamento de danos morais e JULGAR PREJUDICADO o recurso apresentado pela autora. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align="justify"> É o voto. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align="justify"> É o voto. </p>

Processo	0200946-39.2023.8.06.0066
	transparent;" align="justify"> Fortaleza, data da assinatura digital. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="center"> </p><p style="text-indent: 8%; text-align: center;"> </p><p style="text-indent: 8%; text-align: center;"> </p> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	3006207-84.2024.8.06.0064
Número de ordem	173
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Obrigações de Fazer / Não Fazer
Polo ativo	SERGIO SILVA COSTA SOUSA FILHO
Advogado(s) - Polo ativo	SERGIO SILVA COSTA SOUSA FILHO - (CE25955-A)
Polo passivo	MORTEN ERIK NORBY KIRSTEN ELISABETH MARTHINSEN BORRE HETTY ARVID STAERKEBYE KJERSTI STAERKEBYE TOR WILLARD JOHANSEN GRETHE TROLSRUD JOHANSEN JAN BRUUN EVA SISSEL ENGBRETSSEN
Advogado(s) - Polo passivo	MARLEY CAMPELO SERRA - (CE30611-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado
Processo	3008912-16.2025.8.06.0001
Número de ordem	174
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alienação Fiduciária
Polo ativo	MARIA DO SOCORRO LOPES LIMA
Advogado(s) - Polo ativo	ANTONIO HELDER GUERRA LOBO FILHO - (CE42605-A)
Polo passivo	BANCO GM S.A.
Advogado(s) - Polo passivo	CARLOS EDUARDO MENDES ALBUQUERQUE - (PE18857-A)
Terceiros	Não informado

Processo	3008912-16.2025.8.06.0001
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	&quot;times new roman&quot;, times;">III) RAZÕES DE DECIDIR: </p><p style="text-align: justify;" dir="ltr"> 3. De início, ressalta-se que a relação jurídica em apreço é regida pelos preceitos do Código de Defesa do Consumidor (CDC), pois, às instituições financeiras aplicam-se os ditames da norma em referência nos moldes da Súmula 297 do STJ. </p><p style="text-align: justify;" dir="ltr"> 4. Ato contínuo, a necessidade de apresentação de extratos analíticos é inaplicável, uma vez que os documentos apresentados pela instituição financeira nos autos já são suficientes para demonstrar a evolução do débito e justificar a propositura da demanda.&#160; </p><p style="text-align: justify;" dir="ltr"> 5.&#160; Da mesma forma, não se aplica a teoria do adimplemento substancial com relação aos contratos de alienação fiduciária,&#160; em conformidade com a jurisprudência do STJ.&#160; </p><p style="text-align: justify;" dir="ltr"> 6. Na linha do entendimento da mesma Corte Superior, a par da previsão constante no art. 28, §1º, I, da lei nº 10.931/2004, não se revela abusiva a livre pactuação referente aos juros remuneratórios em montante superior a 12% (doze por cento) ao ano, sendo possível que os contratos de mútuo bancário assim prevejam, sem que incidam os arts. 406 e 591 do Código Civil no caso (Temas Repetitivos nºs 25 e 26 do STJ).&#160; </p><p style="text-align: justify;" dir="ltr"> 7. Ademais, as instituições financeiras, categoria em que se insere a entidade apelada, não são reguladas pelas disposições da Lei da Usura (Decreto nº 22.626/1933) nos termos da Súmula nº 596, do STF, e do Tema Repetitivo do STJ nº 28, não se aplicando as limitações aí previstas.&#160; </p><p style="text-align: justify;" dir="ltr"> 8. Por outro lado, a Corte da Cidadania, segundo o Tema Repetitivo nº 27, considera possível a revisão da cláusula contratual que define as taxas de juros remuneratórios, em razão de sua abusividade. Para se identificá-la, deve-se avaliar os efeitos na relação jurídica que podem implicar desvantagem exagerada ao consumidor, sendo utilizado, como parâmetro, o percentual médio adotado pela prática do mercado em operações similares no mesmo período da contratação.&#160; </p><p style="text-align: justify;" dir="ltr"> 9. Nesse cenário, a taxa anual utilizada na contratação versada nos autos foi de 16,77%. Por sua vez, em agosto de 2023, mês em que os termos do negócio jurídico foram firmados entre as partes, a taxa anual no período (Série 20749 - Taxa média de juros das operações de crédito com recursos livres - Pessoas físicas - Aquisição de veículos), conforme consulta no sítio eletrônico gerido pelo Banco Central do Brasil, no Sistema Gerenciador de Séries - SGS, foi de 26,18%. É evidente, de acordo com a jurisprudência do STJ e desta Corte de Justiça, que a taxa de juros foi fixada em patamar inferior à média de mercado praticada na mesma época, portanto, não sendo compreendida como abusiva, mesmo à luz das disposições do Código de Defesa do Consumidor (art. 39, V, do CDC). </p><p style="text-align: justify;" dir="ltr"> 10. Diante de todo esse contexto, a mora do fiduciante restou regularmente caracterizada, pois os encargos principais do período de normalidade contratual, isto é, os juros remuneratórios e a capitalização, não são exorbitantes, autorizando o êxito da ação de busca e apreensão proposta pela instituição financeira, na forma disposta no Tema Repetitivo de nº 28, apreciado pelo STJ.&#160; </p><p style="text-align: justify;" dir="ltr"> 11. Em razão disso, nos termos dos precedentes das Cortes Pátrias, é inequívoca que a constituição da mora do apelante foi regular, caracterizando a legalidade da decisão liminar de 1º grau e os demais atos, até a sentença, que culminaram na apreensão do veículo e na consolidação de sua propriedade, não se extraindo daí qualquer violação aos princípios do contraditório e da ampla defesa, nem se cogitando em reparação de danos morais.&#160; </p><p style="text-align: justify;" dir="ltr"> 12. No caso em apreço, a ré da ação de busca e apreensão, ora apelante, restou inadimplente. Conforme pronunciamento jurisprudencial meritório, não ocorreu a purgação da mora, inexistindo, portanto, ato ilícito a ensejar a pretensão de reparação por danos morais nos moldes em que almeja, isto é, em virtude de medida que ordenou a devolução para a autora no início da lide reintegratória. </p><p style="text-align: justify;" dir="ltr"> 13. Dessa forma, considerando a inexistência de abusividade de encargos exigidos no período da normalidade contratual, não há que se falar em suspensão da liminar de busca e apreensão e, por conseguinte, em nulidade das cláusulas contratuais celebradas, restando estas devidamente válidas. </p><p style="text-align: justify;" dir="ltr">

Processo	3008912-16.2025.8.06.0001
	justify;" dir="ltr"> IV) DISPOSITIVO:&#160; </p><p style="text-align: justify;" dir="ltr"> 14. Recurso conhecido e desprovido.&#160; </p><p style="text-align: justify;">
 </p><p style="text-align: justify;" dir="ltr"> ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação para, no mérito, negar-lhe provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p style="text-align: justify;">
 </p><p style="text-align: center;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;" dir="ltr"> Presidente/Relator </p><p style="text-align: center;">
 </p><p style="text-align: center;" dir="ltr"> RELATÓRIO&#160; </p><p style="text-align: justify;" dir="ltr">&#160;</p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Tratam os autos de apelação cível interposta por Maria do Socorro Lopes Lima, em face da sentença proferida pelo D. juízo da 16ª Vara Cível da Comarca de Fortaleza, que julgou procedente a Ação de Busca e Apreensão de Veículo, proposta por Banco GM S.A em desfavor da ora apelante. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Eis o dispositivo da referida sentença (ID 25567407): </p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; padding-left: 150px;"> Diante do exposto, com fulcro no artigo 487, I, CPC, JULGO PROCEDENTE o pedido formulado na inicial e IMPROCEDENTE o pedido formulado na reconvenção, consolidando, em mãos da parte autora, o domínio e a posse plena e exclusiva do veículo descrito na petição inicial, tornando definitiva a liminar concedida, ficando, com fundamento no 2º e 3º, § 1º, do Decreto Lei 911/69, autorizada a venda. </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> Em face da sucumbência na ação principal, condeno a parte requerida ao pagamento das custas e despesas processuais, bem como a pagar honorários advocatícios fixados em 10% do valor atualizado da causa, ficando a exigibilidade suspensa ante o que prevê o artigo 98, § 3º, CPC. </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> Na reconvenção, condeno também o requerido-reconvinte ao pagamento das custas e honorários advocatícios que arbitro em 10% do valor da causa na reconvenção, com a exigibilidade suspensa pela gratuidade. </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> Determino, de pronto e independentemente do trânsito em julgado, a retirada da restrição eletrônica do veículo junto ao sistema RENAJUD (art. 3º, §9º, Dec.-lei n.º 911/69). </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> Valerá esta sentença como autorização ao DETRAN para a transferência do veículo (Decreto-Lei nº 911/69, art. 2º). </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> Publique-se no DJEN, para ambas as partes, nos termos da Portaria n. 569/2025, DJ 10/03/2025. </p><p style="text-align: justify; padding-left: 150px;" dir="ltr">
 </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> Caso seja interposta apelação, intime-se o apelado, por meio de seu patrono (DJeN), para apresentar contrarrazões no prazo de 15 dias (art. 1010, § 1º, CPC). </p><p style="text-align: justify;"> </p>

Processo	3008912-16.2025.8.06.0001
	padding-left: 150px;" dir="ltr"> Fortaleza, data pelo sistema." </p><p style="text-align: justify;">

 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Irresignada, a demandada interpôs recurso de apelação (ID 25567411), requerendo, em síntese: i) as benesses da gratuidade judiciária; ii) a suspensão da liminar de busca e apreensão; iii) o reconhecimento do adimplemento substancial da obrigação; iv) a aplicação do Código de Defesa do Consumidor; v) a exibição de todos os extratos analíticos da movimentação contratual do réu; vi) a caracterização da abusividade contratual em virtude dos juros abusivos cobrados; vii) a devolução das parcelas pagas pela instituição bancária; a conversão em perdas e danos e a aplicação da multa do art. 3º, §6º do DL 911/69 e; viii) a caracterização de danos morais na apreensão indevida do bem, com a respectiva condenação da instituição financeira em R\$ 5.000,00 (cinco mil reais).&#160; Assim, requer o provimento do recurso para reformar a sentença e, por conseguinte, reaver o bem financiado ou o seu equivalente em dinheiro.</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Preparo não recolhido, em razão da concessão de gratuidade judiciária (ID 25567407). </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> A instituição bancária peticionou informando a venda em leilão extrajudicial do veículo objeto da lide, conforme IDs 25567420 e 25567422. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Intimado a se manifestar, o Banco recorrido apresentou contrarrazões (25567424), impugnando, preliminarmente, a concessão da benesse de gratuidade judiciária à ré apelante. No mérito, pleiteia o desprovimento do apelo e a manutenção da sentença. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> É o relatório. </p><p style="text-align: justify;" dir="ltr">&#160;</p><p style="text-align: center;" dir="ltr"> VOTO </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Registro que os pressupostos recursais – cabimento, legitimidade e interesse de recorrer, tempestividade, regularidade formal, inexistência de fato impeditivo ou extintivo do poder de recorrer – estão devidamente preenchidos no caso concreto, inexistindo quaisquer vícios que obstem o conhecimento do recurso.&#160;</p><p style="text-align: justify; text-indent: 8%;" dir="ltr">&#160;</p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> 1. Da preliminar de impugnação ao benefício da gratuidade judiciária </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Convém analisar a preliminar aduzida pela parte recorrida em suas razões recursais, impugnando o benefício da justiça gratuita que foi concedido à parte apelante, afirmando que o consumidor não demonstrou preencher os requisitos para sua concessão, razão pela qual requer a revogação. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Razão não assiste ao recorrido, pois, em relação à pessoa natural, deve haver presunção de veracidade quanto à declaração de insuficiência de recursos, e, no caso concreto, inexistem nos autos elementos capazes de gerar dúvida razoável acerca dos pressupostos autorizadores para

Processo	3008912-16.2025.8.06.0001
	concessão do benefício.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Ademais, a instituição financeira apelada, ao impugnar o benefício, descurou de trazer documentação comprobatória da real possibilidade financeira da apelada de arcar com as custas e despesas processuais sem prejuízo de seu sustento próprio, ônus que lhe cabia.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Portanto, rejeito a dita impugnação, mantendo o benefício em favor do apelante.&#160; </p><p style="text-align: justify; text-indent: 8%;" dir="ltr">&#160;</p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> &#160; 2. Do mérito recursal </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Cinge-se a controvérsia em analisar se acertada a sentença de procedência dos pedidos na ação de busca e apreensão, consolidando o domínio e a posse plena e exclusiva do veículo descrito na exordial, em razão do inadimplemento da obrigação contratual, e, em consequência, julgando improcedente a reconvenção apresentada. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Examinando detidamente os autos principais, verifico que a irresignação da apelante não tem fundamento, conforme será exposto nos tópicos a seguir. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> 2.1. Da incidência do Código de Defesa do Consumidor </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> De início, saliento que a relação jurídica travada entre as partes é regulada pelos preceitos contidos no Código de Defesa do Consumidor.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Com efeito, no presente caso, estão caracterizadas as figuras do consumidor usuário de um serviço e do fornecedor que o presta, previstas respectivamente no arts. 2º e 3º do CDC.&#160; </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Além disso, já superados os debates sobre a temática no âmbito das cortes superiores, não se revela mais controvertida a incidência das normas consumeristas, quando se trata de uma instituição financeira na condição de prestadora do serviço, porquanto a súmula nº 297, do STJ, expressa os seguintes termos: "O código de defesa do consumidor é aplicável às instituições financeiras".&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Na espécie, a instituição financeira objetiva se consolidar no domínio do veículo com fundamento em negócio jurídico garantido pela alienação fiduciária. Ainda que o instituto seja regido por norma especial (Decreto-Lei nº 911/1969), à evidência do contexto caracterizado acima, não há prejuízo à incidência do CDC para amparar o consumidor em sua manifesta vulnerabilidade. </p><p style="text-align: justify;">
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Processo	3008912-16.2025.8.06.0001
	times;"> 2.2. Da desnecessidade de apresentação dos extratos analíticos </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Afirma a ré apelante que o Banco autor não juntou, em sua inicial, o extrato analítico da movimentação contratual, o que impediu de verificar as taxas aplicadas e as possíveis abusividades cometidas.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Ressalta-se que a ação de busca e apreensão possui rito especial estruturado pelo Decreto-lei nº 911/1969, o qual estabelece requisitos específicos para a propositura da ação, não incluindo a necessidade de apresentação de extratos detalhados de toda a movimentação financeira. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Com efeito, a alegação da apelante não se justifica, pois a petição inicial foi devidamente instruída com a cópia da cédula de crédito bancário (ID 25567353) e o demonstrativo analítico (25567355), no qual constam informações claras sobre os encargos normais da operação e os incidentes no período da inadimplência.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Neste ponto, superada a alegação recursal. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> 2.3. Da inaplicabilidade da teoria do adimplemento substancial </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Há muito, a jurisprudência do STJ consolidou o tema para refutar a incidência da teoria do adimplemento substancial do contrato no âmbito das relações travadas sob a regência da alienação fiduciária.&#160; Vejamos:</p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> AGRAVO INTERNO NO RECURSO ESPECIAL. AÇÃO DE BUSCA E APREENSÃO. ALIENAÇÃO FIDUCIÁRIA. TEORIA DO ADIMPLENTO SUBSTANCIAL. INAPLICABILIDADE. ENTENDIMENTO DO ACÓRDÃO RECORRIDO EM CONSONÂNCIA COM A JURISPRUDÊNCIA DESTA CORTE. INCIDÊNCIA DA SÚMULA 83/STJ. AGRAVO DESPROVIDO. 1. A Segunda Seção do STJ, por ocasião do julgamento do Recurso Especial n. 1.622.555/MG, decidiu pela impossibilidade de se aplicar a teoria do adimplemento substancial aos contratos firmados com base no Decreto-Lei n. 911/1969, considerando a sua manifesta incompatibilidade com a respectiva legislação de regência sobre alienação fiduciária. 2. Incidência, portanto, da Súmula n. 83 do STJ. (...) (STJ, AgInt no REsp n. 1.764.426/CE, relator Ministro Marco Aurélio Bellizze, Terceira Turma, julgado em 29/4/2019, DJe de 6/5/2019). [Grifei].&#160; </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Portanto, nesse contexto, afastada a aplicação do preceito aduzido, a ação de busca e apreensão não encontra óbice algum para a tomada das providências necessárias à consolidação do domínio do veículo garantido, mesmo que, em princípio, o devedor já tenha efetuado o pagamento de boa parte das prestações negociadas para a aquisição do bem.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Rejeito, por consequência, a pretensão do recorrente nessa temática. </p><p style="text-align: justify;">

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	&quot;times new roman&quot;, times;";>
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> 2.4. Da não caracterização de abusividade dos juros cobrados na relação contratual para fins de caracterização da mora do devedor&#160; </p><p style="text-align: justify;";>
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> No tópico a ser examinado, a análise da discussão que releva ponderação por este Órgão Colegiado remete apenas à apuração de circunstâncias que poderiam influenciar na caracterização ou não da mora do devedor e, por consequência, demonstrariam a irregularidade do pleito da instituição financeira. </p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Nesse contexto, importa apurar apenas a alegada abusividade na cobrança dos valores referentes aos juros remuneratórios praticados pela instituição financeira, porquanto fora objeto de expressa irrisignação do apelante e pode refletir no sucesso da ação de busca e apreensão.&#160;</p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Já adianto que não se revela abusiva a pactuação referente ao encargo mencionado em montante superior a 12% (doze por cento) ao ano, como pretende convencer o recorrente em suas razões.&#160;</p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Explico nas linhas seguintes. </p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> De início, relembro que a lei nº 10.931/2004, em seu art. 28, §1º, I, dispõe que os juros podem ser livremente pactuados entre as partes, inexistindo, por conseguinte, óbice de natureza legal na hipótese da contratação de cédulas de crédito bancário.&#160;</p><p style="text-align: justify; text-indent: 8%;"
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> A literalidade da norma segue descrita para melhor análise:&#160; </p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; padding-left: 150px;";" dir="ltr"> Art. 28. A Cédula de Crédito Bancário é título executivo extrajudicial e representa dívida em dinheiro, certa, líquida e exigível, seja pela soma nela indicada, seja pelo saldo devedor demonstrado em planilha de cálculo, ou nos extratos da conta corrente, elaborados conforme previsto no § 2º.&#160; </p><p style="text-align: justify; padding-left: 150px;";" dir="ltr"> § 1º Na Cédula de Crédito Bancário poderão ser pactuados: </p><p style="text-align: justify; padding-left: 150px;";" dir="ltr"> I - os juros sobre a dívida, capitalizados ou não, os critérios de sua incidência e, se for o caso, a periodicidade de sua capitalização, bem como as despesas e os demais encargos decorrentes da obrigação;&#160; </p><p style="text-align: justify;";>
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Por ocasião do julgamento dos Temas Repetitivos de nºs 24, 25 e 26, o STJ já firmou entendimento sobre a matéria em diversos aspectos. Aqui destaco as orientações definidas pela Corte da Cidadania: </p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; padding-left: 150px;";" dir="ltr"> Tema Repetitivo nº 24 - As instituições financeiras

Processo	3008912-16.2025.8.06.0001
	não se sujeitam à limitação dos juros remuneratórios estipulada na Lei de Usura (Decreto 22.626/33), Súmula 596/STF.&#160; </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> Tema Repetitivo nº 25 - A estipulação de juros remuneratórios superiores a 12% ao ano, por si só, não indica abusividade.&#160; </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> Tema Repetitivo nº 26 - São inaplicáveis aos juros remuneratórios dos contratos de mútuo bancário as disposições do art. 591 c/c o art. 406 do CC/02.&#160; &#160;</p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Dos enunciados formulados pela Corte Superior infere-se que a discussão arguida pelo apelante, no tocante à aplicação das normas invocadas em suas razões, são inócuas, porquanto revelam conclusão que destoam do entendimento da jurisprudência.&#160;</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Como visto, as instituições financeiras, categoria em que se insere a entidade apelada, não são reguladas pelas disposições da Lei da Usura, seguindo também o teor da Súmula nº 596, do STF, a qual, por sua vez, preceitua que "As disposições do Decreto 22.626/1933 não se aplicam às taxas de juros e aos outros encargos cobrados nas operações realizadas por instituições públicas ou privadas, que integram o Sistema Financeiro Nacional."&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Nesse cenário, os contratos de mútuo bancário podem estabelecer patamar superior a 12% (doze por cento) ao ano para a taxa de juros remuneratórios, não se justificando a sua limitação com fundamento nos arts. 406 e 591, do Código Civil.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Por outro lado, o STJ, segundo o Tema Repetitivo nº 27, considera possível a revisão da cláusula contratual que define as taxas de juros remuneratórios, em razão de sua abusividade. Para se identificá-la, deve-se avaliar os efeitos na relação jurídica que podem implicar desvantagem exagerada ao consumidor, sendo utilizado, como parâmetro, o percentual médio adotado pela prática do mercado em operações similares no mesmo período da contratação.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Corroborando com o exposto: </p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO DE REVISÃO DE CONTRATO DE FINANCIAMENTO. JUROS REMUNERATÓRIOS. ABUSIVIDADE. ORIGEM. NÃO CONSTATAÇÃO. CAPITALIZAÇÃO MENSAL DE JUROS. PACTUAÇÃO EXPRESSA. MATÉRIA FÁTICO-PROBATÓRIA. REEXAME. SÚMULA Nº 7/STJ. 1. As instituições financeiras não se sujeitam à limitação dos juros remuneratórios que foi estipulada pela Lei de Usura (Decreto nº 22.626/1933), em consonância com a Súmula nº 596/STF, sendo também inaplicável o disposto no art. 591, c/c o art. 406, do Código Civil para esse fim, salvo nas hipóteses previstas em legislação específica. A redução dos juros dependerá de comprovação da onerosidade excessiva - capaz de colocar o consumidor em desvantagem exagerada - em cada caso concreto, tendo como parâmetro a taxa média de mercado para as operações equivalentes, de modo que a simples estipulação de juros remuneratórios superiores a 12% (doze por cento) ao ano, por si só, não indica abusividade, nos termos da Súmula nº 382/STJ (REsp nº 1.061.530/RS). 2. Agravo interno não provido. (STJ, AgInt no AREsp 914.634/SP, Rel. Ministro RICARDO VILLAS BÔAS CUEVA, TERCEIRA TURMA, julgado em 06/12/2016, DJe 19/12/2016). (Destaquei). </p><p style="text-align: justify;">

Processo	3008912-16.2025.8.06.0001
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 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Nos presentes autos, identifico, no contrato de ID 25567353, que a taxa anual utilizada na contratação foi de 16,77%. Por sua vez, em agosto de 2023, mês em que os termos do negócio jurídico foram firmados entre as partes, a taxa anual no período (Série 20749 - Taxa média de juros das operações de crédito com recursos livres - Pessoas físicas - Aquisição de veículos), conforme consulta no sítio eletrônico gerido pelo Banco Central do Brasil, no Sistema Gerenciador de Séries - SGS, foi de 26,18%.&#160; </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> É evidente, de acordo com a jurisprudência do STJ e desta Corte de Justiça, que a taxa de juros foi fixada em patamar inferior à média de mercado praticada na mesma época, portanto, não sendo compreendida como abusiva, mesmo à luz das disposições do Código de Defesa do Consumidor (art. 39, V, do CDC). </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Destarte, concluo que a mora do fiduciante restou regularmente caracterizada, pois os encargos principais do período de normalidade contratual, isto é, os juros remuneratórios e a capitalização, não são exorbitantes, autorizando o êxito da ação de busca e apreensão proposta pela instituição financeira. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> O Tema Repetitivo de nº 28, apreciado pelo STJ, já dispunha tese firmada nesse sentido ao prever que "O reconhecimento da abusividade nos encargos exigidos no período da normalidade contratual (juros remuneratórios e capitalização) descaracteriza a mora" e os recentes precedentes da mesma Corte têm seguido esse entendimento.&#160; </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Em razão disso, nos termos da jurisprudência das Cortes Pátrias, é inequívoca que a constituição da mora do apelante foi regular, caracterizando a legalidade da decisão liminar de 1º grau e os demais atos, até a sentença, que culminaram na apreensão do veículo e na consolidação de sua propriedade, não se extraindo daí qualquer violação aos princípios do contraditório e da ampla defesa.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> DIREITO PROCESSUAL CIVIL E CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DE BUSCA E APREENSÃO. ALIENAÇÃO FIDUCIÁRIA. JUROS REMUNERATÓRIOS. AUSÊNCIA DE ABUSIVIDADE. DESCARACTERIZAÇÃO DA MORA. NÃO OCORRÊNCIA. MULTA DO ART. 3º, §6º, DO DL 911/1969. INAPLICABILIDADE. LUCROS CESSANTES NÃO COMPROVADOS. LITIGÂNCIA DE MÁ-FÉ NÃO CONFIGURADA. RECURSO IMPROVIDO. SENTENÇA MANTIDA. I - CASO EM EXAME. 1. Apelação interposta por Francisco José de Souza Júnior contra sentença que julgou procedente a Ação de Busca e Apreensão ajuizada pelo Banco Aymoré Crédito, Financiamento e Investimento S/A, consolidando a posse plena e exclusiva do bem alienado fiduciariamente em favor do credor. O recorrente alega abusividade dos juros, descaracterização da mora, necessidade de revisão de cláusulas contratuais, aplicação da multa do art. 3º, §6º do DL 911/1969, e pleito por indenização de lucros cessantes e condenação por litigância de má-fé. II. QUESTÃO EM DISCUSSÃO. 2. Há cinco questões em discussão: (i) se os juros remuneratórios cobrados são abusivos; (ii) se há descaracterização da mora; (iii) se é cabível a aplicação da multa do art. 3º, §6º do DL 911/1969; (iv) se há direito à indenização por lucros cessantes; e (v) se está configurada a litigância de má-fé. III. RAZÕES DE DECIDIR. 3. Juros remuneratórios: As taxas de juros praticadas estão dentro dos limites legais e não excedem em mais de 50% a taxa média do mercado divulgada pelo Banco Central para a mesma época e operação, não havendo abusividade na cobrança, conforme a jurisprudência consolidada (Súmula 382/STJ e Tema 25 do STJ). 4. Descaracterização da mora: A mora do devedor

Processo	3008912-16.2025.8.06.0001
	não é descaracterizada, visto que não foi constatada abusividade nos encargos exigidos no período de normalidade contratual. A simples propositura de ação revisional não tem o condão de afastar a mora (Súmulas 380 e 539/STJ). 5. Multa do art. 3º, §6º do DL 911/1969: A aplicação da multa é incabível, pois não se trata de caso de improcedência da ação ou de abuso de direito por parte do credor. O bem foi corretamente apreendido conforme os termos contratuais. 6. Indenização por lucros cessantes: O apelante não comprovou efetivamente a perda de ganhos ou a essencialidade do bem apreendido para suas atividades econômicas, sendo incabível a indenização por lucros cessantes, conforme o art. 402 do CC. 7. Litigância de má-fé: Não restou configurada a má-fé, uma vez que o exercício do direito de ação pela parte autora é legítimo e não há indícios de que tenha agido com dolo ou intuito de causar prejuízo à parte contrária. IV. DISPOSITIVO E TESE. 8. Recurso conhecido e não provido. Sentença mantida. Tese de julgamento: A estipulação de juros remuneratórios superiores a 12% ao ano, por si só, não indica abusividade, devendo a abusividade ser demonstrada de forma concreta. A descaracterização da mora do devedor só ocorre quando há cobrança de encargos abusivos no período de normalidade contratual. A multa prevista no art. 3º, §6º do DL 911/1969 só é aplicável quando há improcedência da ação ou abuso de direito por parte do credor. A condenação por lucros cessantes exige a comprovação efetiva da perda de ganhos, não bastando alegações genéricas. A litigância de má-fé depende da comprovação de conduta dolosa ou abusiva, o que não se verifica no caso em tela. Jurisprudência relevante citada: STJ, REsp nº 1.061.530/RS (Tema 25); TJ-CE, Apelação Cível nº 0003190-97.2019.8.06.0151, Rel. Des. Maria do Livramento Alves Magalhães, j. 21/06/2022; TJ-CE, Apelação Cível nº 0861444-68.2014.8.06.0001, Rel. Des. Francisco Luciano Lima Rodrigues, j. 28/04/2021. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, em conhecer a apelação interposta pela parte autora, para negar-lhe provimento, nos termos do voto do relator. Fortaleza, data da assinatura eletrônica. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (TJCE, Apelação Cível - 0252282-20.2022.8.06.0001, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 16/10/2024, data da publicação: 16/10/2024). (Destaque!) <="" span="" style='font-family: "times new roman", times;'> <="" span="" style='font-family: "times new roman", times;'> <="" span="" style='font-family: "times new roman", times;'> Revisão de cláusulas contratuais. Cédula de crédito bancário. Financiamento de veículo automotor. Aplicabilidade do código de defesa do consumidor. Juros remuneratórios. Taxa contratada compatível com a média do mercado financeiro. Ausência de abusividade. Capitalização de juros mensal. Pactuação expressa. Validade. Comissão de permanência. Ausência de previsão contratual. Encargos de inadimplemento. Juros de mora (1% ao mês). Multa contratual (2%). Legalidade. Ação revisional não afasta a mora. Possibilidade de inscrição do nome do devedor nos órgãos de proteção ao crédito e busca e apreensão do veículo. Consignação em pagamento do valor incontroverso não afasta a mora. Recurso conhecido e desprovido. Sentença mantida. I. Caso em exame 1. Apelação Cível interposta pela parte autora contra sentença de improcedência dos pedidos iniciais, mantendo as cláusulas contratuais pactuadas. II. Questão em discussão 2. A questão em discussão consiste em saber: i) se a taxa de juros remuneratórios pactuada é abusiva; ii) se há legalidade na capitalização de juros mensal; iii) se há cobrança indevida de comissão de permanência; iv) se a propositura de ação revisional descaracteriza a mora. III. Razões de decidir 3. Os juros remuneratórios não se mostram discrepantes dos praticados pelo mercado financeiro, pois, de acordo com os índices divulgados pelo Banco Central do Brasil (20749 - Taxa média de juros das operações de crédito com recursos livres - Pessoas físicas - Aquisição de veículos), no mês de agosto de 2019, data da contratação; fl. 23, a taxa média era de 20,10% ao ano e 1,54% ao mês, enquanto os juros pactuados no contrato são de 20,70% ao ano e 1,58% ao mês, o que afasta a tese recursal de abusividade do encargo contratado. Além disso, firmou-se o entendimento de que a taxa de juros contratada é considerada abusiva se superar, no mínimo, uma vez e meia (50%) a taxa média de mercado divulgada pelo Banco Central do Brasil ($20,10\% \times 1,5 = 30,15\%$ / $1,54\% \times 1,5 = 2,31\%$) levando-se em consideração o tipo da operação e o período da contratação, o que não é o caso dos autos, já que a taxa de juros cobrada é inferior a esse limite (20,70% e 1,58%). Portanto, constata-se a ausência de abusividade dos juros pactuados no contrato. 4. É permitida a capitalização de juros com periodicidade inferior a um ano em contratos bancários celebrados após 31.03.2000, data da publicação da MP n. 1.963-17/2000 (atual MP n. 2.170-36/2001). Com efeito, deve ser mantida a capitalização dos juros, com periodicidade mensal, tendo em vista que o contrato foi firmado em 23.08.2019 (fl. 22). 5. Não há que se falar em qualquer ilegalidade da comissão de permanência, porquanto inexistente previsão contratual

Processo	3008912-16.2025.8.06.0001
	a respeito desse encargo, de sorte que não há interesse recursal quanto a este ponto. O que há, na realidade, é tão somente a cobrança dos seguintes encargos: 1) juros moratórios à taxa de 1% ao mês (súmula 539/STJ); 2) multa de 2% sobre o valor do débito, conforme item VI do instrumento particular (item 5; fl. 23). 6. Como visto, não houve o reconhecimento da abusividade dos encargos durante o período de normalidade (juros remuneratórios e capitalização de juros). Portanto, não há óbice legal para que a instituição financeira inscreva o nome da parte apelante nos órgãos de proteção ao crédito com relação à dívida objeto do contrato, nem obsta a propositura de ação de busca e apreensão do veículo para recuperação do crédito. 7. A consignação em pagamento afasta a mora apenas em relação aos valores depositados, permanecendo a incidência de encargos moratórios sobre os valores remanescentes. Portanto, a consignação em juízo do valor que entende correto não é suficiente, por si só, para a purgar a mora, devendo ser realizado o pagamento integral dos valores devidos de acordo com o contrato. IV. Dispositivo 8. Recurso conhecido e desprovido. Sentença mantida. Acórdão: Vistos, relatados e discutidos estes autos, acordam os Desembargadores integrantes da e. 2ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e desprovê-lo, nos termos do voto da eminente Relatora. Fortaleza, data e hora da assinatura digital. Carlos Alberto Mendes Forte Presidente do Órgão Julgador, em exercício Jane Ruth Maia de Queiroga Desembargadora Relatora (TJCE, Apelação Cível - 0253377-51.2023.8.06.0001, Rel. Desembargador(a) JANE RUTH MAIA DE QUEIROGA, 2ª Câmara Direito Privado, data do julgamento:&#160; 02/10/2024, data da publicação:&#160; 02/10/2024). (Destaquei). </p> <p style="text-align: justify; padding-left: 150px;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Com amparo nessas considerações, justificada a legalidade dos procedimentos adotados para a apreensão do veículo e da liminar deferida em 1º grau, não se cogita em ato ilícito a ser reparado via danos morais, tal como pugnou o apelante em seu recurso.&#160; </p> <p style="text-align: justify; text-indent: 8%;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Desse modo, entendo que o apelo, neste particular, igualmente não merece ser acolhido, devendo a sentença ser mantida em sua integralidade. </p> <p style="text-align: justify;">
 </p> <p style="text-align: justify; text-indent: 8%;"> 2.5. Do não cabimento de indenização por dano moral </p> <p style="text-align: justify;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Sabe-se que a obrigação de indenizar pressupõe a confluência de três requisitos: a prática de uma conduta antijurídica, comissiva ou omissiva, a existência de um dano, bem como o nexo de causalidade entre esses dois primeiros elementos. É o que se extrai do disposto dos artigos 186 e 927 do Código Civil: "Art. 186. Aquele que, por ação ou omissão voluntária, negligência ou imprudência, violar direito e causar dano a outrem, ainda que exclusivamente moral, comete ato ilícito. Art. 927. Aquele que, por ato ilícito (arts. 186 e 187), causar dano a outrem, fica obrigado a repará-lo." </p> <p style="text-align: justify;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> No caso em apreço, a ré da ação de busca e apreensão, ora apelante, restou inadimplente. Conforme pronunciamento jurisdicional meritório, não ocorreu a purgação da mora, inexistindo, portanto, ato ilícito a ensejar a pretensão de reparação em danos morais nos moldes em que almeja, ou seja, em virtude de medida que ordenou a devolução para a autora no início da lide reintegratória. </p> <p style="text-align: justify; text-indent: 8%;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Nesse sentido, oportuno ressaltar que não se tratam os autos de hipótese em que a apreensão do veículo foi indevida, ocorrendo a deterioração do bem em depósito, as quais ensejam danos indenizáveis, circunstâncias essas diferentes do caso em apreço, em que, repita-se, sequer fora efetuado o depósito judicial da integralidade do débito, tendo sido julgado precedente a Ação de Busca e Apreensão, que sequer transitou em julgado. </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr">&#160;</p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> <span style="font-family: &quot;times new

Processo	3008912-16.2025.8.06.0001
	</p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> EMENTA: APELAÇÃO. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. PROCESSAMENTO DE AÇÃO BUSCA E APREENSÃO. AUSÊNCIA DE PURGAÇÃO DA MORA. CONSOLIDAÇÃO DA POSSE PLENA E EXCLUSIVA EM FAVOR DO CRÉDOR FIDUCIÁRIO. TRÂNSITO EM JULGADO. INEXISTÊNCIA DE ATO ILÍCITO A AMPARAR O PLEITO AUTORAL. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA DE IMPROCEDÊNCIA MANTIDA. A controvérsia em apreço relaciona-se ao reconhecimento de eventuais danos morais e materiais decorrentes do cumprimento do mandado de devolução de veículo, no bojo da Ação de Busca e Apreensão nº 0041475-47.2007.8.06.0001, atualmente arquivada e com trânsito em julgado. Em primeiro plano, sabe-se que a sentença de mérito, independente do teor do julgado, tem o condão de substituir decisão provisória, não havendo, in casu, ambiente fático-jurídico para acolher o pleito recursal alusivo aos danos materiais e morais supostamente ocorridos no processamento da Ação de Busca e Apreensão nº 0041475-47.2007.8.06.0001, especialmente relacionados à suposta depredação do automóvel apreendido no início da lide, o qual, ao fim e ao cabo, teve sua posse plena e exclusiva em favor do credor fiduciário. De fato, restou comprovado nos autos que não houve a purgação da mora, tendo a autoridade processante assegurado a restituição à promovida da importância paga mediante alvará e assinalado, no comando sentencial, que a purgação da mora precisa incluir todos os valores cobrados pelo credor, prestações vencidas e vincendas. A inclusão das parcelas vincendas no débito cobrado constitui consectário legal expressamente previsto no art. 3º, § 2º, do Decreto-Lei 911/69, não havendo abusividade em tal conduta. E, sobre o tema o Egrégio Superior Tribunal de Justiça em julgamento definitivo do Recurso Especial nº 1418593/MS, recurso repetitivo, nos moldes do art. 543-C, em 14.5.2014, consolidou o entendimento: 'no sentido de ser necessário o pagamento da integralidade da dívida para purgação da mora, no prazo de cinco dias, após a execução da liminar'. No caso em apreço, a ré da ação de busca e apreensão, ora apelante, restou inadimplente. Conforme pronunciamento jurisdicional meritório, não ocorreu a purgação da mora, inexistindo, portanto, ato ilícito a ensejar a pretensão de reparação por danos morais e materiais nos moldes em que formulada, ou seja, em virtude de medida que ordenou a devolução para a autora no início da lide reintegratória. (...) RECURSO CONHECIDO E DESPROVIDO (Apelação Cível - 0077127-57.2009.8.06.0001, Rel. Desembargador(a) MARIA DAS GRAÇAS ALMEIDA DE QUENTAL, 2ª Câmara Direito Privado, data do julgamento: 13/07/2022, data da publicação: 13/07/2022).&#160; [Grife]&#160;</p><p style="text-align: justify; padding-left: 150px;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Desse modo, constata-se nos autos que a apreensão do veículo ocorreu em razão da mora devidamente caracterizada, através de notificação idônea, bem como, não houve a purgação da mora. Assim sendo, considerando que a apelada não cometeu ato ilícito, mas sim, agiu claramente albergada pela legalidade, em exercício regular de um direito que lhe é conferido, e do qual pode se defender amplamente a parte apelante, não se pode inferir que daí resulte a presunção do dano moral, o qual reputo não configurado, merecendo ser mantida a sentença. </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> 2.6. Da manutenção da liminar de busca e apreensão em razão da não caracterização de abusividade dos encargos contratuais </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Conforme entendimento pacífico no Superior Tribunal de Justiça, admite-se a discussão de cláusulas contratuais em ação de busca e apreensão, como tese de defesa, com o fim de descaracterizar a mora. Portanto, a apreciação das cláusulas contratuais, alegada em sede de contestação e em razões recursais, limita-se à verificação da existência da mora, pressuposto para a procedência do pedido em questão. </p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Outrossim, o

Processo	3008912-16.2025.8.06.0001
	entendimento pacificado é no sentido de que a descaracterização da mora do devedor somente ocorrerá no caso de reconhecimento de abusividade nos encargos exigidos no período da normalidade contratual (juros remuneratórios e capitalização), e desde que não se refiram a encargos acessórios, não descaracterizando a mora se incidentes em período de inadimplência (REsp 1.061.530/RS e REsp 1.639.259/SP).&#160;</p>
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> No caso dos autos a mora restou caracterizada, pois expressa e devida a capitalização de juros, conforme demonstrado anteriormente. </p> <p style="text-align: justify; text-indent: 8%;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Assim, depreende-se, da análise do instrumento contratual entabulado entre as partes, que não há abusividade que possa ensejar a nulidade de suas cláusulas, tendo em vista que há a disposição de todo o regramento do negócio jurídico celebrado entre as partes.&#160; </p> <p style="text-align: justify; text-indent: 8%;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Desse modo, pela análise dos pontos de irresignação recursal, não há se falar em abusividades dos encargos previstos para o período da normalidade contratual, motivo pelo qual plenamente possível a caracterização da mora, sendo, portanto, mantida a liminar de busca e apreensão do veículo. </p> <p style="text-align: justify; text-indent: 8%;"> 3. Dispositivo </p> <p style="text-align: justify;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Com amparo nos fundamentos expostos, conheço do recurso para lhe negar&#160;provimento, mantendo a sentença em sua integralidade.&#160; </p> <p style="text-align: justify; text-indent: 8%;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Considerando o desprovimento da apelação, majoro os honorários advocatícios, em sede recursal, para o patamar de 12% (doze por cento) do valor da causa., observando que, em decorrência da gratuidade de justiça que goza a parte recorrente, deverão ficar sob condição suspensiva de exigibilidade, nos termos do art. 98, §3º, do CPC. </p> <p style="text-align: justify; text-indent: 8%;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> É como voto. </p> <p style="text-align: justify; text-indent: 8%;">
 </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Fortaleza, data da assinatura digital. </p> <p style="text-align: justify;">
 </p> <p style="text-align: center;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p> <p style="text-align: center;" dir="ltr"> Relator </p> <p style="text-align: center;">&#160;</p> <p style="text-align: center;">&#160;</p> <p style="text-align: center;"> &#160; </p>
Processo	0160455-30.2019.8.06.0001
Número de ordem	175
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL

Processo	0160455-30.2019.8.06.0001
Assunto principal	Contratos de Consumo
Polo ativo	JOSE VIEIRA
Advogado(s) - Polo ativo	JOSE IDEMBERG NOBRE DE SENA - (CE14260-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	Não informado

Processo	0160455-30.2019.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAAFxEAABcRAco m8z8AAEulSURBVHhe7b11YFbH1vZnCzdCqRfquMfdiOGQhLi7IEmlu5OEKIEEd3cpbqXU KFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY +lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z +6OXXcf/CQH69dlcZnBKIBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJ Xi0CT6jrYmfHMDacFDw/5+puvOXRoL998+QK/XjnNZRuXuH3vZx7/8ognT6TNWtt/qf+nei DIF93mX5X/GLAnT57w8OEDPjv2CUvnVIFZGEfyBBcifO0ZZtWXccMsSY6dxiZVK1g+v5Kk MHvemT+RXQuj2L1kljOzXUiNHEWo1xhKc7PZvmoBaSFOrcwLYPeichbP9efdBeHMz/Mg O96LbRsWkhTtj88IM0oSPNng2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8 TOVOCqa0qYM3KhVy9elnX/8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mklARS3q4N RnR40iK8MTJtC9eToMoix/GvgVRHFwUwflY9haF0jRRFS/S1JC3Uim3wos7LGsHdRJO +tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFWqT875oYTPXYwrlb98R5u QmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsyOt2 LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXe LCoZz4JiN+YVujEn35XZ+fl5bylL8kYJw8YwX863aJoPS8u8WVHhzbpfniOP7bPDmDXvG D2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm /YvylwC7c/sWs6cXkd1pFAfXJLJzXhCbavxYVR7AUmFcXZYllamjKE0cRsEkW/Im2AhTLE gJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUId6D9HqJF894gP0SQ0zFhab kxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+ X8EmCp7d23Ce4wp6dEOZESYkRpsQEgqKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHE BRmSGGLGIGBL4oMsiQ0yJS7EiPgWQ6nmTAm3YrL6LchMQDljzt+cWH8rrcb5WzDBx5g YXyMivfSi8BhChLSAPi6PyR5GYuYwJAWbkRxoSEaIKQUTncRtmJGXFsmPI89r7RYXXF/ Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHSySkC2uQAlYECdv8hRnyPc7PjDa3PWG PprF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6Pdv2FEYJcEEWJAYYcXsNtf1j/U3lWDIXoBnB4wc J+AbEBuuuNdIXzissnCIDEuMr1w0wiD7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335 NQX4qoYGj8B0jrHldSLJ0PFWZTQV+bGOIKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA2 1UawcWYom6RumTWBqhQ3iscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBREvKlBeAmoYa 6DmZyYvsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafB93Q2qvarQtcDdt/v/whila Kz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElBRJgXaUT3GSwGBJ ofih/FB7ckPMYQszoUC+x3qa4W37NlkhdU5Xm6fMqJVNRElHNWfSLBjNHFEu/SVS+IKbN5 6UmlEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkoplts6LIV2iU260tWgxZ3Hl5hSkRNPjledFP OoLMIEES2pUIDlj3nsgCX7i0CUlPlSrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzlyJ7 gNjKizBY5wdr77UiaKMaiLHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqrh6F8sfwOw MUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBliV6Ts2i4u1uHXAbYUBZhg81mePYWCda qTAQjeJ70sRXTc8Lxc6wNy906sgLHTrxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNjiRpbKJ cTfd56jox4f8lTh1CV7kpV6jgKJz0lw63F35kROU7kjN8ovvj0uNbWv1r+EmANLUgkZ49QlBb GnllgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJ5X9XajNGsvMLA9ivlwoSPb DsP9bvNilC92fe56XOnfC3rQfpekBJldZy34uzMgYQ22uu4hcExljXHFxNcyvUj8lZGAGsSa yIBWi2hdWyORVa6/ec4EUilR10849cBboju/On5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60u ThqK6b4GuNi/SY1BVECWJtPmW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56 h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9ISL/PS+G6flR+IzqL6DrkSNyJkdIA hJxyxKHMzNTkvylaoTHBfPdt2e09qrW/6eQY/VPAlE/FcTpr6yNtqSV6ze9coixrokQwSoS bFIYMJ4EL2PRUiMI8Y1ivWisrEhrEgJmPMPWJIfYUpHswsqyQJaW+IsgNSlrZiQThXWOZg N59dnOPNOhE107Pk3nNm3o/2Y3onxHskQcLthQTIS8CWvET1anukumYMMkyQCifUT8S nRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFruxzckrarpOqj9W2ATn1w7+J4D9nWP0JdULv z8v+HZtlCHFhw+wkFpf5MavQn9BxAKKEEzPSPQQ4qek+ICX7MjXJ6lkfwoSAsiXmjPFj7jw caRM9GVSqBeBnuPEL3ng7+1NgK8vQT5Svbyl8PMiOsAl5Am+JEWnJ1/OkZsQSH5iCE Wis4qTQpmWGCwD4UepgFSU5iJplQUJkkUsiCi9UnxeWfwY+dskr1+6UNYj34olI22e7N8p/ wlvwUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUle7OlGgiKur1li85gLS4UHLT4ygtzGR 6eRFL5tWxfuVydmezwt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6 +ZNbvX0ixvXb0pHr/DDhQtcOv8tZ05/xpddfsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5F OUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+Ocp8h QuZPWsOc2tnM72ymnK5+ly6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONNoN5bFKBY8 ePeb+vQfcvNOPGzdvsYZwjcti1hcvX+D7i+f49z3fHf2DN98LW7M3x79nu+P3eec+PfcUHY cenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yp pqKqurqa2bJbWWDRvWCsI0Z9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdfsvVN+e3R Y+XHdPslfNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQI RhbEE50/ALZsaD3HuHplReKRF4J4aLjUMz/qlvDKkZobjmxNBkDj58lJYYoqTiJ2WRkpfDt k1RZTMrWTuuWs2bGgnQd38Ngxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTNgtjtr yc7OYePGjfl3+atlJFX/UfmXDFoxmFvBs13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGB wjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfnvXvS3Kc3Ta Q+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;0160455-30.2019.8.06.0001 - &#160;APELAÇÃO CÍVEL (198)</p><p> APELANTE: JOSÉ VIEIRA</p><p> APELADO: BANCO BRADESCO S/A</p><p>
 </p><p align="center">
 </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Ementa: Direito do consumidor. Recurso de apelação Cível. Ação de indenização por danos morais. Sentença procedente. Recurso do autor. Repetição de indébito. Nulidade contratual. Pleito de majoração da indenização por danos morais. Impossibilidade. descontos ínfimos realizados. mero aborrecimento. Precedentes desta primeira câmara de direito privado. Recurso conhecido, todavia, desprovido. Sentença mantida. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify">

</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> ACORDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso, todavia, para NEGAR-LHE PROVIMENTO, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Presidente/Relator </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center">

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Processo	0160455-30.2019.8.06.0001
	RELATÓRIO Trata-se de Recurso de Apelação Cível, interposto por JOSÉ VIEIRA, adversando sentença proferida pelo Juízo da 23ª Vara Cível da Comarca de Fortaleza, que, nos autos da ação declaratória de inexistência de relação jurídica com repetição de indébito e indenização por danos morais, manejada pelo ora recorrente em desfavor do BANCO BRADESCO S/A, julgou procedente o feito para (id. 25611441): a) declarar a inexistência de relação jurídica entre as partes no que se refere ao contrato de empréstimo por consignação nº 013429058, para cessarem todos os efeitos deles decorrentes; b) determinar ao requerido restituir em dobro os valores efetivamente descontados a partir de 30/03/2021, enquanto os descontos iniciados antes dessa data devem ser restituídos na forma simples. c) condenar o banco réu ao pagamento de indenização por dano moral, no montante de R\$ 3.000,00 (três mil reais). Em suas razões, requer o autor a majoração do dano moral, aduzindo que os constrangimentos e abalos sofridos pelo(a) recorrente, mormente por ter sido manchado indevidamente seu bom nome, sendo este seu maior patrimônio, além de o impedir, por certo tempo, de entabular qualquer negociação à prazo, trouxe afronta à sua moral, conquistada a duras penas ao longo de sua vida, fazendo-o(a) ainda passar por sérias privações, as quais não serão tão facilmente extirpadas. os constrangimentos e abalos sofridos pelo(a) recorrente, mormente por ter sido manchado indevidamente seu bom nome, sendo este seu maior patrimônio, além de o impedir, por certo tempo, de entabular qualquer negociação à prazo, trouxe afronta à sua moral, conquistada a duras penas ao longo de sua vida, fazendo-o(a) ainda passar por sérias privações, as quais não serão tão facilmente extirpadas. Contrarrazões apresentadas (id.2561144). E o relatório. VOTO Conheço do recurso, eis que presentes os pressupostos de admissibilidade. Adianto que a instituição promovida não recorreu, e que o cerne do apelo do autor consiste em examinar tão somente se é pertinente a majoração da condenação da indenização por danos morais deferida na origem. Tenho que o valor indenizatório não comporta modificação. Explico a seguir. A existência do dano moral pressupõe a configuração de lesão a um bem jurídico que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, o bom nome etc., como se infere dos artigos 1º, inciso III, e 5º, incisos V e X, da Constituição Federal. Sobre o tema leciona Sérgio Cavalieri Filho: [...] só deve ser reputado como

Processo	0160455-30.2019.8.06.0001
	dano moral a dor, vexame, sofrimento ou humilhação que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. Mero dissabor, aborrecimento, mágoa, irritação ou sensibilidade exacerbada estão fora da órbita do dano moral, porquanto, além de fazerem parte da normalidade do nosso dia a dia, no trabalho, no trânsito, entre os amigos e até no ambiente familiar, tais situações não são intensas e duradouras, aponta de romper o equilíbrio psicológico do indivíduo. Se assim não se entender, acabaremos por banalizar o dano moral, ensejando ações judiciais em busca de indenizações pelos mais triviais aborrecimentos. (CAVALIERI FILHO, Sérgio. Programa de Responsabilidade Civil. 11ª ed. São Paulo: Atlas, 2014, p.111)." Nessa perspectiva, a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante" (STJ - AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014). A jurisprudência do Superior Tribunal de Justiça é assente no sentido de que se trata de mero aborrecimento o desconto indevido de valores incapazes de comprometer a subsistência da parte. A propósito, confira-se: AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITOS. RESTITUIÇÃO DE VALORES E INDENIZAÇÃO POR DANOS MORAIS. DESCONTO INDEVIDO. VALOR ÍNFIIMO. DANO MORAL INEXISTENTE. MERO ABORRECIMENTO. CONSONÂNCIA COM A JURISPRUDÊNCIA DESTA CORTE SUPERIOR. RECURSO DESPROVIDO. 1. Esta Corte Superior entende que a caracterização do dano moral exige que a comprovação do dano repercuta na esfera dos direitos da personalidade. A fraude bancária, nessa perspectiva, não pode ser considerada suficiente, por si só, para a caracterização do dano moral (AgInt nos EDcl no AREsp 1.669.683/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 23/11/2020, DJe de 30/11/2020). 2. O Tribunal de origem concluiu que o desconto indevido de R\$ 70,00 (setenta reais) no benefício previdenciário da agravante não acarretou danos morais considerando que foi determinada a restituição do valor, que a instituição financeira também foi vítima de fraude e que não houve inscrição do nome da agravante em cadastros de proteção ao crédito, de modo que ficou configurado mero aborrecimento. 3. "A jurisprudência desta Corte entende que, quando a situação experimentada não tem o condão de expor a parte a dor, vexame, sofrimento ou constrangimento perante terceiros, não há falar em dano moral, uma vez que se trata de mero aborrecimento ou dissabor, mormente quando a falha na prestação de serviços, embora tenha acarretado aborrecimentos, não gerou maiores danos ao recorrente, como ocorreu na presente hipótese" (AgInt no AREsp 1.354.773/MS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 02/04/2019, DJe de 24/04/2019). 4. Agravo interno desprovido. (STJ. AgInt nos EDcl no REsp n. 1.948.000/SP, relator Ministro Raul Araújo, Quarta Turma, julgado em 23/5/2022, DJe de 23/6/2022). [Grifei].

Processo	0160455-30.2019.8.06.0001
	0.5cm; margin-bottom: 0.5cm;" align="justify"> 1. O douto magistrado singular, julgou parcialmente procedente os pedidos contidos na ação Declaratória de Nulidade c/c Indenização por Danos Materiais e Morais, declarando inexistente o contrato de empréstimo impugnado, condenando o banco/apelado a restituir à parte autora/recorrente, os valores que tenham sido descontados do benefício previdenciário, desacolhendo, no entanto, o pedido de indenização por danos morais, considerando que a conduta do banco/recorrido não acarretou intenso sofrimento à vítima ou lesão aos seus direitos de personalidade, elementos da responsabilidade objetiva. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> 2. O cerne da controvérsia recursal consiste na possibilidade da instituição financeira/apelante ser condenada a título de danos morais em razão de descontos indevidos no benefício previdenciário da autora/apelante, referente a contrato de empréstimo consignado. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> 3. Dano Moral - A existência do dano moral pressupõe a configuração de lesão a um bem jurídico que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, o bom nome etc., com base se infere dos arts. 1º, III, e 5º, V e X, da Constituição Federal.</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> 4. No caso, ainda que tenha ocorrido descontos indevidos, tal fato não se mostra suficientemente capaz de ensejar o dano moral alegado, posto que não se traduz em qualquer ofensa aos direitos da personalidade a existência de descontos de valores irrisórios (03 parcelas de R\$ 29,50), ocorridos no benefício previdenciário da demandante/recorrente (fls. 17). </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> 5. Desse modo, ausente a demonstração de que o indébito não ultrapassou meros aborrecimentos, não há que se falar em condenação da entidade bancária ao pagamento de indenização por danos morais.</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> 6. Recurso conhecido e desprovido. Sentença confirmada. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> (TJCE. Apelação Cível - 0050308-05.2021.8.06.0085, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 17/05/2023, data da publicação: 17/05/2023). [Grifei]. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify">

</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Como visto, descontos indevidos, de per si , não configuram dano moral in re ipsa , sendo necessária a análise das circunstâncias do caso concreto. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> No caso, o ínfimo valor dos descontos de R\$ 29,85 (ID 124030876 -fl.02) impede a majoração da indenização por danos morais estabelecida na sentença, vedada a reformatio in pejus. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Obstante tal situação possa eventualmente trazer desconforto e aborrecimento ao consumidor, não é capaz de atingir valores fundamentais do ser humano que ensejem causa concreta e suficiente para a majoração do valor debatido na decisão recorrida </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> Nesse contexto, entende-se que as subtrações foram em

Processo	0160455-30.2019.8.06.0001
	valores inexpressivos, incapazes de deixar o consumidor desprovido de recursos financeiros para solver suas despesas ordinárias. Diante do exposto, pelas razões acima delineadas, conheço do recurso de apelação, todavia, para NEGAR-LHE PROVIMENTO , mantendo incólume a sentença recorrida. É o voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator &#160; &#160; &#160;
Processo	0015058-86.2009.8.06.0001
Número de ordem	176
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alienação Fiduciária
Polo ativo	BANCO DO BRASIL SA
Advogado(s) - Polo ativo	DAVID SOMBRA PEIXOTO - (CE16477-A) NEI CALDERON - (CE33485-A)
Polo passivo	FRANCISCO WELLINGTON XIMENES DE MATOS
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0015058-86.2009.8.06.0001
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmclrAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIALFCIQLhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkEkZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBTKURSS6QGejq7uluHurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYmOrbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcyAwc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBfVo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRSrxvYuXXzhy8/5zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUVDnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaAKNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyygJtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHeRFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgXmoViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRAgxGqGaoIMhseU4RD182dg8n5jdfHNaQELJFBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJASvrIdQg2BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWwVztqx6zNfwGYyOtg+L8dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZwGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+vMy/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlCk3vj//5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDvGFiQAYKCAKMG2MkxjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX+8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJNwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7Sgk6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5vDfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbbuxatW0YlaGYnMWBZgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWAatMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3lXgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWfPDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsPOONGNYVgiAooWj+AHcgz2Bw/urEsm5YHBOEMZn0d39vWETj1j1eEDB/bvrfN5PGdeeeZ02Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hLzSWRGJZMbjTNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11zTZxLoL01c+euYwLFDgyGNry36ewLV0bGvFOW1sB+4REUmN7R4biciLqctmRKTAUumpfaG/pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOe1iAoxmBwJYtB2yARWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fn5FHgkY3WVfUwU2ZJXJjXmKCAKMG2oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuWFzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+KuQEkiQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuSSvRXMBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZRDKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOGepw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tvqWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvGQwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2DltgIsa+swW9gXAylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpFpV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgYNU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+FoZOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6ZC9ddPp8ODfQ/9gTAalT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0DVfvDKi9fd8UPKYK3jRxPSjZUpPkjznXDKa2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hwSnBERGDhfMDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki60hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjpg6TUbmS0f3wUOHu3v7R0aHQPuEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY410jEJZmRUDZIFMjFwRvRvMvGEXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYcDY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	 poder="" <="" judiciário<="" span="" span>="" style='font-family: "times new roman", times;'> tribunal="" <="" de="" justiça<="" span="" span>="" style='font-family: "times new roman", times;'> gabinete="" <="" desembargador="" josé="" patrocínio<="" ricardo="" span="" span>="" style='font-family: "times new roman", times;' vidal=""> processo:="" 0015058-86.2009.8.06.0001<="" <="" span="" span>="" style='font-family: "times new roman", times;'> apelação="" (198)<="" <="" cível="" span="" span>="" style='font-family: "times new roman", times;'> apelante:="" <="" a<="" banco="" brasil="" do="" s="" span="" span>="" style='font-family: "times new roman", times;'> apelado:="" <="" de="" francisco="" matos<="" span="" span>="" style='font-family: "times new roman", times;' wellington="" ximenes=""> i.="" <="" caso="" em="" exame<="" span="" span>="" style='font-family: "times new roman", times;'> 1.="" 25771005,="" <="" a="" apelação="" ação="" cassação="" cível="" da="" de="" execução="" exequente="" extinguiu="" extrajudicial,="" id="" intercorrente.<="" interposto="" no="" objetivando="" pelo="" por="" prescrição="" proferida="" que="" recurso="" sentença="" span="" span>="" style='font-family: "times new roman", times;' título=""> ii.="" <="" discussão<="" em="" questão="" span="" span>="" style='font-family: "times new roman", times;'>

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	align="justify"> 2. A questão em discussão consiste em analisar se deve ser mantida a sentença que decretou a ocorrência de prescrição e extinguiu a ação executiva lastreada em cédula de crédito bancário. </p><p align="justify"> III. RAZÕES DE DECIDIR </p><p align="justify"> 3. No caso em espécie, analisando a movimentação do feito, confere-se que não concretizou o prazo quinquenal da prescrição intercorrente, tampouco se verificou desídia da parte exequente para promover os atos necessários à citação da devedora. Durante todo o interregno processual, inclusive antes da conversão da ação de busca e apreensão, o exequente foi diligente. À exceção do ato praticado no Id 25770931, que ultrapassou cerca de 60 corridos do primeiro prazo, o credor respondeu às intimações tempestivamente, sempre buscando medidas para viabilizar a citação do devedor. Por outro lado, observa-se que o feito ficou paralisado por mais de dois anos em mais de uma ocasião, aguardando despacho do juízo, tempo esse que dependeu exclusivamente da máquina judiciária. Com isso, vê-se que a demora para concretização das diligências, na verdade, decorreu do próprio Poder Judiciário, e não pode ser imputada ao exequente. Nesse sentido, o § 3º do art. 240 do CPC e o enunciado de súmula nº 106 do c. STJ. </p><p align="justify"> IV. DISPOSITIVO </p><p align="justify"> 4. Recurso conhecido e provido. Sentença cassada.&#160; </p><p align="justify"> &#160; </p><p align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação, para lhe dar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p align="center"> &#160; </p><p align="center"> &#160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Presidente/Relator </p><p align="center">
 </p><p align="center"> &#160; </p><p align="center"> RELATÓRIO </p><p align="center">
 </p><p style="text-align: justify; text-indent: 8%;"> Trata-se de recurso de apelação cível interposto pelo Banco do Brasil S.A., objetivando a cassação da sentença proferida no Id 25771005, pelo MM. Juiz de Direito Augusto Cezar de Luna Cordeiro Silva, do Núcleo de Justiça 4.0 - Execuções de Título Extrajudicial, que extinguiu ação de execução de título extrajudicial movida pelo ora apelante em desfavor de Francisco Wellington Ximenes de Matos, com fundamento em prescrição. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> No arrazoadado (Id 25771010), o apelante expõe, em suma, que: (i) após a conversão da ação, apresentou, em 26.10.2021, o endereço atualizado do executado; (ii) quando da diligência, o oficial de justiça informou que o executado havia falecido, evidenciando que realmente se tratava do endereço atualizado e pertencente ao devedor, portanto, o fundamento da prescrição foi equivocado; (iii) o d. juízo a quo deveria ter lhe intimado para regularizar o polo passivo, para habilitação dos sucessores do extinto, o que não ocorreu; e (iv) houve pedido de pesquisa de endereços e, ainda que por um lapso,

Processo	0015058-86.2009.8.06.0001
	pedido de citação por edital, o que afasta qualquer alegação de inércia;&#160;</p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Preparo recursal recolhido, conforme Id 25771009. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Sem contrarrazões. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> É o relatório. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: center;"> VOTO </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> 1 – Admissibilidade </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Satisfeitos os pressupostos intrínsecos ou subjetivos – cabimento, interesse e legitimidade, inexistência de súmula impeditiva – e extrínsecos ou objetivos – tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer – de admissibilidade recursal. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> 2 – Mérito recursal </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> O cerne da controvérsia recursal consiste em analisar se deve ser mantida a sentença que decretou a ocorrência de prescrição intercorrente e extinguiu a ação executiva. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> Cumpre esclarecer que a ação executiva está lastreada na cédula de crédito bancário nº 10208780.207281432, com vencimento final previsto para 01.10.2010, não adimplida pelo executado. Incide, no caso, a prescrição quinquenal prevista no art. 206, § 5º, inciso I, do Código Civil, verbis: </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; padding-left: 150px;"> Art. 206. Prescreve: </p><p style="text-align: justify; padding-left: 150px;"> [...] </p><p style="text-align: justify; padding-left: 150px;"> § 5º Em cinco anos: </p><p style="text-align: justify; padding-left: 150px;"> I - a pretensão de cobrança de dívidas líquidas constantes de instrumento público ou particular; </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Diante disso, como de acordo com a Súmula nº 150 do STF “Prescreve a execução no mesmo prazo de prescrição da ação”, o prazo prescricional da ação de

Processo	0015058-86.2009.8.06.0001
	execução lastreada em cédula de crédito bancária é de 5 (cinco) anos, de modo que a prescrição intercorrente ocorre em igual prazo (art. 206-A do Código Civil). Destaco que a prescrição intercorrente e a prescrição tradicional são institutos jurídicos que possuem a mesma finalidade, diferenciando-se somente pelo momento de sua incidência. Não basta que o titular do direito subjetivo à satisfação do crédito deduza sua pretensão em juízo dentro do prazo prescricional, é necessário também que promova os atos e diligências cabíveis à efetiva satisfação da tutela pretendida. Sobre o assunto, vale destacar o disposto no § 1º do art. 240 do CPC, segundo o qual “A interrupção da prescrição, operada pelo despacho que ordena a citação, ainda que proferido por juízo incompetente, retroagirá à data de propositura da ação”. No mesmo sentido, o art. 802 do CPC, <i>verbis</i>: Art. 802. Na execução, o despacho que ordena a citação, desde que realizada em observância ao disposto no § 2º do art. 240, interrompe a prescrição, ainda que proferido por juízo incompetente. Parágrafo único. A interrupção da prescrição retroagirá à data de propositura da ação. Portanto, a prescrição é interrompida pelo despacho que ordena a citação. Todavia, é preciso lembrar que a citação deve ser feita como determina a lei processual e que o autor tem de adotar as providências necessárias para viabilizá-la. É o que dispõem os artigos 202 do Código Civil e 240 do CPC, <i>verbis</i>: Art. 202, Código Civil. A interrupção da prescrição, que somente poderá ocorrer uma vez, dar-se-á: I - por despacho do juiz, mesmo incompetente, que ordenar a citação, se o interessado a promover no prazo e na forma da lei processual; Art. 240, CPC. A citação válida, ainda quando ordenada por juízo incompetente, induz litispendência, torna litigiosa a coisa e constitui em mora o devedor, ressalvado o disposto nos arts. 397 e 398 da Lei nº 10.406, de 10 de janeiro de 2002 (Código Civil). § 1º A interrupção da prescrição, operada pelo despacho que ordena a citação, ainda que proferido por juízo incompetente, retroagirá à data de propositura da ação. § 2º Incumbe ao autor adotar, no prazo de 10 (dez) dias, as providências necessárias para viabilizar a citação, sob pena de não se aplicar o disposto no § 1º. § 3º A parte não será prejudicada pela demora imputável

Processo	0015058-86.2009.8.06.0001
	exclusivamente ao serviço judiciário. [Grifouse]. Forçoso pontuar, também, a orientação firmada pelo c. Superior Tribunal de Justiça, no julgamento do REsp: 1604412 SC 2016/0125154-1, que fixou a tese de que “Incide a prescrição intercorrente, nas causas regidas pelo CPC/73, quando o exequente permanece inerte por prazo superior ao de prescrição do direito material vindicado, conforme interpretação extraída do art. 202, parágrafo único, do Código Civil de 2002” (STJ, Relator: Ministro MARCO AURÉLIO BELLIZZE, Data de Julgamento: 27/06/2018, S2 - SEGUNDA SEÇÃO, Data de Publicação: DJe 22/08/2018). No caso em exame, observa-se que a ação originária (de busca e apreensão) foi proposta antes mesmo do início do prazo prescricional da pretensão do autor, pois o vencimento final da obrigação era 01.10.2010. Observa-se, também, que a conversão em ação executiva ocorreu em julho de 2021, ou seja, quase onze anos após o vencimento do título exequendo. Todavia, não se reconhece o fenômeno da prescrição porque seu termo a quo se dá com a frustração da busca e apreensão, que é quando nasce a pretensão de conversão em execução, conforme exegese do art. 4º do Decreto Lei nº. 911/1969, Art. 4º Se o bem alienado fiduciariamente não for encontrado ou não se achar na posse do devedor, fica facultado ao credor requerer, nos mesmos autos, a conversão do pedido de busca e apreensão em ação executiva, na forma prevista no Capítulo II do Livro II da Lei no 5.869, de 11 de janeiro de 1973 - Código de Processo Civil. Art. 4º Se o bem alienado fiduciariamente não for encontrado ou não se achar na posse do devedor, fica facultado ao credor requerer, nos mesmos autos, a conversão do pedido de busca e apreensão em ação executiva, na forma prevista no Capítulo II do Livro II da Lei no 5.869, de 11 de janeiro de 1973 - Código de Processo Civil. 1. O despacho que ordenou a citação do réu foi proferido em 20.03.2008, isto é, logo após o protocolo da ação e, em seguida, foi expedido o primeiro mandado, que foi devolvido em julho de 2009, conforme certidão de Id 25770660; 2. Em novembro de 2009 foi expedido um novo mandado, que também foi devolvido. Em julho de 2012, foi proferido despacho determinando a intimação do autor, sendo o expediente confeccionado em fevereiro de 2013 (Ids 25770677/25770679). O promovente se manifestou em 07.03.2013, pugnando pela pesquisa de endereço nos sistemas BACENJUD e RENAJUD, o que foi deferido apenas no despacho de 17.06.2016 e efetivado em 29.06.2017 (vide Ids 25770688 e 25770692). 3. Prosseguindo-se o feito, foram expedidos novos mandados de busca e apreensão, mas as diligências foram cumpridas sem êxito (Vide Ids 25770718, 25770739, 25770804 e 25770830). Em seguida, em 19.07.2021, o credor requereu a conversão do feito em ação executiva, o que foi deferido na decisão de Id 25770840. 4. Em petição de Id 25770900, de 26.10.2021, o exequente forneceu endereço do executado, para fins de citação. Constatada a ausência da planilha de débito,

Processo	0015058-86.2009.8.06.0001
	o credor foi intimado para apresentá-la, tendo cumprido a diligência no prazo designado, no Id 25770912, de 26.07.2022. 5. Expedido o novo mandado, o meirinho certificou o falecimento do executado, conforme expediente de Id 25770923, de 12.01.2023. Intimado, o credor deixou transcorrer o prazo sem manifestação, conforme certidão de decurso de prazo de Id 25770929. Em 30.06.2023 (Id 25770931), depois de quase dois meses do prazo concedido, o credor peticionou requerendo a busca de endereço do executado nos sistemas de auxílio ao Judiciário, o que foi deferido pelo d. juízo a quo, em despacho de 11.09.2023, Id 25770932. 6. A pesquisa foi realizada entre os meses de janeiro e março de 2024, conforme Ids 25770938 e 25770991. Instado a se manifestar, o banco pugnou pela citação por edital. 7. Em 11.02.2025, foi proferido despacho determinando a intimação do exequente para se manifestar sobre possível ocorrência de prescrição, o que foi atendido na petição de Id 25771004. Em seguida, foi proferida a sentença ora recorrida. Feita essa digressão aos autos, confere-se que não concretizou o prazo quinquenal da prescrição intercorrente, pois, ainda que se considere o tempo que deixou de promover a citação dos herdeiros do devedor falecido, não se verifica ter ultrapasso o prazo de cinco anos desde a comunicação do óbito (vide Id 25770923). Além disso, durante todo o interregno processual, inclusive antes da conversão da ação de busca e apreensão, o exequente foi diligente. À exceção do ato praticado no Id 25770931, que ultrapassou cerca de 60 corridos do primeiro prazo, o credor respondeu às intimações tempestivamente, sempre buscando medidas para viabilizar a citação do exequido. Por outro lado, observa-se que o feito ficou paralisado por mais de dois anos em mais de uma ocasião, aguardando despacho do juízo, conforme descrito no item 2, acima, tempo esse que dependeu exclusivamente da máquina judiciária. Com isso, vê-se que o credor agiu de modo a buscar a satisfação de seu crédito e que a demora para concretização das diligências, na verdade, decorreu do próprio Poder Judiciário, e não pode ser imputada ao exequente. Nesse sentido, o § 3º do art. 240 do CPC, citado acima, e o enunciado de súmula nº 106 do c. STJ, que orienta: "Proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da Justiça, não justifica o acolhimento da arguição de prescrição". Em casos análogos, já se manifestaram o Superior Tribunal de Justiça e esta egrégia Corte de Justiça. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. DECISÃO MONOCRÁTICA DA PRESIDÊNCIA. IRRESIGNAÇÃO DO EXECUTADO. PRESCRIÇÃO INTERCORRENTE. INÉRCIA DO EXEQUENTE NÃO CARACTERIZADA. REVOLVIMENTO DE

Processo	0015058-86.2009.8.06.0001
	FATOS E PROVAS. SÚMULA 7 DO STJ. AGRAVO NÃO PROVIDO. 1. "Consoante entendimento consolidado das Turmas que compõem a Segunda Seção desta Corte, não flui o prazo da prescrição intercorrente no período em que o processo de execução fica suspenso por ausência de bens penhoráveis. Ademais a prescrição intercorrente pressupõe desídia do credor que, intimado a diligenciar, se mantém inerte." (AgRg no AREsp 277.620/DF, Rel. Ministro ANTONIO CARLOS FERREIRA, QUARTA TURMA, julgado em 17/12/2013, DJe 03/02/2014). 2. A Corte de origem, soberana na análise do caderno processual, concluiu que não se configurou a prescrição intercorrente, uma vez que, a despeito de demanda ter permanecido arquivada administrativamente por pouco mais de 3 (três) anos, após a constituição de novos procuradores, a casa bancária manifestou-se quando instada pelo Juízo, tendo, inclusive, logrado êxito no pleito de constrição de valores a fim de satisfazer a obrigação, razão pela qual não há falar em inércia a justificar o é reconhecimento da prescrição intercorrente. Inviável tais premissas, a fim de reconhecer a suposta inércia do exequente, ante o óbice da Súmula 7/STJ. 3. Agravo não provido. (STJ - AgInt no AREsp: 1584281 SC 2019/0275810-6, Relator: Ministro LUIS FELIPE SALOMÃO, Data de Julgamento: 03/03/2020, T4 - QUARTA TURMA, Data de Publicação: DJe 10/03/2020, G.N.). AGRAVO INTERNO NO RECURSO ESPECIAL. PROCESSO CIVIL. ART. 921, § 5º, DO CPC. SUSPENSÃO DO PRAZO PRESCRICIONAL. PRESCRIÇÃO INTERCORRENTE. AUSÊNCIA DE INÉRCIA DO EXEQUENTE. IMPOSSIBILIDADE DE RECONHECER A PRESCRIÇÃO INTERCORRENTE. EXAME DA SUPOSTA DESÍDIA. REEXAME DE MATÉRIA FÁTICA. ENUNCIADO 7/STJ. DISSÍDIO JURISPRUDENCIAL SOBRE O MESMO TEMA. PREJUDICADO. 1. A incidência da prescrição intercorrente pressupõe a inércia do exequente por prazo superior ao de prescrição do direito material vindicado, excluindo os casos em que a execução foi paralisaada por determinação judicial, como na espécie. 2. Alterar o entendimento do acórdão recorrido de que não houve desídia do agravado, para o fim de reconhecer a prescrição intercorrente, demandaria, necessariamente, reexame de fatos e provas, o que é vedado em razão do óbice da Súmula 7 do STJ. 3. A incidência da Súmula 7 do STJ prejudica a análise do dissídio jurisprudencial pretendido. Precedentes desta Corte. 4. Agravo interno não provido. (STJ - AgInt no REsp: 1972904 SP 2021/0353010-2, Data de Julgamento: 09/08/2022, T4 - QUARTA TURMA, Data de Publicação: DJe 19/08/2022, G.N.). APELAÇÃO CÍVEL. AÇÃO MONITÓRIA. CÉDULA DE CRÉDITO BANCÁRIO. JUSTIÇA GRATUITA. CONCESSÃO SEM EFEITO RETROATIVO. PRESCRIÇÃO. PRAZO QUINQUENAL. ART. 206, § 5º, I, DO CÓDIGO CIVIL. P ROCESSO QUE NÃO ESTEVE PARADO POR TEMPO SUPERIOR AO PRAZO PRESCRICIONAL. PRESCRIÇÃO INTERCORRENTE. NÃO OCORRÊNCIA. RENEGOCIAÇÃO DA DÍVIDA COM BASE NA MEDIDA PROVISÓRIA 1.016, DE 17 DE DEZEMBRO DE 2020. NÃO CABIMENTO. HONORÁRIOS SUCUMBENCIAIS. OMISSÃO NA SENTENÇA. MATÉRIA ORDEM PÚBLICA. ARBITRAMENTO EX OFFICIO. APRECIACÃO EQUITATIVA. LIMITAÇÕES IMPOSTAS PELO TEMA REPETITIVO 1076 (STJ). CIRCUNSTÂNCIAS DO CASO CONCRETO QUE IMPÕEM A FIXAÇÃO DA VERBA HONORÁRIA MEDIANTE APLICAÇÃO DA EQUIDADE. PRECEDENTE DESTA CÂMARA. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA REFORMA EM PARTE. 1. O recorrente pede a concessão da justiça gratuita e defende, em suma, a incidência da prescrição trienal (art. 70, do Decreto 57.663/1966), bem como que em 27.07.2017 o Juízo singular ordenou a citação do embargante, ora apelante), porém, a citação válida somente ocorreu na data de 30.04.2021, portanto, após quase 03 (três) anos, razão pela qual não há que se falar em interrupção da prescrição. E ainda, caso assim não se entenda, pede a autorização para renegociação da dívida, nos termos integrais da Medida Provisória 1.016, de 17 de dezembro de 2020. 2. Considerando-se que se presume verdadeira a alegação de insuficiência (§ 3.º do art. 99 do CPC), bem como que não há nos autos elementos que apontem a suficiência financeira do apelado, concede-se ao apelado as benesses da justiça gratuita, operando-se, contudo, efeito ex nunc, não alcançando, portanto, despesas e verbas incidentes em momento anterior, ou seja, a condenação imposta na sentença ao pagamento das custas

Processo	0015058-86.2009.8.06.0001
	processuais e dos honorários sucumbenciais. Precedentes. 3. A pretensão de cobrança fundada em instrumento particular, o prazo prescricional de 05 (cinco) anos, consoante o disposto no artigo 206, § 5º, I, do CCB/02. Precedentes. 4. “o vencimento antecipado da dívida não altera o início da fluência do prazo prescricional, prevalecendo para tal fim o termo ordinariamente indicado no contrato, que, no caso, é o dia do vencimento da última parcela”. (AgInt no AREsp n. 1.637.969/RJ, relator Ministro Marco Buzzi, Quarta Turma, julgado em 22/6/2020, DJe de 30/6/2020.). 5. No caso em apreço, como a Cédula de Crédito Bancário que fundamenta a presente Ação Monitória, acostada às fls. 13/34, foi emitida em 12.12.2012 e com vencimento da última parcela em 12.12.2024 (ver cláusula “forma de pagamento”, fls. 20/22), e a ação foi ajuizada em 20.07.2017, não ocorreu prescrição. 6. Segundo entendimento do STJ, “a prescrição intercorrente da pretensão executiva pressupõe inércia injustificada do credor, o que não se verifica quando o período sem prática de atos processuais é atribuível à demora no impulso oficial pelo órgão judiciário”. (AgInt no AREsp n. 1.897.097/RN, relator Ministro Raul Araújo, Quarta Turma, julgado em 27/6/2022, DJe de 29/6/2022.) 7. Da data do despacho que ordenou a citação (26.07.2017) até a sua efetivação (30.04.2021) decorreu tempo aproximado de 04 (quatro) anos, ou seja, menos que o prazo prescricional definido em lei (5 anos), além do que os lapsos temporais em que o processo esteve parado, não foi por inércia da parte autora, mas por morosidade do mecanismo judiciário. A ser assim, não há que se falar em incidência de prescrição ao caso concreto por nenhuma das hipóteses aqui levantadas pelo apelante. 8. [...] (TJ-CE - AC: 00146768320178060043 Barbalha, Relator: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 16/11/2022, 1ª Câmara Direito Privado, Data de Publicação: 16/11/2022, G.N.). </p><p style="text-align: justify; padding-left: 150px;"> APELAÇÃO. CIVIL E PROCESSO CIVIL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PRESCRIÇÃO INTERCORRENTE. EXEQUENTE QUE SE MANTEVE PROATIVA QUANTO À LOCALIZAÇÃO DO EXECUTADO E INDICAÇÃO DE BENS PASSÍVEIS DE PENHORA. INÉRCIA NÃO CONFIGURADA. IMPOSSIBILIDADE DE APLICAÇÃO RETROATIVA DA LEI 14.195/2021. PRINCÍPIO DA APLICAÇÃO IMEDIATA DAS NÓRMAS PROCESSUAIS (ART. 14 DO CPC). DIREITO INTERTEMPORAL. TERMO INICIAL. DATA DA PUBLICAÇÃO DA LEI 14.195/2021. SENTENÇA DESCONSTITUÍDA. RECURSO PROVIDO. 1. O instituto da prescrição intercorrente, na redação original do CPC de 2015, tinha como pressuposto a configuração da inércia do credor e a prévia suspensão do feito pelo prazo de um ano, de acordo com os §§ 1º e 4º do art. 921. Esse requisito foi reforçado por tese fixada pelo STJ, relativa à prescrição intercorrente no processo civil, mantendo-se fiel ao pressuposto da inércia para reconhecimento da prescrição intercorrente, independentemente do êxito das diligências postuladas (IAC no REsp 1.604.412/SC, Rel. Ministro Marco Aurélio Bellizze, 2ª Seção, J. 27/06/2018). 2. A nova redação do § 4º, trazida pela Lei nº 14.195/2021, não pode retroagir e alcançar atos processuais já praticados e modificar os seus efeitos no passado, pois, antes do seu advento, a prescrição intercorrente, nas execuções civis, somente se caracterizava com a inércia do credor por prazo superior ao prazo prescricional. Precedentes. 3. In casu, há de se evidenciar que o Exequente tentou realizar a citação da parte promovida diversas vezes, e em todas elas não obteve êxito. É o que se observa das fls. 111 e 120. Em seguida, após tentativas de obtenção de informações e busca de bens em diversos sistemas a disposição do Poder Judiciário, o Banco exequente requereu a expedição de mandado de penhora de um imóvel indicado, pleito que sequer foi apreciado pelo juízo singular. Observa-se que o exequente manteve-se diligente e atuante nos autos, afastando qualquer tipo de argumentação quanto a uma possível desídia sua. 4. Por outro lado, o prazo de suspensão da execução findou quando ainda não estava vigente a Lei 14.195/2021, entretanto o juiz sentenciante utilizou como prazo inicial da prescrição intercorrente a data da primeira citação infrutífera e sem penhora de bens (10/08/2010). Verifica-se, portanto, o equívoco no entendimento adotado pelo Juízo sentenciante quanto à configuração da prescrição intercorrente no caso concreto, tendo em vista que a regra prevista na nova redação do § 4º do art. 921 do CPC somente poderia ser aplicada a atos processuais que se realizaram após o início da sua vigência. 5. Recurso de Apelação conhecido e provido. Sentença anulada. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, em que figuram as partes acima referidas, ACORDAM os Senhores Desembargadores da Quarta Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, a unanimidade, em conhecer do recurso interposto, para, no mérito, DAR-LHE PROVIMENTO, tudo nos termos do voto do Desembargador Relator. Fortaleza, 04 de fevereiro de 2025 FRANCISCO BEZERRA CAVALCANTE Presidente do Órgão Julgador DESEMBARGADOR FRANCISCO BEZERRA CAVALCANTE Relator

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Processo	0263061-97.2023.8.06.0001
	</p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"> 2. A questão em discussão é a possível responsabilidade da instituição financeira apelante na realização das transações efetuadas na conta bancária da promovente/apelada, que lhe implicaram prejuízo financeiro de R\$ 22.442,37.</p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"> III. RAZÕES DE DECIDIR </p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"> 3. À vista da prova documental produzida nos autos, confere-se que as movimentações contestadas foram realizadas de forma eletrônica, via aplicativo de celular, com uso de senha pessoal, o que corrobora com as alegações do requerido e que não foram impugnadas pela promovente. Na verdade, a parte autora não nega as transações, mas afirma que foram realizadas por terceiros, que acessaram sua conta por falha de segurança do banco. Todavia, a própria promovente afirmou ter permitido o acesso de golpistas a seu smartphone e à instalação de aplicativo que permitiu o acesso à sua conta bancária, evidenciando a culpa exclusiva da vítima, excludente de responsabilidade civil da instituição financeira, nos termos do art. 14, § 3º, inciso II, do CDC.</p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"> 4. Portanto, reveste-se o caso de fortuito externo em razão do suposto golpe ter ocorrido fora do âmbito da atividade bancária propriamente dita e ser estranho à organização da empresa. Em decorrência disso, não há falar em responsabilidade objetiva da instituição financeira, pois é somente o fortuito interno (súmula 479 do STJ), aquele ligado diretamente ao risco da atividade exercida, que caracteriza o dever de indenizar independente da constatação de culpa. Desse modo, é inexistente o nexo de causalidade entre o prejuízo sofrido pela autora e a conduta atribuída à instituição financeira, o que exclui o dever de indenizar. &#160;</p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"> IV. DISPOSITIVO</p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"> 5. Recurso conhecido e provido. </p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"> &#160;</p><p style="text-align: justify;">&#160;</p><p class="EmentadoAcrdo" style="margin-bottom: 6.0pt; text-align: justify;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso, para lhe dar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p align="center"> &#160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Presidente/Relator </p><p align="center">
 </p><p align="center"> &#160; </p><p align="center"> RELATÓRIO </p><p align="center">
 </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Trata-se de recurso de apelação cível interposto pelo Banco Bradesco S/A, objetivando a reforma da sentença de Id 25903786, proferida pela MMª.

Processo	0263061-97.2023.8.06.0001
	Juíza de Direito Maria José Sousa Rosado de Alencar, da 33ª Vara Cível da Comarca de Fortaleza, que julgou parcialmente procedente a Ação de Obrigação de Fazer c/c Indenização por Danos Materiais e Morais, proposta por Maria Socorro Guedes Moraes em desfavor do ora apelante. &#160; Eis o dispositivo sentencial: &#160; Ante o exposto, ratifico a tutela de urgência anteriormente deferida, pelos seus próprios fundamentos, e JULGO PARCIALMENTE PROCEDENTES os pleitos autorais para: &#160; Determinar que o Banco Bradesco S/A restitua à autora a quantia de R\$ 11.221,18 (onze mil duzentos e vinte e um reais e dezoito centavos), com incidência de juros de mora de 1% (um por cento) a contar da citação (art. 405, do CC) e correção monetária pelo INPC a contar do prejuízo, sendo esse a data de transferência dos valores, conforme súmula 43, do STJ; &#160; Rejeitar o pedido de indenização por danos morais, tendo em vista a culpa concorrente das partes. &#160; Consequentemente, extingo o feito com resolução do mérito, o que faço com esteio no art. 487, inciso I, do CPC. &#160; Condeno a Promovida em custas e honorários advocatícios, estes fixados em 10% sobre o valor da condenação. &#160; Transitada em julgado, arquivem os autos com as baixas de estilo. &#160; (i) sempre atua com diligência quando da realização de suas operações; (ii) as transações foram realizadas com utilização de senha/biometria ou chave de segurança, ou seja, mecanismos de uso pessoal e intransferível; (iii) a parte autora/apelada foi vítima de engenharia social conhecida como truque da falsa central de atendimento; (iv) não entra em contato com clientes pedindo senhas, números de Chave de Segurança ou atualizações sistêmicas, e os orienta que não clique em links suspeitos recebidos por e-mail, SMS, redes sociais ou WhatsApp; (v) identificou a contestação da cliente e acionou o banco favorecido, o que segundo as regras do MED, obriga o bloqueio imediato de saldos existentes pelo banco favorecido; (vi) a autora deu causa à fraude uma vez que passou suas credenciais a terceiros e foi negligente no aspecto da segurança, ao executar os comandos solicitados por uma pessoa desconhecida (fraudador); (vii) a parte autora reconhece que forneceu seus dados para terceiros; (viii) as transações foram efetuadas por livre e espontânea vontade do cliente, através do seu aparelho celular, utilizando sua chave de segurança para efetuar a transação; (ix) não houve falha no sistema de segurança do banco; (x) não há nexo de causalidade entre a sua conduta e o prejuízo experimentado pela autora, portanto, não há dano moral ou material de sua responsabilidade. &#160; Face ao narrado, requer o conhecimento e provimento do recurso, para julgar improcedente a ação, reconhecendo a validade das transações. Subsidiariamente, pede a redução do quantum indenizatório. &#160;

Processo	0263061-97.2023.8.06.0001
	serif;">Preparo recursal comprovado nos Ids 25903792/ 25903793. &#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> >Sem contrarrazões, conforme certidão de decurso de prazo de Id 25903803.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> >&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> >É o relatório.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal; text-indent: 8%;" align="center"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal;" align="center"> >VOTO </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal;" align="center">&#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: normal; text-indent: 8%;"> &#160; 1 – Admissibilidade </p><p class="Textbody" style="margin-bottom: 0cm; line-height: normal; text-indent: 8%;"> &#160; </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Inicialmente, registre-se que os pressupostos recursais – cabimento, legitimidade e interesse de recorrer, tempestividade, regularidade formal, preparo recursal, inexistência de fato impeditivo ou extintivo do poder de recorrer – estão devidamente preenchidos no caso concreto, inexistindo quaisquer vícios graves que obstem o conhecimento do recurso. </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> &#160; </p><p class="Textbody" style="margin-bottom: 0cm; line-height: normal; text-indent: 8%;"> 2 – Mérito recursal </p><p class="Textbody" style="margin-bottom: 0cm; line-height: normal; text-indent: 8%;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> A questão em discussão é a existência ou não de responsabilidade da instituição financeira apelante na realização das transações efetuadas na conta bancária da promotora/apelada, que lhe implicaram prejuízo financeiro de R\$ 22.442,37.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">Na peça de ingresso, a parte autora narra que, em setembro de 2023, recebeu uma ligação de um suposto preposto do Banco acionado, informando que tinha sido realizada uma compra irregular no cartão, no valor de R\$ 4.950,00, e que acreditou que realmente tratava-se da equipe do réu, visto que os interlocutores tinham todas as informações relativas a sua conta. Relata que os golpistas instalaram em seu celular um aplicativo chamado Hoptodesk e que transferiram, por meio de pix, o valor de R\$ 22.442,37. Advoga que requereu a devolução da quantia por meio do MED (Mecanismo Especial de Devolução), mas nada foi resolvido, motivando o ajuizamento da ação diante da falha do sistema de segurança do banco.<span style="background-image: initial; background-position: initial; background-size: initial;

Processo	0263061-97.2023.8.06.0001
	garantir segurança aos seus clientes, considerando que o crime foi perpetrado através de uma ligação entre a autora e um terceiro, utilizando-se de contato distinto dos canais oficiais de atendimento da instituição financeira. Isso resultou em um prejuízo financeiro decorrente de uma ação externa à conduta da agência bancária, que contou com contribuição decisiva da própria autora, sem qualquer ingerência do demandado. Embora se possa questionar, em tese, o dever de cautela da instituição financeira diante de transações atípicas nas contas de seus clientes, tal argumento não se aplica ao caso em questão. As operações foram realizadas por meio de dispositivo habilitado pela autora, com o uso da senha pessoal e intransferível de quatro dígitos, razão pela qual a instituição não verificou indícios de fraude em sua realização. Diante disso, forçoso concluir que as provas documentais produzidas nos autos constituem evidências firmes de que as transferências ora impugnadas foram realizadas sem falhas na prestação de serviço do banco acionado (STJ, Súmula 479), de maneira que não se pode lhe imputar responsabilidade por suposto golpe aplicado por terceiro, com facilitação da própria vítima, que permitiu o acesso a seu celular e ainda lhe forneceu dados pessoais. Assim, evidencia-se a culpa exclusiva da vítima, excludente de responsabilidade civil da instituição financeira, nos termos do art. 14, § 3º, inciso II, do CDC, <i>in verbis</i>: Art. 14. O fornecedor de serviços responde, independentemente da existência de culpa, pela reparação dos danos causados aos consumidores por defeitos relativos à prestação dos serviços, bem como por informações insuficientes ou inadequadas sobre sua fruição e riscos. § 1º O serviço é defeituoso quando não fornece a segurança que o consumidor dele pode esperar, levando-se em consideração as circunstâncias relevantes, entre as quais: I - o modo de seu fornecimento; II - o resultado e os riscos que razoavelmente dele se esperam; III - a época em que foi fornecido. § 2º O serviço não é considerado defeituoso pela adoção de novas técnicas. § 3º O fornecedor de serviços só não será responsabilizado quando provar: I - que, tendo prestado o serviço, o defeito inexiste; II - a culpa exclusiva do consumidor ou de terceiro. [Grifou-se] Portanto, reveste-se o caso de fortuito externo em razão do suposto golpe ter ocorrido fora do âmbito da atividade bancária propriamente dita e ser estranho à organização da empresa. Em decorrência disso, não há falar em responsabilidade objetiva da instituição financeira, pois é somente o

Processo	0263061-97.2023.8.06.0001
	fortuito interno (súmula 479 do STJ), aquele ligado diretamente ao risco da atividade exercida, que caracteriza o dever de indenizar independente da constatação de culpa. Desse modo, é inexistente o nexo de causalidade entre o prejuízo sofrido pela autora e a conduta atribuída à instituição financeira, o que exclui o dever de indenizar. Nesse sentido, é pacífico o entendimento deste e. Tribunal de Justiça. Vejamos (grifos nossos): EMENTA: DIREITO DO CONSUMIDOR E CIVIL. APELAÇÃO CÍVEL. FRAUDE BANCÁRIA. GOLPE DA FALSA CENTRAL DE ATENDIMENTO. CULPA EXCLUSIVA DA VÍTIMA. FORTUITO EXTERNO. RESPONSABILIDADE DO BANCO AFASTADA. SENTENÇA REFORMADA. RECURSO DO BANCO PROVIDO. APELAÇÃO ADESIVA PREJUDICADA. I. CASO EM EXAME: Apelação cível e recurso adesivo interpostos contra a sentença que julgou procedente a ação de reparação de danos originária, reconhecendo a ocorrência de golpe na situação examinada, declarando a inexistência da dívida contraída pela Autora e condenando o banco ao pagamento de indenização material de R\$ 22.969,00 e moral no valor de R\$ 7.000,00. II. QUESTÃO EM DISCUSSÃO: Há duas questões em discussão: (i) definir se a instituição financeira responde objetivamente pelos prejuízos decorrentes de fraude bancária praticada por terceiros, em contexto de operações realizadas pela própria cliente, sem a concorrência do Banco para o prejuízo; (ii) estabelecer se a indenização por danos morais fixada em primeiro grau deveria ser majorada. III. RAZÕES DE DECIDIR 1. O Código de Defesa do Consumidor é aplicável às instituições financeiras (STJ, Súmula 297), que respondem objetivamente pelos danos causados em razão do risco da atividade (CDC, art. 14). 2. Entretanto, a responsabilidade do banco é afastada quando configurada culpa exclusiva do consumidor ou de terceiro (CDC, art. 14, § 3º, II). 3. No caso, a fraude foi perpetrada mediante contato telefônico de número não oficial, no qual a própria autora forneceu seus dados e realizou voluntariamente as operações, inclusive transferências e pagamentos a terceiros sem vínculo com a instituição financeira. 4. As transações foram autenticadas por dispositivo habilitado pela cliente, com senha pessoal e biometria facial, afastando-se indícios de falha do banco.

Processo	0263061-97.2023.8.06.0001
	align: justify;"> 5. Configura-se fortuito externo, pois as operações decorreram de golpe praticado por terceiros em ambiente diverso da instituição financeira, com contribuição decisiva da vítima, rompendo o nexo causal.</p> <p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 6. Ausente a responsabilidade da instituição financeira, resta prejudicada a análise do pedido de majoração de danos morais formulado na apelação adesiva.</p> <p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> IV: DISPOSITIVO: Recurso de apelação da parte Ré conhecido e provido. Recurso adesivo da Autora prejudicado. </p> <p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> (APELAÇÃO CÍVEL - 02006864020248060158, Relator(a): JOSE RICARDO VIDAL PATROCINIO, 1ª Câmara de Direito Privado, Data do julgamento: 28/08/2025)</p> <p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p> <p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. TRANSFERÊNCIA VIA PIX REALIZADA PELA PRÓPRIA AUTORA AOS FRAUDADORES. CULPA EXCLUSIVA DA VÍTIMA. AUSÊNCIA DE FALHA NA PRESTAÇÃO DE SERVIÇO. FORTUITO EXTERNO. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. I. CASO EM EXAME 1. Apelação Cível interposta por NU Pagamentos S/A e NU Financeira S/A - Sociedade de Crédito, Financiamento e Investimento contra a sentença proferida pelo douto Juízo da Vara Única da Comarca de Monsenhor Tabosa que, nos autos da Ação Declaratória De Inexigibilidade De Débito Cumulada Com Indenização Por Danos Materiais E Morais, ajuizada por Maria Rosimeiry Pereira de Sousa, julgou parcialmente procedentes os pedidos autorais para condenar a instituição financeira à restituição do valor subtraído da conta da autora. II. QUESTÕES EM DISCUSSÃO 2. Há duas questões em discussão: (i) se houve falha na prestação de serviço por parte da instituição financeira promovida; e (ii) se deve a requerida/apelada ser condenada ao pagamento de dano material em favor da autora/apelada. III. RAZÕES DE DECIDIR 3. In casu, tenho que não há como não se reconhecer a culpa exclusiva da vítima que, embora acreditasse estar em contato com o funcionário da instituição bancária, a meu sentir, a autora faltou com o dever de atenção e cuidado em relação a ação fraudulenta dos estelionatários, ao passo que observo que nas mensagens recebidas não há nenhuma informação dos dados bancários da autora, bem como o link e o número de telefone utilizado pelos fraudadores é totalmente divergente daqueles que a casa bancária divulga como sendo os meios de contatos oficiais para o contato dos clientes. Assim, a própria autora facilitou a transferência do montante da conta bancária. 4. Não ouvido que, à medida em que a tecnologia avança, fraudadores aperfeiçoam as técnicas ilícitas para aplicação de golpes, ficando, assim, o consumidor vulnerável a inúmeros tipos de artimanhas praticadas. Logo, cabe ao fornecedor, instituição financeira, se antever desses artifícios criando mecanismos que barrem transações suspeitas. No entanto, não enxergo nexo de causalidade entre a conduta da instituição financeira e a ação perpetrada pelos fraudadores que enseje à promovida a condenação em restituir o valor transferido da conta bancária da autora. I. DISPOSITIVO E TESE 5. Recurso conhecido e provido. Sentença reformada. Tese de julgamento: ¿A instituição financeira não responde por fraude bancária praticada por terceiros quando inexistir falha nos seus serviços ou defeito na segurança do sistema.¿ Dispositivo citado: CDC, art. 14; Código Civil, art. 186 e 927. Jurisprudência citada: TJCE, Apelação Cível - 0200473-35.2023.8.06.0169, Rel. Desembargador(a) Carlos Augusto Gomes Correia, 1ª Câmara Direito Privado, data do julgamento: 12/02/2025, data da publicação: 12/02/2025; TJCE, Apelação Cível - 0206125-18.2024.8.06.0001, Rel. Desembargador(a) Jose Ricardo Vidal Patrocínio, 1ª Câmara Direito Privado, data do julgamento: 18/12/2024, data da publicação: 18/12/2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, em conhecer do presente recurso e dar-lhe provimento, nos termos do voto do Relator. Fortaleza, 9 de abril de 2025 JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator </p> <p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> (Apelação Cível - 0200038-56.2024.8.06.0127, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160; 09/04/2025, data da publicação:&#160; 09/04/2025) </p> <p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p>

Processo	0263061-97.2023.8.06.0001
	class="Standard" style="margin-left: 4.0cm; text-align: justify;"> #160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> EMENTA: CIVIL. PROCESSO CIVIL. APELAÇÃO. DIREITO DO CONSUMIDOR. GOLPE DA FALSA CENTRAL. CONSUMIDOR QUE DEIXOU DE ADOPTAR CAUTELAS MÍNIMAS DE SEGURANÇA. FALHA NA PRESTAÇÃO DE SERVIÇO. NÃO CONFIGURADO. RECUSO CONHECIDO E DESPROVIDO.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> I. CASO EM EXAME </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 1. Trata-se de “ação de restituição de valor c/c indenização por dano moral e material” movida por Cesarina Gadelha do Nascimento em face de Nu Pagamentos S.A, Banco do Brasil S.A, PAGSEGURO e ACCESS Soluções de Pagamento SA. Foi proferida Sentença julgando IMPROCEDENTES os pedidos autorais, contra a qual CESARINA GADELHA DO NASCIMENTO interpôs Apelação.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 2. O cerne da questão está em verificar a ocorrência de fortuito interno (fraude bancária) apta a gerar danos à parte. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> III. RAZÕES DE DECIDIR </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 3. Primeiramente, destaco que é unânime o entendimento de que “o Código de Defesa do Consumidor é aplicável às instituições financeiras”. (Súmula 297, STJ). </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 4. Apreciando os autos, o juízo singular, à luz das provas dos autos, entendeu que os elementos indicam a ausência de violação aos sistemas de segurança das instituições financeiras: </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 5. Reavaliando as provas dos autos, consta à Inicial&#160; print de SMS recebido pela autora, com o nome “N *U PAGAMENTOS”, informando a existência de transação suspeita no valor de “R1.796,32”, indicando as primeiras irregularidades, em razão de o nome da instituição financeira (NU PAGAMENTOS) não está devidamente redigido e não constar o cifrão (\$) na quantia informada. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 6. Ademais, no mínimo se causa estranheza que, para não se reconhecer uma transação suspeita, no valor de R\$ 1.796,32, o correntista tenha que realizar transferências bancárias para pessoa física desconhecida e em valor superior ao apontado como suspeito. Soma-se, ainda, o fato de as transações terem sido realizadas do aparelho da autora e mediante a utilização de sua senha, e em valores não demasiadamente elevados. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 7. Em que pese as instituições financeiras tenham o dever de manter dispositivos de segurança a fim de evitar fraudes e subtrações bancárias, o consumidor também deve adotar medidas de cuidados, verificando a procedência dos SMSs e ligações recebidas, conferindo se os números utilizados são os mesmos constantes nos canais oficiais da instituição financeira e, em caso de dúvida, entrar em contato através dos meios oficiais disponibilizados. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 8. Além disso, inexistente nos autos prova de que o golpista tenha se utilizado de dados sensíveis obtidos a partir de falhas de segurança das instituições financeiras. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 9. Dessa forma, no caso concreto, não é possível imputar aos demandados o nexo causal pelo dano, restando evidente a existência da excludente de responsabilidade do fornecedor prevista no art. 14, § 3º, II, do CDC, diante da culpa exclusiva de terceiro. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> IV. DISPOSITIVO. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 10. Recurso conhecido e desprovido. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> </p>

Processo	0263061-97.2023.8.06.0001
	small;"> (APELAÇÃO CÍVEL - 02011451520248060167, Relator(a): PAULO AIRTON ALBUQUERQUE FILHO, 2ª Câmara de Direito Privado, Data do julgamento: 02/04/2025</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> #160; </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> #160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. TRANSAÇÃO FRAUDULENTA VIA PIX. GOLPE TELEFÔNICO. CULPA EXCLUSIVA DA VÍTIMA QUE FORNECEU INFORMAÇÕES SENSÍVEIS E SEGUIU INSTRUÇÕES DO ESTELIONATÁRIO. FORTUITO EXTERNO CONFIGURADO. AUSENTE FALHA NO SERVIÇO. RECURSO DESPROVIDO. I. Caso em exame 1. Recurso de Apelação Cível interposto contra sentença que julgou improcedente ação anulatória de negócio jurídico c/c restituição e repetição de indébito e indenização por danos morais, ajuizada por consumidor vítima de golpe telefônico, no qual terceiros, mediante falsa informação de que havia transferência bancária suspeita em sua conta bancária e de seu esposo, obtiveram acesso ao dispositivo móvel e realizaram operações via PIX, além de empréstimo, totalizando o valor de R\$ 23.322,00. II. Questão em discussão 2. Verificação da possibilidade de responsabilização civil da instituição financeira por danos decorrentes de golpe telefônico praticado por terceiros e da configuração de excludentes de responsabilidade, como culpa exclusiva da vítima e fortuito externo, à luz das normas consumeristas. III. Razões de decidir 3. A relação jurídica entre as partes caracteriza-se como consumerista, regendo-se pelo Código de Defesa do Consumidor (arts. 2º e 3º, CDC). Todavia, a responsabilidade civil objetiva da instituição financeira, com base na teoria do risco do empreendimento, não é absoluta, sendo afastada nas hipóteses de excludentes, como culpa exclusiva da vítima e fortuito externo (art. 14, § 3º, CDC). 4. No caso, restou configurada a culpa exclusiva da vítima, que forneceu informações sensíveis e seguiu instruções de terceiro, possibilitando o acesso indevido à conta bancária. Tal conduta demonstra negligência no cumprimento de deveres mínimos de cautela. 5. O golpe ocorreu fora do âmbito da atividade bancária e sem relação com falha na prestação de serviços, caracterizando fortuito externo, que rompe o nexo causal e exclui a responsabilidade do banco. 6. Precedentes deste e. Tribunal e do STJ reconhecem que, em casos semelhantes, inexistente responsabilidade do banco diante da contribuição exclusiva do consumidor para a ocorrência do dano. IV. Dispositivo e tese 7. Recurso conhecido e desprovido. Sentença de improcedência mantida. Dispositivos relevantes citados: CDC, arts. 6º, VIII, 14, § 3º, II; CPC, arts. 85, § 11, 98, § 3º, 373, I. Jurisprudência relevante citada: STJ, Súmula 479; TJCE, Apelação Cível nº 0113641-57.2019.8.06.0001, Rel. Des. José Ricardo Vidal Patrocínio, julgado em 22/02/2023; TJCE, Agravo Interno Cível nº 0110920-35.2019.8.06.0001, Rel. Des. Emanuel Leite Albuquerque, julgado em 15/06/2022. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer e desprover o recurso, nos termos do voto do relator. Fortaleza, data assinatura eletrônica. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> (Apelação Cível - 0200473-35.2023.8.06.0169, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento:&#160; 12/02/2025, data da publicação:&#160; 12/02/2025) </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> #160; </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> #160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> Ementa: Consumidor e processual civil. Apelação cível. golpe da falsa central de atendimento. Ausência de nexo causal entre a conduta da instituição financeira e os danos alegados pela consumidora. Responsabilidade objetiva afastada. Falha na prestação de serviço não evidenciada. Culpa exclusiva da vítima. Excludente de responsabilidade configurada. Recurso conhecido e desprovido. Sentença mantida. </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> I. Caso em exame </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 1. Apelação Cível interposta pela autora contra sentença de improcedência dos pedidos iniciais, afastando a responsabilidade da instituição financeira com base na culpa exclusiva da vítima e

Processo	0263061-97.2023.8.06.0001
	ausência de prova de defeito na prestação do serviço. A autora alegou ter sido induzida a realizar operação no valor de R\$ 20.000,00 por terceiros que possuíam seus dados pessoais, sustentando falha na segurança do banco. II. Questão em discussão 2. A questão em discussão consiste em verificar se a instituição financeira pode ser responsabilizada pelos danos suportados pela consumidora, em razão de fraude perpetrada por terceiro, que a induziu, por meio de contato telefônico, a realizar transferência bancária, sob o argumento de falha no dever de segurança e possível vazamento de dados. III. Razões de decidir 3. O extrato bancário anexado aos autos confirma a alegação da apelante quanto à existência da transferência bancária no valor de R\$ 20.000,00, realizada no dia 26.01.2023, mediante débito de sua conta poupança (Id 19337293). Entretanto, não se verifica nenhum indício de irregularidade na operação realizada, tampouco prova de falha sistêmica ou de segurança por parte da instituição financeira. A transação foi processada de forma regular, com autenticação legítima da titular da conta, sem bloqueio, alerta ou interferência externa detectada no sistema bancário. 4. Nos termos do art. 14, § 3º, II, do CDC, a responsabilidade do fornecedor de serviços é afastada quando demonstrada a culpa exclusiva do consumidor ou de terceiro, o que se evidencia na hipótese, em razão da conduta voluntária da apelante ao seguir instruções telefônicas de suposto atendente bancário, sem ter buscado confirmação por canal oficial da instituição financeira. Ademais, não há nos autos nenhuma comprovação de que a instituição financeira tenha sido responsável pelo vazamento dos dados da apelante. A simples afirmação de que os fraudadores detinham informações pessoais da correntista não é suficiente, por si só, para caracterizar falha no dever de segurança da instituição financeira, competindo à parte autora o ônus da prova quanto aos fatos constitutivos de seu direito, nos termos do art. 373, I, do CPC. 5. Dessa forma, conclui-se que a apelante agiu com imprudência ao realizar, de forma voluntária, transferência bancária de valor significativo sem verificar previamente a autenticidade das orientações recebidas, mesmo estando no interior da agência bancária, não sendo possível imputar a responsabilidade à empresa ré, o que caracteriza culpa exclusiva da vítima e de terceiro, conforme prevê o art. 14, § 3º, II, do CDC. 6. Ainda, não há prova de que o apelado tenha deixado de adotar medidas de segurança para evitar golpes desse tipo, não havendo nos autos indícios concretos de vazamento de dados bancários atribuíveis à instituição financeira. 7. Assim, ausente demonstração de nexo causal entre a atividade bancária e o prejuízo suportado, mantém-se inócua a conclusão sentencial quanto à inexistência de responsabilidade do promovido. Com efeito, inexistindo os elementos indispensáveis à configuração da responsabilidade civil objetiva – ato ilícito, dano e nexo causal –, não há como se admitir a reparação pelos supostos danos materiais e morais reclamados pela apelante. Dispositivo 8. Recurso conhecido e desprovido. Sentença mantida. (APELAÇÃO CÍVEL - 02004157620238060122, Relator(a): JANE RUTH MAIA DE QUEIROGA, 2ª Câmara de Direito Privado, Data do julgamento: 08/05/2025) DIREITO DO

Processo	0263061-97.2023.8.06.0001
	justify; text-indent: 8%; line-height: normal;"> 3 – Dispositivo </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> #160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Ante o exposto, CONHEÇO do recurso de apelação, para lhe DAR PROVIMENTO, para julgar improcedentes os pedidos autorais.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> #160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Com o resultado, inverte a condenação aos ônus da sucumbência, que serão suportados integralmente pela promovente, ficando alterada a base de cálculo dos honorários advocatícios sucumbenciais para o valor da causa, a fim de se ajustar ao artigo 85, § 2º, do CPC, observando-se a suspensão da exigibilidade por ser a vencida beneficiária da justiça gratuita (art. 98, § 3º, do CPC).</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> #160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> É como voto.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> #160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> #160;Fortaleza, data da assinatura digital.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> #160;</p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Relator </p><p> </p><p> </p><div>
 <hr size="1" /><div id="ftn1"> <p class="Footnote"> <sup> <sup> [1] </sup> #160;As instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias. </p> <div>
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Processo	0200263-21.2023.8.06.0092
Número de ordem	178
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO

Processo	0200263-21.2023.8.06.0092
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Inclusão Indevida em Cadastro de Inadimplentes
Polo ativo	ANTONIA FERREIRA BARROS BANCO MERCANTIL DO BRASIL SA
Advogado(s) - Polo ativo	ANNA RONNERIA LACERDA SOUZA - (DF62386-B) ANNA RONNERIA LACERDA SOUZA - (DF62386-B)
Polo passivo	BANCO MERCANTIL DO BRASIL SA ANTONIA FERREIRA BARROS
Advogado(s) - Polo passivo	EUGENIO COSTA FERREIRA DE MELO - (MG103082-A) EUGENIO COSTA FERREIRA DE MELO - (MG103082-A)
Terceiros	EDUARDO FERREIRA DE JESUS BANCO BRADESCO FINANCIAMENTOS S.A.

Processo	0200263-21.2023.8.06.0092
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAAFxEAABcRAco m8z8AAEulSURBVHhe7b11YFbH1vZnCdCqRfquMfdiOGQhLi7IEmlu5OEKIEEd3cpbqXU KFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY +lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z +6OXXcf/CQH69dlcZnBKIBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJ Xi0CT6jrYmfHMDVdacfDRw/5+puvOXRoL998+QK/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+nei DIF93mX5X/GLAnT57w8OEDPjv2CUvnVIFZGEfyBBcifO0ZZtWXccMsSY6dxiZVK1g+v5Kk MHvemT+RXQuj2L1kljOzXUiNHEWo1xhKc7PZvmoBaSFOrcwLYPeichbP9efdBeHMz/Mg O96LbRsWkhTtj88IM0oSPNng2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8 TOVOCqa0qYM3KhVy9elnX/8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mklARS3q4N RnR40iK8MTJtC9eToMoix/GvgVRHFwUwflY9haF0jRRFS/S1JC3Uim3wos7LGsHdRJO +tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFWqT875oYTPXYwrlb98R5u QmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsyOt2 LA0tj2L8wgPeWR7F0qjtTJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXe LCoZz4JiN+YVujEn35XZ+fl5byyL8kYJw8YwX863aJoPS8u8WVHhzbpfniOP7bPDmDXvG D2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm /YvylwC7c/sWs6cXkd1pFAfXJLJzXhCbavxYVR7AUmFcXZYllamjKE0cRsEkW/Im2AhTLE gJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUId6D9HqJF894gP0SQ0zFhab kxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+ X8EmCp7d23Ce4wp6dEOZESYkRpsQEgqKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHE BRmSGGLGIGBL4oMsiQ0yJS7EiPgWQ6nmTAm3YrL6LchMQDljzt+cWH8rrcb5WzDBx5g YXyMivfSi8BhChLSAPI6PyR5GYuYwJAWbkRxoSEaIKQUTncRtmJGXFsmPI89r7RYXXF/ Uh3/TgUn5y4DdvPEj6QnRGPD/njAPQ5JCpbHSySkC2uQAlYECdV8hRnyPc7PjDa3PWG PprF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6Pdv2FEYJcEEWJAYYCxsNtf1j/U3lWDIXoBnB4wc J+AbEBuuuNdIXzissnCIDEuMr1w0wID7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335 NQX4qoYGj8B0jrHldSLJ0PFWZTQV+bGOIKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA2 1UawcWYom6RumTWBqhQ3iscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBREvKlBeAmoYa 6DmZyYvsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafB93Q2qvarQtcDdt/v/whila Kz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElBRJgXaUT3GSwGBJ ofih/FB7ckPMYQszoUC+x3qa4W37NlkhdU5K6fMqJVNRElHNWfSLBjNHFEu/SVS+IKbN5 6UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkoplts6LIV2iU260tWgxZ3HI5hSkRNPjledFP OoLMIEES2pUIDlj3nsgCX7i0CUlPlSrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzlyJ7 gNJKizBY5wdr77UiaKMaILHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqrh6F8sfwOw MUdVVJo0b3oRrrY9xcRMyIsyJUuKQUmck6bBliV6Ts2i4u1uHXAbYUBZhg81mePYWCda qTaQjeJ70sRXTc8Lxc6wNy906sgLHTrxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNjiRpbKJ cTfd56jox4f8lTh1CV7kpV6jgKJz0lw63F35kROU7kjN8ovvj0uNbWv1r+EmANLUgkZ49QlBb GnllgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJ5X9XajNGsvMLA9ivlwoSPb DsP9bvNilC92fe56XOnfC3rQfpekBJldZy34uzMgYQ22uu4hcExljXHFxNcyvIUj8IZGAGsSa yIBWi2hdWyORVa6/ec4EUilR10849cBboju/On5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60u ThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56 h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9ISL/PS+G6flR+IzqL6DrkSNyJkdIA hJxyxKHMzNTkvylaoTHBfPdt2e09qrW/6eQY/PVAlE/FcTpr6yNtqSV6ze9coixrokQwSoS bFIYMJ4EL2PRUiMI8Y1ivWisrEhrEgJmPMPWJIfYUpHswsqyQJaW+IsgNSlrZiQThXWOZg N59dnOPNOhE107Pk3nNm3o/2Y3onxHskQcLthQTIS8CWvET1anukumYMMkyQCifUT8S nRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFruxzckrarpOqj9W2ATn1w7+J4D9nWP0JdULv z8v+HZtlCHFhw+wkFpf5MavQn9BxAKKEEZPSPQQ4qek+ICX7MjXJ6lkfwoSAsiXmjPFj7jw caRM9GVSqBeBnuPEL3ng7+1NgK8vQT5Svbyl8PMiOsAl5Am+JEWNJ1/OkZsQSH5iCE Wis4qTQpmWGCwD4UepgFSU5iJplQUJkkUsiCi9UnxeWfwY+dsklr+6UNYy34olI22e7N8p/ wlvwUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUle7OlGgiKur1li85gLS4UHLT4ygtzGR 6eRFL5tWxfuVydmezwt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6 +ZNbvX0ixvXb0pHr/DDhQtcOv8tZ05/xpddfsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5F OUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+Ocp8h QuZPWsOc2tnM72ymnK5+ly6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONNoN5bFKBY8 ePeb+vQfcvNOPGzdvsYZwjcti1hcvX+D7i+f49z3fHf2DN98LW7M3x79nu+P3eec+PfcUHY cenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yp pqKqurqa2bJbWWDRvWCSiOZ9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdfsvVN+e3R Y+XHdPslfNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQI RhbEE50/ALZsaD3HuHplReKRF4J4aLjUMz/qlvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpFDt k1RZTMrWTuuWs2bGgnQd38Ngxj/ji6y+4eOU8d29LWvTgQX1bn/D44QPxvdf57MTNmtjr yc7OYePGjfl3+atlJFX/UfmXDFoxmFvBs13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGB wjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfnvXvS3Kc3Ta Q+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;0200263-21.2023.8.06.0092 - &#160;APELAÇÃO CÍVEL (198)</p><p> APELANTES/APELADOS: ANTONIA FERREIRA BARROS e BANCO MERCANTIL DO BRASIL S/A</p><p>&#160;</p><p>
 </p><p align="center">
</p><p class="western" style="font-variant: small-caps; font-style: normal; font-weight: normal; line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-decoration: none;" align="justify"> Ementa: Direito do consumidor. Recursos de apelação cível. Ação anulatória de débitos com indenização por danos morais e materiais. Sentença de parcial procedência. Contrato de empréstimo consignado carreado aos autos. Impugnação da assinatura em sede de réplica. Ônus de comprovar a veracidade do documento pela parte que o produziu. Tema 1.061 do stj. Inércia da instituição financeira. Validade do contrato não demonstrada. Falha na prestação do serviço caracterizada. Danos morais. Não caracterização. Ausência de abalo aos direitos da personalidade. Mero aborrecimento. Incidência de correção monetária sobre o montante a ser compensado, pelo inpc/ibge, a partir da data da transferência, para que não cause enriquecimento sem causa da demandante. Recursos conhecidos, todavia, desprovidos. Sentença mantida na íntegra. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Vistos, relatados e discutidos estes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer dos recursos, todavia, para, NEGAR- LHES PROVIMENTO, nos termos do voto do Relator. Fortaleza, data da assinatura digital. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;"

Processo	0200263-21.2023.8.06.0092
	align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Presidente/Relator </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center">&#160;</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> RELATÓRIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Trata-se de Recursos de Apelação Cível, interpostos por ANTÔNIA FERREIRA BARROS e pelo BANCO MERCANTIL DO BRASIL S/A. , adversando sentença proferida pelo Juízo de Vara Única da Comarca de Independência, que, nos autos da ação anulatória de débito c/c danos materiais e morais, julgou parcialmente procedente a ação, para: (id. 25928294) </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> a) Declarar a nulidade do contrato&#160; em questão, nº 014724386, para cessarem todos os efeitos dele decorrentes; </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> b) Condenar a parte promovida a restituir, de forma simples , todas as parcelas descontadas indevidamente até a efetiva suspensão ou extinção do contrato em apreço no benefício previdenciário da autora . Tais valores deverão ser acrescidos de juros de mora de 1% ao mês e correção monetária (INPC), ambos a partir da primeira cobrança indevida (súmulas 43 e 54 do STJ). Ressalte-se que deve ser observada a prescrição parcial das parcelas que se venceram há mais de 5 anos do ajuizamento da ação, nos termos do art. 206, §5, I do CC/02; </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> c) DEFERIR a compensação dos valores entre a

Processo	0200263-21.2023.8.06.0092
	importância referente à condenação e o crédito disponibilizado pela instituição financeira demandada à parte autora, o qual será corrigido pelo INPC desde a comprovada transferência; d) negar o pedido de indenização por danos morais. Em suas razões, a promovente aduz que a prova pericial não foi realizada, e o banco foi condenado à restituição dos valores descontados indevidamente. Todavia, a r. sentença deixou de condenar a instituição financeira ao pagamento de indenização por danos morais. Ressalta que, diante da inexistência de contrato válido e da evidente falha na prestação do serviço por parte do apelado, a ausência de condenação por danos morais revela-se inadequada, sobretudo considerando a conduta abusiva da instituição financeira, que extrapolou os limites do exercício regular de direito e causou prejuízos significativos à autora, aposentada e parte hipossuficiente na relação contratual. Requer a reforma da r. sentença para que a instituição financeira seja condenada ao pagamento a título de danos morais no montante de R\$ 10.000,00 (dez mil reais), atendendo sempre ao princípio da razoabilidade e proporcionalidade. Aduz, por fim, destaca a impossibilidade de incidência de juros ou atualização monetária sobre o valor a ser compensado. Defende que a atualização sobre tal valor não deve prosperar, por ser inaceitável que a autora, já vítima de descontos indevidos em seu benefício previdenciário por anos, seja ainda onerada com juros ou correção monetária sobre um valor que jamais deveria ter sido creditado em sua conta. A instituição financeira, por sua vez, em seu apelo, argui que apresentou o contrato celebrado, comprovante de transferência de empréstimo, conforme reconhecido pela própria parte apelada, entretanto, a sentença combatida julgou procedente em parte os pedidos autorais. Salienta que, mesmo ausente o laudo pericial, necessário que seja avaliado todo o conjunto probatório apresentado pela instituição financeira perante o juízo, no intuito de avaliar a validade da contratação, sendo que a perícia grafotécnica configura apenas uma das formas de avaliar se houve ou não fraude. Destaca que, em análise “a olho nu” dos documentos apresentados nos autos, é notória a similitude na grafia existente em todas as assinaturas apostas tanto no contrato como no documento de identidade carreado, argumentando, ainda que “Se realmente é necessário a realização de perícia

Processo	0200263-21.2023.8.06.0092
	grafotécnica para averiguar a existência ou não divergências nas assinaturas, resta cristalino que a instituição financeira não pode ser responsabilizada por suposta fraude." </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Pugna pelo provimento do recurso, a fim de que a sentença seja reformada para julgar o feito improcedente. Subsidiariamente, requer que os danos morais sejam minorados para valor proporcional ao objeto da ação. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Contrarrrazões apresentadas (id's. 25928306 e 25928313). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É o relatório. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="center"> VOTO </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Conheço dos recursos, eis que presentes os pressupostos de admissibilidade. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> O cerne da controvérsia consiste em analisar a regularidade do contrato de empréstimo consignado nº 014724386 , e, em seguida, examinar a responsabilidade civil imputada ao banco, em virtude da suposta falha na prestação do serviço no ato de celebração do contrato, à luz do Código de Defesa do Consumidor. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Sobre o assunto, este e. Tribunal de Justiça firmou entendimento de que a confirmação da regularidade ou irregularidade do negócio depende de provas concretas sobre i) a anuência do (a) consumidor (a) sobre os descontos realizados e ii) o recebimento do crédito por parte do beneficiário. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Assim, tendo em vista a incidência das regras do Código de Defesa do Consumidor, bem como a impossibilidade de a parte autora constituir prova negativa da relação jurídica ora discutida, compete à instituição financeira trazer aos autos documentos hábeis a demonstrar a regularidade da relação contratual, e, se for caso, comprovar alguma das hipóteses de excludentes de responsabilidade, nos termos do art. 14, § 3º, incisos I e II, do Código de Defesa do Consumidor c/c o art. 373, § 1º, do Código de Processo Civil. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> No contexto dos autos, a autora discorre que foi surpreendida com a contratação de empréstimo consignado, incidente sobre seu benefício previdenciário, incluído no dia 07/10/2017, com valor emprestado de R\$ 6.264,00, com previsão de pagamento em 72 parcelas de R\$ 87,00, conforme histórico de empréstimo consignado (id. 25927586). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> A instituição financeira, por seu turno, acostou o instrumento contratual e os documentos pessoais da autora (id's.

Processo	0200263-21.2023.8.06.0092
	25928196 e 25928197), bem como o comprovante de transferência do valor em benefício da contratante (id. 25928200). Em contrapartida, ao apresentar réplica (id. 25928223), a promovente afirmou desconhecer a assinatura aposta ao documento, alertando ser necessária a produção de prova pericial grafotécnica. Nos termos da decisão interlocutória, foi determinada a intimação do Banco promovido para recolher o valor dos honorários periciais, no prazo de 10 dias, sob pena de julgamento do feito no estado em que se encontra, assumindo o Banco o ônus da ausência da prova pericial, em consonância com o Tema nº 1.061, do STJ (id. 25928277). Apesar da determinação judicial, a instituição financeira permaneceu inerte. (id. 25928293) ficando silente com relação à eventual dilação probatória, furtando-se, portanto, do ônus que lhe competia, na forma do art. 429, inciso II, do CPC, verbis: Art. 429. Incumbe o ônus da prova quando: I - se tratar de falsidade de documento ou de preenchimento abusivo, à parte que a arguir; II - se tratar de impugnação da autenticidade, à parte que produziu o documento. Nessa mesma linha de raciocínio, em julgamento submetido ao rito dos recursos repetitivos, a Segunda Seção do c. Superior Tribunal de Justiça firmou a seguinte tese jurídica (Tema 1.061): "Na hipótese em que o consumidor/autor impugnar a autenticidade da assinatura constante em contrato bancário juntado ao processo pela instituição financeira, caberá a esta o ônus de provar a autenticidade (CPC, arts. 6º, 369 e 429, II)". Com base nisso, ao analisar as provas coligidas aos autos, o juízo de primeiro grau considerou, acertadamente, que a instituição financeira não se desincumbiu do seu ônus probatório, tendo em vista que não demonstrou adequadamente a regular contratação, na medida em que não foi capaz de superar a queixa de inautenticidade da assinatura aposta ao contrato, deixando de comprovar, portanto, a validade do instrumento. Isto é, uma vez questionada a assinatura inscrita em documento produzido pelo banco, a este competia demonstrar a sua autenticidade, havendo, no entanto, a preclusão para exercer o direito de produção de provas nesse sentido (art. 223, caput, do CPC), visto que, embora devidamente intimado, o banco ficou-se inerte.

Processo	0200263-21.2023.8.06.0092
	class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse sentido, para efeito de argumentação, colho da fonte jurisprudencial deste Tribunal de Justiça e das demais cortes pátrias os julgamentos abaixo ementados: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> ="" >(tj-ce="" >1.="" ><="" >apelação="" <="" <span="" (30="" (cpc,="" (paradigma,="" (pág.="" (stj="" (tema="" (três="" -="" 00540735520218060029="" 03="" 10.="" 1061),="" 1061).="" 107="" 11="" 11.="" 110),="" 111)="" 12.="" 13.="" 14.="" 16="" 16),="" 1846649="" 1ª="" 2.="" 2021)="" 2021).="" 2021.="" 2022).<="" 2022,="" 297="" 2ª="" 3.="" 3.000,00="" 30="" 368="" 4.="" 429,="" 5.="" 6.="" 676.608="" 6º,="" 7.="" 8.="" 9.="" a="" ac:="" acerca="" acopiara="" acopiara,="" acórdão="" acórdão,="" afastada.="" agente="" ainda="" ajuizada="" alegado.="" align="justify" alterasse="" analisada="" anexado="" anulatória="" análise="" ao="" aos="" apelada.="" apelante,="" apelante.="" apelação="" aplicável="" apresentação="" apresentou="" após="" arbitramento="" art.="" arts.="" as="" assinatura="" assinatura.="" assinaturas="" atento="" ato="" através="" augusto="" ausência="" autenticidade="" autor="" autor,="" autora="" autora,="" autos="" autos,="" autos.="" ação="" ação,="" banco="" bancária",="" bancário="" base="" basta="" bem="" benefício="" boa-fé="" bradesco="" c="" caberá="" carlos="" caso="" causa="" cautela="" ce,="" cicero="" cinge-se="" class="western" comarca="" como="" competente="" completamente="" comprovado="" comprovar="" comprovação="" conduta="" configurados="" conhecido="" consentâneo="" considero="" consignado="" constante="" constantes="" constitui="" consumidor="" consumidor,="" contra="" contratação,="" contrato="" contratual="" contratual,="" controvérsia="" contrária="" contrário="" contudo,="" correia,="" correção="" cotejo="" culpa="" cumpre="" câmara="" cível="" cível.="" código="" da="" dano="" dano,="" danos="" danoso.="" das="" data="" de="" decidiu="" decisão.="" declaração="" defesa="" demonstrar="" denota-se="" depositada="" descontos="" desses="" deve="" devendo="" dever="" diferentes="" direito="" discussão="" discutida,="" disposições="" divergem="" divergentes.="" do="" dobro="" documento="" documentos="" dos="" débito="" e="" e,="" earesp="" econômico="" efeitos="" em="" empréstimo="" empréstimo,="" empréstimo.="" entender="" entidade="" esta="" evento="" eventualmente="" face="" fato="" fatores:="" favor="" financeira="" financeira,="" financeira.="" financeiras".="" firmado="" fixação="" fora="" forma="" fornecedor="" gomes="" grafotécnica="" hipótese="" há="" identidade="" ii)."="" ilícito="" impugnar="" impugnou="" incidindo="" incidir="" inciso="" incumbia="" indenização="" indébito="" inexistência="" instituição="" instituições="" instrumento="" interposto="" irregulares="" irregularidade="" juiz="" julgado="" julgamento="" julgamento:="" julgou="" juntada="" juntado="" juntado,="" junto="" juros="" jurídico.="" justiça,="" juízo="" ma="" mantido.="" meio="" meios="" mil="" modo="" modulação="" monetária="" mora="" morais="" moral="" má-fé,="" n.º="" na="" necessidade="" negou="" negócio="" no="" nos="" não="" o="" objetiva.="" objeto="" observada="" ora="" os="" ou="" outros="" p="" p><p="" pactuado="" pagos="" para="" paradigma="" parcialmente="" parte="" parte.="" partir="" passou="" pela="" pelo="" percebe-se="" perfectibilidade="" perícia="" pese="" podendo="" pontuou="" por="" porquanto="" porte="" posteriormente="" praticado="" previdenciário.="" privado,="" procedente="" processo="" procuratório="" proferida="" promovente="" promover="" promovido="" promovido,="" prova.="" provar="" provido.<="" publicação="" publicação:="" qual:="" qualquer="" quantia="" que="" que:="" quem="" quo="" r\$="" reais),="" realizados="" realizar="" realizou="" reconhecimento="" recurso="" regime="" regularidade="" relativos="" relator:="" relação="" repetitivo="" repetição="" requerente="" requereu="" resp="" respectivamente.="" responsabilidade="" resta="" restou="" ré,="" s.a.,="" se="" segundo="" seja="" sentença="" ser="" sido="" silva="" simples="" sob="" sofrimento="" somente="" span>="" span><="" stj="" style="font-family: Georgia, serif;" sua="" substancialmente="" superior="" suposta="" supostamente,="" sá="" são="" súmula="" tema="" tenha="" termos="" tomada="" trata-se="" tribunal="" valerá="" validade="" valor="" valores="" vara="" verifique="" veríssimo="" viii,="" vítima="" à="" às="" é="" ônus="">

Processo	0200263-21.2023.8.06.0092
	AGRAVO DE INSTRUMENTO. AÇÃO DE REVOGAÇÃO DE DOAÇÃO POR INEXECUÇÃO DE ENCARGOS. PRODUÇÃO DE PROVAS. PRECLUSÃO TEMPORAL CONFIGURADA. A preclusão temporal é a perda da faculdade de praticar determinado ato processual, quando decorrido o prazo para tanto, ou praticado a destempo. Segundo a jurisprudência majoritária em voga no Superior Tribunal de Justiça, configura preclusão a ausência de manifestação da parte acerca do despacho pelo qual é oportunizado momento para declinar pedido de produção de prova. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-MG - Agravo de InstrumentoCv 1.0000.22.149483-4/001, Relator (a): Des.(a) Cláudia Maia , 14a CÂMARA CÍVEL, julgamento em 10/11/2022, publicação da súmula em 10/11/2022). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO DE INSTRUMENTO AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS INDEFERIMENTO DE PROVA DOCUMENTAL (FILMAGENS DE CÂMERAS DO CIRCUITO INTERNO DO ESTACIONAMENTO) PROVA NÃO REQUERIDA NO TEMPO E MOMENTO OPORTUNO OCORRÊNCIA DE PRECLUSÃO INEXISTÊNCIA DE CERCEAMENTO DE DEFESA DECISÃO MANTIDA RECURSO CONHECIDO E NÃO PROVIDO . 1. Discute-se no presente recurso, o acerto ou desacerto da decisão agravada que indeferiu o pedido de produção de prova documental filmagens das câmeras de segurança do estacionamento da empresa ré no momento do sinistro (furto do caminhão do requerente).. 2. Sabe-se que a preclusão consiste na perda, extinção ou consumação de uma faculdade processual em face do decurso do tempo (preclusão temporal), da prática de ato incompatível (preclusão lógica) e do efetivo exercício de determinada faculdade processual (preclusão consumativa). 3. O Superior Tribunal de Justiça tem entendimento firmado de que preclui o direito à prova se a parte, intimada para especificar as que pretendia produzir, não se manifesta oportunamente, e a preclusão ocorre mesmo que haja pedido de produção de provas na inicial ou na contestação, mas a parte silencia na fase de especificação. Precedentes do STJ. 4. No caso, tendo a parte autora sido intimada (em 22/07/2019 e em 17/01/2020 f. 184 e 566, na origem, respectivamente) para especificar as provas que pretendia produzir, no prazo de 5 (cinco) dias, limitou-se a requerer tão somente a produção de prova oral. Assim, conforme corretamente fundamentado na decisão recorrida, embora o autoragravante tenha requerido em sua inicial a produção de "todas as provas admitidas em direito", ficou inerte quando devidamente intimado para especificar e justificar eventuais provas que pretendesse produzir, mais precisamente a respeito da produção da referida prova documental (filmagens das câmeras de segurança), acarretando na preclusão desse direito. 5. Diante da preclusão consumativa, incabível a produção de prova não requerida quando da especificação de provas que a parte pretendia produzir. 6. Agravo de Instrumento conhecido e não provido. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJMS. Agravo de Instrumento n. 1410156-23.2021.8.12.0000, Brasíliaândia, 3a Câmara Cível, Relator (a): Des. Paulo Alberto de Oliveira, j: 10/08/2021, p: 16/08/2021). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Posto isso, considerando que o banco ficou silente quanto à realização de perícia grafotécnica, demonstrando a desídia em comprovar a regularidade do contrato, impera-se ratificar a declaração de invalidade do mútuo impugnado, bem como a devolução das parcelas efetivamente descontadas do benefício previdenciário da parte autora. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Dos Danos morais </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> No tocante à indenização pelos danos morais, sabe-se que sua caracterização está condicionada à existência de lesão a um bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, o bom nome etc., como se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> </p>

Processo	0200263-21.2023.8.06.0092
	margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Sobre o tema leciona Sérgio Cavalieri Filho: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> [...]. só deve ser reputado como dano moral a dor, vexame, sofrimento ou humilhação que, fugindo à normalidade, interfira intensamente no comportamento psicológico do indivíduo, causando-lhe aflições, angústia e desequilíbrio em seu bem-estar. Mero dissabor, aborrecimento, mágoa, irritação ou sensibilidade exacerbada estão fora da órbita do dano moral, porquanto, além de fazerem parte da normalidade do nosso dia a dia, no trabalho, no trânsito, entre os amigos e até no ambiente familiar, tais situações não são intensas e duradouras, aponta de romper o equilíbrio psicológico do indivíduo. Se assim não se entender, acabaremos por banalizar o dano moral, ensejando ações judiciais em busca de indenizações pelos mais triviais aborrecimentos. (CAVALIERI FILHO, Sérgio. Programa de Responsabilidade Civil. 11a ed. São Paulo: Atlas, 2014, p.111). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nessa perspectiva,"a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante."(AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse ponto, a jurisprudência do Superior Tribunal de Justiça é assente no sentido de que se trata de mero aborrecimento o desconto indevido de valores incapazes de comprometer a subsistência da parte. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> A propósito: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITOS. RESTITUIÇÃO DE VALORES E INDENIZAÇÃO POR DANOS MORAIS. DESCONTO INDEVIDO. VALOR ÍNFINO. DANO MORAL INEXISTENTE. MERO ABORRECIMENTO. CONSONÂNCIA COM A JURISPRUDÊNCIA DESTA CORTE SUPERIOR. RECURSO DESPROVIDO. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. Esta Corte Superior entende que a caracterização do dano moral exige que a comprovação do dano repercuta na esfera dos direitos da personalidade. A fraude bancária, nessa perspectiva, não pode ser considerada suficiente, por si só, para a caracterização do dano moral? (AgInt nos EDcl no AREsp 1.669.683/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 23/11/2020, DJe de 30/11/2020). 2. O Tribunal de origem concluiu que o desconto indevido de R\$ 70,00 (setenta reais) no benefício previdenciário da agravante não acarretou danos morais, considerando que foi determinada a restituição do valor, que a instituição financeira também foi vítima de fraude e que não houve inscrição do nome da agravante em cadastros de proteção ao crédito, de modo que ficou configurado mero aborrecimento. 3." A jurisprudência desta Corte entende que, quando a situação experimentada não tem o condão de expor a parte a dor, vexame, sofrimento ou constrangimento perante terceiros, não há falar em dano moral, uma vez que se trata de mero aborrecimento ou dissabor, mormente quando a falha na prestação de serviços, embora tenha acarretado aborrecimentos, não gerou maiores danos ao recorrente, como ocorreu na presente hipótese "(AgInt no AREsp 1.354.773/MS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 02/04/2019, DJe de 24/04/2019). 4. Agravo interno desprovido. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm;

Processo	0200263-21.2023.8.06.0092
	background: transparent;" align="justify"> (STJ - AgInt nos EDcl no REsp n. 1.948.000/SP, relator Ministro Raul Araújo, Quarta Turma, julgado em 23/5/2022, DJe de 23/6/2022). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO E DANOS MORAIS. DESCONTO INDEVIDO. VALOR ÍNFIIMO. INCIDÊNCIA DAS SÚMULAS 283 E 284/STF. DANO MORAL INEXISTENTE. MERO ABORRECIMENTO. RECURSO NÃO PROVIDO. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. A ausência de impugnação, nas razões do recurso especial, de fundamento autônomo e suficiente à manutenção do aresto recorrido atrai, por analogia, o óbice da Súmula 283 do STF. 2. O Tribunal de origem concluiu que o desconto indevido de uma parcela no valor de R\$ 28,00 (vinte e oito reais) no benefício previdenciário da recorrente não acarretou danos morais, pois representa valor ínfimo, incapaz de comprometer sua subsistência, bem como o valor foi restituído com correção monetária, de modo que ficou configurado mero aborrecimento. 3. A jurisprudência desta Corte entende que, quando a situação experimentada não tem o condão de expor a parte a dor, vexame, sofrimento ou constrangimento perante terceiros, não há falar em dano moral, uma vez que se trata de mero aborrecimento ou dissabor, mormente quando a falha na prestação de serviços, embora tenha acarretado aborrecimentos, não gerou maiores danos ao recorrente, como ocorreu na presente hipótese. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 4. Agravo interno não provido. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (STJ - AgInt no AREsp 1354773/MS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 02/04/2019, DJe 24/04/2019). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> No mesmo sentido tem decidido esta Primeira Câmara de Direito Privado em casos análogos aos dos autos. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO, C/C INDENIZAÇÃO POR DANOS E RESTITUIÇÃO DE INDÉBITO. DESCONTOS TARIFAS EM CONTA CORRENTE ONDE A PARTE RECEBE SEU SALÁRIO/PROVENTOS. IMPOSSIBILIDADE. DESCONTOS COM VALORES ÍNFIMOS. MAIOR DESCONTO OCORREU EM FEVEREIRO/01 (R\$ 27,32), IMPLICANDO 3,56% DO TOTAL DO BENEFÍCIO RECEBIDO (R\$ 766,10). DANO MORAL NÃO CONFIGURADO. MEROS ABORRECIMENTOS. JUROS DE MORA A PARTIR DA CITAÇÃO. HONORÁRIOS ADVOCATÍCIOS SUCUMBENCIAIS FIXADOS NA SENTENÇA EQUIVOCADAMENTE. CORREÇÃO EX OFFICIO. MATÉRIA DE ORDEM PÚBLICA. VALOR IRRISÓRIO. FIXAÇÃO POR EQUIDADE. RECURSO CONHECIDO E PARCIALMENTE PROVIDO PARA APENAS CORRIGIR A VERBA HONORÁRIA, FIXANDO-A POR EQUIDADE. SENTENÇA PARCIALMENTE REFORMADA. A C O R D A a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, conhecer do presente recurso e dar-lhe parcial provimento, reformando-se parcialmente a sentença, nos termos do voto do eminente Relator. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJCE. Apelação Cível - 0051597-73.2021.8.06.0084, Rel. Desembargador (a) FRANCISCO MAURO FERREIRA LIBERATO, 1a Câmara Direito Privado, data do julgamento: 26/04/2023, data da publicação: 27/04/2023). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> PROCESSO CIVIL. RECURSO DE

Processo	0200263-21.2023.8.06.0092
	APELAÇÃO EM AÇÃO DECLARATÓRIA DE NULIDADE C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. DESCONTO CONTA-SALÁRIO DA AUTORA. DANOS MORAIS NÃO CONFIGURADOS. DESCONTOS ÍNFIMOS. MEROS ABORRECIMENTOS. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. 1. O douto magistrado singular, julgou parcialmente procedente os pedidos contidos na ação Declaratória de Nulidade c/c Indenização por Danos Materiais e Morais, declarando inexistente o contrato de empréstimo impugnado, condenando o banco/apelado a restituir à parte autora/recorrente, os valores que tenham sido descontados do benefício previdenciário, desacolhendo, no entanto, o pedido de indenização por danos morais, considerando que a conduta do banco/recorrido não acarretou intenso sofrimento à vítima ou lesão aos seus direitos de personalidade, elementos da responsabilidade objetiva. 2. O cerne da controvérsia recursal consiste na possibilidade da instituição financeira/apelante ser condenada a título de danos morais em razão de descontos indevidos no benefício previdenciário da autora/apelante, referente a contrato de empréstimo consignado. 3. Dano Moral - A existência do dano moral pressupõe a configuração de lesão a um bem jurídico que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, o bom nome etc., com base se infere dos arts. 1º, III, e 5º, V e X, da Constituição Federal. 4. No caso, ainda que tenha ocorrido descontos indevidos, tal fato não se mostra suficientemente capaz de ensejar o dano moral alegado, posto que não se traduz em qualquer ofensa aos direitos da personalidade a existência de descontos de valores irrisórios (03 parcelas de R\$ 29,50), ocorridos no benefício previdenciário da demandante/recorrente (fls.17) . 5. Desse modo, ausente a demonstração de que o indébito não ultrapassou meros aborrecimentos, não há que se falar em condenação da entidade bancária ao pagamento de indenização por danos morais. 6. Recurso conhecido e desprovido. Sentença confirmada. (TJCE. Apelação Cível - 0050308-05.2021.8.06.0085, Rel. Desembargador (a) EMANUEL LEITE ALBUQUERQUE, 1a Câmara Direito Privado, data do julgamento: 17/05/2023, data da publicação: 17/05/2023). No caso em tela, verifica-se que os descontos realizados no benefício previdenciário da demandante não ultrapassaram o valor de R\$ 87,00 (oitenta e sete reais), conforme histórico de créditos (id. 25927586). Assim, entende-se que a consumidora não ficou desprovida de recursos financeiros para solver suas despesas ordinárias, inclusive é de se observar que não houve nenhuma comprovação nesse sentido, de sorte que a existência de descontos no valor acima referido não caracteriza dor, sofrimento ou humilhação, tampouco representa violação à honra, à imagem ou à vida privada da autora. Com efeito, não se vislumbra dano à personalidade que possa ensejar o pagamento de indenização por danos morais, notadamente porque referidos descontos não foram capazes de causar maiores consequências negativas, como a inscrição do nome da consumidora nos cadastros de proteção ao crédito ou o comprometimento do mínimo existencial, sendo o caso, portanto, de acolher os argumentos da instituição financeira apelante, no sentido de que os descontos não causaram lesão de ordem moral, ainda mais também porque comprovada a disponibilização do crédito em benefício e proveito da consumidora. Da Compensação Por fim, agiu com acerto o douto Juiz de 1º grau ao determinar a realização de compensação entre o valor creditado em favor da autora e a quantia correspondente ao indébito, por considerar que a instituição financeira juntou comprovante de transferência bancária (id. 25928200), em que consta o recebimento do crédito correspondente à contratação ora discutida, no montante de R\$ 3.110,00 (três mil, cento e dez reais),

Processo	0200263-21.2023.8.06.0092
	devendo tal valor, a despeito da argumentação da promovente, ser corrigido monetariamente pelo INPC, desde a data da transferência, posto que a hipótese de não incidência de correção monetária ensejaria enriquecimento ilícito da autora, bem como ofenderia os princípios de justiça e equidade. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse sentido: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; page-break-before: auto;" align="justify"> RECURSO DE APELAÇÃO. SENTENÇA DE PROCEDÊNCIA. MANTIDA. EMPRÉSTIMO CONSIGNADO. DESCONTOS EM BENEFÍCIO PREVIDENCIÁRIO COMPROVADOS. CONTRATO FRAUDULENTO. PERÍCIA GRAFOTÉCNICA QUE ATESTA SER A ASSINATURA FALSA. DEDUÇÕES INDEVIDAS. RESPONSABILIDADE OBJETIVA DA INSTITUIÇÃO FINANCEIRA. RESTITUIÇÃO DOS VALORES NA FORMA SIMPLES. DANO MORAL IN RE IPSA. CONFIGURADÔ. QUANTUM MANTIDO. JUROS DE MORA. FLUÊNCIA A PARTIR DO DANO. INTELIGÊNCIA DA SÚMULA 54 STJ. CORREÇÃO MONETÁRIA DO VALOR FIXADO A TÍTULO DE DANOS MORAIS. DATA DA SUA FIXAÇÃO. SÚMULA 362. RECURSO CONHECIDO E IMPROVIDO. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. Trata-se de ação que requer a declaração de inexistência de contrato de empréstimo consignado, a repetição do indébito em dobro e a condenação da instituição financeira em reparação por danos morais. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 2. O ônus de comprovar fato impeditivo, modificativo ou extintivo do direito autoral (art. 373, II, CPC) não foi descumprido a contento pela instituição financeira, ao exibir em juízo contrato fraudulento. Isso porque, o parecer grafotécnico constante nos autos é categórico ao afirmar que a assinatura constante no instrumento contratual apresentado pelo ente financeiro é ilegítima. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 3. Destarte, as provas constantes dos fôlios são indicativas de fraude na contratação do referido empréstimo, o qual foi firmado por terceiro, impondo-se a declaração de nulidade do negócio jurídico. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 4. É cediço que o fornecedor de serviços responde objetivamente pelos danos causados ao consumidor, bem como que a responsabilidade objetiva se aplica às instituições financeiras, por delitos praticados por terceiros, no âmbito de operações bancárias, posto que trata-se de risco da atividade, com respaldo no art. 14 do CDC e na Súmula 479 do STJ. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 5. No tocante à devolução dos importes indevidamente descontados, no caso em liça entendo que o Magistrado de piso julgou corretamente que a restituição deve ocorrer de forma simples, porquanto não restou evidenciado a má-fé do banco requerido. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 6. O débito direto no benefício do consumidor, reduzindo seu aposento, ausente contrato válido a amparar tais descontos, caracteriza dano moral in re ipsa, ou seja, presumido, decorrente da própria existência do ato. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 7. Amparada nas particularidades do caso concreto, à luz da valoração entre os danos suportados pela suplicante e os princípios da razoabilidade e proporcionalidade, mantenho o montante indenizatório em R\$ 3.000,00 (três mil reais) por estar condizente com o costumeiramente arbitrado em casos análogos. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"></p>

Processo	0200263-21.2023.8.06.0092
	style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 8. Quanto ao termo inicial dos juros de mora, conforme entendimento sumulado pelo STJ (súmula 54), estes fluem desde o evento danoso, em hipótese de responsabilidade extracontratual, como é o caso dos autos, uma vez que o contrato questionado foi declarado nulo. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 9. Por sua vez, a correção monetária do valor arbitrado a título de danos morais tem como marco inicial o momento da fixação do valor (súmula 362 STJ). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 10. Por fim, determino que seja compensado o valor comprovadamente recebido pela parte autora em sua conta bancária, devidamente atualizado, com o proveito econômico do presente feito. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 11. Recurso conhecido e improvido. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-CE - AC: 00511696220218060029 Acopiara, Relator: MARIA DE FÁTIMA DE MELO LOUREIRO, Data de Julgamento: 08/06/2022, 2a Câmara Direito Privado, Data de Publicação: 08/06/2022). </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">&#160;</p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> PROCESSO CIVIL E CONSUMIDOR. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. AÇÃO DE INEXISTÊNCIA DE DÉBITO, C/C REPARAÇÃO POR DANOS MORAIS E MATERIAIS. ALEGAÇÃO DE OMISSÃO POR AUSÊNCIA DE DETERMINAÇÃO DE CORREÇÃO MONETÁRIA SOBRE O MONTANTE A SER COMPENSADO. CORREÇÃO MONETÁRIA IGUALMENTE DEVIDA NA COMPENSAÇÃO. OMISSÃO VERIFICADA. RELAÇÃO EXTRA CONTRATUAL. CORRETA APLICAÇÃO DE JUROS E CORREÇÃO MONETÁRIA CONSOANTE SÚMULAS 43, 54, 362 DO STJ. CONTRADIÇÃO NÃO VERIFICADA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO INTEGRADO. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 1. Os Embargos de Declaração servem para reparar omissões, obscuridades e contradições no julgado, além de reconhecer matérias de ofício ou erro material, consoante inteligência do art. 1.022 do CPC. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 2. No caso, o acórdão embargado determinou a correção monetária apenas dos indébitos a serem repetidos, restando silente quanto à necessidade de correção do montante a ser compensado. Verificada a omissão nesse ponto em específico e determinada a correção monetária do valor comprovadamente depositado na conta da consumidora pelo banco, o qual será alvo de compensação quando da indenização por danos materiais. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 3. Declarada a nulidade do contrato objeto da celeuma, passa a ser extracontratual a relação entre as partes litigantes, de modo que juros e correção monetária deverão observar o disposto nas súmulas 43, 54 e 362 do STJ. Ausente contradição na aplicação dos verbetes. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> 4. Recurso conhecido e parcialmente provido. Acórdão integrado. (TJ-CE - Embargos de Declaração Cível:

Processo	0200263-21.2023.8.06.0092
	0172240-23.2018.8.06.0001 Fortaleza, Relator: FRANCISCO JAIME MEDEIROS NETO, Data de Julgamento: 19/12/2023, 4a Câmara Direito Privado, Data de Publicação: 19/12/2023). Diante do exposto, conheço de ambos os recursos, para NEGAR-LHES PR OVIMENTO, mantendo incólume a sentença fustigada. Mantida a sucumbência recíproca, como reconhecida na origem, majoro em 3% os honorários advocatícios fixados na sentença, nos termos do art. 85, §11, do CPC, em desfavor de ambas as partes, suspensa a exigibilidade em relação à promovente, por ser beneficiária da gratuidade judiciária. É o voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator &#160; &#160; &#160;
Processo	0200421-78.2023.8.06.0059
Número de ordem	179
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	MARIA SOCORRO CAMPOS DA SILVA
Advogado(s) - Polo ativo	MARCOSORRITE GOMES ALVES - (CE38659-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado

Processo	0200421-78.2023.8.06.0059
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCIQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRSrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRLz8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmCl3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmJFYQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQm+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfLk3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fnsFHHqjeh3WFOUwU2ZXJlJxMkCAGC oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXG6425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvXNkX410JezMZRUDZIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0200421-78.2023.8.06.0059
	roman" >, times;">PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line- height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> <span style="font-family: &quot;times new roman&quot;,
 </p><p>
 </p><p style="text-align: justify;"> PROCESSO: 0200421- 78.2023.8.06.0059 </p><p style="text-align: justify;"> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"> APELANTE: MARIA SOCORRO CAMPOS DA SILVA </p><p style="text-align: justify;"> APELADO: BANCO BRADESCO S/A </p><p style="text-align: justify;">
 </p><p style="text-align: justify;"> EMENTA: DIREITO DO CONSUMIDOR. RECURSO DE APELAÇÃO CÍVEL EM AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SENTENÇA DE IMPROCEDÊNCIA NA ORIGEM. ABORDAGEM DE TERCEIRO NO INTERIOR DA AGÊNCIA BANCÁRIA. GOLPE ATRAVÉS DE SAQUES E TRANSFERÊNCIA BANCÁRIA. RESPONSABILIDADE OBJETIVA. FALHA NA PRESTAÇÃO DO SERVIÇO E NO DEVER DE SEGURANÇA. RESPONSABILIDADE OBJETIVA DA INSTITUIÇÃO FINANCEIRA. FORTUITO INTERNO. SÚMULA Nº 479 DO STJ. RESTITUIÇÃO DOS VALORES EM DOBRO. DANO MORAL CONFIGURADO. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. </p><p style="text-align: justify;"> I. CASO EM EXAME </p><p style="text-align: justify;"> 1. Trata-se de Apelação Cível interposta por Maria Socorro Campos da Silva, adversando sentença proferida pelo Juízo da Vara Única da Comarca de Caririçu, que, nos autos da Ação de Indenização por Danos Materiais e Morais, ajuizada em desfavor do Banco Bradesco S/A, julgou improcedente a ação (ID 25935298), nos termos do art. 487, inciso I, do CPC. </p><p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> 2. A controvérsia recursal restringe-se a examinar se a instituição financeira incorreu em falha

Processo	0200421-78.2023.8.06.0059
	style="font-size: large;">" Trata-se de Apelação Cível interposta por Maria Socorro Campos da Silva, adversando sentença proferida pelo Juízo da Vara Única da Comarca de Caririçu, que, nos autos da Ação de Indenização por Danos Materiais e Morais, ajuizada em desfavor do Banco Bradesco S/A, julgou improcedente a ação (ID 25935298), nos termos do art. 487, inciso I, do CPC. Eis o dispositivo: </p><p style="text-align: justify; text-indent: 8%;>
 </p><p style="text-align: justify; padding-left: 120px;"> “Ante o exposto, por tudo mais que dos autos consta,&#160; julgo improcedentes os pedidos autorais, extinguindo o presente feito com resolução de mérito, com base no art. 487, inciso I, do CPC.</p><p style="text-align: justify; padding-left: 120px;"> Condeno a requerente ao pagamento das custas processuais e honorários advocatícios que fixo em 10% do valor da causa, porém suspendo a exigibilidade de tais obrigações por força do benefício da justiça gratuita concedido a autora pela decisão de id. 108089560.</p><p style="text-align: justify; padding-left: 120px;"> Publique-se. Registre-se. Intimem-se. <p style="text-align: justify; padding-left: 120px;"> Após o trânsito em julgado, arquivem-se os autos com baixa definitiva. </p><p style="text-align: justify; padding-left: 120px;"> Expedientes necessários.” </p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> Inconformada, a parte autora interpôs apelação (ID 25935302), alegando em suma, que restou comprovado nos autos ter sido vítima de golpe dentro da agência bancária do promovido, em horário comercial, quando buscava sacar seu benefício previdenciário. Sustenta que os danos materiais e morais decorreram diretamente da falha na prestação do serviço, evidenciada pela ausência de segurança no ambiente bancário e pela negligência no dever de vigilância, circunstâncias que permitiram a atuação de terceiro se passando por funcionário, sem qualquer intervenção dos empregados ou seguranças. </p><p style="text-align: justify; text-indent: 8%;"> Aduz que o prejuízo suportado, no valor de R\$ 6.000,00 (seis mil reais), representa quantia significativa para qualquer consumidor, especialmente para uma aposentada que depende exclusivamente de seu benefício previdenciário. Ressalta, ainda, que o banco promovido, mesmo ciente da fraude, não adotou medidas para minimizar os danos, agravando o sofrimento emocional e o sentimento de desamparo da requerente. </p><p style="text-align: justify; text-indent: 8%;"> Ao final, requer a reforma da sentença para que sejam integralmente acolhidos os pedidos iniciais, com a consequente condenação da recorrida ao pagamento de indenização por danos materiais e morais, bem como de honorários advocatícios sucumbenciais. </p><p style="text-align: justify; text-indent: 8%;"> Ausência de preparo recursal, pois beneficiária da gratuidade judiciária.</p><p style="text-align: justify; text-indent: 8%;"> Em contrarrazões recursais (ID 25935308), o banco réu pugna, preliminarmente, pelo não conhecimento do recurso interposto ante a ausência de dialeticidade recursal. No mérito, postula o seu desprovemento, mantendo-se a sentença em todos os termos. </p><p style="text-align: justify; text-indent: 8%;"> É o relatório.</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: center;"> VOTO </p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> 1 – Da preliminar de ausência de dialeticidade recursal </p><p style="text-align: justify;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Antes de tudo, convém analisar

Processo	0200421-78.2023.8.06.0059
	a preliminar arguida pela parte ré em sede de contrarrazões, defendendo que a recorrente não atacou os fundamentos jurídicos expostos na sentença, deixando de atender ao princípio da dialeticidade, o que se configura em requisito de admissibilidade formal, não devendo ser conhecido o recurso ora combatido. É sabido que não há como se admitir um recurso cujas razões estejam inteiramente dissociadas da decisão combatida, uma vez que se impõe ao recorrente contrapor-se aos fundamentos da decisão, com o fito de demonstrar em que consistiu o erro, quer processual, quer material, sustentando as razões de sua reforma. A parte recorrente tem, portanto, o ônus processual de demonstrar quais falhas processuais ou materiais na decisão judicial que devem ensejar o provimento do recurso. Diz-se que esse ônus decorre direta e imediatamente do princípio da dialeticidade, que sugere a necessidade de existência de pertinência temática entre as razões recursais e os fundamentos da decisão impugnada. No presente caso, vê-se que a parte autora se insurgiu de forma clara e consistente sobre os fundamentos da sentença adversada, explanando os motivos pelos quais entende que deve ser objeto de reforma. Cumpriu, assim, com todos os elementos formais de admissibilidade do recurso, por estar clara a sua pretensão. Diante disso, é de se rejeitar a preliminar apresentada. 2 – Do juízo de admissibilidade Conheço do recurso de apelação cível, pois satisfeitos os requisitos intrínsecos e extrínsecos de admissibilidade. 3 – Do mérito recursal A controvérsia recursal restringe-se a examinar se a instituição financeira incorreu em falha na prestação do serviço em razão das movimentações fraudulentas de valores da conta da autora, realizada por estelionatário no interior da agência bancária, bem como se tal circunstância é suficiente para ensejar a condenação ao pagamento de indenização por danos materiais e morais. Rememorando os fatos, a autora, ora apelante, narra na inicial que, em 12/05/2023, foi vítima de golpe dentro de agência do Banco Bradesco S/A, onde mantinha conta para recebimento de benefício previdenciário. Relata que, ao tentar sacar parte de seu benefício, foi abordada por uma mulher bem-vestida e educada, que se apresentou como funcionária da instituição e ofereceu ajuda. Por estar no interior da agência e diante da aparência de legitimidade da suposta funcionária, a autora confiou nas orientações recebidas. A estelionatária informou que o caixa eletrônico apresentava problemas e a direcionou para outro terminal, enquanto realizava operações em sua conta. Em seguida, orientou a autora a procurar outro funcionário, sob o pretexto de que os saques não estavam sendo concluídos. Nessa oportunidade, foram subtraídos da conta da promovente R\$ 6.000,00 (seis mil reais). Ao falar com “outro” funcionário do banco, a autora recebeu o extrato e deparou-se com o valor menor em sua conta. Imediatamente percebeu o que havia acontecido e entrou em contato com a gerência bancária, no entanto, nenhuma medida foi tomada para minimizar seu dano, conforme declaração e Boletim de Ocorrência de IDs 25934715 e 25934716. Nesse contexto, incumbe ressaltar que a relação entre as partes é, de fato, consumerista, uma vez que a autora é a destinatária final dos serviços oferecidos pela instituição financeira ré, sem olvidar que a atividade bancária é considerada serviço para os fins legais. O artigo 3º, § 2º, do Código de Defesa do Consumidor, inclui, expressamente, a atividade bancária no seu conceito de serviço. Sobre o tema, o Superior Tribunal de Justiça editou a Súmula nº 297, que dispõe: “O Código de Defesa do

Processo	0200421-78.2023.8.06.0059
	Consumidor é aplicável às instituições financeiras." </p><p style="text-align: justify; text-indent: 8%;"> Não por outra razão que é cabível a inversão do ônus probante em desfavor da instituição bancária. Tal medida se mostra adequada às ações deste tipo porque, considerando a impossibilidade de a autora apelante constituir prova negativa, compete à instituição financeira requerida, ora apelada, trazer aos autos documentos hábeis a demonstrar a regularidade das movimentações bancárias contestadas na exordial, nos termos do artigo 373, II, do Código de Processo Civil.</p><p style="text-align: justify; text-indent: 8%;"> Ademais, é imperioso destacar que a lei consumerista prevê a inversão do ônus da prova ope legis, isto é, é taxativa ao afirmar que cabe ao fornecedor provar a inexistência do defeito ou a culpa exclusiva do consumidor ou de terceiros. </p><p style="text-align: justify; text-indent: 8%;"> Neste passo, é obrigação da instituição financeira adotar as cautelas necessárias para a realização de operações como transferências e saques em conta-corrente, tendo o dever de implementar sistemas de fiscalização e segurança que impeçam a ocorrência de fraude ou a ação de estelionatários no interior de suas agências bancárias, sob pena de responder pelos danos causados. </p><p style="text-align: justify; text-indent: 8%;"> A questão, inclusive, foi sumulada pelo STJ, ipsis litteris:</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; padding-left: 120px;"> Súmula 479. As instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias."&#160; &#160; [Grifei].</p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;"> Pois bem. </p><p style="text-align: justify; text-indent: 8%;"> Compulsando os autos verifica-se que, de fato, no dia 12 de maio de 2023 foram realizados dois saques na conta bancária da autora nos valores de R\$ 2.500,00 (dois mil e quinhentos reais) e R\$ 500,00 (quinhentos reais). Além de transferência no valor de R\$ 3.000,00 (três mil reais), conforme extratos de IDs 25934717 e 25934734.</p><p style="text-align: justify; text-indent: 8%;"> Em que pese às alegações do apelado de que as operações foram realizadas com o uso de cartão e senha, verifica-se do contexto fático e probatório que as operações só ocorreram por consequência da ausência de fiscalização no interior da agência bancária, que facilitou a atuação de golpistas. </p><p style="text-align: justify; text-indent: 8%;"> Logo, o caso em apreço não se trata de negligência ou de imprudência da autora, mas sim da omissão da instituição financeira em proporcionar segurança aos seus clientes. </p><p style="text-align: justify; text-indent: 8%;"> Somado a isso, não se pode perder de vista que a instituição financeira, após ser comunicada acerca do golpe realizado em suas dependências, não tomou as medidas cabíveis para apurar o fato. Tampouco colacionou aos autos as imagens do terminal eletrônico ou mesmo a filmagem da agência, capazes de atestar a inexistência de falha em sua segurança ou a regularidade das movimentações bancárias, embora disponha de mecanismos hábeis para tanto. </p><p style="text-align: justify; text-indent: 8%;"> Desse modo, entendo que competiria ao Banco Bradesco S/A comprovar que a parte autora efetivamente realizou as movimentações bancárias impugnadas, ônus que não foi satisfeito, haja vista que não houve a juntada de qualquer meio de prova para desconstituir essa narrativa. Entendo que as transações bancárias realizadas devem ser reconhecidas como fraudulentas uma vez que o recorrente não demonstrou minimamente a inexistência de fraude ou inviabilidade de fraude, o qual era ônus seu. </p><p style="text-align: justify; text-indent: 8%;"> Acerca do tema, em julgamento de casos análogos, colho da jurisprudência desta 1ª Câmara Direito Privado do TJCE:</p><p style="text-align: justify; text-indent: 8%;">
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Processo	0200421-78.2023.8.06.0059
	AGRAVO INTERNO EM APELAÇÃO CÍVEL. AÇÃO DE REPARAÇÃO POR DANOS MORAIS E MATERIAIS. ALEGAÇÃO DE NÃO CABIMENTO DE JULGAMENTO MONOCRÁTICO AFASTADA. SUBMISSÃO DA MATÉRIA AO COLEGIADO. SUPRIMENTO DE EVENTUAL NULIDADE. GOLPE DA TROCA DE CARTÕES NO INTERIOR DA AGÊNCIA BANCÁRIA. TRANSAÇÕES NÃO RECONHECIDAS. RESPONSABILIDADE OBJETIVA DA INSTITUIÇÃO FINANCEIRA. FALHA NA PRESTAÇÃO DE SERVIÇO. ART. 14, § 1º, II, CDC. DANOS MORAIS E MATERIAIS CONFIGURADOS. VALOR DA INDENIZAÇÃO ARBITRADO EM QUANTUM RAZOÁVEL E EM CONSONÂNCIA COM CASOS SEMELHANTES DESTE TRIBUNAL. RECURSO CONHECIDO E NÃO PROVIDO. DECISÃO AGRAVADA CONFIRMADA. 1. Como se extrai das razões recursais supra, o banco agravante defende, em suma, que o julgamento da apelação não se enquadra na hipótese do 932 do CPC/15, uma vez que a tese do recorrente ainda tem possibilidade de discussão". No mérito, sustenta ausência de sua responsabilidade, tendo em vista que todas as transações fraudulentas alegadas na conta do agravado, houve leitura do CHIP do cartão, o que significa necessariamente foi realizada de forma presencial e que foi necessária digitação de senha; inexistência de danos morais e materiais indenizáveis e, acaso assim não se entenda, a quantificação do dano moral, devendo seguir os parâmetros dos princípios da proporcionalidade e razoabilidade, sob pena de enriquecimento ilícito, vedado pelo ordenamento jurídico". 2. A despeito de constituir exceção à regra dos julgamentos colegiados, a atuação monocrática dos relatores é admitida em hipóteses legalmente previstas, face à evidente celeridade e economia processual conferidas em processos a envolver matérias de direito com entendimento jurisprudencialmente sedimentado, em torno das quais prescindem de maiores debates jurídicos. Frise-se, ainda, ser possível o julgamento monocrático do recurso, ainda que fora das hipóteses previstas no art. 932 do CPC, consoante aplicação analógica do enunciado 568 da Súmula do STJ: "O relator, monocraticamente e no Superior Tribunal de Justiça, poderá dar ou negar provimento ao recurso quando houver entendimento dominante acerca do tema" (STJ - Súmula 568, CORTE ESPECIAL, julgado em 16/03/2016, DJe 17/03/2016). 3. "O exame monocrático do recurso especial, no caso, não implica descon sideração das regras dos arts. 932, IV, do CPC e 255, § 4º, II, do RISTJ. Ademais, eventual nulidade da decisão monocrática por suposta contrariedade ao art. 932 do CPC fica superada com a reapreciação do recurso pelo órgão colegiado mediante agravo interno". (AgInt no REsp 1955384/PE, Rel. Ministro SÉRGIO KUKINA, PRIMEIRA TURMA, julgado em 21/02/2022, DJe 24/02/2022) 4. Extrai-se da narrativa dos fatos que a autora/agravada solicitou o auxílio de seu marido, um senhor de idade avançada, para promover um ato bancário de transferência de um valor de R\$700,00 para o filho do casal e que "tal ato fora realizado num dos terminais de atendimento do réu, em caixas eletrônicos por ele disponibilizados. Ao terminar a transação, um homem dirigiu-se ao marido da autora, informando que este teria deixado cair um aviso que determinava que este fizesse um cadastramento. [...] Finda a transação, sem que a autora ou seu marido pudessem perceber, o meliante acabou por aplicar seu golpe e, de alguma forma copiou ou trocou o cartão da autora por um outro qualquer. Nos dias que se seguiram, referido marginal iniciou a tomada de bens do autor, utilizando o cartão para fazer várias compras e saques, tendo o banco percebido o fato e entrado em contato com a autora.". 5. Em sua defesa, o banco promovido sustenta que, sendo o sistema bancário totalmente protegido por tecnologia de criptografia, não há falha na prestação do serviço. Contudo, sequer acostou nos autos gravações oriundas do sistema de vídeo da agência ou da máquina de caixa rápido referente ao incidente ocorrido, não sendo possível comprovar que não houve falha na sua prestação de serviço. 6. Evidenciada a natureza consumerista da relação existente entre os litigantes, consoante o Código de Defesa do Consumidor, a responsabilidade civil de reparação pelos danos causados aos consumidores, em face dos produtos (art. 12) ou serviços colocados no mercado de consumo (art. 14), independe da existência de culpa, ou seja, trata-se de responsabilidade objetiva. 7. Enuncia a Súmula n.º 479 do STJ que "As instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias." 8. O evento danoso não ocorreu pela cessão do cartão ao esposo da autora, mas por conduta executada por terceiro, cuja atuação foi permitida por falha de segurança no interior da agência bancária da instituição financeira. Portanto, deve haver a condenação do réu ao pagamento de indenização por danos morais e materiais em favor da demandante. 9. A indenização pelos danos morais deve atender aos princípios da equidade e da razoabilidade, não podendo ser infima nem exorbitante, levando em consideração o valor da cobrança indevida, o quantum fixado de R\$ 5.000,00 (cinco mil reais) não se revela excessivo. 10. Agravo interno conhecido e não provido. Decisão monocrática confirmada. (TJCE. Agravo Interno Cível - 0907459-95.2014.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 25/05/2022, data da publicação: 25/05/2022).&#160; &#160; [Grifei]. </p><p style="text-align: justify; padding-left: 120px;"> <span style="font-family:

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	&quot;times new roman&quot;, times;";>&#160; </p> <p style="text-align: justify; padding-left: 120px;"> ="" >consumidor="" <span="" civil.<="" e="" processual="" span="" style="font-size: medium;"> agência="" abordagem.<="" bancária.="" span="" strong><="" style="font-size: medium;" terceiro.=""> instituição="" financeira.="" responsabilidade.<="" span="" strong><="" style="font-size: medium;"> ="" >&#160;<="" ><="" ><br="" >[grifei].<="" >agravo="" >apelação="" >assim,="" >na="" >à="" <p="" cuida-se="" falha="" (apelação="" (art.="" (certidão="" (tj-ce="" (§="" -="" 0000301-92.2018.8.06.0059,="" 0050033-84.2021.8.06.0108,="" 0622016-22.2021.8.06.0000,="" 06220162220218060000="" 08="" 1.="" 11="" 1ª="" 2.="" 2021)="" 2021,="" 2021;="" 25="" 2ª="" 2º="" 3.="" 300="" 300,="" 373,="" 39,="" 3º="" 4.="" 5.000,00="" 53="" 58,="" 73)="" <span="" a="" abordada="" abordagens="" absolutamente="" aceitado="" acerca="" acreditava="" acuradamente,="" ademais,="" agravada.="" agravante="" agravo="" agência="" agências="" ai:="" ainda="" ajuda="" alberto="" alegado="" alegar="" alegação="" analisando-se,="" anjos="" anjos,="" ante="" ao="" aos="" apresentou="" argumentando,="" argumento="" art.="" as="" assim,="" atuação="" auferindo="" autor="" autor.="" autoral="" autos="" autos,="" ação="" banco="" bancária="" bancária,="" benefício,="" bradesco="" básicas.="" c="" caput="" caririçu;="" carlos="" caso="" causa="" causa,="" ce="" ceará="" colho="" com="" comarca="" comarca:="" como="" concedida="" condição="" conduta="" configurada.<="" conhecido="" conjectural="" considera-se,="" consideração="" consigna-se="" consumo.="" conta="" contexto="" contra="" contrarrazões="" correia="" cpc)="" cpc),="" cpc.="" cuja="" cujo="" culpa="" custear="" câmara="" cível="" cível.="" da="" dados="" dano="" danos="" danos,="" das="" data="" de="" decisão="" decisão,="" declaratória="" defere="" delituosa="" demanda="" demonstrar="" dentro="" desarrazoada,="" desconhecida,="" desconhecido<="" desconstituição="" descontos="" descontos,="" desde="" desembargar="" desincumbiu="" deu="" deve="" deve-se="" direito="" disso,="" dito="" diz="" do="" dos="" douto="" débito="" e="" efeitos="" elementos="" em="" empreendimento.<="" empréstimos="" erigir-se="" esta="" estado="" está="" eventualmente="" evidenciem="" evidente="" exclusiva="" extintivos="" extraída="" facilitou="" fatos="" favor="" fazer="" ferreira="" financeira="" fora="" forte;="" fraudador,="" fraude="" fraude.="" haja="" houve="" houver="" há="" ii,="" impeditivos,="" improcedência.="" impugnação,="" impõe.="" indeferiu="" indenizatória.="" indenização="" indevida="" indevidamente="" indevidos,="" indiscutíveis="" indivíduos,="" indébito="" inexistência="" informado="" insipiente,="" instituição="" instrumento="" instrumento,="" instrumento.="" interior="" intimado,="" intuito="" irresignação="" irreversibilidade="" irrisório,="" jaguaruana-ce,="" jesus="" julgador:="" julgamento:="" junto="" jurisprudência="" justiça="" juízo="" lado,="" lavrada="" levando-se="" levar="" lima,="" liminar,="" liminarmente="" lúcia="" mais="" manejado="" manutenção="" maria="" materiais="" medida="" mendes="" mensal="" menção="" mesma="" modificativos="" momento="" morais="" morais,="" mostrando-se,="" na="" nebuloso="" necessidades="" no="" nos="" nossa="" nº="" não="" o="" obrigação="" omissão="" operação="" os="" ou="" outro="" p>="" pagamento="" para="" parte="" pedido="" pedir,="" pela="" pelo="" pelos="" perigo="" perpétrada="" pese="" pessoa="" pessoais,="" pleiteia="" pleito="" pode="" por="" praticou="" prejudicada="" prepostos="" prestação="" pretende="" privado="" privado).&#160;<="" probabilidade="" prolação="" promovido="" promovido,="" propósito,="" provido.="" provimento="" provimento.="" pág.="" pág.36="" págs.="" pátria:<="" quadro="" quais="" qual="" qual,="" qualquer="" quando="" quantia="" que="" que,="" quem="" quo="" r\$="" razão="" realizada="" realizadas="" reconhecer="" reforma,="" registro:="" relator:="" relação="" rememora-se="" renda="" repetição="" reportar-se="" requer="" requerente.<="" respectivos="" respeitosamente,="" responder="" responsabilidade="" resposta="" resta="" revela="" revelam="" reversão="" risco="" réu="" réu,="" s="" s.a.,="" se="" sendo="" senhora="" sentença="" sentido="" ser="" serem="" seu="" sido="" sob="" span="" span>="" span><="" sra.="" strong>.="" style="font-size: medium;" suas="" suficiente="" suma,="" suspensão="" sócio="" tem-se="" tendo="" teoria="" ter="" terceiro="" terceiros="" terceiros.="" teria="" tomados="" transações="" transferência="" tribunal="" trilha,="" tutela="" um="" uma="" urgência="" urgência.="" valor="" valores="" vara="" veio="" vera="" vez="" vide="" vindica="" vista="" vivenciado="" voluntariamente="" vulnerabilidade="" vê-se="" vítima="" vítima,="" à="" às="" é="" órgão="" ônus="" única="" –="">

Processo	0200421-78.2023.8.06.0059
	Ausência de segurança no interior da agência bancária, facilitando a atuação delituosa de terceiros. Risco interno que não exime o dever reparatório. Súmula 479 do STJ. 5. Reforma da sentença para acolhimento da pretensão inicial, condenando-se a ré ao ressarcimento do valor objeto da transação bancária impugnada bem como a reparar o dano moral suportado. PROVIMENTO PARCIAL DO RECURSO. (TJ-RJ - APL: 00281072720208190203, Relator: Des(a). JDS MARIA TERESA PONTES GAZINEU, Data de Julgamento: 18/05/2022, VIGÉSIMA QUARTA CÂMARA CÍVEL, Data de Publicação: 20/05/2022).&#160; [Grifei]. &#160; </p> EMENTA: APELAÇÃO CÍVEL - AÇÃO DE INDENIZAÇÃO - CAIXA ELETRÔNICO - UTILIZAÇÃO FRAUDULENTE DE CARTÃO - FRAUDE OCORRIDA DENTRO DO ESTABELECIMENTO BANCÁRIO - RESPONSABILIDADE OBJETIVA - FALHA NA PRESTAÇÃO DO SERVIÇO - DANO MORAL - CONFIGURAÇÃO - VALOR - ARBITRAMENTO. 1. O fornecedor de serviços responde, independente da existência de culpa, pelos danos causados aos consumidores por defeitos relativos à prestação do serviço. 2. O Banco responde pelos prejuízos causados aos seus clientes em razão de golpe de troca de cartões, ocorrido no interior da agência bancária. 3. A súmula nº 479 do Superior Tribunal de Justiça reforça a responsabilidade dos bancos ao preceituar que "as instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias". 4. A prática de fraude realizada dentro da agência bancária gera danos morais a serem ressarcidos. 4. O valor da indenização por dano moral deve ser fixado examinando-se as peculiaridades de cada caso e, em especial, a gravidade da lesão, a intensidade da culpa do agente, a condição socioeconômica das partes e a participação de cada um nos fatos que originaram o dano a ser ressarcido, de tal forma que assegure ao ofendido satisfação adequada &#160;ao seu sofrimento, sem o seu enriquecimento imotivado, e cause no agente impacto suficiente para evitar novo e igual atentado. (TJ-MG - AC: 10702130290209001 Uberlândia, Relator: Maurílio Gabriel, Data de Julgamento: 25/11/2021, Câmaras Cíveis / 15ª CÂMARA CÍVEL, Data de Publicação: 02/12/2021).&#160; &#160; [Grifei]. &#160; </p> AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS – Fraude em caixa de autoatendimento no interior de agência bancária – Ato ilícito praticado por terceiro, que se apropriou da integralidade do benefício previdenciário da autora, por meio de saque – Falha na prestação do serviço de segurança pela instituição financeira - Danos materiais e morais reconhecidos - Quantum indenizatório da indenização por danos morais fixado em R\$ 5.000,00, que atende aos princípios da razoabilidade e proporcionalidade - Sentença reformada - Recurso provido, com readequação do ônus sucumbencial. (TJ-SP - AC: 10034469720218260344 SP 1003446-97.2021.8.26.0344, Relator: Marco Fábio Morsello, Data de Julgamento: 23/09/2021, 11ª Câmara de Direito Privado, Data de Publicação: 23/09/2021).&#160; &#160; [Grifei]. &#160; </p> &#160; </p> No que tange ao pleito compensatório, saliento que é dever do magistrado atentar-se a critérios de razoabilidade e proporcionalidade em observância às circunstâncias em que o ato ilícito foi cometido, às consequências da ofensa ao lesado, o grau de culpa do ofensor, à eventual contribuição do ofendido no evento danoso e à situação econômica das partes. </p> É notório que a indenização por danos morais, conquanto não seja possível quantificar concretamente em valores monetários o desgaste subjetivo sofrido pelas vítimas do evento danoso, representa um modo efetivo de compensação daquele que sofreu determinada aflição ou abalo emocional considerável, seja em razão das peculiaridades do caso concreto, seja em virtude dos parâmetros já fixados por meio da jurisprudência. </p> Em verdade, a indenização moral tem por finalidade levar ao prejudicado um bem da vida que lhe restitua parcialmente a sensação de justiça e, ainda, represente uma utilidade concreta. Aliada à compensação, a indenização por danos morais possui caráter punitivo-pedagógico, pois consiste em um meio de punir o

Processo	0200421-78.2023.8.06.0059
	junto a instituição financeira/apelante, e que, no dia 26 de outubro de 2022, recebeu um SMS, informando a realização de transferência bancária no valor de R\$ 13.500,00 (treze mil e quinhentos reais) para a conta nº 12880000007542200829, agência 1966, através da chave PIX de nº 17467920865, cuja titularidade pertence a Daniel Domingues. 3. Relata, também, que houve contratação de um empréstimo no valor de R\$ 5.275,00 (cinco mil, duzentos e setenta e cinco reais), bem como, nova transferência via chave PIX de nº (11)95980-7245 para a conta nº 12880000007589062031, agência 0605, de titularidade de Mateus Félix da Silva no importe de R\$ 5.600,00 (cinco mil e seiscentos reais). Afirma que referidas transações foram realizadas sem sua anuência. 4. Frisa-se o fato que o próprio banco/apelante admitiu que seu cliente foi vítima do Golpe da Liberação de Dispositivo, portanto, óbvio que as transações não foram realizadas pelo autor/recorrido. 5. Nas relações consumeristas a responsabilidade contratual do fornecedor é objetiva, respondendo, independentemente de culpa, nos termos do art. 14, do CDC, pela reparação de danos causados pelo defeito do produto ou má prestação do serviço. Urge destacar, que o parágrafo terceiro do dispositivo supracitado, traz à baila a inversão do ônus da prova ope legis, isto é, a própria lei é taxativa ao afirmar que cabe ao fornecedor provar a inexistência do defeito ou a culpa exclusiva do consumidor ou de terceiros. 6. Especialmente sobre o PIX, a Resolução nº 01/2020, do Banco Central do Brasil, estabelece no artigo 32, que os participantes do PIX (instituição financeira, instituição de pagamento ou ente governamental que adere ao Regulamento do PIX e que oferecem a ferramenta aos seus clientes), devem responsabilizar-se por fraudes no âmbito do PIX, decorrentes de falhas nos seus mecanismos de gerenciamento de riscos, compreendendo a inobservância de medidas de gestão de risco definidas neste Regulamento e em dispositivos normativos complementares. 7. A medida em que a tecnologia avança fraudadores aperfeiçoam as técnicas ilícitas para aplicação de golpes, ficando, assim, o consumidor vulnerável a inúmeros tipos de artimanhas praticadas. Logo cabe ao fornecedor, instituição financeira, se antever desses artifícios criando mecanismos que barrem transações suspeitas. 8. O presente caso, trata-se, de um fortuito interno, pois o banco deve prezar pela segurança dos seus clientes, impondo mecanismos de fiscalizações de transações suspeitas. 9. Assim, quando demonstrada a falha na prestação dos serviços pelo banco, configurado está o ilícito civil, conferindo daí ao lesado a devida reparação dos danos sofridos, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. 10. Danos morais - Nesse cenário fático, reputo caracterizado o dano moral, cuja prova, porque afeta os direitos da personalidade, conforma-se com a mera demonstração do ilícito. Nesse sentido, a jurisprudência é uníssona ao conceder a indenização pelos danos morais sofridos ante a violação do dever de segurança dos dados dos consumidores. 11. Fixação Fatores - Considero razoável a quantia arbitrada a título de danos morais no valor de R\$ 5.000,00 (cinco mil reais), tendo em vista os parâmetros da razoabilidade, proporcionalidade e, principalmente, pela natureza específica da ofensa sofrida, a situação econômica do ofensor e mais ainda, pela capacidade e a possibilidade real e efetiva de o ofensor voltar a praticar e/ou vir a ser responsabilizado pelo mesmo ato danoso. 12. Recurso conhecido e desprovido. Sentença confirmada. A C Ó R D Ã O Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator, parte integrante desta decisão. Fortaleza, 27 de setembro de 2023. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator. (Apelação Cível TJ-CE - 0200050-23.2023.8.06.0154, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 27/09/2023, data da publicação: 27/09/2023). [Grifei]. &#160; </p> <p style="text-align: justify; text-indent: 8%;"> No que concerne ao dano material, é firme o entendimento de que a restituição em dobro prescinde da comprovação de má-fé da instituição financeira quando a cobrança ou o débito indevido resulta de falha na prestação do serviço, consoante tese firmada pelo eg. Superior Tribunal de Justiça no julgamento do EAREsp 676.608/RS, submetido ao rito dos recursos repetitivos. </p> <p style="text-align: justify; text-indent: 8%;"> Importa ressaltar, contudo, que a aplicação dessa orientação restringe-se às movimentações ocorridas após a publicação do referido precedente, em 30 de março de 2021. </p> <p style="text-align: justify; text-indent: 8%;"> No caso em apreço, verifica-se dos extratos bancários (IDs 25934717 e 25934734) que os saques fraudulentos foram realizados em 12 de maio de 2023, no interior da própria agência, mediante atuação de terceiro estelionatário, ocasionando a subtração da quantia de R\$ 6.000,00 (seis mil reais). Dessa forma, em conformidade com a orientação fixada pelo Superior Tribunal de Justiça, impõe-se a restituição em dobro da quantia indevidamente subtraída. </p> <p style="text-align: justify; text-indent: 8%;">

Processo	0200421-78.2023.8.06.0059
	indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> 4 – Dispositivo </p><p style="text-align: justify; text-indent: 8%;"> Ante o exposto, CONHEÇO do recurso interposto, para, no mérito, DAR-LHE PROVIMENTO, no sentido de reformar integralmente a sentença recorrida, julgando procedentes os pleitos autorais para: </p><p style="text-align: justify; text-indent: 8%;"> a) declarar a nulidade das movimentações bancárias questionadas, uma vez que fraudulentas; </p><p style="text-align: justify; text-indent: 8%;"> b) determinar a restituição em dobro dos valores debitados da conta bancária da autora, sendo acrescidos de juros de mora e de correção monetária a partir da data do evento danoso, conforme Súmulas nº 43 e 54 do STJ, representados pela taxa Selic (art. 406, § 1º, Código Civil); </p><p style="text-align: justify; text-indent: 8%;"> c) condenar o banco promovido ao pagamento de indenização por danos morais, no montante de R\$ 5.000,00 (cinco mil reais), que será acrescido da taxa Selic, deduzindo-se o IPCA desde o evento danoso até o arbitramento, momento a partir do qual passará a computar a taxa Selic integralmente, até o efetivo pagamento, nos termos do § 1º do art. 406 do Código Civil (Súmula 362 do STJ). </p><p style="text-align: justify; text-indent: 8%;"> Diante do resultado, em razão da inversão da sucumbência, condeno unicamente a parte demandada ao pagamento das custas e dos honorários advocatícios sucumbenciais, estes ora arbitrados em 10% (dez por cento) sobre o valor atualizado da condenação, em conformidade com o art. 85, §2 do CPC. </p><p style="text-align: justify; text-indent: 8%;"> É como voto. </p><p style="text-align: justify; text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify;"> #160; </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Relator </p><p>
 </p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0894219-39.2014.8.06.0001
Número de ordem	180
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Cédula de Crédito Bancário
Polo ativo	BANCO SAFRA S A
Advogado(s) - Polo ativo	IAN COUTINHO MAC DOWELL DE FIGUEIREDO - (PE19595-A) ANTONIO ROQUE DE ALBUQUERQUE JUNIOR - (CE22463-A)
Polo passivo	GENIL ARAUJO CAMELO LD COMERCIO DE ALIMENTOS LTDA FALIDO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0894219-39.2014.8.06.0001
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	text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">II. QUESTÃO EM DISCUSSÃO: O cerne da controvérsia consiste em aferir se a pretensão do Exequente restou fulminada pela prescrição intercorrente.</h3><h3 style="line-height: 1.38; text-align: justify; margin-top: 14pt; margin-bottom: 4pt;" dir="ltr"> III. RAZÕES DE DECIDIR</h3><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">1. O prazo prescricional da pretensão executória, no caso de cédula de crédito bancário, é trienal (CC, art. 206, §3º, VIII; STF, Súmula 150).</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">2. O despacho que determina a citação do réu constitui causa interruptiva da prescrição (CC, art. 202, I; CPC, art. 240), retroagindo à data da propositura da ação, desde que o autor adote as providências necessárias para viabilizar a citação válida no prazo legal.</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">3. Conforme entendimento tradicional, a demora na citação por dificuldades de localização do devedor ou morosidade do Judiciário não pode ser imputada ao credor, afastando a prescrição (STJ, Súmula 106).</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">4. Conforme a redação atual do art. 921, §4º, do CPC, alterada pela Lei nº 14.195/2021, não se exige a desídia do credor para o decurso do prazo prescricional, haja vista que o instituto não se justifica mais na inércia da parte exequente, e sim na não localização do executado ou na ausência de bens penhoráveis deste. Tal disciplina não tem aplicação retroativa, alcançando apenas processos em curso em que ainda não tivesse iniciado o prazo prescricional sob a redação anterior (STJ, REsp nº 2.090.768/PR, Rel. Min. Nancy Andrighi, 3ª Turma, j. 12.11.2024).</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">5. No caso, não havia suspensão decretada por ausência de bens ou localização do devedor antes da entrada em vigor da Lei nº 14.195/2021, sendo aplicável a nova disciplina. A primeira tentativa de citação após a vigência da lei ocorreu em abril de 2023, evidenciando-se que não houve tempo hábil para o transcurso do prazo de prescrição.</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">6.

Processo	0894219-39.2014.8.06.0001
	style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Ademais, a execução foi suspensa em relação à devedora principal por decisão judicial em razão da falência (Lei nº 11.101/2005, art. 6º, II), impedindo o transcurso do prazo prescricional nesse período. Enquanto não houver eventual declaração da natureza extraconcursal do crédito pelo Juízo Falimentar e decisão com expressa revogação da suspensão processual determinada, não há como transcorrer o prazo de prescrição.</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">7. Assim, inexiste decurso do prazo prescricional tanto em relação à devedora falida e como ao fiador, devendo ser cassada a sentença extintiva para prosseguimento da execução.</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">IV. DISPOSITIVO: Recurso conhecido e provido.</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 12pt;" dir="ltr">ACÓRDÃO:&#160; Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação para lhe dar provimento, nos termos do voto do Desembargador Relator.&#160;</p><p style="line-height: 1.38; text-align: justify; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e assinatura digital registradas no sistema processual eletrônico.</p><p style="text-align: justify;"> <strong id="docs-internal-guid-42bf090f-7fff-cbee-79fe-4d7a79c8687e" style="font-weight: normal;">

 </p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="line-height: 1.38; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Presidente/Relator</p><p style="text-align: justify;">

 </p><p style="line-height: 1.38; text-align: center; margin-top: 12pt; margin-bottom: 0pt;" dir="ltr"> RELATÓRIO</p><p style="line-height: 1.38; text-align: justify; margin-top: 0pt; margin-bottom: 0pt; padding: 21pt 0pt 12pt 0pt;" dir="ltr">Trata-se de recurso de apelação interposto pelo Banco Safra S.A. contra a sentença prolatada pelo Juízo do Núcleo de Justiça 4.0 - Execuções de Título Extrajudicial, Comarca de Fortaleza, nos autos da

Processo	0894219-39.2014.8.06.0001
	normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Ação de Execução de Título Extrajudicial 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">proposta pelo ora Apelante em desfavor de M. M. Araújo Com. de Alimentos Ltda. e do fiador Genil Araújo Camelo. 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt; dir="ltr">Na 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">Na #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">sentença 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">apelada (ID 25980229), o feito foi extinto pelo reconhecimento da prescrição da pretensão executória em relação ao título em que se fundam a demanda. O 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">magistrado destacou que, após diversas tentativas infrutíferas de citação dos executados e de localização de bens passíveis de penhora, decorreu um lapso temporal superior a oito anos sem que a parte exequente lograsse êxito na citação do devedor. Ressaltou, ainda, que o prazo prescricional para a cobrança dos créditos representados no título de crédito exequendo é de três anos, conforme estabelecido no art. 206, § 3º, inciso VIII, do Código Civil. Dado o decurso do prazo sem a satisfação da citação válida, o juiz reconheceu a prescrição intercorrente e determinou a extinção da execução. 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt; dir="ltr">Irresignado, o Banco Safra interpôs o 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">recurso de apelação 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">(ID 25907329), ressaltando que 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: #ffffff; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">o processo foi ajuizado sob a vigência do CPC/73 e alegando que o reconhecimento da prescrição foi de encontro ao precedente vinculante firmado pelo STJ no Incidente de Assunção de Competência no Recurso Especial nº 1.604.412/SC. Enfatizou que a prescrição intercorrente, conforme o precedente, só se consuma em caso de inércia do exequente por prazo superior ao da prescrição do direito material, situação que não teria ocorrido. Além disso, destaca que não houve suspensão do processo quando do advento do CPC/2015, o que asseguraria o exame do tema sob a ótica do CPC/73. Para o apelante, o transcurso de tempo no processo é atribuído a dificuldades burocráticas e à morosidade do Judiciário, e não à desídia do credor, conforme demonstrado pelas suas diligências ao longo dos anos. Cita a Súmula nº 106 do STJ, que dispõe sobre a não imputação de atraso à parte quando a demora se deve ao mecanismo da justiça. Na conclusão, requereu a reforma da sentença, para afastar a prescrição e permitir o prosseguimento da execução. 1.7999999999999998; text-indent: 70.86614173228347pt; text-align: justify; background-color: #ffffff; margin-top: 0pt; margin-bottom: 0pt; padding: 9pt 0pt 12pt 0pt; dir="ltr">É o relatório. 1.38; text-align: center; margin-top: 21pt; margin-bottom: 0pt; dir="ltr">VOTO 1.7999999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;

Processo	0894219-39.2014.8.06.0001
	dir="ltr">Consoante relatado, o presente recurso configura insurgência contra odecisumde Primeiro Grau que extinguiu a execução originária com fulcro no art. 487, II, do CPC, reconhecendo a prescrição da pretensão executória em relação aos títulos em que fundam a ação.&#160;</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Analisando-se os autos, verifica-se que a execução em comento tem como objeto a satisfação de dívida oriunda de cédula de crédito bancário (CCB nº 001301572) com data de vencimento final em20/10/2014(ID 25979624). Ante a natureza do referidos título, constata-se que incide, a título de definição do prazo prescricional, a norma incidente no art. 206, §3º, VIII, da Lei Adjetiva Civil, que assim dispõe:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Art. 206. Prescreve:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">[...]</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">§ 3º Emtrês anos:</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">[...]</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">VIII - apretensão para haver o pagamento de título de crédito, a contar do vencimento, ressalvadas as disposições de lei especial; [...]</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nos termos do Enunciado nº 150 da súmula do Supremo Tribunal

Processo	0894219-39.2014.8.06.0001
	Federal, prescreve a execução no mesmo prazo de prescrição da ação. Dessa forma, para a prescrição da pretensão objeto da demanda executória originária aplica-se o prazo trienal , o qual foi, inicialmente, observado quando da propositura da ação, cujo protocolo se deu em 29/09/2014 . O Código Civil apresenta, ainda, um rol de hipóteses interruptivas do prazo prescricional, discriminadas em seu art. 202, in verbis Art. 202 A interrupção da prescrição, que somente poderá ocorrer uma vez, dar-se-á: I - por protesto, nas condições do inciso antecedente; II - por protesto cambial; III - por

Processo	0894219-39.2014.8.06.0001
	<p>size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">>IV - pela apresentação do título de crédito em juízo de inventário ou em concurso de credores;</p> <p dir="ltr" style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;"> >V - por qualquer ato judicial que constitua em mora o devedor; </p> <p dir="ltr" style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;"> >VI - por qualquer ato inequívoco, ainda que extrajudicial, que importe reconhecimento do direito pelo devedor. </p> <p dir="ltr" style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;"> >Parágrafo único >A prescrição interrompida recomeça a correr da data do ato que a interrompeu, ou do último ato do processo para a interromper. (Grifou-se). </p> <p dir="ltr" style="line-height: 1.7999999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;"> >Nessa toada, assim prevê o art. 240 do Código Processual Civil: </p> <p dir="ltr" style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;"> >Art. 240 </p> <p style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">>A citação válida</p> <p style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">>, ainda quando ordenada por juízo incompetente, induz litispendência, torna litigiosa a coisa e constitui em mora o devedor, ressalvado o disposto nos arts. 397 e 398 da Lei nº 10.406, de 10 de janeiro de 2002 (Código Civil)</p> <p dir="ltr" style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;"> >§ 1º >A interrupção da prescrição, operada pelo despacho que ordena a citação, ainda que proferido por juízo incompetente, retroagirá à data de propositura da ação. </p> <p dir="ltr" style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;"> >§ 2º >Incumbe ao autor adotar, no prazo de 10 (dez) dias, as providências necessárias para viabilizar a citação, </p> <p style="font-size: 12pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">>sob pena de não se aplicar o disposto no § 1º.</p> <p dir="ltr" style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;"> > </p>

Processo	0894219-39.2014.8.06.0001
	none; vertical-align: baseline; white-space: pre-wrap;">§ 3º A parte não será prejudicada pela demora imputável exclusivamente ao serviço judiciário § 4º O efeito retroativo a que se refere o § 1º aplica-se à decadência e aos demais prazos extintivos previstos em lei. (Grifou-se). Nos termos do CPC, portanto, o despacho que ordena a citação é hipótese interruptiva do prazo prescricional, retroagindo à data da propositura da ação. Para tanto, contudo, é necessário que o autor adote, no prazo de 10 (dez) dias, as providências necessárias para viabilizar a concretização do ato citatório, sob pena de não operar a interrupção pretendida. Não obstante isso, ressalta-se que a parte não será prejudicada pela demora imputável exclusivamente ao serviço judiciário , de modo a assegurar que o exequente não se prejudique caso atue de forma diligente. In casu observa-se que o ora Apelante manifestou-se nos momentos oportunos, cumprindo as determinações judiciais e promovendo várias tentativas de citação da parte executada, atendendo a todas as intimações que lhe foram direcionadas para o impulsionamento do feito. Não se verifica significativa paralisação do feito por inércia exclusiva do Exequente, mas apenas algumas demoras atribuíveis ao próprio Judiciário, bem como à dificuldade de localização dos Executados. Neste ensejo, recorro que, segundo a tradicional jurisprudência do Superior Tribunal de Justiça, o decurso do prazo prescricional não pode ser atribuído ao credor quando este adota as providências necessárias para promover a citação, mas a demora ocorre por circunstâncias alheias à sua vontade. Nesse raciocínio, enuncia a Súmula 106 da referida Corte: Súmula 106, STJ - Proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da Justiça, não justifica o acolhimento da arguição de prescrição ou decadência. No mesmo sentido, colho jurisprudência de nossos Tribunais sobre o tema (grifo nosso):

Processo	0894219-39.2014.8.06.0001
	text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">APELAÇÃO CÍVEL – AÇÃO DE BUSCA E APREENSÃO – PRESCRIÇÃO TRIENAL – AUSÊNCIA DE CITAÇÃO VÁLIDA DO DEVEDOR – DESÍDIA DO AUTOR NÃO VERIFICADA – DEMORA IMPUTÁVEL À DEVEDORA PELA DIFICULDADE DE SUA LOCALIZAÇÃO – SENTENÇA REFORMADA – RECURSO CONHECIDO E PROVIDO. Discute-se no presente recurso a ocorrência, ou não, da prescrição da pretensão executiva em razão de demora exacerbada da promoção da citação válida. É firme o entendimento do STJ de que somente a inércia injustificada do credor caracteriza a prescrição intercorrente na execução, o que não se verifica no caso de demora no andamento do feito por motivos inerentes ao próprio mecanismo judiciário. Incidência da Súmula 83/STJ" (AgInt no AREsp 1778946/GO, Rel. Ministro Raul Araújo, Quarta Turma, julgado em 17/05/2021, DJe 18/06/2021). Na hipótese, vê-se que o credor sempre diligenciou na tentativa de citar a executada, a qual, em verdade, se revelou pessoa de difícil localização, haja vista as inúmeras tentativas infrutíferas de sua citação. A demora na citação ocorreu por razões imputáveis à devedora-apelada, e até mesmo, possivelmente, por motivos inerentes ao mecanismo da justiça, não podendo a requerida ser beneficiada com o reconhecimento da prescrição em flagrante prejuízo ao apelante. (TJ-MS - Apelação Cível: 0832243-97 .2013.8.12.0001 Campo Grande, Relator.: Des. Marcos José de Brito Rodrigues, Data de Julgamento: 28/02/2024, 1ª Câmara Cível, Data de Publicação: 01/03/2024).</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">EMENTA: APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. DEMORA CITAÇÃO. AUSÊNCIA DE DESÍDIA DA PARTE AUTORA . PRESCRIÇÃO. AFASTADA. SENTENÇA CASSADA. I. Não se pode imputar ao autor a demora no ato citatório, uma vez que a dificuldade em localizar os requeridos decorre da mudança de endereço havida sem a necessária comunicação ao credor/recorrente, que implementou uma série de medidas, no curso do processo, para encontrá-los. Não há se falar em ocorrência de prescrição, quando não há desídia do autor, que cumpriu todas as diligências e promoveu os atos necessários para a regular citação das partes requeridas. II. A inércia do titular do direito é requisito indispensável para que haja o reconhecimento da prescrição . A ausência da citação válida não leva ao reconhecimento

Processo	0894219-39.2014.8.06.0001
	da prescrição, na hipótese em que se deu, não por culpa do titular do direito, mas por situação alheia à sua vontade, consistente na dificuldade de localização do devedor. RECURSO APELATÓRIO CONHECIDO E PROVIDO. SENTENÇA CASSADA. (TJ-GO) Apelação Cível: 0284623-09.2015.8.09.0051 IPAMERI, Relator.: Des(a) . ALICE TELES DE OLIVEIRA, 11ª Câmara Cível, Data de Publicação: (S/R) DJ). 1.38000000000000001; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Ementa: CIVIL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO AÇÃO DE EXECUÇÃO. PRESCRIÇÃO. DEMORA NA CITAÇÃO NÃO IMPUTÁVEL AO EXEQUENTE . INTERRUÇÃO DA PRESCRIÇÃO. EFEITOS RETROATIVOS À DATA DA PROPOSITURA DA AÇÃO. SÚMULA Nº 106/STJ. PRESCRIÇÃO AFASTADA . 1. De acordo com os artigos 202, inciso I, do Código Civil e 240, §§ 1º e 2º, do Código de Processo Civil, o despacho que ordena a citação, ainda que proferido por juiz incompetente, constitui marco interruptivo da prescrição, retroagindo à data da propositura da ação, desde que a citação seja efetivada no prazo de 10 (dez) dias. 2. Consoante entendimento consolidado pela Súmula nº 106 do colendo Superior Tribunal de Justiça, (P)roposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da Justiça, não justifica o acolhimento da arguição de prescrição ou decadência . 3. Tendo em vista que a demanda fora ajuizada dentro do prazo prescricional e a demora na efetivação da citação não pode ser imputada ao exequente, não deve ser reconhecida a prescrição. 4. Agravo de Instrumento conhecido e desprovido . TJ-DF (07192523920248070000 1889259, Relator.: CARMEN BITTENCOURT, Data de Julgamento: 09/07/2024, 8ª Turma Cível, Data de Publicação: 29/07/2024). Tal entendimento coaduna com a redação original do art. 921, §4º, do CPC, que permitia a interpretação segundo a qual a desídia do exequente na movimentação do processo era condição para a ocorrência da prescrição intercorrente. Sabe-se, contudo, que, com a nova redação do referido dispositivo, trazida pela reforma operada pela Lei nº 14.195/2021, a norma passou a prever que o termo inicial do prazo de prescrição intercorrente será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis e haverá suspensão, por uma única vez, pelo prazo máximo previsto no § 1º do mesmo dispositivo legal (um ano). Leiam-se os termos atualmente em vigor.

Processo	0894219-39.2014.8.06.0001
	top: 21pt; margin-bottom: 0pt;" dir="ltr"> Art. 921 . Suspende-se a execução:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> [...]</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">§ 4º O termo inicial da prescrição no curso do processo será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis, e será suspensa, por uma única vez, pelo prazo máximo previsto no § 1º deste artigo.&#160;(Grifou-se).</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Assim, a legislação processual atual não exige a desídia do credor para o decurso do prazo prescricional, haja vista que o instituto não se justifica mais na inércia da parte exequente, e sim na não localização do executado ou na ausência de bens penhoráveis deste.</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Impende ressaltar, porém, que a nova redação do §4º do art. 921 do CPC não possui aplicação retroativa, conforme já explanou o Superior Tribunal de Justiça:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> RECURSO ESPECIAL. PROCESSUAL CIVIL. PRESCRIÇÃO INTERCORRENTE. CPC/2015. NOVO REGIME JURÍDICO INTRODUZIDO PELA LEI N. 14.195/21. APLICAÇÃO RETROATIVA. IMPOSSIBILIDADE.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> 1. Ação de execução de título executivo extrajudicial da qual foi extraído o presente recurso especial, interposto em 8/5/2023 e

Processo	0894219-39.2014.8.06.0001
	concluso ao gabinete em 23/8/2023. 2. O propósito recursal consiste em dizer se o novo regime da prescrição intercorrente introduzido pela Lei n. n. 14.195/21 pode ser aplicado retroativamente. 3. Inovando em relação ao CPC/1973, o CPC/2015 passou a disciplinar, expressamente, o instituto da prescrição intercorrente, erigindo o seu regime jurídico próprio, sobretudo, nos arts. 921 a 923. 4. De acordo com o art. 921, inciso III e §1º do CPC/2015, a execução deverá ser suspensa quando não for localizado o executado ou bens penhoráveis, pelo prazo de um ano, durante o qual também se suspenderá a prescrição. 5. Nos termos da redação original do art. 921, §4º, do CPC/2015, decorrido o prazo de suspensão de um ano sem manifestação do exequente, começaria a correr o prazo de prescrição intercorrente. 6. A Lei n. 14.195/2021 introduziu importantes alterações na disciplina da prescrição intercorrente, alterando o §4º do art. 921 do CPC/2015, que passou a prever que o termo inicial do prazo de prescrição intercorrente será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis e será suspensa, por uma única vez, pelo prazo máximo previsto no § 1º do mesmo dispositivo legal. 7. A partir da entrada em vigor da Lei n. 14.195/2021, ao contrário do que se verificava na redação original do código, não há mais necessidade de desídia do credor para a consumação da prescrição intercorrente, cujo prazo iniciará automaticamente. 8. O novo regime da prescrição intercorrente introduzido pela Lei n. 14.195/21 não pode ser aplicado retroativamente, mas apenas a) aos novos processos ou àqueles em que a execução infrutífera for posterior à nova lei

Processo	0894219-39.2014.8.06.0001
	weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;"> e b) aos processos anteriores à nova lei no qual ainda não tenha sido determinada a suspensão da execução.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> 9. Na hipótese dos autos, não merece reforma o acórdão recorrido, pois incide na espécie a redação original do CPC/2015 e não aquela introduzida pela Lei n. 14.195/21, que não deve ser aplicada retroativamente a uma execução iniciada em 2015 e cuja suspensão findou em 2018. Além disso, Corte de origem constatou que não houve qualquer desídia da parte exequente - requisito exigido antes da Lei n. 14.195/21-, o que afasta a caracterização da prescrição intercorrente à luz da redação original do CPC/2015. 10. Recurso especial não provido.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr">STJ -REsp n. 2.090.768/PR, relatora Ministra Nancy Andrighi, Terceira Turma, julgado em 12/11/2024, DJe de 14/11/2024). (Grifou-se).</p><p style="line-height: 1.7999999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Observa-se que, em atenção ao princípio do isolamento dos atos processuais (art. 14 do CPC), a norma processual nova não retroage para alcançar atos pretéritos, mas incide imediatamente sobre processos em curso, mostrando-se aplicável aos atos posteriores à sua entrada em vigor. No que pertine à reforma que trouxe a redação atual do §4º do art. 921, o precedente supracitado trouxe os seguintes esclarecimentos em matéria de direito intertemporal:</p><p style="line-height: 1.38; margin-left: 113pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> [...] Em síntese, atualmente, iniciada a execução, a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis dá início ao prazo da prescrição intercorrente. Essa não localização implica a suspensão da execução e do prazo da prescrição intercorrente, que já tinha iniciado. Finalmente, o prazo da prescrição intercorrente voltará a fluir ao final do prazo de um ano de suspensão da execução. Transcorrido o prazo de prescrição da pretensão de direito material do credor, o juiz, depois de ouvida as partes, no prazo de quinze dias, poderá, de ofício, reconhecer a prescrição intercorrente extinguindo o processo, sem ônus para as partes. Tal é a disciplina atual da prescrição intercorrente no ordenamento jurídico nacional.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> 15. O ponto central da controvérsia consiste em definir se a nova redação do §4º do art. 921 do CPC – que alterou significativamente o termo inicial do prazo de prescrição intercorrente – é aplicável retroativamente.</p><p style="line-height: 1.3800000000000001; margin-left: 113pt; text-align: justify; margin-top: 8pt; margin-bottom: 0pt;" dir="ltr"> <span style="font-size: 12pt; font-family: 'Times New

Processo	0894219-39.2014.8.06.0001
	Roman', serif; color: #000000; background-color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">16. Nesse contexto, o art. 14 do CPC dispõe que "a norma processual não retroagirá e será aplicável imediatamente aos processos em curso, respeitados os atos processuais praticados e as situações jurídicas consolidadas sob a vigência da norma revogada". 17. Partindo dessas premissas fundamentais, para o deslinde da questão de direito intertemporal, é preciso examinar quatro situações distintas. 18. Em primeiro lugar, se o processo for posterior às modificações introduzidas pela Lei n. 14.195/2021 ou se a execução infrutífera ocorrer quando já em vigor a nova lei, dúvida não há que será aplicável a lei nova, de modo que o termo inicial do prazo de prescrição intercorrente será a ciência da primeira tentativa infrutífera de localização do devedor ou de bens penhoráveis. [...] 20. Em segundo lugar, se o processo estiver em curso no momento da entrada em vigor da Lei n. 14.195/2021 e ainda não tiver sido determinada a suspensão da execução por ausência de localização do executado ou de bens penhoráveis, aplica-se a nova lei. Isso significa que, após a entrada em vigor da Lei n. 14.195/2021, deverá ser realizada nova tentativa de localização do devedor ou de bens penhoráveis, que, se infrutífera, dará início ao transcurso do prazo da prescrição intercorrente nos termos da nova redação do §4º do art. 921 do CPC. 21. Em terceiro lugar, se o processo estiver em curso no momento da entrada em vigor da Lei n. 14.195/2021, mas já tiver iniciado o transcurso do prazo da prescrição intercorrente nos termos da nova redação do §4º do art. 921 do CPC, não se aplicará a nova lei. Em outras palavras, se o prazo da prescrição intercorrente já havia sido deflagrado durante a vigência da disciplina anterior, continuará por ela regulado. 22. Isso porque, não se pode extrair interpretação que viabilize o reinício ou a reabertura de prazo prescricional já deflagrado na vigência da redação original do CPC/2015, isto é, antes das alterações promovidas pela Lei n. 14.195/2021 [...].

Processo	0894219-39.2014.8.06.0001
	color: transparent; font-weight: 400; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">26. Por fim, em quarto lugar, se o advento da Lei n. 14.195/2021 ocorrer durante o prazo de suspensão da execução, não se aplica a nova lei, pois, com o início da suspensão já havia a justa expectativa de que o termo inicial do prazo da prescrição intercorrente seria aquele definido pela redação original do código, que era a lei vigente ao tempo do início da suspensão. [...]&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr">Analisando-se os autos do presente caso, verifica-se, a priori, a incidência da redação atual do dispositivo, ante o seu enquadramento em hipótese de aplicabilidade da Lei nº 14.195/2021, consoante o entendimento apresentado pela Corte Superior de Justiça. Isso porque, não obstante se tratar de execução que já se encontrava em curso antes do advento da reforma, não foi determinada a suspensão do feito motivada na ausência de localização dos executados, razão pela qual ainda não havia sido deflagrado o prazo de prescrição intercorrente quando da entrada em vigor da referida lei.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr"> Segundo o raciocínio apresentado pela referida Corte, em situações como tal, deverá ser realizada nova tentativa de localização do devedor ou de bens penhoráveis após a entrada em vigor da Lei n. 14.195/2021 e, caso a diligência seja infrutífera, a ciência da parte quanto ao insucesso desse ato dará início ao curso do prazo da prescrição intercorrente, em consonância com a nova redação do §4º do art. 921 do CPC.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr">Considerando-se que a Lei em comento entrou em vigor em 27 de agosto de 2021, portanto, o início do prazo prescricional deve se configurar na ciência do Exequente/Apelante sobre o resultado da primeira tentativa de citação posterior a essa data.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt; dir="ltr">Conforme os autos, a única diligência realizada com essa finalidade após o marco em referência se deu em abril de 2023, quando a Oficiala de Justiça certificou a ausência do Sr. Genil Araújo Camelo no local e a entrega da contrafé a uma recepcionista do edifício (v. ID 25980216). Veja-se que, independentemente do resultado dessa diligência ou do prazo da respectiva intimação do Exequente, <span style="font-size: 13.99999999999998pt; font-family: 'Times New Roman',serif; color: #000000; background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-

Processo	0894219-39.2014.8.06.0001
	space: pre-wrap;">a própria data da realização do ato já evidencia a impossibilidade do transcurso do prazo trienal.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Além disso, em uma análise mais detida dos autos, é possível observar circunstância apta a impedir o transcurso do prazo prescricional em comento em relação à devedora principal.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Em decisão proferida em 01/03/2017 (ID 25980190), o Juízo de Primeiro Grau determinou a suspensão do feito por tempo indeterminado em relação à Executada M. M. Araújo Comércio de Alimentos Ltda. >motivada na declaração de falência da referida pessoa jurídica nos autos de nº 0160513-38.2016.8.06.0001. Intimado dessa decisão, o Exequente postulou a revogação da suspensão e o regular prosseguimento do feito contra ambos os devedores solidários, sob o fundamento de o crédito possui natureza extraconcorursal (ID 25980195). Porém, o pedido em questão jamais foi apreciado pelo Juízo da 6ª Vara Cível, nem mesmo para afirmar sua incompetência para o exame dessa questão.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Em petição acostada no ID 25980208, o Exequente postulou a citação do devedor solidário em novo endereço e reiterou o pedido de que seja revogada a suspensão da execução quanto à empresa M. M. Araújo Comércio de Alimentos Ltda., que novamente não foi abordado pelo Juízo.&#160;</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> O feito foi redistribuído ao Núcleo de Justiça 4.0 – Execuções de Título Extrajudicial e, após manifestação do Exequente defendendo a não consumação do prazo prescricional, sobreveio a sentença ora apelada.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nesse contexto, verifica-se que o feito executório se manteve suspenso em relação à empresa em comento, com fundamento no art. 6º, II, da Lei nº 11.101/2005 e na decisão proferida nos autos da ação falimentar (v. ID 25980180). Ressalte-se, por oportuno, que o processo de falência da executada permanece em curso (ação nº 0160513-38.2016.8.06.0001), e não há notícia quanto à exclusão do crédito em comento pelo Juízo Falimentar>questão essa que se insere na competência deste.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Como consequência disso, concluo que <span style="font-size: 13.999999999999998pt; font-family: 'Times New Roman',serif; color: #000000;

Processo	0894219-39.2014.8.06.0001
	background-color: transparent; font-weight: 700; font-style: normal; font-variant: normal; text-decoration: none; vertical-align: baseline; white-space: pre-wrap;">não houve transcurso do prazo prescricional referente ao crédito em questão (art. 6º, I, da Lei nº 11.101/2005). Ainda que se acolhesse o argumento de que o feito versa sobre crédito extraconcursal, impor-se-ia decisão judicial nesse sentido e a expressa revogação do sobrestamento do feito executório para que o prazo prescricional voltasse a correr (ou se iniciasse, no caso da prescrição intercorrente fundada na legislação em vigor), o que não ocorreu. Entendimento diverso prejudicaria o regular exercício do direito de ação do Exequente, que se encontrava impedido de promover qualquer ato voltado a promover a citação do devedor enquanto vigorasse a suspensão processual.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Dessa forma, resta evidente que não houve o decurso do prazo prescricional em relação a nenhum dos codevedores solidários. Vigora a suspensão do feito em relação à pessoa jurídica, em razão da decretação de sua falência. No caso do devedor solidário (fiador), este não é atingido pelos efeitos do decreto falimentar em questão <sup>1</sup> , mas as circunstâncias do caso indicam que ainda não houve efetivo decurso do prazo trienal, conforme explanado acima.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228345pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Nessa toada, constato a adoção de premissa equivocada pelo Juízo, apta a eivar de nulidade a sentença objurgada. Como consequência, medida que se impõe é a cassação do decisum e o retorno do feito à origem para regular prosseguimento.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr">Ex positis, CONHEÇO do recurso de apelação para lhe DAR PROVIMENTO, afastando a prescrição no caso sub examine e cassando a sentença objurgada, com determinação de retorno do feito à origem para regular prosseguimento.</p><p style="line-height: 1.799999999999998; text-

Processo	0894219-39.2014.8.06.0001
	indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> É como voto.</p><p style="line-height: 1.799999999999998; text-indent: 70.86614173228347pt; text-align: justify; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> Fortaleza, data e assinatura digital registradas no sistema processual eletrônico.</p><p style="line-height: 1.799999999999998; text-align: center; margin-top: 21pt; margin-bottom: 0pt;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="line-height: 1.799999999999998; text-align: center; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> Relator</p><p style="text-align: justify;">

<p style="line-height: 1.38; text-align: justify; margin-top: 0pt; margin-bottom: 0pt;" dir="ltr"> <sup>1</sup>Súmula 581, STJ - A recuperação judicial do devedor principal não impede o prosseguimento das ações e execuções ajuizadas contra terceiros devedores solidários ou coobrigados em geral, por garantia cambial, real ou fidejussória.</p>

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Processo	3000775-37.2025.8.06.0133
Número de ordem	181
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Direito de Imagem
Polo ativo	MARCOS KLEBER HOLANDA FARIAS
Advogado(s) - Polo ativo	MARDYLLA FARIAS DE OLIVEIRA - (CE44891-A)
Polo passivo	NEON FINANCEIRA - CREDITO, FINANCIAMENTO E INVESTIMENTO S.A
Advogado(s) - Polo passivo	ELLEN CRISTINA GONCALVES PIRES - (CE30035-S)
Terceiros	Não informado

Processo	3000775-37.2025.8.06.0133
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Processo	3000775-37.2025.8.06.0133
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Processo	3000775-37.2025.8.06.0133
	roman&quot;, times;"/>PODER JUDICIÁRIO tribunal de justiça gabinete desembargador josé ricardo vidal patrocínio processo: 3000775-37.2025.8.06.0133 apelante: marcos kleber holanda farias apelado: neon financeira - crédito, financiamento e investimento s/a EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDEFERIMENTO DA INICIAL. EXTINÇÃO SEM JULGAMENTO DE MÉRITO. ALEGAÇÃO DE LITIGÂNCIA PREDATÓRIA. NÃO CONFIGURAÇÃO. NEGATIVAÇÃO POR DÍVIDAS DIVERSAS. AÇÕES PROPOSTAS CONTRA EMPRESAS DISTINTAS. PRINCÍPIO DA INAFASTABILIDADE DA JURISDIÇÃO E DA PRIMAZIA DO JULGAMENTO DE MÉRITO. SENTENÇA CASSADA. RECURSO PROVIDO. I) CASO EM EXAME: 1. Trata-se de Apelação Cível interposta por Marcos Kleber Holanda Farias, objetivando a reforma da sentença de ID 26002231, proferida pelo Juízo da 2ª Vara da Comarca de Novas Russas, que, com base no art. 485, I do CPC, extinguiu, sem resolução do mérito, a Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Morais e Pedido de Tutela de Urgência ajuizada pelo ora apelante em desfavor de Neon Financeira - Crédito, Financiamento e Investimentos S/A.

Processo	3000775-37.2025.8.06.0133
	petição inicial, extinguindo a presente ação sem resolução do mérito, na forma do art. 485, I, do Código de Processo Civil. Sem custas pelo cancelamento da distribuição. Publique-se. Registre-se. Intime-se. Com o trânsito em julgado, arquivem-se os autos com as cauteladas legais. &#160; &#160; &#160; Interpôs apelação (ID 26002233), sustentando que a sentença extinguiu o processo sem resolução do mérito fundamentando-se no fato de que várias demandas foram protocoladas no mesmo dia. Acontece que, todas as demandas possuem polos passivos e fatos ou contratos diferentes, sendo, portanto, completamente incoerente que essas demandas sejam processadas e julgadas de forma conjunta, especialmente considerando que envolvem ações diferentes, com contratos e negócios jurídicos distintos. Ademais, é evidente que a decisão atacada, ao indeferir a petição inicial por fracionamento de demandas não deve prosperar, haja vista que causa considerável prejuízo aos princípios constitucionais do contraditório, da ampla defesa, da celeridade processual e ao princípio da primazia do julgamento de mérito, como de resto ao princípio da inafastabilidade da jurisdição. Pugna, então, pelo conhecimento e provimento do recurso para que seja anulada a sentença recorrida, com o fim de determinar o retorno dos autos ao juízo singular para regular prosseguimento do feito. Contrarrazões recursais (ID 26002237), nas quais a promovida pugna pelo desprovimento do apelo. É o relatório. &#160; VOTO &#160; 1 – Do juízo de admissibilidade Presentes os pressupostos de admissibilidade, conheço do recurso. &#160; 2 – Do mérito recursal O cerne da controvérsia recursal consiste em definir se a propositura de cinco ações semelhantes contra pessoas jurídicas distintas e com objetos diversos, configura litigância abusiva apta a justificar o indeferimento da petição inicial. O juízo de primeiro grau extinguiu o processo sem resolução do mérito, sob o argumento de que teria havido abuso do direito de ação, uma vez que o autor ajuizou cinco demandas, todas baseadas na mesma causa de pedir, fundamentação e pedidos, propostas no mesmo dia ou em momentos próximos. No presente caso, ao examinar os autos e proceder à consulta no PJe de primeiro grau, verifiquei que todas as ações mencionadas pelo magistrado a quo tratam, de fato, de inscrições restritivas decorrentes de dívidas não reconhecidas. Todavia, embora protocoladas na mesma data, as ações possuem objetos distintos e foram propostas contra pessoas jurídicas diversas, cada qual com CNPJ próprio, a saber: Processo nº 3000771-97.2025.8.06.0133, em face de WILL FINANCEIRA S.A (CNPJ 36.272.465/0001-49); Processo nº 3000772-82.2025.8.06.0133, contra NU PAGAMENTOS S/A (CNPJ 18.236.120/0001-58); Processo nº 3000773-67.2025.8.06.0133, contra BANCO DIGIO S/A (CNPJ 27.098.060/0001-45); Processo nº 3000774-52.2025.8.06.0133, contra

Processo	3000775-37.2025.8.06.0133
	ITAÚ UNIBANCO S/A (CNPJ 60.701.190/0001-04); e a presente demanda, nº 3000775-37.2025.8.06.0133, em desfavor de NEON FINANCEIRA – CRÉDITO, FINANCIAMENTO E INVESTIMENTO S/A (CNPJ 11.285.104/0001-06). É imperioso ressaltar que, em diversos julgados, esta Relatoria tem entendido que o fracionamento de ações configura verdadeiro abuso do direito de demandar, quando caracterizado pela propositura de múltiplas demandas contra a mesma parte e causa de pedir semelhante, evidenciando conduta processual temerária e abusiva. Entretanto, no presente caso, diversamente do fundamento sentencial, entendo que a conduta do demandante ao propor cinco ações contra pessoas jurídicas distintas não caracteriza prática de litigiosidade predatória, nos termos parametrizados na Recomendação nº 127, de 15/02/2022, do Conselho Nacional de Justiça (CNJ), que dispõe: “Art. 2º Para os fins desta recomendação, entende-se por judicialização predatória o ajuizamento em massa em território nacional de ações com pedido e causa de pedir semelhantes em face de uma pessoa ou de um grupo específico de pessoas, a fim de inibir a plena liberdade de expressão.” Assim sendo, considero desarrazoada a conclusão de que o ajuizamento de cinco demandas contra instituições financeiras distintas, em que cada uma questiona negativamente por dívida diversa, constitua fracionamento indevido de ação e caracterize violação ao princípio da cooperação, evidenciando suposta falta de interesse de agir da parte autora. Entendo, pois, que, não restou evidenciada a ocorrência de demanda temerária. A propósito, em casos análogos, colho da fonte jurisprudencial: “DIREITO PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITOS C/C INDENIZAÇÃO. SENTENÇA DE INDEFERIMENTO DA INICIAL POR AUSÊNCIA DE INTERESSE PROCESSUAL. AUSÊNCIA DE INTERESSE PROCESSUAL POR FRACIONAMENTO DE DEMANDAS. NÃO OCORRÊNCIA. OFENSA AO PRINCÍPIO DO ACESSO À JUSTIÇA. PRINCÍPIO DA INAFASTABILIDADE DA TUTELA JURISDICIONAL. PRINCÍPIO DA PRIMAZIA DO JULGAMENTO DE MÉRITO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. I Cinge-se a controvérsia em perquirir o acerto ou desacerto da sentença impugnada, que indeferiu a petição inicial, sob a fundamentação de existência de três ações, esta e outras duas, ajuizadas pela autora buscando anular descontos, supostamente indevidos, o que configuraria ausência de interesse processual, uma vez que a parte deveria ajuizar somente uma demanda. II No caso concreto, conquanto os processos versem sobre matéria similar, ou seja, cobranças indevidas; referem-se a descontos de timbres, contratos e períodos diversos; assim, relações jurídicas distintas. Patente, pois, a legitimidade e o interesse processual. III- O fundamento utilizado pelo magistrado sentenciante não se aplica ao caso sub judice, ante a diferenciação entre as ações paradigmas por ostentarem como causa de pedir contratos diversos, o que descaracteriza a multiplicidade de ações; afastando-se, pois, a ocorrência do instituto da conexão e, ainda, a possibilidade de ocorrência do mero risco de decisões conflitantes, a que se refere o art. 55, § 3º do CPC. IV- Em que pese se tratar das mesmas partes, o fato de cada processo ostentar Contratos distintos, já é o suficiente para que se permita o processamento em separado, porquanto, antes de ser uma obrigação, a reunião dos pedidos em uma só demanda é uma faculdade (art. 327, CPC). V- Em homenagem aos princípios da cooperação, da inafastabilidade da tutela jurisdicional e da primazia do julgamento de mérito; devem os autos retornar ao juízo de origem para que a inicial seja recebida, processada e sentenciada, na forma da lei. VI Recurso conhecido e provido. Sentença anulada. ACÓRDÃO Visto, relatado e discutido o presente recurso, acorda a Primeira Câmara de Direito Privado do Egrégio Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para dar-lhe provimento, nos termos do relatório e voto que passam a integrar o presente acórdão. Fortaleza/CE, data e hora do sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADORA MARIA REGINA OLIVEIRA CAMARA Relatora (TJ-CE - Apelação Cível - 0201039-18.2024.8.06.0114, Rel. Desembargador(a) MARIA REGINA OLIVEIRA CAMARA, 1ª Câmara Direito Privado, data do julgamento: 06/11/2024, data da publicação: 06/11/2024). [Grifou-se].

Processo	3000775-37.2025.8.06.0133
	style="font-size: medium;";" #160; </p><p style="text-align: justify; padding-left: 120px;";"> APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. INDEFERIMENTO DE INICIAL. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. FALTA DE INTERESSE PROCESSUAL. MULTIPLICIDADE DE DEMANDAS. EXERCÍCIO DO DIREITO DE AÇÃO. CONTRATOS DISTINTOS. CAUSAS DE PEDIR DISTINTAS. VEDAÇÃO À CONDUTA DA PARTE AUTORA - AUSÊNCIA - ERROR IN PROCEDENDO. CONEXÃO. INEXISTENTE. CONTRATOS DIFERENTES. SENTENÇA ANULADA - RECURSO CONHECIDO E PROVIDO. 1. O cerne da demanda se refere se há interesse de agir em uma demanda, quando a autora ingressa com multiplicidade de ações contra o mesmo réu. 2. O entendimento doutrinário dominante em nosso ordenamento jurídico preleciona que o interesse de agir ou processual está intimamente ligado ao binômio necessidade/adequação, não sendo albergado pelo Ordenamento Jurídico o ajuizamento de múltipla ações como causa da falta de interesse de agir. 3. Ausência de conexão, em virtude de as ações terem objetos distintos. 4. Recurso conhecido e dado provimento. Sentença anulada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para dar-lhe provimento, nos termos do voto do relator. Fortaleza, data conforme assinatura eletrônica. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (TJ-CE -&#160; Apelação Cível - 0200490-53.2022.8.06.0154, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 26/07/2023, data da publicação: 26/07/2023). #160; [Grifou-se].</p><p style="text-align: justify; padding-left: 120px;";"> #160; </p><p style="text-align: justify; padding-left: 120px;";"> APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. AÇÃO DE DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SERVIÇO DE SEGURO . TARIFAS. EXTINÇÃO DA AÇÃO POR AUSÊNCIA DE LEGITIMIDADE OU INTERESSE PROCESSUAL. 485, VI, DO CPC. DEMANDA PREDATÓRIA NÃO CONFIGURADA . AUSÊNCIA DE JUSTA CAUSA PARA A EXTINÇÃO DA AÇÃO. INDEFERIMENTO DA INICIAL. VIOLAÇÃO DOS PRINCÍPIOS DO ACESSO À JUSTIÇA E DA PRIMAZIA DO JULGAMENTO DE MÉRITO. CERCEAMENTO DO DIREITO DE DEFESA . SENTENÇA CASSADA. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. 1 . Trata-se de recurso de apelação interposto contra sentença que decretou a extinção do processo, sem julgamento do mérito, por ausência de legitimidade ou de interesse processual, na forma do art. 485, VI, do CPC, sob o fundamento de que o ajuizamento de demandas de massa pelo apelante viola os princípios da razoável duração do processo, eficiência e da cooperação, expondo a falta de interesse de agir, e que o ajuizamento de duas ações contra a mesma parte, sobre o mesmo assunto, configura abuso de direito da autora. 2. Inicialmente, embora a sentença mencione que a autora tenha ajuizado 2 (dois) processos diferentes contra a mesma instituição financeira, devo observar que a configuração de conduta predatória do apelante não ocorre pela simples verificação da quantidade de ações ajuizadas, mas pela presença de outras circunstâncias associadas, como por exemplo, o fracionamento indevidos de pedidos relativos a um mesmo contrato em diferentes ações ou o ajuizamento da mesma ação (parte, pedido e causa de pedir) em diferentes varas ou comarcas, visando escolher o juízo que lhe parece ter o entendimento mais favorável, para depois desistir dos outros processos, burlando o princípio do juiz natural, o que não ocorreu no caso dos autos, visto que uma ação se trata da cobrança de Seguro e a outra de Tarifas bancárias . 3. Além disso, ainda que semelhantes, as ações são diferentes e inexistente conexão entre elas quando tiverem como causa de pedir diferentes contratos, ainda que haja identidade de partes, pois cada contrato envolve diferentes objetos, valores e circunstâncias a serem apreciadas individualmente, razão pela qual não deve haver a reunião dos processos nesses casos. 4. Desse modo, é absolutamente irrazoável a conclusão de que o ajuizamento de diversos processos contra instituições financeiras diversas, em que cada um aborda sobre um contrato diferente do outro, constitua fragmentação indevida de ação. 5. Em ações cuja discussão envolve a existência ou validade de negócios jurídicos relacionados a contratos bancários, em que a causa de pedir gira em torno da falha na prestação de serviços bancários, a simples evidência da violação do direito da parte, como a demonstração da existência de inclusão de descontos do benefício previdenciários através de extrato do INSS, em razão do contrato que afirma ser fraudulento ou indevido, é suficiente para evidenciar o interesse de agir da parte em fazer cessar a violação de seu direito e a responsabilização civil pelos danos sofridos. 6. No caso dos autos, a parte

Processo	3000775-37.2025.8.06.0133
	autora alega estar sendo alvo de cobranças indevidas pelo banco promovido, que estaria descontando de seu benefício previdenciário valores referentes a prestações de um Seguro que afirma não ter contratado, e instruiu a inicial com cópia do documento pessoal de identificação (p. 26); comprovante de residência (p. 27); procuração ad judícia assinada de próprio punho (p. 29); extrato da conta Bradesco em que consta a inclusão dos descontos referentes ao contrato de Seguro, em favor do banco promovido (p. 31/46) estando a petição, portanto, lastreada em documentos que evidenciam minimamente a presença de pressupostos de constituição e de desenvolvimento válido e regular do processo. 7. Ressalto, ainda, que em ações cuja questão controvertida é a negativa da contratação do empréstimo e a existência de descontos indevidos referente ao mesmo, cabe à parte autora a demonstração da existência dos referidos descontos, ao passo que é ônus da prova da instituição financeira comprovar a contratação do serviço e apresentar aos autos o instrumento contratual, a fim de que seja submetido à análise de existência e validade do negócio jurídico, assim como a comprovação da transferência dos recursos oriundos do empréstimo para a conta do consumidor, pois, em se tratando de relação de consumo, deve ser observada a aplicação da inversão do ônus da prova em favor do consumidor, imputando-se à instituição financeira a juntada dos documentos que por ela devem ser mantidos, por serem considerados de posse obrigatória, em decorrência da atividade desempenhada, como é o caso dos instrumentos do contrato. 8. Nesse contexto, estando descaracterizada a existência de demanda predatória e evidenciada a causa de pedir, a legitimidade da parte e o interesse processual, há de se reconhecer a ausência de justa causa para a extinção do feito, por violação dos princípios da inafastabilidade da tutela jurisdicional e do devido processo legal, consagrados pelo art. 5º, XXXV e LIV, da Constituição Federal, comprometendo a finalidade do processo, que é a satisfação do direito material pela primazia da sentença de mérito, nos termos dos arts. 4º e 6º, do CPC. 9. Recurso conhecido e provido. Sentença anulada. Retorno dos autos à origem para o regular processamento do feito. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os Desembargadores integrantes da 2ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para dar-lhe provimento, GABINETE Exmo. Sr. EMANUEL LEITE ALBUQUERQUE em conformidade com o voto do Relator. Fortaleza (CE), data indicada no sistema. DESEMBARGADOR EVERARDO LUCENA SEGUNDO Relator (TJ-CE - Apelação Cível: 02007944720248060133 Nova Russas, Relator.: EVERARDO LUCENA SEGUNDO, Data de Julgamento: 23/10/2024, 2ª Câmara Direito Privado, Data de Publicação: 23/10/2024).&#160;[Grifou-se]</p><p style="text-align: justify; padding-left: 120px;">&#160;</p><p style="text-align: justify; padding-left: 120px;">APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. AÇÃO DE DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. EMPRÉSTIMO CONSIGNADO. EXTINÇÃO DA AÇÃO POR AUSÊNCIA DE PRESSUPOSTOS DE CONSTITUIÇÃO. 485, IV, DO CPC. DEMANDA PREDATÓRIA NÃO CONFIGURADA. LEGITIMIDADE E INTERESSE PROCESSUAL RECONHECIDO. AUSÊNCIA DE JUSTA CAUSA PARA A EXTINÇÃO DA AÇÃO. VIOLAÇÃO DOS PRINCÍPIOS DO ACESSO À JUSTIÇA E DA PRIMAZIA DO JULGAMENTO DE MÉRITO. CERCEAMENTO DO DIREITO DE DEFESA. SENTENÇA CASSADA. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. 1. Trata-se de recurso de apelação interposto contra sentença que decretou a extinção do processo, sem julgamento do mérito, por ausência de pressupostos de constituição e de desenvolvimento válido e regular do processo, na forma do art. 485, IV, do CPC, sob o fundamento de que o ajuizamento de demandas de massa pelo apelante viola o princípio da Cooperação, expondo a falta de interesse de agir. 2. Inicialmente, embora a sentença mencione que o advogado tenha ajuizado seis processos diferentes contra instituições financeiras, devo observar que a configuração de conduta predatória do advogado não ocorre pela simples verificação da quantidade de ações ajuizadas, mas pela presença de outras circunstâncias associadas, como por exemplo, o fracionamento indevidos de pedidos relativos a um mesmo contrato em diferentes ações ou o ajuizamento da mesma ação (parte, pedido e causa de pedir) em diferentes varas ou comarcas, visando escolher o juízo que lhe parece ter o entendimento mais favorável, para depois desistir dos outros processos, burlando o princípio do juiz natural, o que não ocorreu no caso dos autos. 3. Além disso, ainda que semelhantes, as ações são diferentes e inexistente conexão entre elas quando tiverem como causa de pedir diferentes contratos, ainda que haja identidade de partes, pois cada contrato envolve diferentes objetos, valores e circunstâncias a serem apreciadas individualmente, razão pela qual não deve haver a reunião dos processos nesses casos. 4. Desse modo, é absolutamente irrazoável a conclusão de que o ajuizamento de diversos processos contra instituições financeiras diversas, em que cada um aborda sobre um contrato diferente do outro, constitua fragmentação indevida de ação. 5. Em ações cuja discussão envolve a existência ou validade de negócios jurídicos relacionados

Processo	3000775-37.2025.8.06.0133
	a contratos bancários, em que a causa de pedir gira em torno da falha na prestação de serviços bancários, a simples evidência da violação do direito da parte, como a demonstração da existência de inclusão de descontos do benefício previdenciários através de extrato do INSS, em razão do contrato que afirma ser fraudulento ou indevido, é suficiente para evidenciar o interesse de agir da parte em fazer cessar a violação de seu direito e a responsabilização civil pelos danos sofridos. 6. No caso dos autos, a parte autora alega estar sendo alvo de cobranças indevidas pelo banco promovido, que estaria descontando de seu benefício previdenciário valores referentes a prestações de um empréstimo consignado que assegura não ter contratado, e instruiu a inicial com procuração ad judícia assinada de próprio punho (p. 15); cópia do documento pessoal de identificação (p. 16); comprovante de residência (p. 17); extrato do INSS em que consta a inclusão dos descontos referentes ao contrato de empréstimo nº 0123325510321, em favor do banco promovido (p. 20/22) estando a petição, portanto, lastreada em documentos que evidenciam minimamente a presença de pressupostos de constituição e de desenvolvimento válido e regular do processo. 7. Ressalto, ainda, que em ações cuja questão controvertida é a negativa da contratação do empréstimo e a existência de descontos indevidos referente ao mesmo, cabe à parte autora a demonstração da existência dos referidos descontos, ao passo que é ônus da prova da instituição financeira comprovar a contratação do serviço e apresentar aos autos o instrumento contratual, a fim de que seja submetido à análise de existência e validade do negócio jurídico, assim como a comprovação da transferência dos recursos oriundos do empréstimo para a conta do consumidor, pois, em se tratando de relação de consumo, deve ser observada a aplicação da inversão do ônus da prova em favor do consumidor, imputando-se à instituição financeira a juntada dos documentos que por ela devem ser mantidos, por serem considerados de posse obrigatória, em decorrência da atividade desempenhada, como é o caso dos instrumentos do contrato. 8. Nesse contexto, estando descaracterizada a existência de demanda predatória e evidenciada a causa de pedir, a legitimidade da parte e o interesse processual, há de se reconhecer a ausência de justa causa para a extinção do feito, por violação dos princípios da inafastabilidade da tutela jurisdicional e do devido processo legal, consagrados pelo art. 5º, XXXV e LIV, da Constituição Federal, comprometendo a finalidade do processo, que é a satisfação do direito material pela primazia da sentença de mérito, nos termos dos arts. 4º e 6º, do CPC. 9. Recurso conhecido e provido. Sentença anulada. Retorno dos autos à origem para o regular processamento do feito. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os Desembargadores integrantes da 2ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para dar-lhe provimento, em conformidade com o voto da Relatora. Fortaleza (CE), data indicada no sistema. JUÍZA CONVOCADA FRANCISCA FRANCY MARIA DA COSTA FARIAS- PORT. 2075 Relatora (TJ-CE - Apelação Cível: 02004821120248060056 Capistrano, Relatora: Juíza convocada FRANCISCA FRANCY MARIA DA COSTA FARIAS- PORT. 2075, Data de Julgamento: 25/09/2024, 2ª Câmara Direito Privado, Data de Publicação: 25/09/2024).&#160;[Grifou-se].</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify; text-indent: 8%;">Assim, entendo que, a fim de assegurar a devida aplicação da norma processual de caráter cogente e em respeito às garantias constitucionais de acesso a uma tutela jurisdicional justa e efetiva, célere e adequada, bem como em observância ao princípio da primazia da decisão de mérito e do acesso à jurisdição, impõe-se a reforma da sentença recorrida.</p><p style="text-align: justify; text-indent: 8%;">Diante do exposto, pelos motivos acima delineados, conheço do recurso para dar-lhe provimento, anulando a sentença objurgada e determinando o retorno dos autos ao d. juízo de primeiro grau para regular processamento do feito.</p><p style="text-align: justify; text-indent: 8%;">É como voto.</p><p style="text-align: justify; text-indent: 8%;">Fortaleza, data da assinatura digital.</p><p style="text-align: justify;">&#160;</p><p align="center">DESEMBARGADOR JOSE RICARDO VIDAL PATROCÍNIO</p><p align="center">Relator</p><p>
</p><p>&#160;</p><p style="text-align: center;">&#160;</p></p>

Processo	0200494-45.2024.8.06.0114
Número de ordem	183
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Seguro
Polo ativo	ROSINEIDE ALVES PEIXOTO DOS SANTOS
Advogado(s) - Polo ativo	MARIA EUGENIA FILGUEIRAS MILFONT DE ALMEIDA - (CE52483-A) RENATO ALVES DE MELO - (CE29801-A) JHYULLY CAVALCANTE BESERRA LEITE - (CE42362-A) JULIANA RIBEIRO PROCOPIO - (CE52620-A) VANESSA LIMA DE OLIVEIRA - (CE41177-A)
Polo passivo	SECON ASSESSORIA E ADMINISTRACAO DE SEGUROS LTDA
Advogado(s) - Polo passivo	NAARA FRANCIELLE DE LIMA - (MG166006-A)
Terceiros	Não informado

Processo	0200494-45.2024.8.06.0114
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	roman&quot;, times;"/>PODER JUDICIÁRIO line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> color: #000000;"/> font-family: Arial, serif;"/> font-size: small;"/> strong> font-size: large;"/> font-size: medium;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>TRIBUNAL DE JUSTIÇA line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> font-family: &quot;times new roman&quot;, times; font-size: small;"/> strong> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> font-size: large;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> text-align: justify;"/> font-family: &quot;times new roman&quot;, times; font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>PROCESSO: 0200494-45.2024.8.06.0114 text-align: justify;"/> font-family: Arial, serif;"/> font-size: small;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> font-size: large;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>APELAÇÃO CÍVEL (198) text-align: justify;"/> font-family: Arial, serif;"/> font-size: small;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> font-size: large;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>APELANTE: ROSINEIDE ALVES PEIXOTO DOS SANTOS text-align: justify;"/> font-family: Arial, serif;"/> font-size: small;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> font-size: large;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>APELADO: SECON ASSESSORIA E ADMINISTRAÇÃO DE SEGUROS LTDA. text-align: justify;"/> font-size: large;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> text-align: justify;"/> font-size: large;"/> font-size: medium;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/> text-align: justify;"/> font-family: &quot;times new roman&quot;, times; font-size: large;"/>QUANTUM font-family: &quot;times new roman&quot;, times; font-size: large;"/>INDENIZATÓRIO. DANOS MORAIS NÃO CONFIGURADOS. DESCONTO EFETUADO EM VALOR INEXPRESSIVO. MERO ABORRECIMENTO. PERTINÊNCIA DO ARBITRAMENTO DA VERBA HONORÁRIA SOB O CRITÉRIO DA EQUIDADE. HONORÁRIOS ÍNFIMOS. ART. 85, § 8, DO CPC. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. text-align: justify;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>I. CASO EM EXAME text-align: justify;"/> font-size: large;"/> font-family: &quot;times new roman&quot;, times;"/>1. Trata-se de Apelação Cível interposta por Rosineide Alves Peixoto dos Santos com o objetivo de reformar a sentença proferida pelo Juízo da Vara Única da Comarca de Lavras da Mangabeira, que julgou parcialmente procedente a Ação Declaratória de Inexistência de Débito c/c Indenização por Danos

Processo	0200494-45.2024.8.06.0114
	Morais e Materiais ajuizada pela ora apelante em desfavor de SECON ASSESSORIA E ADMINISTRAÇÃO DE SEGUROS LTDA. II. QUESTÃO EM DISCUSSÃO 2. O cerne da controvérsia recursal consiste tão somente em examinar se o desconto indevido realizado no benefício previdenciário da Autora/Apelante, sob a rubrica “Seguradora Secon”, foi apto a ensejar a ocorrência de dano moral indenizável, bem como se é cabível a majoração dos honorários advocatícios de sucumbência fixados na sentença recorrida. III. RAZÕES DE DECIDIR 3. O dano moral somente ocorre quando houver lesão a bem que integra os direitos da personalidade, como a honra, a dignidade, a intimidade, a imagem, e o bom nome, com base no que se infere dos arts. 1º, inciso III, e 5º, incisos V e X, da Constituição Federal. Nessa perspectiva, “a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme o ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante.” (AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 20/05/2014, DJe de 27/05/2014). 4. No caso em tela, ocorreu um único desconto no valor de R\$ 76,00 (setenta e seis reais), conforme se observa da análise dos extratos bancários anexados pela autora (ID 26625370). Nesse cenário, não se olvida que a situação possa eventualmente ter trazido algum aborrecimento à recorrente, contudo, não foi capaz de atingir valores fundamentais do ser humano, tratando-se de meros aborrecimentos a que se está sujeito na vida em sociedade. 5. Descontos em valores incapazes de comprometer a subsistência não traduzem lesão à personalidade que enseje o pagamento de indenização por danos morais, dado que não ensejam maiores consequências negativas. Vale lembrar, por oportuno, que a parte autora será devidamente restituída dos valores indevidamente descontados, os quais serão corrigidos monetariamente e acrescidos de juros de mora. 6. Portanto, entende-se que agiu de forma acertada o douto magistrado ao julgar improcedente o pleito autoral de condenação da parte requerida ao pagamento da indenização em questão. 7. No que tange ao pedido de majoração dos honorários sucumbenciais, entendo que as circunstâncias concretas do caso (efetivo trabalho realizado pelo advogado, o tempo exigido para o seu serviço, grau de zelo do profissional, lugar de prestação do serviço, a natureza e a importância da causa (de baixa complexidade e natureza repetitiva - art. 85, §2º, I a IV, e §8º, do CPC), somadas ao fato de que houve julgamento antecipado da demanda, autorizam a fixação equitativa da verba honorária. Todavia, o valor arbitrado em R\$ 300,00 (trezentos reais) pelo juízo singular mostra-se irrisório, razão pela qual o majoro para R\$ 500,00 (quinhentos reais). IV. DISPOSITIVO 8. Recurso conhecido e parcialmente provido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso, para, no mérito, dar-lhe parcial provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/ Relator

Processo	0200494-45.2024.8.06.0114
	size: large;">RELATÓRIO </p><p style="text-align: justify;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Trata-se de Apelação Cível interposta por Rosineide Alves Peixoto dos Santos com o objetivo de reformar a sentença proferida pelo Juízo da Vara Única da Comarca de Lavras da Mangabeira, que julgou parcialmente procedente a Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Morais e Materiais ajuizada pela ora apelante em desfavor de SECON ASSESSORIA E ADMINISTRAÇÃO DE SEGUROS LTDA. </p><p style="text-align: justify; text-indent: 8%;"> A referida ação visa à declaração de inexistência de relação contratual entre as partes, à fixação de indenização a título de danos morais e à devolução em dobro de valores indevidamente descontados do benefício previdenciário da autora/apelante. </p><p style="text-align: justify; text-indent: 8%;"> Ao analisar o conjunto probatório acostado aos autos, o juízo singular destacou que " Destarte, considerando que não foi provada a existência regular do contrato questionado, a declaração de sua nulidade é medida que se impõe. Resta inequívoco o dever do banco de indenizar a promovente pelos danos sofridos. Ressalto que eventual ação de terceiro fraudador não tem o condão de afastar a responsabilidade civil do demandado, na medida em que se trata de um fortuito interno, inerente à atividade por ele desempenhada (Súmula 479 do STJ). &#160; [...] Não tocante ao pedido de indenização por danos morais, observa-se que o autor teve desconto de sua conta bancária o valor de R\$ 76,00, montante que representa menos de 5% do salário mínimo vigente . Não há qualquer prova nos autos de que esse desconto comprometeu sua subsistência ou lhe causou situação de vexame, humilhação ou sofrimento apto a atingir sua honra e dignidade. </p><p style="text-align: justify; text-indent: 8%;"> Assim, a ação foi julgada parcialmente procedente com o indeferimento da indenização por danos morais pleiteada, decidindo-se nos seguintes termos (ID 26625914): </p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify; padding-left: 120px;"> Diante do exposto, com fundamento no artigo 487, inciso I, do Código de Processo Civil, acolho parcialmente a pretensão autoral para:&#160;</p><p style="text-align: justify; padding-left: 120px;"> a) declarar a inexistência do contrato questionado e determinar a cessação dos descontos na conta bancária do autor. &#160; </p><p style="text-align: justify; padding-left: 120px;"> b) rejeitar o pedido de indenização por danos morais, uma vez que não restou configurado dano extrapatrimonial indenizável. &#160; </p><p style="text-align: justify; padding-left: 120px;"> c) condenar a requerida à devolução dos valores indevidamente cobrados, na forma dobrada, devidamente corrigidos pelo INPC e acrescidos de juros de 1% ao mês, a partir da data de cada desconto.&#160; </p><p style="text-align: justify; padding-left: 120px;"> Diante da sucumbência recíproca, as custas processuais e os honorários advocatícios serão divididos pro rata, fixando-se os honorários advocatícios, por equidade em virtude do irrisório valor da condenação, em R\$ 300,00, nos termos do artigo 85, §8º, do CPC. Quanto à parte autora, a cobrança fica suspensa em razão da gratuidade deferida.&#160; </p><p style="text-align: justify; padding-left: 120px;"> P.R.I.&#160; </p><p style="text-align: justify; padding-left: 120px;"> Após o trânsito em julgado, intime-se a parte requerida para pagamento das custas no prazo de 15 dias, sob pena de inscrição na dívida ativa, de já autorizada diante de eventual inadimplemento. Por fim, archive-se. </p><p style="text-align: justify; padding-left: 120px;"> Expedientes necessários. &#160;</p><p style="text-align: justify; text-indent: 8%;"> </p>

Processo	0200494-45.2024.8.06.0114
	style="font-size: large;"/> Nessa perspectiva, “a verificação do dano moral não reside exatamente na simples ocorrência do ilícito, de sorte que nem todo ato desconforme ao ordenamento jurídico enseja indenização por dano moral. O importante é que o ato ilícito seja capaz de irradiar-se para a esfera da dignidade da pessoa, ofendendo-a de maneira relevante.” (AgRg no REsp 1.269.246/RS, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTATURMA, julgado em 20/05/2014, DJe de 27/05/2014). [Grifei]. Nesse ponto, a jurisprudência do Superior Tribunal de Justiça é assente no sentido de que configura mero aborrecimento o desconto indevido, em benefício previdenciário, de valores incapazes de comprometer a subsistência da parte. A propósito, confira-se: &#160;</p> AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. AÇÃO DECLARATÓRIA DE INEXIGIBILIDADE DE DÉBITOS. RESTITUIÇÃO DE VALORES E INDENIZAÇÃO POR DANOS MORAIS. DESCONTO INDEVIDO. VALOR ÍNFINO. DANO MORAL INEXISTENTE. MERO ABORRECIMENTO. CONSONÂNCIA COM A JURISPRUDÊNCIA DESTA CORTE SUPERIOR. RECURSO DESPROVIDO. 1. Esta Corte Superior entende que a caracterização do dano moral exige que a comprovação do dano repercuta na esfera dos direitos da personalidade. A fraude bancária, nessa perspectiva, não pode ser considerada suficiente, por si só, para a caracterização do dano moral (AgInt nos EDcl no AREsp 1.669.683/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 23/11/2020, DJe de 30/11/2020). 2. O Tribunal de origem concluiu que o desconto indevido de R\$ 70,00 (setenta reais) no benefício previdenciário da agravante não acarretou danos morais, considerando que foi determinada a restituição do valor, que a instituição financeira também foi vítima de fraude e que não houve inscrição do nome da agravante em cadastros de proteção ao crédito, de modo que ficou configurado mero aborrecimento. 3. “A jurisprudência desta Corte entende que, quando a situação experimentada não tem o condão de expor a parte a dor, vexame, sofrimento ou constrangimento perante terceiros, não há falar em dano moral, uma vez que se trata de mero aborrecimento ou dissabor, mormente quando a falha na prestação de serviços, embora tenha acarretado aborrecimentos, não gerou maiores danos ao recorrente, como ocorreu na presente hipótese”. (STJ - AgInt no AREsp 1.354.773/MS, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 02/04/2019, DJe de 24/04/2019). 4. Agravo interno desprovido. (AgInt nos EDcl no REsp n. 1.948.000/SP, relator Ministro Raul Araújo, Quarta Turma, julgado em 23/5/2022, DJe de 23/6/2022). [Grifei].</p> &#160;</p> No mesmo sentido tem decidido este egrégio Tribunal de Justiça, inclusive esta colenda Primeira Câmara de Direito Privado, em casos análogos ao dos autos:</p> &#160;</p> DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA/NULIDADE DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DE INDÉBITO E PEDIDO DE REPARAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. INSTITUIÇÃO FINANCEIRA NÃO COMPROVOU A REGULARIDADE DA CONTRATAÇÃO. DANOS MORAIS NÃO CONFIGURADOS. DESCONTOS EM VALORES IRRISÓRIOS. RESTITUIÇÃO DO INDÉBITO, NA FORMA SIMPLES E EM DOBRO (EAREsp 676.608/RS). SENTENÇA REFORMADA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para lhe dar parcial provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital. (Apelação Cível TJ-CE 0013083-17.2017.8.06.0173, Rel. Desembargador (a) JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 14/02/2024, data da publicação: 14/02/2024). [Grifei].</p> &#160;</p> CIVIL. PROCESSUAL CIVIL. APELAÇÃO CÍVEL. RMC RESERVA DE MARGEM CONSIGNÁVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C REPETIÇÃO DE INDÉBITO E PEDIDO DE REPARAÇÃO POR DANOS MORAIS E TUTELA DE URGÊNCIA ANTECIPADA COM PEDIDO LIMINAR. SENTENÇA

Processo	0200494-45.2024.8.06.0114
	PROCEDENTE. IRRESIGNAÇÃO DO BANCO RÉU. AUSÊNCIA DE PROVA DA CONTRATAÇÃO. ILICITUDE DOS DESCONTOS NO BENEFÍCIO DA AUTORA. RESTITUIÇÃO SIMPLES MANTIDA EM ATENÇÃO AO ART. 42 DO CDC E A MODULAÇÃO DE EFEITOS DO EARESP 676.608/RS. DANOS MORAIS. NÃO CONFIGURADOS. VALORES DOS DESCONTOS IRRISÓRIOS. MERO ABORRECIMENTO. APELO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PARCIAL PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. (Apelação Cível TJ-CE 0295598-83.2022.8.06.0001, Rel. Desembargador (a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 06/09/2023, data da publicação: 06/09/2023). [Grifei]. </p><p style="text-align: justify; padding-left: 120px;"> &#160; </p><p style="text-align: justify; padding-left: 120px;"> &#160;APELAÇÃO CÍVEL. CONTRATOS DE EMPRÉSTIMO CONSIGNADO. ALEGAÇÃO DE CONEXÃO. PROCESSOS FUNDADOS EM CONTRATOS DISTINTOS. DESNECESSIDADE DE PRÉVIO REQUERIMENTO ADMINISTRATIVO. PRELIMINARES REJEITADAS. INEXISTÊNCIA DE DOCUMENTOS APTOS A COMPROVAR A REGULARIDADE DOS NEGÓCIOS JURÍDICOS. AUSÊNCIA DE COMPROVANTE DE REPASSE DOS VALORES SUPOSTAMENTE PACTUADOS. CONTRATAÇÕES ILÍCITAS. DANOS PATRIMONIAIS CONFIGURADOS. DANOS MORAIS. PARCELAS CORRESPONDENTES AO VALOR DE R\$ 66,15. QUANTIA IRRISÓRIA SE COMPARADA AO VALOR DO BENEFÍCIO PREVIDENCIÁRIO DA PARTE PROMOVENTE. DESCONTOS INEXPRESSIVOS. MERO ABORRECIMENTO. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PARCIAL PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. (Apelação Cível TJ-CE 0050276-84.2020.8.06.0036, Rel. Desembargador (a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 30/08/2023, data da publicação: 31/08/2023). [Grifei]. </p><p style="text-align: justify;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> &#160;No caso em tela, ocorreu um único desconto no valor de R\$ 76,00 (setenta e seis reais), conforme se observa da análise dos extratos bancários anexados pela autora (ID 26625370). </p><p style="text-align: justify; text-indent: 8%;"> &#160;Nesse cenário, não se olvida que a situação possa eventualmente ter trazido algum aborrecimento a recorrente, contudo, não foi capaz de atingir valores fundamentais do ser humano, tratando-se de mero aborrecimento a que se está sujeito na vida em sociedade. </p><p style="text-align: justify; text-indent: 8%;"> &#160;Vale lembrar, por oportuno, que a parte autora será restituída do valor indevidamente descontado, os quais serão corrigidos monetariamente e acrescidos de juros de mora. Assim, coaduno com o entendimento de que os descontos em valores incapazes de comprometer a subsistência não traduzem lesão à personalidade que enseje o pagamento de indenização por danos morais, dado que não ensejam maiores consequências negativas. </p><p style="text-align: justify; text-indent: 8%;"> &#160;Portanto, entendo que agiu de forma acertada o douto magistrado a quo ao julgar improcedente o pleito autoral de condenação da parte requerida ao pagamento da indenização em questão. </p><p style="text-align: justify; text-indent: 8%;"> &#160;Por fim, a parte autora/apelante requer a fixação dos honorários de sucumbência em 20% (vinte por cento) sob o valor da causa ou sob o valor reformado da condenação ou arbitrado em R\$ 1.000,00 (um mil reais) de forma equitativa. </p><p style="text-align: justify; text-indent: 8%;"> &#160;Sobre o assunto, vale recordar o disposto nas normas constantes no art. 85 do Código Processual Civil em vigor, notadamente os seguintes dispositivos [grifo nosso]: </p><p style="text-align: justify;"> &#160;</p><p style="text-align: justify; padding-left: 120px;"> Art. 85. A

Processo	0200494-45.2024.8.06.0114
	sentença condenará o vencido a pagar honorários ao advogado do vencedor. § 1º São devidos honorários advocatícios na reconvenção, no cumprimento de sentença, provisório ou definitivo, na execução, resistida ou não, e nos recursos interpostos, cumulativamente. § 2º Os honorários serão fixados entre o mínimo de dez e o máximo de vinte por cento sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa, atendidos: I - o grau de zelo do profissional; II - o lugar de prestação do serviço; III - a natureza e a importância da causa; IV - o trabalho realizado pelo advogado e o tempo exigido para o seu serviço. § 6º Os limites e critérios previstos nos §§ 2º e 3º aplicam-se independentemente de qual seja o conteúdo da decisão, inclusive aos casos de improcedência ou de sentença sem resolução de mérito. § 6º-A. Quando o valor da condenação ou do proveito econômico obtido ou o valor atualizado da causa for líquido ou liquidável, para fins de fixação dos honorários advocatícios, nos termos dos §§ 2º e 3º, é proibida a apreciação equitativa, salvo nas hipóteses expressamente previstas no § 8º deste artigo. § 8º Nas causas em que for inestimável ou irrisório o proveito econômico ou, ainda, quando o valor da causa for muito baixo, o juiz fixará o valor dos honorários por apreciação equitativa, observando o disposto nos incisos do § 2º. § 160. No caso, verifica-se a possibilidade de mensuração do proveito econômico obtido pela parte autora. Porém, tratando-se de condenação considerada irrisória em um contexto geral, sua utilização como base de cálculo ensejará honorários ínfimos, desvalorizando o trabalho desempenhado pelo causídico. Assim, considerando as circunstâncias concretas do caso (efetivo trabalho realizado pelo advogado, o tempo exigido para o seu serviço, grau de zelo do profissional, lugar de prestação do serviço, a natureza e a importância da causa (de baixa complexidade e natureza repetitiva - art. 85, §2º, I a IV, e §8º, do CPC), bem como ao fato de que houve julgamento antecipado da demanda, considero pertinente a fixação equitativa dos honorários sucumbenciais, no entanto a fixação no valor de R\$ 300,00 (trezentos reais) pelo juízo <i>em quo</i> mostra-se irrisória, razão pela qual os arbitro no patamar de R\$ 500,00 (quinhentos reais). 3. Dispositivo Diante do exposto, CONHEÇO do recurso de apelação, para lhe dar PARCIAL PROVIMENTO, reformando a sentença recorrida exclusivamente para arbitrar os honorários sucumbenciais sob o critério da equidade, fixando-os no patamar de R\$ 500,00 (quinhentos reais). É como voto. Fortaleza, data da assinatura digital.

Processo	0200494-45.2024.8.06.0114
	times;">DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Relator </p><p> </p><p> </p> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	3001383-27.2025.8.06.0071
Número de ordem	185
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Capitalização e Previdência Privada
Polo ativo	FRANCISCO BEZERRA MONTEIRO CAIXA DE PREVIDENCIA E ASSISTENCIA DOS SERVIDORES DA FUNDACAO NACIONAL DE SAUDE
Advogado(s) - Polo ativo	MARCOS ANTONIO INACIO DA SILVA - (CE20417-A) MARCOS ANTONIO INACIO DA SILVA - (CE20417-A)
Polo passivo	CAIXA DE PREVIDENCIA E ASSISTENCIA DOS SERVIDORES DA FUNDACAO NACIONAL DE SAUDE FRANCISCO BEZERRA MONTEIRO
Advogado(s) - Polo passivo	RAFAEL SALEK RUIZ - (RJ94228-A) RAFAEL SALEK RUIZ - (RJ94228-A)
Terceiros	Não informado

Processo	3001383-27.2025.8.06.0071
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Processo	3001383-27.2025.8.06.0071
	simultaneamente pelos litigantes em face da sentença proferida no Id 26732067, que julgou parcialmente procedente a Ação de Indenização por Danos Materiais e Morais. II. QUESTÕES EM DISCUSSÃO 2. As questões em discussão são: (i) possível ocorrência de prescrição da pretensão autoral; e (ii) em caso de não prescrição, verificar a alegada legitimidade dos descontos efetuados quando do resgate das contribuições previdenciárias do autor, a título de custeio administrativo e de benefício de risco. III. RAZÕES DE DECIDIR 3. O art. 75 da Lei Complementar nº 109/2001 disciplina que “Sem prejuízo do benefício, prescreve em cinco anos o direito às prestações não pagas nem reclamadas na época própria, resguardados os direitos dos menores dependentes, dos incapazes ou dos ausentes, na forma do Código Civil”. 4. Sobre o assunto, esclareceu o STJ que “em demanda de previdência complementar, deve ser observada a prescrição quinquenal, nos termos do artigo 75 da LC nº 109 /2001 e Súmula 427 do STJ.” (REsp n. 1.989.159/AM, relatora Ministra Nancy Andrighi, Terceira Turma, data do julgamento: 12-12-2023, data da publicação/fonte: DJe de 15-12-2023). 5. No caso concreto, a pretensão autoral foi atingida pelo fenômeno da prescrição, pois se infere do caderno processual que o beneficiário resgatou suas contribuições em 25/09/2019, ao passo que propôs a presente ação somente em 31.03.2025, isto é, quando já superado o prazo de cinco anos do recebimento do saldo de resgate. DISPOSITIVO 6. Recurso da parte ré conhecido e provido. Recurso da parte autora prejudicado. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer dos recursos de apelação, para dar provimento ao apelo da ré e julgar prejudicado o apelo do promovente, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. &#160;

Processo	3001383-27.2025.8.06.0071
	align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Presidente/Relator </p><p align="center">
 </p><p align="center"> &#160; </p><p align="center"> RELATÓRIO </p><p align="center">
 </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Trata-se de recursos de apelação cível interpostos simultaneamente pelas partes litigantes, objetivando a reforma da sentença proferida no Id 26732067, pelo MM. Juiz de Direito José Batista de Andrade, da 1ª Vara Cível da Comarca de Crato, que julgou parcialmente procedente a Ação de Indenização por Danos Materiais e Morais, proposta por Francisco Bezerra Monteiro em desfavor da Caixa de Previdência e Assistência dos Servidores da Fundação Nacional de Saúde – CAPESESP.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Eis o dispositivo sentencial:</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> Isso posto e o mais que dos autos consta, JULGO PROCEDENTE o pedido de indenização por dano material para condenar o promovido a pagar à parte autora o valor de R\$ 4.232,47 (quatro mil, duzentos e trinta e dois reais e quarenta e sete centavos), corrigido pelo IPCA, a partir da data da retenção desse valor, e acrescido de juros legais de mora, a partir da citação e deduzido o imposto de renda. Por outro lado, JULGO IMPROCEDENTE o pedido de indenização por dano moral e, por conseguinte, EXTINGO O PROCESSO, com resolução do mérito, nos termos do art. 487, inciso I, do Código de Processo Civil.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> Condeno ainda a promovida no pagamento das despesas processuais e honorários advocatícios que fixo no percentual de 10% do valor da condenação, nos termos do art. 85, §2º, do CPC.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> No recurso do promovente (Id 26732070), a insurgência é contra o capítulo da sentença que julgou improcedente o pedido de indenização por danos morais. De acordo com o apelante, a situação ultrapassou o mero aborrecimento e houve perda do tempo útil, pois se viu obrigado a ingressar com a ação para receber os valores que têm direito.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Face ao narrado, pede a reforma da sentença para condenar a requerida à reparação por dano moral.</p></p>

Processo	3001383-27.2025.8.06.0071
	New Roman" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> 1 – Admissibilidade </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">
 </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Inicialmente, registre-se que os pressupostos recursais – cabimento, legitimidade e interesse de recorrer, tempestividade, regularidade formal, preparo/gratuidade judiciária, inexistência de fato impeditivo ou extintivo do poder de recorrer – estão devidamente preenchidos no caso concreto, inexistindo quaisquer vícios graves que obstem o conhecimento dos recursos. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;">
 </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> A propósito, as questões preliminares suscitadas pela requerida não merecem guarida.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.9pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> </p><p class="Standard" style="text-align: justify; text-indent: 8%;"> Da simples leitura da peça recursal, denota-se que o promovente tenta desconstituir o resultado da sentença no capítulo que lhe foi desfavorável, ainda que reiterando alguns dos argumentos lançados na peça inicial. Nesse cenário, entende-se que não há prejuízo ao conhecimento do apelo.</p><p class="Standard" style="text-align: justify; text-indent: 8%;"> No mesmo sentido, colaciono exemplar do c. Superior Tribunal de Justiça (STJ), in verbis </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> </p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> PROCESSUAL CIVIL E ADMINISTRATIVO. ART. 535 DO CPC/1973. VIOLAÇÃO. INEXISTÊNCIA. APELAÇÃO. INÉPCIA. AUSÊNCIA. PRECLUSÃO. FUNDAMENTO INATACADO E DEFICIÊNCIA RECURSAL. CONTRATO ADMINISTRATIVO. DESCUMPRIMENTO. PERDA SUPERVENIENTE DO OBJETO RECURSAL. VERIFICAÇÃO. REEXAME DE FATOS E PROVAS. INVIABILIDADE. FATO SUPERVENIENTE. CONSIDERAÇÃO PELO JULGADOR. JULGAMENTO EXTRA PETITA. INOCORRÊNCIA. PRINCÍPIO DA PERSUASÃO RACIONAL. AFRONTA. SÚMULA 7 DO STJ. INCIDÊNCIA.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 1. (...)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 3. A rejeição da alegada ofensa ao art. 514, II, do CPC/1973 (inépcia recursal por ausência de impugnação específica dos fundamentos da sentença) pela Corte local se harmoniza com a jurisprudência do STJ, no sentido de que a repetição de peças anteriores nas razões da apelação não ofende o princípio da dialeticidade quando puderem ser extraídas do recurso as razões e a intenção de reforma da sentença. Incidência do teor da Súmula 83/STJ.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 4. A compreensão acima explicitada não se confunde com a estrita observância do princípio da dialeticidade em sede de agravo interno em apelo especial, como defendido pelo agravante, posto que a observância àquele primado, nessa hipótese, advém da incidência da Súmula n. 182 do STJ e da aplicação do art. 932, III, combinado com o art. 1.021, § 1º, do Código de Processo Civil/2015.</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 5. (...)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> 14. Agravo interno

Processo	3001383-27.2025.8.06.0071
	desprovido. (AgInt no AgInt no AREsp 790.415/SP, Rel. Ministro GURGEL DE FARIA, PRIMEIRA TURMA, julgado em 16/11/2020, DJe 27/11/2020, grifei). Destarte, é de rejeitar a questão preliminar de ofensa ao princípio da dialeticidade. Quanto à preliminar de impugnação à justiça gratuita, lançada no apelo da promovida, há de anotar que tal questão se encontra preclusa, pois o benefício foi concedido no despacho inicial e a requerida não impugnou no momento oportuno. Segundo dispõe o art. 100 do Código de Processo Civil, “Deferido o pedido, a parte contrária poderá oferecer impugnação na contestação, na réplica, nas contrarrazões de recurso ou, nos casos de pedido superveniente ou formulado por terceiro, por meio de petição simples, a ser apresentada no prazo de 15 (quinze) dias, nos autos do próprio processo, sem suspensão de seu curso” [grifou-se]. Os artigos 336 e 337 do CPC também prevêem: Art. 336. Incumbe ao réu alegar, na contestação, toda a matéria de defesa, expondo as razões de fato e de direito com que impugna o pedido do autor e especificando as provas que pretende produzir. Art. 337. Incumbe ao réu, antes de discutir o mérito, alegar: ...] XIII - indevida concessão do benefício de gratuidade de justiça. No caso em tela, o banco não impugnou a matéria no momento oportuno, ou seja, na contestação, configurando, assim, preclusão do seu direito de praticar o ato, nos termos do art. 507 do CPC, que reza: “É vedado à parte discutir no curso do processo as questões já decididas a cujo respeito se operou a preclusão”.

Processo	3001383-27.2025.8.06.0071
	none;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> DIREITO CIVIL E PREVIDENCIÁRIO. APELAÇÕES CÍVEIS. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. PREVIDÊNCIA COMPLEMENTAR FECHADA. OCORRÊNCIA DE PRESCRIÇÃO. EXTINÇÃO DO PROCESSO COM RESOLUÇÃO DO MÉRITO. PROVIMENTO DO RECURSO DA PROMOVDA. PREJUDICADÔ O RECURSO DA AUTORA.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> I. CASO EM EXAME</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 1. Recursos de apelação interpostos por Francisca Alves de Souza e pela Caixa de Previdência e Assistência dos Servidores da Fundação Nacional de Saúde – CAPESESP, contra sentença que julgou parcialmente procedentes os pedidos na ação de indenização por danos materiais e morais. A sentença condenou a ré ao pagamento de valor referente à diferença no resgate da reserva de poupança, mas rejeitou o pedido de indenização por danos morais.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> II. QUESTÃO EM DISCUSSÃO</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 2. Há duas questões em discussão:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> (i) saber se a pretensão da autora para recebimento de valores supostamente devidos a título de reserva de poupança encontra-se prescrita,</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> (ii) caso superada a prescrição, saber se há direito à indenização por danos morais em razão da retenção de valores no resgate do plano de previdência complementar.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> III. RAZÕES DE DECIDIR</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 3. O prazo prescricional aplicável é quinquenal, conforme art. 75 da Lei Complementar nº 109/2001 e Súmulas nº 291 e nº 427 do STJ.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 4. O termo inicial da prescrição ocorreu na data do efetivo resgate da reserva de poupança, ocorrido em 25/11/2014. A ação foi ajuizada em 08/08/2024, após o prazo de cinco anos. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 5. Caracterizada a prescrição, extingue-se o processo com resolução do mérito, nos termos do artigo 487, II, do CPC.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 6. Fica prejudicada a análise do mérito do recurso da autora.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> IV. DISPOSITIVO E TESE</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> </p>

Processo	3001383-27.2025.8.06.0071
	&quot;Times New Roman&quot;, serif;">5. Acerca do tema, o STJ redigiu a Súmula 291 ("A ação de cobrança de parcelas de complementação de aposentadoria pela previdência privada prescreve em cinco anos") e a Súmula 427 ("A ação de cobrança de diferenças de valores de complementação de aposentadoria prescreve em cinco anos contados da data do pagamento"). Segundo o STJ, mesma ratio se aplica nos casos de resgate de valores aplicados em Regime de Previdência Complementar.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 6. A situação se trata de autor já desligado do plano complementar, cujos proventos foram recebidos em 27/05/2019 (fato não impugnado pela parte autora), termo inicial da contagem do prazo prescricional.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 7. Porém, a ação foi proposta em 31/10/2024, após o término do prazo prescricional.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 8. A parte autora deixou de levantar causa suspensiva ou interruptiva da prescrição.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> IV. DISPOSITIVO.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> 9. Recurso de CAIXA DE PREVIDÊNCIA E ASSISTÊNCIA DOS SERVIDORES DA FUNDAÇÃO NACIONAL DE SAÚDE – CAPESESP conhecido e provido reformando a sentença recorrida, no sentido de declarar a ocorrência do prazo prescricional. Recurso de CARLOS FRANCISCO DE OLIVEIRA BELÉM conhecido e desprovido.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> (TJCE, APELAÇÃO CÍVEL - 30030707320248060071, Relator(a): PAULO AIRTON ALBUQUERQUE FILHO, 2ª Câmara de Direito Privado, Data do julgamento: 15/05/2025</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> DIREITO CIVIL É PROCESSUAL CIVIL. AGRAVO INTERNO EM RECURSO DE APELAÇÃO. PREVIDÊNCIA PRIVADA. DESLIGAMENTO DO PLANO. RESGATE DA RESERVA DE POUPANÇA. PRESCRIÇÃO DO FUNDO DIREITO. INCIDÊNCIA DAS SÚMULAS NºS 291 e 427 DO STJ e DA TESE FIXADA NOS RECURSOS ESPECIAIS REPETITIVOS 1.111 .973/SP E 1.110.561/SP, JULGADOS EM 09.09 .2009, PELA SEGUNDA SEÇÃO DO SUPERIOR TRIBUNAL DE JUSTIÇA. PRETENSÃO AJUIZADA APÓS O ESGOTAMENTO DO PRAZO PRESCRICIONAL QUINQUENAL. AUSÊNCIA DE ARGUMENTOS CAPAZES DE INFIRMAR A DECISÃO ADVERSADA. AGRAVO INTERNO CONHECIDO, TODAVIA, DESPROVIDO. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os Membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso, todavia, para NEGAR-LHE PROVIMENTO, nos termos do voto do eminente Relator. Fortaleza, data e hora indicadas no sistema. Presidente do Órgão Julgador DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> (TJ-CE - AGT: 07980273520008060001 Fortaleza, Relator.: FRANCISCO MAURO FERREIRA LIBERATO, Data de Julgamento: 26/10/2022, 1ª Câmara Direito Privado, Data de Publicação: 26/10/2022)</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-

Processo	3001383-27.2025.8.06.0071
	justify; text-indent: 8%; line-height: normal;"> 3 – Dispositivo</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Ante o exposto, CONHEÇO dos recursos de apelação interpostos para:</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoListParagraphCxSpFirst" style="margin: 0cm 0cm 0cm 88.85pt; text-align: justify; line-height: normal;"><!--[if !supportLists]-->a)&#160;&#160;&#160;&#160;&#160; <!--[endif]--> DAR PROVIMENTO ao apelo da CAPESEP, para reconhecer a ocorrência da prescrição da pretensão autoral, julgando extinto o processo com resolução de mérito, com fundamento no artigo 487, II, do CPC;</p><p class="MsoListParagraphCxSpMiddle" style="margin: 0cm 0cm 0cm 88.85pt; text-align: justify; line-height: normal;"> &#160;</p><p class="MsoListParagraphCxSpLast" style="margin: 0cm 0cm 0cm 88.85pt; text-align: justify; line-height: normal;"><!--[if !supportLists]-->b)&#160;&#160;&#160;&#160;&#160; <!--[endif]--> JULGAR PREJUDICADO o apelo do requerente.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: normal; text-indent: 8%;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Por consequência, inverte a condenação aos ônus da sucumbência, que serão suportados integralmente pelo autor, ficando alterada apenas a base de cálculo dos honorários sucumbenciais para o valor da causa, a fim de se ajustar ao disposto no art. 85, § 2º, CPC, restando observado que a exigibilidade fica suspensa por ser o vencido beneficiário da justiça gratuita.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> É como voto.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 8%; line-height: normal;"> Fortaleza/CE, data da assinatura digital.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 70.85pt; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">
</p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="text-align: center;"> <span style="font-family: &quot;times new

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Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCIQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiwK7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJFwCwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAhrRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDjT9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsPOONGNYVgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxxH6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4REUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fnsFHHqjeh3YwFUUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJ1VfDrTECR2H3TDT2IZMs6fC7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4Ss89Ta/NzDL7fJ5XC6H02kXbY41gnkUvsnXNkIx410JEZMRUZOZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0254311-77.2021.8.06.0001
	II. QUESTÃO EM DISCUSSÃO 2. O cerne da controvérsia recursal consiste em analisar se existe ilegalidade nas cláusulas do contrato de financiamento bancário, especificamente no que tange à abusividade relativa à capitalização de juros e da comissão de permanência. III. RAZÕES DE DECIDIR 3. Como se sabe, o ordenamento jurídico pátrio não veda a capitalização de juros, restando vedada, como regra, a incidência de juros compostos com periodicidade inferior a um ano. Entretanto, os contratos bancários figuram como exceção, conforme art. 5º da Medida Provisória nº 2.170-36, segundo o qual "nas operações realizadas pelas instituições integrantes do Sistema Financeiro Nacional, é admissível a capitalização de juros com periodicidade inferior a um ano". Isto é corroborado pelo entendimento sumulado do Superior Tribunal de Justiça, enunciado nº 539, segundo o qual "é permitida a capitalização de juros com periodicidade inferior à anual em contratos celebrados com instituições integrantes do Sistema Financeiro Nacional a partir de 31/3/2000 (MP nº 1.963-17/2000, reeditada como MP n. 2.170-36/2001), desde que expressamente pactuada". Além disso, o enunciado 541 da súmula da jurisprudência da mencionada Corte sedimentou que "a previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal é suficiente para permitir a cobrança da taxa efetiva anual contratada (DJe 15/6/2015)". 4. Da análise do espelho do contrato, infere-se que as partes convencionaram a capitalização mensal de juros, uma vez que a taxa de juros remuneratórios foi fixada em "1,50% ao mês" e "19,57% ao ano", o que revela a adoção de "juros capitalizados". Dito isso, tem-se que a cláusula do contrato referente à capitalização dos juros não viola qualquer disposição legal e ainda está bem redigida e clara, de modo que o mutuário, no momento da pactuação, teve plena ciência do exato valor das parcelas que pagaria durante toda a contratualidade, as quais foram computadas em consonância com a taxa de juros devidamente ajustada. 5. Quanto à comissão de permanência, a apelante alega que o contrato celebrado prevê sua "cumulação indevida com outros encargos moratórios, o que configuraria, segundo afirma, abusividade contratual, em afronta à jurisprudência consolidada sobre a matéria". A questão foi apreciada pelo c. Superior Tribunal de Justiça no julgamento dos Recursos Especiais 1.058.114-RS e 1.063.343-RS, oportunidade em que se entendeu

Processo	0254311-77.2021.8.06.0001
	possível a sua cobrança para o período de inadimplência, desde que (i) expressamente prevista no contrato e (ii) não cumulada com os demais encargos (correção monetária, juros remuneratórios, juros moratórios ou multa contratual).&#160; Ocorre que, diversamente do alegado pela parte autora / recorrente, o contrato não prevê a incidência de comissão de permanência cumulada com outros encargos. Logo, inexistindo cláusula dispondo sobre comissão de permanência, não se sustenta a alegada abusividade contratual nesse aspecto.&#160;</p><p style="text-align: justify;"> IV. DISPOSITIVO </p><p style="text-align: justify;"> 6. Recurso desprovido. </p><p style="text-align: justify;"> ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer do recurso de apelação para lhe negar provimento, no sentido de manter inalterada a sentença recorrida, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital.</p><p>
</p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Relator </p><p align="center"> &#160; </p><p align="center"> RELATÓRIO </p><p>
</p><p style="text-align: justify; text-indent: 8%;"> Trata-se de Apelação Cível interposta por Janieire Alves da Silva contra&#160;sentença proferida pelo MMº. Juiz de Direito Fernando Luiz Pinheiro Barros, da 7ª Vara Cível da Comarca de Fortaleza/CE, que julgou improcedente a Ação Revisional cumulada com pedido de Tutela de Urgência de Manutenção de Posse e de Não Inclusão do Nome da Autora no Serasa, SPC e Afins, ajuizada em face do Banco Itaucard S/A, mantendo incólumes as cláusulas contratuais celebradas. </p><p style="text-align: justify; text-indent: 8%;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> &#160;Eis o dispositivo da sentença: </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; padding-left: 240px;"> "Face a tudo quanto exposto e mais o que dos autos consta, com base no art. 332 incisos I e II julgo improcedente liminarmente a presente AÇÃO REVISIONAL C/C PEDIDO DETUTELA DE URGÊNCIA DE MANUTENÇÃO DE POSSE E DE NÃO INCLUSÃO DO NOME DA AUTORA NO SERASA, SPC E AFINS que JANIEIRE ALVES DASILVA promoveu contra BANCO ITAUCARD S/A. </p><p style="text-align: justify; padding-left: 240px;"> Entendo incabível a aplicação do art. 10 do CPC em face do que dispõe o Paragrafo único do art. 487 do mesmo diploma legal, em face da matéria reconhecida não tratar de decadência ou prescrição: "A exceção é a hipótese de indeferimento inicial: o juiz pode deixar de ouvir as partes nessa hipótese, e estas, caso se vejam lesadas, podem recorrer da sentença." (Comentários ao Código de Processo Civil, Nelson Nery Júnior e Rosa Maria de Andrade Nery, Ed. Revista dos Tribunais, 2ª tiragem, pág. 1145). </p><p style="text-align: justify; padding-left: 240px;"> Com a ação improcedente, condeno o(a) autor(a) nos encargos da sucumbência em 10%do valor da causa e nas custas processuais contudo, suspendo a exigibilidade da cobrança pelo prazo legal de 5 (cinco) anos, por ser beneficiário(a) da justiça gratuita, que lhe foi deferido às fls. 38. Transitada em julgado, intime-se a parte promovida do conteúdo da inicial e da sentença que foi proferida com emissão da respectiva certidão, conforme o art. 241 do CPC c/c art. 332 § 2º do mesmo diploma legal, após o que, arquivem-se". </p><p style="text-align: justify; padding-left: 240px;">&#160;</p><p style="text-indent: 8%; text-align: justify;"> </p>

Processo	0254311-77.2021.8.06.0001
	apresentada pela parte, ônus do qual a instituição bancária não se desincumbiu, nos termos do art. 373, inciso II, do Código de Processo Civil, razão pela qual se impõe a rejeição da preliminar suscitada. III – Do mérito O cerne da controvérsia recursal consiste em analisar se existe ilegalidade nas cláusulas do contrato de financiamento bancário, especificamente no que tange à abusividade relativa à capitalização de juros e da comissão de permanência. Como se sabe, o ordenamento jurídico pátrio não veda a capitalização de juros, restando vedada, como regra, a incidência de juros compostos com periodicidade inferior a um ano. Entretanto, os contratos bancários figuram como exceção, conforme art. 5º da Medida Provisória nº 2.170-36, segundo o qual "nas operações realizadas pelas instituições integrantes do Sistema Financeiro Nacional, é admissível a capitalização de juros com periodicidade inferior a um ano". A propósito, o Pretório Excelso já se manifestou no sentido da legalidade da referida norma. Confira-se: CONSTITUCIONAL. ART. 5º DA MP 2.170/01. CAPITALIZAÇÃO DE JUROS COM PERIODICIDADE INFERIOR A UM ANO. REQUISITOS NECESSÁRIOS PARA EDIÇÃO DE MEDIDA PROVISÓRIA. SINDICABILIDADE PELO PODER JUDICIÁRIO. ESCRUTÍNIO ESTRITO. AUSÊNCIA, NO CASO, DE ELEMENTOS SUFICIENTES PARA NEGÁ-LOS. RECURSO PROVIDO. 1. A jurisprudência da Suprema Corte está consolidada no sentido de que, conquanto os pressupostos para a edição de medidas provisórias se exponham ao controle judicial, o escrutínio a ser feito neste particular tem domínio estrito, justificando-se a invalidação da iniciativa presidencial apenas quando atestada a inexistência cabal de relevância e de urgência. 2. Não se pode negar que o tema tratado pelo art. 5º da MP 2.170/01 é relevante, porquanto o tratamento normativo dos juros é matéria extremamente sensível para a estruturação do sistema bancário, e, conseqüentemente, para assegurar estabilidade à dinâmica da vida econômica do país. 3. Por outro lado, a urgência para a edição do ato também não pode ser rechaçada, ainda mais em se considerando que, para tal, seria indispensável fazer juízo sobre a realidade econômica existente à época, ou seja, há quinze anos passados. 4. Recurso extraordinário provido. " (RE 592.377/RS, Tribunal Pleno, Rel. Min. Marco Aurélio, Rel. p/ Acórdão Min. Teori Zavascki, DJe de 20/03/2015). Isto é corroborado pelo entendimento sumulado do Superior Tribunal de Justiça, enunciado nº 539, segundo o qual "é permitida a capitalização de juros com periodicidade inferior à anual em contratos celebrados com instituições integrantes do Sistema Financeiro Nacional a partir de 31/3/2000 (MP nº 1.963-17/2000, reeditada como MP n. 2.170-36/2001), desde que expressamente pactuada". Assim, é entendimento consolidado no STJ a admissibilidade da capitalização dos juros em periodicidade inferior à anual em contratos firmados com instituição financeira, se expressamente pactuada. Discute-se, entretanto, as circunstâncias sob as quais se pode considerar como expressa, na prática, a previsão da incidência de juros compostos no contrato. O entendimento também adotado pela Corte Superior é o de que atende ao requisito em questão a clara disposição das taxas mensais

Processo	0254311-77.2021.8.06.0001
	e anuais incidentes no pacto, podendo o contratante deduzir referida capitalização se restar evidente que a taxa de juros anual é mais de doze vezes superior à mensal.
 </p> Nesse sentido, é o enunciado 541 da súmula da jurisprudência da mencionada Corte: "a previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal é suficiente para permitir a cobrança da taxa efetiva anual contratada (DJe 15/6/2015)". </p>
 </p> Nesse ritmo, a Segunda Seção do STJ, em julgamento submetido ao rito dos recursos repetitivos, apreciando os REsp de nº 1.046.768/RS, 1.003.530/RS, e 973.827/RS, julgados em 08/08/2012, sob a relatoria do il. Ministro Luís Felipe Salomão, consolidou entendimento a respeito das questões processuais e de mérito em debate nas ações revisionais de contratos bancários em que se discutiram os temas acima mencionados. Vejamos: </p>
 </p> 1) É permitida a capitalização de juros com periodicidade inferior a um ano em contratos celebrados após 31/3/2000, data da publicação da Medida Provisória nº 1.963-17/2000, em vigor como MP nº 2.170-01, desde que expressamente pactuada; </p> 2) A capitalização dos juros em periodicidade inferior à anual deve vir pactuada de forma expressa e clara. A previsão no contrato bancário de taxa de juros anual superior ao duodécuplo da mensal é suficiente para permitir a cobrança da taxa efetiva anual contratada. [Grifou-se]. </p>
 </p> Adotando tal posicionamento, confirmam-se decisões desta c. Primeira Câmara de Direito Privado: </p> times;">
 </p> APELAÇÕES CÍVEIS. AÇÃO REVISIONAL. CONTRATO DE FINANCIAMENTO. ALIENAÇÃO FIDUCIÁRIA. VEÍCULO AUTOMOTOR. TAXA DE JUROS REMUNERATÓRIOS EM CONSONÂNCIA COM A MÉDIA DE MERCADO. INEXISTÊNCIA DE ABUSIVIDADE. CAPITALIZAÇÃO MENSAL DOS JUROS. PACTUAÇÃO DEMONSTRADA NOS TERMOS DA SÚMULA 541/STJ. INEXISTENTE ILEGALIDADE NO PERÍODO DE NORMALIDADE CONTRATUAL. MORA NÃO DESCARACTERIZADA. APELAÇÃO DO DEVEDOR CONHECIDA E NÃO PROVIDA. DETERMINAÇÃO PARA EFETUAR O RECOLHIMENTO DO PREPARO EM DOBRIO, SOB PENA DE DESERÇÃO (ART. 1.007 DO CPC/2015). DESATENDIMENTO. APELAÇÃO DO BANCO NÃO CONHECIDA. APLICAÇÃO DA PENA DE DESERÇÃO. SENTENÇA MANTIDA. MATÉRIA DEVOLVIDA. A questão devolvida a este e. Tribunal busca verificar se é correta sentença que consolidou o domínio e a posse plena e exclusiva do veículo descrito na petição inicial ao banco/apelado e declarou a nulidade das cláusulas contratuais relativas à cobrança das taxas de avaliação, de registro e da cobrança do seguro prestamista, sem, contudo, descaracterizar a mora com base nas taxas e capitalização dos juros convencionados. APELAÇÃO DO BANCO. NÃO CONHECIDA. APLICAÇÃO DA PENA DESERÇÃO. Conforme dispõe o art. 1.007 do CPC/2015, cabe ao recorrente, quando não requerer a concessão de gratuidade da justiça, comprovar, no ato de interposição do recurso, o recolhimento do preparo. Verifica- se, dos autos, que o Banco não requereu e nem lhe foi deferido os benefício da justiça gratuita, motivo pelo qual foi intimado (conforme certidões de págs. 174 e 176) para comprovar o recolhimento do preparo em dobro, de acordo com o despacho proferido à pág. 173. Apesar disso, o prazo transcorreu in albis, conforme certidão de decurso de prazo juntada à pág. 178. Assim, considerando que o preparo é um dos pressupostos de admissibilidade recursal (requisito extrínseco) e que deve ser, não apenas recolhido, mas também comprovado, como regra, no ato de sua interposição, não há como afastar a deserção do apelo. JUROS REMUNERATÓRIOS. Em situações excepcionais é possível revisar as taxas de juros remuneratórios, desde que reste suficientemente demonstrada a abusividade do referido encargo, implicando, assim, em evidente desvantagem para o consumidor. Assim, de acordo com o entendimento do STJ, para que os juros contratados sejam considerados abusivos deve restar demonstrado nos autos que as taxas estipuladas

Processo	0254311-77.2021.8.06.0001
	no instrumento contratual se distanciam de forma acintosa da média de mercado, porquanto não é qualquer desvio desta média que caracteriza o abuso e autoriza o afastamento dos juros remuneratórios do contrato. (Precedentes: Resp 407.097, RS; Resp 1.061.530, RS; AgRg no Resp 1.032.626, MS; AgRg no Resp 809.293, RS; AgRg no Resp 817.431, RS). Aplicando-se o critério adotado para aferição da abusividade nos juros remuneratórios contratados ($1,98 \times 1,5 = 2,97\%$ ao mês/ $26,46 \times 1,5 = 39,69\%$ ao ano), verifica-se que a taxa de juros contratada não supera em mais de 50% (cinquenta por cento) da taxa média praticada no mercado, considerada a mesma operação e o período da celebração do contrato. Dessa forma, na análise do caso concreto, não se verifica qualquer abusividade quanto aos juros remuneratórios. CAPITALIZAÇÃO DOS JUROS. No que concerne à pactuação desse encargo, entende-se satisfeita quando consta do contrato que a taxa de juros anuais é superior ao duodécuplo da taxa de juros mensais, admitindo-se que o encargo foi pactuado (Resp nº 973.827/RS. Na hipótese vertente, o contrato evidencia que a taxa de juros anual (29,24% ao ano) é doze vezes maior que a mensal (2,16% ao mês), portanto, conclui-se que a capitalização mensal dos juros foi expressamente pactuada, devendo ser mantida. DA INOCORRÊNCIA DA DESCONSTITUIÇÃO DA MORA. Não reconhecida ilegalidade dos encargos pactuados no período da normalidade contratual (juros remuneratórios e capitalização de juros), não há que se falar em descaracterização da mora. conforme posicionamento consolidado pelo Superior Tribunal de Justiça (STJ), no julgamento dos REsp nºs. 1061530/RS, 1.639.320/SP e 1.639.259/SP (Temas STJ 28, 29 e 972), a descaracterização da mora do devedor somente ocorrerá no caso de reconhecimento de abusividade nos encargos essenciais (juros remuneratórios e capitalização dos juros) exigidos no período da normalidade, já que a "[a] abusividade de encargos acessórios do contrato não descaracteriza a mora". Ademais, "[a] simples propositura da ação de revisão de contrato não inibe a caracterização da mora do autor". Recurso interposto pelo devedor conhecido e não provido. Recurso interposto pelo banco/credor não conhecido.
 (Apelação Cível&#160;- 0203416-62.2022.8.06.0071, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento:&#160; 25/10/2023, data da publicação:&#160; 26/10/2023) . [Grifou-se]. </p><p style="text-align: justify; padding-left: 240px;">
 </p><p style="text-align: justify; padding-left: 240px;"> APELAÇÃO CÍVEL. AÇÃO REVISIONAL. CAPITALIZAÇÃO DE JUROS. DUODÉCUPLO DA TAXA MENSAL INFERIOR À TAXA COBRADA NO CONTRATO. PACTUAÇÃO EXPRESSA. VALIDADE DA COBRANÇA. PRECEDENTES DO STJ. JUROS REMUNERATÓRIOS CONTRATUAIS NO PERCENTUAL DE 27,46% AO ANO. ABUSIVIDADE EM RELAÇÃO À TAXA MÉDIA DE MERCADO NO PERÍODO DA CONTRATAÇÃO (19,76% AO ANO). COBRANÇA ABUSIVA NO PERÍODO DA NORMALIDADE CONTRATUAL. MORA DESCARACTERIZADA. PRECEDENTES DO STJ. INEXISTÊNCIA DE COBRANÇA DE COMISSÃO DE PERMANÊNCIA A PROSTRAR AO SOLO O ARGUMENTO DE SUA CUMULAÇÃO COM OUTRAS VERBAS MORATÓRIAS. TARIFA DE CADASTRO NO VALOR DE R\$ 695,00 (SEISCENTOS E NOVENTA E CINCO REAIS), INFERIOR À TARIFA MÉDIA DIVULGADA PELO BANCO CENTRAL DO BRASIL (R\$ 989,18). AUSÊNCIA DE ILEGALIDADE E/OU ABUSIVIDADE. TARIFA ¿ VALOR DOCUMENTAÇÃO¿ (R\$ 1.132,00). AUSÊNCIA DE INDICAÇÃO A QUE SE DESTINO TAL VALOR, TAMPOUCO A COMPROVAÇÃO DE EVENTUAL SERVIÇO PRESTADO. AFASTAMENTO DA COBRANÇA. REPETIÇÃO DO INDÉBITO. TEMA REPETITIVO Nº 28 DO STJ.. EAREsp 676.608/RS. MODULAÇÃO DOS EFEITOS. PRESTAÇÕES POSTERIORES A 30.03.2021 QUE DEVEM SER DEVOLVIDAS EM DOBRO. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. 1. Com relação à capitalização de juros, segundo o STJ, para cobrá-la é necessário apenas que a taxa de juros anual seja superior a doze vezes (duodécuplo) a taxa mensal fixada no contrato, circunstância presente aos autos, porquanto, a soma dos juros mensais de 2,04%, totaliza o percentual anual de 24,48%, inferior ao percentual cobrado ao ano de 27,46%. (fl. 110) 2. Os juros no percentual apontado no contrato, de 27,46% ao ano, ostentam caráter de abusividade, na medida em que discrepam, significativamente, da taxa média de mercado para o caso de aquisição de veículo para pessoa física no período da contratação (março/2020), consoante extraí do site do Banco Central do Brasil, que apontou o percentual de 19.76% ao ano para aquele interregno, ou seja, uma diferença superior a 5% (cinco por cento) entre a taxa média de mercado e a taxa contratual, percentual este considerado como suficiente para autorizar a revisão contratual conforme entendimento consolidado na ambiência da Primeira Câmara de Direito Privado. 3. Como visto, houve a cobrança abusiva de juros remuneratórios no período da normalidade do contrato, o que acarreta como consequência a descaracterização da mora, consoante a sólida, estável, firme, jurisprudência do colendo Superior Tribunal de Justiça (STJ) sobre este assunto, no sentido de que ¿A cobrança de encargos abusivos no período da normalidade enseja a descaracterização da mora.¿ ¿ (AgInt no AREsp 1118462/RS, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 20/02/2018, DJe 01/03/2018) 4. Na

Processo	0254311-77.2021.8.06.0001
	hipótese de inadimplemento, o contrato não exige a cobrança de comissão de permanência, o que prostra ao solo o argumento da existência de cumulação desse encargo com outras verbas moratórias (cl. 4.5, fl. 11) 5. Não obstante a tarifa de cadastro tenha sido expressamente pactuada e exigida no início do relacionamento entre os contratantes, é possível a redução do encargo quando demonstrada a abusividade. No caso em análise, a cobrança da Tarifa de Cadastro, conforme especificação constante no instrumento contratual, foi firmada em R\$ 695,00 (seiscentos e noventa e cinco reais), e segundo o site do Banco Central do Brasil o preço da tarifa média de cadastro é, hoje, o equivalente a R\$ 967,42 (novecentos e sessenta e sete reais e quarenta e dois centavos), restando comprovado, pois, que a pactuação respeitou os ditames da legalidade e razoabilidade, razão pela qual deve ser mantida a respectiva cobrança. 6. No que se refere à cobrança da rubrica "valor documentação", no importe de R\$ 1.132,00 (um mil, cento e trinta e dois reais), enxergo manifesta abusividade na cobrança, mormente porque o contrato não estipula a que se destina o pautado valor, tampouco a instituição financeira comprovou eventual prestação de serviço em decorrência de tal cobrança. 7. Por fim, com relação à devolução dos valores pagos a maior, convém destacar que o STJ, por ocasião do julgamento, pela Corte Especial, do EAREsp 676608/RS, de relatoria do Ministro Og Fernandes, definiu que a restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que cobrou valor indevido, revelando-se cabível quando a cobrança indevida consubstanciar conduta contrária à boa-fé objetiva" e que a restituição em dobro do indébito seja aplicada apenas às cobranças indevidas realizadas a partir da publicação daquele acórdão, ou seja, 30/03/2021. 8. APELAÇÃO CONHECIDA E PARCIALMENTE PROVIDA. (Apelação Cível - 0201236-61.2022.8.06.0075, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 25/10/2023, data da publicação: 25/10/2023). [Grifou-se]. Da análise do espelho do contrato (ID 26737076), infere-se que as partes convencionaram a capitalização mensal de juros, uma vez que a taxa de juros remuneratórios foi fixada em 1,50% ao mês e 19,57% ao ano, o que revela a adoção de periodicidade inferior à anual, caracterizando regular previsão dos juros capitalizados. Dito isso, tem-se que a cláusula do contrato referente à capitalização dos juros não viola qualquer disposição legal e ainda está bem redigida e clara, de modo que o mutuário, no momento da pactuação, teve plena ciência do exato valor das parcelas que pagaria durante toda a contratualidade, as quais foram computadas em consonância com a taxa de juros devidamente ajustada. Quanto à comissão de permanência, a apelante alega que o contrato celebrado prevê sua cumulação indevida com outros encargos moratórios, o que configuraria, segundo afirma, abusividade contratual, em afronta à jurisprudência consolidada sobre a matéria. A questão da comissão de permanência foi apreciada pelo c. Superior Tribunal de Justiça no julgamento dos Recursos Especiais 1.058.114-RS e 1.063.343-RS, oportunidade em que se entendeu possível a sua cobrança para o período de inadimplência, desde que (i) expressamente prevista no contrato e (ii) não cumulada com os demais encargos (correção monetária, juros remuneratórios, juros moratórios ou multa contratual). A propósito, o Colendo Superior Tribunal de Justiça editou as seguintes súmulas: Súmula 30. A comissão de permanência e a correção monetária são inacumuláveis. Súmula 294. Não é potestativa a

Processo	0254311-77.2021.8.06.0001
	cláusula contratual que prevê a comissão de permanência, calculada pela taxa média de mercado apurada pelo Banco Central do Brasil, limitada à taxa do contrato. Súmula 296. Os juros remuneratórios, não cumuláveis com a comissão de permanência, são devidos no período de inadimplência, à taxa média de mercado estipulada pelo Banco Central do Brasil, limitada ao percentual contratado. Súmula 472. A cobrança de comissão de permanência - cujo valor não pode ultrapassar a soma dos encargos remuneratórios e moratórios previstos no contrato - exclui a exigibilidade dos juros remuneratórios, moratórios e da multa contratual. Nesse contexto, é imperativo considerar nula de pleno direito eventual aplicação de comissão de permanência acrescida de juros moratórios ou remuneratórios, multa contratual e correção monetária. Ocorre que, diversamente do alegado pela parte autora / recorrente, o contrato não prevê a incidência de comissão de permanência cumulada com outros encargos. Logo, inexistindo cláusula dispondo sobre comissão de permanência, não se sustenta a alegada abusividade contratual nesse aspecto. V – Dispositivo Diante do exposto, CONHEÇO do apelo interposto para lhe NEGAR PROVIMENTO, mantendo-se inalterada a sentença ora recorrida. Com o resultado, majoro os honorários advocatícios para 12% (doze por cento) do valor atualizado da causa, cuja exigibilidade ficará suspensa em razão dos benefícios da justiça gratuita (art. 98, § 3º, do CPC). É como voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator
Processo	3002110-15.2025.8.06.0029
Número de ordem	187
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO

Processo	3002110-15.2025.8.06.0029
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	FRANCISCA NOGUEIRA DE MORAIS CHAGAS
Advogado(s) - Polo ativo	VICENTE PEREIRA DE ARAUJO JUNIOR - (CE32897-A)
Polo passivo	BANCO ITAU BMG CONSIGNADO S.A.
Advogado(s) - Polo passivo	ENY ANGE SOLEDADE BITTENCOURT DE ARAUJO - (BA29442-A)
Terceiros	Não informado

Processo	3002110-15.2025.8.06.0029
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Processo	3002110-15.2025.8.06.0029
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Processo	3002110-15.2025.8.06.0029
	se em nome de terceiro(a), comprovando a relação entre ambos, bem como ratificar os termos da procuração e o pedido de declaração de nulidade do contrato objeto da presente ação, sob pena de indeferimento da exordial. No mesmo prazo, determinou que o advogado da parte autora juntasse novamente a procuração pública, ante a falha na visualização do PDF. Diante da inércia, sobreveio aos autos a sentença de ID 26740567, que extinguiu o feito sem apreciação do mérito, com fundamento no art. 485, I do CPC, nos seguintes termos: Pelo exposto, EXTINGO O PRESENTE FEITO SEM JULGAMENTO DE MÉRITO, o que faço com amparo no art. 485, "I", do Código de Processo Civil. Sem custas ante a gratuidade judiciária que defiro nos autos. Empós o trânsito em julgado desta decisão, arquivem-se os autos com a devida baixa na distribuição. Publique-se. Registre-se. Intimem-se. Nas razões recursais (ID 26740570), a apelante sustenta, em síntese, que não é necessária a atuação pessoal da parte em todos os atos processuais, com o objetivo de "dar legitimidade" ao causídico. Da mesma forma, a procuração devidamente assinada e constituída supre o objetivo de confirmar a vontade da parte, tornando extremamente desnecessário seu deslocamento, se tratando de pessoa idosa e com dificuldades de locomoção, apenas para confirmar o que já deixou expresso em documento legítimo e legal. Ora, há diversos momentos processuais onde seriam oportunizados à Apelante o comparecimento ao fórum local, como, por exemplo, a própria audiência de instrução. Além disso, a idosa reside em Zona Rural, dependendo de carros de aluguel e até mesmo de carona para se dirigir a cidade. Ao final, requer o conhecimento do recurso e, no mérito, o seu provimento, para anular a sentença e determinar o retorno dos autos ao Juízo de origem para o regular processamento do feito. Contrarrazões (ID 26740577), pugnando o apelado pelo desprovimento do recurso interposto, mantendo-se integralmente a sentença que indeferiu a petição inicial. É o relatório. VOTO Ao compulsar os autos, verifica-se que a autora, ora recorrente, apresentou os seguintes documentos no ato de protocolo da inicial: contrato de consultoria e assessoria jurídica (ID 26740558); comprovante de residência (ID 26740557); documento de identificação (ID 26740556); extrato de empréstimos consignados do INSS (ID 26740559); ofício enviado ao promovido (ID 26740560) e comprovante de solicitação de abertura de reclamação administrativa (ID 26740561). No entanto, não apresentou procuração ad judicia, uma vez que o documento de ID 26740555 apresenta

Processo	3002110-15.2025.8.06.0029
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Processo	3002110-15.2025.8.06.0029
	hxQQFeYSE0iAilgAilgAr0cgY+/-+DYuvPPDWH6/F9LhYumE6RTSPcLS9xchzD1xWNYwC9 BheM9yT5XNggWh479c7oEiGoB3PU+10ePxj+NfjTue+qzhB4bVo6wCusJAVkAr1lpJrFmX 1uOjArrCRGoSERABERABEWgDBL5LMD2vvPtNHHHFu7Hwbs/FeGs+XLxvGDHH65oQ0 +yTRIDrnR427zQnfmfBDKb5dO0REtb8/7frPRarH/xSXHDHh/Hx5981jV0K6ApQK6BbT7Ao lu2TVuKAARRCRGoSERABERABEWgjBL4e8H08/dpXcdoN78f6R78cf/rnU/Gb1R8uTqUeM YUuj5hCvAe+OzkJ60HvZeb0+ekag+Ld2MX7sVmUGBguPylnfap/T9z/OeL1Wduc9lpcds/H8 fp7A4JFJWZeCugKaCugFWutJNasS+vxUQFdYS1iQilgAilgAi0lQlFjcfne580iHue+bzYf7v DGW/EKge9GHPT+Ez8YZPHY/y1Ho3RVn44Rk6C0E9FDJXf4xVH46J13ksZtjiiVho1+ei/+E vx7/Pfyv+m7zNj7/yZXz65XfBKek9cSmgK6CugG49waKItE9aiQMK6AoTqUIEQAREQAREo M0RQEx/9c338fr738TDL34RNz36aVx278fxn9s/jHnu+SDO9IMJg3Nv/SAuSHvNr7z/k7j9ic/i yXQK+nsfD4hvvv2+x0Rzmbok6AoDWQGTGWSlsWZdWo+PCugKE6IJREAEREAEERGA4R QBPqZ8hxKCFuaKArtA5CujWEyyKSPuklTiggK4wkZpEBERABERABERABNoAAQV0hU5 UQCvWWkmsWZfW46MCusJEahIREAEREAEERAEaAMEFNAVOIEB3XqCRRFpn7QSB zoW0GPG6KOPMegzZow88igxwggjxNRTTxN33HFHhdnHJClgAilgAilgAq2EgAK6Qm8 ooBVrrSTWrEvr8bGagB5jklD+uQK6wrxrEhEQAREQAREQARFoRQQU0BV6RQJHdeoJFE WmftBIHFNAVJIKTiAlilAlilAlilEAbIKArtCJCmjFWiuJNevSenxUQFeYSE0iAilgAilgAilgAm 2AgAK6QicqoFtPsCgi7ZNW4kBVAT3KKKPGiCP+Iqaa6vdxxRVXVJh9TCICliACliACliACli BKCDz00EMx99xzF+fajDzyyOmsm9EHf8YYY4zo7DPmnnGNGd35+Vnv1FHAKaMvAK4k1 69J6fKwqoEcddbT4v//7ZfTt2zf22WefeOedd3pqWrNcERABERABERABERCBIUTg888/j9N OOy2mm2665BQZMUYYZZRQFD0MFdCtJ1gUkfZJK3GgMwHNKuQPJ3FzKjNjAlcp55503rr 322iGctk0uAilgAilgAilgAILQUwg89thjseKKK8bYY48dI400Uow22miVvc/YhN3pfSZvPdBJKp JaSSRZF/nYEQeGRECPNtroacL9dSGqV1l1fQ6qzvj+++76nngOWKgAilgAilgAilgAhUQO DJJ5+MrbbaKiaYYIL45S9/GaOOOuoQeZ8V0NtsE0sssWSMM85vEniipVh34tkVGGlgB4Z HDgyJgEY4Zx90kgjx0ILLRQXXHBhFpjhxxWmbpOlgaAilgAilgAilgAgOE4EvvvvgiiEheffXvi/3 NiOfa0G2iC7va/6yAVkc7YOCciRwocaDqPugfwrkHeql5VVGzKKadKK5r/LA4We+655+KTT z6JAQMGxLffutHDOSAHHADckAOyAE50QOYIOx1/mvV16Jm2++OfbYY4+YeeaZ0zk2/ 1e153LYdtUDxLo7dDvnbw3Ak2BJgd6DQeGRkAz6Y488ijFwWljzxqTDHFFLH44ovHFltsE XvvvU8ceuhhcfjh3fL57DDDo/h9XPkkUfGUUcdldp/mB8xkANYQA7IATnQCznQXfYR+e6/// 7xr3/9K5ZffvmYdtpC8H8i1/8ln796193KJ678kAroLfeOrbRA91rhM3wGFJsm5sfSt95GPeY PzpILHuhCeXmwzYQhPQvf/mrNEH/X7HC+atf/ao4nMJP4zHIK8di23hsxVRM5YAckANYoB 04gC2GaOYn7SFkG/thaLzPzQjd1gOt11FxlGd6HQeGRkDnsJ+ykOZd0axw8mHC/tWv/DQ aAX4ynJ4JxixU+BEDOSAH5IAckANYoAy8WfEbqZSkcFJaFc0fiusvswl6hVZurQe614kbPbL N98gOb5g3QkBNlf3Dz9EK77Sfxmlw7rjixvj1+cnMmD0Y8YyAE5IAfkgByQA7ViuSycO/M+ K6DrHOnme6AVX8ObGLS9Q875oRPQ+R3RA0O5638akx4V46OFAlojSUNZDsgBOSAH5 EATB+oJ5q6Ec44m7OoEbvdA64HWA22ItRyow4GuRDTf3AKdxBP392LKAR1gP33PBRA A8bBm4A3njFe9w1AOt8aQBLQfkgByQA3KgM+FcRUC3inhGpHsKtyJNkSYHehUHhkVAI +aqimiF9NCLaAW0hpLGshyQA3JADsiBKqK5inhupfBTbTcQvCJJ0OehzzkurOxqyKgWaX syAvdtYjOlvsHj3TtA0APdefimkUK9j/rgdZ40oCWA3JADsiB9ufAkAjlldnzXEU4Z890s8K3Fd AKaAW0HOiVHKgiooddQHctplf1gdGu9/PAQ0D36dMneLC1azttV8eLTGijNnJADsgBOVCV A3mPc72fXYVvU/P0bV9jpXDqlcKpHT2qtmnoPetdCemORXTZQ91VWLffdx72/IN8wB3vsw Ja46mq8WQ6uSIH5IAcGH440JlgLn/XiuJZD7QlWhEtB3o1B7oS0J0dKPZjct16cdjVKAfF09 fHTAE9/BhBGrz2tRyQA3JADITIQFh3Kqh23qgFU69WjjptR16r207YVdFQOfVy2re6B9eea WgHvoFhbKAzqdwV324mk5DTA7IATkgB+RAe3BgSATzkHqee2LvsWJaAa2AlgNtwYFqlnr MYi/uklnoH4d5V3kl6JEEkLoV0O1h+GjA2o9yQA7IATIQ5kAVW2hY0lQJ2e5J4ayAvjy1hXh qJ2+qbRk6r3p1AT2slnpYBPjwdS99wv7nCSecMM0zvJd7Yli8HzGQA3JADsgBOSAHhvaw sLLAbuap27VI+R5ohbRCWg70eg4MmYhG0A1fgrbZ7S0L6HwKtwaTBpMckANYQA7IATn Q28Wzh4gpnHq9cNJR03Re23bEbUHF9A/pFdONFtgKaA0kjWQ5IAfkgByQAx1xYEHctWvT 9qTn2RBuxbPiWQ60HQeGXkQT3j0wxHvoDh1ThGcRptpoyEEI94Qx0UQTDX4PtlaUhpQ ckANYQA7IgeGPA8MilltRPOuBVkC1nYBqR8+qbRo6L/uwi+ksqv05JFginscYY6y0/3mimHjii QfvgW7kA9S8fljoEQuxkANYQA7IlgXbmQ4n0DrWhWmMuB4YDFDQyL8TmYhQIFtLZCo xtyt1+ywE5IAeax4FWFM96oBVSsw42Q0os7dF7cdsBNYdwYYVwVR0K5Suv4dt++ffVAI7 YFaHQ1z+gSa7GWA3JADvRuDrSqeFZAK6AV0HJguOJAVRFouqEX3Qro3m2waHDaf3J ADsgBOdBTHGhl0Vyum6+xUkANVwKqHTYqtqEx3nRF8tCL5M6wU0BrePWU4WW5ck8O yAE50Ps40FtEswJa0axolgNyoYDcCurGCOofBPTeMckkkxjCbQj3j06317jtfcatfWafyQE50E gO9EbB7CFiCieFkxyQA93IgeFdiCugNbQaaWiZl3ySA3JADRGb9pB+DaqDYZwd6Mhbah tY0JtxVEc5UDv4QALCPQXr7DCAz3WWGMVHshGPbT5MB3z9iIEckANYQA7IlgZ7igAJaAa 03Ug7IATnQMA4ooDVoessqgsV5JwfkGByQA83ggAJaw7lhhrNewt7jJbSv7Kvu4sAPArpV DrppHqg9RbrMZcDckAOyAE50FYcUEAroBXQckAOyIGGcUAB7ep/M1b/LUOeyQE5IAfkQ E9xQAGt4dwww7m7PFrmq7dUDvQeDiigNW6hyqCxXLknB+SAHJADzeCAAlorBrYCWA3J ADjSMAwpjZdmGC+Wlc/kgByQA3KgpziggnZwbpjhrJew93gJ7Sv7qrs4oIDWoOkpg8Zy5 Z4ckANYQA40gwMKaAW0AloOyAE50DAOKKA1XpphvFIgPJMDCkAOyIGe4oACWsO5YY Zzd3m0zFdvqRzoPRxQQGvQ9JRBY7lyT7IATkgB5RBAQW0AloBLQfkgBxoGACu0BovzT BeLEOeyQE5IAfkQE9xQAGt4dwww1kvYe/xEtpX9IV3cUABrUHTUwaN5co9OSAH5IAcaA YHFNAKaAW0HJADcqBhHFBAA7w0w3ixDHkmB+SAHJADPCUBBbSGc8MM5+7yaJmv3Il 50Hs4oIDWoOkpg8Zy5Z4ckANYQA40gwMKaAW0AloOyAE50DAOKKA1XpphvFIgPJMDC kAOyIGe4oACWsO5YYazXsLe4yW0r+yr7uKAAlqDppqMGsuVe3JADsgBOdAMDiiGfDAKa DkgB+RAwziggnZ4aYbxYhnyTA7IATkgB3qKawpoDeeGGc7d5dEyX72lqcd3cEABRHTU waN5co9OSAH5IAcaAYHFNAKaAW0HJADcqBhHFBAA7w0w3ixDHkmB+SAHJADPCUBB bSGc8MMZ72EvcdLaF/ZV93FAQW0Bk1PGTswk/fkgByQA3KgGRxQQCugFdByQA7IlgY ZxQAGt8dIM48Uy5JkckANYQA70FAcU0BrODTOcu8ujZb56S+VA7+GAAlqDppqMGsuVe3

Processo	3002110-15.2025.8.06.0029
	réu; III - o fato e os fundamentos jurídicos do pedido; IV - o pedido com as suas especificações; V - o valor da causa; VI - as provas com que o autor pretende demonstrar a verdade dos fatos alegados; VII - a opção do autor pela realização ou não de audiência de conciliação ou de mediação. § 1º Caso não disponha das informações previstas no inciso II, poderá o autor, na petição inicial, requerer ao juiz diligências necessárias a sua obtenção. § 2º A petição inicial não será indeferida se, a despeito da falta de informações a que se refere o inciso II, for possível a citação do réu. § 3º A petição inicial não será indeferida pelo não atendimento ao disposto no inciso II deste artigo se a obtenção de tais informações tornar impossível ou excessivamente oneroso o acesso à justiça. Art. 320. A petição inicial será instruída com os documentos indispensáveis à propositura da ação. Art. 321 do CPC). Consoante relatado, o d. magistrado a quo ordenou a intimação da parte autora (ID 26740562) para, dentre outros termos, juntar novamente procuração em razão na falha na visualização do PDF. Decorrido o prazo sem ter sido apresentado o que fora determinado, a petição inicial foi indeferida, julgando-se extinto o processo sem resolução de mérito. Em que pese o entendimento reiterado desta relatoria de que a exigência de comparecimento pessoal da parte autora à Secretaria da Vara para apresentar documento pessoal de identificação, comprovante de residência e para ratificar a outorga de procuração ao advogado, com fundamento na Recomendação n.º 01/2019/NUMOPEDE/CGJCE – atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE –, não configure exigência indispensável ao regular processamento da ação, seja porque não constitui exigência prevista em lei, seja porque tais providências podem ser averiguadas em eventual e futura instrução da causa, se for o caso, a procuração ad judicium sequer foi carreada aos autos, evidenciando falha intransponível da representação. Dessa forma, ainda que a ausência de procuração constitua vício sanável, constata-se, no caso concreto, a desídia da parte autora em regularizar a situação. O juízo a quo, com a devida cautela, concedeu prazo para que o apelante apresentasse instrumento procuratório válido, requisito essencial à representação processual; entretanto, diante da inércia em adotar qualquer providência, resta evidenciado o desinteresse da parte em sanar o vício, impondo-se a extinção do processo, nos termos do art. 485, inciso I, do CPC. Vejamos o que a jurisprudência pátria apresenta em casos similares:

Processo	3002110-15.2025.8.06.0029
	medium;"> APELAÇÃO CÍVEL - AÇÃO ORDINÁRIA - DETERMINAÇÃO DE JUNTADA DE PROCURAÇÃO ATUALIZADA, COMPROVANTE DE ENDEREÇO E COMPROVANTE DA NEGATIVAÇÃO ATUALIZADO - DESNECESSIDADE - DESCUMPRIMENTO - SENTENÇA MANTIDA. - A petição inicial será instruída com os documentos indispensáveis à propositura da ação, sob pena de seu indeferimento. - O juiz, ao verificar que a petição inicial não preenche os requisitos dos arts. 319 e 320 ou que apresenta defeitos e irregularidades capazes de dificultar o julgamento de mérito, determinará que o autor, no prazo de 15 (quinze) dias, a emende ou a complete, indicando com precisão o que deve ser corrigido ou completado. - Se o autor não cumprir a diligência, o juiz indeferirá a petição inicial. (TJMG - Apelação Cível 1.0000.19.031591-1/001, Relator(a): Des.(a) Pedro Aleixo , 16ª CÂMARA CÍVEL, julgamento em 19/06/2019, publicação da súmula em 24/06/2019). (Grifou-se). </p><p style="text-align: justify; padding-left: 120px;">
 </p><p style="text-align: justify; padding-left: 120px;"> EMENTA: APELAÇÃO CÍVEL - AUSÊNCIA DE PROCURAÇÃO OUTORGADA AO SUBSCRITOR DO RECURSO - INTIMAÇÃO PARA REGULARIZAÇÃO NÃO ATENDIDA - RECURSO NÃO CONHECIDO - AÇÃO DE COBRANÇA - RESCISÃO DE CONTRATO DE REPRESENTAÇÃO COMERCIAL - RETENÇÃO NA FONTE DO IMPOSTO DE RENDA SOBRE O VALOR DA INDENIZAÇÃO PREVISTA NO ART. 27, "J", DA LEI 4.886/65 - NÃO CABIMENTO. - A procuração é documento indispensável para a atuação do causídico em juízo. Determinada a intimação da parte para regularizar sua representação processual na apelação, sua inércia é causa suficiente para o não conhecimento do recurso, por ausência de requisito extrínseco de admissibilidade. - A indenização recebida pelos representantes comerciais, quando da rescisão contratual imotivada, não está sujeita à incidência do imposto de renda, por força do disposto no art. 70, § 5º, da Lei nº 9.430/96, na medida em que o enunciado desta norma legal estipula a exclusão da base de cálculo do imposto das quantias devidas a título de reparação patrimonial, como na espécie prevista no art. 27, j, da Lei nº 4.886/65. (TJMG - Apelação Cível 1.0702.14.051259-2/001, Relator(a): Des.(a) Tiago Pinto , 15ª CÂMARA CÍVEL, julgamento em 13/12/2018, publicação da súmula em 25/01/2019). (Grifou-se). </p><p style="text-align: justify;"> &#160; </p><p style="text-align: justify; text-indent: 8%;"> Nesse sentido, seguem julgados deste e. Sodalício, in verbis: </p><p style="text-align: justify;"> &#160; </p><p style="text-align: justify; padding-left: 120px;"> APELAÇÃO CÍVEL AÇÃO CIVIL EX DELICTOCANCELAMENTO DE PROTESTO INDEVIDO DECRETÇÃO DE REVELIA E JULGAMENTO DE PROCEDÊNCIA PRETENSÃO DE REFORMA DESCABIMENTO CONTESTAÇÃO DESACOMPANHADA DE PROCURAÇÃO PROMOVIDO INTIMADO PESSOALMENTE PARA SANAR A IRREGULARIDADE NA REPRESENTAÇÃO PROCESSUAL INÉRCIA REVELIA CONFIRMADA PEDIDOS SUBSIDIÁRIOS INDEFERIDOS RECURSO CONHECIDO E DESPROVIDO SENTENÇA CONFIRMADA. 1. O recurso apelatório visa à reforma da sentença de primeira instância que decretou a revelia do promovido e julgou procedente o pedido autoral, condenando a parte ré ao pagamento dos danos materiais suportados pelo autor, na importância total de R\$133.573,29 (cento e trinta e três mil, quinhentos e setenta e três reais e vinte e nove centavos), com os acréscimos de estilo. 2. Trata-se, na origem, de Ação Civil ex delicto, baseada nos artigos 63 a 67 do Código de Processo Penal, que trata da responsabilidade civil pela condenação na esfera criminal. Na espécie, o promovido/apelante foi condenado em ação penal transitada em julgado (processo nº 0209061-36.2012.8.26.0001), na qual foi comprovada conduta criminal do réu, que resultou em prejuízo para o autor, no montante de R\$75.000,00 (setenta e cinco mil reais), conforme cópias do aludido processo, juntadas às fls. 19-49. Nesse contexto, estabelecida a responsabilidade civil do apelante pela condenação na esfera criminal, tem ele o dever de indenizar o recorrido pelo dano material suportado pela vítima. 3. Alega o apelante, basicamente, a nulidade da sentença por suposta irregularidade processual na decretação de sua revelia. De acordo com o artigo 76 do Código de Processo Civil, verificada a incapacidade processual ou a irregularidade da representação da parte, o juiz suspenderá o processo e designará prazo razoável para que seja sanado o vício, sob pena de o réu ser declarado revel. 4. Na hipótese vertente, verifica-se que tanto o autor foi intimado pessoalmente (fl. 126 por mandado), como o advogado constante da petição de defesa foi intimado pelo DJ, para regularizar a representação processual, juntando a procuração ad judícia, entretanto, a parte permaneceu inerte. 5. É cediço que, de acordo com o artigo 104 e seus parágrafos do Código de Processo Civil, o advogado pode ser admitido a atuar em juízo sem procuração, com o

Processo	3002110-15.2025.8.06.0029
	objetivo de evitar a preclusão, decadência ou prescrição, ou para realizar um ato considerado urgente. No entanto, ele deverá apresentar a procuração no prazo de 15 dias, sob pena de o ato ser considerado inválido e de o advogado ser responsabilizado pelas despesas e pelos danos causados. Nesse contexto, a decretação da revelia, assim como a ineficácia dos atos, é medida que se impõe. 6. Subsidiariamente, o apelante roga pela nulidade da audiência de conciliação e pelo retorno dos autos à origem para retomar aquela fase processual. Sem razão. Tratando-se de audiência conciliatória, não se fazia obrigatória a presença de advogado, na medida em que o autor poderia firmar acordo com a parte autora independentemente da presença do advogado . 7. A contestação, por seu turno, por não ter sido assinada por advogado constituído, trata-se de ato ineficaz, o que equivale à não apresentação da peça, corroborando com a decretação da revelia. 8. Por fim, não assiste razão ao recorrente quanto ao pedido subsidiário de reforma da sentença ao argumento de que a correção monetária foi aplicada sobre valor divergente do apresentado no pedido inicial, na medida em que a divergência do valor corresponde tão somente à atualização monetária desde o efetivo prejuízo do autor até a propositura da presente ação civil, após o trânsito em julgado da ação penal. 9. Recurso conhecido e desprovido. Sentença confirmada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, unanimemente, em conhecer do recurso, negando-lhe provimento, nos termos do voto da relatora. (TJ-CE - Apelação Cível: 02137637320228060001 Fortaleza, Relator.: MARIA DE FÁTIMA DE MELO LOUREIRO, Data de Julgamento: 18/12/2024, 2ª Câmara Direito Privado, Data de Publicação: 18/12/2024). (Grifou-se). ¶160 </p> <p style="text-align: justify; padding-left: 120px;"> PROCESSO CIVIL. APELAÇÃO CÍVEL. AÇÃO DE EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. CONCESSÃO DE OPORTUNIDADE DE EMENDA À PETIÇÃO INICIAL. INÉRCIA DA PARTE AUTORA. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO (CPC DE 1973, ART. 267, I, C/C 284, PARÁGRAFO ÚNICO). SENTENÇA MANTIDA. RECURSO A QUE SE NEGA PROVIMENTO. I – Sendo possível a emenda da inicial o juiz deve propiciá-la ao autor, sendo-lhe vedado indeferir, desde logo, a petição inicial. "in Código de Processo Civil Comentado e Legislação Extravagante. 7ª. ed. Revista dos Tribunais: São Paulo, 2007, pág 553)". II – Na espécie, infere-se da análise dos autos, que a parte promovente foi regularmente intimada, antes da citação do réu, com o intuito de emendar a peça vestibular, não atendendo, entretanto, a determinação judicial. Logo o indeferimento do pedido é medida que se impõe. III – Apelação conhecida e improvida. Relator (a): FRANCISCO BEZERRA CAVALCANTE; Comarca: Fortaleza; Órgão julgador: 12ª Vara Cível; Data do julgamento: 03/09/2019; Data de registro: 04/09/2019. (Grifou-se). </p> <p style="text-align: justify;"> ¶160 </p> <p style="text-align: justify; text-indent: 8%;"> Assim, conclui-se que, embora a autora tenha sido devidamente intimada para trazer aos autos o instrumento procuratório, deixou de cumprir a determinação judicial e não apresentou o documento em momento posterior, inclusive quando da propositura da presente apelação. Logo, o indeferimento da petição inicial é medida que se impõe, haja vista o disposto no artigo 321, parágrafo único, do CPC. </p> <p style="text-align: justify; text-indent: 8%;"> Diante de todo o exposto, CONHEÇO do recurso de apelação, para NEGAR-LHE PROVIMENTO, mantendo incólumes os termos da sentença recorrida. </p> <p style="text-align: justify; text-indent: 8%;"> Considerando o desprovido do recurso interposto, majoro os honorários advocatícios, em sede recursal, para 12% (doze por cento) do valor atualizado da causa, ficando sua exigibilidade suspensa em virtude da concessão da gratuidade judiciária, nos termos do art. 98, §3º do Código de Processo Civil. </p> <p style="text-align: justify; text-indent: 8%;"> É como voto. </p> <p style="text-align: justify; text-indent: 8%;"> Fortaleza, data da assinatura digital. ¶160</p> <p> ¶160</p> <p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p> <p align="center"> Relator </p> <p> ¶160</p> <p align="center;"> ¶160</p>

Processo	3002110-15.2025.8.06.0029
	medium;"> #160; </p>
Processo	3001223-73.2025.8.06.0112
Número de ordem	188
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Tarifas
Polo ativo	MARILEIDE FERREIRA SANTOS
Advogado(s) - Polo ativo	GLAUBER ALBIERI VIEIRA - (PR55455-A)
Polo passivo	BANCO VOTORANTIM S.A.
Advogado(s) - Polo passivo	ANTONIO DE MORAES DOURADO NETO - (PE23255-A)
Terceiros	Não informado

Processo	3001223-73.2025.8.06.0112
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlx8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBl4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacnJfWcSwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmCl3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBttau2dl/XHeucKd7W0vVrDwGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/DyookK8dTUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYWcnODHQM+5 PxxH6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOW1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYGE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc3tLV1D/CfYWcnODHQM+5 qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfn1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssADLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGd425NbR9LZQW6JzT9CdPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY4nkdUvsnXNkIX410JEZmRSDZIFMjFwRvMVG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

Processo	3001223-73.2025.8.06.0112
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Processo	3001223-73.2025.8.06.0112
	 PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO medium;"> PROCESSO: 3001223-73.2025.8.06.0112 font-family: "times new roman"; times;"> APELAÇÃO CÍVEL (198) APELANTE: MARILEIDE FERREIRA SANTOS APELADO: BANCO VOTORANTIM S.A. EMENTA: RECURSO DE APELAÇÃO. AÇÃO DE REVISÃO DE CONTRATO C/C RESTITUIÇÃO DE VALORES. SENTENÇA DE IMPROCEDÊNCIA. ALEGAÇÃO DE ABUSIVIDADE DAS CLÁUSULAS REFERENTES À CONTRATAÇÃO DE SEGURO PROTEÇÃO FINANCEIRA E COBRANÇA DE TARIFA DE AVALIAÇÃO DO BEM. ABUSIVIDADE NÃO CONSTATADA. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Recurso de apelação cível interposto contra sentença de Id 26774389, que julgou improcedente a Ação de Revisão Contratual c/c Restituição de Valores, proposta pela ora apelante. II. QUESTÃO EM DISCUSSÃO 2. A questão em

Processo	3001223-73.2025.8.06.0112
	discussão é a possível abusividade das cláusulas contratuais relativas ao seguro proteção financeira e à tarifa de avaliação do bem. III. RAZÕES DE DECIDIR 3. Em exame à prova documental produzida, extrai-se que houve a oportunidade de escolha da contratação do seguro proteção financeira pela consumidora/apelante, eis que o contrato foi firmado em apartado, em instrumento de adesão próprio. Nele, inclusive, há a declaração de que a contratação é opcional e que é facultado à segurada o cancelamento a qualquer tempo. Logo, conclui-se que não houve venda casada e que a cobrança não é abusiva, rejeitando, por consectário, sua restituição à apelante. 4. A orientação contida na tese firmada no Tema Repetitivo 958 do c. STJ é pela validade da contratação da tarifa de avaliação do bem, ressalvado o reconhecimento de abusividade da cobrança por serviço não efetivamente prestado e a possibilidade de controle da onerosidade excessiva, em cada caso concreto. Na hipótese em tela, o serviço de avaliação do bem está comprovado pelo documento de Id 26774376, fls. 20 e 22, no qual consta, inclusive, a foto do veículo avaliado. Portanto, resta justificada a cobrança da tarifa, não havendo, também, qualquer indício de onerosidade excessiva quanto ao valor do referido encargo. IV. DISPOSITIVO 5. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso de apelação e a ele negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO MARILEIDE FERREIRA SANTOS REVISÃO CONTRATUAL BANCO VOTORANTIM S/A RELAÇÃO ABUSIVAS COBRANÇA DE SEGURO PRESTAMISTA E DE TARIFA DE AVALIAÇÃO DO BEM PELO QUE REQUER A DEVOLUÇÃO EM DOBRO DAS QUANTIAS PAGAS PELAS CITADAS RUBRICAS.

Processo	3001223-73.2025.8.06.0112
	correspondente bancário, em contratos celebrados a partir de 25/02/2011, data de entrada em vigor da Res.-CMN 3.954/2011, sendo válida a cláusula no período anterior a essa resolução, ressalvado o controle da onerosidade excessiva; 2.3. Validade da tarifa de avaliação do bem dado em garantia, bem como da cláusula que prevê o ressarcimento de despesa com o registro do contrato, ressalvadas a: 2.3.1. abusividade da cobrança por serviço não efetivamente prestado; e a 2.3.2. possibilidade de controle da onerosidade excessiva, em cada caso concreto. Portanto, restou consolidado o entendimento da validade da contratação da tarifa de avaliação do bem, ressalvado o reconhecimento de abusividade da cobrança por serviço não efetivamente prestado e a possibilidade de controle da onerosidade excessiva, em cada caso concreto. Na hipótese em tela, o serviço de avaliação do bem está comprovado pelo documento de Id 26774376, fls. 20 e 22, no qual consta, inclusive, a foto do veículo avaliado. Desse modo, entende-se justificada a cobrança da tarifa, não havendo, também, qualquer indício de onerosidade excessiva quanto ao valor do referido encargo. Desse modo, entende-se justificada a cobrança da tarifa, não havendo, também, qualquer indício de onerosidade excessiva quanto ao valor do referido encargo. Nesse sentido, colho da fonte jurisprudencial deste e. Tribunal de Justiça (grifo nosso): DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO BANCÁRIO C/C INDENIZAÇÃO. CONTRATO DE FINANCIAMENTO. TARIFA DE CADASTRO. TARIFAS DE REGISTRO E AVALIAÇÃO DO BEM. SEGURO PRESTAMISTA. VALIDADE. AUSÊNCIA DE ABUSIVIDADE DEMONSTRADA. DANO MORAL NÃO CONFIGURADO. SENTENÇA MANTIDA. RECURSO DESPROVIDO. I. CASO EM EXAME Apelação Cível interposta por Alexandre Sávio Braga Soares contra sentença da 39ª Vara Cível da Comarca de Fortaleza/CE que, nos autos da Ação Rescisória c/c Indenização ajuizada em face de Aymoré Crédito, Financiamento e Investimento S/A, julgou improcedentes os pedidos de declaração de abusividade de cláusulas contratuais, restituição em dobro de valores pagos a título de encargos supostamente indevidos e condenação em danos morais. II. QUESTÃO EM DISCUSSÃO Há três questões em discussão: (i) definir se é abusiva a cobrança de tarifa de cadastro, tarifas de registro de contrato e de avaliação de bem no contrato de financiamento firmado; (ii) apurar se houve venda casada na contratação de seguro prestamista; e (iii) verificar a configuração de dano moral em razão da suposta abusividade das cobranças impugnadas. III. RAZÕES DE DECIDIR A cobrança da tarifa de cadastro é válida para contratos firmados após a vigência da Resolução CMN 3.518/2007, desde que realizada no início do relacionamento entre o consumidor e a instituição financeira, consoante precedentes do STJ e Súmula 566. As tarifas de registro e de avaliação do bem são legítimas, conforme a tese firmada no Tema 958/STJ, sendo lícita sua cobrança quando há previsão contratual, efetiva prestação do serviço e inexistência de onerosidade excessiva, o que restou demonstrado no caso concreto. O seguro prestamista contratado pelo apelante não caracteriza venda casada, à luz da tese firmada no Tema 972/STJ, pois consta como cláusula optativa no contrato, com adesão expressa e ausência de prova de imposição ou

Processo	3001223-73.2025.8.06.0112
	restrição à liberdade de escolha do consumidor quanto à seguradora. A ausência de abusividade nas cobranças afastou a pretensão de restituição em dobro dos valores pagos, e a inexistência de prova de dano moral ou conduta ilícita por parte da instituição financeira inviabiliza a condenação por danos extrapatrimoniais. Mantida a sentença de improcedência, majorando-se os honorários advocatícios, nos termos do art. 85, § 11, do CPC, permanecendo suspensa sua exigibilidade em razão da concessão da justiça gratuita. IV. DISPOSITIVO E TESE Recurso desprovido. Tese de julgamento: É válida a cobrança da tarifa de cadastro em contrato bancário firmado após 30/04/2008, desde que realizada no início do relacionamento entre o consumidor e a instituição financeira. São legítimas as cobranças de tarifas de registro de contrato e avaliação de bem, desde que previstas contratualmente, efetivamente prestadas e não caracterizada a onerosidade excessiva. A contratação de seguro prestamista não configura venda casada quando se verifica a opção expressa e voluntária do consumidor, sem imposição de restrição à escolha da seguradora. A ausência de abusividade na contratação e cobrança dos encargos afasta o direito à restituição em dobro e à indenização por dano moral. Dispositivos relevantes citados: CPC/2015, arts. 85, § 11, e 98, § 3º; Resolução CMN 3.518/2007. Jurisprudência relevante citada: STJ, REsp 1.251.331/RS e 1.255.573/RS, Rel. Min. Maria Isabel Gallotti, 2ª Seção, j. 28.08.2013 (Tema 725); STJ, REsp 1.578.553/SP, Rel. Min. Paulo de Tarso Sanseverino, 2ª Seção, j. 28.11.2018 (Tema 958); STJ, REsp 1.639.320/SP e 1.639.259/SP, Rel. Min. Paulo de Tarso Sanseverino, 2ª Seção, j. 12.12.2018 (Tema 972). ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, unanimemente, em conhecer do recurso interposto para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data assinatura eletrônica. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (Apelação Cível - 0264276-11.2023.8.06.0001, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 06/06/2025, data da publicação: 06/06/2025) APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO DE FINANCIAMENTO DE VEÍCULO. JULGAMENTO DE IMPROCEDÊNCIA. PRETENSÃO DE REFORMA. TARIFAS DE REGISTRO DE CONTRATO, AVALIAÇÃO DE VEÍCULO E DE CADASTRO. VALIDADE. TAXA DE JUROS REMUNERATÓRIOS. ABUSIVIDADE NÃO EVIDENCIADA NO CASO CONCRETO. CUSTO EFETIVO TOTAL > CET. INCLUSÃO DE TARIFAS, IMPOSTOS, SEGUROS E OUTRAS DESPESAS. RECURSO CONHECIDO E IMPROVIDO. SENTENÇA MANTIDA. 1. Insurge-se a apelante contra a sentença de improcedência do pedido de revisão do contrato de financiamento bancário para aquisição de veículo. 2. Tarifas de Registro de Contrato e de Avaliação de Veículo. Nos termos do entendimento lançado no Tema Repetitivo 958/STJ, ao julgar o Recurso Especial 1.578.553, sob o procedimento dos recursos repetitivos, não há ilegalidade na cobrança das Tarifas de Registro de Contrato e de Avaliação de Veículo, só se impondo a restituição do correspondente valor ao consumidor se demonstrado, no caso concreto, que não houve a efetiva prestação do serviço ou se for constatada a onerosidade excessiva na cobrança, pois, em tais hipóteses, estará configurada a abusividade. 3. Na espécie, tem-se que o serviço de avaliação do bem foi efetivamente prestada, conforme se comprova pelo Termo de Avaliação de Veículo de fl. 209. O mesmo se diga quanto ao serviço de registro de contrato, tendo em vista que o gravame foi registrado no órgão de trânsito, passando a constar nos dados do veículo o gravame na data da contratação (fl. 233). Por sua vez, não foi demonstrada a onerosidade excessiva da tarifa, cobrada a título de registro de contrato, no montante de R\$351,25 (trezentos e cinquenta e um reais e vinte e cinco centavos), nem quanto à tarifa de avaliação do veículo, no importe de R\$150,00 (cento e cinquenta reais) (fl. 197, cláusulas B.9 e D.2). Cobranças mantidas. 4. Tarifa de Cadastro. O Superior Tribunal de Justiça, no julgamento do AgRg no AREsp 357178/PR, Relator Ministro Ricardo Villas Boas Cueva, DJe 30/10/2014, deixou ratificado o entendimento de que "É possível a cobrança das tarifas de abertura de crédito (TAC) e emissão de carnê (TEC) nos contratos celebrados até 30/4/2008. Com a entrada em vigor da Resolução CMN 3.518/2007, em 30/4/2008, permanece válida a Tarifa de Cadastro expressamente tipificada em ato normativo padronizador da autoridade monetária, a qual somente pode ser cobrada no início do relacionamento entre o consumidor e a instituição financeira, salvo demonstração de efetiva abusividade no caso concreto." Como o presente contrato bancário foi firmado em 22/12/2021, é válida a tarifa de cadastro contratada a R\$870,00 (oitocentos e setenta

Processo	3001223-73.2025.8.06.0112
	reais), ademais, não restou demonstrada a discrepância do valor cobrado com a média em contratos da mesma espécie. 5. Taxa de Juros. No CET- Custo Efetivo Total, são incluídas as tarifas, tributos, taxas, seguros e outras despesas e, logicamente, seu percentual é maior que a taxa mensal de juros estipulada no contrato, o que não torna a sua cobrança ilícita. Destarte, ao alegar cobrança de juros acima dos contratados, o apelante levou em consideração apenas os juros mensais pactuados, esquecendo-se de considerar os demais encargos. 6. Recurso conhecido e improvido. Sentença inalterada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso interposto e negar-lhe provimento, nos termos do voto da relatora. (Apelação Cível - 0201122-95.2022.8.06.0084, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 01/11/2023, data da publicação: 01/11/2023). Assim sendo, inexistindo abusividade quanto à tarifa impugnada, impõe-se o reconhecimento da validade da cobrança. 3 – Dispositivo Diante do exposto, CONHEÇO do apelo interposto pela autora e a ele NEGO PROVIMENTO, permanecendo inalterados os termos da sentença objurgada. Com o resultado, majoro os honorários advocatícios sucumbenciais para 12% (doze por cento) do valor da causa, conforme art. 85, § 11, CPC, restando observada a suspensão da exigibilidade dessa condenação, por ser a vencida beneficiária da justiça gratuita (art. 98, § 3º, CPC). É como voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator

Processo	3001223-73.2025.8.06.0112
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Processo	3001055-60.2025.8.06.0051
Número de ordem	189
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	ELIZA SERAFIM RIBEIRO
Advogado(s) - Polo ativo	FRANCISCO REGIOS PEREIRA NETO - (CE25034-A)
Polo passivo	BANCO PAN S.A.
Advogado(s) - Polo passivo	ROBERTO DOREA PESSOA - (BA12407-A)
Terceiros	Não informado

Processo	3001055-60.2025.8.06.0051
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSY0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VjE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RDl82dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWvZtqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmGFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDjT9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTuPljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LTl9z2wZ6B+iP9WeVIWtYJQMh0z2DdvrYlZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOW1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUW2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJElVfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY410JezMRUZOZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	3001055-60.2025.8.06.0051
	roman&quot;, times;"/>PODER JUDICIÁRIO tribunal de justiça gabinete de desembargador patrocínio processo: 3001055-60.2025.8.06.0051 apelação cível apelante: eliza serafim ribeiro apelado: banco pan s.a. ementa: direito civil, processual civil e do consumidor. apelação cível. ação declaratória de inexistência de vínculo contratual de empréstimo consignado. fracionamento indevido de demandas similares. abuso de direito. litigância abusiva. indeferimento da inicial por ausência de interesse processual. recurso conhecido e desprovido. i. caso em exame: 1. apelação cível interposta contra a sentença que indeferiu a petição inicial da ação anulatória de vínculo contratual de empréstimo consignado originária por ausência de interesse processual. ii. questão em discussão: 2. o cerne da controvérsia consiste em examinar se a demanda proposta pela ora Recorrente consubstancia litigância abusiva, ante a constatação do fracionamento desnecessário de ações similares pela Autora. iii. razões de decidir: 3. o juízo originário apurou a existência, na mesma comarca, de 5 (cinco) ações da Promovente/Apelante veiculando pedidos semelhantes (inexistência do contrato e do respectivo débito), todas contra o Banco apelado e propostas no mesmo período.

Processo	3001055-60.2025.8.06.0051
	justify;" dir="ltr"> 4. Em vez de reunir as ações apontadas em um único feito, a ora Apelante desmembrou cada um dos contratos em processos distintos, apesar de todos eles terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Isso consubstanciou flagrante desprestígio aos princípios da cooperação, da boa-fé, da economia e da eficiência processuais. </p><p style="text-align: justify;" dir="ltr"> 5. Apesar de cada demanda tratar de contrato distinto, impõe-se que seja evitado o fracionamento desnecessário de ações que venha a gerar multiplicidade injustificada de demandas praticamente iguais, sob pena de se caracterizar abuso do direito de demandar judicialmente (art. 5º do CPC c/c art. 187 do Código Civil). </p><p style="text-align: justify;" dir="ltr"> 6. Não se mostra acertado o acionamento exacerbado e desmotivado do Poder Judiciário, com o ajuizamento de ações com o mesmo teor e finalidade, quando se poderia fazer em um único processo. </p><p style="text-align: justify;" dir="ltr"> 7. As ações judiciais em referência veiculam pedido de indenização por danos morais, não sendo adequado o exame individualizado do respectivo pleito, considerando-se que as condutas apontadas em cada processo tendem a consubstanciar uma só lesão extrapatrimonial. Nesse contexto, a individualização processual do pedido de reparação é apta a levar o juízo a erro, uma vez que a quantificação do dano (que é um só) deve considerar o cenário geral da situação do Autor. </p><p style="text-align: justify;" dir="ltr"> 8. As partes têm o dever legal de agir honestamente, de boa-fé, visando a uma solução justa e célere da situação posta em juízo. Nessa perspectiva, o fracionamento indevido de ações representa verdadeiro abuso do direito processual. </p><p style="text-align: justify;" dir="ltr"> 9. Na repressão à litigância abusiva, o julgador deverá empregar a medida que melhor se adequar à finalidade de impedir o objetivo ilícito das partes. No caso do fracionamento indevido de ações similares, a extinção processual sem resolução do mérito traduz uma opção razoável e compatível com esse intuito, uma vez que desestimula a multiplicação de ações judiciais sem ocasionar prejuízo ao exercício do direito de ação, ante a possibilidade de propositura de nova demanda compatível com a boa-fé e o princípio cooperativo. </p><p style="text-align: justify;" dir="ltr"> 10. Sob esse prisma, não merece reproche o entendimento manifestado pelo magistrado de primeiro grau, sendo adequada a aplicação dos arts. 330, III e 485, VI, do CPC. </p><p style="text-align: justify;" dir="ltr"> IV. DISPOSITIVO:&#160; </p><p style="text-align: justify;" dir="ltr"> 11. Recurso conhecido e desprovido. </p><p style="text-align: justify;" dir="ltr">
 </p><p style="text-align: justify;" dir="ltr"> ACÓRDÃO:&#160; Vistos, relatados e discutidos estes autos, acorda a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação para lhe negar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p style="text-align: justify;" dir="ltr">
 </p><p style="text-align: center;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;" dir="ltr"> Presidente/Relator </p><p style="text-align: center;" dir="ltr">
 </p><p style="text-align: center;" dir="ltr"> RELATÓRIO </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Trata-se de recurso de apelação interposto por Eliza Serafim Ribeiro contra a sentença prolatada pelo Juízo da 2ª Vara da Comarca de Boa Viagem nos autos da Ação Declaratória de Inexistência de Vínculo Contratual de Empréstimo Consignado, que fora proposta pela ora Apelante em desfavor de Banco Pan S.A. </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> </p>

Processo	3001055-60.2025.8.06.0051
	&#160; &#160; Na sentença (ID 26774920), o d. Juízo a quo indeferiu a petição inicial, extinguindo o processo sem resolução de mérito sob fundamento de ausência de interesse processual, conforme os arts. 330, III, 485, VI, 80, III e 81, todos do Código de Processo Civil, bem como no art. 5º, inciso LV, da Constituição Federal e na Recomendação nº 159/2024 do CNJ. O fundamento central para a decisão foi a ausência de interesse de agir da autora, relacionada ao fato de que ajuizou ações similares contra o Banco em um curto espaço de tempo. O magistrado argumentou que as ações deveriam ter sido reunidas em um único processo, dada a semelhança nos pedidos e a identidade das partes, para evitar a morosidade judicial e o abuso do direito de ação. &#160; &#160; Irresignada, a Autora interpôs recurso de apelação (ID 26774932), defendendo que a decisão de extinguir o processo foi equivocada, uma vez que o Promovente apresentou toda a documentação necessária para sustentar seus pedidos, conforme previsto no artigo 319 do CPC. Argumenta que o fracionamento das ações era cabível, pois as demandas tratam de contratos diversos; e sustenta que a decisão violou os princípios do acesso à Justiça e do devido processo legal, previstos no artigo 5º, XXXV e LV, da Constituição Federal. &#160; &#160; Em contrarrazões recursais (ID 26774936), o Banco Pan S.A defende a manutenção da sentença e pugna pelo desprovemento do recurso. &#160; &#160; É o relatório. &#160; VOTO &#160; &#160; Consoante relatado, o presente recurso configura insurgência contra a sentença que indeferiu a petição inicial da ação declaratória de inexistência de débito originária por ausência de pressupostos de constituição e de desenvolvimento válido e regular do processo. Na referida sentença, entendeu o d. Juízo a quo que a demanda consubstancia litigância abusiva, ante a constatação do fracionamento desnecessário de ações similares pela autora. &#160; &#160; Analizando-se os autos, verifica-se que o juízo originário apurou a existência, na mesma comarca, de 5 (cinco) ações da mesma autora veiculando pedidos semelhantes (inexistência do contrato e do respectivo débito), todas contra o mesmo Banco e propostas no mesmo período. &#160; &#160; Nota-se, inequivocamente, que tais ações têm objeto e causa de pedir idênticos entre si, pois a &#160; &#160; lega a recorrente, em síntese, não ter celebrado os respectivos contratos, razão pela qual requer a restituição dos valores indevidamente descontados, bem como indenização pelos danos morais resultantes da conduta da instituição promovida. Porém, em vez de reunir as causas de pedir e os pedidos em um único feito, a apelante desmembrou cada um dos contratos em processos distintos, apesar de todos eles terem identidade e afinidade no que pertine à causa de pedir e aos pedidos, como muito bem delimitou o d. juízo singular. &#160; &#160; Ressalte-se que a reunião desses processos em um só prestigiaria o princípio da cooperação, da boa-fé, da economia e da eficiência processuais, o que não foi observado pela parte ora recorrente. &#160; &#160; Sendo assim,

Processo	3001055-60.2025.8.06.0051
	mostra-se correto o decisum recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos, para que se evitem julgamentos contraditórios sobre a mesma situação. Para tais casos, assim prevê o art. 55, §3º, do CPC:
 </p> <p style="text-align: justify; padding-left: 150px;" dir="ltr"> Art. 55. Reputam-se conexas 2 (duas) ou mais ações quando lhes for comum o pedido ou a causa de pedir. </p> <p style="text-align: justify; padding-left: 150px;" dir="ltr"> [...] </p> <p style="text-align: justify; padding-left: 150px;" dir="ltr"> § 3º Serão reunidos para julgamento conjunto os processos que possam gerar risco de prolação de decisões conflitantes ou contraditórias caso decididos separadamente, mesmo sem conexão entre eles. </p> <p style="text-align: justify;" dir="ltr"> É de se salientar que, apesar de cada demanda tratar de contrato distinto, impõe-se que seja evitado o fracionamento desnecessário de ações que venha a gerar multiplicidade injustificada de demandas praticamente iguais, sob pena de se caracterizar abuso do direito de demandar judicialmente. Nos termos da norma do art. 187 do Código Civil, também comete ato ilícito o titular de um direito que, ao exercê-lo, excede manifestamente os limites impostos pelo seu fim econômico ou social, pela boa-fé ou pelos bons costumes. </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Com efeito, as partes têm o dever legal de agir honestamente, de boa-fé, visando a uma solução justa e célere da situação posta em juízo. Nessa perspectiva, o fracionamento indevido de ações representa verdadeiro abuso do direito processual, especialmente porque a Autora, quando utiliza esse mecanismo, postula a justiça gratuita, e, sem a concessão desse benefício, dificilmente optaria pela multiplicidade de demandas. </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> A par disso, as ações judiciais em referência veiculam pedido de indenização por danos morais, não sendo adequado o exame individualizado do respectivo pleito, considerando-se que as condutas apontadas em cada processo tendem a consubstanciar uma só lesão extrapatrimonial. Nesse contexto, a individualização processual do pedido de reparação é apta a levar o juízo a erro, uma vez que a quantificação do dano (que é um só) deve considerar o cenário geral da situação da Autora. </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Um dos resultados negativos de condutas como tal é a sobrecarga massiva e desnecessária das unidades jurisdicionais, prejudicando o adequado desempenho das funções jurisdicionais. Esse cenário poderia ser evitado caso os promoventes e respectivos causídicos optassem pela reunião de demandas similares em uma só, facilitando a apreciação adequada e uniforme da situação vivenciada pelo indivíduo atingido e empregando economia dos recursos empregados pelo Poder Judiciário. </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Ao afastar uma conduta cooperativa e buscar o fracionamento injustificado de ações análogas, usualmente no intento de multiplicar também a reparação moral, o jurisdicionado incorre em conduta ilícita, consubstanciada no abuso do direito processual, figura fundamentada na interpretação conjunta do art. 5º do CPC e do art. 187 do Código Civil. </p> <p style="text-align: justify; text-indent: 8%;" dir="ltr"> Vale destacar que a sanção voltada para a repressão do abuso do direito processual é atípica, pois a litigância abusiva é polimórfica, havendo, portanto, diversas formas de se apresentar. Por tal motivo, pode-se considerar o seu suporte legal na norma do art. 142 do CPC: </p> <p style="text-align: justify; padding-left: 150px;" dir="ltr">
 </p> <p style="text-align: justify;" dir="ltr"> Art. 142. Convencendo-se, pelas circunstâncias, de que autor e réu se serviram do processo para praticar ato simulado ou conseguir fim vedado por lei, o juiz proferirá decisão que impeça

Processo	3001055-60.2025.8.06.0051
	os objetivos das partes, aplicando, de ofício, as penalidades da litigância de má-fé. [Grifou-se]. &#160; Dessa forma, o Julgador deverá empregar a sanção que melhor se adequar à finalidade de impedir o objetivo ilícito das partes. No caso do fracionamento indevido de ações similares, a extinção processual sem resolução do mérito traduz uma medida razoável e compatível com esse intuito, uma vez que desestimula a multiplicação de ações judiciais sem ocasionar prejuízo ao exercício do direito de ação, ante a possibilidade de proposição de nova demanda compatível com a boa-fé e o princípio cooperativo. &#160; Nessa toada, manifesto minha concordância com o entendimento exarado pelo d. Juízo a quo em relação ao prejuízo da conduta adotada pela Requerente/Apelante em relação a princípios basilares para a ordem jurídica, como a razoável duração do processo, a boa-fé, a eficiência e a economia processuais. Não se mostra acertado o acionamento exacerbado e desmotivado do Poder Judiciário, com o ajuizamento de ações com o mesmo teor e finalidade, quando se poderia fazer em um único processo. &#160; Vale dizer, para cada contrato, foi ajuizada uma nova ação, quando, na verdade, os pedidos e as causas de pedir deveriam ser concentradas em apenas uma demanda, inclusive porque envolvem pedido de indenização por danos morais, cujo dano, por óbvio, é único. &#160; Repiso que o fato de as demandas ajuizadas pela Autora/Apelante discutirem contratos diversos não é suficiente para afastar a conexão, já que todas as ações partem exatamente do pressuposto de que a Autora foi vítima de descontos indevidos realizados pela parte promovida e que, a partir disso, pretende a reparação. &#160; Sob esse prisma, não merece reproche o entendimento manifestado pelo magistrado de primeiro grau, sendo adequada a aplicação dos arts. 330, III e 485, VI, do CPC. Registro que, em casos análogos ao presente, a jurisprudência desta e. Corte tem manifestado o raciocínio ora explanado, consoante ilustram as seguintes ementas [grifo nosso]: &#160; DIREITO CIVIL, PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. O cerne da controvérsia consiste em verificar o interesse de agir do autor, ora apelante, dado o fracionamento de ações e suposto abuso no direito de demandar. 2. Inicialmente, tem-se relação de consumo, figurando o promovente/apelante como consumidor e o banco/apelado como fornecedor de serviços, sujeito à eventual responsabilização civil, conforme os arts. 12 e 14 do CDC. 3. Do exame dos autos, nota-se que o autor ajuizou 17 (dezessete) ações anulatórias de débito c/c indenização por danos materiais e morais contra diferentes instituições financeiras, muitas delas contra o banco apelado, alegando, em resumo, não ter firmado os empréstimos consignados e requerendo restituição de valores e indenização correspondente, e que em vez de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em diversos processos, como muito bem delimitou o d. Juízo singular, apesar de todas elas terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decisor recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, §3º, do CPC. 4. Por último, a sentença recorrida encontra-se devidamente fundamentada, com exposição clara do d. juízo de primeiro grau, em consonância com o art. 93, IX, da CF/1988, não vindo a calhar o argumento sobre carência de fundamentação levantado na apelação. 5. De mais a mais, constata-se nesta e. Corte a existência de inúmeras demandas praticamente idênticas patrocinadas pelo causídico do autor/apelante, de modo que é aceitável que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. Precedentes. 6. Apelação conhecida e desprovida. Sentença mantida. [...] (TJ-CE -

Processo	3001055-60.2025.8.06.0051
	Apelação Cível - 0201642-39.2022.8.06.0154, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 05/07/2023, data da publicação: 05/07/2023). DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DE EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO ATIVO. APELO DESPROVIDO. 1. A controvérsia recursal na demanda diz respeito ao interesse de agir da promovente no feito, além do fracionamento de ações e suposto abuso no direito de demandar. 2. Em um primeiro momento, frisa-se a relação de consumo no ato, situação em que a parte ativa figura como consumidora, ao passo em que a instituição bancária consta na posição de fornecedora de serviços, sujeita à eventual responsabilização civil, nos termos dos arts. 12 e 14, CDC. 3. No caso concreto, observa-se um número excessivo de demandas ajuizadas pela promovente em face de instituições bancárias, havendo, em seu nome, 38 contendas para discutir contratos de empréstimos consignado e descontos indevidos em seu benefício econômico. Apesar de discutirem contratos diversos, nota-se identidade entre as lides alhures, considerando que são as mesmas as causas de pedir e os pedidos. 4. Sendo assim, assiste razão o decismum vergastado, no que considera-se como necessária, ainda, a reunião dos supraditos processos para que se evite julgamentos contraditórios, aos termos do art. 55, §3º, CPC. 5. Outrossim, tem-se como devidamente fundamentada a sentença combatida, tendo o magistrado exposto toda sua linha de raciocínio e argumentação, vide art. 93, IX, CF, cabendo, pois, o afastamento de carência de fundamentação suscitado em recurso. 6. Ademais, observa-se que consta perante esta Egrégia Corte de Justiça inúmeras demandas praticamente idênticas conduzidas pelo causídico da autora, de modo que é justo que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. 7. Apelo conhecido e desprovido. [...] (TJ-CE - Apelação Cível - 0200488-83.2022.8.06.0154, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 08/03/2023, data da publicação: 09/03/2023). APELAÇÃO. SENTENÇA DE INDEFERIMENTO DA A PETIÇÃO INICIAL, COM EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. NO CASO, AÇÃO ANULATÓRIA DE DÉBITO COM DANOS MATERIAIS E MORAIS. MULTIPLICIDADE DE DEMANDAS PROPOSTAS PELA AUTORA: 38 (TRINTA E OITO) AÇÕES NA COMARCA DE QUIXERAMOBIM. CONEXÃO. PARADIGMAS DO STJ. SINTOMÁTICA POSTURA DISFUNCIONAL DO CAUSÍDICO. DESPROVIMENTO. 1. Rememore-se o caso. Nos autos, ação anulatória de débito c/c danos materiais e morais. Nessa perspectiva, a Parte Autora alega que foi surpreendida com a cobrança de empréstimo não contratado. Enfatizou que as relações jurídicas que desencadearam as cobranças por parte do promovido são indevidas. Ao final, pugna pela anulação do contrato e condenação do demandado ao pagamento de indenização por danos morais e materiais, em razão dos descontos indevidos. Eis a origem da celeuma. 2. Inicialmente, mister consignar que o Juízo Primevo deferiu o benefício da Assistência Judiciária Gratuita à Parte Autora, o que deve ser conservado. 3. MULTIPLICIDADE DE DEMANDAS PROPOSTAS PELA AUTORA: 38 (TRINTA E OITO) AÇÕES NA COMARCA DE QUIXERAMOBIM: Nada obstante, a análise meritória da demanda foi impactada ante a constatação judicial da multiplicidade de ações propostas pela Autora, a saber: 38 (trinta e oito) na Comarca de Quixeramobim, todas ajuizadas no dia 30.03.22, donde se verifica o mesmo objeto, igual causa de pedir e idêntico pedido, mas tais exordiais foram distribuídas isoladamente e individualmente. 4. CONEXÃO: A jurisprudência do STJ tem entendido que, por ser uma faculdade do julgador, a decisão que reconhece a conexão ou a continência não impõe ao magistrado a obrigatoriedade de julgamento simultâneo dos feitos. O magistrado, a seu critério e diante de cada caso concreto, verificará a utilidade do julgamento simultâneo, com vistas a privilegiar a economia processual. Paradigmas do STJ. 5. SINTOMÁTICA POSTURA DISFUNCIONAL DO CAUSÍDICO: A essa altura, o Julgador Pioneiro enfatiza que o Advogado merece reprimenda. 6. DESPROVIMENTO do Apelo, para conservar a sentença por irrepreensível, pelo que se verifica a necessidade de extração de cópias dos autos para envio a Ordem dos Advogados do Brasil, Seccional do Ceará - OAB-CE, bem como a remessa de traslado do feito para a douta Corregedoria-Geral da Justiça do Ceará e CGJ-CE, que melhor dirão.

Processo	3001055-60.2025.8.06.0051
	[...] (TJ-CE - Apelação Cível- 0200504-37.2022.8.06.0154, Rel. Desembargador(a) FRANCISCO DARÍVAL BESERRA PRIMO, 4ª Câmara Direito Privado, data do julgamento:07/02/2023, data da publicação: 07/02/2023). </p><p style="text-align: justify; padding-left: 150px;" dir="ltr">
 </p><p style="text-align: justify; padding-left: 150px;" dir="ltr"> PROCESSUAL. PECULIARIDADE DO CASO CONCRETO.</p>FRACIONAMENTO DE AÇÕES QUE INDICAM ABUSO DO DIREITO DE DEMANDAR. CONDUTA ADOTADA QUE CONFIGURA LITIGÂNCIA DE MÁ-FÉ. DESLEALDADE PROCESSUAL EM OBTER VANTAGEM INDEVIDA. APLICAÇÃO DE MULTA DE OFÍCIO. MANUTENÇÃO DA SENTENÇA EXTINTIVA. RECURSO CONHECIDO E IMPROVIDO. SENTENÇA INALTERADA. 1. Foi indeferida a petição inicial da Ação Declaratória de Inexistência de Relação Jurídica sob o fundamento de que, a parte opta pelo fracionamento de ações, o que consiste em um verdadeiro abuso de direito de demandar. 2. Entretanto, em suas razões recursais, a apelante limita-se a defender a necessidade de ajuizamento de diferentes ações para cada contrato consignado não realizado com o Banco promovido. 3. O fracionamento das ações, como a do presente caso, consiste em um verdadeiro abuso do direito de demandar, na medida em que a autora ajuizou diversas ações contra a mesma parte, inclusive veiculando pedido idêntico, no caso, a declaração de inexigibilidade de débito, configurando conduta processual temerária e abusiva, a qual o Judiciário não pode dar guarida. 4. Recurso conhecido e improvido. [...] (TJ-CE - Apelação Cível- 0200491-38.2022.8.06.0154, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 29/06/2022, data da publicação: 29/06/2022). </p><p style="text-align: justify; padding-left: 150px;" dir="ltr">&#160;</p><p style="text-align: justify; padding-left: 150px;" dir="ltr">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Ex positis, CONHEÇO do recurso de apelação para lhe NEGAR PROVIMENTO, mantendo incólume a sentença recorrida.</p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Formado o contraditório na esfera recursal, condeno a parte autora ao pagamento de honorários advocatícios, os quais fixo em 10% (dez por cento) sobre o valor atualizado da causa, ressalvado o constante no § 3º do art. 98 do CPC. </p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> E como voto. </p><p style="text-align: justify; text-indent: 8%;" dir="ltr">
 </p><p style="text-align: justify; text-indent: 8%;" dir="ltr"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify;" dir="ltr">&#160;</p><p style="text-align: justify;" dir="ltr">
 </p><p style="text-align: center;" dir="ltr"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p style="text-align: center;" dir="ltr"> Relator</p><p style="text-align: justify;">&#160;</p><p style="text-align: justify;">&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	3002008-90.2025.8.06.0029
Número de ordem	190
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Práticas Abusivas

Processo	3002008-90.2025.8.06.0029
Polo ativo	ANTONIA JURANDIR DE OLIVEIRA FURTADO
Advogado(s) - Polo ativo	FRANCISCO AUGUSTO OLIVEIRA PAES DE ANDRADE - (CE38088-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	THIAGO BARREIRA ROMCY - (CE23900-A)
Terceiros	Não informado

Processo	3002008-90.2025.8.06.0029
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWvZtqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNhEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmJFYQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAhrRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWj+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxBG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fnsFHHqjeh3WFOUu2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJ1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznXDKa2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkIx410JEZMRU0ZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

Processo	3002008-90.2025.8.06.0029
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	roman" >, times;">PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line- height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> <span style="font-family: &quot;times new roman&quot;,
 </p><p>
 </p><p> PROCESSO: 3002008- 90.2025.8.06.0029 </p><p style="text-align: justify;"> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"> APELANTE: ANTÔNIA JURANDIR DE OLIVEIRA FURTADO. </p><p style="text-align: justify;"> APELADO: BANCO BRADESCO S/A. </p><p style="text-align: justify;"> <span style="font-family: &quot;times new roman&quot;,
 </p><p style="text-align: justify;"> EMENTA:&#160; DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C &#160;INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. ORDEM PARA COMPARECIMENTO PRÉVIO EM JUÍZO E PARA RATIFICAR DOCUMENTAÇÃO. EXTINÇÃO DA AÇÃO SEM RESOLUÇÃO DE MÉRITO. &#160; ERROR IN PROCEDENDO . DESNECESSIDADE &#160; DE &#160; COMPARECIMENTO PRESENCIAL DA AUTORA NA SECRETARIA DA VARA. EXCESSO DE FORMALISMO. VIOLAÇÃO AO PRINCÍPIO DO ACESSO À JUSTIÇA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTS. 319 E 320 DO <span style="text-indent: 0cm; font-family: &quot;times new roman&quot;,
 times; font-size: large; letter-spacing: 2pt;">&#160; <span style="text-indent: 0cm;

Processo	3002008-90.2025.8.06.0029
	font-family: &quot;times new roman&quot;; times; font-size: large;">CPC. RECURSO CONHECIDO E PROVIDO. SENTENÇA CASSADA. I) CASO EM EXAME 1.&#160; Trata-se de Apelação Cível interposta por Antônia Jurandir de Oliveira Furtado com o objetivo de reformar a sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Acopiara, que, com base nos arts. 321 e 485, I do CPC, indeferiu a inicial e extinguiu, sem resolução do mérito, a Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Materiais e Morais ajuizada pela ora apelante em desfavor do Banco Bradesco S.A. II. QUESTÃO EM DISCUSSÃO 2.&#160; Cinge-se a controvérsia recursal a examinar o acerto ou desacerto da sentença que extinguiu o feito, sem resolução de mérito, em razão do não comparecimento da parte autora para ratificar a procuração e apresentar seus documentos originais de identificação e comprovante de residência recente em seu nome. III. RAZÕES DE DECIDIR 3.&#160; Ao compulsar os autos, verifica-se que a autora, ora recorrente, apresentou os seguintes documentos no ato de protocolo da inicial: procuração e declaração de hipossuficiência (ID. n.º 26967310); documentos de identificação (ID. n.º 26967311); comprovante de residência (ID. n.º 26967312) e extrato de empréstimos consignados do INSS (ID. n.º 26967313).&#160; Com base nisso, entendo que a petição inicial cumpriu, ao menos em tese, os requisitos indispensáveis à propositura da ação judicial, conforme disposto nos arts. 319 e 320 do CPC. 4.&#160; O&#160; comparecimento pessoal da parte autora à Secretaria da Vara para apresentar documento pessoal de identificação, comprovante de residência e para ratificar a outorga de procuração ao advogado, com fundamento na Recomendação n.º 01/2019/NUMOPEDE/CGJCE – atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE –, não configura exigência indispensável ao regular processamento da ação, seja porque não constitui exigência prevista em lei, seja porque tais providências podem ser averiguadas em eventual e futura instrução da causa, se for o caso. 5.&#160; É &#160; desnecessário determinar o comparecimento presencial obrigatório da parte autora à unidade jurisdicional onde o processo tramita, vez que já fora anexada documentação suficiente ao processamento da demanda, como documentos pessoais e a procuração outorgada ao causídico. Isto é, as informações e o acervo documental que instruem a inicial são suficientes ao trâmite regular da ação, sobretudo em demandas que versam sobre matérias de cunho consumerista, em que foi postulada a inversão dos ônus probatórios e a facilitação dos direitos do consumidor em juízo.&#160; Nessa toada,&#160;o indeferimento da inicial caracteriza formalismo exacerbado e desnecessário, em nítido prejuízo aos princípios da primazia de julgamento de mérito e de acesso à justiça. 6. E mbora o juízo singular faça menção à incidência da Recomendação n.º 01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE, providenciando as medidas cabíveis quando constatada uma suposta demanda temerária (art. 139, inciso IX, do CPC), o indeferimento da inicial com a extinção da ação sob o fundamento de falha de representação processual não se revela plausível no caso concreto. 7. Portanto, não há que falar em extinção do feito pelas razões levantadas pelo juízo primevo, sob pena de inviabilizar o acesso à justiça em decorrência de formalismo

Processo	3002008-90.2025.8.06.0029
	family: &quot;times new roman&quot;, times;";> &#160; Pelo exposto, EXTINGO O PRESENTE FEITO SEM JULGAMENTO DE MÉRITO, o que faço com amparo no art. 485, "I", do Código de Processo Civil. </p><p style="text-align: justify; text-indent: 8%; padding-left: 150px;";> &#160; Sem custas ante a gratuidade judiciária que defiro nos autos". </p><p style="text-align: justify; padding-left: 150px;";>
 </p><p style="text-align: justify; text-indent: 8%;";> Irresignada, nas razões recursais de ID. n.º 26967323, a autora/apelante aduz, em síntese, que foi equivocada a extinção do feito, sustentando que cumpriu todos os requisitos de uma peça inicial, não havendo sentido na exigência de documentos adicionais. Ademais, alega que é pessoa idosa e depende de " carros de aluguel" para se deslocar da zona rural até o fórum, e que " há diversos momentos processuais onde seriam oportunizados à Apelante o comparecimento ao fórum local, como, por exemplo, a própria audiência de instrução". </p><p style="text-align: justify; text-indent: 8%;";> &#160; Ao final, requer o conhecimento do recurso e, no mérito, o seu provimento, para anular a sentença e determinar o retorno dos autos ao Juízo de origem para o regular processamento do feito.</p><p style="text-align: justify; text-indent: 8%;";> &#160; Contrarrazões apresentadas no ID. n.º 26967329.</p><p style="text-align: justify; text-indent: 8%;";> &#160; É o relatório.</p><p style="text-align: justify;";>
 </p><p style="text-align: center;";> VOTO </p><p style="text-align: justify;";>
 </p><p style="text-align: justify; text-indent: 8%;";> 1– Admissibilidade </p><p style="text-align: justify; text-indent: 8%;";> &#160; </p><p style="text-align: justify; text-indent: 8%;";> Satisfeitos os pressupostos intrínsecos ou subjetivos – cabimento, interesse e legitimidade, inexistência de súmula impeditiva – e extrínsecos ou objetivos – tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer – de admissibilidade recursal, conheço do recurso interposto pelo promovido.</p><p style="text-align: justify; text-indent: 8%;";> 2 - Mérito recursal </p><p style="text-align: justify; text-indent: 8%;";> &#160; Ao compulsar os autos, verifica-se que a autora, ora recorrente, apresentou os seguintes documentos no ato de protocolo da inicial: procuração e declaração de hipossuficiência (ID. n.º 26967310); documentos de identificação (ID. n.º 26967311); comprovante de residência (ID. n.º 26967312) e extrato de empréstimos consignados do INSS (ID. n.º 26967313).</p><p style="text-align: justify; text-indent: 8%;";> &#160; Com base nisso, entendo que a petição inicial cumpriu, ao menos em tese, os requisitos indispensáveis à propositura da ação judicial, conforme disposto nos arts. 319 e 320 do CPC, in verbis:</p><p style="text-align: justify;";>
 </p><p style="text-align: justify; padding-left: 150px;";> Art. 319. A petição inicial indicará:</p><p style="text-align: justify; padding-left: 150px;";> <span style="font-family:

Processo	3002008-90.2025.8.06.0029
	PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA NEGATIVA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS.&#160;DETERMINAÇÃO DE EMENDA À INICIAL NÃO ATENDIDA. DESNECESSIDADE DE COMPARECIMENTO PRESENCIAL DA PARTE À SECRETARIA DA VARA. EXCESSO DE FORMALISMO. VIOLAÇÃO AO PRINCÍPIO DO LIVRE ACESSO À JUSTIÇA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTS. 319 E 320 DO CPC.&#160;RECURSO CONHECIDO E PROVIDO. SENTENÇA CASSADA. 1. Cinge-se a controvérsia recursal em examinar o acerto ou desacerto da sentença que extinguiu o feito sem resolução de mérito, ao reconhecer a inépcia da petição inicial ante a ausência de comparecimento prévio da parte em juízo para apresentar seus documentos originais de identificação e ratificar os termos da procuração outorgada. 2. Ao compulsar os autos, verifica-se que a autora, ora recorrente, apresentou os seguintes documentos no ato de protocolo da inicial: procuração; documentos de identificação; comprovante de endereço, em nome de terceiro; extrato de empréstimo consignado junto ao INSS; e requerimento da cópia do contrato e do comprovante de transferência, por via administrativa.&#160;3. Nesse contexto, diversamente da fundamentação apresentada pelo d. juízo singular, é desnecessário e inapropriado determinar de antemão o comparecimento presencial da parte autora à Secretaria da Vara para apresentação de documentos pessoais originais, como uma condição de procedibilidade da demanda judicial.&#160;4.&#160;É válido ressaltar que, embora o juízo singular faça menção à incidência da Recomendação n.º 01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE, providenciando as medidas cabíveis quando constatada a existência de demanda temerária (art. 139, inciso IX, do CPC), a extinção da ação sob o fundamento da inépcia da petição inicial não se revela plausível no caso concreto.&#160;5. A circunstância que ensejou o indeferimento da inicial não diz respeito à falta de documentos indispensáveis ao regular processamento da ação, mas, na realidade, foi motivada pelo não cumprimento de diligências pela parte autora / apelante, que, se fosse o caso, deveria ser intimada pessoalmente para suprir a falta no prazo de 5 (cinco) dias, e desde que o processo ficasse parado por mais de 30 (trinta) dias, conforme determina o art. 485, inciso III e §1º, do CPC. 6. Recurso conhecido e provido. Sentença cassada. ACÓRDÃO Vistos, relatados e discutidos estes autos, acordam os membros da Primeira Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em conhecer do recurso interposto, para DAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data da assinatura digital.&#160;(Apelação Cível&#160;TJ-CE&#160;0204280-95.2023.8.06.0029, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO,&#160;1ª Câmara Direito Privado, data do julgamento:&#160;29/05/2024, data da publicação:&#160;&#160;29/05/2024). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXTINÇÃO DO PROCESSO SEM JULGAMENTO DO MÉRITO. ART. 485, IV, DO CPC. LITIGÂNCIA PREDATÓRIA NÃO CONFIGURADA. VIOLAÇÃO AO DEVIDO PROCESSO LEGAL. NULIDADE DA SENTENÇA.&#160;RECURSO&#160;PROVIDO. I. CASO EM EXAME. 1. Apelação cível interposta contra sentença que extinguiu o processo sem julgamento de mérito, com fundamento no art. 485, IV, do CPC, em razão de suposta irregularidade de representação e suspeita de litigância predatória.&#160;O juízo de primeiro grau determinou a intimação da parte autora para comparecer pessoalmente à Secretaria da Vara para apresentar documento de identificação, comprovante de residência e ratificar a outorga da procuração ao advogado, baseando-se na Recomendação nº&#160;01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação nº 01/2021/NUMOPEDE/CGJCE.&#160;A parte autora havia instruído a inicial com os documentos necessários, incluindo procuração, documento de identificação e comprovante de residência. II. QUESTÃO EM DISCUSSÃO. 2. Há duas questões em discussão: (i) definir se houve regularidade na representação processual e apresentação de documentos; (ii) estabelecer se a sentença que extinguiu o processo sem resolução do mérito, baseada em suposta litigância predatória, viola o devido processo legal e o princípio da inafastabilidade da tutela jurisdicional. III. RAZÕES DE DECIDIR. 3. A parte autora instrui adequadamente a inicial com procuração conferida ao advogado, documento

Processo	3002008-90.2025.8.06.0029
	de identificação e comprovante de residência, conforme exigido pelos arts. 319 e 320 do CPC, de modo que não há irregularidade na representação processual ou elementos que justifiquem a presunção de litigância predatória.&#160; 4. O ato de extinção do processo sem determinar a intimação pessoal do autor, conforme o art. 485, §1º, do CPC, viola o devido processo legal e o direito de defesa, uma vez que o juízo deveria ter oportunizado à parte a regularização de eventuais pendências antes de extinguir a demanda. 5. A invocação da Recomendação nº 01/2019/NUMOPEDE/CGJCE como fundamento para extinção do feito sem comprovação de litigância predatória configura cerceamento de defesa e violação ao princípio da inafastabilidade da tutela jurisdicional, garantido pelo art. 5º, XXXV, da CF.&#160;IV. DISPOSITIVO E TESE. 6. Recurso conhecido e provido. Sentença anulada. Tese de julgamento: A extinção do processo sem resolução de mérito, fundada em suposta irregularidade de representação sem intimação prévia da parte para suprir a falta, viola o devido processo legal e constitui nulidade da sentença. A simples suspeita de litigância predatória, sem evidências concretas, não justifica a extinção da demanda quando a inicial está devidamente instruída, e a aplicação da Recomendação nº 01/2019/NUMOPEDE/CGJCE não pode servir de obstáculo ao acesso à justiça. Jurisprudência relevante citada: TJCE, Apelação Cível nº 0200234-65.2024.8.06.0114, Rel. Des. Maria Regina Oliveira Câmara, j. 09.10.2024; TJCE, Apelação Cível nº 0200312-19.2023.8.06.0171, Rel. Des.&#160; Francisco Jaime Medeiros Neto, j. 17.12.2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, em conhecer do recurso para dar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura eletrônica. (Apelação Cível&#160; TJ-CE&#160;0200062-77.2024.8.06.0097, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA,&#160; 1ª Câmara Direito Privado, data do julgamento: 05/02/2025, data da publicação:&#160; 05/02/2025). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> PROCESSUAL CIVIL. AÇÃO DECLARATÓRIA DE PRESCRIÇÃO DE DÉBITO C/C OBRIGAÇÃO DE FAZER.&#160; DETERMINAÇÃO DE EMENDA À INICIAL NÃO ATENDIDA. EXTINÇÃO DA AÇÃO SEM RESOLUÇÃO DE&#160; MÉRITO. AUSÊNCIA DE INTIMAÇÃO PRÉVIA DO PATRONO PARA DAR PROSEGUIMENTO AO FEITO. ERROR IN PROCEDENDO. DESNECESSIDADE DE COMPARECIMENTO PRESENCIAL DA PARTE À SECRETARIA DA VARA PARA MOSTRAR COMPROVANTE DE ENDEREÇO E RATIFICAR A PROCURAÇÃO. EXCESSO DE FORMALISMO. VIOLAÇÃO AO PRINCÍPIO DO LIVRE ACESSO À JUSTIÇA. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTS. 319 E 320 DO CPC. SENTENÇA ANULADA.&#160;RECURSO CONHECIDO E PROVIDO. (TJ-CE&#160;- Apelação Cível - 0200165-67.2023.8.06.0114, Rel. Desembargador(a) JOSÉ RICARDO VIDAL&#160; PATROCÍNIO,&#160; 1ª Câmara Direito Privado, data do julgamento: 24/01/2024, data da publicação:&#160; 24/01/2024). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">
 </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. DESPACHO DETERMINANDO A EMENDA DA INICIAL.&#160; INDEFERIMENTO DA PETIÇÃO EXORDIAL E EXTINÇÃO DO FEITO SEM ANÁLISE DO MÉRITO. PEÇA QUE ATENDE AOS REQUISITOS DOS ARTS. 319 E 320 DO CPC. DOCUMENTOS INDISPENSÁVEIS AO AJUIZAMENTO DA AÇÃO JUNTADOS AOS AUTOS. DESNECESSIDADE DE COMPARECIMENTO DO AUTOR À SEDE DO JUÍZO PARA APRESENTAÇÃO DOS ORIGINAIS DO DOCUMENTO DE IDENTIDADE E DO COMPROVANTE DE ENDEREÇO E RATIFICAR OS PODERES CONFERIDOS NA PROCURAÇÃO AO ADVOGADO (Nº01/2019/NUPOMEDE/CGJCE.) EXCESSO DE FORMALISMO. ATENDIMENTO AO PRECEITUADO PELOS ARTIGOS 319 E 320 DO CPC. NULIDADE DA SENTENÇA.&#160;RECURSO CONHECIDO E PROVIDO.&#160; ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do presente recurso para DAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e

Processo	3002008-90.2025.8.06.0029
	hora indicadas no sistema. (Apelação Cível&#160; TJ-CE&#160;0202604-78.2024.8.06.0029, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO,&#160; 1ª Câmara Direito Privado, data do julgamento: 06/11/2024, data da publicação:&#160; 07/11/2024). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 120px;">
 </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> É válido ressaltar que, embora o juízo singular faça menção à incidência da Recomendação n.º 01/2019/NUMOPEDE/CGJCE, atualizada pela Recomendação n.º 01/2021/NUMOPEDE/CGJCE, providenciando as medidas cabíveis quando constatada uma suposta demanda temerária (art. 139, inciso IX, do CPC), o indeferimento da inicial com a extinção da ação sob o fundamento de falha de representação processual não se revela plausível no caso concreto.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> &#160; Portanto, não há que falar em extinção do feito pelas razões levantadas pelo d. juízo primevo, sob pena de inviabilizar o acesso à justiça em decorrência de formalismo exacerbado e desnecessário, comprometendo a finalidade do processo, que é a satisfação do direito material.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> 3- Dispositivo </p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Ante o exposto, pelos motivos acima delineados,&#160; <strong style="font-family: &quot;times new roman&quot;; times;">CONHEÇO do recurso interposto para&#160; <strong style="font-family: &quot;times new roman&quot;; times;">DAR-LHE PROVIMENTO , e, por conseguinte, anular a sentença e determinar o retorno dos autos ao d. Juízo de primeiro grau para regular processamento do feito.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> É como voto.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Fortaleza, data da assinatura digital.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;">&#160;</p><p style="text-align: center;">
 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Presidente/Relator </p>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0201242-52.2023.8.06.0166
Número de ordem	192
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	BANCO BRADESCO S/A
Advogado(s) - Polo ativo	WILSON SALES BELCHIOR - (CE17314-A)
Polo passivo	EDILANIA TOMAZ DO NASCIMENTO DA SILVA
Advogado(s) - Polo passivo	GARIBALDE UCHOA DE ALBUQUERQUE - (CE22179-A)
Terceiros	Não informado

Processo	0201242-52.2023.8.06.0166
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPftaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWvZtqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTau2dl/XHeucKJdW0vVrDmWFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOOw3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfLk3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3Jz0yFwcvwlqRLkiu3cCAWl2fn5FHghj3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y9ZR DKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOGPE pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qikym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpf pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSsCP0gq8gvPPjWmya9 vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbsM0f3wUOHu3v7R0aH QpEubM6X4Ss89Ta/NzDL7fJ5XC6H02kXbY41nkdUvsnXNkIx410JEZMRU0ZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	0201242-52.2023.8.06.0166
	negativa, se cabe reparação civil, à luz das normas do Código de Defesa do Consumidor. III) RAZÕES DE DECIDIR 3. In casu, a parte autora alega que foi surpreendida com a existência de descontos em seu benefício previdenciário, que se referiam a um contrato de empréstimo pessoal de nº 0123463036936, que, segundo afirma, não teria contratado. Os descontos iniciaram em julho de 2022, e correspondem ao valor mensal de R\$ 41,59 (quarenta e um reais e cinquenta e nove centavos), conforme extrato do INSS anexado ao processo (fl. 03 - ID. nº 27000105). 4. Ao apresentar defesa, a instituição financeira aduziu que a contratação ocorreu regularmente por meio do sistema Banco Dia e Noite (BDN), modalidade realizada por intermédio de cartão e senha / biometria. Na ocasião, juntou o LOG de transação para comprovar a contratação efetiva por meio de confirmação por senha / biometria (vide ID. nº 27000459), e extrato de simples conferência para demonstrar a transferência do valor de R\$ 1.000,00 (mil reais) em favor da contratante (ID. nº 27000460 e 27000484), em 29 de junho de 2022. Assim, à vista das provas documentais apresentadas pelo promovido/apelante, considero que houve equívoco na sentença de primeiro grau, que reconheceu a ilegalidade dos descontos realizados na folha de pagamento da autora, visto que a instituição financeira comprovou a regularidade da contratação, desincumbindo-se do ônus probante que lhe cabia. 5. A propósito, vale dizer que a contratação do empréstimo consignado ocorreu mediante a utilização de caixa de autoatendimento, via sistema BDN (Bradesco Dia e Noite). Com efeito, para contratações dessa natureza, são imprescindíveis a utilização de dados pessoais do contratante, assim como a biometria e uso do cartão e senha. Desse modo, entendendo que, no caso em análise, há prova contundente produzida pela instituição financeira acerca da existência do contrato na modalidade de autoatendimento, colacionando vasta documentação em sua peça contestatória que comprova a validade do empréstimo consignado. 6. C/abia à parte autora/apelada comprovar, ainda que de forma ínfima, o não recebimento do numerário, o que poderia fazer mediante a simples apresentação de extrato bancário do período correspondente, mas não o fez. O banco, por sua vez, trouxe indicativos de que o valor contratado fora efetivamente transferido para a conta da autora, conforme se vê dos extratos acostados nos IDs. nº 27000460 e 27000484, em que consta o valor do empréstimo contratado, a indicação do contrato correspondente e o montante disponibilizado, no caso, de R\$ 1.000,00 (mil reais). 7. Assim, conclui-se que a contratação do empréstimo fora realizada pela promovente/apelada por meio eletrônico, mediante a observância de uma série de procedimentos para acessos, validações, aceites e autorizações. Há uma especificidade para cada ato contratual, o que enseja uma leitura prévia por parte do contratante, não sendo pertinente considerar que o consumidor não teve prévio conhecimento acerca das condições avençadas. Por tudo isso, reputo a existência de elementos fáticos suficientes à comprovação do negócio jurídico válido celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, do seu ônus probante de fato impeditivo, modificativo ou extintivo do direito autoral (art. 373, II, CPC), produzindo prova pertinente à regularidade da contratação que sustenta ter acontecido. 8. Logo, ao vislumbrar a regularidade dos descontos nos proventos de aposentadoria da parte autora, não há que falar em ato ilícito praticado pela instituição financeira, tampouco em invalidade contratual, motivo pelo qual reformo o pronunciamento

Processo	0201242-52.2023.8.06.0166
	judicial de origem e julgo improcedente a pretensão inicial. IV) DISPOSITIVO 9. Recurso conhecido e provido. Sentença reformada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação, para, no mérito, dar-lhe provimento, no sentido de reformar a sentença e julgar improcedente a ação, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator RELATÓRIO Trata-se de Apelação Cível interposta por Banco Bradesco S/A com o objetivo de reformar a sentença proferida pelo MM. Juiz de Direito Wallton Pereira de Souza Paiva, da 2ª Vara da Comarca de Senador Pompeu, que julgou parcialmente procedente a Ação Anulatória de Débito c/c Danos Materiais e Morais ajuizada em desfavor do ora apelante por Edilania Tomaz do Nascimento da Silva. A referida ação visa à declaração de inexistência de relação contratual entre as partes, à fixação de indenização a título de danos morais e à devolução em dobro de descontos realizados no benefício previdenciário da autora/apelada, decorrentes de contrato de empréstimo consignado que esta alega não ter celebrado. Ao analisar o conjunto probatório acostado aos autos, o juízo singular destacou que "[...] A parte ré restringe-se alegar a regularidade da contratação, colacionando aos autos somente extratos. Contudo, em nenhum momento colaciona o instrumento do negócio jurídico objeto da lide, impondo-se que sejam considerados presumidamente verdadeiros os fatos alegados pela parte autora, visto que a instituição financeira não se desincumbiu do seu ônus probatório. Ainda que a parte ré insista em afirmar que foi realizado o citado empréstimo, o fato é que os elementos constantes nos autos são insuficientes à comprovação da efetiva contratação do empréstimo pela autora." Assim, a ação foi julgada parcialmente procedente, decidindo-se nos seguintes termos (sentença de ID. n.º 27000473): Ante o exposto, nos termos da fundamentação supra, JULGO PARCIALMENTE PROCEDENTES os

Processo	0201242-52.2023.8.06.0166
	pedidos, com resolução do mérito, consoante o preceito do art. 487, inciso I, do CPC, para: A) declarar a inexistência do Contrato nº 463036936; B) condenar o Demandado no pagamento à parte Requerente no valor de R\$ 3.000,00(três mil reais), a título de indenização por danos morais, acrescidos de juros simples de mora de 1% ao mês, desde o evento danoso (Súmula 54 do STJ e arts. 398 e 406 ambos do Código Civil) e de correção monetária pelo INPC a contar do arbitramento (Súmula nº 362 do STJ); C) condenar o Requerido, a título de dano material, na devolução simples dos valores descontados até 30/03/2021 e na forma dobrada dos posteriores (EAREsp nº 676.608/RS), acrescido de correção monetária pelo INPC a partir do efetivo prejuízo (Súmula 43, STJ) e juros simples de 1% (um por cento) ao mês a contar do evento danoso (art. 398, CC/02 e Súmula 54, STJ), nos termos do § único do art. 42 da Lei nº 8.078/90, Autorizo o reclamado a compensar da condenação, eventuais valores já depositados em favor da demandante, com atualização monetária pelo IPCA desde o dia da transferência/depósito, mas sem incidência de juros por se tratar de transferência ilegal. Condeno o promovido em custas e honorários advocatício no patamar de 10% (dez por cento) do valor da condenação (Art. 85, § 2, NCPC). Nas razões recursais de ID. nº 27000475, a instituição financeira sustenta, em síntese, que a parte autora efetivamente contratou o empréstimo, e que este "foi celebrado com apresentação dos documentos pessoais da parte adversa e de outra forma só aconteceria se alguém tivesse feito o uso indevido deles e certamente assim teria sido por negligência da própria parte, quando não teve a diligência necessária para proteger seus dados". Acrescenta, ainda, que o valor do mútuo foi devidamente depositado em favor da parte autora / apelada, conforme extratos de ID. nº 27000460 e 27000484. Ao final, requer a reforma da sentença e, por conseguinte, a improcedência da ação, ou, subsidiariamente, que a devolução dos valores descontados seja efetivada na forma simples, e, quanto aos danos morais, pleiteia que a condenação seja minorada e que o termo inicial dos juros de mora e da correção monetária coincida com a data do arbitramento. Preparo recolhido no ID. nº 27000477. Contrarrrazões apresentadas no ID. nº 27000482. É o relatório. VOTO 1- Admissibilidade Presentes os pressupostos recursais de admissibilidade intrínsecos (legitimidade, interesse, cabimento e inexistência de fato

Processo	0201242-52.2023.8.06.0166
	impeditivo ou extintivo) e extrínsecos (tempestividade, preparo e regularidade formal), conheço do recurso. <strong style="font-family: "Times New Roman"; font-size: large;">#160; <strong style="font-family: "Times New Roman"; font-size: large;"> 2- Mérito recursal <strong style="font-family: "Times New Roman"; font-size: large;">#160; Sobre o assunto, este e. Tribunal de Justiça firmou entendimento de que a confirmação da regularidade ou irregularidade do negócio depende de provas concretas sobre: (i) a anuência do consumidor sobre os descontos realizados e (ii) o recebimento do crédito por parte do beneficiário. <strong style="font-family: "Times New Roman"; font-size: large;">#160; No contexto dos autos, atento à incidência das normas do Código de Defesa do Consumidor (art. 2º e 3º, § 2º, do CDC), é cabível a inversão do ônus probante em desfavor da instituição bancária, como medida adequada às ações desta natureza, especialmente pela impossibilidade de o consumidor constituir prova negativa da pretensão autoral. Assim, compete à instituição financeira trazer aos autos documentos hábeis a demonstrar a regularidade da relação contratual contestada na exordial, nos termos do artigo 373, inciso II, do CPC, c/c art. 6º, inciso VIII, do CDC. <strong style="font-family: "Times New Roman"; font-size: large;">#160; In casu, a parte autora alega que foi surpreendida com a existência de descontos em seu benefício previdenciário, que se referiam a um contrato de empréstimo pessoal de n.º 0123463036936, que, segundo afirma, não teria contratado. Os descontos iniciaram em julho de 2022, e correspondem ao valor mensal de R\$ 41,59 (quarenta e um reais e cinquenta e nove centavos), conforme extrato do INSS anexado ao processo (fl. 03 - ID. n.º 27000105). <strong style="font-family: "Times New Roman"; font-size: large;">#160; Ao apresentar defesa, a instituição financeira aduziu que a contratação ocorreu regularmente por meio do sistema Banco Dia e Noite (BDN), modalidade realizada por intermédio de cartão e senha / biometria. Na ocasião, juntou o LOG de transação para comprovar a contratação efetiva por meio de confirmação por senha / biometria (vide ID. n.º 27000459), e extrato de simples conferência para demonstrar a transferência do valor de R\$ 1.000,00 (mil reais) em favor da contratante (ID. n.º 27000460 e 27000484), em 29 de junho de 2022. <strong style="font-family: "Times New Roman"; font-size: large;">#160; Assim, à vista das provas documentais apresentadas pelo promovido/apelante, considero que houve equívoco na sentença de primeiro grau, que reconheceu a ilegalidade dos descontos realizados na folha de pagamento da autora, visto que a instituição financeira comprovou a regularidade da contratação, desincumbindo-se do ônus probante que lhe cabia. <strong style="font-family: "Times New Roman"; font-size: large;">#160; A propósito, vale dizer que a contratação do empréstimo consignado ocorreu mediante a utilização de caixa de autoatendimento, via sistema BDN (Bradesco Dia e Noite). Com efeito, para contratações dessa natureza, são imprescindíveis a utilização de dados pessoais do contratante, assim como a biometria e uso do cartão e senha. <strong style="font-family: "Times New Roman"; font-size: large;">#160; Desse modo, entendo que, no caso em análise, há prova contundente produzida pela instituição financeira acerca da existência do contrato na modalidade de autoatendimento, colacionando vasta documentação em sua peça contestatória que comprova a validade do empréstimo consignado. <strong style="font-family: "Times New Roman"; font-size: large;">#160; Nesse contexto, insta salientar que a jurisprudência deste egrégio Tribunal de Justiça, inclusive desta c. Primeira Câmara de Direito Privado, tem se manifestado pela validade da contratação de empréstimo consignado em terminais de autoatendimento, desde que haja prova do recebimento dos valores contratados. Vejamos:

Processo	0201242-52.2023.8.06.0166
	&quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> DIREITO DO CONSUMIDOR. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITOS C/C INDENIZAÇÃO POR DANO MORAL.&#160; EMPRÉSTIMO CONSIGNADO. CONTRATO REALIZADO EM TERMINAL DE AUTOATENDIMENTO. COMPROVAÇÃO DE CRÉDITO EM CONTA DE TITULARIDADE DA PARTE AUTORA. REGULARIDADE CONTRATUAL.&#160;RECURSO PROVIDO. SENTENÇA REFORMADA. I. CASO EM EXAME 1. Trata-se de recurso de Apelação Cível interposto contra sentença prolatada pelo Juízo da Vara Única da Comarca de Chaval/CE, que julgou parcialmente procedente a Ação Declaratória de Inexistência de Débitos c/c Indenização por Dano Moral, extinguindo o feito, na forma do art. 487, inciso I, do Código de Processo Civil. II. QUESTÃO EM DISCUSSÃO 2. Cinge-se a controvérsia recursal em verificar a validade da contratação de empréstimo pessoal firmada entre as partes, e, em sendo a resposta negativa, se cabe reparação civil, à luz das normas do Código de Defesa do Consumidor. III. RAZÕES DE DECIDIR 3. In casu, a parte autora alega que foi surpreendida com a existência de descontos em seu benefício previdenciário, que se referiam a um contrato de empréstimo pessoal nº 388239295, que, segundo afirma, não teria contratado. Os descontos iniciaram em 10 de março de 2020, e correspondem ao valor mensal de R\$ 140,00 (cento e quarenta reais), conforme extratos anexados ao processo. 4. Ao apresentar defesa, a instituição financeira aduziu que a contratação ocorreu regularmente por meio do sistema Banco Dia e Noite (BDN), modalidade realizada por intermédio de cartão e senha / biometria. Na ocasião, juntou extrato de simples conferência para demonstrar a transferência do valor de R\$ 3.220,68 (três mil, duzentos e vinte reais e sessenta e oito centavos) em favor do contratante. Posteriormente, juntou o LOG de transação para comprovar a contratação efetiva por meio de confirmação por senha / biometria. 5. Assim,&#160; à vista das provas documentais apresentadas pelo banco, considero válida a contratação do empréstimo mediante a utilização de caixa de autoatendimento, via sistema BDN (Banco Dia e Noite), em que se exige a utilização de cartão e senha / biometria pessoal para confirmar a transação.&#160;6.&#160; No caso, os extratos bancários juntados ao processo demonstram a transferência do valor do mútuo em favor da parte autora, efetivada no dia 8 de janeiro de 2020, corroborando às informações do extrato de simples conferência apresentado pela instituição financeira.&#160;7.&#160; Logo, ao vislumbrar a regularidade dos descontos nos proventos de aposentadoria da parte autora, não há que falar em ato ilícito praticado pela instituição financeira, tampouco em invalidade contratual, motivo pelo qual reformo o pronunciamento judicial de origem e julgo improcedente a pretensão inicial.&#160;IV. DISPOSITIVO 8. Recurso provido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação, para, no mérito, dar-lhe provimento, no sentido de reformar a sentença e julgar improcedente a ação, nos termos do voto do Relator. Fortaleza, data da assinatura digital.&#160;(Apelação Cível&#160; TJ-CE&#160;0200143-53.2023.8.06.0067, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO,&#160; 1ª Câmara Direito Privado, data do julgamento:&#160; 27/11/2024, data da publicação:&#160;&#160; 27/11/2024). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;"> DIREITO DO CONSUMIDOR. APELAÇÕES CÍVEIS. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. COBRANÇA INDEVIDA.&#160; EMPRÉSTIMO CONSIGNADO. CONTRATO REALIZADO EM TERMINAL DE AUTOATENDIMENTO. COMPROVAÇÃO DE CRÉDITO EM CONTA DE TITULARIDADE DA PROMOVENTE. REGULARIDADE CONTRATUAL.&#160;RECURSO DO BANCO CONHECIDO E PROVIDO. RECURSO DA PARTE AUTORA PREJUDICADO. SENTENÇA REFORMADA. 1. Tratam os autos de recursos de apelações interpostos contra sentença prolatada pelo Juízo da 2ª Vara Cível da Comarca de Acopiara, que julgou procedente a Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Morais e Materiais ajuizada em desfavor da instituição financeira, extinguindo o feito, com resolução de mérito, na forma do art. 487, inciso I, do Código de Processo Civil. 2. Cinge-se a controvérsia recursal em verificar a regularidade do contrato de empréstimo consignado firmado com a parte autora, e, em sendo a resposta negativa, se cabe reparação civil. 3. Da análise dos autos, tem-se que a parte promovida colacionou cópia do comprovante de rastreabilidade de acesso do cliente via canal de atendimento, além do comprovante da operação bancária em conta de titularidade da parte autora, bem como do valor transferido e sacado da respectiva conta, em 30 de março de 2022. Assim,&#160; à vista das provas documentais apresentadas pelo banco, considero que houve equívoco na sentença de primeiro grau, que reconheceu a ilegalidade dos descontos realizados na folha de pagamento da autora,

Processo	0201242-52.2023.8.06.0166
	visto que a instituição financeira comprovou a regularidade da contratação, desincumbindo-se do ônus probatório que lhe cabia. 4. A propósito, vale dizer que a contratação do empréstimo consignado ocorreu mediante a utilização de caixa de autoatendimento, via sistema BDN (Bradesco Dia e Noite). Com efeito, para contratações dessa natureza, são imprescindíveis a utilização de dados pessoais do contratante, assim como a biometria e uso do cartão e senha. Desse modo, entendo que, no caso em análise, há prova contundente produzida pela instituição financeira acerca da existência do contrato na modalidade de autoatendimento, colacionando vasta documentação em sua peça contestatória que comprova a validade do empréstimo consignado. 5. Logo, ao vislumbrar a regularidade dos descontos nos proventos de aposentadoria da autora, não há que falar em ato ilícito praticado pela instituição financeira, tampouco em invalidade contratual, motivo pelo qual reforma-se o pronunciamento judicial de primeiro grau para julgar improcedente a pretensão inicial. 6. Recurso do banco conhecido e provido. Recurso da promotora prejudicado. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso interposto pelo banco, para, no mérito, dar-lhe provimento, e julgar prejudicado o recurso de apelação interposto pela autora, nos termos do voto do Relator. Fortaleza, data da assinatura digital. (Apelação Cível TJ-CE 0203381-97.2023.8.06.0029, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado data do julgamento: 24/04/2024, data da publicação: 24/04/2024). [Grifou-se]. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. CONTRATO DE EMPRÉSTIMO CONSIGNADO. EMPRÉSTIMO REALIZADO EM CAIXA DE AUTOATENDIMENTO. AUSÊNCIA DE IRREGULARIDADES. JUNTADA DE EXTRATOS BANCÁRIOS. COMPROVAÇÃO DA TRANSFERÊNCIA DO VALOR PACTUADO. DANOS MORAIS E MATERIAIS NÃO CONFIGURADOS. ACLARATÓRIOS CONHECIDOS E DESPROVIDOS. DECISÃO MANTIDA. (Embargos de Declaração Cível TJ-CE 0008952-72.2019.8.06.0126, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado data do julgamento: 17/11/2023, data da publicação: 18/11/2023). [Grifou-se]. DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS COM PEDIDO DE TUTELA DE URGÊNCIA. SENTENÇA DE PROCEDÊNCIA. PORTABILIDADE DE EMPRÉSTIMO CONSIGNADO. TRANSAÇÕES EFETIVADAS COM USO DE CARTÃO E SENHA PESSOAL EM TERMINAL DE AUTOATENDIMENTO. ASSINATURA ELETRÔNICA VÁLIDA. ATENDIMENTO AO DISPOSTO NA INSTRUÇÃO NORMATIVA INSS Nº 28/2008. RECURSO DO BANCO CONHECIDO E PROVIDO. RECURSO DA AUTORA PREJUDICADO. SENTENÇA REFORMADA. 1. O cerne da controvérsia versa acerca da validade da operação bancária de portabilidade de empréstimo consignado, efetuada por meio de assinatura eletrônica com uso de cartão magnético e senha de uso pessoal e intransferível. 2. A instituição financeira em questão anexou documento de portabilidade de empréstimo consignado, de nº 109604896, advindo do Banco Santander (Brasil) S.A e firmado no dia 18/05/2022, ocorrendo sua celebração por meio do uso de cartão com senha de uso pessoal e intransferível em central de autoatendimento, favorecendo a autora e constando a sua devida assinatura eletrônica ao campo inferior do contrato. Dessa forma, não se vislumbra quaisquer irregularidades quanto ao contrato à luz do Código de Defesa do Consumidor, do Código Civil e, tampouco, da Instrução Normativa INSS nº 28/2008, pois, no presente pacto há autorização expressa da consumidora por meio eletrônico. 3. Em casos similares aos dos autos, nos quais as operações feitas pelo consumidor devem ser feitas inserindo o cartão pessoal e senha intransferíveis em um terminal de autoatendimento, e em relação ao assentimento ou não da assinatura eletrônica como meio de validade contratual, é necessário salientar que a jurisprudência pátria é pacífica ao reconhecer que eventuais fraudes não geram responsabilidade civil da instituição financeira, uma vez que é dever do titular guardar as informações pessoais em questão e sem as quais não seria possível completar a transação, conforme: (AgInt no AREsp n. 1.816.546/PB, relator Ministro Marco Aurélio Bellizze, Terceira Turma, julgado em 22/11/2021, DJe de 25/11/2021). 4. A tese proposta pela recorrente de que a instituição financeira não apresentou documentos

Processo	0201242-52.2023.8.06.0166
	contratuais não merece acolhimento, haja vista que o referido contrato encontra-se anexado nos autos sem quaisquer vícios formais, tendo &#160;sua celebração firmada em terminal eletrônico de autoatendimento pela própria autora por meio de cartão e senha de uso pessoal.&#160;5. Apelação cível interposta pela instituição financeira conhecida e provida. Apelação cível interposta pela autora prejudicada. Sentença reformada. (Apelação Cível&#160; TJ-CE&#160; 0201158-11.2022.8.06.0029, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS,&#160; 1ª Câmara Direito Privado, data do&#160;julgamento: 13/12/2023, data da publicação:&#160; 13/12/2023). [Grifou-se].</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; padding-left: 150px;">&#160;</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Por essa análise, cabia à parte autora/apelada comprovar, ainda que de forma ínfima, o não recebimento do numerário, o que poderia fazer mediante a simples apresentação de extrato bancário do período correspondente, mas não o fez. O banco, por sua vez, trouxe indicativos de que o valor contratado fora efetivamente transferido para a conta da autora, conforme se vê dos extratos acostados nos IDs. n.º 27000460 e 27000484, em que consta o valor do empréstimo contratado, a indicação do contrato correspondente e o montante disponibilizado, no caso, de R\$ 1.000,00 &#160;(mil reais).</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Assim, conclui-se que a contratação do empréstimo fora realizada pela promovente/apelada por meio eletrônico, mediante a observância de uma série de procedimentos para acessos, validações, aceites e autorizações. Há uma especificidade para cada ato contratual, o que enseja uma leitura prévia por parte do contratante, não sendo pertinente considerar que o consumidor não teve prévio conhecimento acerca das condições avençadas.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Vê-se que a operação impugnada fora realizada pela requerente/apelada de forma virtual, como já fora dito, motivo pelo qual não haveria como o banco apelante juntar aos autos a cópia de instrumento contratual convencional com a assinatura da contratante. A documentação carreada demonstra que a instituição recorrente agiu com o necessário zelo na prestação do serviço, não havendo que se falar em ilegalidade na contratação.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Por tudo isso, reputo a existência de elementos fáticos suficientes à comprovação do negócio jurídico válido celebrado entre as partes, tendo a instituição financeira se desincumbido, a contento, do seu ônus probante de fato impeditivo, modificativo ou extintivo do direito autoral (art. 373, II, CPC), produzindo prova pertinente à regularidade da contratação que sustenta ter acontecido.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Logo, ao vislumbrar a regularidade dos descontos nos proventos de aposentadoria da parte autora, não há que falar em ato ilícito praticado pela instituição financeira, tampouco em invalidade contratual, motivo pelo qual reformo o pronunciamento judicial de origem e julgo improcedente a pretensão inicial.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> <strong style="font-family: &quot;times new roman&quot;; times; font-size: large; text-indent: 0px;">3- Dispositivo</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> <strong style="font-family: &quot;times new roman&quot;; times; font-size: large; text-indent: 0px;">&#160; Ante o exposto, pelas razões de fato e de direito acima descritas, &#160; <strong style="font-family: &quot;times new roman&quot;; times; font-size: large; text-indent: 0px;">conheço &#160; do recurso de apelação, para, no mérito, &#160; <strong style="font-family: &quot;times new roman&quot;; times; font-size: large; text-indent: 0px;">dar-lhe provimento , no sentido de reformar a sentença e julgar improcedente o pleito autoral.</p><p style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"> Com o resultado, inverte e redimensiono o ônus sucumbencial em desfavor da parte

Processo	0201242-52.2023.8.06.0166
	autora, fixando os honorários de advocatícios sobre o valor da causa, ressaltando-se a suspensão da exigibilidade em razão dos benefícios da justiça gratuita (art. 98, § 3º, CPC). É como voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente/Relator
Processo	3000421-30.2025.8.06.0030
Número de ordem	193
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Tarifas
Polo ativo	RAIMUNDO JORGE DE CASTRO
Advogado(s) - Polo ativo	SUELLEN NATASHA PINHEIRO CORREA - (CE22554-A) LUIZ GUILHERME ELIANO PINTO - (CE21516-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	THIAGO BARREIRA ROMCY - (CE23900-A)
Terceiros	Não informado

Processo	3000421-30.2025.8.06.0030
Acordão	<p style="text-align: center;">&#160;</p><p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCIQLhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTE8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUJZReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ/+jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRSrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommDOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6hMDY3bKspomopGk4 aq0AxDM4glkvEtCPFTaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RfYvY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RDl82dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBl4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWvZtqx62NfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNhEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKSrLz8rJTcLGuGpquMCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtTASGWRBttau2dl/XHeuccbKdTWpljdzg72jpb67snTSt2uMX3X MkxjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDjT9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsquaxatW0YlaGYnMWb Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/DyookK8dTUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3lxi UG4LTl9z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVgiAooWj+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeeZ02Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hLzSWRGJZMbj TNWPf+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZXoLO1c+euYwLFDgyGNry36ewLV0bGvFOW1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNRq 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWWhWotLYLBlaHs3Jz0yFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAKMg2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhantbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOG pw1t9ofclZHE21NneWVeWBxJJE1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo ZOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGAD425NbR9FJZQW6GzTC9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkX410JEZMRUUDZIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	3000421-30.2025.8.06.0030
	unanimidade de#160;votos, em conhecer do recurso interposto para DAR-LHE#160;PROVIMENTO, nos termos do voto do Desembargador Relator. Fortaleza, data da#160;assinatura digital.</p><p style="text-align: justify;">
</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Presidente/Relator </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify">
 </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> RELATÓRIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;"> &#160; Trata-se de Apelação Cível interposta por Raimundo Jorge de Castro com o objetivo de reformar sentença proferida pelo MM. Juiz de Direito Hércules Antônio Jacot Filho, da Vara Única da Comarca de Aiuaaba, que indeferiu a inicial nos autos da Ação Declaratória de Nulidade de Negócio Jurídico c/c Repetição do Indébito e Indenização por Danos Morais ajuizada pelo ora apelante em desfavor do Banco Bradesco S/A.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;"> A referida ação visa à declaração de inexistência/nulidade de relação contratual entre as partes, à fixação de indenização a título de danos morais e à devolução em dobro de parcelas indevidamente descontadas do benefício previdenciário do autor/apelante.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;"> &#160; Ao analisar os autos, o juízo singular destacou que "[...]&#160; que a parte autora é a mesma, assim como a causa de pedir (negativa de contratação de tarifas e/ou empréstimos bancários),&#160; no mesmo benefício previdenciário / conta bancária ,&#160; divergindo apenas os contratos/descontos, de modo que não há nenhuma necessidade/utilidade no fracionamento de tais demandas.&#160; [...]] </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;"> Assim, na&#160; sentença de ID. n.º 27008782, o d. Juízo&#160; a quo&#160; da ausência de interesse de agir, conforme art. 485, inciso VI do Código de Processo&#160;Civil.&#160; O fundamento central para tal decisão foi o fato de o autor/apelante ter ajuizado duas ações similares&#160; contra o Banco requerido. O magistrado argumentou que as ações&#160; deveriam ter sido reunidas em um único processo, dada a semelhança nos pedidos e &#160; identidade das partes, para evitar a morosidade judicial e o abuso do direito de ação.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;"> &#160; Irresignado, o autor apelou&#160; ID. n.º 27008786 arguindo que " o fracionamento de ações, por si só, não deve ser considerado suficiente para afastar o

Processo	3000421-30.2025.8.06.0030
	interesse de agir, especialmente quando cada ação trata de contratos distintos, ainda que relacionados ao mesmo réu." </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;"> &#160; Aduz que <em style="background-color: transparent; font-family: "times new roman";, times; font-size: 14pt; text-indent: 2.5cm;">agiu em estrita observância aos princípios da necessidade, adequação e efetividade da tutela jurisdicional, não havendo, pois, qualquer abuso do direito de ação. Ao revés, a tentativa de imposição da cumulação de pedidos viola a faculdade conferida à parte pelo art. 327 do CPC e restringe, de forma indevida, o exercício do direito constitucional de acesso à justiça, previsto no art. 5º, inciso XXXV, da Constituição Federal ."</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;"> &#160; Pugna pelo provimento do recurso, cassando-se a sentença objurgada, para que o processo possa seguir seu curso normal.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;"> &#160; Contrarrrazões apresentadas no ID. n.º 27009543.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;"> &#160; É o relatório.</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify; text-indent: 8%;">
</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: center;"> VOTO</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: center;">
</p><p style="text-align: justify; font-family: "Times New Roman";; font-size: medium; text-indent: 8%;"> <strong style="font-size: large; font-family: "times new roman";, times;">1- Admissibilidade</p><p style="text-align: justify; font-family: "Times New Roman";; font-size: medium; text-indent: 8%;"> Satisfeitos os pressupostos intrínsecos ou subjetivos – cabimento, interesse e legitimidade, inexistência de súmula impeditiva – e extrínsecos ou objetivos – tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer – de admissibilidade recursal, conheço do recurso interposto.</p><p class="MsoNormal" style="text-align: justify; font-family: "Times New Roman";; font-size: medium; text-indent: 8%;"> 2- Mérito recursal</p><p class="MsoNormal" style="text-align: justify; font-family: "Times New Roman";; font-size: medium; text-indent: 8%;"> &#160; Inicialmente, destaque-se a relação consumerista entre as partes, figurando o promovente/apelante como consumidor e o banco/apelado como fornecedor de serviços, sujeito à eventual responsabilização civil, conforme os arts. 12 e 14 do CDC, e que o enunciado n.º 297 da súmula da jurisprudência do STJ estabelece que: "<em style="background-color: transparent; font-family: "times new roman";, times; text-indent: 2.5cm; font-size: 11px;">O Código de Defesa do Consumidor é aplicável às instituições financeiras"</p><p class="MsoNormal" style="text-align: justify; font-family: "Times New Roman";; font-size: medium; text-indent: 8%;"><em style="background-color: transparent; font-family: "times new roman";, times; text-indent: 2.5cm; font-size: 11px;">O Código de Defesa do Consumidor é aplicável às instituições financeiras"</p>

Processo	3000421-30.2025.8.06.0030
	&quot;times new roman&quot;, times; text-indent: 2.5cm; font-size: 11px;"/> &#160;/>Em exame dos autos, tem-se que o douto juízo&#160;/> a quo >indeferiu a petição inicial, por ausência de interesse de agir, ao fundamento que houve abuso no direito de demandar, visto que o requerente deveria ter ingressado com uma única demanda a fim de discutir as cobranças realizadas pela instituição financeira e não a interposição de duas<strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> &#160;ações, mencionadas na sentença de ID. n.º 27008782, quais sejam os processos de n.º 3000421-30.2025.8.06.0030 e 3000422-15.2025.8.06.0030.</p><p class="MsoNormal" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"/> &#160;/> Pois bem.</p><p class="MsoNormal" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"/><strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> Especialmente o fato de serem <strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> somente duas causas ajuizadas pelo <strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> demandante <strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> em desfavor do Banco Bradesco S/A <strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> <strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> &#160;leva-me a entender <strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> &#160;pelo <strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> afastamento da hipótese de litigância abusiva.</p><p class="MsoNormal" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"/> <strong style="font-family: &quot;times new roman&quot;, times; background-color: transparent; text-indent: 2.5cm; font-size: 11px;"/> &#160;/> &#160;/> Entretanto, no presente caso, diversamente do fundamento sentencial, em vista da situação que circunda os processos em evidência, não há como caracterizar como prática de litigiosidade predatória, nos termos parametrizados na Recomendação n.º 127 de 15/02/2022 do Conselho Nacional de Justiça (CNJ), que dispõe:</p><p class="MsoNormal" style="text-align: justify; font-family: &quot;Times New Roman&quot;; font-size: medium; text-indent: 8%;"/> &#160;/>
</p><p class="MsoNormal" style="text-align: justify; font-size: 100%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent; align="justify"/> “Art. 2º Para os fins desta recomendação, entende-se por judicialização predatória o ajuizamento

Processo	3000421-30.2025.8.06.0030
	em massa em território nacional de ações com pedido e causa de pedir semelhantes em face de uma pessoa ou de um grupo específico de pessoas, a fim de inibir a plena liberdade de expressão." </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">
 </p><p class="western" style="line-height: 200%; text-indent: 8%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Destarte, considero desarrazoada a conclusão do il. juiz a quo, eis que a situação fática posta em deslinde não configura fracionamento indevido de ações, nem caracteriza violação ao princípio da cooperação e falta de interesse de agir da parte autora. </p><p class="western" style="line-height: 200%; text-indent: 8%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> &#160; Entendo, pois, que, não restou evidenciada a ocorrência de demanda temerária.</p><p class="western" style="line-height: 200%; text-indent: 8%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Nesse entendimento, anoto os seguintes julgados desta eg. Corte de Justiça:</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">
 </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> DIREITO PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITOS C/C INDENIZAÇÃO. SENTENÇA DE INDEFERIMENTO DA INICIAL POR AUSÊNCIA DE INTERESSE PROCESSUAL. AUSÊNCIA DE INTERESSE PROCESSUAL POR FRACIONAMENTO DE DEMANDAS. NÃO OCORRÊNCIA. OFENSA AO PRINCÍPIO DO ACESSO À JUSTIÇA. PRINCÍPIO DA INAFASTABILIDADE DA TUTELA JURISDICIONAL. PRINCÍPIO DA PRIMAZIA DO JULGAMENTO DE MÉRITO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. I- Cinge-se a controvérsia em perquirir o acerto ou desacerto da sentença impugnada, que indeferiu a petição inicial, sob a fundamentação de existência de três ações, esta e outras duas, ajuizadas pela autora buscando anular descontos, supostamente indevidos, o que configuraria ausência de interesse processual, uma vez que a parte deveria ajuizar somente uma demanda. II- No caso concreto, conquanto os processos versem sobre matéria similar, ou seja, cobranças indevidas; referem-se a descontos de timbres, contratos e períodos diversos; assim, relações jurídicas distintas. Patente, pois, a legitimidade e o interesse processual. III- O fundamento utilizado pelo magistrado sentenciante não se aplica ao caso sub judice, ante a diferenciação entre as ações paradigmas por ostentarem como causa de pedir contratos diversos, o que descaracteriza a multiplicidade de ações; afastando-se, pois, a ocorrência do instituto da conexão e, ainda, a possibilidade de ocorrência do mero risco de decisões conflitantes, a que se refere o art. 55, § 3º do CPC. IV- Em que pese se tratar das mesmas partes, o fato de cada processo ostentar Contratos distintos, já é o suficiente para que se permita o processamento em separado, porquanto, antes de ser uma obrigação, a reunião dos pedidos em uma só demanda é uma faculdade (art. 327, CPC). V- Em homenagem aos princípios da cooperação, da inafastabilidade da tutela jurisdicional e da primazia do julgamento de mérito; devem os autos retornar ao juízo de origem para que a inicial seja recebida, processada e sentenciada, na forma da lei. VI- Recurso conhecido e provido. Sentença anulada.&#160; (TJ-CE - Apelação Cível - 0201039-18.2024.8.06.0114, Rel. Desembargador(a) MARIA REGINA OLIVEIRA CAMARA, 1ª Câmara Direito Privado, data do julgamento: 06/11/2024, data da publicação: 06/11/2024). [Grifou-se].</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">
 </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. AÇÃO DE DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SERVIÇO DE SEGURO . TARIFAS. EXTINÇÃO DA AÇÃO POR AUSÊNCIA DE LEGITIMIDADE OU INTERESSE PROCESSUAL. 485, VI, DO CPC. DEMANDA PREDATÓRIA NÃO CONFIGURADA . AUSÊNCIA DE JUSTA CAUSA PARA A EXTINÇÃO DA AÇÃO.</p>

Processo	3000421-30.2025.8.06.0030
	INDEFERIMENTO DA INICIAL. VIOLAÇÃO DOS PRINCÍPIOS DO ACESSO À JUSTIÇA E DA PRIMAZIA DO JULGAMENTO DE MÉRITO. CERCEAMENTO DO DIREITO DE DEFESA . SENTENÇA CASSADA. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. RECURSO CONHECIDO E PROVIDO. 1 . Trata-se de recurso de apelação interposto contra sentença que decretou a extinção do processo, sem julgamento do mérito, por ausência de legitimidade ou de interesse processual, na forma do art. 485, VI, do CPC, sob o fundamento de que o ajuizamento de demandas de massa pelo apelante viola os princípios da razoável duração do processo, eficiência e da cooperação, expondo a falta de interesse de agir, e que o ajuizamento de duas ações contra a mesma parte, sobre o mesmo assunto, configura abuso de direito da autora. 2. Inicialmente, embora a sentença mencione que a autora tenha ajuizado 2 (dois) processos diferentes contra a mesma instituição financeira, devo observar que a configuração de conduta predatória do apelante não ocorre pela simples verificação da quantidade de ações ajuizadas, mas pela presença de outras circunstâncias associadas, como por exemplo, o fracionamento indevidos de pedidos relativos a um mesmo contrato em diferentes ações ou o ajuizamento da mesma ação (parte, pedido e causa de pedir) em diferentes varas ou comarcas, visando escolher o juízo que lhe parece ter o entendimento mais favorável, para depois desistir dos outros processos, burlando o princípio do juiz natural, o que não ocorreu no caso dos autos, visto que uma ação se trata da cobrança de Seguro e a outra de Tarifas bancárias . 3. Além disso, ainda que semelhantes, as ações são diferentes e inexistente conexão entre elas quando tiverem como causa de pedir diferentes contratos, ainda que haja identidade de partes, pois cada contrato envolve diferentes objetos, valores e circunstâncias a serem apreciadas individualmente, razão pela qual não deve haver a reunião dos processos nesses casos. 4. Desse modo, é absolutamente irrazoável a conclusão de que o ajuizamento de diversos processos contra instituições financeiras diversas, em que cada um aborda sobre um contrato diferente do outro, constitua fragmentação indevida de ação . 5. Em ações cuja discussão envolve a existência ou validade de negócios jurídicos relacionados a contratos bancários, em que a causa de pedir gira em torno da falha na prestação de serviços bancários, a simples evidência da violação do direito da parte, como a demonstração da existência de inclusão de descontos do benefício previdenciários através de extrato do INSS, em razão do contrato que afirma ser fraudulento ou indevido, é suficiente para evidenciar o interesse de agir da parte em fazer cessar a violação de seu direito e a responsabilização civil pelos danos sofridos. 6. No caso dos autos, a parte autora alega estar sendo alvo de cobranças indevidas pelo banco promovido, que estaria descontando de seu benefício previdenciário valores referentes a prestações de um Seguro que afirma não ter contratado, e instruiu a inicial com cópia do documento pessoal de identificação (p . 26); comprovante de residência (p. 27); procuração ad judícia assinada de próprio punho (p. 29); extrato da conta Bradesco em que consta a inclusão dos descontos referentes ao contrato de Seguro, em favor do banco promovido (p. 31/46) estando a petição, portanto, lastreada em documentos que evidenciam minimamente a presença de pressupostos de constituição e de desenvolvimento válido e regular do processo . 7. Ressalto, ainda, que em ações cuja questão controvertida é a negativa da contratação do empréstimo e a existência de descontos indevidos referente ao mesmo, cabe à parte autora a demonstração da existência dos referidos descontos, ao passo que é ônus da prova da instituição financeira comprovar a contratação do serviço e apresentar aos autos o instrumento contratual, a fim de que seja submetido à análise de existência e validade do negócio jurídico, assim como a comprovação da transferência dos recursos oriundos do empréstimo para a conta do consumidor, pois, em se tratando de relação de consumo, deve ser observada a aplicação da inversão do ônus da prova em favor do consumidor, imputando-se à instituição financeira a juntada dos documentos que por ela devem ser mantidos, por serem considerados de posse obrigatória, em decorrência da atividade desempenhada, como é o caso dos instrumentos do contrato. 8. Nesse contexto, estando descaracterizada a existência de demanda predatória e evidenciada a causa de pedir, a legitimidade da parte e o interesse processual, há de se reconhecer a ausência de justa causa para a extinção do feito, por violação dos princípios da inafastabilidade da tutela jurisdicional e do devido processo legal, consagrados pelo art . 5º, XXXV e LIV, da Constituição Federal, comprometendo a finalidade do processo, que é a satisfação do direito material pela primazia da sentença de mérito, nos termos dos arts. 4º e 6º, do CPC. 9. Recurso conhecido e provido . Sentença anulada. Retorno dos autos à origem para o regular processamento do feito. TJ-CE - Apelação Cível: 02007944720248060133 Nova Russas, Relator.: EVERARDO LUCENA SEGUNDO, Data de Julgamento: 23/10/2024, 2ª Câmara Direito Privado, Data de Publicação: 23/10/2024). [Grifou-se].

Processo	3000421-30.2025.8.06.0030
	 APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. TARIFAS BANCÁRIAS E SEGURO PRESTÁMISTA EMPRÉSTIMO CONSIGNADO. INSURGÊNCIA DA PARTE AUTORA CONTRA O INDEFERIMENTO DA PETIÇÃO INICIAL E EXTINÇÃO DA AÇÃO SEM RESOLUÇÃO DO MÉRITO (ART. 330, III, DO CPC). AJUIZAMENTO DE DIVERSAS AÇÕES QUE NÃO RELEVA A AUSÊNCIA DE INTERESSE DE AGIR. PROCESSOS FUNDADOS EM CONTRATO DIVERSO. CAUSA DE PEDIR DISTINTAS. REUNIÃO POR CONEXÃO. IMPOSSIBILIDADE. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. Trata-se de apelação cível proposta pela parte autora, em desfavor da sentença que indeferiu a petição inicial julgando extinta a ação e sem resolução do mérito, por ausência do interesse recursal. A controvérsia cinge-se em analisar se há falta de interesse processual em face do ajuizamento de várias ações que versam sobre fatos semelhantes, ao invés de propor uma única ação englobando tudo. 2. Em relação ao abuso do direito de ação ou "uso predatório da jurisdição", embora essa prática seja temerária, não se enquadra na hipótese prevista no art. 330, inciso III, do CPC, pois o interesse de agir está presente, consubstanciado no binômio necessidade/adequação. Sob essa perspectiva, a necessidade deriva da proibição da autotutela no ordenamento jurídico brasileiro, implicando que, na ausência de meios próprios para buscar a realização de suas pretensões, o demandante deve recorrer ao Estado-juiz. Por outro lado, a adequação refere-se ao uso de instrumentos processuais apropriados para alcançar a tutela jurisdicional almejada. 3. Sob esse prisma, a argumentação do magistrado de primeira instância de que a existência de múltiplas ações movidas para anular contratos de empréstimo consignado indica falta de interesse processual, uma vez que o autor deveria ter apresentado apenas uma demanda, não é válida. Isso se deve ao fato de que, em situações de conexão entre ações, a consequência processual é a junção dos processos para julgamento conjunto e não a sua extinção por ausência de interesse de agir. 4. A conexão entre processos evita decisões conflitantes ao julgar casos semelhantes simultaneamente pelo mesmo juízo. Neste caso, apesar de envolverem cobranças indevidas de empréstimos consignados, os processos têm objetos distintos, tratam-se de diferentes contratos. 5. Cumpre destacar, ainda, que a sentença recorrida viola o princípio da cooperação, conforme estabelecido no art. 6º do CPC, além de infringir a garantia constitucional da inafastabilidade da tutela jurisdicional, como previsto no art. 5º, XXXV, da CF. 6. Observa-se, portanto, que o Juízo a quo, ao prolatar a sentença, não agiu com acerto, incorrendo em error in procedendo. Diante disso, a anulação da sentença e o retorno dos autos ao Juízo de origem para o regular processamento é medida que se impõe. 7. Recurso conhecido e provido. Sentença casada.&#160; (TJ-CE - Apelação Cível - 0200510-55.2024.8.06.0160, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 14/08/2024, data da publicação: 14/08/2024). [Grifou-se].</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. INDEFERIMENTO DE INICIAL. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. FALTA DE INTERESSE PROCESSUAL. MULTIPLICIDADE DE DEMANDAS. EXERCÍCIO DO DIREITO DE AÇÃO. CONTRATOS DISTINTOS. CAUSAS DE PEDIR DISTINTAS. VEDAÇÃO À CONDUITA DA PARTE AUTORA - AUSÊNCIA - ERROR IN PROCEDENDO. CONEXÃO. INEXISTENTE. CONTRATOS DIFERENTES. SENTENÇA ANULADA - RECURSO CONHECIDO E PROVIDO. 1. O cerne da demanda se refere se há interesse de agir em uma demanda, quando a autora ingressa com multiplicidade de ações contra o mesmo réu. 2. O entendimento doutrinário dominante em nosso ordenamento jurídico preleciona que o interesse de agir ou processual está intimamente ligado ao binômio necessidade/adequação, não sendo albergado pelo Ordenamento Jurídico o ajuizamento de múltiplas ações como causa da falta de interesse de agir. 3. Ausência de conexão, em virtude de as ações terem objetos distintos. 4. Recurso conhecido e dado provimento. Sentença anulada.&#160; (TJ-CE - Apelação Cível - 0200490-53.2022.8.06.0154, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 26/07/2023, data da publicação: 26/07/2023). [Grifou-se].</p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> </p><p class="western" style="line-height: 200%; text-indent: 8%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> </p></table>

Processo	3000421-30.2025.8.06.0030
	0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Com o propósito de assegurar à parte autora as garantias constitucionais do acesso a uma tutela jurisdicional efetiva, célere e eficaz, asseguradas pelo legislador constituinte, deve a sentença ser cassada, a fim de que os autos possam retomar seu processamento.</p><p class="western" style="line-height: 200%; text-indent: 8%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> <strong style="font-size: large;">3- Dispositivo</p><p class="western" style="line-height: 200%; text-indent: 8%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> <strong style="font-size: large;">¶Diante do exposto, conheço do recurso, para<strong style="background-color: transparent; font-family: "times new roman", times; text-indent: 2.5cm;">DAR-LHE PROVIMENTO, a fim de desconstituir a sentença recorrida e determinar o retorno dos autos à origem, para que ali seja dada a regular tramitação ao feito.</p><p class="western" style="line-height: 200%; text-indent: 8%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É o voto.</p><p class="western" style="line-height: 200%; text-indent: 8%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Fortaleza, data da assinatura digital.</p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">
</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Presidente/Relator</p><p>¶</p>

<p>¶</p><p style="text-align: center;"> ¶</p></p>
Processo	3000843-54.2024.8.06.0122
Número de ordem	194
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Rescisão do contrato e devolução do dinheiro
Polo ativo	MARIA PONTES DA SILVA
Advogado(s) - Polo ativo	DEBORA BELEM DE MENDONCA - (CE34734-A)
Polo passivo	BRADESCO CAPITALIZACAO S/A
Advogado(s) - Polo passivo	FRANCISCO SAMPAIO DE MENEZES JUNIOR - (CE9075-A)
Terceiros	Não informado

Processo	3000843-54.2024.8.06.0122
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmclrAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIALFCIQLhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkEkZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7uluHurr6WxtTujJr0RmlV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYmOrbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcyAwc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBfVo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUVDnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaAKNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyygJtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHeRFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgXmoViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQELJFBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXKR3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZwGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+vMy/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj//5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmJFYQAYKCAKMG2MkxjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX+8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJNwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7Sgk6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5vDfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWBZgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWAatMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3lXgiUG4LT19z2wZ6B+iP9WeVIWtYJQMhoz2DdvrYIz8y02ewMg8CAZmdl+DKckkP64L2PE3H62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWfPDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWj+AHcgz2Bw/urEsm5YHBOEMZn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQm+5PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbjTNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11zTZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOW1sB+4rEUmN7R4biciLqctmRKTAUumpfaG/pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yARWhWotLYLBlaHs3JzOyFwcwvlqRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAGKMG2oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuWFzkhHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+KuQEkiQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuSSvRXMbpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y9ZRDKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOGepw1t9ofclZHE21NneWVeWBxJJ1VfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tvqWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvGQwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gXAylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpfPv4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgYNU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+FoZOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTAalT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0DVfvDKi9fd8UPKYK3jRxPsJZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9vC46kKFmzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hwSnBERGDHfMDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki60hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjpg6TUbmS0f3wUOHu3v7R0aHQPuEbM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41okUvsnXNkIX410JEZMRUOZDIFMjFwRvMVGEXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYcDY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	3000843-54.2024.8.06.0122
	Presidente/Relator RELATÓRIO Trata-se de Apelação Cível interposta por Maria Pontes da Silva com o objetivo de reformar a sentença proferida pelo MM. Juiz de Direito Daniel Alves Mendes Filho, da Vara Única da Comarca de Mauriti, que julgou parcialmente procedente a Ação Declaratória de Inexistência de Débito c/c Repetição do Indébito e Indenização por Danos Morais ajuizada pela ora apelante em desfavor de Bradesco Capitalização S/A. A referida ação visa à declaração de inexistência de relação contratual entre as partes, à fixação de indenização a título de danos morais e à devolução em dobro de parcelas indevidamente descontadas do benefício previdenciário da autora/apelante. Ao analisar o conjunto probatório acostado aos autos, o juízo singular destacou que "[...]" a parte requerida teve oportunidade de comprovar a regularidade dos débitos indicados nos autos, mas não se desincumbiu de tal ônus, sendo que deixou de apresentar qualquer tipo de contrato ou documento assinado pela parte autora que indique a contratação. Assim não produziu prova concreta que demonstrasse a existência da relação contratual ou anuência da parte autora que originaram os débitos [...]. Assim, a ação foi julgada parcialmente procedente, com o indeferimento da indenização por danos morais pleiteada, conforme sentença de ID. n.º 27083406. a) Declarar a nulidade dos descontos impugnados, com a consequente cessação definitiva dos descontos efetuados no benefício previdenciário da parte demandante; b) Determinar ao demandado a restituir de forma simples as parcelas descontadas até março de 2021, caso existam, e em dobro as descontadas após março de 2021. Sobre tais valores incidirão correção monetária pelo índice IPCA desde cada desconto e juros de mora pela variação da TAXA SELIC mês a mês, também a partir de cada desconto (Súmula 54/STJ), deduzida a correção monetária calculada pelo IPCA/IBGE (art. 405 c/c art. 406, § 1º, CC), com a ressalva de que não haverá incidência de juros moratórios (taxa de juros ZERO) se a diferença entre a subtração do IPCA da taxa SELIC for negativa, consoante o art. 406, § 3º, CC.

Processo	3000843-54.2024.8.06.0122
	(ID's. 27083323 e 27083338).&#160; Tem como objeto o processo de número 3000843-54.2024.8.06.0122, que deverá ser extinto, definindo-se, para tanto, obrigação de pagar e as suas condições, sendo, assim, lícito, possível e determinado. Por fim, o acordo está livre de qualquer vício de vontade. </p><p style="text-align: justify; text-indent: 8%;"> &#160; Dessa forma, considerando que a jurisdição visa a solução do litígio, e manifestando as partes nítido interesse em compor a lide, mediante concessões mútuas, uma vez observados os pressupostos de validade do art. 104 do Código Civil, nada obsta que o acordo realizado seja convalidado em grau de recurso.&#160; O próprio Código de Processo Civil prevê que ao magistrado cabe, a qualquer tempo, promover a autocomposição entre as partes. </p><p style="text-align: justify; text-indent: 8%;">&#160; Em relação a sua homologação em juízo, explica Nelson Nery Júnior (<em style="text-indent: 94.4882px;">in &#160;Código Civil Comentado [versão digital]. Ed. 2017. Revista dos Tribunais. Art. 840) que ela pode se dar por meio de simples apresentação em juízo do instrumento do acordo, como é o presente caso: </p><p style="text-align: justify; text-indent: 8%;">&#160;</p><p style="text-align: justify; padding-left: 150px;"> A homologação de acordo extrajudicial em juízo pode ser feita: a) no curso de ação pendente, por comunicação da parte, que junta o acordo e requer sua homologação (CPC 487 III b; CPC/1973 269 III), que caracteriza o título executivo descrito no CPC 515 II (CPC/1973 475-N III); ou b) por meio de simples apresentação ao juízo do instrumento do acordo, para que possa ser homologado. Somente a hipótese b é que caracteriza o título executivo judicial previsto no CPC 515 III (CPC/1973 475-N V), aqui comentado. </p><p style="text-align: justify; padding-left: 150px;">&#160;</p><p style="text-align: justify; text-indent: 8%;"> A esse respeito, ressalte-se ainda que, mesmo sendo celebrado acordo extrajudicial entre as partes, o interesse de agir permanece, no sentido de se obter a homologação da transação pelo juízo, com a consequente criação de título executivo judicial apto a embasar eventual fase de execução na hipótese de descumprimento do avençado entre as partes.&#160; Entretanto, em relação ao recurso, uma vez celebrado acordo entre as partes, resta prejudicado o seu julgamento em razão da perda superveniente do seu objeto, nos termos do art. 932, III, do CPC. </p><p style="text-align: justify; text-indent: 8%;"> &#160; Diante do exposto,&#160; HOMOLOGO , para que surtam seus jurídicos e regulares efeitos,&#160; a composição realizada , nos termos do instrumento de transação (ID. n.º 27634547), ao tempo em que EXTINGO o processo com resolução de mérito, nos termos do art. 487, III, "b" do CPC, restando, dessa forma,&#160; prejudicado o presente recurso. </p><p style="text-align: justify; text-indent: 8%;"> &#160; É o voto.</p><p style="text-align: justify; text-indent: 8%;"> &#160; Fortaleza, data da assinatura digital.</p><p style="text-align: justify; text-indent: 8%;">

Processo	3000843-54.2024.8.06.0122
	
 DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Presidente/Relator </p><p>
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<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	3000157-52.2025.8.06.0114
Número de ordem	195
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Rescisão do contrato e devolução do dinheiro
Polo ativo	JOAQUIM FRANCISCO DO NASCIMENTO
Advogado(s) - Polo ativo	JUNIOR SOUSA AGUIAR - (CE38185-A)
Polo passivo	BANCO BRADESCO S/A BRADESCO CAPITALIZACAO S/A
Advogado(s) - Polo passivo	THIAGO BARREIRA ROMCY - (CE23900-A)
Terceiros	Não informado

Processo	3000157-52.2025.8.06.0114
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSY0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+Co/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RD182dg8n5jdfHNaQ ELJFBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPxK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWvZtqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHlRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlC3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmWFiQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsquxatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LT19z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQm+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BAbDkY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAFfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVVeWBxJJElVfDrTECR2H3TDT2lZMs6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsJzUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjpg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nkdUvsnXNkIx410JEZMRUZOZDIFMjFvRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	3000157-52.2025.8.06.0114
	roman&quot;, times;"/>PODER JUDICIÁRIO tribunal de justiça gabinete desembargador José Ricardo Vidal Patrocínio processo: 3000157-52.2025.8.06.0114 apelação cível (198) apelante: Joaquim Francisco do Nascimento apelado: Banco Bradesco S/A, Bradesco Capitalização S/A EMENTA DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR COBRANÇA INDEVIDA CUMULADA COM PEDIDO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. EXTINÇÃO DO PROCESSO POR AUSÊNCIA DE PRESSUPOSTO DE CONSTITUIÇÃO E DESENVOLVIMENTO VÁLIDO E REGULAR. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES. RECURSO DESPROVIDO. SENTENÇA MANTIDA. I. CASO EM EXAME Trata-se de Apelação Cível interposta contra sentença prolatada pelo Juízo da Vara Única da Comarca de Lavras da Mangabeira/CE, que extinguiu a Ação de Indenização por Cobrança Indevida cumulada com pedido de Indenização por Danos Morais e Materiais, indeferindo a petição inicial, com fulcro no artigo 330, inciso III, do CPC e na Recomendação 159/2024 do CNJ.

Processo	3000157-52.2025.8.06.0114
	roman", times;";II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> 2.&#160; O cerne da controvérsia recursal consiste em examinar a correção ou não da sentença que indeferiu a petição inicial e extinguiu o feito sem resolução de mérito, com fundamento no fracionamento indevido de ações.</p><p style="text-align: justify;"> III. RAZÕES DE DECIDIR </p><p style="text-align: justify;"> 3.&#160; Do exame dos autos, nota-se que a parte autora, ora apelante, ajuizou&#160; 3 (três) ações <strong style="font-family: "times new roman", times; font-size: large; text-indent: 8%;">&#160; em que se nega ou se questiona, sem maior detalhamento, descontos indevidos (referentes a seguro, empréstimos consignados e títulos de capitalização) realizados em sua conta bancária, ajuizados contra a mesma instituição financeira ora recorrida, e que, em vez de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em um processo, como muito bem delimitou o d. juízo singular, apesar dos três terem identidade e afinidade quanto à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o&#160; <em style="font-family: "times new roman", times; font-size: large; text-indent: 8%;">decisum &#160;recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, §3º, do Código de Processo Civil.&#160;</p><p style="text-align: justify;"> 4.&#160; Nessa toada, manifesto minha concordância com o entendimento exarado pelo d. juízo &#160; <em style="font-family: "times new roman", times; font-size: large; text-indent: 8%;">a quo &#160; em relação ao prejuízo da conduta assumida pelo requerente / apelante no que tange aos princípios basilares para a ordem jurídica, como a razoável duração do processo, além da eficiência e economia processual. Não&#160; não se revela admissível o acionamento excessivo e injustificado do Poder Judiciário , por meio do ajuizamento de &#160; diversas ações com idêntico conteúdo e finalidade , propostas contra o &#160; mesmo réu , quando seria plenamente possível a reunião de todos os pedidos em um &#160; único processo.&#160;</p><p style="text-align: justify;"> IV. DISPOSITIVO </p><p style="text-align: justify;"> 5. Recurso desprovido. </p><p style="text-align: justify;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer do recurso interposto para, no mérito, negar-lhe provimento, no sentido de manter inalterada a sentença recorrida, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. <p align="center"> &#160; <p align="center"> &#160; </p>

Processo	3000157-52.2025.8.06.0114
	instituição financeira ora recorrida, e que, em vez de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em um processo, como muito bem delimitou o d. juízo singular, apesar dos três terem identidade e afinidade quanto à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decisum recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, §3º, do Código de Processo Civil.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> É de se salientar que, apesar de tratarem de contratos distintos em cada uma das demandas, tal fracionamento de ações deveria ser evitado a fim de que fossem reunidas em um só feito, pois do contrário, resta caracterizado o abuso do direito de demandar, com amparo no art. 187 do Código Civil.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> Com efeito, as partes têm o dever legal de agir corretamente e com lealdade, de boa-fé, e o fracionamento de ações representa verdadeiro abuso do direito processual, especialmente porque a parte autora, quando utiliza esse mecanismo, postula a justiça gratuita, e, sem a concessão desse benefício dificilmente optaria pela multiplicidade de demandas. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> Nessa toada, manifesto minha concordância com o entendimento exarado pelo d. juízo a quo em relação ao prejuízo da conduta assumida pelo requerente / apelante no que tange aos princípios basilares para a ordem jurídica, como a razoável duração do processo, além da eficiência e economia processual. Não&#160; não se revela admissível o acionamento excessivo e injustificado do Poder Judiciário, por meio do ajuizamento de diversas ações com idêntico conteúdo e finalidade, propostas contra o mesmo réu, quando seria plenamente possível a reunião de todos os pedidos em um único processo.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> Veja-se trecho da sentença hostilizada: </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; padding-left: 270px;"> Aqui destaco as demandas "desnecessariamente fracionadas". É o caso presente. Observe-se que a parte autora é a mesma, assim como a causa de pedir (negativa de contratação de tarifas e/ou empréstimos bancários), no mesmo benefício previdenciário / conta bancária, divergindo apenas os contratos/descontos, de modo que não há nenhuma necessidade/utilidade no fracionamento de tais demandas. </p><p style="text-align: justify; padding-left: 270px;"> [...] </p><p style="text-align: justify; padding-left: 270px;"> Ademais, é do entendimento deste Juízo que o dano moral é fenômeno que repercute como um todo na esfera individual quando diz respeito ao mesmo contexto fático, de modo que eventual fracionamento de demandas no afã de angariar diversas condenações em danos morais revela conduta que busca utilizar o sistema processual para enriquecimento sem causa, devendo ser tal comportamento coibido pelo Juízo, na forma do art. 142 do CPC.&#160; </p><p style="text-align: justify; padding-left: 270px;"> Desta feita, como amplamente narrado acima, o fracionamento das ações configura abuso de direito, violando os princípios da boa-fé e da cooperação, esvaziando o interesse de agir para propositura da presente ação. </p><p style="text-align: justify; padding-left: 270px;">
 </p><p style="text-align: justify; text-indent: 8%;"> Tudo isso considerado, a fim de que se evite decisões contraditórias, urge que seja realizada a reunião dos processos que contêm identidade, ou seja, que contam com as mesmas partes, causa de pedir e pedidos, em respeito à previsão do art. 55, CPC, in verbis. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="padding-left: 240px; text-align: justify;">
 </p>

Processo	3000157-52.2025.8.06.0114
	medium;"> Art. 55. Reputam-se conexas 2 (duas) ou mais ações quando lhes for comum o pedido ou a causa de pedir. </p><p style="padding-left: 240px; text-align: justify;"> § 1º Os processos de ações conexas serão reunidos para decisão conjunta, salvo se um deles já houver sido sentenciado. </p><p style="padding-left: 240px; text-align: justify;"> § 2º Aplica-se o disposto no caput: I - a execução de título extrajudicial e à ação de conhecimento relativa ao mesmo ato jurídico; II - às execuções fundadas no mesmo título executivo. </p><p style="padding-left: 240px; text-align: justify;"> § 3º Serão reunidos para julgamento conjunto os processos que possam gerar risco de prolação de decisões conflitantes ou contraditórias caso decididos separadamente, mesmo sem conexão entre eles </p><p style="padding-left: 240px; text-align: justify;">

 </p><p style="text-align: justify; text-indent: 8%;"> Como dito, o fato de as ações envolverem contratos distintos não afasta a conexão, pois todas têm como base a mesma causa de pedir: descontos bancários que o autor afirma serem indevidos, com pedidos de restituição e indenização por danos morais.&#160;Sob esse prisma, não merece reproche o entendimento manifestado pelo d. magistrado de primeiro grau, sendo adequada a aplicação dos arts. 330, inciso I e 485, inciso VI, do CPC. </p><p style="text-align: justify; text-indent: 8%;">&#160;</p><p style="text-align: justify; text-indent: 8%;"> Posto isso, para efeito de argumentação, vejamos os julgamentos abaixo ementados em casos semelhantes: </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; padding-left: 240px;"> DIREITO CIVIL, PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÕES CÍVEIS. SENTENÇA DE EXTINÇÃO DO PROCESSO POR AUSÊNCIA DE INTERESSE DE AGIR. AUSÊNCIA DE DIALETICIDADE RECURSAL NO APELO DA INSTITUIÇÃO FINANCEIRA. RECURSO NÃO CONHECIDO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES. RECURSO DO AUTOR CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. I) CASO EM EXAME: 1. Trata-se de Apelações Cíveis objetivando a reforma da sentença proferida pelo Juízo da Vara Única da Comarca de Aracoiaba, nos autos da Ação Ordinária que fora ajuizada por Adail Alves da Silva em desfavor de Banco Bradesco S/A. II) QUESTÃO EM DISCUSSÃO: 2. O cerne da controvérsia consiste em verificar o interesse de agir do Autor, dado o fracionamento de ações e suposto abuso no direito de demandar. III) RAZÕES DE DECIDIR: 3. Recurso da parte requerida não conhecido por ausência de dialeticidade. 4. No caso, tem-se relação de consumo, figurando o Promovente como consumidor e o banco como fornecedor de serviços, sujeito à eventual responsabilização, conforme os arts. 12 e 14 do CDC. 5. D o exame dos autos, nota-se que o autor ajuizou 7 (sete) ações anulatórias de débito c/c indenização por danos materiais e morais contra a mesma instituição financeira, e que, em vez de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em diversos processos, como muito bem delimitou o d. Juízo singular, apesar de todas elas terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decisor recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, §3º, do CPC. 6. Por último, a sentença recorrida se encontra devidamente fundamentada, com exposição clara do entendimento do d. juízo de primeiro grau, em consonância com o art. 93, IX, da CF/1988, não vindo a calhar o argumento sobre carência de fundamentação levantado na apelação. IV) DISPOSITIVO: 7. Recurso da instituição financeira não conhecido. Recurso do autor conhecido e desprovido. Sentença mantida.&#160;
 (Apelação Cível&#160;- 0200098-11.2024.8.06.0036, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 04/12/2024, data da publicação:&#160; 04/12/2024) [Grifou-se]. </p><p style="text-align: justify; padding-left: 240px;"> DIREITO CIVIL, PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1.

Processo	3000157-52.2025.8.06.0114
	O cerne da controvérsia consiste em verificar o interesse de agir do autor, ora apelante, dado o fracionamento de ações e suposto abuso no direito de demandar. 2. Inicialmente, tem-se relação de consumo, figurando o promovente/apelante como consumidor e o banco/apelado como fornecedor de serviços, sujeito à eventual responsabilização civil, conforme os arts. 12 e 14 do CDC. 3. Do exame dos autos, nota-se que o autor ajuizou 17 (dezesete) ações anulatórias de débito c/c indenização por danos materiais e morais contra diferentes instituições financeiras, muitas delas contra o banco apelado, alegando, em resumo, não ter firmado os empréstimos consignados e requerendo restituição de valores e indenização correspondente, e que em vez de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em diversos processos, como muito bem delimitou o d. Juízo singular, apesar de todas elas terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decismum recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, §3º, do CPC. 4. Por último, a sentença recorrida encontra-se devidamente fundamentada, com exposição clara do d. juízo de primeiro grau, em consonância com o art. 93, IX, da CF/1988, não vindo a calhar o argumento sobre carência de fundamentação levantado na apelação. 5. De mais a mais, constata-se nesta e. Corte a existência de inúmeras demandas praticamente idênticas patrocinadas pelo causídico do autor/apelante, de modo que é aceitável que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. Precedentes. 6. Apelação conhecida e desprovida. Sentença mantida. (Apelação Cível - 0201642-39.2022.8.06.0154, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 05/07/2023, data da publicação: 05/07/2023). [Grifou-se] DIREITO CIVIL E PROCESSUAL CIVIL. DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DE EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. APURAÇÃO DE POSTURA INADEQUADA DO PATRONO ATIVO. APELO DESPROVIDO. 1. A controvérsia recursal na demanda diz respeito ao interesse de agir da promovente no feito, além do fracionamento de ações e suposto abuso no direito de demandar. 2. Em um primeiro momento, frisa-se a relação de consumo no ato, situação em que a parte ativa figura como consumidora, ao passo em que a instituição bancária consta na posição de fornecedora de serviços, sujeita à eventual responsabilização civil, nos termos dos arts. 12 e 14, CDC. 3. No caso concreto, observa-se um número excessivo de demandas ajuizadas pela promovente em face de instituições bancárias, havendo, em seu nome, 38 contendidas para discutir contratos de empréstimos consignado e descontos indevidos em seu benefício econômico. Apesar de discutirem contratos diversos, nota-se identidade entre as lides alhures, considerando que são as mesmas as causas de pedir e os pedidos. 4. Sendo assim, assiste razão o decismum vergastado, no que considera-se como necessária, ainda, a reunião dos supraditos processos para que se evite julgamentos contraditórios, aos termos do art. 55, §3º, CPC. 5. Outrossim, tem-se como devidamente fundamentada a sentença combatida, tendo o magistrado exposto toda sua linha de raciocínio e argumentação, vide art. 93, IX, CF, cabendo, pois, o afastamento de carência de fundamentação suscitado em recurso. 6. Ademais, observa-se que consta perante esta Egrégia Corte de Justiça inúmeras demandas praticamente idênticas conduzidas pelo causídico da autora, de modo que é justo que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. 7. Apelo conhecido e desprovido. (Apelação Cível - 0200488-83.2022.8.06.0154, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 08/03/2023, data da publicação: 09/03/2023). [Grifou-se] APELAÇÃO. SENTENÇA DE INDEFERIMENTO DA A PETIÇÃO INICIAL, COM EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. NO CASO, AÇÃO ANULATÓRIA DE DÉBITO COM DANOS MATERIAIS E MORAIS. MULTIPLICIDADE DE DEMANDAS PROPOSTAS PELA AUTORA: 38 (TRINTA E OITO) AÇÕES NA COMARCA DE QUIXERAMOBIM. CONEXÃO. PARADIGMAS DO STJ. SINTOMÁTICA POSTURA DISFUNCIONAL DO CAUSÍDICO. DESPROVIMENTO. 1. Rememore-se o caso. Nos autos, ação anulatória de débito c/c danos materiais e morais. Nessa perspectiva, a Parte Autora alega que foi surpreendida com a cobrança de empréstimo não contratado. Enfatizou que as relações jurídicas que desencadearam as cobranças por parte do promovido são indevidas. Ao final, pugna pela anulação do contrato e condenação do demandado ao pagamento de indenização por danos morais e materiais, em razão dos descontos indevidos. Eis a origem da celeuma. 2. Inicialmente, mister consignar que o Juízo Primevo deferiu o benefício da Assistência Judiciária Gratuita à Parte Autora, o que deve ser conservado. 3. MULTIPLICIDADE DE DEMANDAS PROPOSTAS PELA

Processo	3000157-52.2025.8.06.0114
	AUTORA: 38 (TRINTA E OITO) AÇÕES NA COMARCA DE QUIXERAMOBIM: Nada obstante, a análise meritória da demanda foi impactada ante a constatação judicial da multiplicidade de ações propostas pela Autora, a saber: 38 (trinta e oito) na Comarca de Quixeramobim, todas ajuizadas no dia 30.03.22, donde se verifica o mesmo objeto, igual causa de pedir e idêntico pedido, mas tais exordiais foram distribuídas isoladamente e individualmente. 4. CONEXÃO: A jurisprudência do STJ tem entendido que, por ser uma faculdade do julgador, a decisão que reconhece a conexão ou a continência não impõe ao magistrado a obrigatoriedade de julgamento simultâneo dos feitos. O magistrado, a seu critério e diante de cada caso concreto, verificará a utilidade do julgamento simultâneo, com vistas a privilegiar a economia processual. Paradigmas do STJ. 5. SINTOMÁTICA POSTURA DISFUNCIONAL DO CAUSÍDICO: A essa altura, o Julgador Pioneiro enfatiza que o Advogado merece reprimenda. 6. DESPROVIMENTO do Apelo, para conservar a sentença por irrepreensível, pelo que se verifica a necessidade de extração de cópias dos autos para envio a Ordem dos Advogados do Brasil, Seccional do Ceará - OAB-CE, bem como a remessa de traslado do feito para a douta Corregedoria-Geral da Justiça do Ceará ¿ CGJ-CE, que melhor dirão. (Apelação Cível- 0200504-37.2022.8.06.0154, Rel. Desembargador(a) FRANCISCO DARIVÁL BESERRA PRIMO, 4ª Câmara Direito Privado, data do julgamento: 07/02/2023, data da publicação: 07/02/2023). [Grifou-se] PROCESSIONAL. PECULIARIDADE DO CASO CONCRETO. FRACIONAMENTO DE AÇÕES QUE INDICAM ABUSO DO DIREITO DE DEMANDAR. CONDUTA ADOTADA QUE CONFIGURA LITIGÂNCIA DE MÁ-FÉ. DESLEALDADE PROCESSUAL EM OBTER VANTAGEM INDEVIDA. APLICAÇÃO DE MULTA DE OFÍCIO. MANUTENÇÃO DA SENTENÇA EXTINTIVA. RECURSO CONHECIDO E IMPROVIDO. SENTENÇA INALTERADA. 1. Foi indeferida a petição inicial da Ação Declaratória de Inexistência de Relação Jurídica sob o fundamento de que, a parte opta pelo fracionamento de ações, o que consiste em um verdadeiro abuso de direito de demandar. 2. Entretanto, em suas razões recursais, a apelante limita-se a defender a necessidade de ajuizamento de diferentes ações para cada contrato consignado não realizado com o Banco promovido. 3. . O fracionamento das ações, como a do presente caso, consiste em um verdadeiro abuso do direito de demandar, na medida em que a autora ajuizou diversas ações contra a mesma parte, inclusive veiculando pedido idêntico, no caso, a declaração de inexigibilidade de débito, configurando conduta processual temerária e abusiva, a qual o Judiciário não pode dar guarida. 4. Recurso conhecido e improvido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer o recurso interposto e negar-lhe provimento, nos termos do voto da relatora. (Apelação Cível0200491-38.2022.8.06.0154, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 29/06/2022, data da publicação: 29/06/2022). [Grifou-se] Ante o exposto, CONHEÇO do recurso para lhe NEGAR PROVIMENTO, permanecendo incólumes os termos da sentença recorrida.
 </p> É como voto.</p> Fortaleza, data da assinatura digital.</p>

 </p> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO</p> Presidente/Relator</p> &#160;</p>
Processo	3001088-18.2025.8.06.0094
Número de ordem	196
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO

Processo	3001088-18.2025.8.06.0094
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Empréstimo consignado
Polo ativo	CESARIO BRASIL DE SOUSA
Advogado(s) - Polo ativo	MARCUS ANDRE FORTALEZA DE SOUSA - (CE19091-A)
Polo passivo	BANCO SANTANDER (BRASIL) S.A.
Advogado(s) - Polo passivo	DIEGO MONTEIRO BAPTISTA - (RJ153999-A)
Terceiros	Não informado

Processo	3001088-18.2025.8.06.0094
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqyIQKGF0ttyK7SIVIA LFCIQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJByZvfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiWk7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBIRMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCe5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RDl82dg8n5jdfHNaQ ELJFBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUElzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWCSwVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNhEhWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmCl3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtASGWRBTtau2dl/XHeucKJdW0vVrDmWfGFIQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrlorJoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDj9kwlfVv33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsquaxatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlXZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LTl9z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsPOONGNYVgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfL3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fn5FHqieh3YwFUUwU2ZXJlJxMkCAKMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTBuZz4WYOGE pw1t9ofclZHE21NneWVeWBxJJElVfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2DltgIsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFlsFkMa5tOq0qKsHJfX5wBDDqpkxxfN1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzfl8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAkx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjpg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nUvsnXNkIx410JEZMRU0ZDIFMjFwRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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Processo	3001088-18.2025.8.06.0094
	Morais e Repetição do Indébito ajuizada pelo ora apelante em desfavor do Banco Santander (Brasil) S/A.&#160;</p><p class="MsoNormal" style="text-align: justify;"> &#160; II) QUESTÃO EM DISCUSSÃO</p><p class="MsoNormal" style="text-align: justify;"> &#160; 2.&#160; O cerne da controvérsia consiste em verificar a existência do interesse processual do Autor, ora Apelante, na ação originária, dado o fracionamento de ações e o suposto abuso no direito de demandar.</p><p class="MsoNormal" style="text-align: justify;"> III) RAZÕES DE DECIDIR<p class="MsoNormal" style="text-align: justify;"> 3.&#160; Analisando-se os autos, verifica-se que o Juízo originário&#160; constatou a existência , na mesma Comarca, de 4 (quatro ações do Promovente/Apelante&#160; que veiculavam &#160;pedidos idênticos (inexistência/nulidade do contrato com repetição do indébito e indenização por danos morais), contra o banco ora apelado, todas&#160; protocoladas na mesma data.&#160; Nota-se, de forma inequívoca, que tais ações têm objetivo e causa de pedir&#160;idênticos entre si. Alega o promovente, em síntese, não ter celebrado os respectivos contratos impugnados, razão pela qual requer a restituição dos valores indevidamente descontados, bem&#160;como indenização pelos danos morais resultantes da conduta da instituição financeira&#160;promovida. Porém, em vez de reunir as causas de pedir e os pedidos contra o demandado em&#160;um único feito (o que reduziria as demandas à quantidade de apenas um processo na comarca), o ora apelante desmembrou cada um dos contratos em processos distintos, apesar de todos&#160;eles terem identidade e afinidade no que pertine à causa de pedir e aos pedidos,&#160;como muito bem delimitou o d. Juízo singular.</p><p class="MsoNormal" style="text-align: justify;"> 4.&#160; Ressalte-se que seria possível mesmo a reunião desses processos em apenas um só, considerando- se o nível de semelhança entre os elementos das ações em questão e as mesmas partes. Tal conduta prestigiaria o princípio da cooperação, da boa-fé, da economia e da eficiência processuais, o que não foi observado pela recorrente. Sendo assim, mostra-se correto o&#160; <em style="font-family: "times new roman", times; font-size: large;">decisum&#160; recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos, para que se evitem julgamentos contraditórios sobre a mesma situação.</p><p class="MsoNormal" style="text-align: justify;"> 5.&#160; As partes têm o dever legal de agir honestamente, de boa-fé,&#160;visando a uma solução justa e célere da situação posta em juízo. Nessa perspectiva, o&#160;fracionamento indevido de ações representa verdadeiro abuso do direito processual,&#160;especialmente porque o autor, quando utiliza esse mecanismo, postula a justiça gratuita, e,&#160;sem a concessão desse benefício, dificilmente optaria pela multiplicidade de demandas.&#160;A par disso, as ações judiciais em referência veiculam pedido de indenização&#160;por danos morais, não sendo adequado o exame individualizado do respectivo pleito,&#160;considerando-se que as condutas apontadas em cada processo tendem a consubstanciar uma só&#160;lesão extrapatrimonial. Nesse contexto, a individualização processual do pedido de reparação é&#160;apta a levar o juízo a erro, uma vez que a quantificação do dano (que é um só) deve considerar o&#160;cenário geral da situação do autor.</p><p class="MsoNormal" style="text-align: justify;"> 6.&#160; Na repressão à litigância abusiva, o Julgador deverá empregar a medida que&#160;melhor se adequar à finalidade de impedir o objetivo ilícito das partes. No caso do&#160;fracionamento indevido de ações similares, a extinção processual sem resolução do&#160;mérito traduz uma opção

Processo	3001088-18.2025.8.06.0094
	SANTANDER (BRASIL) S.A) conforme certidão retro/pesquisa no PJe, além de se tratar de processos da mesma natureza, em que foram alterados apenas os números dos contratos. [...] Tal conduta, no meu entender, vai de encontro ao princípio da Cooperação estampado no artigo 6º do CPC, que preconiza que “todos os sujeitos do processo devem cooperar entre si para que se obtenha, em tempo razoável, decisão de mérito justa e efetiva.” [...] Assim, na sentença de ID. n.º 27087577, o d. Juízo a quo houve por bem indeferir a petição inicial, extinguindo o processo sem resolução de mérito sob fundamento da ausência de interesse processual, conforme art. 485, inciso VI do Código de Processo Civil. O fundamento central para tal decisão foi o fato de o autor/apelante ter ajuizado quatro ações similares contra o Banco requerido. O magistrado argumentou que as ações deveriam ter sido reunidas em um único processo, dada a semelhança nos pedidos e identidade das partes, para evitar a morosidade judicial e o abuso do direito de ação. Irresignado, o autor interpôs o recurso de apelação de ID. n.º 27087582, alegando, em síntese, que os processos não possuem causa de pedir ou pedido iguais, não seria o caso de conexão, os processos podem ser julgados de forma separada, e não teria risco de decisões conflitantes, pois cada um possui uma relação jurídica distinta, realizadas em épocas próprias. Sustenta, assim, que o fracionamento das ações era cabível. Ao final, requer o conhecimento do recurso e, no mérito, o seu provimento, para anular a sentença e determinar o retorno dos autos ao Juízo de origem para o regular processamento do feito. Sem contrarrazões, conforme ID. n.º 27087584. É o relatório. VOTO 1- Admissibilidade Satisfeitos os pressupostos intrínsecos ou subjetivos – cabimento, interesse e legitimidade, inexistência de súpula impeditiva – e extrínsecos ou objetivos – tempestividade, preparo, regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer – de admissibilidade recursal, conheço do recurso

Processo	3001088-18.2025.8.06.0094
	I- a execução de título extrajudicial e à ação de conhecimento relativa ao mesmo ato jurídico; </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> II- às execuções fundadas no mesmo título executivo. </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> § 3º Serão reunidos para julgamento conjunto os processos que possam gerar risco de prolação de decisões conflitantes ou contraditórias caso decididos separadamente, mesmo sem conexão entre eles. </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;">
 </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> É de se salientar que, apesar de cada demanda tratar de um contrato distinto, impõe-se que seja evitado o fracionamento desnecessário de ações que venha a gerar multiplicidade injustificada de demandas praticamente iguais, sob pena de se caracterizar&#160;abuso do direito de demandar judicialmente.&#160;Nos termos da norma do art. 187 do Código Civil, " também comete ato ilícito o titular de um direito que, ao exercê-lo, excede manifestamente os limites impostos pelo seu fim econômico ou social, pela boa-fé ou pelos bons costumes" </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Com efeito, as partes têm o dever legal de agir honestamente, de boa-fé,&#160;visando a uma solução justa e célere da situação posta em juízo. Nessa perspectiva, o&#160;fracionamento indevido de ações representa verdadeiro abuso do direito processual,&#160;especialmente porque o autor, quando utiliza esse mecanismo, postula a justiça gratuita, e,&#160;sem a concessão desse benefício, dificilmente optaria pela multiplicidade de demandas.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; A par disso, as ações judiciais em referência veiculam pedido de indenização&#160;por danos morais, não sendo adequado o exame individualizado do respectivo pleito,&#160;considerando-se que as condutas apontadas em cada processo tendem a consubstanciar uma só&#160;lesão extrapatrimonial. Nesse contexto, a individualização processual do pedido de reparação é&#160;apta a levar o juízo a erro, uma vez que a quantificação do dano (que é um só) deve considerar o&#160;cenário geral da situação do autor.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Um dos resultados negativos de condutas como tal é a sobrecarga&#160;massiva e desnecessária das unidades jurisdicionais, prejudicando o adequado&#160;desempenho das funções jurisdicionais. Esse cenário poderia ser evitado caso os&#160;promovedores e respectivos causídicos optassem pela reunião de demandas similares&#160;em uma só, facilitando a apreciação adequada e uniforme da situação vivenciada pelo&#160;indivíduo atingido e empregando economia dos recursos empregados pelo Poder&#160;Judiciário.&#160;</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Ao afastar uma conduta cooperativa e buscar o fracionamento&#160;injustificado de ações análogas, usualmente no intento de multiplicar também a&#160;reparação moral, o jurisdicionado incorre em conduta ilícita, consubstanciada no&#160; <strong style="font-size: large; font-family: "times new roman", times;">abuso do direito processual , figura fundamentada na interpretação conjunta do art.&#160;5º do CPC e do art. 187 do Código Civil.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Vale destacar que a sanção voltada para a repressão do abuso do direito&#160;processual é atípica, pois a litigância abusiva é polimórfica, havendo, portanto,&#160;diversas formas de se apresentar. Por tal motivo, pode-se considerar o seu suporte&#160;legal na norma do art. 142 do CPC:</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;">
 </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> Art. 142.&#160;Convencendo-se, pelas circunstâncias, de que o autor e réu se&#160;serviram do processo para praticar ato simulado ou conseguir fim vedado&#160;por lei, o juiz&#160;proferirá decisão que impeça os objetivos das

Processo	3001088-18.2025.8.06.0094
	partes,&#160;aplicando,&#160;de ofício,&#160;as penalidades da litigância de má-fé. [Grifou-se]. </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;">
 </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> Dessa forma, o Julgador deverá empregar a sanção que melhor se&#160;adequar à finalidade de impedir o objetivo ilícito das partes. No caso do&#160;fracionamento indevido de ações similares, a extinção processual sem resolução do&#160;mérito traduz uma medida razoável e compatível com esse intuito, uma vez que&#160;desestimula a multiplicação de ações judiciais sem ocasionar prejuízo ao exercício do&#160;direito de ação, ante a possibilidade de propositura de nova demanda compatível com&#160;a boa-fé e o princípio cooperativo.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Nessa toada, manifesto minha concordância com o entendimento exarado pelo&#160;d. Juízo&#160; <em style="font-size: large; font-family: &quot;times new roman&quot;, times;">a quo &#160;em relação ao prejuízo da conduta adotada pelo requerente/apelante em relação&#160;a princípios basilares para a ordem jurídica, como a razoável duração do processo, a boa-fé, a&#160;eficiência e a economia processuais. Não se mostra acertado o acionamento exacerbado e&#160;desmotivado do Poder Judiciário, com o ajuizamento de ações com o mesmo teor e finalidade,&#160;quando poderia fazer-se em um único processo.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Vale dizer, para cada contrato, foi ajuizada uma nova ação, quando, na&#160;verdade, os pedidos e as causas de pedir deveriam ser concentradas em apenas uma&#160;demanda, inclusive porque envolvem pedido de indenização por danos morais, cujo&#160;dano, por óbvio, é único.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> &#160; Tudo isso considerado, a fim de que se evite decisões contraditórias, urge que&#160;seja realizada a reunião dos processos que contêm identidade, ou seja, que contam com as&#160;mesmas partes, causa de pedir e pedidos, em respeito à previsão do já citado art. 55 do CPC.&#160;</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> Repiso que o fato de as demandas ajuizadas pela autora/apelante discutirem&#160;contratos diversos não é suficiente para afastar a conexão, já que todas as ações partem&#160;exatamente do pressuposto de que a autora&#160;foi vítima de descontos indevidos realizados pelo&#160;banco promovido e que, a partir disso, pretende a reparação.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> Sob esse prisma, não merece reproche o entendimento manifestado pelo magistrado de primeiro grau, sendo adequada a aplicação do 485, VI, do CPC.&#160;Registro que, em casos análogos ao presente, a jurisprudência desta e. Corte&#160;tem adotado o raciocínio ora explanado, consoante ilustram as seguintes ementas:</p><p class="MsoNormal" style="text-align: justify;">
 <p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> DIREITO DO CONSUMIDOR. RECURSO DE APELAÇÃO CÍVEL EM AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS POR COBRANÇA INDEVIDA DE ANUIDADES DE CARTÃO DE CRÉDITO.&#160; IRRESIGNAÇÃO CONTRA SENTENÇA QUE INDEFERIU A PETIÇÃO INICIAL POR AUSÊNCIA DE INTERESSE DE AGIR. FRACIONAMENTO DE DEMANDAS SIMILARES, ENSEJANDO MULTIPLICIDADE INJUSTIFICADA. CONEXÃO. ABUSO DO DIREITO DE AÇÃO. PRECEDENTES.&#160;RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. Trata-se de Apelação Cível interposta com o objetivo de reformar a sentença proferida pelo Juízo da Vara Única da Comarca de Lavras da Mangabeira, que indeferiu a petição inicial da Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Materiais e Morais ajuizada pela ora apelante em desfavor do Banco Bradesco S/A. 2. O cerne da controvérsia consiste em verificar a existência de interesse de agir da autora, ora apelante, na ação originária, dado o fracionamento de ações e suposto abuso no direito de demandar. 3. Analisando-se os autos, verifica-se que o Juízo originário apurou a existência, na mesma Comarca, de 4 (quatro) ações da promovente/apelante veiculando pedidos anulatórios de débito c/c reparação de danos em desfavor de diferentes instituições financeiras, sendo três delas contra o ora promovido/apelado (Bradesco S/A). Verificou-se, ainda, que todas essas ações foram propostas no mesmo

Processo	3001088-18.2025.8.06.0094
	ínterim, entre os dias 16/07/2024 e 17/07/2024, conforme pesquisa realizada no sistema e-SAJ. 4. Nota-se, inequivocamente, que tais ações têm objetivo e causa de pedir idênticos entre si. Alega a promovente, em síntese, não ter celebrado os respectivos contratos bancários, razão pela qual requer a restituição dos valores indevidamente descontados, bem como indenização pelos danos morais resultantes da conduta da instituição financeira promovida. Porém, em vez de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito (o que reduziria as demandas à quantidade de apenas um processo na comarca), a ora apelante desmembrou cada um dos contratos em processos distintos, apesar de todos eles terem identidade e afinidade no que pertine à causa de pedir e aos pedidos, como muito bem delimitou o d. Juízo singular. 5. Ressalte-se que seria possível, até mesmo, a reunião de todos esses processos em apenas um só, com formação de litisconsórcio passivo entres as instituições, considerando-se o nível de semelhança entre os elementos das ações em questão. Tal conduta prestigiaria o princípio da cooperação, da boa-fé, da economia e da eficiência processuais, o que não foi observado pela parte ora recorrente.¶6. Apesar de cada demanda tratar de contrato distinto, impõe-se que seja evitado o fracionamento desnecessário de ações que venha a gerar multiplicidade injustificada de demandas praticamente iguais, sob pena de se caracterizar abuso do direito de demandar judicialmente, por enquadramento na norma do art. 187 do Código Civil.¶7. As partes têm o dever legal de agir honestamente, de boa-fé, visando a uma solução justa e célere da situação posta em juízo. Nessa perspectiva, o fracionamento indevido de ações representa verdadeiro abuso do direito processual, especialmente porque a autora, quando utiliza esse mecanismo, postula a justiça gratuita, e, sem a concessão desse benefício, dificilmente optaria pela multiplicidade de demandas.¶8. A par disso, as ações judiciais em referência veiculam pedido de indenização por danos morais, não sendo adequado o exame individualizado do respectivo pleito, considerando-se que as condutas apontadas em cada processo tendem a consubstanciar uma só lesão extrapatrimonial. Nesse contexto, a individualização processual do pedido de reparação é apta a levar o juízo a erro, uma vez que a quantificação do dano (que é um só) deve considerar o cenário geral da situação da autora.¶9. Apelação conhecida e desprovida. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso de apelação para lhe negar provimento, nos termos do voto do Desembargador Relator.¶(Apelação Cível¶ TJ-CE¶ 0200849-55.2024.8.06.0114, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO,¶ 1ª Câmara Direito Privado, data do julgamento:¶ 22/01/2025, data da publicação:¶ 22/01/2025). [Grifou-se]. DIREITO CIVIL, PROCESSUAL CIVIL E DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO.¶ FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO. PRECEDENTES.¶ APURAÇÃO DE POSTURA INADEQUADA DO PATRONO DA PARTE AUTORA. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. O cerne da controvérsia consiste em verificar o interesse de agir do autor, ora apelante, dado o fracionamento de ações e suposto abuso no direito de demandar. 2. Inicialmente, tem-se relação de consumo, figurando o promovente/apelante como consumidor e o banco/apelado como fornecedor de serviços, sujeito à eventual responsabilização civil, conforme os arts. 12 e 14 do CDC.¶ 3. Do exame dos autos, nota-se que o autor ajuizou 17 (dezessete) ações anulatórias de débito c/c indenização por danos materiais e morais contra diferentes instituições financeiras, muitas delas contra o banco apelado, alegando, em resumo, não ter firmado os empréstimos consignados e requerendo restituição de valores e indenização correspondente, e que em vez de reunir as causas de pedir e os pedidos contra o mesmo réu em um único feito, desmembrou cada um dos contratos em diversos processos, como muito bem delimitou o d. Juízo singular, apesar de todas elas terem identidade e afinidade no que pertine à causa de pedir e aos pedidos. Sendo assim, mostra-se correto o decisor recorrido, considerando-se necessária, portanto, a reunião dos supraditos processos para que se evite julgamentos contraditórios, nos termos do art. 55, §3º, do CPC.¶ 4. Por último, a sentença recorrida encontra-se devidamente fundamentada, com exposição clara do d. juízo de primeiro grau, em consonância com o art. 93, IX, da CF/1988, não vindo a calhar o argumento sobre carência de fundamentação levantado na apelação. 5. De mais a mais, constata-se nesta e. Corte a existência de inúmeras demandas praticamente idênticas patrocinadas pelo causídico do autor/apelante, de modo que é aceitável que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. Precedentes. 6.

Processo	3001088-18.2025.8.06.0094
	Apelação conhecida e desprovida. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso, mas para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (Apelação Cível&#160; TJ-CE&#160;0201642-39.2022.8.06.0154, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO,&#160; 1ª Câmara Direito Privado, data do julgamento: 05/07/2023, data da publicação:&#160; 05/07/2023). [Grifou-se]. </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;">
 </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> DIREITO CIVIL E PROCESSUAL CIVIL. DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. SENTENÇA COM INDEFERIMENTO DE EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO.&#160; FRACIONAMENTO DE DEMANDAS SIMILARES. CONEXÃO.&#160;APURAÇÃO DE POSTURA INADEQUADA DO PATRONO ATIVO. APELO DESPROVIDO. 1. A controvérsia recursal na demanda diz respeito ao interesse de agir da promovente no feito, além do fracionamento de ações e suposto abuso no direito de demandar. 2. Em um primeiro momento, frisa-se a relação de consumo no ato, situação em que a parte ativa figura como consumidora, ao passo em que a instituição bancária consta na posição de fornecedora de serviços, sujeita à eventual responsabilização civil, nos termos dos arts. 12 e 14, CDC.&#160; 3. No caso concreto, observa-se um número excessivo de demandas ajuizadas pela promovente em face de instituições bancárias, havendo, em seu nome, 38 contendas para discutir contratos de empréstimos consignado e descontos indevidos em seu benefício econômico. Apesar de discutirem contratos diversos, nota-se identidade entre as lides alhures, considerando que são as mesmas as causas de pedir e os pedidos.&#160;4. &#160;Sendo assim, assiste razão o decisorio vergastado, no que considera-se como necessária, ainda, a reunião dos supraditos processos para que se evite julgamentos contraditórios, aos termos do art. 55, §3º, CPC. 5.&#160;Outrossim, tem-se como devidamente fundamentada a sentença combatida, tendo o magistrado exposto toda sua linha de raciocínio e argumentação, vide art. 93, IX, CF, cabendo, pois, o afastamento de carência de fundamentação suscitado em recurso. 6. Ademais, observa-se que consta perante esta Egrégia Corte de Justiça inúmeras demandas praticamente idênticas conduzidas pelo causídico da autora, de modo que é justo que o órgão competente averigue eventual postura irregular de sua parte, desestimulando, assim, o exercício abusivo do direito de demandar. 7. Apelo conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do Recurso, para negar-lhe provimento, nos termos do voto do Relator, que faz parte desta decisão. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (Apelação Cível&#160; TJ-CE&#160;0200488-83.2022.8.06.0154, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO,&#160; 1ª Câmara Direito Privado, data do julgamento: 08/03/2023, data da publicação:&#160; 09/03/2023). [Grifou-se]. </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;">
 </p><p class="MsoNormal" style="text-align: justify; padding-left: 150px;"> APELAÇÃO. SENTENÇA DE INDEFERIMENTO DA A PETIÇÃO INICIAL, COM EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. NO CASO, AÇÃO ANULATÓRIA DE DÉBITO COM DANOS MATERIAIS E MORAIS.&#160; MULTIPLICIDADE DE DEMANDAS PROPOSTAS PELA AUTORA: 38 (TRINTA E OITO) AÇÕES NA COMARCA DE QUIXERAMOBIM. CONEXÃO.&#160;PARADIGMAS DO STJ. SINTOMÁTICA POSTURA DISFUNCIONAL DO CAUSÍDICO. DESPROVIMENTO. 1. Rememore-se o caso. Nos autos, ação anulatória de débito c/c danos materiais e morais. Nessa perspectiva, a Parte Autora alega que foi surpreendida com a cobrança de empréstimo não contratado. Enfatizou que as relações jurídicas que desencadearam as cobranças por parte do promovido são indevidas. Ao final, pugna pela anulação do contrato e condenação do demandado ao pagamento de indenização por danos morais e materiais, em razão dos descontos indevidos. Eis a origem da celeuma. 2. Inicialmente, mister consignar que o Juízo Primevo deferiu o benefício da Assistência Judiciária Gratuita à Parte Autora, o que deve ser conservado.&#160; 3. MULTIPLICIDADE DE DEMANDAS PROPOSTAS PELA AUTORA: 38 (TRINTA E OITO) AÇÕES NA COMARCA DE QUIXERAMOBIM: Nada obstante, a análise meritória da demanda foi impactada ante a constatação judicial da multiplicidade de ações propostas pela Autora, a saber: 38 (trinta e oito) na Comarca de Quixeramobim, todas ajuizadas no dia 30.03.22, donde se verifica o

Processo	3001088-18.2025.8.06.0094
	mesmo objeto, igual causa de pedir e idêntico pedido, mas tais exordiais foram distribuídas isoladamente e individualmente.¶4. CONEXÃO: A jurisprudência do STJ tem entendido que, por ser uma faculdade do julgador, a decisão que reconhece a conexão ou a continência não impõe ao magistrado a obrigatoriedade de julgamento simultâneo dos feitos. O magistrado, a seu critério e diante de cada caso concreto, verificará a utilidade do julgamento simultâneo, com vistas a privilegiar a economia processual. Paradigmas do STJ. 5. SINTOMÁTICA POSTURA DISFUNCIONAL DO CAUSÍDICO: A essa altura, o Julgador Pioneiro enfatiza que o Advogado merece reprimenda. 6. DESPROVIMENTO do Apelo, para conservar a sentença por irrepreensível, pelo que se verifica a necessidade de extração de cópias dos autos para envio a Ordem dos Advogados do Brasil, Seccional do Ceará - OAB-CE, bem como a remessa de traslado do feito para a douta Corregedoria-Geral da Justiça do Ceará e CGJ-CE, que melhor dirão. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, o Desprovemento do Apelo, nos termos do voto do Relator, Desembargador Francisco Darival Beserra Primo. Fortaleza, data indicada no sistema. DESEMBARGADOR FRANCISCO DARIVAL BESERRA PRIMO Relator (Apelação Cível¶; TJ-CE¶;0200504-37.2022.8.06.0154, Rel. Desembargador(a) FRANCISCO DARIVAL BESERRA PRIMO,¶; 4ª Câmara Direito Privado, data do julgamento:07/02/2023, data da publicação:¶; 07/02/2023). [Grifou-se]. </p><p class="MsoNormal" style="text-align: justify;">
 </p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> Portanto, entendo que agiu de forma acertada o douto magistrado¶; a quo¶;ao indeferir a inicial e¶; extinguir o feito¶; com fulcro no art. 485, inciso VI, do CPC.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> <strong style="font-size: large; font-family: "times new roman", times;">3- Dispositivo <p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> Diante do exposto,¶; <strong style="font-size: large; font-family: "times new roman", times;">CONHEÇO ¶;do recurso de apelação para¶; <strong style="font-size: large; font-family: "times new roman", times;">NEGAR-LHE PROVIMENTO , mantendo hígida a sentença recorrida.</p><p class="MsoNormal" style="text-align: justify; text-indent: 8%;"> É como voto.¶; </p><p style="text-align: justify; text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify; text-indent: 8%;"> times;">
 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Presidente/Relator </p><p>

<p>¶;</p><p>¶;</p><p style="text-align: center;"> ¶; </p></p>
Processo	3000205-11.2025.8.06.0114
Número de ordem	197
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	APELAÇÃO CÍVEL

Processo	3000205-11.2025.8.06.0114
Assunto principal	Indenização por Dano Moral
Polo ativo	MARIA DAS DORES DA SILVA
Advogado(s) - Polo ativo	JULIANA RIBEIRO PROCOPIO - (CE52620-A) JHYULLY CAVALCANTE BESERRA LEITE - (CE42362-A) RENATO ALVES DE MELO - (CE29801-A) MARIA EUGENIA FILGUEIRAS MILFONT DE ALMEIDA - (CE52483-A) VANESSA LIMA DE OLIVEIRA - (CE41177-A)
Polo passivo	ASPECIR PREVIDENCIA
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3000205-11.2025.8.06.0114
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUheUgAAAFkAAAB4CAIAAAAWmcl rAABSy0IEQVR4nN29dbxc1bk3vtf22eMz58xx15wkJ+5ECQQJEJziVqylQKGF0ttyK7SIVIA LFCiQILhLEgiBuPtJctzdx2X771lrzwm076X9wPu2f/yGJBzVzfdaz3rk++iwpmlS3+JlmCaNkE kZyEQU/KE1VVZVITZpSuQFhjZMes/2zZ3HDo+PjyWCi7qRkuOx8OiwK7f81p88mJ2fA8/9 w4/uENUOSXLA7VJE60gZGtWXXHTLotNOhzV9tPbFTe8+65LsnM3D2wWGtdtcvoL8ooWr 1wQCAbhcvVKqZnAsTXE8TzPwE1gPRSO4G/zvW+yJ/TaEoGD3yJBtKURSS6QGejq7ulu Hurr6WxtTujJr0RmLV6zMLCr8/K2XpxSE55XIC6KDs2ULNr7haEtTXddLv//pRbdfV1JdHYm Orbn0zKyCPFXVWZZFtPrhm58C7YDCrzz71NDhT6qz7UvOnGd3i6loRIGdJ4Lb9hwtqJkcy Awc3LPjs/feDvW2ZBZW5JeUzReU5ZSWZPr8oijanC4dmSyF/v20MHUKGAKZn3704Z5PX 0PyqJ2W8wu8VXIOV04klrLz4X2/veulGasuiEWiBUWF+cXZim5QOge7VTQDXpLZ//jPfpBf Vo7ig5qeiXipo5oWqVZQ+C0/RvfOr5jXXC4ozzbG43FaJbheYlX8S4GMZRsrxvYuXXzhy8/5 zIGptYUdMeTk0uHE7GO5o3v7ghpMU3MLq299gf3ejL832Jr3/gCA+SBommdOnFg98JKs3 JqJUKwTJFhmFC8rbl1O13IOZyTZtecEkCzeTKiaTBssBirMHUTK52uR020b4y4OM4uKLS 6cmkWIERgdEpRZMXnbpk7pwwCFQiUTE8FHS4OIfTreuyYaqUjJGKsPDHTrwjtPGZRUV DnQPy8lkZrbb6cyePM0wjWQypny6uT4UHHd5s2jmm+7sm9OCNhmQSoQonueRYGoaaA KNRjp8m5eXw+qllZKVyyq9gbmcXdrKghgBGUinqLQSE2xiVXWNZuidqrps6L+tmsLMHKyyg JtzRNDne5DkgDCE5vJWZfmToiioDK7IMZ7KaDUILV05furi2Gk6MDY3bKspomopGk4 aq0AxDM4glkvEtCPFtaGGYGugnRDF2f3YweKyS41gODpWBPTvdvHtqSSSuRRPK4PHe RFyVY6mYosJudU2INFMxZB2uNmnaNDRMUoo2QN6Az0BKDOAd+JVOGzSQmuhmmgX moViaRzwtmLRoEwSBszsEm5OW7EJZTTnHkRagXGqGaoIMhseU4RDl82dg8n5jdfHNaQ ELJfBEPOO8NU//f/57fMRKOx2MRPZEyk2pKURQGwb5YmIVBuyOW5XkO1sqJAsvrdiQg2 BxSODqGyWoYNN4szdIMUEIzdQPMjwG8pQBL4CEqMBBwhRY3VEY21UhQBsOBFEPXK R3bDYajEZBHsgGBRBCf3sG4t2i2w5fjcnwLWmBDRacJfWcWVztqx6zNfwGYyOtg+L8 dJgo2mad1kaMpQDB0Wragaa6JYJKUBiQwF+AI2QeNNG1AAKxsMwwwEF4VQ5BpgEgdAZ wGWUDIYSaITVNENJNheHWrCLDobisaLhkJnSKFbTNDAvSjQJJqmvm+4cYn/4+HcpQwe 2Jcb130wLYGtiwPGF191xz6P39yKqs6jQGG6rodHEKAyb1xkgBmLguHIRyMhw9HWH3W4 hL98HGxMEGyvQAiuYDEvBW0DvsMLE3ceKsRlZ8rJTcLGuGpquCqtmilFS6VSjGkcq+v My/HpSXU0psL+4S+QkQfVZeM8LjYj18Gw9N4DQ7PPuamwqOQb7+hb08L8kuBmlCk3vj// 5Y1nnzrUfjza0zyl2IFQYJMcNrtTASGWRBTau2dl/XHeucKJdW0vVrDmJFYQAYKCAKMG2 MxkjXcQHMQU6JT0upJjAHRqgCXUT6yHWGBsN7j/QDnZn3opyRHFkXAFQF47H5JgCX +8+0MVI5zOlmr/mmtUXX07OKX1o/3ZaTFAEwy0QBKfHe+Pd97fUH/vwz3esWl0tR03VUJ NwrloRjoR2bW/3BwpnLp63a3djR/sol4iGoipx+KXBCRxWm8gEjh8ZiUdJfUH21RdA+yoa7S qK6KNE0QGukRvKDjT9kwIFvV33tG5s0skN9gLlJfLw+WxNjvv8AhD7Llrr4evkb4mGhs5v Dfb7ypb8EXOoW3gM8V84hOAVdv+vB9B5/a+llDOKgARIR9OI3CsbsqumatW0YlaGYnMWB Zgy7pN566ZLUhcU10vWlxZc6oAPweHx7sb+gw/Dyook8dTPUpljdzg72jpb67snTSt2uMX3X 9k9Z+ligAyAJqtr57//9vopU/M0WQvGFFGgPU5etLEHG15bfeWV/diQBYAUoiJUF0v4TWA tMHhg9CjMFpZug+ejg2Fh33cbT5ucA1I5lyJ1to/OXVGZkullq7Qt4177wtqnpV95YlpvjyS3l xgiUG4LTl9z2wZ6B+iP9WeVIWtYJQMh0z2DdvYrYZ8y02ewMg8CAZmdl+DKckkP64L2PE3H 62htXT5pcsHRVpdsjbf60SVeViopMYLlpyZGtn3y05tKrTANbe6ycAdJ80419KxmBx4FNhWf pDAZI+ufr3p8/zV0xOVOW9dHhhKYzcsponGNyVvgiAooWJ+AHcgz2Bw/urEsm5YHBOEM Zn0d39vWETj1j1eEDB/bvrfN5PGdeeEZO2Fz71McZ2d6R4cihvc3tLV1D/CfYwCnODHQM+5 PxhG6g40e6CkswTaPxBADWwmXhS/+2sdvn33Rdzia1SkDDBlo5G++r28hlzSWRGJZMbj TNWPF+vcWVak7trQoshYKAQX0E0e6R0cinOTVwKlmdHOK3Lc77cF8j101aiYavN4PI11z TZxoLO1c+euYwLFDgyGNry36ewLV0bGvFOw1sB+4rEUmN7R4biciLqctmRKTAUumpfaG /pjUS0eAcqo+3a0SqJgdzBMZPzAtq0Llp3KAF4jHiv6D+hOwMUahrVEDFDUjm1fFLijnNNrQ 7Rd4l0ZkuRkXXZPY0Pn4BABdKY0NVmQk52IK4WfgfLk3GgkYSKOE1iAoxmBwJYtB2yA RWhWotLYLBlaHs3JzOyFwcwvwlRLkiu3cCAWl2fn5FHgkY3WFOUu2ZXJlJxMkCAGMG2 oSTsaTqemzAp+99TLQwqBU8OG/ndf+T2hB7mcFNxCVVswGqEuGxWELwhrl/OLdtWuW FzkzHHJCVIUmmUyODCdZJnb08KA/L7+wrOLMi4Xikol9W/fpqZCiHU7GNXiPTeLGx+Ku QEKikQBkhABb0QhwdCwco2nXtq11NocAlu922waHRmNRdsLZK86+5KySouyhnoE9uzuS SVrXmBpzukSH15ad5eQlrruvqaXhWEXNZFiZSSwKxRWgk/GaJwzLP7UvX0sLnciA5Y5ZR DKwl0UTcAfAhanbaWtkhX3Qm7L6l0A4hMJU5pQay7ZJdlOVk05G2ZFQTbUzz4WOGPE pw1t9ofclZHE21NneWVeWBxJJElVfDrTECR2H3TDT2lZmS6fc7C8bEE8F1NbX5xOHv3tv qWo3WcjW850dTZ1mu3M6qiKym5r3s4EtL8mRwNiovjUDL5wdqX737w9xSVdkYQddqNvG QwLkANKbV8i69lmK+IBYPJSmG64quJDSVfE8rSLNae7PpXXps7M8PjA2Dltglsa+swW9gX AylymGnT84aHQvgBNog7p8M5w+4UOIeHplCx58V0j8QOtx7uHAWlEjkdhl0jWdfp+p6hpF pV4YwpQHdTozm3j1u8fFIsFkMa5tOq0qKsHJfX5wBDDqpkxxfn1ZU5NkmlJFK6Yt9z9AgY NU+GD2HDjyzf8Jcx1Dp7//Z65/pC8xf4BdgssAdLeaaYBFEJ6JxpWf7gjV54EaaKhWOK+Fo zOHznWgP9w/lcYWCdYJy0BFvMkyqUYCXGB425NbR9LZQW6GZ7C9ddPp8ODfQ/9gTA alT9aBp1iWEpCkDiGjYCxsAP8ypGyJSFYCijCHTTWEnH3alutfBdocTGeFkVZaU75OAX0 DVfvDKi9fd8UPKYK3jRxPsjZUpPkjznxDka2lhYW16QuqwwOE7YSSCP0gq8gvPPjWmya9 vC46kKfMzqRRvUHNchr8n5nMEXB6XO8shSjanQ5JEKRNFOwu+q8CLjMCzGAKx2F9hw SnBERGDhfmDH4bSdB0ldVVkgLw62CgATqYi6+C8KZogk1cUDiGRikQiQ5EQPXnWzkjki6 0hQws76CSrGp3DG6cvXVlcUuh2efAGiPNuognd8U9ju//Kjppg6TUbmS0f3wUOHu3v7R0aH QpEubM6X4SS89Ta/NzDL7fJ5XC6H02kXbY41nkdUvsnXNkX410JEZMRUZOZDIFMjFvRvMvG EXY9ME4ELA7r1LGzD5DRZpiWhCNsG3XdtJQ2skQVkvZ9jIGfgyIEBGjuWSkSjsXA0ORYc DY2OffjZtsGREVVV/E57UX5OeUnxksWLREFM88m3oiWJ5cD6kj5wpO4vzz67+uxzFy1YE

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	roman" >, times;">PODER JUDICIÁRIO </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> TRIBUNAL DE JUSTIÇA </p><p style="line-height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> GABINETE DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="line- height: 100%; orphans: 2; widows: 2; margin-bottom: 0cm; text-align: center;"> times;">
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 </p><p> PROCESSO: 3000205-11.2025.8.06.0114 </p><p style="text-align: justify;"> APELAÇÃO CÍVEL (198) </p><p style="text-align: justify;"> APELANTE: MARIA DAS DORES DA SILVA </p><p style="text-align: justify;"> times;">APELADO: ASPECIR PREVIDÊNCIA </p><p style="text-align: justify;"> times;"> EMENTA:&#160;DIREITO DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO CUMULADA COM PEDIDO DE INDENIZAÇÃO POR DANOS MORAIS. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. AJUIZAMENTO DE DUAS AÇÕES QUE NÃO REVELA AUSÊNCIA DE INTERESSE DE AGIR. PROCESSOS FUNDAMENTADOS EM RELAÇÕES JURÍDICAS DIVERSAS. CAUSA DE PEDIR DISTINTAS. REUNIÃO POR CONEXÃO. IMPOSSIBILIDADE. ERROR IN PROCEDENDO. RECURSO PROVIDO. SENTENÇA ANULADA. </p><p style="text-align: justify;"> I. CASO EM EXAME </p><p style="text-align: justify;"> 1.&#160; Trata-se de recurso de Apelação Cível interposto&#160; contra sentença proferida pelo Juízo da Vara Única da Comarca de Lavras da Mangabeira/CE, que julgou extinta, sem resolução de mérito, a Ação Declaratória de Inexistência de Débito cumulada com pedido de Idenização por Danos Morais,&#160; indeferindo a petição inicial com fundamento na ausência de interesse de agir, nos termos do art. 330, inciso III, do Código de Processo Civil.&#160;&#160;</p><p style="text-align: justify;"> II. QUESTÃO EM DISCUSSÃO </p><p style="text-align: justify;"> 2.&#160; O cerne da controvérsia reside em verificar o acerto ou desacerto da decisão que extinguiu o processo

Processo	3000205-11.2025.8.06.0114
	sem resolução do mérito, indeferindo a petição inicial por ausência de interesse processual (art. 485, inciso I, do CPC), em razão do suposto fracionamento indevido de demandas. III. RAZÕES DE DECIDIR 3. Ainda que seja temário o abuso do direito de ação, ou também chamado de "uso predatório da jurisdição", tal fenômeno não se enquadra na hipótese prevista no art. 330, inciso III, do Código de Processo Civil, pois o interesse de agir está consubstanciado no binômio necessidade / adequação. Sob essa perspectiva, a necessidade deriva da proibição da autotutela no ordenamento jurídico brasileiro, implicando que, na ausência de meios próprios para buscar a realização de suas pretensões, o demandante deve recorrer ao Estado-juiz. A adequação, por seu turno, refere-se ao uso de instrumentos processuais apropriados para alcançar a tutela jurisdicional almejada. 4. Atento a isso, não se sustenta a argumentação do il. juízo de primeira instância ao fundamentar que duas ações movidas para anular contratos de taxas e tarifas indicaria falta de interesse processual por constituir fracionamento indevido de demandas. Isso se deve ao fato de que, em situações de conexão entre ações, a consequência processual é a junção dos processos para julgamento conjunto e não a sua extinção por ausência de interesse de agir (art. 55 do CPC). A despeito disso, verifica-se que, no presente caso, embora os processos tratem de questões semelhantes, ou seja, descontos indevidos efetivados na conta bancária do autor, ora recorrente, os objetos das ações são distintos. Neste processo específico, é discutida a contribuição "ASPECIR", enquanto o outro processo mencionado pelo juízo de primeira instância trata de outra relação jurídica (contratos) distinta. Inclusive, ressalte-se que, da listagem apresentada pelo d. juízo a quo este é o único processo em que figura como parte ré a ASPECIR PREVIDÊNCIA UNIÃO SEGURADORA. 5. Dessa forma, considerando a necessidade e a utilidade da atuação jurisdicional para obtenção de provimento apto a obstar os descontos impugnados, não há que se cogitar a ausência de interesse processual na espécie. Com efeito, revela-se indispensável o pronunciamento judicial quanto à legalidade da contribuição questionada, supostamente instituída de forma fraudulenta, bem como dos descontos dela decorrentes. 6. Não se ignora a existência de situações específicas que evidenciam a utilização predatória da jurisdição por parte de um número restrito e identificável de profissionais da advocacia. Tais condutas merecem, de fato, ser coibidas, razão pela qual este egrégio Tribunal tem adotado providências institucionais, por meio do Núcleo de Monitoramento do Perfil de Demandas, com o objetivo de identificar práticas fraudulentas e implementar medidas voltadas ao enfrentamento do problema. Entretanto, ainda que sejam compreensíveis as razões que motivaram o il. juízo de primeiro grau, a atividade jurisdicional deve necessariamente observar os preceitos legais, especialmente aqueles previstos na legislação processual civil. No caso em apreço, a solução adotada na sentença carece de amparo normativo, razão pela qual se impõe a anulação do julgado. IV. DISPOSITIVO 7. Recurso provido. Sentença anulada.

Processo	3000205-11.2025.8.06.0114
	justify;"> ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer do recurso para, no mérito, dar-lhe provimento, no sentido de anular a sentença e determinar o reprocessamento do feito, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. </p><p align="justify">

 <p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Presidente/Relator </p><p align="center"> </p><p align="center"> </p><p align="center"> RELATÓRIO </p><p style="text-align: justify; text-indent: 8%;"> Trata-se de recurso de Apelação Cível interposto por Maria das Dores da Silva contra sentença proferida pelo MMº. Juiz de Direito Luzinaldo Alves Alexandre da Silva, da Vara Única da Comarca de Lavras da Mangabeira/CE, que julgou extinta, sem resolução de mérito, a Ação Declaratória de Inexistência de Débito cumulada com pedido de Indenização por Danos Morais ajuizada em desfavor da Aspecir Previdência União Seguradora, indeferindo a petição inicial com fundamento na ausência de interesse de agir, nos termos do art. 330, inciso III, do Código de Processo Civil.&#160; </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> Eis o dispositivo da sentença: <p style="text-align: justify; text-indent: 8%;">
 </p><p style="padding-left: 240px; text-align: justify;"> Ante o exposto, indefiro a petição inicial, por ausência de interesse de agir, nos termos do art. 330, inciso III, do CPC e da Recomendação 159/2024 do CNJ.&#160; </p><p style="padding-left: 240px; text-align: justify;"> Sem custas e honorários.&#160; </p><p style="padding-left: 240px; text-align: justify;"> Com o trânsito em julgado, arquivem-se os autos.&#160; </p><p style="padding-left: 240px; text-align: justify;">
 <p style="text-align: justify; text-indent: 8%;"> Nas razões recursais, a parte apelante alega, em síntese, que as partes rés, bem como a causa de pedir e o pedido em cada processo, são diferentes, não estando presentes os requisitos para o litisconsórcio obrigatório ou para a conexão, pelo que requer o provimento do recurso, a fim de que seja anulada a sentença e determinado &#160;o retorno dos autos à origem para regular prosseguimento do feito.</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> Sem contrarrazões. <p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> E o relatório. </p><p align="center"> VOTO </p><p style="text-align: justify; text-indent: 8%;"> Conheço do recurso, pois satisfeitos os pressupostos intrínsecos e extrínsecos de admissibilidade. </p><p style="text-align: justify; text-indent: 8%;">
 <p style="text-align: justify; text-indent: 8%;"> O cerne da controvérsia reside em verificar o acerto ou desacerto da decisão que extinguiu o processo sem resolução do mérito, indeferindo a petição inicial por ausência de interesse processual (art.

Processo	3000205-11.2025.8.06.0114
	485, inciso I, do CPC), em razão do suposto fracionamento indevido de demandas. Ainda que seja temário o abuso do direito de ação, ou também chamado de "uso predatório da jurisdição", tal fenômeno não se enquadra na hipótese prevista no art. 330, inciso III, do Código de Processo Civil, pois o interesse de agir está consubstanciado no binômio necessidade / adequação. Sob essa perspectiva, a necessidade deriva da proibição da autotutela no ordenamento jurídico brasileiro, implicando que, na ausência de meios próprios para buscar a realização de suas pretensões, o demandante deve recorrer ao Estado-juiz. A adequação, por seu turno, refere-se ao uso de instrumentos processuais apropriados para alcançar a tutela jurisdicional almejada. Atento a isso, não se sustenta a argumentação do il. juízo de primeira instância ao fundamentar que duas ações movidas para anular contratos de taxas e tarifas indicaria falta de interesse processual por constituir fracionamento indevido de demandas. Isso se deve ao fato de que, em situações de conexão entre ações, a consequência processual é a junção dos processos para julgamento conjunto e não a sua extinção por ausência de interesse de agir (art. 55 do CPC). A despeito disso, verifica-se que, no presente caso, embora os processos tratem de questões semelhantes, ou seja, descontos indevidos efetivados na conta bancária do autor, ora recorrente, os objetos das ações são distintos. Neste processo específico, é discutida a contribuição "ASPECIR", enquanto o outro processo mencionado pelo juízo de primeira instância trata de outra relação jurídica (contratos) distinta. Inclusive, ressalte-se que, da listagem apresentada pelo d. juízo a quo, este é o único processo em que figura como parte ré a ASPECIR PREVIDÊNCIA UNIÃO SEGURADORA. A propósito, colaciono precedentes desta egrégia Corte de Justiça em casos análogos ao dos autos: APelação. DIREITO PROCESSUAL CIVIL. AÇÃO DECLARATÓRIA DE NULIDADE/INEXISTÊNCIA CONTRATUAL C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. MULTIPLICIDADE DE AÇÕES. FALTA DE INTERESSE PROCESSUAL. SENTENÇA DE INDEFERIMENTO DA PETIÇÃO INICIAL. IMPOSSIBILIDADE. CAUSA DE PEDIR E PEDIDOS DISTINTOS. INTERESSE PROCESSUAL EVIDENCIADO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. Trata-se de recurso de apelação manejado em desfavor de sentença que indeferiu a petição inicial, sob fundamento de que o demandante não possui interesse de agir, em razão do ajuizamento de diversas ações contra a mesma instituição financeira. 2. A definição de interesse processual (art. 485, VI e art. 330, III, do CPC) é composta pelo binômio necessidade - utilidade, refletindo este o meio processual apropriado e aquela a indispensabilidade do ingresso em juízo para satisfazer uma pretensão. 3. Nesse sentido, vislumbra-se como indevida a fundamentação utilizada na sentença de que a existência de várias ações propostas buscando anular contratos de empréstimo consignado configura a ausência de interesse processual, visto que a parte deveria ajuizar somente uma demanda. Com efeito, a consequência processual em casos de conexão entre ações é a reunião dos processos, nos termos do art. 55, §1º, do CPC) e não a sua extinção por ausência de interesse de agir. 4. In casu, sequer é possível afirmar que existe conexão, tampouco que há risco de decisões conflitantes, observado que a regularidade dos contratos deve ser apurada de forma individual. Dessa forma, considerando que cada empréstimo realizado implica em novo desconto nos proventos previdenciários, sendo esta sua causa de pedir, e que o autor tem necessidade/utilidade de buscar o Poder Judiciário para obter provimento jurisdicional apto a cessar tais débitos, não há como se reputar ausente o interesse processual. 5. Recurso conhecido e provido. Sentença anulada. (TJCE. Apelação Cível - 0200635-64.2024.8.06.0114, Rel. Desembargador(a) EVERARDO LUCENA SEGUNDO, 2ª Câmara Direito Privado, data do julgamento: 21/08/2024, data da publicação: 21/08/2024). [Grifou-se].

Processo	3000205-11.2025.8.06.0114
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 </p><p style="text-align: justify; padding-left: 240px;"> APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. TARIFAS BANCÁRIAS E SEGURO PRESTAMISTA EMPRÉSTIMO CONSIGNADO. INSURGÊNCIA DA PARTE AUTORA CONTRA O INDEFERIMENTO DA PETIÇÃO INICIAL E EXTINÇÃO DA AÇÃO SEM RESOLUÇÃO DO MÉRITO (ART. 330, III, DO CPC) . AJUIZAMENTO DE DIVERSAS AÇÕES QUE NÃO RELEVA A AUSÊNCIA DE INTERESSE DE AGIR. PROCESSOS FUNDADOS EM CONTRATO DIVERSO. CAUSA DE PEDIR DISTINTAS. REUNIÃO POR CONEXÃO. IMPOSSIBILIDADE. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. Tratase de apelação cível proposta pela parte autora, em desfavor da sentença que indeferiu a petição inicial julgando extinta a ação e sem resolução do mérito, por ausência do interesse recursal. A controvérsia cinge-se em analisar se há falta de interesse processual em face do ajuizamento de várias ações que versam sobre fatos semelhantes, ao invés de propor uma única ação englobando tudo. 2. Em relação ao abuso do direito de ação ou "uso predatório da jurisdição", embora essa prática seja temerária, não se enquadra na hipótese prevista no art. 330, inciso III, do CPC, pois o interesse de agir está presente, consubstanciado no binômio necessidade/adequação. Sob essa perspectiva, a necessidade deriva da proibição da autotutela no ordenamento jurídico brasileiro, implicando que, na ausência de meios próprios para buscar a realização de suas pretensões, o demandante deve recorrer ao Estado-juiz. Por outro lado, a adequação refere-se ao uso de instrumentos processuais apropriados para alcançar a tutela jurisdicional almejada. 3. Sob esse prisma, a argumentação do magistrado de primeira instância de que a existência de múltiplas ações movidas para anular contratos de empréstimo consignado indica falta de interesse processual, uma vez que o autor deveria ter apresentado apenas uma demanda, não é válida. Isso se deve ao fato de que, em situações de conexão entre ações, a consequência processual é a junção dos processos para julgamento conjunto e não a sua extinção por ausência de interesse de agir. 4. A conexão entre processos evita decisões conflitantes ao julgar casos semelhantes simultaneamente pelo mesmo juízo. Neste caso, apesar de envolverem cobranças indevidas de empréstimos consignados, os processos têm objetos distintos, tratam-se de diferentes contratos. 5. Cumpre destacar, ainda, que a sentença recorrida viola o princípio da cooperação, conforme estabelecido no art. 6º do CPC, além de infringir a garantia constitucional da inafastabilidade da tutela jurisdicional, como previsto no art. 5º, XXXV, da CF. 6. Observa-se, portanto, que o Juízo a quo, ao prolatar a sentença, não agiu com acerto, incorrendo em error in procedendo. Diante disso, a anulação da sentença e o retorno dos autos ao Juízo de origem para o regular processamento é medida que se impõe. 7. Recurso conhecido e provido. Sentença cassada. (TJCE. Apelação Cível - 0200510-55.2024.8.06.0160, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 14/08/2024, data da publicação: 14/08/2024). [Grifou-se]. </p><p style="text-align: justify; padding-left: 240px;">
 </p><p style="text-align: justify; padding-left: 240px;"> APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C DANOS MATERIAIS E MORAIS. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DE MÉRITO. FALTA DE INTERESSE PROCESSUAL. MULTIPLICIDADE DE AÇÕES ENVOLVENDO AS MESMAS PARTES. CONTRATOS DISTINTOS. CAUSAS DE PEDIR DISTINTAS. VEDAÇÃO À CONDUTA DA PARTE - AUSÊNCIA - ERROR IN PROCEDENDO. CONEXÃO. INEXISTENTE. CONTRATOS DIFERENTES. SENTENÇA ANULADA - RECURSO CONHECIDO E PROVIDO. 1. O cerne da demanda se refere se há interesse de agir em uma demanda, quando o autor ingressa com multiplicidade de ações contra o mesmo réu. 2. O entendimento doutrinário dominante em nosso ordenamento jurídico preleciona que o interesse de agir ou processual está intimamente ligado ao binômio necessidade/adequação, não sendo albergado pelo Ordenamento Jurídico o ajuizamento de múltiplas ações como causa da falta de interesse de agir. 3. Ausência de conexão, em virtude de as ações terem objetos distintos. 4. Recurso conhecido e provido. Sentença anulada. (TJCE. Apelação Cível - 0200077-19.2024.8.06.0203, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 03/07/2024, data da publicação: 03/07/2024). [Grifou-se]. </p><p style="text-align: justify; padding-left: 240px;">
 </p><p style="text-align: justify; padding-left: 240px;"> APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. MULTIPLICIDADE DE AÇÕES. FALTA DE INTERESSE PROCESSUAL. SENTENÇA DE INDEFERIMENTO DA PETIÇÃO INICIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. IMPOSSIBILIDADE. CAUSA DE PEDIR E PEDIDOS

Processo	3000205-11.2025.8.06.0114
	DISTINTOS. INTERESSE PROCESSUAL EVIDENCIADO. ERROR IN PROCEDENDO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. Cuida-se de Apelação Cível interposta por Emidia Maria Nobre Ribeiro objurgando sentença proferida pelo douto Juízo da 2ª Vara da Comarca de Quixeramobim, a qual extinguiu, sem resolução de mérito, a Ação Anulatória de Débito c/c Indenização por Danos Materiais e Morais ajuizada pela apelante em desfavor do Banco Bradesco Financiamentos S.A. 2. A controvérsia recursal da demanda cinge-se em analisar a correção, ou não, do decisum hostilizado, o qual indeferiu a petição inicial, sob fundamento de que a demandante não possui interesse de agir, haja vista o ajuizamento de diversas ações contra a mesma instituição financeira. 3. A definição de interesse processual (art. 485, VI e art. 330, III, do CPC) é composta pelo binômio necessidade-adequação, refletindo este o meio processual apropriado e aquela a indispensabilidade do ingresso em juízo para satisfazer uma pretensão. 4. Sob esse prisma, a fundamentação utilizada pelo magistrado a quo de que a existência de várias ações propostas pela autora buscando anular contratos de empréstimo consignado configura a ausência de interesse processual, uma vez que a parte deveria ajuizar somente uma demanda, não merece acolhida. Isto porque a consequência processual em casos de conexão entre ações é a reunião dos processos (art. 55, §1º, CPC), e não a sua extinção por ausência de interesse de agir. 5. Na espécie, contudo, sequer é possível afirmar que existe conexão, tampouco que há risco de decisões conflitantes, tendo em vista que a regularidade dos contratos deve ser apurada de forma individual. Destarte, considerando que cada empréstimo realizado implica em novo desconto em seus proventos previdenciários, sendo esta sua causa de pedir, e que a autora tem necessidade/utilidade de buscar o Poder Judiciário para obter provimento jurisdicional apto a cessar tais débitos, não há como se reputar ausente o interesse processual in casu. 6. Recurso conhecido e provido. Sentença anulada. (TJCE. Apelação Cível - 0200515-66.2022.8.06.0154, Rel. Desembargador(a) JANE RUTH MAIA DE QUEIROGA, 3ª Câmara Direito Privado, data do julgamento: 29/11/2023, data da publicação: 29/11/2023). [Grifou-se]. </p><p style="text-align: justify; text-indent: 8%;">&#160;</p><p style="text-align: justify; text-indent: 8%;"> Dessa forma, considerando a necessidade e a utilidade da atuação jurisdicional para obtenção de provimento apto a obstar os descontos impugnados, não há que se cogitar a ausência de interesse processual na espécie. Com efeito, revela-se indispensável o pronunciamento judicial quanto à legalidade da contribuição questionada, supostamente instituída de forma fraudulenta, bem como dos descontos dela decorrentes. </p><p style="text-align: justify; text-indent: 8%;">&#160;</p><p style="text-align: justify; text-indent: 8%;"> Por fim, não se ignora&#160;a existência de situações específicas que evidenciam a utilização predatória da jurisdição por parte de um número restrito e identificável de profissionais da advocacia. Tais condutas merecem, de fato, ser coibidas, razão pela qual este egrégio Tribunal tem adotado providências institucionais, por meio do Núcleo de Monitoramento do Perfil de Demandas, com o objetivo de identificar práticas fraudulentas e implementar medidas voltadas ao enfrentamento do problema.&#160; Entretanto, ainda que sejam compreensíveis as razões que motivaram o il. juízo de primeiro grau, a atividade jurisdicional deve necessariamente observar os preceitos legais, especialmente aqueles previstos na legislação processual civil. No caso em apreço, a solução adotada na sentença carece de amparo normativo, razão pela qual se impõe a anulação do julgado.</p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> Diante do exposto, conheço do presente recurso, para DAR-LHE PROVIMENTO, com o fim de anular a sentença recorrida e determinar o retorno dos autos ao juízo de primeiro grau para que seja dado o regular processamento do feito. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> É como voto. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: justify; text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p align="justify">

 </p><p align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p align="center"> Presidente/Relator </p><p align="justify">
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	do termo inicial do prazo prescricional para o ajuizamento da ação que visa a apurar supostos desfalques indevidos em conta vinculada ao PASEP. 4. O voto condutor do acórdão expôs, de maneira clara e objetiva, as razões pelas quais não se reconheceu a prescrição no caso concreto, em estrita observância ao princípio da <i>actio nata</i> e das teses firmadas no Tema Repetitivo nº 1.150 do Superior Tribunal de Justiça, que dispõe o seguinte: “O termo inicial para a contagem do prazo prescricional é o dia em que o titular toma ciência dos desfalques ou a data do último depósito efetuado na conta individual vinculada ao PASEP”. 5. Portanto, inexistente razão para o acolhimento dos embargos, pois não há ponto omissivo, obscuro, contraditório ou com erro material a ser corrigido no aresto embargado. Como dito, os embargos prestam-se apenas para afastar dúvida, omissão, contradição ou erro na prestação jurisdicional, e não para reanalisar o <i>decisum</i> questionado. IV. DISPOSITIVO 6. Recurso desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, à unanimidade, em conhecer dos presentes embargos de declaração para, no mérito, negar-lhes provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator RELATÓRIO Trata-se de Embargos de Declaração opostos pelo Banco do Brasil S/A contra acórdão da Primeira Câmara de Direito Privado do Tribunal de Justiça do Ceará, que deu provimento ao recurso de Apelação Cível interposto nos autos da Ação de Obrigação de Fazer cumulada com pedido de Indenização por Danos Materiais e Morais proposta por Edmilson Alves da Silva, no sentido de anular a sentença e determinar o reprocessamento do feito. Eis a ementa do julgado: DIREITO CIVIL E PROCESSUAL CIVIL. RECURSO DE APELAÇÃO. AÇÃO DE OBRIGAÇÃO DE FAZER CUMULADA COM INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. DIFERENÇA DE VALORES NA CONTA VINCULADA AO PASEP. PRESCRIÇÃO INOCORRENTE. PRINCÍPIO DA <i>ACTIO NATA</i>. PRAZO QUE FLUI A PARTIR DO MOMENTO EM QUE A PARTE TOMA CIÊNCIA INEQUÍVOCA DA OCORRÊNCIA DA IRREGULARIDADE. RECEBIMENTO DO EXTRATO OU DAS MICROFILMAGENS. TEMA Nº 1.150 DO STJ. RETORNO DOS AUTOS À VARA DE ORIGEM PARA O DEVIDO PROCESSAMENTO E JULGAMENTO DO LITÍGIO. RECURSO PROVIDO. SENTENÇA ANULADA. No recurso, a parte embargante aduz, em síntese, que existe omissão na decisão colegiada, por deixar de considerar que a parte autora, ora embargada, já possuía ciência do saldo em sua conta PASEP desde o saque do abono de aposentadoria em 6 de outubro de 1995, sendo este o efetivo termo

Processo	0277463-52.2024.8.06.0001
	ação. Como dito, o recurso de embargos de declaração possui cabimento restrito à demonstração de algum dos vícios expressamente previstos no art. 1.022 do Código de Processo Civil, dentre os quais se inclui a omissão, que ocorre quando i) o julgado não aprecia ponto ou questão relevante sobre a qual deveria ter se manifestado; ii) não estiver devidamente fundamentado (artigo 489, § 1º, do CPC); ou iii) deixar de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicáveis à hipótese (artigo 1.022, parágrafo único, I, do CPC). Nesse contexto, ao confrontar as razões dos embargos com o inteiro teor do acórdão impugnado, percebe-se que inexistente qualquer vício de omissão relativo à fixação do termo inicial do prazo prescricional para o ajuizamento da ação que visa a apurar supostos desfalques indevidos em conta vinculada ao PASEP. e das teses firmadas no Tema Repetitivo nº 1.150 do Superior Tribunal de Justiça, que dispõe o seguinte: a) O Banco do Brasil possui, ou não, legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao PASEP, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa; b) A pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao PASEP se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil ou ao prazo quinquenal estipulado pelo artigo 1º do Decreto nº 20.910/32; c) O termo inicial para a contagem do prazo prescricional é o dia em que o titular toma ciência dos desfalques ou a data do último depósito efetuado na conta individual vinculada ao PASEP. Vejamos, a propósito, os excertos do acórdão que trataram sobre a matéria: Com efeito, a fluência do prazo prescricional de dez anos para a parte exercer a pretensão condenatória começa a partir da data em que se tem conhecimento da lesão. Sendo assim, de acordo com o princípio da actio nata, o direito de pleitear a indenização surge quando a lesão e suas consequências são constatadas. No caso em análise, verifica-se que o Juízo a quo considerou a data do pagamento da aposentadoria, qual seja 6 de outubro de 1995, como termo inicial do prazo para o ajuizamento da demanda visando a questionar eventuais inconsistências e desvios. Contudo, o precedente vinculante invocado estabelece que o termo inicial para a contagem do prazo prescricional coincide com a data em que o titular, comprovadamente, toma ciência dos desfalques realizados em sua conta individual vinculada ao PASEP. O entendimento mais escorreito é no sentido de que o termo inicial da contagem do prazo prescricional da pretensão autoral se dá quando do recebimento do extrato ou das microfilmagens da sua

Processo	0277463-52.2024.8.06.0001
	conta. No particular, a&#160;autora recebeu os extratos em 11 de junho de 2024 (ID 19916182), tendo ajuizado a ação em 21 de outubro de 2024, motivo pelo qual não há que se falar em prescrição decenal. </p><p style="text-indent: 8%; align="justify">
 </p><p style="text-indent: 8%; align="justify"> Confere-se, portanto, que o julgado enfrentou a matéria suscitada pela ora embargante de forma coerente, aplicando jurisprudência pacificada pelo egrégio Superior Tribunal de Justiça, não havendo omissão, obscuridade, contradição ou erro material que possa motivar sua alteração. </p><p style="text-indent: 8%; align="justify">
 </p><p style="text-indent: 8%; align="justify"> Em verdade, o que se observa dos embargos é que a parte ora recorrente busca rediscutir o mérito da decisão, o que não é cabível por meio deste tipo de recurso, que tem fundamentação vinculada. </p><p style="text-indent: 8%; align="justify">
 </p><p style="text-indent: 8%; align="justify"> Nesse sentido, revelo o posicionamento consolidado do c. Superior Tribunal de Justiça, in verbis: </p><p align="justify">
 </p><p style="padding-left: 150px; align="justify"> PROCESSO CIVIL. EMBARGOS DE DECLARAÇÃO EM EMBARGOS DE DIVERGÊNCIA EM RECURSO ESPECIAL. OBSCURIDADE. CONTRADIÇÃO. AUSÊNCIA. OMISSÃO E ERRO MATERIAL RECONHECIDOS. </p><p style="padding-left: 150px; align="justify"> 1. Embargos de declaração que apontam a existência de obscuridade, omissão, contradição e erro material. </p><p style="padding-left: 150px; align="justify"> 2. Não há obscuridade, eis que a inconformidade relativa à incidência da Súmula 158/STJ e os motivos a ela atrelados já foram analisados e afastados por esta Corte Especial. </p><p style="padding-left: 150px; align="justify"> 3. A omissão que permite o provimento dos embargos de declaração se apresenta quando o julgador não analisa pontos ou questões que estão contidas nos autos. Ou seja, conforme a dicção legal, cabem embargos de declaração quando há "omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento" (art. 1.022, II, do CPC). In casu, o aresto embargado é expresso quanto à existência de similitude fática entre os acórdãos confrontados, bem como inexistente omissão quanto ao conteúdo do REsp 201.563/RJ e à fixação de honorários por equidade. Lado outro, impõe-se o acolhimento da irresignação, para dizer da não incidência da Súmula 598/STF. </p><p style="padding-left: 150px; align="justify"> 4. A contradição que autoriza a oposição de embargos declaratórios é aquela interna ao julgado, relativa a seus fundamentos e dispositivo, e não a contradição entre este e o entendimento da parte, ou o que ficara decidido na origem, ou, ainda, quaisquer outras decisões do STJ. Precedentes. No particular, revela-se nítida a pretensão da embargante de rediscutir matéria já decidida, fazendo com que prevaleça o seu entendimento sobre o tema. </p><p style="padding-left: 150px; align="justify"> 5. Este Órgão Julgador firmou orientação de que a interposição de Embargos de Divergência em Recurso Especial dá início a novo grau recursal, de modo que, ao questionar decisão publicada na vigência do novo Diploma Processual Civil, a parte embargante está sujeita à majoração dos honorários de sucumbência caso indeferidos liminarmente pelo relator ou se o colegiado deles não conhecer ou negar-lhes provimento (AgInt nos EAREsp 762.075/MT, Corte Especial, DJe 07/03/2019). No caso, o acórdão que ensejou a interposição dos embargos de divergência foi publicado antes da vigência do novo CPC, circunstância que afasta a incidência do art. 85, § 11, do CPC/2015. </p><p style="padding-left: 150px; align="justify"> 6. Os embargos de declaração interpostos pela parte recorrente não possuem intuito protelatório, razão pela qual não é caso de aplicação da multa inserta no art. 1.026, § 2º, do CPC/2015. </p><p style="padding-left: 150px; align="justify"> 7. Embargos de declaração parcialmente acolhidos, para sanar a omissão relativa à não incidência da Súmula 598/STF e corrigir erro material, afastando a

Processo	0277463-52.2024.8.06.0001
	majoração dos honorários de sucumbência. (EDcl nos EREsp 1411420/DF, Rel. Ministra NANCY ANDRIGHI, CORTE ESPECIAL, julgado em 18/11/2020, DJe 26/11/2020). [Grifou-se]. EMBARGOS DE DECLARAÇÃO NO AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO MONITÓRIA. IMPROCEDÊNCIA DO PEDIDO. OMISSÃO NÃO CARACTERIZADA. REDISCUSSÃO. IMPOSSIBILIDADE. EMBARGOS REJEITADOS. 1. Os embargos de declaração têm como objetivo sanar eventual existência de obscuridade, contradição, omissão ou erro material (CPC/2015, art. 1.022). É inadmissível a sua oposição para rediscutir questões tratadas e devidamente fundamentadas na decisão embargada, já que não são cabíveis para provocar novo julgamento da lide. 2. Embargos de declaração rejeitados. (EDcl no AgInt no AREsp 1728757/DF, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 25/10/2021, DJe 26/11/2021). [Grifou-se]. AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO MONITÓRIA. FUNDAMENTAÇÃO DO ACÓRDÃO RECORRIDO. SUFICIÊNCIA. ÔNUS DO DEVEDOR. VERIFICAÇÃO. SÚMULA 7 DESTA CORTE. DOCUMENTO NOVO. NÃO CARACTERIZAÇÃO. AGRAVO NÃO PROVIDO. 1. Não há violação aos arts. 489 e 1.022 do CPC/2015, tendo em vista que o v. acórdão recorrido adotou fundamentação suficiente, decidindo integralmente a controvérsia. É indevido conjecturar-se a existência de omissão, obscuridade ou contradição no julgado apenas porque decidido em desconformidade com os interesses da parte. 2. Ante as provas acostadas aos autos, a Corte de origem reconheceu que o contrato foi rescindido por determinação do DNIT, e não por culpa dos contratantes, razão pela qual não enseja a aplicação da cláusula penal. Nesse contexto, a modificação de tal entendimento lançado no v. acórdão recorrido demandaria o revolvimento de suporte fático-probatório dos autos, o que é inviável em sede de recurso especial. 3. Nos termos do art. 396 do CPC/73 (art. 434 do CPC/2015), cabe à parte instruir a inicial ou a contestação com os documentos que forem necessários para provar o direito alegado. 4. Na hipótese, foi consignado pelas instâncias ordinárias que os documentos apresentados são antigos e, não tendo sido apresentados no momento oportuno, operou-se a preclusão. 5. Agravo interno não provido. (AgInt nos EDcl no AREsp 1573807/MG, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 20/04/2020, DJe 04/05/2020). [Grifou-se]. EMBARGOS DE DECLARAÇÃO NOS EMBARGOS DE DECLARAÇÃO NO AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL - AÇÃO ORDINÁRIA - ACÓRDÃO DESTE ÓRGÃO FRACIONÁRIO QUE REJEITOU EMBARGOS DECLARATÓRIOS DA PARTE ADVERSA. IRRESIGNAÇÃO DO AUTOR. 1. Nos termos do artigo 1.022 do CPC/15, o recurso de embargos de declaração objetiva suprir omissão, dissipar obscuridade, afastar contradição ou sanar erro material encontrável em decisão ou acórdão, não podendo ser utilizado como instrumento para a rediscussão do julgado.

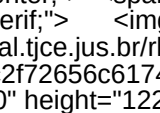
Processo	0277463-52.2024.8.06.0001
	150px;" align="justify"> 2. Embargos de declaração acolhidos, com efeitos infringentes, para declarar a intempestividade dos anteriores embargos declaratórios de fls. 3.393/3.396, e-STJ, opostos pela ora embargada. </p><p style="padding-left: 150px;" align="justify"> (STJ, EDcl nos EDcl no AgInt no AREsp n. 592.270/SP, relator Ministro Marco Buzzi, Quarta Turma, julgado em 27/3/2023, DJe de 31/3/2023). [Grifou-se]. </p><p align="justify">
 </p><p style="text-indent: 8%;" align="justify"> Portanto, inexistente razão para o acolhimento dos embargos, pois não há ponto omissivo, obscuro, contraditório ou com erro material a ser corrigido no aresto embargado. Como dito, os embargos prestam-se apenas para afastar dúvida, omissão, contradição ou erro na prestação jurisdicional, e não para reanalisar o decisum questionado. </p><p style="text-indent: 8%;" align="justify">
 </p><p style="text-indent: 8%;" align="justify"> Nesse esteio, o enunciado nº 18 da súmula da jurisprudência desta e. Corte de Justiça assenta que "</p><p style="text-indent: 8%;" align="justify"> Por fim, consigno que "consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de pré-questionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade" (art. 1.025, CPC). </p><p style="text-indent: 8%;" align="justify">
 </p><p style="text-indent: 8%;" align="justify"> Assim, com fulcro no art. 1.022 do Código de Processo Civil, conheço dos embargos de declaração, mas nego-lhes provimento, por não estarem presentes quaisquer dos requisitos indicados pela lei, nem serem apropriados à rediscussão do julgado, mantendo hígido o acórdão embargado. </p><p style="text-indent: 8%;" align="justify">
 </p><p style="text-indent: 8%;" align="justify"> É como voto. </p><p align="justify">
 </p><p style="text-align: justify; text-indent: 8%;"> Fortaleza, data da assinatura digital. </p><p style="text-align: justify; text-indent: 8%;">
 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Relator </p><p>
 </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p></p>
Processo	0092684-55.2007.8.06.0001
Número de ordem	199
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado

Processo	0092684-55.2007.8.06.0001
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Cheque
Polo ativo	MBC COMERCIO DE MADEIRAS LTDA
Advogado(s) - Polo ativo	RUI BARROS LEAL FARIAS - (CE16411-A) MIGUEL ROCHA NASSER HISSA - (CE15469-A) RODRIGO MACEDO DE CARVALHO - (CE15470-A)
Polo passivo	MADEIREIRA RIO BRANCO LTDA
Advogado(s) - Polo passivo	DAVID AIRES ARAUJO - (CE18177-A) CARLOS HENRIQUE ARAÚJO SANTIAGO - (CE20966-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0092684-55.2007.8.06.0001
Acórdão	 PROCESSO: 0092684-55.2007.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: MBC COMERCIO DE MADEIRAS LTDA APELADO: MADEIREIRA RIO BRANCO LTDA EMENTA: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. ALEGAÇÃO DE OMISSÃO. CERCEAMENTO DE DEFESA. REJEIÇÃO DO PEDIDO DE PRÓVA ORAL. JULGAMENTO ANTECIPADO DA LIDE. POSSIBILIDADE. OMISSÃO SUPRIDA SEM EFEITOS INFRINGENTES. RECURSO PROVIDO. I. CASO EM EXAME 1. Embargos de Declaração opostos por MBC Comércio de Madeiras LTDA. contra acórdão que, em sede de Apelação Cível, manteve sentença de improcedência nos embargos à execução, ao reconhecer a validade e exigibilidade de cheque transmitido a terceiro de boa-fé. O embargante sustenta omissão quanto à alegação de cerceamento de defesa, em razão do indeferimento da produção de prova oral (oitiva de testemunhas e depoimento pessoal da parte autora). II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se o acórdão embargado incorreu em omissão ao deixar de analisar a alegação de cerceamento de defesa, diante do indeferimento da instrução probatória requerida pelo apelante. III. RAZÕES DE DECIDIR 3. Os Embargos de Declaração destinam-se a suprir omissão, esclarecer obscuridade, eliminar contradição ou corrigir erro material, conforme art. 1.022 do CPC. 4. Constatada a ausência de manifestação expressa sobre a alegação de cerceamento de defesa, impõe-se a integração do julgado para suprir a omissão. 5. O julgamento antecipado da lide, com base no art. 355, I, do CPC, é legítimo quando as provas documentais constantes dos autos se mostram suficientes para a solução da controvérsia. 6. O magistrado, como destinatário da prova, possui discricionariedade para indeferir diligências desnecessárias, inúteis ou meramente protelatórias, nos termos do art. 370, parágrafo único, do CPC, não configurando cerceamento de defesa a rejeição fundamentada da prova oral. A jurisprudência dos Tribunais pátrios reconhece que, em demandas em que a prova documental é suficiente para o deslinde da causa, não há nulidade processual pelo indeferimento da prova testemunhal ou do depoimento pessoal. IV. DISPOSITIVO E TESE 8. Recurso provido, sem efeitos modificativos. Tese de julgamento: 1. Omissão reconhecida quanto à análise da alegação de cerceamento de defesa, sem modificação do resultado do julgamento. 2. O julgamento antecipado da lide é válido quando a prova documental é suficiente para formar o convencimento do magistrado. 3. O indeferimento de prova oral não configura cerceamento de defesa quando devidamente fundamentado pelo juiz, na condição de destinatário final da prova.

Processo	0092684-55.2007.8.06.0001
	align: justify;"> Delimitados os contornos gerais da lide, tenho que mereço guarida a pretensão recursal.</p><p style="text-align: justify;">Com efeito, em verificação retrospectiva da lide, verifica-se que a parte embargante, de fato, apresentou pedido de produção de prova oral e instrução, o qual foi, de fato, rejeitado pelo Juízo primevo por ocasião do julgamento desta ação, ID 21428403, sob os seguintes termos:</p><p style="padding-left: 120px; text-align: justify;"> II – FUNDAMENTAÇÃO Considerando que a questão é basicamente de direito e que as provas necessárias ao deslinde da questão já se encontram nos autos, não havendo, portanto, necessidade de maiores dilações probatórias, passo ao antecipado julgamento da lide, nos termos do permissivo legal inserto no art. 355, inciso I, do CPC."</p><p style="text-align: justify;">A matéria foi revisitada em sede de embargos declaratórios e, em suas razões recursais, houve expressa impugnação, pela ora embargante do tema acima aludido, sem se vislumbrar, em contrapartida, a avaliação meritória por parte desta instância ad quem.</p><p style="text-align: justify;"> Nesse compasso, já provendo o presente recurso aclaratório, tenho que a irresignação do embargante/apelante quanto à configuração de cerceamento de defesa na espécie não prospera.</p><p style="text-align: justify;"> É que, diferentemente do aludido pelo embargante, a controvérsia encerrada nesta lide dispensa – por seus próprios contornos – a produção de prova oral por si requestada, bastando, para a formação do convencimento do julgador, a vasta prova documental já produzida na instrução e já tendo o juiz a quo anunciado o julgamento antecipado da lide, ID 21428410.</p><p style="text-align: justify;"> Registre-se, por oportuno, que o magistrado, enquanto destinatário da instrução probatória, tem ampla discricionariedade acerca da conveniência dos meios para sua realização, não se vinculando ao pleito das partes, desde que apresente motivação idônea para sua dispensa. É o que se extrai do art. 370 do CPC:</p><p style="text-align: justify; padding-left: 120px;"> Art. 370. Caberá ao juiz, de ofício ou a requerimento da parte, determinar as provas necessárias ao julgamento do mérito.</p><p style="text-align: justify; padding-left: 120px;"> Parágrafo único. O juiz indeferirá, em decisão fundamentada, as diligências inúteis ou meramente protelatórias.</p><p style="text-align: justify;">Não é outro o entendimento dos Tribunais pátrios em julgados paradigmáticos:</p><p style="text-align: justify; padding-left: 120px;">EMBARGOS À EXECUÇÃO – DUPLICATAS – NOTAS FISCAIS E COMPROVANTE DE ENTREGA DE MERCADORIAS – SENTENÇA DE IMPROCEDÊNCIA – IRRESIGNAÇÃO – CERCEAMENTO DE DEFESA – INOCORRÊNCIA – POSSIBILIDADE DE JULGAMENTO ANTECIPADO DA LIDE – DESNECESSIDADE DE PRODUÇÃO DE PROVA ORAL – PROVAS DOCUMENTAIS SUFICIENTES PARA A ELUCIDAÇÃO DA LIDE – MAGISTRADO DESTINATÁRIO FINAL DA PROVA – ART. 370 DO CPC – SENTENÇA MANTIDA – HONORÁRIOS RECURSAIS – MAJORAÇÃO – APELAÇÃO CÍVEL – CONHECIDA E NÃO PROVIDA (TJPR. Processo: 0001517-02.2020.8.16.0072. Órgão Julgador: 16ª Câmara Cível. Relator: Des. Maria Mercis Gomes Aniceto. Data Julgamento: 13/10/2021)</p><p style="text-align: justify; padding-left: 120px;"> EMENTA: APELAÇÃO. EMBARGOS À EXECUÇÃO. DUPLICATAS SEM ACEITE. CERCEAMENTO DE DEFESA. PROVA ORAL. DESNECESSIDADE. PROVA DOCUMENTAL APENAS. NECESSIDADE DE JUNTADA DO COMPROVANTE DE ENTREGA DA MERCADORIA OU PRESTAÇÃO DE SERVIÇOS. INEXISTENCIA. AUSENCIA DE TITULO EXECUTIVO. O legislador brasileiro consagrou a possibilidade de ser cobrada e, inclusive, executada a duplicata desprovida de aceite, desde que acompanhada de documento suficiente para comprovar a realização do negócio mercantil como o comprovante de entrega das mercadorias ou a prestação dos serviços. (TJMG - Apelação Cível 1.0209.14.000756-5/001, Relator(a): Des.(a) Alberto Henrique , 13ª CÂMARA CÍVEL, julgamento em 26/10/2017, publicação da súmula em 10/11/2017)</p><p style="text-align: justify; padding-left: 120px;">CERCEAMENTO DE DEFESA – Julgamento antecipado da lide, sem a realização de prova oral postulada – Inocorrência – Matéria de fato que já havia sido demonstrada por meio das provas carreadas aos autos – Desnecessidade de prova oral – Ademais, o Julgador, por ser o destinatário da prova, tem o poder de averiguar a conveniência e a necessidade da mesma para o deslinde do feito – Pronto julgamento autorizado, sem qualquer nulidade – PRELIMINAR AFASTADA. AÇÃO MONITÓRIA E RECONVENÇÃO – Duplicata – Compra e venda de materiais de construção – Monitória improcedente e reconvenção parcialmente procedente para condenar a autora-reconvinda a pagar ao réu-reconvinte a quantia de R\$80.270,48, pela aplicação do art. 940 do CC – Apelo da autora – JUSTIÇA GRATUITA: Pedido feito em grau recursal por pessoa jurídica – Ausência de demonstração da hipossuficiência financeira, o que leva ao indeferimento do pedido – Recolhimento do preparo determinado, no prazo de 5 dias, como postulado no pedido subsidiário, sob pena de inscrição na dívida ativa – MÉRITO: CDC aplicável – Alegado pagamento integral, por parte do réu, que não foi devidamente refutado pela autora – Prova documental que se contrapõe ao pedido monitório, sendo possível

Processo	0092684-55.2007.8.06.0001																								
	reconhecer o pagamento da dívida – Além do pagamento inicial de R\$6.850,00, houve uma nota de devolução, com abatimento de valor (R\$17.918,63) e o pagamento do remanescente em três parcelas, por meio de cheques – Restituição em dobro do valor cobrado, corretamente determinada — Sentença mantida – RECURSO DESPROVIDO. (TJSP; Apelação Cível 1001202- 98.2020.8.26.0032; Relator (a): Ramon Mateo Júnior; Órgão Julgador: 15ª Câmara de Direito Privado; Foro de Araçatuba – 1ª Vara Cível; Data do Julgamento: 23/11/2021; Data de Registro: 24/11/2021)</p><p style="text-align: justify;"> Nessa perspectiva, não há que se falar em cerceamento de defesa, vez que se trata de matéria de direito e do convencimento do juízo.</p><p style="text-align: justify;"> Por todo o exposto, conheço o recurso aclaratório, para, no mérito, conferir-lhe provimento, integrando o acórdão vergastado quanto ao tema omissis, sem efeitos modificativos.</p><p> É como voto.</p><p> </p><p style="text-align: center;"> CARLOS AUGUSTO GOMES CORREIA</p><p style="text-align: center;"> Desembargador Relator</p><p> </p><p> </p><p> </p><p style="text-align: justify;"> </p><p> </p><p style="text-align: center;"> </p></td></tr> <tr> <td>Processo</td><td>0918181-91.2014.8.06.0001</td></tr> <tr> <td>Número de ordem</td><td>200</td></tr> <tr> <td>Órgão julgador</td><td>4º Gabinete da 1ª Câmara de Direito Privado</td></tr> <tr> <td>Órgão julgador colegiado</td><td>1ª Câmara de Direito Privado</td></tr> <tr> <td>Relator</td><td>CARLOS AUGUSTO GOMES CORREIA</td></tr> <tr> <td>Classe judicial</td><td>APELAÇÃO CÍVEL</td></tr> <tr> <td>Assunto principal</td><td>Cédula de Crédito Comercial</td></tr> <tr> <td>Polo ativo</td><td>A.S ENGENHARIA LTDA.</td></tr> <tr> <td>Advogado(s) - Polo ativo</td><td>HELLEN LUIZA PINHEIRO MARQUES DE SOUZA - (CE41378-A) VALDIMIRO VIEIRA DA SILVA - (CE24331-A) ROBSON HALLEY COSTA RODRIGUES - (CE27422-A)</td></tr> <tr> <td>Polo passivo</td><td>CONSORCIO CPE-VLT FORTALEZA</td></tr> <tr> <td>Advogado(s) - Polo passivo</td><td>DANIEL ARAUJO LIMA - (CE15108-A) LARA GURGEL DO AMARAL DUARTE - (CE24606-A)</td></tr> <tr> <td>Terceiros</td><td>PROCURADORIA GERAL DE JUSTICA</td></tr>	Processo	0918181-91.2014.8.06.0001	Número de ordem	200	Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado	Órgão julgador colegiado	1ª Câmara de Direito Privado	Relator	CARLOS AUGUSTO GOMES CORREIA	Classe judicial	APELAÇÃO CÍVEL	Assunto principal	Cédula de Crédito Comercial	Polo ativo	A.S ENGENHARIA LTDA.	Advogado(s) - Polo ativo	HELLEN LUIZA PINHEIRO MARQUES DE SOUZA - (CE41378-A) VALDIMIRO VIEIRA DA SILVA - (CE24331-A) ROBSON HALLEY COSTA RODRIGUES - (CE27422-A)	Polo passivo	CONSORCIO CPE-VLT FORTALEZA	Advogado(s) - Polo passivo	DANIEL ARAUJO LIMA - (CE15108-A) LARA GURGEL DO AMARAL DUARTE - (CE24606-A)	Terceiros	PROCURADORIA GERAL DE JUSTICA
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Processo	0918181-91.2014.8.06.0001
Acórdão	 PROCESSO: 0918181-91.2014.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: A.S ENGENHARIA LTDA. APELADO: CONSORCIO CPE-VLT FORTALEZA EMENTA: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO MONITÓRIA. NOTAS FISCAIS SEM ACEITE. AUSÊNCIA DE PROVA DA EFETIVA PRESTAÇÃO DOS SERVIÇOS. CONFISSÃO NÃO DEMONSTRADA. IMPROCEDÊNCIA MANTIDA. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Apelação Cível interposta por A S Engenharia Ltda. contra sentença da 28ª Vara Cível da Comarca de Fortaleza, que julgou improcedente Ação Monitória c/c Pedido de Medida Cautelar ajuizada em desfavor do Consórcio CPE – VLT Fortaleza, com fundamento no art. 487, I, do CPC, diante da ausência de prova escrita suficiente a embasar a demanda. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em verificar se notas fiscais desacompanhadas de aceite ou de outros documentos comprobatórios, somadas a fotos e à alegada confissão da parte ré, são suficientes para embasar ação monitória visando à cobrança de serviços de engenharia supostamente prestados. III. RAZÕES DE DECIDIR 3. A jurisprudência admite o ajuizamento de ação monitória instruída com notas fiscais, desde que acompanhadas de prova da efetiva entrega da mercadoria ou da prestação dos serviços. 4.

Processo	0918181-91.2014.8.06.0001
	small;"> 3. &#160;&#160;&#160;&#160; <!--[endif]--> Alegação de confissão da parte ré exige manifestação expressa e inequívoca nos autos, não se presumindo a partir de defesas processuais.</p><div class="Standarduser" style="text-align: center; line-height: 150%;"> <hr size="2" /> </div><p class="Standarduser" style="text-align: justify; line-height: 150%;"> Dispositivos relevantes citados : CPC, arts. 373, I, 487, I, e 85, § 11; Lei nº 5.474/1968 (Lei das Duplicatas), art. 15, II. </p><p class="Standarduser" style="text-align: justify; line-height: 150%;"> Jurisprudência relevante citada : STJ, REsp 141.322/RS, Rel. Min. Barros Monteiro, Quarta Turma, DJ 14.06.2004; TJCE, Apelação Cível nº 0251214-98.2023.8.06.0001, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara Direito Privado, j. 30.04.2025; TJCE, Apelação Cível nº 0215312-55.2021.8.06.0001, Rel. Des. Carlos Augusto Gomes Correia, 1ª Câmara Direito Privado, j. 16.04.2025; TJCE, Apelação Cível nº 0834637-11.2014.8.06.0001, Rel. Des. José Lopes de Araújo Filho, 3ª Câmara Direito Privado, j. 19.04.2023; TJMG, AC nº 1.0707.14.017784-1/001, Rel. Des. Albergaria Costa, 3ª Câmara Cível, j. 12.08.2022; TJMG, AC nº 1.0525.13.021611-8/001, Rel. Des. Sérgio André da Fonseca Xavier, 18ª Câmara Cível, j. 05.10.2021; TJSP, AC nº 1048938-31.2018.8.26.0114, Rel. Des. Rodolfo Pellizari, 24ª Câmara de Direito Privado, j. 02.09.2022. </p><p class="Standarduser" style="text-align: justify; line-height: 150%;"> &#160;</p><p class="EmentadoAcordo" style="text-align: justify; line-height: 150%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, em conhecer do recurso de apelação cível para negar-lhe provimento, nos termos do voto do Relator.</p><p class="EmentadoAcordo" style="text-align: center; line-height: 150%;"> &#160; Fortaleza, data da assinatura eletrônica.</p><p>
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 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do Órgão Julgador </p><p style="text-align: center;">
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 </div> RELATÓRIO </p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> &#160;</p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Tratam-se os autos de Apelação Cível interposta por A S ENGENHARIA LTDA, contra sentença prolatada pelo MM. Juiz de Direito da 28ª Vara Cível da Comarca de Fortaleza, que em sede de Ação Monitória c/c Pedido de Medida Cautelar proposta pela ora apelante, em desfavor de CONSÓRCIO CPE - VLTFORTALEZA, julgou improcedente a ação com a resolução de mérito, nos termos do art. 487, I do CPC, por falta de prova escrita suficiente para aparelhar a presente demanda.</p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Consta da sentença que o Magistrado a quo decidiu nos seguintes termos: </p> <p class="Standarduser" style="margin-left: 4cm; text-align: justify;">&#160;</p> <p class="Standarduser" style="margin-left: 4cm; text-align: justify;">DISPOSITIVO</p> <p class="Standarduser" style="margin-left: 4cm; text-align: justify;">Diante do exposto, nos termos do artigo 487, I, CPC, JULGO IMPROCEDENTE a presente AÇÃO MONITÓRIA, por sentença, com a resolução de mérito, nos termos do art. 487, I do CPC, por falta de prova escrita suficiente para aparelhar a presente ação. Condeno a parte autora ao pagamento das custas processuais e honorários advocatícios do parainfno do autor, 10%

Processo	0918181-91.2014.8.06.0001
	(dez por cento) sobre o valor da causa, nos termos do CPC, art. 85, § 2º do CPC. P.R.I, Transitada em julgado, certifique-se e expeça-se ofício ao Cartório de Protesto desta comarca para que proceda o cancelamento definitivo do protesto e, empós, arquivem-se os autos, com a devida baixa.</p> <p class="Standarduser" style="margin-left: 4cm; text-align: justify;">Expedientes necessários</p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> &#160; </p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Irresignado, o recorrente interpôs o presente recurso, ID 21429401 (SAJ 287), alegando, em suas razões recursais que houve a confissão da apelada acerca da prestação dos serviços quando da apresentação dos embargos à monitória. </p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Aduz, ainda, a validade da prestação da prestação dos serviços por meio de fotos e notas fiscais sem aceite do devedor. </p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Por fim, requer : O Recebimento e Processamento da presente peça recursal, por preenchidos os pressupostos de recorribilidade, e, com base nos fundamentos legais e jurisprudenciais aplicáveis ao caso, que esta Egrégia Corte dê integral provimento ao recurso, para, reformando a sentença hostilizada, JULGUE TOTALMENTE PROCEDENTE o pleito recursal, desconstituindo a sentença de fls. 252/257, para fins de reconhecer a prestação dos serviços prestados pela Apelante ante as provas ajuizadas e a confissão expressa da Apelada.</p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Contrarrazões ID 21429290 (SAJ 310). </p> <p class="StandardWW" style="text-align: justify; text-indent: 56.15pt; line-height: 150%;">Após, os autos ascenderam para julgamento nesta Corte.</p> <p class="CorpodotextoSAJSG" style="margin: 0cm;">Parecer do Ministério Público juntado ID 21428839 (SAJ 327), opinando pela desnecessidade de intervenção do Parquet, por se tratar de matéria de cunho patrimonial, envolvendo partes capazes e direitos disponíveis.</p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> É o relatório. &#160; </p> <p class="Standard" style="text-align: center;">VOTO</p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">&#160;</p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">Conheço do presente recurso, porquanto presentes os pressupostos intrínsecos e extrínsecos de admissibilidade recursal.</p> <p class="Standarduser" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> No caso em tela, a controvérsia recursal consiste em aferir o acerto ou não da sentença que julgou improcedente a ação monitória, com a resolução de mérito, nos termos do art. 487, I do CPC, por falta de prova escrita suficiente para aparelhar a ação. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Dito isso, rememorando o caso dos autos, em sede de inicial, narra a parte autora, ora apelante que celebrou com a requerida um contrato verbal objetivando a realização de serviços relacionados às obras do "VLT de Fortaleza", cujo contrato administrativo se deu entre a ré e o governo do Estado do Ceará, onde as normas do referido contrato não se estendiam ao negócio jurídico verbal pactuado entre os litigantes, sendo, portanto, uma relação de sublocação de serviços. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Relata que a promovida afastou a empresa Promovente de suas atividades e não honrou com as devidas contraprestações pelos serviços prestados, dívida que chegou ao valor de R\$ 491.137,39, sendo este o valor devido pelas contraprestações dos serviços realizados. Pugna pela efetuação do pagamento do valor do débito e ao final que seja a mesma condenada ao pagamento no importe acima mencionado, bem como em custas processuais e honorários advocatícios. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Opostos embargos à monitória no prazo legal, a Apelada sustentou, preliminarmente, a ilegitimidade ativa por irregularidade na representação societária e, no mérito, a carência de fundamentação dos argumentos, pois a Apelante anexou documentação totalmente unilateral, não havendo nos autos um único elemento que comprove a anuência, mesmo que indireta, da Apelada em relação às notas fiscais apresentadas. Da mesma forma, foi exposto que os serviços efetivamente prestados foram pagos/consignados judicialmente, e demonstrado a necessidade da revogação da medida antecipatória de tutela, deferida em decisão fls. 83 – 89, determinando que o Governo do Estado do Ceará deposite perante este Juízo o quantum no valor de R\$ 404.966,40. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;"> Ato contínuo,

Processo	0918181-91.2014.8.06.0001
	em ID 21429432 , sobreveio sentença julgando improcedente os pedidos da Apelante, haja vista ausência de provas dos fatos constitutivos do direito pleiteado.</p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">Inconformada com o "decisum" monocrático, a parte Autora interpôs o presente recurso, trazendo para tanto, os mesmos argumentos e provas juntas a exordial.</p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">Feito essas considerações, cumpre destacar que quantos aos requisitos necessários para a cobrança judicial de duplicatas, dispõe o art. 15 da Lei n.º 5.474/1968 (Lei das Duplicatas): </p> <p class="Standard" style="text-align: justify; line-height: 150%;">&#160;</p> <p class="Standard" style="margin-left: 4cm; text-align: justify;">"Art. 15 - A cobrança judicial de duplicata ou triplicata será efetuada de conformidade com o processo aplicável aos títulos executivos extrajudiciais, de que cogita o Livro II do Código de Processo Civil, quando se tratar: </p> <p class="Standard" style="margin-left: 4cm; text-align: justify;">"I - de duplicata ou triplicata aceita, protestada ou não; </p> <p class="Standard" style="margin-left: 4cm; text-align: justify;">"II – de duplicata ou triplicata não aceita, contanto que, cumulativamente :</p> <p class="Standard" style="margin-left: 4cm; text-align: justify;">"a) haja sido protestada</p> <p class="Standard" style="margin-left: 4cm; text-align: justify;">"b) esteja acompanhada de documento hábil comprobatório da entrega e do recebimento da mercadoria, permitida a sua comprovação por meio eletrônico; </p> <p class="Standard" style="margin-left: 4cm; text-align: justify;">"c) o sacado não tenha, comprovadamente, recusado o aceite, no prazo, nas condições e pelos motivos previstos nos arts. 7º e 8º desta Lei". </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">&#160;</p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">Neste passo, a luz do referido dispositivo, não havendo aceite, a lei é expressa ao exigir de forma cumulativa, que a duplicata esteja acompanhada do protesto, do comprovante de entrega da mercadoria e que o sacado não tenha recusado o aceite nos termos legais. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">Sobre o tema, o entendimento firmado pelo Col. Superior Tribunal de Justiça, "negada pelo sacado a causa que autorizaria o saque da duplicata, cumpre ao sacador comprovar documentalmente a entrega e o recebimento da mercadoria (artigos 333, II, e 334, II, do CPC; 15, II, b, da Lei nº 5.474/68)" (STJ, REsp: 141.322/RS 1997/0051371-8, Relator: Ministro Barros Monteiro, T4 - Quarta Turma, DJ 14.06.2004). </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">Visto isso, dessume-se do caso concreto que a parte apelante sustenta que ajuizou ação monitória em desfavor do apelado, em virtude da inadimplência de um suposto contrato verbal de serviços de engenharia, instruindo-a com fotos e notas fiscais sem qualquer aceite. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">Neste contexto, deve-se destacar que apesar de todas as notas fiscais estarem sem assinatura da devedora, esse fato não impede a utilização dos referidos documentos como fundamento para o ajuizamento de ação monitória, eis que outros elementos podem comprovar a existência da dívida. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">Todavia, em que pese as notas fiscais serem documentos hábeis ao ajuizamento da ação monitória, essas não comprovam, por si só, a prestação do serviço. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">A prova da prestação do serviço é encargo do postulante, porquanto constitutivo do seu direito, de modo que tendo a recorrida negado a prestação do serviço, caberia então à ora apelante provar que efetivamente realizou o serviço descrito nas NFs, fato que não ocorreu. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">As fotos, em anexo, não permitem ao Poder Judiciário atestar, com precisão, que aqueles serviços são referentes ao suposto contrato verbal realizado entre as partes, ônus que, reprimis, competia à parte promovente, restando a incerteza quanto a constituição do negócio mercantil que gerou a dívida aqui cobrada. </p> <p class="Standard" style="text-align: justify; text-indent: 2cm; line-height: 150%;">Ao negar inteiramente a existência da dívida, a recorrida se desincumbiu do ônus da prova que recaía sobre si, pois exigir prova da inexistência de algo seria, na verdade, impor-lhe obrigação

Processo	0918181-91.2014.8.06.0001
	impossível. Ademais, diferente do que afirma o apelante, sobre a confissão dos serviços prestados, não há nos autos documento hábil a embasar que o recorrido confessa a realização deles. Assim, como inexistente prova da efetiva prestação dos serviços representados pelas notas fiscais apresentadas pela autora/recorrente, ônus que lhe incumbia a teor do inciso I do art. 373 do CPC, impõe-se a manutenção da improcedência dos pleitos autorais. A propósito, eis o entendimento deste e. Tribunal de Justiça do Ceará, em demandas análogas: &#160; DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO MONITÓRIA. NOTAS FISCAIS DESACOMPANHADAS DE PROVA DA EFETIVA PRESTAÇÃO DE SERVIÇO. INÉPCIA DA INICIAL CONFIGURADA. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. RECURSO PARCIALMENTE PROVIDO. I. CASO EM EXAME: Tem-se Apelação cível interposta por empresa ré contra sentença que rejeitou seus embargos monitorios e empôs julgou procedente ação monitoria, condenando-a (apelante) ao pagamento de crédito consubstanciado nas Notas Fiscais apresentadas pela apelada. II. QUESTÃO EM DISCUSSÃO: 1. O ponto em discussão cinge-se em saber se a ação monitoria pode (ou não) ser instruída com Notas Fiscais desacompanhadas de uma prova inequívoca da efetiva prestação dos serviços nelas descritos. III. RAZÕES DE DECIDIR: 2. A jurisprudência dominante do STJ admite o uso de notas fiscais para instrução de ação monitoria, mas desde que acompanhadas de prova da entrega da mercadoria ou (como no caso) da efetiva prestação de serviços. 3. A autora chegou a apresentar as Notas Fiscais prevendo serviços de engenharia em obra de tratamento de esgoto mas sem qualquer documento hábil complementar a demonstrar de forma clara e objetiva a realização desses serviços descritos nas Notas Fiscais. 4. Os e-mails, bem como as conversas via aplicativo e boletos apresentados não comprovam a execução dos serviços, mas apenas que as partes ao que tudo indica, mantinham uma relação jurídica; As mensagens ademais tampouco identificam os interlocutores, de modo que tendo a parte ré apresentado tese negativa da prestação de serviço, era dever da autora provar que realmente prestou os serviços. 5. Inexistente prova mínima do fato constitutivo do direito autoral, configura-se situação de inépcia da petição inicial, devendo o processo ser extinto sem julgamento de mérito, nos termos do art. 485, IV, do CPC, para que a parte recorrida procure o seu direito perante a via do procedimento comum ordinário. IV. DISPOSITIVO: 6. Recurso conhecido em parte e parcialmente provido para extinguir o processo sem resolução de mérito por inépcia da petição inicial. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, por conhecer e desprover o recurso. Fortaleza, 30 de abril de 2025 RELATOR (Apelação Cível- 0251214-98.2023.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 30/04/2025, data da publicação: 30/04/2025) DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. CONTRATO DE LOCAÇÃO DE BENS MÓVEIS. INEXISTÊNCIA DE NOTA FISCAL E DE ACEITE DAS MEDIÇÕES. ILIQUIDEZ DO TÍTULO. EXTINÇÃO DA EXECUÇÃO. MANUTENÇÃO DA SENTENÇA. RECURSO CONHECIDO E NÃO PROVIDO. I. CASO EM EXAME. 1. Apelação cível interposta contra sentença que acolheu exceção de pré-executividade e extinguiu execução fundada em contrato de locação de bens móveis celebrado entre as partes, ao fundamento de que o título executivo extrajudicial apresentado carece de liquidez e certeza, por ausência da nota fiscal e do aceite expresso das medições mensais, conforme exigência contratual. II. QUESTÃO EM DISCUSSÃO. 2. A questão em discussão consiste em verificar se o contrato de locação de bens móveis, desacompanhado da nota fiscal e do aceite expresso das medições por parte da locatária, é suficiente para embasar a execução como título executivo extrajudicial, nos termos do art. 783 do CPC. III. RAZÕES DE DECIDIR. 3. O contrato de locação firmado entre as partes condiciona o faturamento e a exigibilidade dos valores à apresentação da nota fiscal e ao aceite do boletim de medição pela locatária, conforme cláusula 10, o que não foi comprovado nos autos. 4. A ausência da nota fiscal nº 14462 e do aceite expresso dos valores cobrados inviabiliza a aferição, de plano, da liquidez e certeza do título, impossibilitando sua exigibilidade em sede de execução, conforme exige o art. 783 do CPC. 5. A ação executiva exige título líquido, certo e exigível, características que devem estar presentes no momento da propositura da ação, sem necessidade de dilação probatória para apuração do quantum debeat. 6. A ausência de elementos essenciais à formação do título executivo impõe a extinção da execução, nos termos dos arts. 487, I, e 803, I, do CPC, diante da

Processo	0918181-91.2014.8.06.0001
	inadequação da via processual eleita pela exequente. 7. A jurisprudência pátria é firme ao reconhecer a necessidade de liquidez do título executivo extrajudicial, especialmente quando o contrato prevê condicionantes para a exigibilidade do crédito, como aceite e emissão de nota fiscal, os quais não foram demonstrados no caso concreto. IV. DISPOSITIVO E TESE. 8. Recurso conhecido e não provido. Tese de julgamento: A ausência de nota fiscal e do aceite expresso das medições, quando exigidos contratualmente, afasta a liquidez e a certeza do título executivo extrajudicial, impedindo o ajuizamento da execução. A execução fundada em contrato com cláusulas condicionais à exigibilidade do crédito depende da demonstração documental prévia do cumprimento dessas condições. A via executiva é inadequada quando a aferição do crédito exige dilação probatória, devendo ser manejada ação de conhecimento. Jurisprudência relevante citada: TJSP, Apelação Cível nº 1003234-13.2018.8.26.0011, Rel. Des. Paulo Ayrosa, j. 13.02.2019; TJSP, Apelação Cível nº 1067057-82.2018.8.26.0100, Rel. Des. Silvia Rocha, j. 04.10.2019; TJMG, Apelação Cível nº 1.0000.21.180966-0/001, Rel. Des. Roberto Apolinário de Castro, j. 07.12.2021; TJMG, Apelação Cível nº 1.0000.20.047195-1/001, Rel. Des. Fernando Lins, j. 04.11.2020. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, em conhece do recurso apelatório para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura eletrônica. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator (Apelação Cível nº 0215312-55.2021.8.06.0001, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 16/04/2025, data da publicação: 16/04/2025) DIREITO CIVIL E PROCESSO CIVIL. EMBARGOS MONITÓRIOS PARCIALMENTE PROCEDENTES NA ORIGEM. APRESENTAÇÃO DE NOTAS FISCAIS E DUPLICATAS QUE APARELHAM A AÇÃO MONITÓRIA. MÉRAS ALEGAÇÕES DE DESCUMPRIMENTO DAS OBRIGAÇÕES DECORRENTES DA SUPOSTA ENTREGA E ACEITE DAS MERCADORIAS. DOCUMENTOS ANEXADOS QUE NÃO DEMONSTRAM O RECEBIMENTO DOS PRODUTOS E ACEITES DE 06 (SEIS) DAS 11 DUPLICATAS, APENAS 05 (CINCO) RESTARAM DEVIDAMENTE DEMONSTRADAS NOS AUTOS. FRAGILIDADE DO CONJUNTO PROBATÓRIO ANEXADO AO FEITO. INEXISTÊNCIA DE PROVA QUE FUNDAMENTE O ACEITE A JUSTIFICAR O RECONHECIMENTO DO INADIMPLEMENTO DAS 06 DUPLICATAS NÃO RECONHECIDAS PELO JUÍZO. ÔNUS QUE COMPETIA À REQUERENTE DEMONSTRAR OS FATOS CONSTITUTIVOS DE SEU DIREITO, ART. 373, I DO CPC. RECURSO APELATÓRIO CONHECIDO E IMPROVIDO. SENTENÇA MANTIDA. I. Apelação interposta para reformar sentença que julgou parcialmente procedente a ação monitoria, constituindo de pleno direito tão somente 5 das 11 duplicatas questionadas, visto a existência de aceite e recebimento das mercadorias nas notas fiscais de fls. 27; 35; 43; 51 e 59, desconsiderando as demais por ausência do recebimento e do aceite na duplicata. II. A teor do art. 700 do CPC, a ação monitoria cabe a quem pretender, com base em prova escrita sem eficácia de título executivo, entre outros, o pagamento de soma em dinheiro. O objetivo é acelerar o recebimento do valor pretendido, transferindo para posteriores embargos monitorios a discussão sobre a existência ou não do crédito. Dessa forma, inverte-se para o devedor o ônus de desconstituir o direito do autor em relação à dívida questionada, o que foi devidamente demonstrado em 6 das 11 duplicatas exigidas. III. De todas as duplicatas apresentadas na monitoria, só 5 (cinco) foram reconhecidas a exigibilidade, visto o recebimento e aceite por parte da demandada, consoante fls. 31; 39; 47; 55 e 63, o que totaliza o valor de R\$ 5.016,83 (cinco mil e dezesseis reais e oitenta e três centavos), não restando demonstrado o inadimplemento em relação às demais duplicatas, conforme bem noticiou o MM. Magistrado em sua sentença de fls. 111/114. IV. Nessas circunstâncias, verifico que a requerente Neoplastic Embalagem Plástica Ltda não se desincumbiu do ônus que lhe competia, conforme preconiza o art. 373, I do CPC/15, no sentido de demonstrar os fatos constitutivos de seu direito, demonstrando a demandada Nazaré Azevedo Portela-ME, que recebeu todas as duplicatas exigidas, as quais correspondem à importância de R\$ 15.053,50 (quinze mil, cinquenta e três reais e cinquenta centavos), ora almejados. V. Recurso apelatório conhecido e improvido. Sentença mantida. (Apelação Cível - 0834637-11.2014.8.06.0001, Rel. Desembargador(a) JOSÉ LOPES DE ARAÚJO FILHO, 3ª Câmara Direito Privado, data do julgamento: 19/04/2023, data da publicação: 15/05/2023) No mesmo sentido, a jurisprudência dos Tribunais Estaduais: APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. DUPLICADAS.

Processo	0918181-91.2014.8.06.0001
	 #160; </p>
Processo	0415232-93.2010.8.06.0001
Número de ordem	201
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Cédula de Crédito Bancário
Polo ativo	CELIA MARIA ARAUJO MORAIS CORREIA
Advogado(s) - Polo ativo	RUI BARROS LEAL FARIAS - (CE16411-A) MIGUEL ROCHA NASSER HISSA - (CE15469-A) RODRIGO MACEDO DE CARVALHO - (CE15470-A)
Polo passivo	ADVISOR GESTAO DE ATIVOS S.A MARCIO MORAIS CORREIA GONCALVES
Advogado(s) - Polo passivo	TAMIRES DE SOUSA SALGADO - (CE29486-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado
Processo	0476888-51.2010.8.06.0001
Número de ordem	202
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Usucapião Especial (Constitucional)
Polo ativo	Antonio Carlos Jesus de Oliveira
Advogado(s) - Polo ativo	JOSE MAURO DE MELO ESCORCIO - (CE13687-A)
Polo passivo	ZILMA SOUSA DE OLIVEIRA PAROMA CONSTRUÇOES E EMPREENDIMENTOS LTDA
Advogado(s) - Polo passivo	JOSE MAURO DE MELO ESCORCIO - (CE13687-A)
Terceiros	Diego Francisco Spiusa de Oliveira Jadriel Antonio Borges de Souza ANA MARIA FREIRE ARAUJO ANTONIA MARIA BORGES DE ARAUJO Edmar Cordeiro Pinto PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado
Processo	0631554-90.2022.8.06.0000
Número de ordem	203
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Penhora / Depósito/ Avaliação
Polo ativo	FUNDO DE INVESTIMENTO EM DIREITOS CREDITÓRIOS - FIDC PREMIUM
Advogado(s) - Polo ativo	JOSE GUILHERME CARNEIRO QUEIROZ - (CE41111-A)
Polo passivo	CARBOMIL QUIMICA S A CANDIDO DA SILVEIRA QUINDERE LEONARDO DE PONTES VIEIRA
Advogado(s) - Polo passivo	HEBER QUINDERE JUNIOR - (CE4328-A)
Terceiros	Não informado

Processo	0631554-90.2022.8.06.0000
Acórdão	<blockquote> <p style="text-align: center;">
 </p> <p class="MsoNormal" style="margin-bottom: 0cm; line-height: normal; text-align: center;"> ESTADO DO CEARÁ
 PODER JUDICIÁRIO
 TRIBUNAL DE JUSTIÇA
 PRIMEIRA CÂMARA DE DIREITO PRIVADO
 DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p> <p>&#160;</p> <p> PROCESSO:&#160;0631554-90.2022.8.06.0000 -&#160; AGRAVO DE INSTRUMENTO (202) / AGRAVO INTERNO
 AGRAVANTE:CARBOMIL QUIMICA S A, CANDIDO DA SILVEIRA QUINDERE, LEONARDO DE PONTES VIEIRA&#160;
 AGRAVADO:&#160; FUNDO DE INVESTIMENTO EM DIREITOS CREDITORIOS - FIDC PREMIUM </p> <div style="text-align: justify;"> <hr /> <div> Ementa: DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. ARRESTO ON-LINE. POSSIBILIDADE ANTES DA CITAÇÃO. FUNDOS DE PREVIDÊNCIA PRIVADA. PENHORABILIDADE. ANÁLISE DO JULGADOR. RECURSO DESPROVIDO.&#160;</div> <div> I. Caso em exame </div> <div>1. Agravo interno interposto contra decisão monocrática que deu provimento a agravo de instrumento e determinou o arresto de ativos financeiros em nome dos executados, inclusive não citados, no curso de execução de título extrajudicial ajuizada em 2015. O agravante sustenta necessidade de citação prévia e impenhorabilidade dos valores bloqueados, alegando tratar-se de proventos de aposentadoria.&#160;</div> <div> II. Questão em discussão </div> <div>2. As questões em discussão consiste em definir se é admissível a decretação de arresto on-line antes da citação do executado, diante de tentativas frustradas de localização e em estabelecer se os valores bloqueados em fundos de previdência privada são impenhoráveis.</div> <div> III. Razões de decidir </div> <div>3. A jurisprudência do STJ admite o arresto on-line antes da citação, quando frustradas as tentativas de localização do devedor, sendo desnecessário o exaurimento das diligências, conforme aplicação analógica do art. 854 do CPC.&#160;</div> <div>4. No caso em exame, a execução tramita desde 2015, sem pagamento do débito, e houve tentativas infrutíferas de localizar os avalistas, configurando risco de frustração do processo e justificando a medida excepcional.&#160;</div> <div>5. Ademais, o art. 830 do CPC prevê a possibilidade de arresto de bens quando o oficial de justiça não encontra o executado, e o art. 854 autoriza o bloqueio eletrônico de ativos financeiros sem prévia ciência do devedor.&#160;</div> <div>6. Quanto a natureza dos valores a serem bloqueados, o STJ consolidou entendimento de que a penhorabilidade de valores em fundos de previdência privada deve ser analisada caso a caso, cabendo ao juízo aferir se possuem destinação alimentar.</div> <div>7. Contudo, neste caso, não há nos autos comprovação do caráter alimentar dos valores. Assim, diante do elevado montante no fundo, aliado à longa duração da execução, entendendo cabível a manutenção do arresto.&#160;</div> <div> IV. Dispositivo </div> <div>8. Recurso desprovido.</div> <div>
 </div> <div> Dispositivos relevantes citados: CPC/2015, arts. 830, caput; 833, IV e X; 854, caput.&#160;</div> <div> Jurisprudência relevante citada: STJ, AgInt no AREsp 1.288.367/RS, Rel. Min. Raul Araújo, Quarta Turma, j. 19.09.2022, DJe 04.10.2022; STJ, AgInt no AREsp 1.956.886/RJ, Rel. Min. Nancy Andrichi, Terceira Turma, j. 02.05.2022, DJe 04.05.2022; AgInt no AREsp n. 2.436.157/GO, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 7/4/2025, DJEN de 11/4/2025.</div> <div>
 </div> <div> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para, no mérito, negar-lhe provimento nos termos do voto do Relator.</div> <div style="text-align: center;">Fortaleza, data constante no sistema.</div> <p style="text-align: center;">
 </p> <p>
 </p> <p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do Órgão Julgador </p> <p>
 </p> <p style="text-align: center;">

Processo	0631554-90.2022.8.06.0000
	small;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p> <p>&#160;</p> <hr /> <p>&#160;</p> <p style="text-align: center;">&#160;</p> <p style="text-align: center;"> RELATÓRIO </p></div> <p style="line-height: 100%; margin-bottom: 0cm;" align="center">
 </p></blockquote><p style="text-align: justify; text-indent: 8%;"> Trata-se de Agravo Interno interposto por CARBOMIL QUÍMICA S.A. contra os termos da decisão monocrática (ID 21490129), proferida por este Relator, que deu provimento ao agravo de instrumento interposto por FUNDO DE INVESTIMENTO EM DIREITOS CREDITÓRIOS – FIDC PREMIUM, reformando a decisão de origem (execução de título extrajudicial n. 0010298-33.2015.8.06.0115) e determinando o arresto de ativos financeiros em nome dos executados, inclusive os não citados.</p><p style="text-align: justify; text-indent: 8%;"> No presente recurso (ID 21490433), o agravante (executado) sustenta que a decisão agravada incorreu em erro de julgamento ao não considerar que, por não ter sido citado no processo de origem, não poderia ser submetido a atos expropriatórios. Argumenta, ainda, que a autorização para arresto de ativos financeiros pelo Tribunal encontra óbice no art. 833, IV, do CPC, que dispõe sobre a impenhorabilidade de proventos de aposentadoria.</p><p style="text-align: justify; text-indent: 8%;"> Aduz, também, que a decisão agravada foi omissa quanto à análise da impenhorabilidade dos valores, questão suscitada pelo agravante em sede de contrarrazões ao agravo de instrumento. Ressalta que se trata de matéria de ordem pública e que foi naquele momento que teve a primeira oportunidade de se manifestar, uma vez que o arresto havia sido indeferido na origem.</p><p style="text-align: justify; text-indent: 8%;"> Foram apresentadas contrarrazões (ID 21490404), nas quais o agravado (exequente) pugna pela manutenção da decisão agravada, destacando que o agravante (executado) foi devidamente intimado para pagar o débito, mas permaneceu inerte. Ressalta, ainda, que a execução se arrasta há quase dez anos, o que justifica a adoção de meios alternativos para a satisfação do crédito.</p><p style="text-align: justify; text-indent: 8%;"> É o relatório.</p><p style="text-align: justify; text-indent: 8%;"> Adotando o Pacto Nacional do Judiciário pela Linguagem Simples do CNJ, passo a proferir meu voto.</p><p style="text-align: center;"> VOTO </p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;"> Presentes os requisitos de admissibilidade, conheço do recurso.</p><p style="text-align: justify; text-indent: 8%;"> A decisão monocrática agravada não merece reforma, pois encontra respaldo na jurisprudência desta Corte e do Superior Tribunal de Justiça, que admitem a concessão do arresto on-line, mesmo antes da citação da parte executada, quando demonstrado risco de grave lesão ou de difícil reparação que justifique a adoção da medida excepcional.</p><p style="text-align: justify; text-indent: 8%;"> No caso, tais requisitos estão presentes, considerando que já houve duas tentativas frustradas de localização dos avalistas do débito, e que a execução tramita desde 2015 sem adimplemento, conforme observado na monocrática agravada.</p><p style="text-align: justify; text-indent: 8%;"> A respeito do tema, cabe citar precedentes do STJ que autorizam o arresto on-line diante de tentativas frustradas de localização do executado, senão vejamos:</p><p style="text-align: justify;">
 </p><p style="text-align: justify; padding-left: 240px;"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. ARRESTO ON-LINE. TENTATIVA DE LOCALIZAÇÃO DO EXECUTADO FRUSTRADA. NECESSIDADE. CONSONÂNCIA DO ACÓRDÃO RECORRIDO COM A JURISPRUDÊNCIA DESTA CORTE. SÚMULA 83/STJ. AGRAVO DESPROVIDO.
 1. A jurisprudência desta Corte Superior é assente no sentido de que, uma vez frustrada a tentativa de localização do devedor, é possível o arresto de seus bens na modalidade on-line, com base na aplicação analógica do art. 854 do CPC/2015, sendo prescindível que haja o esgotamento das tentativas.
 2. O entendimento adotado no acórdão recorrido coincide com a jurisprudência assente desta Corte Superior, circunstância que atrai a incidência da Súmula 83/STJ.
 3. Agravo interno a que se nega provimento.
 (AgInt no AREsp n. 1.288.367/RS, relator Ministro Raul Araújo, Quarta Turma, julgado em 19/9/2022, DJe de 4/10/2022.) [Grifo nosso]

 PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. CÉDULA DE

Processo	0631554-90.2022.8.06.0000
	CRÉDITO BANCÁRIO. DECISÃO QUE DEFERIU ARRESTO ONLINE EM CONTA. PREQUESTIONAMENTO. AUSÊNCIA. SÚMULA 211/STJ. ARRESTO EXECUTIVO ELETRÔNICO. TENTATIVA DE LOCALIZAÇÃO DO EXECUTADO FRUSTRADA. ADMISSIBILIDADE. EXAURIMENTO DAS TENTATIVAS DE CITAÇÃO. PRESCINDIBILIDADE. HARMONIA ENTRE O ACÓRDÃO RECORRIDO E A JURISPRUDÊNCIA DO STJ.
 1. Execução de título extrajudicial fundada em cédula de crédito bancário, no bojo da qual foi proferida decisão deferindo arresto online em conta.
 2. A ausência de decisão acerca dos dispositivos legais indicados como violados, não obstante a interposição de embargos de declaração, impede o conhecimento do recurso especial.
 3. Frustrada a tentativa de localização do devedor para citação, é possível o arresto de seus bens na modalidade on-line, com base na aplicação analógica do art. 854 do CPC/15, sendo prescindível que haja o exaurimento das tentativas. Precedentes.
 4. Agravo interno no agravo em recurso especial não provido.
 (AglInt no AREsp n. 1.956.886/RJ, relatora Ministra Nancy Andrigli, Terceira Turma, julgado em 2/5/2022, DJe de 4/5/2022.) [Grifo nosso] ¶
Ademais, o entendimento harmoniza-se com os arts. 830, caput, e 854, caput, do CPC/15, sendo o primeiro no sentido de que “Se o oficial de justiça não encontrar o executado, arrestar-lhe-á tantos bens quantos bastem para garantir a execução.” e o segundo dispondo que¶ “Para possibilitar a penhora de dinheiro em depósito ou em aplicação financeira, o juiz, a requerimento do exequente, sem dar ciência prévia do ato ao executado, determinará às instituições financeiras, por meio de sistema eletrônico gerido pela autoridade supervisora do sistema financeiro nacional, que torne indisponíveis ativos financeiros existentes em nome do executado, limitando-se a indisponibilidade ao valor indicado na execução.”</p><p style="text-align: justify; text-indent: 8%;">De igual modo, assim se encontram os julgados desta Corte, quanto ao tema em análise:</p><p style="text-align: justify;">
</p><p style="text-align: justify; padding-left: 240px;">AGRAVO DE INSTRUMENTO. PEDIDO DE ARRESTO ONLINE. TENTATIVA DE CITAÇÃO FRUSTRADA. DESNECESSIDADE DE ESGOTAMENTO DOS MEIOS DE LOCALIZAÇÃO DO DEVEDOR. PRECEDENTES DO COLENO SUPERIOR TRIBUNAL DE JUSTIÇA E DESTA CORTE. RECURSO CONHECIDO E PROVIDO. 1. A controvérsia recursal cinge-se em analisar se, após tentativa frustrada de citação, deve o pedido de arresto on-line ser concedido ou se seu deferimento está condicionado ao esgotamento das tentativas de atos citatórios.
2. Sobre o tema, é sabido que o arresto executivo, também denominado de prévio ou pré-penhora, é uma medida que tem por finalidade garantir a futura penhora e evitar maiores prejuízos ao credor, mediante o bloqueio dos bens do executado.
3. Com efeito, o diploma preceitua que, frustrada a citação, ainda que pautada em uma única tentativa, é autorizado o arresto on-line de bens pelo oficial de justiça responsável por localizar o executado.
4. Outrossim, ainda que o dispositivo não mencione expressamente a modalidade “on-line”, a adoção da medida é plenamente cabível, por aplicação analógica do art. 854 do Código de Processo Civil.
5. Acrescente-se que não há qualquer exigência legal para que seja o arresto prévio condicionado ao esgotamento dos meios extrajudiciais à localização do executado, principalmente quando a não localização do devedor decorre do fato dele não ser localizado no endereço fornecido para a celebração do negócio, não tendo comunicado o credor acerca da alteração de seu endereço ou mesmo em endereços constantes de órgãos oficiais.
6. Não obstante exista divergência jurisprudencial a respeito do tema, a Terceira Turma do Superior Tribunal de Justiça alinhou o entendimento de que é possível o arresto online antes da citação, fazendo-se desnecessário o esgotamento dos meios de localização do devedor.
7. Portanto, ante a desnecessidade de que o arresto esteja condicionado ao esgotamento dos meios extrajudiciais à localização do executado, entendo pela reforma da decisão objurgada.
8. Recurso conhecido e provido.
ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para DAR-LHE PROVIMENTO, em conformidade com o voto do eminente Relator. Fortaleza, data indicada no sistema. DESEMBARGADORA CLEIDE ALVES DE AGUIAR Presidente do Órgão Julgador DESEMBARGADOR PAULO DE TARSO PIRES NOGUEIRA Relator
(Agravo de Instrumento - 0631425-56.2020.8.06.0000, Rel. Desembargador(a) PAULO DE TARSO PIRES NOGUEIRA, 3ª Câmara Direito Privado, data do julgamento:¶18/12/2024, data da publicação:¶ 18/12/2024) [Grifo nosso]
<span style="font-size: x-

Processo	0631554-90.2022.8.06.0000
	small;">
 DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO DE EXECUÇÃO. DECISÃO QUE INDEFERIU O PEDIDO DE ARRESTO DE BENS PRÉVIO OU PRÉ-PENHORA. MEDIDA QUE PODE SER REALIZADA APÓS TENTATIVA INFRUTÍFERA DE CITAÇÃO DA PARTÊ EXECUTADA, NOS TERMOS DO ART. 830 C/C 854 DO CPC. DESNECESSIDADE DE EXAURIMENTO DAS TENTATIVAS DE CITAÇÃO. ARRESTO ON-LINE. POSSIBILIDADE. APLICAÇÃO ANALÓGICA DO ART. 854 DO CPC. APLICAÇÃO PRINCÍPIOS DA COOPERAÇÃO, CELERIDADE PROCESSUAL E EFETIVIDADE DA TUTELA JURISDICIONAL. PRECEDENTES STJ E TJCE. DECISÃO AGRAVADA REFORMADA. AGRAVO DE INSTRUMENTO CONHECIDO E PROVIDO.&#160;
 1. O cerne da presente ação recursal consiste em apreciar se é cabível o deferimento do arresto prévio, na modalidade on-line, sem que tenha sido citado a parte exequida.&#160;
 2. É cediço que o arresto é medida processual que visa garantir a execução, uma vez que se converterá em penhora se o executado não adimplir com sua obrigação, podendo tal medida ser aplicada na hipótese do devedor não ser encontrado.&#160;
 3. Da leitura do art. 830 do CPC, depreende-se que a Lei Adjetiva Civil possibilita a efetivação de medidas assecuratórias da execução, embora não integralizada a relação processual. Assim, a aplicação do art. 830 do CPC está condicionada ao preenchimento de dois requisitos, conforme a própria dicção legal: não ser localizado o devedor, quando da tentativa de sua citação por mandado, e não serem encontrados bens penhoráveis, pelo oficial de justiça, naquela ocasião.&#160;
 4. Não obstante exista divergência jurisprudencial a respeito do tema, conforme precedentes do Superior Tribunal de Justiça, é possível o arresto online antes da citação, fazendo-se desnecessário o esgotamento dos meios de localização do devedor.&#160;
 5. In casu, vislumbra-se que existe risco de dano em face da parte Recorrente, uma vez que a conduta do Agravado, que busca evitar o recebimento dos autos de comunicação do Juízo, em flagrante violação ao dever de cooperação, probidade e boa-fé processuais, previsto nos artigos 5º e 6º do CPC, é indicativo de que possa, nesse mesmo desiderato, esvaziar-se dos bens pessoais que poderiam fazer frente ao pagamento do débito exequente, caso se confirme existente.&#160;
 6. Com efeito, resta evidente que o arresto executivo prescinde da citação do executado, o que é uma condição apenas para a sua conversão em penhora, e não para a efetivação em si, circunstância que confere virtual probabilidade de provimento do recurso manejado pela parte Agravante. É que, embora o art. 830 do CPC, ao disciplinar o arresto executivo, isto é, a constrição de bens do executado quando ele não for encontrado para a citação, não preveja a expressamente a modalidade de indisponibilidade de ativos financeiros em conta bancária, é fato que também não o proíbe, o que autoriza o Juízo a decidir sobre a sua viabilidade, em razão da lacuna legislativa, podendo, nesse caso, ser aplicado por analogia o art. 854 do CPC.&#160;
 7. Assim, percebe-se que a indisponibilidade de ativos financeiros depositados em conta bancária, ou bloqueio on-line como se convencionou chamar, trata-se também de uma medida preparatória à efetivação da penhora, tal qual o arresto executivo, porém nunca se confundido com a própria penhora em si. Tanto é assim, que antes que se efetive a <conversão> da indisponibilidade (bloqueio on-line) em penhora (penhora on-line), é necessário que haja a prévia intimação do executado para opor sua impugnação ao bloqueio, o que na doutrina processualista é chamado de mini-embargos, tudo conforme §§ 2º, 3º e 5º do art. 854 do CPC.&#160;
 8. Destarte, a indisponibilidade de ativos financeiros previstos no art. 854 do CPC enquadra-se, perfeitamente, nos contornos do instituto do arresto on-line de ativos financeiros, com previsão no art. 830 do mesmo diploma legal, sendo precisamente esse o entendimento conferido aos dispositivos pelo c. Superior Tribunal de Justiça, como se verifica dos julgamentos acima transcritos, que se amolda com perfeição ao caso em comento. Precedentes TJCE.&#160;
 9. Desse modo, em observância aos preceitos fundamentais estabelecidos na Constituição Federal e nas disposições do Código de Processo Civil, especialmente aos princípios da cooperação, celeridade processual e efetividade da tutela jurisdicional, tem-se que a reforma da decisão agravada é medida que se impõe. 10. Recurso CONHECIDO e PROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em CONHECER do recurso para lhe DAR PROVIMENTO, reformando a decisão de origem, nos termos do voto do eminente Relator. Fortaleza, data e hora indicadas pelo sistema. JOSÉ EVANDRO NOGUEIRA LIMA FILHO Presidente do Órgão Julgador DESEMBARGADOR FRANCISCO JAIME MEDEIROS NETO Relator
 (Agravado de Instrumento - 0627923-07.2023.8.06.0000, Rel. Desembargador(a) FRANCISCO JAIME MEDEIROS NETO, 4ª Câmara Direito Privado, data do julgamento:&#160; 17/12/2024, data da publicação:&#160; 17/12/2024) [Grifo nosso]</p><p style="text-align: justify;">

Processo	0631554-90.2022.8.06.0000
	Em relação à natureza dos valores bloqueados, verifica-se, pelo ofício do Bradesco Seguros S.A (ID 99983326 – autos originários), que ambos os avalistas possuem depósitos em fundo de previdência privada, sendo que o Sr. Leonardo de Pontes Vieira possui R\$ 107.399,72 e o Sr. Cândido da Silveira Quindere possui R\$ 88.623,52. Os montantes ultrapassam o limite de 40 salários-mínimos, o que afasta a incidência da impenhorabilidade prevista no art. 833, X, do CPC, inclusive também do inciso 160; Quanto à penhorabilidade de valores em fundos de previdência privada, o STJ já consolidou o entendimento de que a análise deve ser feita caso a caso, cabendo ao juízo verificar se possuem caráter alimentar. A propósito: AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AGRAVO DE INSTRUMENTO. NEGATIVA DE PRESTAÇÃO JURISDICIONAL. ALEGAÇÃO GENÉRICA. SÚMULA Nº 284/STF. FUNDOS DE PREVIDÊNCIA PRIVADA. NATUREZA ALIMENTAR. ANÁLISE DO JULGADOR. PENHORABILIDADE. ACOLHIMENTO. IMPOSSIBILIDADE. SÚMULA Nº 7/STJ. 1. No caso, a alegação de negativa de prestação jurisdicional foi formulada de forma genérica, sem especificação das supostas omissões ou teses que deveriam ter sido examinadas pelo tribunal de origem, apresentando fundamentação deficiente, a atrair, por analogia, a Súmula nº 284/STF. 2. A jurisprudência desta Corte entende que a impenhorabilidade dos valores depositados em fundo de previdência privada complementar deve ser aferida pelo magistrado em cada caso, de modo que resta caracterizada a sua natureza alimentar, na forma do art. 649, IV, do CPC, quando as provas dos autos revelarem a necessidade de utilização do saldo para a subsistência do participante e de sua família. 3. Não há como rever o acórdão recorrido, para entender pela penhorabilidade dos fundos previdenciários, sem a incursão nos fatos e nas provas dos autos, o que é inviável no recurso especial em virtude do óbice da Súmula nº 7/STJ. 4. Agravo interno não provido. (AgInt no AREsp n. 2.436.157/GO, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 7/4/2025, DJEN de 11/4/2025.) [Grifo nosso] AGRAVO INTERNO NO RECURSO ESPECIAL. EXECUÇÃO DE TÍTULO EXECUTIVO EXTRAJUDICIAL. BLOQUEIO DE VALORES APLICADOS EM PREVIDÊNCIA PRIVADA. ANÁLISE CASUÍSTICA. ALEGAÇÃO DE IMPENHORABILIDADE. CARÁTER ALIMENTAR. AFERIÇÃO. IMPOSSIBILIDADE. MATÉRIA FÁTICO-PROBATÓRIA. SÚMULA 7/STJ. AGRAVO IMPROVIDO. 1. A jurisprudência consolidada do Superior Tribunal de Justiça estabelece que os valores depositados em fundos de previdência privada não são, em regra, automaticamente impenhoráveis, devendo ser analisado, em cada caso, se são indispensáveis para a subsistência do executado. 2. No caso, o TJSP constatou que a agravante possui saldos expressivos em, ao menos, três planos de previdência privada e que os valores bloqueados, mesmo após a dedução do débito, excedem o limite previsto no art. 833, X, do CPC, não tendo sido demonstrado que tais recursos são indispensáveis para a subsistência da recorrente e de sua família. 3. A modificação do entendimento adotado pelo Tribunal de origem demandaria o reexame do conjunto fático-probatório dos autos, o que é vedado em recurso especial, nos termos da Súmula n. 7 do STJ. 4. Agravo interno desprovido. (AgInt no REsp n. 2.147.349/SP, relator Ministro Carlos Cini Marchionatti (Desembargador Convocado TJRS), Terceira Turma, julgado em 17/2/2025, DJEN de 20/2/2025.) [Grifo nosso] PROCESSUAL CIVIL. EXECUÇÃO FISCAL. PENHORABILIDADE DOS VALORES APLICADOS EM PREVIDÊNCIA PRIVADA COMPLEMENTAR. ANÁLISE CASUÍSTICA. REVOLVIMENTO DO ACERVO FÁTICO-PROBATÓRIO. SÚMULA 7/STJ. 1. A impenhorabilidade dos valores depositados em fundo de previdência privada complementar deve ser aferida pelo Juiz casuisticamente, de modo que, se as provas dos autos revelarem a necessidade de utilização do saldo para a subsistência do participante e de sua família, caracterizada estará a sua natureza alimentar, na forma do art. 649, IV, do CPC" (EResp 1.121.719/SP, Rel. Ministra Nancy Andrighi, DJe 4/4/2014). 2. Hipótese em que o Tribunal de origem concluiu que "o executado não necessita dos valores constritos para sua subsistência e de sua família, na medida em que dispôs de R\$117.000,00 para o plano de previdência privada, além de emprestar R\$45.000,00 à terceira pessoa, possuir imóvel na praia (fl. 306v do apenso), contratar advogado privado (fl. 12) e não requerer benefício de AJG".

Processo	0631554-90.2022.8.06.0000
	
 3. A reforma do julgado, portanto, depende de incursão no acervo fático-probatório dos autos, o que encontra óbice na Súmula 7/STJ.
 4. Agravo Interno não provido.
 (AgInt no AREsp n. 1.205.924/RS, relator Ministro Herman Benjamin, Segunda Turma, julgado em 6/3/2018, DJe de 22/11/2018.) [Grifo nosso]</p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;"> No presente caso, não há provas (nos autos de origem e nestes autos recursais) de que os executados dependam dos valores bloqueados para sua subsistência. Somado a isso, o montante elevado, aliado à longa duração da execução, favorecem a manutenção do arresto.</p><p style="text-align: justify; text-indent: 8%;"> Ante o exposto, conheço do agravo interno e nego-lhe provimento, mantendo integralmente a decisão monocrática (ID 21490129).&#160;</p><p style="text-align: justify; text-indent: 8%;"> É como voto.</p><p style="text-align: justify; text-indent: 8%;"> Fortaleza – CE, data constante no sistema.</p><p style="text-align: justify;">
 </p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA
 Relator</p><p style="text-align: justify;"> &#160; </p><p style="text-align: justify;">&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0248882-32.2021.8.06.0001
Número de ordem	204
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Revisão
Polo ativo	DICKSON BELISARIO BARLETTA
Advogado(s) - Polo ativo	IGOR CESAR MENEZES DA COSTA - (CE41927-A) DEILA THAISE MAIA LIMA - (CE41770-A)
Polo passivo	LUAN FIRMEZA BARLETTA CAROLINA FIRMEZA FACO FRANKLIN DE LIMA
Advogado(s) - Polo passivo	DIONEIA AUTRAN DE MESQUITA - (CE22298-A)
Terceiros	Não informado

Processo	0248882-32.2021.8.06.0001
Acórdão	 PROCESSO: 0248882-32.2021.8.06.0001 - 160; APELAÇÃO CÍVEL (198) APELANTE: DICKSON BELISARIO BARLETTA APELADO: LUAN FIRMEZA BARLETTA, CAROLINA FIRMEZA FACO FRANKLIN DE LIMA Ementa DIREITO DE FAMÍLIA. APELAÇÕES CÍVEIS. AÇÃO REVISIONAL DE ALIMENTOS. MAIORIDADE DO ALIMENTANDO. REDUÇÃO DA CAPACIDADE FINANCEIRA DO ALIMENTANTE. MANUTENÇÃO DA PENSÃO EM PATAMAR REDUZIDO. RECURSOS DESPROVIDOS. I. CASO EM EXAME Apelações Cíveis interpostas contra sentença da 4ª Vara de Família da Comarca de Fortaleza que julgou parcialmente procedente a Ação Revisional de Alimentos c/c Tutela de Urgência, reduzindo o valor da pensão de dois salários-mínimos para 70% do salário-mínimo nacional. O primeiro apelante pleiteia nova redução para 30% do salário-mínimo; o segundo requer a improcedência da ação revisional e a manutenção da pensão originária. II. QUESTÃO EM DISCUSSÃO Há duas questões em discussão: (i) definir se a maioria civil do alimentando extingue automaticamente a obrigação alimentar; (ii) estabelecer se ficou comprovada alteração superveniente da capacidade financeira do alimentante que justifique a redução do encargo alimentar. III. RAZÕES DE DECIDIR A maioria civil do alimentando não extingue automaticamente a obrigação alimentar, subsistindo o dever de assistência decorrente do vínculo de parentesco, nos termos da Súmula 358 do STJ. A manutenção da pensão alimentícia é admitida enquanto perdurar a necessidade do alimentando, notadamente em fase de formação educacional e ingresso no mercado de trabalho. A exoneração ou redução dos alimentos depende de prova da modificação superveniente da capacidade econômica do alimentante ou da necessidade do alimentando, conforme art. 1.699 do CC. O alimentante comprovou alteração em sua situação financeira em razão da pandemia da Covid-19, que inviabilizou sua atividade profissional anterior, configurando fato novo apto à revisão. Constatou-se, ainda, que o alimentando atingiu a maioria e exerce atividade laboral formal, reduzindo a necessidade de percepção em patamar superior. A fixação da pensão em 70% do salário-mínimo observa o binômio necessidade/possibilidade, ajustando-se à realidade financeira do alimentante e às necessidades do alimentando.

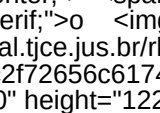
Processo	0248882-32.2021.8.06.0001
	class="western"> IV. DISPOSITIVO E TESE </h3> <p class="western" align="justify"> Recursos desprovidos. </p> <p class="western" align="justify"> Tese de julgamento : </p> <p class="western" align="justify"> A maioridade civil não extingue automaticamente a obrigação alimentar, que subsiste mediante comprovação da necessidade do alimentando. </p> <p class="western" align="justify"> A redução dos alimentos depende de prova inequívoca de alteração superveniente na capacidade financeira do alimentante ou na necessidade do alimentando. </p> <p class="western" align="justify"> A fixação da pensão deve observar o binômio necessidade/possibilidade, ajustando-se proporcionalmente à situação concreta. </p> <hr /> <p class="western" align="justify"> Dispositivos relevantes citados : CF/1988, art. 229; CC, arts. 1.694 e 1.699; CPC/2015, arts. 373, I, e 487, I.
 Jurisprudência relevante citada : STJ, Súmula 358; TJCE, Apelação Cível nº 0184177-98.2016.8.06.0001, Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câmara Direito Privado, j. 25.09.2019; TJCE, Apelação Cível, Rel. Marlúcia de Araújo Bezerra, Vara Única de Família e Sucessões de Sobral, j. 16.11.2016. </p> <p style="line-height: 100%; margin-bottom: 0.42cm" align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER de ambos o recursos e, no mérito, NEGAR-LHES PROVIMENTO. </p> <p>
 </p><p style="text-align: center;"> Fortaleza, data da assinatura digital.</p><p>&#160;</p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do Órgão Julgador</p><p style="text-align: center;">
 </p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p><p style="text-align: center;">&#160;</p><p style="text-align: center;">&#160;</p><p class="western" style="line-height: 150%; margin-bottom: 0.42cm" align="center"> RELATÓRIO </p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Tratam os autos de Apelações Cíveis interpostas por Dickson Belissário Barletta e Luan Firmeza Barletta, em face de sentença proferida pel o Juíz o da 4ª Vara de Família da Comarca de Fortaleza, que julgou parcialmente procedente a Ação Revisional de Alimentos c/c Tutela de Urgência proposta por Dickson Belissário Barletta em desfavor de Luan Firmeza Barletta. nos seguintes termos (Id. 21491064):</p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.42cm; background: transparent; page-break-before: auto" align="justify"> ISTO POSTO, ante as considerações supra e tudo mais que dos autos consta e demais princípios de direito aplicáveis à espécie, hei por bem JULGAR PARCIALMENTE PROCEDENTE a presente Ação para, em consequência, determinar a redução dos alimentos, fixando-os, doravante, no patamar de 70% (setenta por cento) do salário mínimo nacional, para que surta seus jurídicos e legais efeitos, extinguindo o feito com resolução meritória, na forma do art. 487, inciso I, do Código de Processo Civil. </p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.42cm; background: transparent" align="justify"> Condeno a parte promovida em face do ônus da sucumbência, no pagamento de custas e

Processo	0248882-32.2021.8.06.0001
	honorários advocatícios a parte vencedora, no valor equivalente a 10 % (dez por cento) do valor da causa. Suspendo, no entanto, a sua execução, nos termos do art. 98 § 3º do CPC/2015. Apelação interposta por Dickson Belissário Barletta sob Id. 21491016, objetivando a minoração dos alimentos diante da redução da sua capacidade financeira. Apelação interposta por Luan Firmeza Barletta sob Id. 21491025, visando à reforma da sentença para que a presente ação seja julgada improcedente e mantido o valor da pensão alimentícia fixado nos autos do processo 0106771-30.2018.8.06.0001. Contrarrazões sob Id. 21491022 e 21491085. Em parecer de Id. 21490359, a Procuradoria Geral de Justiça informou não possuir interesse no feito. É o relatório. VOTO Presentes os pressupostos de admissibilidade, conheço de ambos os recursos. Conforme relatado, ratam os autos de Apelações Cíveis interpostas por Dickson Belissário Barletta e Luan Firmeza Barletta, em face de sentença proferida pelo Juízo da 4ª Vara de Família da Comarca de Fortaleza, que julgou parcialmente procedente a Ação Revisional de Alimentos c/c Tutela de Urgência proposta por Dickson Belissário Barletta em desfavor de Luan Firmeza Barletta. No que pertine ao mérito, o primeiro apelante, Dickson Belissário Barletta, pugna pela redução do encargo alimentar para 30% (trinta por cento) do salário-mínimo. O segundo apelante, por sua vez, busca pelo restabelecimento da pensão alimentícia para o valor originário de 02 (dois) salários-mínimos. Primeiramente, ao falar-se de exoneração de alimentos, é sabido que, em se tratando de alimentos prestados pelo genitor a sua prole, a circunstância da credora alimentícia atingir a maioridade civil não implica, de modo automático, na cessação da obrigação alimentícia, porquanto, embora cessada a compulsoriedade, subsiste o dever de assistência fundado no parentesco consanguíneo. A despeito disto, passa-se a exigir a prova da respectiva necessidade. Neste contexto, eis o enunciado da Súmula n.º 358 do STJ: "O cancelamento de pensão alimentícia de filho que atingiu a maioridade está sujeito à decisão judicial, mediante contraditório, ainda que nos próprios autos". De acordo com o lecionado por Maria Berenice Dias: O adimplemento da capacidade civil, aos 18 anos (CC 5º), ainda que enseje o fim do poder familiar, não leva a extinção automática do encargo alimentar. Após a maioridade é presumível a necessidade dos filhos de continuarem a perceber alimentos. No entanto, a presunção passa a ser juris tantum, enquanto os filhos estiverem estudando, pois compete

Processo	0248882-32.2021.8.06.0001
	aos pais o dever de assegurar-lhes educação (CC 1.694)." (grifei) (DIAS, Maria Berenice, Manual de Direito das Famílias, 12. ed, rev. atual. e ampl. São Paulo: Revista dos Tribunais, 2017, p. 606). </p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> De consignar-se, neste ponto, que a jurisprudência é uníssona em decidir pela manutenção da pensão alimentícia, fixada em favor d a prole, enquanto perdurar o estudo profissionalizante do alimentando maior (curso de superior ou técnico), com o objetivo de assegurar-lhe as condições necessárias para o adequado ingresso no mercado de trabalho.</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Eis o precedente desta Corte :</p><p class="western" style="line-height: 150%; margin-bottom: 0.42cm; padding-left: 150px;" align="justify"> APELAÇÃO CÍVEL. AÇÃO DE ALIMENTOS. MAIORIDADE DOS FILHOS NO CURSO DO PROCESSO NÃO IMPLICA EXONERAÇÃO AUTOMÁTICA DA OBRIGAÇÃO ALIMENTAR. INCUMBE AO INTERESSADO, JÁ MAIOR DE IDADE, COMPROVAR NOS AUTOS QUE AINDA NECESSITA RECEBER ALIMENTOS, OBSERVANDO-SE AMPLAMENTE O CONTRADITÓRIO. RECURSO DE APELAÇÃO EM AÇÃO DE ALIMENTOS NÃO É INSTRUMENTO PROCESSUAL APTO A GARANTIR O DEVIDO PROCESSO LEGAL IMPRESCINDÍVEL À EXTINÇÃO DO ÔNUS PROVISIONAL. RECURSO CONHECIDO E IMPROVIDO. 1. A maioria civil, em que pese faça cessar o poder familiar, não enseja a automática exoneração do dever de prestar alimentos, que subsiste com base na relação de parentesco e necessidade do alimentando, demonstrada por meio de prova de que não pode prover seu próprio sustento ou por frequência em curso técnico ou superior. Precedentes do STJ. 2. A extinção do ônus provisional requer a observância do amplo contraditório, como corolário do devido processo legal, o que não se mostra possível originariamente pela via recursal. 3. Apelação da qual se conhece, mas para negar-lhe provimento.&#160; (Relator (a): MARLUCIA DE ARAÚJO BEZERRA - PORT 1.713/2016; Comarca: Sobral; Órgão julgador: Vara Única de Família e Sucessões da Comarca de Sobral; Data do julgamento: 16/11/2016; Data de registro: 17/11/2016)</p><pre class="western" style="margin-left: 4cm; margin-bottom: 0.42cm;">
</pre><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Em relação à redução do encargo alimentar, é admitida, nos moldes do artigo 1699 do Código Civil, desde que sobrevenha mudança na situação financeira do alimentante ou da alimentanda.</p><p class="western" style="line-height: 150%; margin-bottom: 0.42cm; padding-left: 150px;" align="justify"> Art. 1.699. CC. Se, fixados os alimentos, sobrevier mudança na situação financeira de quem os supre, ou na de quem os recebe, poderá o interessado reclamar ao juiz, conforme as circunstâncias, exoneração, redução ou majoração do encargo.&#160;</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify">&#160;</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Somado a isto, conforme estabelecido no artigo 373, I, do CPC/15, atribui-se ao autor que pede a revisão a demonstração da efetiva modificação das circunstâncias fáticas capazes de justificar a modificação do pensionamento anteriormente fixado.</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Pois bem. </p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> A sentença que fixou o valor da verba ora discutida foi proferida em 2018, no processo n. 0 0106771-30.2018.8.06.0001 . Contudo, n o ano de 2021, o genitor ingressou com pedido de redução, alegando como tese principal a redução de sua capacidade financeira, em virtude da impossibilidade de retorno aos Estados Unidos, diante das medidas restritivas adotadas no período de Pandemia da Covid-19, deixando, assim, de auferir renda com o desempenho da função de jogador profissional de poker.</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Desta feita, resta claro que ocorreu uma alteração superveniente da capacidade financeira do autor, o qual há muitos anos contribuía de forma efetiva para o suprimento das necessidades do requerido. </p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> </p></td></tr></table>

Processo	0248882-32.2021.8.06.0001
	150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Nesse ponto, vejamos a fundamentação da sentença (Id. 21491064):</p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.42cm; background: transparent; page-break-before: auto" align="justify"> Posto isto, demonstra-se como desarrazoado manter o percentual da obrigação alimentar no patamar fixado na sentença proferida nos autos do Processo nº 0106771-30.2018.8.06.0001, qual seja, de 2 (dois) salários mínimos nacionais, visto que o requerente relata estar desempregado e que teve sua capacidade financeira reduzida. </p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.42cm; background: transparent" align="justify"> Ademais, destaca-se também que, o requerido no curso da lide atingiu a maioria e possui emprego formal (fls. 342/343), afastando dessa maneira a hipótese de manutenção dos alimentos no patamar anteriormente fixados. </p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.42cm; background: transparent" align="justify"> Impõe-se, portanto, a minoração dos alimentos, a fim de atender à proporcionalidade inerente à obrigação alimentícia, diante da atual situação de desemprego que relatada pelo o autor. Contudo, havendo notícia de que o autor possui vínculo empregatício formal, auferindo renda mensal fixa, é de justiça estabelecer o desconto da verba alimentar direto na fonte pagadora, o que evitaria maiores conflitos entre as partes. </p><p class="western" style="line-height: 150%; orphans: 0; widows: 0; margin-left: 4cm; margin-bottom: 0.42cm; background: transparent" align="justify"> Ressalta-se que a fixação dos alimentos em percentual de 70% (setenta por cento) do salário mínimo nacional é a solução que melhor se adequa à eventual alteração fática da capacidade financeira do alimentante, pois o valor do pensionamento acompanhará os reajustes nacionais. Garante-se, desta maneira, tanto que o jovem se beneficie com eventual renda que o pai venha auferir, bem como previne que a obrigação extrapole a possibilidade financeira do alimentante. </p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Extraí-se, pois, a ocorrência de uma alteração considerável na capacidade financeira do alimentante, o que justifica a revisão do encargo alimentar, para reduzir-lhe, adequando-o à nova realidade fática e atendendo o binômio necessidade/possibilidade.</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> A ssim , concluo restar presente fato novo ensejador da redução dos alimentos, conforme procedido na sentença recorrida, de modo a atender as necessidades d o alimentand o , sem onerar excessivamente o devedor do encargo.</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Sobre o tema, vejamos o entendimento deste e. TJCE:</p><p class="western" style="line-height: 150%; margin-left: 4cm; margin-bottom: 0.42cm; background: transparent; break-before: auto;" align="justify"> DIREITO CIVIL. PROCESSUAL CIVIL. DIREITO DE FAMÍLIA. DUAS APELAÇÕES CÍVEIS NA AÇÃO DE EXONERAÇÃO/REVISÃO DE ALIMENTOS. SENTENÇA DE PARCIAL PROCEDÊNCIA PARA DIMINUIR A PENSÃO ALIMENTÍCIA DE 02 (DOIS) PARA 01 (UM) SALÁRIO-MÍNIMO. PRELIMINARES REJEITADAS. NULIDADE DE SENTENÇA POR AUSÊNCIA DE FUNDAMENTAÇÃO. INOCORRÊNCIA. ERRO NA CONTAGEM DE PRAZO PARA APRESENTAR MEMORIAIS. PREJUÍZO NÃO CONFIGURADO. MÉRITO. MAIORIDADE CIVIL DA ALIMENTANDA QUE NÃO IMPLICA EM EXONERAÇÃO AUTOMÁTICA. ESTUDANTE DE ENSINO SUPERIOR. NECESSIDADE EM CONTINUAR PERCEBENDO ALIMENTOS COMPROVADA. FATO NOVO DECORRENTE DA CONSIDERÁVEL REDUÇÃO DA CAPACIDADE FINANCEIRA DO ALIMENTANTE (ART. 1699, CC). ATENÇÃO AO BINÔMIO NECESSIDADE/POSSIBILIDADE. MINORAÇÃO DOS ALIMENTOS SOMENTE PARA 1,3 (UM VÍRGULA TRÊS) SALÁRIOS-MÍNIMOS, DE MODO A MELHOR ATENDER A CARÊNCIA DA CREDORA ALIMENTÍCIA. PRIMEIRO APELO CONHECIDO E IMPROVIDO. SEGUNDO APELO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. [...] 2.2. Em se tratando de alimentos prestados pelo genitor a sua prole, a circunstância da credora alimentícia atingir a maioria civil não implica, de modo automático, na cessação da obrigação alimentícia, porquanto, embora cessada a compulsoriedade, subsiste o dever de assistência fundado

Processo	0248882-32.2021.8.06.0001
	no parentesco consanguíneo. A despeito disto, passa-se a exigir a prova da respectiva necessidade. 2.3. De acordo com o enunciado da Súmula n.º 358 do STJ: "O cancelamento de pensão alimentícia de filho que atingiu a maioridade está sujeito à decisão judicial, mediante contraditório, ainda que nos próprios autos". [...] 2.5. Em relação à redução do encargo alimentar, é admitida, nos moldes do artigo 1699 do Código Civil, desde que sobrevenha mudança na situação financeira do alimentante ou da alimentanda, atribuindo-se ao autor que pede a revisão a demonstração da efetiva modificação das circunstâncias fáticas capazes de justificar a modificação do pensionamento anteriormente fixado. 2.6. No caso concreto, extrai-se a ocorrência de uma alteração considerável na capacidade financeira do alimentante, o que justifica a revisão do encargo alimentar, para reduzir-lhe, adequando-o à nova realidade fática. [...]. (Apelação Cível&#160;- 0184177-98.2016.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160; 25/09/2019, data da publicação:&#160; 26/09/2019)</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Repise-se, por oportuno, que o requerido no curso da lide atingiu a maioridade e há notícia nos autos de que possui emprego formal (Id. 21490992), afastando, dessa maneira, a hipótese de manutenção dos alimentos no patamar anteriormente fixados.</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> A obrigação alimentar – nada custa rememorar – constitui relação jurídica continuativa, de trato sucessivo, " cuja sentença tem implícita a cláusula rebus sic standibus (DIAS, Maria Berenice, Manual de Direito das Famílias, 12. ed., 2017, p. 674).</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> Disso, então, sobrevindo modificação das circunstâncias determinantes para a imposição do encargo, reduzi-lo ou liberá-lo são soluções legalmente previstas, à disposição da parte a quem aproveitam. </p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> ANTE O EXPOSTO, conheço de ambos os recursos para NEGAR-LHES PROVIMENTO, mantendo-se incólume a sentença de primeiro grau.</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-bottom: 0.42cm" align="justify"> É como voto. </p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p><p>&#160;</p><div> <p>&#160;</p> </div><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0625636-37.2024.8.06.0000
Número de ordem	205
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Contratos de Consumo
Polo ativo	UNIMED DE FORTALEZA COOPERATIVA DE TRABALHO MEDICO LTDA
Advogado(s) - Polo ativo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Polo passivo	ROMICELIA OLIVEIRA MARQUES
Advogado(s) - Polo passivo	ROMARIA OLIVEIRA MARQUES - (CE5829) BEATRIZ OLIVEIRA BEZERRA - (CE40218)
Terceiros	Não informado

Processo	0625636-37.2024.8.06.0000
Acórdão	 PROCESSO: 0625636-37.2024.8.06.0000 - 160; EMBARGOS DE DECLARAÇÃO EMBARGANTE: ROMICELIA OLIVEIRA MARQUES EMBARGADO: UNIMED DE FORTALEZA COOPERATIVA DE TRABALHO MEDICO LTDA EMENTA: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM AGRAVO DE INSTRUMENTO. ALEGAÇÃO DE OMISSÃO, CONTRADIÇÃO E ERRO MATERIAL. INOCORRÊNCIA. RECURSO CONHECIDO E DESPROVIDO. I. CASO EM EXAME 1. Embargos de declaração opostos por Romicélia Oliveira Marques contra acórdão da 1ª Câmara de Direito Privado que deu provimento a agravo de instrumento interposto pela parte contrária. A embargante sustenta omissão quanto à ausência de intimação para apresentar contrarrazões, contradição no exame da validade de reajustes por faixa etária em plano de saúde e erro material na identificação de certidão de decurso de prazo como comprovante de intimação. II. QUESTÃO EM DISCUSSÃO 2. Há três questões em discussão: (i) definir se houve omissão no acórdão em razão de suposta ausência de intimação para contrarrazões; (ii) estabelecer se existiu contradição na análise da validade dos reajustes contratuais; (iii) determinar se ocorreu erro material na referência à certidão de decurso de prazo como intimação. III. RAZÕES DE DECIDIR 3. A intimação da embargante para apresentar contrarrazões ao agravo ocorreu regularmente por meio de publicação no Diário da Justiça Eletrônico, certificada nos autos, não havendo omissão a ser suprida. 4. O acórdão embargado enfrentou expressamente a questão dos reajustes por faixa etária, aplicando os Temas Repetitivos nº 952 e 1.016 do STJ e ressaltando a necessidade de dilação probatória para análise da abusividade, inexistindo contradição. 5. A referência à certidão de decurso de prazo não configura erro material, pois o documento certificou tanto a intimação da parte quanto a ausência de apresentação de contrarrazões.

Processo	0625636-37.2024.8.06.0000
	serif;">6. O inconformismo da parte não autoriza o manejo dos embargos de declaração como sucedâneo recursal, pois não se trata de vício previsto no art. 1.022 do CPC/2015. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> IV. DISPOSITIVO </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> 7. Recurso conhecido e desprovido.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> &#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> Dispositivos relevantes citados: CPC/2015, arts. 489, § 1º, 1.022, I a III, parágrafo único, I e II, 1.025, 1.026, §§ 2º e 3º. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> &#160;<p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, conhecer do presente recurso e, no mérito, negar-lhe provimento, nos termos do voto do Relator. <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> &#160;<p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> Fortaleza, data conforme assinatura digital.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> &#160;<p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> Presidente do Órgão Julgador</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> &#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"><!--[if supportFields]>MERGEFIELD &#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"><!--[endif]>> Relator<!--[if supportFields]><!--[endif]>>&#160; </p> <br style="page-break-before: always;" /> </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> &#160;</p></td></tr></table>

Processo	0625636-37.2024.8.06.0000
	small;"> RELATÓRIO </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%; align="center"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Trata-se de recurso de embargos de declaração opostos por Romicélia Oliveira Marques (ID 21669335), em face do acórdão proferido por esta eg. 1ª Câmara de Direito Privado (ID 21669300), que conheceu e deu provimento ao recurso de agravo de instrumento do agravante/embargado. &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Em suas razões recursais, apontaram omissão, contradição e erro no acórdão embargado, alegando que não houve de intimação para apresentação de contrarrazões ao agravo de instrumento interposto, bem como há contradição no juízo de validade dos reajustes. Por fim, afirma ainda, que há erro por identificar certidão de decurso de prazo como sendo comprovante de intimação da embargante. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Requer provimento ao recurso para que seja acolhido a fim de que seja reconhecida a nulidade do acórdão embargado e se determine a renovação do julgamento do Agravo de Instrumento após regular intimação para apresentação de contrarrazões. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Devidamente intimada, a parte embargada apresentou as contrarrazões de ID 21669311e requer o indeferimento dos embargos ao alegar que se limitam a rediscutir a matéria já exaustivamente debatida nos autos, mantendo-se integralmente o acórdão embargado. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É o relatório. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%; align="center"> VOTO </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%; align="center"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Conheço do presente recurso, porquanto presentes os pressupostos intrínsecos e extrínsecos de admissibilidade recursal. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Ressalte-se que o recurso de embargos declaratórios possui hipótese de cabimento, especificamente atrelada à finalidade integrativa de aperfeiçoamento das decisões judiciais, que tem expressa previsão no art. 1.022 do atual Código de Processo quando houver, na sentença ou acórdão, obscuridade, contradição, erro material ou no caso de omissão de ponto sobre o qual devia pronunciar-se o juiz ou tribuna, a saber: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> I - esclarecer obscuridade ou eliminar contradição; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; </p></p>

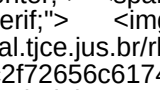
Processo	0625636-37.2024.8.06.0000
	class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">III - corrigir erro material.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">Parágrafo único. Considera-se omissa a decisão que:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">I - deixe de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicável ao caso sob julgamento;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">II - incorra em qualquer das condutas descritas no art. 489, § 1º.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">&#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;">Essa modalidade de recurso proporciona uma nova oportunidade para que o julgador, prolator de decisão atacada, revise e reanalisar o julgado, à vista de possíveis defeitos sanáveis pontuados pela embargante, de modo que o corrija, complemente ou esclareça.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;">E mais, quando se vislumbrar que a mácula, ao ser detectada, pode causar revertério no julgado, de maneira que sejam invertidas as conclusões originárias, há que se reconhecer os Embargos de Declaração com efeitos modificativos ou infringentes.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;">A propósito do assunto, discorre o processualista Humberto Theodoro Júnior que:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">Se o caso é de omissão, o julgamento dos embargos supri-la-á, decidindo a questão que, por lapso, escapou à decisão embargada. No caso de obscuridade ou contradição, o decisório será expungido, eliminando-se o defeito nele detectado. Tratando-se de erro material, o juiz irá corrigi-lo. Em qualquer caso, a substância do julgado será mantida, visto que os embargos de declaração não visam à reforma do acórdão, ou da sentença. No entanto, será inevitável alguma alteração no conteúdo do julgado, principalmente quando se tiver de eliminar omissão ou contradição. O que, todavia, se impõe ao julgamento dos embargos de declaração é que não se proceda a um novo julgamento da causa, pois a tanto não se destina esse remédio recursal.As eventuais novidades introduzidas no decisório primitivo não podem ir além do estritamente necessário à eliminação da obscuridade ou contradição, ao suprimento da omissão ou à correção do erro material. (Curso de Direito Processual Civil Execução forçada, processos nos tribunais, recursos e direito intertemporal Vol. III / Humberto Theodoro Júnior. 48. ed. rev., atual. e ampl. Rio de Janeiro: Forense, 2016, p. 1.062-1.063). [grifo nosso].</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">&#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;">E mais, quanto às hipóteses de cabimento dos embargos de declaração Luiz Guilherme Marinoni, Sérgio Cruz Arenhart e Daniel Mitidiero, lecionam que </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">Obscuridade. Decisão obscura é a decisão a que falta clareza. A obscuridade concerne à redação da decisão. A obscuridade compromete a adequada compreensão da ideia exposta na decisão judicial.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">Contradição. A

Processo	0625636-37.2024.8.06.0000
	decisão é contraditória quando encerra duas ou mais proposições ou dois ou mais enunciados inconciliáveis. A contradição ocorre entre proposições e os enunciados que se encontram dentro da mesma decisão. Omissão. A apreciação que o órgão jurisdicional deve fazer dos fundamentos levantados pelas partes em seus arrazoados tem de ser completa (art. 489, § 1º, IV, CPC). Vale dizer: a motivação da decisão deve ser completa – razão pela qual cabem embargos declaratórios quando for omitido 'ponto sobre o qual devia se pronunciar-se o juiz de ofício ou a requerimento' (art. 1.022, II, CPC). Erro material. Cabem embargos de declaração para sanção de erro material, assim entendidos os erros de cálculos e as inexatidões materiais (art. 494, I, CPC). Erro de cálculo consiste no erro aritmético (não se confunde, porém, com o erro quanto a critério de cálculo ou elementos do cálculo, que constituem erros de julgamento a respeito do cálculo). Inexatidão material constitui erro na redação da decisão – e não no julgamento nela exprimido. (Novo Código de Processo Civil Comentado. São Paulo: Editora Revista dos Tribunais, 2015. págs. 953/954). [grifo nosso]. Conforme se depreende dos autos, aduz a parte embargante que o acórdão incorreu em omissão, porquanto não a teria intimado para apresentar contrarrazões ao agravo de instrumento. Não merece prosperar a alegação da parte embargante de que o acórdão incorreu em omissão, sob o argumento de que não teria sido intimada para apresentar contrarrazões ao agravo de instrumento. Conforme se extrai dos autos, houve a devida intimação da parte agravada, ora embargante, por intermédio de suas patronas devidamente constituídas. Em ato ordinatório de ID nº 21668786 (fl. 218 do SAJ), consta expressamente a certidão de envio de publicação no Diário da Justiça Eletrônico, onde se encontram lançados os nomes da agravada e de suas advogadas Beatriz Oliveira Bezerra e Romaria Oliveira Marques. De igual modo, em ID nº 21669291 (fl. 222 do SAJ), há a certidão de publicação confirmando o mesmo conteúdo, com a expressa indicação da parte agravada e de suas procuradoras. A consulta ao próprio Diário da Justiça Eletrônico (https://esaj.tjce.jus.br/cdje/consultaAvancada.do#buscaavancada) corrobora a regularidade da intimação, constando, na edição nº 3310, caderno 2, pág. 142 (https://esaj.tjce.jus.br/cdje/consultaSimples.do?cdVolume=14&nuDiario=3310&cdCaderno=2&nuSeqpagina=142), a intimação da embargante para apresentação de contrarrazões, com menção expressa à parte e às suas patronas. Assim, não procede a alegação de omissão, uma vez que a intimação ocorreu de forma regular. Ressalte-se, ainda, que a simples alegação da parte embargante de que não houve referência ao seu nome em determinada movimentação não é suficiente para infirmar as certidões constantes dos autos e a própria publicação no Diário da Justiça Eletrônico, atos dotados de fé pública. Também não procede a alegação de contradição formulada pela embargante. Sustenta a parte que, ao aplicar os Temas Repetitivos nº 952 e 1.016 do STJ, o acórdão teria reconhecido, em tese, a validade dos

Processo	0625636-37.2024.8.06.0000
	reajustes por faixa etária desde que observados critérios contratuais, atuariais e de proporcionalidade, mas teria se omitido em analisar se, no caso concreto, tais requisitos foram efetivamente atendidos pela operadora de saúde, em especial diante dos percentuais praticados, reputados excessivos pela embargante. Entretanto, vê-se que não assiste razão ao recorrente, uma vez que a questão foi devidamente tratada na decisão embargada. Conforme se depreende do acórdão, a questão foi devidamente enfrentada e solucionada. O colegiado deixou expresso que a possibilidade de aplicação de reajustes por mudança de faixa etária aos beneficiários de planos de saúde já se encontra pacificada pelo Superior Tribunal de Justiça (Temas 952 e 1.016). À luz desse entendimento, o acórdão recorrido expressamente consignou que, no caso em exame, não restou demonstrada a probabilidade do direito alegado pela parte autora, ora embargante, ressaltando a necessidade de maior dilação probatória para a apuração da eventual abusividade dos percentuais aplicados pela operadora. Por essa razão, entendeu-se pelo não preenchimento dos requisitos para concessão da tutela de urgência, reformando-se a decisão interlocutória que havia deferido a medida. Não obstante às alegações da parte embargante, evidencia-se que a fundamentação da decisão foi abordada em todos os seus aspectos e de maneira coerente e fundamentada, representando a presente insurgência mero inconformismo com o decisum recorrido, que foi exarado em consonância com os ditames legais que regem a matéria e como posicionamento professado pela jurisprudência pátria sobre o tema. Por fim, a embargante sustenta que o acórdão teria incorrido em erro material, ao identificar a fl. 224 dos autos (ID 21669293) como comprovante de intimação, quando, em verdade, tratar-se-ia de mera certidão de decurso de prazo. Contudo, a alegação não procede. O acórdão recorrido, ao consignar que “Devidamente intimada (fl. 224), a agravada não apresentou contrarrazões”, não incorreu em equívoco, tampouco atribuiu natureza diversa ao referido documento. Com efeito, ao se examinar a fl. 224 (ID 21669293), constata-se que se trata de certidão expedida pela serventia judicial, na qual, além de registrar o decurso do prazo sem apresentação de manifestação pela parte, também se certifica a disponibilização da intimação da agravada e de suas patronas no Diário da Justiça Eletrônico para fins de apresentação de contrarrazões. Assim, o acórdão apenas reconheceu, com base nessa certidão, que houve a regular intimação da parte agravada, a qual, entretanto, quedou-se inerte no prazo assinalado. Não há, portanto, erro material a ser sanado, mas tão somente interpretação equivocada da embargante acerca do conteúdo do documento indicado, o que não enseja a modificação do julgado. Entendo, portanto, que não existe omissão, contradição ou erro a serem supridos restando consideradas as matérias e dispositivos suscitados automaticamente prequestionados, por força do que determina o art. 1.025 do CPC/2015.

Processo	0625636-37.2024.8.06.0000
	helvetica, sans-serif;">CPC/2015, art. 1.025. Consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de pré-questionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Diante de todo o exposto, CONHEÇO do presente recurso de embargos de declaração, mas para NEGAR-LHE PROVIMENTO, ante a ausência de quaisquer vícios delimitados no art. 1022, do Código de Processo Civil, a fim de manter a decisão recorrida em todos os seus termos. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Ficam as partes, desde logo, advertidas de que a oposição de embargos de declaração, com nítido intuito protelatório, ensejará a aplicação da multa prevista no art. 1.026, §§2º e 3º, do CPC/2015. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É como voto. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> Relator </p><p>&#160;</p></div>

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Processo	0638535-67.2024.8.06.0000
Número de ordem	206
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Fixação
Polo ativo	JULIO CESAR FROTA
Advogado(s) - Polo ativo	HENRIQUE LEONARDO TORRES DE OLIVEIRA - (CE20377-A)
Polo passivo	HELENA MARIA COSTA FROTA
Advogado(s) - Polo passivo	ROSANA NUNES RAMOS - (CE27620-A) ALEXANDRE ZAMPROGNO - (CE42100-A) MARCELO MOTA GURGEL DO AMARAL - (CE12392-A) ALINE CHAVES SOUSA - (CE38433-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0638535-67.2024.8.06.0000
Acordão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0638535-67.2024.8.06.0000 - AGRAVO DE INSTRUMENTO (202) AGRAVANTE: JULIO CESAR FROTA AGRAVADO: HELENA MARIA COSTA FROTA Ementa: DIREITO DE FAMÍLIA. AGRAVO DE INSTRUMENTO. DIVÓRCIO LITIGIOSO COM PARTILHA DE BENS E ALIMENTOS. FIXAÇÃO DE ALIMENTOS PROVISÓRIOS EM FAVOR DE EX-CÔNJUGE. NECESSIDADE DEMONSTRADA. POSSIBILIDADE ECONÔMICA COMPROVADA. BINÔMIO NECESSIDADE/POSSIBILIDADE ATENDIDO. RECURSO DESPROVIDO. I. CASO EM EXAME Agravado de instrumento interposto por ex-marido contra decisão interlocutória proferida em ação de divórcio litigioso c/c partilha de bens e alimentos, na qual o juízo de origem fixou alimentos provisórios em favor da ex-esposa no valor de 1,5 salário-mínimo, devidos desde a citação. O agravante sustenta incapacidade financeira para suportar a obrigação, alegando receber apenas benefício previdenciário de aproximadamente R\$ 4.900,00, além de exercer atividade pastoral sem remuneração e possuir imóveis cedidos à igreja. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em definir se a decisão de primeiro grau que fixou alimentos provisórios em favor da ex-cônjuge deve ser reformada, à luz do binômio necessidade/possibilidade. III. RAZÕES DE DECIDIR A concessão de tutela de urgência exige a presença concomitante de probabilidade do direito e perigo de dano, nos termos do art. 300 do CPC. 4.

Processo	0638535-67.2024.8.06.0000
	normal; font-variant-position: normal; font-variant-emoji: normal; font-stretch: normal; line-height: normal;">&#160;&#160;&#160;&#160; <!--[endif]--> A idade avançada e a ausência de inserção no mercado de trabalho justificam a fixação de alimentos em favor do ex-cônjuge idoso. </p><p class="Standard" style="margin-left: 36.0pt; text-align: justify; text-indent: -18.0pt; line-height: 150%; mso-list: l4 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 3. &#160;&#160;&#160;&#160; <!--[endif]--> A alegação de dificuldades financeiras do alimentante não afasta a obrigação alimentar quando comprovada sua capacidade de suportar a prestação sem prejuízo do próprio sustento.</p><div class="Standard" style="text-align: center; line-height: 150%;"> <hr size="2" /></div><p class="Standard" style="text-align: justify; line-height: 150%;"> Dispositivos relevantes citados: CPC/2015, art. 300; CC/2002, arts. 1.694 e 1.703. </p><p class="Standard" style="text-align: justify; line-height: 150%;"> Jurisprudência relevante citada: TJCE, AI nº 0623614-69.2025.8.06.0000, Rel. Des. Francisco Bezerra Cavalcante, 4ª Câmara Direito Privado, j. 22.07.2025; TJCE, AI nº 0624034-74.2025.8.06.0000, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara Direito Privado, j. 18.06.2025; TJ-MG, AI nº 10000212368633001, Rel. Des. Alexandre Santiago, 8ª Câmara Cível, j. 03.06.2022; TJDF, AI nº 0702375-34.2018.8.07.0000, Rel. Des. Diaulus Costa Ribeiro, 8ª Turma Cível, j. 27.06.2018; TJRS, AI nº 70075338392, Rel. Des. Ricardo Moreira Lins Pastl, 8ª Câmara Cível, j. 09.11.2017. </p><p class="EmentadoAcrdo" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de agravo de instrumento, para negar-lhe provimento, nos termos do voto do Relator. </p><p class="EmentadoAcrdo" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%; align="center"> Fortaleza, data da assinatura digital eletrônica. </p><p class="EmentadoAcrdo" style="text-align: center;" align="center"> &#160; </p><p class="EmentadoAcrdo" style="text-align: center;" align="center"> &#160; </p><p class="EmentadoAcrdo" style="text-align: center;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;"> Presidente do Órgão Julgador </p><p style="text-align: center;">
 </p><p style="text-align: center;"> <br style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p><p>&#160;</p><div> <p>&#160;</p> </div></div><p class="Standard" style="margin-top: 24.0pt; text-align: center;" align="center"> RELATÓRIO </p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Trata-se de Agravo de Instrumento interposto por JULIO CESAR FROTA, contra decisão interlocutória prolatada pelo MM. Juiz de Direito da 16ª Vara de Família da Comarca de Fortaleza, em sede de Ação de Divórcio Litigioso c/c Partilha de Bens e Alimentos movida por HELENA MARIA COSTA FROTA, em desfavor do ora agravante.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Na decisão interlocutória agravada de fls. 55/60 (SAJ), dos autos de origem, o juiz de primeiro grau entendeu por deferir o pedido formulado pela parte autora, nos seguintes termos:</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> [...] Assim, pelas razões acima declinadas, o ônus

Processo	0638535-67.2024.8.06.0000
	da eventual demora da tutela definitiva deve ser suportado pelo promovido. Nesses termos, estando patenteados os pressupostos legais reportados no art. 300 do CPC e com fundamento nos demais elementos fáticos que serviram para embasar o teor desta decisão, DEFIRO a tutela de urgência requerida na exordial para fixar provisoriamente alimentos provisionais mensais devidos pelo réu à autora no patamar de 1/5 (um e meio) salário-mínimo vigente, devidos desde a citação, devendo o valor ser depositado até o 5º útil de cada mês na conta bancária de titularidade da autora. Inconformada com a decisão, o agravante interpôs o presente recurso, aduzindo que não possui condições financeiras de suportar a pensão alimentícia provisória arbitrada pelo juízo de primeiro grau, uma vez que é aposentado, recebe apenas pensão do INSS no valor de R\$ R\$ 4.900,00 (quatro mil e novecentos reais), é pastor de uma congregação religiosa e que todos os seus imóveis estão cedidos em favor da igreja, pelo que não lhe gerariam lucro. Requer, em sede de liminar, a concessão de efeito suspensivo ao agravo, a fim de que seja interrompido o dever de prestação alimentícia à sua ex-esposa. No mérito, roga pelo provimento do recurso, para que seja mantida a liminar. Decisão interlocutória ID 21679813, deferindo parcialmente o pedido de efeito suspensivo requerido. Agravo Interno contra a referida decisão Interlocutória que concedeu em parte o efeito suspensivo almejado ID 21680260. Contrarrazões ID 21679824 (SAJ 117). Parecer do Órgão Ministerial informando não haver interesse público primário no objeto da presente demanda. É o relatório. VOTO Inicialmente, quanto aos requisitos de admissibilidade recursal, intrínsecos e extrínsecos, cumpre observar que o presente recurso de agravo de instrumento deve ser conhecido. Insurgência admitida, a controvérsia recursal consiste em analisar a possibilidade de reforma ou não, da decisão interlocutória de primeiro grau que deferiu o pedido de tutela de urgência formulado pela parte promotora no sentido de fixar provisoriamente alimentos provisionais mensais devidos pelo réu, ora recorrente, à autora no patamar de 1/5 (um e meio) salário-mínimo vigente, devidos desde a citação, devendo o valor ser depositado até o 5º dia útil de cada mês na conta bancária de titularidade da autora. Dito isso, cumpre destacar, <i>a priori</i>, que a cognição deste Juízo <i>ad quem</i> se restringe à análise perfunctória da matéria, verificando-se o acerto ou não da decisão recorrida, em razão da estreita via do agravo de instrumento, que veda a incursão aprofundada e definitiva no mérito da ação originária, sob pena de incorrer-se em prejuízo e, por conseguinte, em supressão de uma instância jurisdicional. Nesse viés, impõe-se acentuar que a legislação processual civil estabelece como requisitos motivadores da concessão da tutela de urgência (1) a probabilidade do direito e (2) o perigo de dano ou o risco ao resultado útil do processo, nos termos do art. 300 do CPC. Nesse cenário, adianto que a irresignação do agravante não merece ser acolhida. Nesse contexto, deve-se destacar que os alimentos entre cônjuges consistem em obrigação decorrente do dever de assistência mútua, previsto no Código Civil Brasileiro. Após a separação ou o divórcio, um dos cônjuges pode ser obrigado a pagar alimentos ao outro, desde que comprovada a necessidade de quem os solicita e a capacidade financeira de quem deve prestá-los, nos termos do artigo 1.694 do Código Civil. O artigo

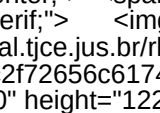
Processo	0638535-67.2024.8.06.0000
	1.694 do Código Civil estabelece que os alimentos devem ser fixados na proporção das necessidades do reclamante e dos recursos da pessoa obrigada. A jurisprudência pátria reconhece que a obrigação alimentícia entre cônjuges não é automática e deve ser analisada caso a caso, levando em consideração fatores como a idade de quem requer, a saúde e a capacidade de trabalho do cônjuge alimentando, assim como o padrão de vida mantido durante o matrimônio ou união estável. Feito essas considerações, tem-se que, no presente caso, foi devidamente demonstrado o vínculo matrimonial entre a recorrida e o recorrente desde 30/11/2001, bem como é incontroverso que a promovente dependia financeiramente do ex-marido, ora agravante, posto que, em momento algum do recurso em comento, o agravante impugna a afirmação contida na inicial de que era o cônjuge varão quem arcava com as contas de casa e que a recorrida era “do lar”. Ademais, a agravada é pessoa idosa e está hoje com 67 anos de idade, não havendo o promovido comprovado que a ex-cônjuge laborava durante o vínculo conjugal, o que limita a capacidade de a parte autora se reinserir no mercado de trabalho 23 anos depois, contando-se do início do matrimônio. Nesse passo, os referidos fatos demonstram, até o momento, a necessidade da recorrida em obter alimentos. Por outro lado, o recorrente não logrou êxito em demonstrar que não possui condições de arcar com o valor arbitrado pelo juízo de origem, posto que comprovou ser aposentado e receber pensão de R\$ 34.405,07 por ano, conforme demonstrativo do imposto de renda ID 21680253 (SAJ fls. 21-30). No caso dos autos, incontroverso, documentalmente, a relação matrimonial entre as partes, objeto de pedido de Divórcio c/c Alimentos. Outrossim, a agravada é pessoa idosa, 67 anos de idade, fato que por si só já advoga em prol do cônjuge agravado quanto à necessidade dos alimentos requeridos na Instância inaugural. Ademais, não se tem notícia nos autos, muito menos comprovação, de que a alimentanda é ativa no mercado de trabalho. Por outro lado, o Alimentante é aposentado auferindo rendimentos mensais de aproximadamente R\$ 5.000,00 (cinco mil reais) sendo proprietário de vários imóveis, estando 3 (três) deles, no seu dizer, cedidos graciosamente à Igreja da qual é Pastor; razão pela qual a ilação a que se chega é a de que, acaso necessitar de maior numerário para sua manutenção e a manutenção da agravada/alimentanda, poderá locar ao menos um dos imóveis para fins de proporcionar uma vida com um mínimo de dignidade à sua ex-companheira de longa jornada, hoje já idosa e sem perspectivas para o labor. Assim, entendo que a probabilidade do direito não está presente, posto que foi demonstrado, pelo menos em um juízo de análise superficial, ante o atual grau de cognição de que ora disponho, que o agravante tem possibilidade de pagar 1,5 salários-mínimos sem prejuízo de seu sustento, razão pela qual os alimentos devem ser mantidos. Assim, entendo que a probabilidade do direito não está presente, posto que foi demonstrado, pelo menos em um juízo de análise superficial, ante o atual grau de cognição de que ora disponho, que o agravante tem possibilidade de pagar 1,5 salários-mínimos sem prejuízo de seu sustento, razão pela qual os alimentos devem ser mantidos. DIREITO CIVIL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. ALIMENTOS PROVISÓRIOS. FIXAÇÃO EM FAVOR DE EX-COMPANHEIRA. NECESSIDADE E POSSIBILIDADE. SUPRESSÃO DE INSTÂNCIA. RECURSO PARCIALMENTE CONHECIDO E, NA PARTE CONHECIDA, NÃO PROVIDO. I. CASO EM EXAME. Agravo de instrumento interposto com o objetivo de reformar decisão que fixou alimentos provisórios no valor de três salários mínimos em favor da agravada, ex-companheira do agravante. O recorrente sustenta, preliminarmente, a nulidade da decisão por vício de incompetência, e, no mérito, a ausência de comprovação de necessidade da agravada e a desproporcionalidade do encargo em relação à sua capacidade econômica. II. QUESTÃO EM DISCUSSÃO Há duas questões em discussão: (i) definir se é possível o conhecimento do recurso quanto à alegação de nulidade da decisão por incompetência do juízo; (ii) estabelecer se a decisão agravada merece reforma quanto à fixação dos alimentos provisórios. III. RAZÕES DE DECIDIR O exame da alegação de nulidade da decisão por incompetência encontra óbice na ausência de manifestação prévia do juízo de origem sobre a matéria, que foi oportunamente suscitada na contestação apresentada na ação principal, configurando-se questão prejudicial ao mérito da demanda, cuja análise

Processo	0638535-67.2024.8.06.0000
	competes, inicialmente, ao juízo a quo, sob pena de indevida supressão de instância. Quanto ao mérito do recurso, a fixação dos alimentos provisórios deve observar o binômio necessidade-possibilidade, conforme disposto no art. 1.694, caput e §1º, do Código Civil. No caso concreto, há indícios suficientes de que as partes mantiveram longa convivência, configurando, em tese, união estável, bem como de que a agravada se encontra em situação de vulnerabilidade econômica, justificando a fixação da verba alimentar. Não ficou demonstrado que o agravante não possui capacidade para suportar o encargo no valor fixado, tampouco que o montante seja manifestamente excessivo ou desproporcional. A decisão agravada encontra-se suficientemente fundamentada, pautando-se na prudente análise do binômio necessidade-possibilidade, dentro dos parâmetros usuais para hipóteses similares, especialmente considerando-se o caráter provisório da fixação dos alimentos. Ressalta-se que a fixação provisória não impede a revisão futura da obrigação alimentar, caso surjam novos elementos probatórios que justifiquem sua alteração. IV. DISPOSITIVO E TESE Recurso parcialmente conhecido e, na parte conhecida, desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade, conhecer parcialmente do presente agravo de instrumento, para, na parte conhecida, NEGAR-LHE PROVIMENTO, nos termos do voto do Relator. Fortaleza, DATA DO SISTEMA DESEMBARGADOR FRANCISCO BEZERRA CAVALCANTE Relator
 (Agravado de Instrumento&#160;- 0623614-69.2025.8.06.0000, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento:&#160; 22/07/2025, data da publicação:&#160; 22/07/2025)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> DIREITO DE FAMÍLIA. AGRAVO DE INSTRUMENTO. ALIMENTOS. BINÔMIO NECESSIDADE/POSSIBILIDADE. AUSÊNCIA DE PROVAS IDÔNEAS PARA MAJORAÇÃO. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Agravo de instrumento interposto por Bárbara Carla Santos da Silva contra decisão interlocutória proferida no curso de ação de alimentos c/c fixação de guarda e regulamentação de convivência, ajuizada por Antônio Nilson Bernardino Silva Júnior, na qual o juízo de origem fixou alimentos em 80% do salário-mínimo, deferiu guarda compartilhada com residência da menor com a genitora e regulamentou o direito de visitas do pai. A agravante sustenta que está desempregada, não possui condições de arcar com as despesas da menor e requer a majoração dos alimentos para 100% do salário-mínimo, além do custeio integral das despesas escolares, plano de saúde, vestuário e medicamentos pelo agravado. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se estão presentes os elementos fáticos e jurídicos que autorizem a majoração dos alimentos fixados em 80% do salário-mínimo para 100%, com inclusão de outras despesas, com base no binômio necessidade possibilidade. III. RAZÕES DE DECIDIR 3. A análise de alimentos deve observar o binômio necessidade do alimentado e possibilidade do alimentante, nos termos dos arts. 1.694, §1º, e 1.695 do Código Civil, o que exige ponderação proporcional entre os direitos fundamentais envolvidos, sem promover enriquecimento sem causa. 4. A presunção da necessidade da menor, por sua tenra idade (06 anos), não é suficiente, por si só, para justificar a majoração dos alimentos, sendo necessária a comprovação efetiva da impossibilidade da genitora em prover qualquer parcela e da aptidão financeira do genitor para arcar com a totalidade dos custos. 5. A planilha apresentada pela agravante (fls. 05/06), bem como a carteira de trabalho sem nenhum preenchimento (fls. 15/20), não se revestem de força probatória suficiente para afastar a conclusão do juízo de origem, especialmente diante da alegação do agravado de ausência de vínculo de trabalho fixo e existência de outros filhos. 6. A revisão do valor fixado demandaria dilação probatória para aferição mais precisa da real capacidade econômica do alimentante e da veracidade das despesas alegadas, providência incompatível com a via estreita do agravo de instrumento. 7. A jurisprudência consolidada nos tribunais pátrios rechaça a majoração de alimentos sem prova cabal da alteração do trinômio necessidade-possibilidade-proporcionalidade, impondo a manutenção do quantum arbitrado enquanto não demonstrado o desequilíbrio. 8. A obrigação alimentar deve ser compartilhada entre os genitores, na proporção de suas possibilidades, conforme o art. 1.703 do Código Civil, não se podendo presumir, nesta fase, que o genitor deva suportar integralmente os encargos. IV. DISPOSITIVO E TESE 9. Recurso desprovido. Tese de julgamento: 1. A majoração dos alimentos exige demonstração inequívoca da alteração do binômio necessidade possibilidade, sendo necessária dilação probatória para averiguar a real necessidade de majoração do quantum adequado. 2. A obrigação alimentar é solidária entre os genitores e deve observar a proporção de seus recursos, nos termos do art. 1.703 do Código Civil. 3. A simples alegação de desemprego da genitora não autoriza a imposição integral dos encargos ao genitor sem prova concreta da real situação econômica de ambas as partes. Dispositivos relevantes citados: CC, arts. 1.694, §1º; 1.695; 1.703; CPC/2015, art. 300. Jurisprudência relevante citada: TJCE, AgInt no AI 0632194-25.2024.8.06.0000, Rel. Des. Everardo Lucena Segundo, 2ª Câmara Direito Privado, j. 30.10.2024; TJCE, AgInt no AI 0632603-98.2024.8.06.0000, Rel. Des. Marcos William Leite de Oliveira, 3ª Câmara Direito Privado, j. 21.03.2025; TJDF, AI 0763482-

Processo	0638535-67.2024.8.06.0000
	94.2019.8.07.0016, Rel. Des. Diaulas Costa Ribeiro, 8ª Turma Cível, j. 10.12.2020. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso para lhe negar provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator
 (Agravado de Instrumento&#160;- 0624034-74.2025.8.06.0000, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160; 18/06/2025, data da publicação:&#160; 18/06/2025)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Por fim, tenho que no presente feito, a questão ainda deverá ser aprofundada durante a instrução processual, ocasião em que serão colhidos maiores elementos de prova acerca da possibilidade do cônjuge e das necessidades da parte agravada.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Nesse sentido, é farta a jurisprudência:</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> >AGRAVO DE INSTRUMENTO - AÇÃO REVISIONAL DE ALIMENTOS - TUTELA PROVISÓRIA&#160; MAJORAÇÃO DOS ALIMENTOS ANTERIORMENTE FIXADOS - BINÔMIO NECESSIDADE / POSSIBILIDADE - DILAÇÃO PROBATÓRIA. - Havendo necessidade de dilação probatória em relação às mudanças na situação financeira do alimentante e necessidade do alimentando, o indeferimento do pedido de tutela provisória de urgência de natureza antecipada, consistente na majoração da pensão alimentícia anteriormente fixada é medida que se impõe." (TJ-MG - AI: 10000212368633001 MG, Relator: Alexandre Santiago, Data de Julgamento: 03/06/2022, Câmaras Especializadas Cíveis / 8ª Câmara Cível Especializada, Data de Publicação: 22/06/2022)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> >AGRAVO DE INSTRUMENTO. AUSÊNCIA DE PROVAS DE DA CAPACIDADE FINANCEIRA DO ALIMENTANTE. DILAÇÃO PROBATÓRIA. 1. A fixação de alimentos provisórios norteia-se pelo binômio necessidade/capacidade. 2. Ante a ausência de prova robusta da alegada modificação no binômio necessidade/capacidade, os alimentos estabelecidos na ação revisional devem ser mantidos até a adequada dilação probatória, a ser realizada sob o crivo do contraditório e da ampla defesa. 3. Agravo conhecido e desprovido." (TJDF 07023753420188070000 - Segredo Justiça 0702375-34.2018.8.07.0000, Relator: de DIAULAS COSTA RIBEIRO, Data de Julgamento: 27/06/2018, 8ª Turma Cível, Data de Publicação: Publicado no PJe : 06/07/2018 . Pág.: Sem Página Cadastrada.)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> >AGRAVO DE INSTRUMENTO. AÇÃO REVISIONAL DE ALIMENTOS. MAJORAÇÃO. DESCABIMENTO. DILAÇÃO PROBATÓRIA. MANUTENÇÃO DA DECISÃO RECORRIDA. Inexistindo no instrumento elementos a indicar de forma categórica a efetiva extensão das possibilidades paternas, inviável, por ora, o acolhimento do pleito liminar de majoração da verba alimentícia. Necessidade de dilação probatória. Decisão indeferitória mantida. AGRAVO DE INSTRUMENTO DESPROVIDO." (TJ-RS - AI: 70075338392 RS, Relator: Ricardo Moreira Lins Pastl, Data de Julgamento: 09/11/2017, Oitava Câmara Cível, Data de Publicação: Diário da Justiça do dia 14/11/2017)</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Ante o exposto, CONHEÇO do presente recurso, para NEGAR-LHE PROVIMENTO e, por consequência, revogar a decisão interlocutória de ID 21679813 (SAJ fl. 106), mantendo a tutela de urgência deferida na decisão impugnada que fixa provisoriamente alimentos provisionais mensais devidos pelo réu, ora agravante, à autora no patamar de 1/5 (um e meio) salário-mínimo vigente, devidos desde a citação.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É como voto.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160;</p><p class="Standarduser" style="text-align: center;" align="center"> >DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p>&#160;</p><p class="Standarduser" style="text-align: center;" align="center"> >Relator </p>

Processo	0638535-67.2024.8.06.0000
	style="font-family: &quot;Times New Roman&quot;; serif; letter-spacing: 0.1pt; background-image: initial; background-position: initial; background-size: initial; background-repeat: initial; background-attachment: initial; background-origin: initial; background-clip: initial;">&#160;</p><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>
Processo	0202222-85.2024.8.06.0029
Número de ordem	207
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Seguro
Polo ativo	ANTONIA LEENE FERREIRA LIMA
Advogado(s) - Polo ativo	FRANCISCO AUGUSTO OLIVEIRA PAES DE ANDRADE - (CE38088-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	FRANCISCO SAMPAIO DE MENEZES JUNIOR - (CE9075-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0202222-85.2024.8.06.0029
Acórdão	 PROCESSO: 0202222-85.2024.8.06.0029 - APELAÇÃO CÍVEL (198) APELANTE: ANTONIA LEENE FERREIRA LIMA APELADO: BANCO BRADESCO S/A EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. INDEFERIMENTO DA PETIÇÃO INICIAL. EXIGÊNCIA DE COMPROVANTE DE RESIDÊNCIA ATUALIZADO. DOCUMENTO NÃO INDISPENSÁVEL À PROPOSITURA DA AÇÃO. FORMALISMO EXACERBADO. PRINCÍPIOS DA PRIMAZIA DA DECISÃO DE MÉRITO E DO ACESSO À JUSTIÇA. SENTENÇA CASSADA. RECURSO PROVIDO. I. CASO EM EXAME: 1. Apelação Cível interposta contra sentença da 2ª Vara Cível da Comarca de Acopiara que indeferiu a petição inicial e extinguiu o processo, sem resolução do mérito, com fundamento no art. 485, I, do CPC, sob o argumento de que a parte autora não cumpriu a determinação de apresentar comprovante de residência legível e atualizado em nome próprio ou de terceiros. A parte apelante sustenta que a inicial foi instruída com a documentação necessária ao regular processamento da demanda. II. QUESTÃO EM DISCUSSÃO: 2. Há duas questões em discussão: (i) definir se houve deferimento tácito do pedido de justiça gratuita diante da ausência de manifestação expressa pelo juízo de primeiro grau; (ii) estabelecer se a ausência de comprovante de residência atualizado constitui fundamento legítimo para indeferir a petição inicial e extinguir o processo sem resolução do mérito. RAZÕES DE DECIDIR: 3. A ausência de manifestação do juiz sobre o pedido de gratuidade de justiça implica deferimento tácito, conforme precedentes do STF e do STJ. 4. O comprovante de residência atualizado não constitui documento indispensável à propositura da ação, nos termos dos arts. 319 e 320 do CPC, cabendo apenas a exigência de documentos sem os quais não seja possível apreciar o mérito. 5. A documentação apresentada pela autora, consistente em procuração, declaração de hipossuficiência, documentos de identificação, comprovante de residência e extrato bancário, é suficiente para o regular desenvolvimento do processo. 6. A exigência de juntada de comprovante de residência atualizado configura formalismo excessivo, em afronta aos princípios da primazia da decisão de mérito e do acesso à justiça (CF, art. 5º, XXXV; CPC, arts. 4º e 6º). 7. A jurisprudência consolidada do TJCE e do STJ reconhece que o indeferimento da inicial não pode se basear em exigências que extrapolam os requisitos legais da petição inicial, sob pena de cerceamento do direito de ação. DISPOSITIVO E Tese: 8. Recurso conhecido e provido. Sentença anulada. Tese de julgamento: A ausência de manifestação judicial sobre o pedido de gratuidade de justiça acarreta deferimento tácito do benefício.

Processo	0202222-85.2024.8.06.0029
	padding-left: 30px;">2. O comprovante de residência atualizado não constitui documento indispensável à propositura da ação, sendo desnecessária sua apresentação para o regular processamento da demanda.&#160;</p><p style="text-align: justify; padding-left: 30px;">3. O indeferimento da petição inicial por formalismo exacerbado viola os princípios da primazia da decisão de mérito e do acesso à justiça.&#160;</p><p style="text-align: justify;">Dispositivos relevantes citados: CF/1988, art. 5º, XXXV, LIV e LXXIV; CPC, arts. 4º, 6º, 141, 319, 320, 321, 485, I, e 492; Lei 1.060/1950, arts. 4º, 6º e 9º.&#160;</p><p style="text-align: justify;">Jurisprudência relevante citada: STF, AI nº 649.283/SP-AgR, Rel. Min. Ricardo Lewandowski, Primeira Turma, j. 19.09.2008; STF, RE nº 245.646-AgR/RN, Rel. Min. Celso de Mello, Segunda Turma, DJe 13.02.2009; STJ, AgRg nos EAREsp 86.915/SP, Rel. Min. Raul Araújo, j. 26.02.2015, DJe 04.03.2015; TJCE, Apelação Cível nº 0200818-33.2023.8.06.0029, Rel. Des. Inácio de Alencar Cortez Neto, 2ª Câmara Direito Privado, j. 04.10.2023; TJCE, Apelação Cível nº 0000034-13.2019.8.06.0148, Rel. Des. Heráclito Vieira de Sousa Neto, 1ª Câmara Direito Privado, j. 16.06.2021.&#160;</p><p style="text-align: justify;">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e dar-lhe provimento, nos termos do voto do Relator.&#160;</p><p>
</p><p style="text-align: justify;">Fortaleza, data da assinatura digital.</p><p>
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</p><p style="text-align: center;">DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
Presidente do Órgão Julgador</p><p>
</p><p style="text-align: center;">DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA<br style="text-align: center;" />Relator</p><p>&#160;</p><p>&#160;</p><div><p style="text-align: center;">RELATÓRIO</p><p style="text-align: justify; text-indent: 8%;">Trata-se de Apelação Cível interposta por Antonia Leene Ferreira Lima, contra sentença prolatada pelo MM. Juiz de Direito da 2ª Vara Cível da Comarca de Acopiara, em sede de ação declaratória de inexistência de débito com pedido de danos morais, proposta pelo ora apelante, em desfavor do Banco Bradesco S.A.&#160;</p><p style="text-align: justify; text-indent: 8%;">Consta do dispositivo da sentença que o Magistrado a quo decidiu nos seguintes termos:</p><p style="text-align: justify; padding-left: 150px;">“(…) Nos exatos termos da legislação colacionada, para que possa o Juiz declarar a extinção do processo e seu arquivamento, por indeferimento da inicial, é necessário que o requerente tenha sido devidamente citado para emenda-la e, não o faça, no prazo legal. In casu, houve a intimação da parte autora (fls. 32) contudo, a requerente não atendeu a determinação judicial. Tal desídia caracteriza o disposto no inciso I do art. 485 do CPC, já transcrito. Isto é, o autor deu causa ao indeferimento da petição inicial. Não restando outra alternativa a esse Magistrado, senão extinguir o feito. 3. Dispositivo: Pelo exposto, EXTINGO O PRESENTE FEITO SEM JULGAMENTO DE PODER JUDICIÁRIO DO ESTADO DO CEARÁ Comarca de Acopiara 2ª Vara Cível da Comarca de Acopiara Rua Cícero Mandu, S/N, Centro - CEP 63560-000, Fone: (88), Acopiara-CE - E-mail: tjce@tjce.jus.br MÉRITO, o que faço com amparo no art. 485, “I”, do Código de Processo Civil. Sem custas ante a gratuidade judiciária que defiro nos autos. (…)</p><p style="text-align: justify; text-indent: 8%;">Irresignado, a recorrente interpôs o presente recurso, id. 21749371, alegando, em suas razões recursais, que a inicial foi instruída com toda a documentação necessária.</p><p style="text-align: justify; text-indent: 8%;">Sustenta que a exordial se encontra instruída com os documentos mínimos indispensáveis ao desenvolvimento regular do processo, inclusive, afirma que quando a parte foi intimada para comparecer em juízo, e mesmo se tratando de idosa com dificuldades de locomoção, cumpriu com a determinação e levou os

Processo	0202222-85.2024.8.06.0029
	documentos solicitados.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Por fim, requer seja o presente recurso recebido, conhecido e provido no sentido de reformar a sentença declarando-a nula.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Devidamente intimado, o recorrido apresentou contrarrazões, id. 21749347, alegando a falta de interesse de agir, visto que a parte deveria ter juntado todas as documentações necessárias. Por fim, requer o improvimento do presente recurso e manutenção da sentença.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Após, os autos ascenderam para julgamento nesta Corte. </p> <p style="text-align: justify; text-indent: 8%;"> Parecer do Ministério Público (id. 21749240), pelo conhecimento e provimento do presente recurso.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> É o relatório.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Adotando o Pacto Nacional do Judiciário Pela Linguagem Simples, do CNJ, passo a proferir o meu voto.&#160; </p> <p style="text-align: center;"> VOTO </p> <p style="text-align: center;">
 </p> <p style="text-align: justify; text-indent: 8%;"> Inicialmente, no caso em análise, tem-se que o sentenciante não se manifestou sobre o requerimento de concessão da gratuidade de justiça formulado pela parte autora, sendo entendimento no Superior Tribunal de Justiça e nesta Corte alencarina de que a omissão do Judiciário quanto ao pedido de gratuidade de justiça acarreta o seu deferimento tácito. </p> <p style="text-align: justify; text-indent: 8%;"> Não reconhecer, portanto, o deferimento tácito da justiça gratuita, seria contrariar diretamente os precedentes da jurisprudência consolidada do Pretório Excelso, do Colendo Superior Tribunal de Justiça - STJ e de demais tribunais pátrios, in verbis: </p> <p style="text-align: justify; padding-left: 150px;"> CONSTITUCIONAL. PROCESSO CIVIL. AGRAVO REGIMENTAL EM AGRAVO DE INSTRUMENTO. BENEFÍCIO JUSTIÇA GRATUITA. DESNECESSIDADE DE COMPROVAÇÃO. PRECEDENTES. AGRAVO IMPROVIDO. I - É pacífico o entendimento da Corte de que para a obtenção de assistência jurídica gratuita, basta a declaração, feita pelo próprio interessado, de que sua situação econômica não lhe permite ir a Juízo sem prejudicar sua manutenção ou de sua família. Precedentes. II - Agravo regimental improvido (STF, AI nº 649.283/SP-AgR, Primeira Turma, Relator o Ministro Ricardo Lewandowski, DJ de 19/9/08). (G.N) </p> <p style="text-align: justify; padding-left: 150px;"> ALEGAÇÃO DE INCAPACIDADE FINANCEIRA E CONCESSÃO DO BENEFÍCIO DA GRATUIDADE. O acesso ao benefício da gratuidade, com todas as consequências jurídicas dele decorrentes, resulta da simples afirmação, pela parte (pessoa física ou natural), de que não dispõe de capacidade para suportar os encargos financeiros inerentes ao processo judicial, mostrando-se desnecessária a comprovação, pela parte necessitada, da alegada insuficiência de recursos para prover, sem prejuízo próprio ou de sua família, as despesas processuais. Precedentes. Se o órgão judiciário competente deixar de apreciar o pedido de concessão do benefício da gratuidade, reputar-se-á tacitamente deferida tal postulação, eis que incumbe, à parte contrária, o ônus de provar, mediante impugnação fundamentada, que não se configura, concretamente, o estado de incapacidade financeira afirmado pela pessoa que invoca situação de necessidade. Precedentes (STF, RE nº 245.646-AgR/RN, Relator o Ministro Celso de Mello, Segunda Turma, DJe 13/2/09). DIREITO PROCESSUAL CIVIL. EFICÁCIA DA CONCESSÃO DE ASSISTÊNCIA JUDICIÁRIA GRATUITA. Quando a assistência judiciária gratuita for deferida, a eficácia da concessão do benefício prevalecerá, independentemente de renovação de seu pedido, em todas as instâncias e para todos os atos do processo - alcançando, inclusive, as ações incidentais ao processo de conhecimento, os recursos, as rescisórias, assim como o subsequente processo de execução e eventuais embargos à execução -, somente perdendo sua eficácia por expressa revogação pelo Juiz ou Tribunal. Isso porque não há previsão legal que autorize a exigência de renovação do pedido de assistência judiciária gratuita em cada instância e a cada interposição de recurso, mesmo na instância extraordinária. Ao contrário, o art. 9º da Lei 1.060/1950 estabelece expressamente a eficácia da decisão deferitória do benefício em todas as instâncias e graus de jurisdição. Com efeito, a concessão do benefício, por compor a integralidade da tutela jurídica pleiteada, comporta eficácia para todos os atos processuais, em todas as instâncias, alcançando, inclusive, as ações incidentais ao processo de conhecimento, os recursos, as rescisórias, assim como o subsequente processo de execução e eventuais embargos à execução, sendo despendida a constante renovação do pedido a cada instância e para a prática de cada ato processual. Essa é a interpretação mais adequada da legislação, especialmente da Lei 1.060/1950 (arts. 4º, 6º e 9º), e consentânea com os princípios constitucionais da inafastabilidade da tutela jurisdicional e do processo justo, com garantia constitucional de concessão do benefício da assistência judiciária gratuita ao necessitado

Processo	0202222-85.2024.8.06.0029
	(art. 5º, XXXV, LIV e LXXIV, da CF). Assim, desde que adequadamente formulado o pedido e uma vez concedida, a assistência judiciária gratuita prevalecerá em todas as instâncias e para todos os atos do processo, nos expressos termos assegurados no art. 9º da Lei 1.060/1950 (reiterado no parágrafo único do art. 13 da Lei 11.636/2007). Contudo, perderá eficácia a concessão do benefício em caso de expressa revogação pelo Juiz ou Tribunal, quando comprovada a mudança da condição econômico financeira do beneficiário. Isso porque a decisão que concede a gratuidade está condicionada à cláusula rebus sic standibus, primando pela precariedade e não gerando preclusão pro judicato. Dessa maneira, a renovação do pedido de gratuidade da justiça somente se torna necessária quando houver anterior indeferimento do pleito ou revogação no curso do processo. Por fim, cabe ressaltar que não se faz necessário, para o processamento de eventual recurso, que o beneficiário faça expressa remissão na petição recursal acerca do anterior deferimento da assistência judiciária gratuita, embora seja evidente a utilidade dessa providência facilitadora. Basta, portanto, que constem dos autos os comprovantes de que já litiga na condição de beneficiário da justiça gratuita. AgRg nos EAREsp 86.915-SP, Rel. Min. Raul Araújo, julgado em 26/2/2015, DJe 4/3/2015. (G.N) AGRAVO DE INSTRUMENTO. ASSISTÊNCIA JUDICIÁRIA GRATUITA. CONCESSÃO. LEI Nº 1.060/50. ESPÓLIO. REPRESENTAÇÃO. 1. Para a concessão do benefício da assistência judiciária, desnecessária a declaração de pobreza, assinada pelo requerente e com firma reconhecida, bastando, para tanto, o simples requerimento na petição inicial, nos termos da Lei nº 1.060/50. 2. Passados dois anos do falecimento, não se pode falar em administrador provisório, impondo-se a outorga de procuração por todos os herdeiros, caso ainda não tenha sido aberto inventário. (TRF 3ª Região, 6ª Turma, Juiz Mairan Maia, AG200103000056834/SP, DJU 4/11/2002, p. 716)&#160; <p style="text-align: justify; text-indent: 8%;"> Desta Egrégia Corte de Justiça, ademais, extraio os seguintes julgados: <p style="text-align: justify; padding-left: 150px;"> DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO MONITÓRIA. PEDIDO DE JUSTIÇA GRATUITA NÃO ANALISADO PELO JUÍZO SINGULAR. DEFERIMENTO TÁCITO. RECONVENÇÃO APRESENTADA. PEDIDOS NÃO ENFRENTADOS NA SENTENÇA PELO JUÍZO A QUO. ERROR IN PROCEDENDO. JULGAMENTO CITRA PETITA. NULIDADE DA SENTENÇA SUSCITADA DE OFÍCIO. TEORIA DA CAUSA MADURA. ART. 1.013, § 3º, II, DO CPC. INAPLICABILIDADE AO CASO. PRECEDENTES DESTA CÂMARA. SENTENÇA CASSADA. PRELIMINAR SUSCITADA DE OFÍCIO ACOLHIDA. 01. Cabe ao juiz decidir a lide nos limites em que foi proposta, não podendo conceder à parte providência além da requerida na inicial (sentença ultra petita), aquém do pedido (decisão citra petita) e, muito menos, fora do requerido pelas partes (sentença extra petita). 02. Ao exame dos autos, apura-se que a parte requerida, ora apelante, apresentou reconvenção (vide fls. 61/73) formulando pedidos de indenização por danos morais e materiais. 03. É notório que tais pedidos, no entanto, não foram apreciados na sentença, omitindo-se o juízo singular quanto aos fundamentos e pleitos indenizatórios realizados na reconvenção. 04. Dessa forma, incontroverso que o magistrado, ao deixar de apreciar de forma expressa e motivada pedido elencado na reconvenção, incorre em julgamento citra petita, em violação ao princípio da adstrição (art. 492, CPC), devendo a sentença ser cassada. 05. A sentença hostilizada não observa os arts. 141 e 489, II do CPC/15 e a imperiosa necessidade de fundamentação prevista na CF/88, não havendo outra alternativa senão cassá-la. 06. É de rigor registrar a impossibilidade de aplicar a teoria da causa madura (art. 1.013, § 3º, CPC/2015) ao caso, eis que o entendimento majoritário desta Câmara é no sentido de que, embora a regra impositiva do art. 1.013, § 3º, III, do CPC/15 determine o imediato julgamento do processo nos casos de sentença omissa no exame de um dos pedidos, é defeso ao órgão ad quem julgar pretensão não analisada pelo juízo a quo, sob pena de supressão de instância e de afronta ao duplo grau de jurisdição. Precedentes desta 3ª Câmara de Direito Privado. 07. Sentença anulada de ofício, determinando o retorno dos autos à origem, para que seja proferida nova decisão, com o pronunciamento judicial expresso e fundamentado acerca dos pedidos formulados na reconvenção, notadamente quanto aos pedidos indenizatórios, restando prejudicadas as demais teses recursais. ACÓRDÃO Vistos, relatados e discutidos o recurso, acorda a Terceira Câmara de Direito Privado, do Egrégio Tribunal de Justiça do Ceará, por unanimidade, em ACOLHER A PRELIMINAR SUSCITADA DE OFÍCIO POR ESTA RELATORA PARA CASSAR A SENTENÇA, POR VÍCIO CITRA PETITA, determinando o retorno dos autos à origem, para que seja proferida nova decisão, com o pronunciamento judicial expresso e fundamentado acerca dos pedidos formulados na reconvenção, notadamente quanto aos pedidos indenizatórios, restando prejudicadas as demais teses recursais, em conformidade com o voto da Relatora. Presidente do Órgão Julgador CLEIDE ALVES DE AGUIAR Relatora <p style="text-align: justify; padding-left: 150px;"> (Apelação Cível - 0127660-10.2015.8.06.0001, Rel. Desembargador(a) CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento:&#160; 17/04/2024, data da publicação:&#160; 17/04/2024) </p>

Processo	0202222-85.2024.8.06.0029
	PROCESSO CIVIL. AGRAVO INTERNO. DECISÃO MONOCRÁTICA QUE DESPROVEU EMBARGOS DECLARATÓRIOS. HABILITAÇÃO DA MASSA FALIDA E DETERMINAÇÃO DA SUSPENSÃO DA AÇÃO MONITÓRIA. PRELIMINARMENTE. GRATUIDADE NÃO APRECIADA EM PRIMEIRA INSTÂNCIA. AUSÊNCIA DE MANIFESTAÇÃO ENSEJA O DEFERIMENTO TÁCITO. PRECEDENTES DO SUPERIOR TRIBUNAL DE JUSTIÇA. ANÁLISE EXAURIENTE DA DEMANDA. HIPÓTESE VERIFICADA NOS TERMOS DO §1º, DO ART. 6º, DA LEI 11.101/2005. RECURSO CONHECIDO E PROVIDO. 1.Trata-se de Agravo Interno interposto por Massa Falida de Oboé Crédito, Financiamento e Investimento S/A, Oboé Tecnologia e Serviços Financeiros S/A, Oboé Distribuidora de Valores Mobiliários S/A, Companhia de Investimento Oboé, Advisor Gestão de Ativos S/A, Oboé Holding Financeira S/A, José Newton Lopes Freitas, Magazines Brasileiros Ltda. e Clarinete Promotora de Vendas e Serviços Ltda., contra decisão monocrática, proferida às fls.14/15 de relatoria do Desembargador Raimundo Nonato Silva Santos, que desproveu os embargos declaratórios que visavam reverter a decisão de suspensão da Ação Monitória. 2. Preliminarmente. A gratuidade processual deve ser concedida aos agravantes, tendo em vista decisão recente do STJ na qual determina que, diante da ausência de indeferimento em decisão fundamentada pelo juízo a quo, o seu deferimento é tácito. 3. Compulsando os autos da Ação Monitória, verifica-se que o agravado interpôs Apelação Cível, questionando a iliquidez da dívida, anatocismo, pela suposta aplicação de juros moratórios e remuneratórios, alegando ainda que os cálculos teriam sido expressos de forma confusa, sem clareza na escolha dos índices. Assim, a despeito da decisão de suspensão exarada, ratificada pela decisão monocrática no julgamento dos aclaratórios, verifico que é desprovida de elementos jurídicos que consubstancie seu fundamento. O questionamento arguido em apelo, demonstra a iliquidez da dívida, ainda que esse recurso venha a ser desprovido, quando do seu julgamento. Assim, a ação monitória deve ter seu prosseguimento, pois enquadra-se na hipótese prevista no §1º, do art. 6º, da Lei 11.101/2005. 4. Inobservar essa premissa seria fomentar a ideia de uma justiça que se nega a prestação jurisdicional, pois estar-se-ia impedindo que os agravantes se habilitem no processo falimentar da agravada. Corroborase à isso, o fato da sentença de primeiro grau ter sido favorável aos agravantes. 5. Recurso conhecido e provido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e dar-lhe provimento, nos termos do voto do Eminentíssimo Relator. Fortaleza, . JOSÉ EVANDRO NOGUEIRA LIMA FILHO Presidente do Órgão Julgador DESEMBARGADOR JOSÉ EVANDRO NOGUEIRA LIMA FILHO Relator (Agravo Interno Cível - 0046872-24.2006.8.06.0001, Rel. Desembargador(a) JOSE EVANDRO NOGUEIRA LIMA FILHO, 4ª Câmara Direito Privado, data do julgamento: 23/04/2024, data da publicação: 23/04/2024) </p> Com efeito, a constatação do silêncio do julgador a quo quanto ao pedido, a meu ver, e conforme jurisprudência consolidada dos Tribunais Superiores, enseja o deferimento implícito do benefício. </p> Deste modo, concedo os benefícios da justiça gratuita a parte apelante. </p> Conheço do presente recurso, porquanto presentes os pressupostos intrínsecos e extrínsecos de admissibilidade recursal. </p> A controvérsia recursal consiste em analisar a possibilidade de reforma da sentença, id. 21749351, que indeferiu a petição inicial e julgou extinto o processo sem resolução do mérito, com base no art. 485, I do CPC, posto que descumprida a decisão que determinou a emenda da petição inicial para que a autora, ora Apelante, comprovante de endereço legível e recente (últimos 03 meses) em seu nome ou, se em nome de terceiros. </p> Com efeito, respeitados os fundamentos da sentença, a emenda exigida em primeiro grau é desnecessária na espécie, razão pela qual o recurso comporta provimento. </p> Na hipótese dos autos, verifica-se que a autora, ora recorrente, apresentou os seguintes documentos no ato de protocolo da inicial: procuração e declaração de hipossuficiência (id. 21749354); documentos de identificação (id. 21749362); comprovante de residência (id. 21749348) e extrato da conta-corrente (id. 21749365). </p> Continuamente, observo que o juízo de piso proferiu despacho (id. 21749373) requerendo a emenda a inicial para comparecer a Secretaria para apresentar documentos. </p> Ato contínuo, foi juntado aos autos documentos de identificação e comprovante de residência (id. 21749366, 21749367 e 21749368). </p> Consequentemente, o juízo requereu nova emenda a inicial alegando que era necessário comprovante de residência legível e recente dos últimos três meses, em seu

Processo	0202222-85.2024.8.06.0029
	nome ou em nome de terceiros, comprovando a relação entre ambos, sob pena de indeferimento da inicial (id. 21749353).&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Dito isso, conforme disposto nos arts. 319 e 320 do CPC, a petição inicial deve estar acompanhada da documentação e das informações a seguir descritas: </p> <p style="text-align: justify; padding-left: 150px;"> Art. 319. A petição inicial indicará:&#160; </p> <p style="text-align: justify; padding-left: 150px;"> I - o juízo a que é dirigida;&#160; </p> <p style="text-align: justify; padding-left: 150px;"> II - os nomes, os prenomes, o estado civil, a existência de união estável, a profissão, o número de inscrição no Cadastro de Pessoas Físicas ou no Cadastro Nacional da Pessoa Jurídica, o endereço eletrônico, o domicílio e a residência do autor e do réu; </p> <p style="text-align: justify; padding-left: 150px;"> III - o fato e os fundamentos jurídicos do pedido; </p> <p style="text-align: justify; padding-left: 150px;"> IV - o pedido com as suas especificações;&#160; </p> <p style="text-align: justify; padding-left: 150px;"> V - o valor da causa;&#160; </p> <p style="text-align: justify; padding-left: 150px;"> VI - as provas com que o autor pretende demonstrar a verdade dos fatos alegados;&#160; </p> <p style="text-align: justify; padding-left: 150px;"> VII - a opção do autor pela realização ou não de audiência de conciliação ou de mediação. § 1º Caso não disponha das informações previstas no inciso II, poderá o autor, na petição inicial, requerer ao juiz diligências necessárias a sua obtenção.&#160; </p> <p style="text-align: justify; padding-left: 150px;"> § 2º A petição inicial não será indeferida se, a despeito da falta de informações a que se refere o inciso II, for possível a citação do réu.</p> <p style="text-align: justify; padding-left: 150px;"> § 3º A petição inicial não será indeferida pelo não atendimento ao disposto no inciso II deste artigo se a obtenção de tais informações tornar impossível ou excessivamente oneroso o acesso à justiça.&#160; </p> <p style="text-align: justify; padding-left: 150px;"> Art. 320. A petição inicial será instruída com os documentos indispensáveis à propositura da ação.</p> <p style="text-align: justify; text-indent: 8%;"> Nesse contexto, diversamente da fundamentação exposta pelo juízo singular, é desnecessário a emenda requerida, uma vez que as informações apresentadas na exordial e os documentos que instruem o feito se mostram suficientes ao trâmite regular da ação, havendo clara distinção entre documentos importantes à prova do direito alegado pelas partes e a documentação indispensável à propositura da ação, conforme leciona a doutrina de Cândido Rangel Dinamarco, sobre tema, veja-se: </p> <p style="text-align: justify; padding-left: 150px;"> "São documentos indispensáveis à propositura da demanda somente aqueles sem os quais o mérito da causa não possa ser julgado, como a certidão de casamento na ação de divórcio ou de anulação de casamento, a escritura pública e registro nas demandas fundadas em direito de propriedade, o instrumento do contrato cuja anulação se vem pedir etc. Não se incluem na exigência do art. 320 do Código de Processo Civil os demais possíveis documentos que o autor traria ou trará no processo depois, ainda quando importantes para que, no mérito, sua demanda seja julgada procedente" (In Instituições de Direito Processual Civil, 7ª Edição, Malheiros Editores, 2017, p. 458). </p> <p style="text-align: justify; text-indent: 8%;"> No mesmo passo, colaciono pertinente lição de NELSON NERY JUNIOR e ROSA MARIA DE ANDRADE NERY sobre o assunto: </p> <p style="text-align: justify; padding-left: 150px;"> 4. Documentos indispensáveis. O autor pode juntar à petição inicial documentos que entende sejam importantes para demonstrar a existência dos fatos constitutivos de seu pedido (CPC 373 I). Há documentos, entretanto, que são indispensáveis à propositura da ação, isto é, sem os quais o pedido não pode ser apreciado pelo mérito. A indispensabilidade da juntada do documento com a petição inicial é aferível diante do caso concreto, isto é, depende do tipo da pretensão deduzida em juízo. Normalmente são indispensáveis, nas ações de estado, os que comprovam o estado e a capacidade das pessoas, sobre os quais a lei exige a certidão do cartório de registro civil como única prova (prova legal) dessa situação. A procuração ad judícia é indispensável em toda e qualquer ação judicial, devendo acompanhar a petição inicial. </p> <p style="text-align: justify; padding-left: 150px;"> 5. Exemplos de documentos indispensáveis: a) ação reivindicatória: escritura devidamente registrada; b) ação de anulação de casamento, separação judicial ou divórcio: certidão de casamento; c) ação de alimentos, fundada na LA: certidão de nascimento ou outra prova de parentesco; d) ação desconstitutiva (de anulação, rescisão etc.) de contrato escrito: o instrumento do contrato; e) ação condenatória de obrigação de fazer, consistente em instituição de arbitragem (LARb 7.º): o contrato do qual conste a cláusula compromissória ou o compromisso arbitral; f) ação de 857 execução fundada em título executivo extrajudicial (CPC 784): o título

Processo	0202222-85.2024.8.06.0029
	executivo.&#160; </p> <p style="text-align: justify; padding-left: 150px;"> &#160;6. Documentos indispensáveis e indeferimento da petição inicial. A indispensabilidade de que trata a norma sob comentário refere-se à admissibilidade, isto é, ao deferimento da petição inicial. Caso esteja ausente um desses documentos, o juiz deverá mandar juntá-lo (CPC 321 caput), sob pena de indeferimento da petição inicial (CPC 321 par.ún.). A norma não trata de outros documentos, necessários ao deslinde da causa (mérito), mas não à admissibilidade da petição inicial, como, por exemplo, os que dizem respeito à prova dos fatos alegados pelo autor (v.g., recibo, se o autor alega que a dívida foi paga). Neste caso, trata-se de questão de mérito, isto é, de fato não provado com documento que poderia ter sido juntado à inicial, o que poderá acarretar a improcedência do pedido. Não se pode tolher a dedução da pretensão do autor, porque ele não "provou" o seu direito já na petição inicial. O raciocínio restritivo pode ser válido para o mandado de segurança, porque a CF 5.º LXIX exige a prova, pré-constituída e juntada com a petição inicial, do direito líquido e certo do impetrante, mas não para as ações em geral. Na ação comum do processo civil tradicional, é suficiente para o juiz mandar citar o réu a juntada dos documentos indispensáveis à admissibilidade (juízo de probabilidade) da ação. Em sentido contrário, entendendo que a indispensabilidade tratada pela norma atinge esses outros documentos comprobatórios das alegações do autor: Marcato-Scarpinella. CPC Interpretado, coment. 1 CPC/1973 283, p. 869. </p> <p style="text-align: justify; padding-left: 150px;"> >7.(...) </p> <p style="text-align: justify; padding-left: 150px;"> >8. Momento de produção da prova documental. Documentos indispensáveis. Indeferimento da petição inicial. Não se pode confundir a admissibilidade da petição inicial, finalidade da incidência do CPC 320, com o momento da produção da prova documental. A doutrina e os tribunais têm sido extremamente condescendentes com as partes, permitindo a juntada de documentos a qualquer tempo, negando a rigidez do sistema processual vigente. Quando o autor tem a posse ou conhecimento de documentos úteis à demonstração dos fatos constitutivos de seu direito, deverá fazer a prova documental desses fatos na petição inicial (CPC 434), somente podendo juntar documentos posteriormente se forem novos ou relativos a direito ou fatos supervenientes (CPC 435 e CPC 493). A juntada desses documentos não é requisito da petição, mas requisito de validade e eficácia da prova documental. O juiz não pode indeferir a petição inicial porque o autor não juntou documento que já possuía (v.g., recibo, para provar pagamento), mas que não era indispensável, indispensabilidade essa a teor do CPC 320. Embora afirme que o documento indispensável deve ser juntado com a petição inicial, Scarpinella conclui pela impossibilidade de o juiz indeferi-la, "pois o caso é de sua emenda, nos termos do art. 284 [do CPC/1973]", omitindo-se, contudo, quanto à solução que deva ser dada ao caso, se o autor não emendar a petição inicial (Marcato-Scarpinella. CPC Interpretado, coment. 3 CPC/1973 283, p. 870). Não emendada, isto é, não juntado o documento indispensável, indispensabilidade aferida a teor do CPC 320, o caso é de indeferimento da petição inicial, porque a lei é expressa nesse sentido (CPC 321 par.ún. e 328 IV).&#160; </p> <p style="text-align: justify; padding-left: 150px;"> >(Código de Processo Civil comentado / Nelson Nery Junior, Rosa Maria de Andrade Nery. -- 17. ed. -- São Paulo, Revista dos Tribunais, 2018, Ps.857/858.) (GN) </p> <p style="text-align: justify; text-indent: 8%;"> >Nesse viés, observo que a parte comprovou três vezes as documentações requeridas pelo juízo, inclusive comparecendo presencialmente na Secretaria da Unidade Judiciária. </p> <p style="text-align: justify; text-indent: 8%;"> >Ato contínuo, compreendo as manifestações do juízo no sentido de requerer comprovante de endereço atualizado, contudo, faz-se necessário salientar que o comprovante de endereço atualizado não é documento indispensável à propositura da demanda.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> >Nesse aspecto, o indeferimento da inicial caracteriza formalismo exacerbado e desnecessário, em nítido prejuízo aos princípios da primazia de julgamento de mérito e de acesso à justiça.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> >No ensejo, cito jurisprudência deste Egrégio Tribunal, in verbis:&#160; &#160; </p> <p style="text-align: justify; padding-left: 150px;"> >DIREITO PROCESSUAL CIVIL. CONSUMIDOR. AÇÃO DECLARATÓRIA DE RELAÇÃO JURÍDICA C/C INDENIZAÇÃO. EMPRÉSTIMO CONSIGNADO. SENTENÇA EXTINTIVA SEM RESOLUÇÃO DE MÉRITO POR INDEFERIMENTO DA INICIAL. AUSÊNCIA DE DOCUMENTOS INDISPENSÁVEIS À PROPOSITURA DA AÇÃO. NÃO OCORRÊNCIA. OFENSA AO PRINCÍPIO DO ACESSO À JUSTIÇA E DO DEVIDO PROCESSO LEGAL. PRINCÍPIO DA INAFASTABILIDADE DA TUTELA JURISDICIONAL. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1 - O cerne da controvérsia recursal cinge-se em analisar se as várias condições impostas pelo juízo singular ao recebimento da inicial, cujo não atendimento ensejou a extinção terminativa do presente feito por indeferimento da exordial, encontram respaldo legal. 2 - No caso em tela, a parte autora juntou a documentação contendo a procuração, a sua carteira de identidade, CPF, comprovante de

Processo	0202222-85.2024.8.06.0029
	residência, extrato emitido pelo Instituto nacional do Seguro Social - INSS, com o histórico dos empréstimos bancários da demandante e, por fim, a notificação encaminhada ao promovido solicitando o envio do contrato e dos documentos pertinentes. Além disso, em relação à quantificação do dano material, não é exigível nesse caso, pois seria necessário que a parte tivesse acesso ao contrato para que pudesse fazer os cálculos adequadamente 3 - Sendo assim, entendese que o disposto nos artigos 319, III e 320 do CPC foi cumprido, uma vez que claramente existem empréstimos sendo descontados do benefício da autora, logo, não há que se falar em indeferimento da exordial. 4 - A prova da validade de tais empréstimos, por outro lado, é ônus do demandado, a qual deverá anexar os contratos que serviram de fundamento para os referidos descontos, bem como cópia dos depósitos relativos às quantias emprestadas pelo banco. Com efeito, não se pode olvidar que se trata a presente demanda de relação consumerista, havendo, assim, a possibilidade de inversão do ônus da prova em favor do consumidor. 5 - Nessa perspectiva, não há que se falar em indeferimento da inicial, sob pena de inviabilizar o acesso à justiça em decorrência de formalismo exacerbado e desnecessário, comprometendo a finalidade do processo, que é a satisfação do direito material, notadamente em se tratando de informações muitas vezes inacessíveis à própria parte. 6 - Por tais razões, impõe-se o acolhimento do apelo para anular a sentença recorrida por quebra dos princípios do acesso à justiça (art. 5º, XXXV, CF/88) e da primazia da sentença de mérito (arts. 4º e 6º, CPC/15), devendo os autos retornar ao primeiro grau para fins de retomada do processamento do feito, proferindo-se, ao final, novo julgamento. 7- Recurso de apelação conhecido e provido. Sentença anulada.(Apelação Cível n. 0200818-33.2023.8.06.0029, Rel. Desembargador INACIO DE ALENCAR CORTEZ NETO, 2ª Câmara Direito Privado, data do julgamento: 04/10/2023, data da publicação: 04/10/2023)&#160; </p> <p style="text-align: justify; padding-left: 150px;">APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. AÇÃO DECLARATÓRIA DE NULIDADE/INEXISTÊNCIA CONTRATUAL C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO EM FOLHA DE PAGAMENTO DE APOSENTADO (ANALFABETO). EXIGÊNCIA DE CONFIRMAÇÃO DE VERACIDADE DOS DOCUMENTOS PESSOAIS E RATIFICAÇÃO DOS PODERES OUTORGADOS AO REPRESENTANTE JURÍDICO EM PROCURAÇÃO. DEMANDA POTENCIALMENTE TEMERÁRIA. MEDIDAS HÍGIDAS E LEGÍTIMAS. ART. 139, IX, C/C ART. 425, §2º, DO CPC. EXTINÇÃO DO FEITO COM FULCRO NO ART. 485, I, DO CPC. AUSÊNCIA DE INTIMAÇÃO PESSOAL DA AUTORA, CONFORME PRECEITUA O ART. 485, §1º DO CPC. NULIDADE DA SENTENÇA. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 1. Trata-se de Apelação Cível interposta pelo apelante objurgando sentença proferida pelo Juízo da 2ª Vara da Comarca de Boa Viagem às fls. 196/199, que, nos autos de Ação Declaratória de Nulidade/Inexistência Contratual c/c Repetição do Indébito e Indenização por Danos Morais ajuizada em desfavor do Banco Bradesco S/A., extinguiu o feito sem resolução do mérito. 2. O juiz extinguiu o processo sem resolução de mérito com fulcro no art. 485, I, do CPC, por entender que a parte, qualificada como analfabeta, foi intimada para ratificar os termos da procuração e o pedido da inicial, bem como apresentar os documentos originais de identidade e comprovante de residência, com fulcro na Recomendação nº 01/2019/NUMOPEDE/CGJCE e art. 425, § 2º e art. 139, IX do CPC , mas não promoveu os atos ordenados. 3. A questão analisada diz respeito à necessidade da aplicação da Recomendação nº 01/2019/NUMOPEDE/CGJCE. No caso sub judice assiste razão ao juízo de 1º grau, pois a demanda envolve pessoa não alfabetizada, e a ação nos termos em que foi apresentada, possui perfil de "demanda temerária", com mesmo tema, petições quase todas idênticas, trazendo os mesmos fatos, como é o caso das ações que discutem empréstimos consignados. 4. O fundamento utilizado pelo magistrado singular para indeferir a petição inicial foi a falta de interesse processual em virtude de a apelante não ter comparecido pessoalmente à Secretaria da Vara com o fito de ratificar os termos da procuração e apresentar os documentos originais. 5. O processo foi extinto sem ser observada a prescrição do §1º do art. 485 do CPC, que determina a prévia intimação pessoal da parte autora nos casos de extinção por não promover os atos e as diligências que lhe incumbir, prevista no inciso III do aludido dispositivo legal, logo a sentença recorrida deve ser anulada para que haja o regular prosseguimento do feito, à luz da legislação processual. 6. Recurso conhecido e parcialmente provido. Sentença anulada. (Apelação Cível - 0201285-77.2022.8.06.0051, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento: 27/09/2023, data da publicação: 28/09/2023)&#160; </p> <p style="text-align: justify; padding-left: 150px;">APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE EMPRÉSTIMO C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO SOB O FUNDAMENTO DE AUSÊNCIA DE DOCUMENTO INDISPENSÁVEL À PROPOSITURA DA AÇÃO. PETIÇÃO INICIAL QUE ATENDE AOS REQUISITOS PREVISTOS NOS ARTIGOS 319 E 320 DO CPC/15. DOCUMENTOS REPUTADOS RELEVANTES ANEXADOS AO FEITO. OCORRÊNCIA. SENTENÇA

Processo	0202222-85.2024.8.06.0029
	ANULADA. RECURSO CONHECIDO E PROVIDO. 1 - O cerne da controvérsia reside na verificação da imprescindibilidade de juntada de extratos bancários pela promovente à propositura da ação de Declaratória de Inexistência de Empréstimo, a configurar requisito da petição inicial (arts. 319 e 320 do CPC). 2 - Na hipótese, a requerente anexou aos autos o extrato de consignação emitido pelo órgão de previdência, do qual é possível extrair a indicação do contrato em observação e os respectivos descontos; ademais, realizou requerimento administrativo perante o banco/demandado, visando obtenção de cópia do contrato do empréstimo questionado e não foi atendido, motivando o ajuizamento da presente ação. 3 - A demandante narrou a sua pretensão de forma clara e objetiva, descreveu causa de pedir próxima e remota, além de juntar os documentos reputados relevantes e indicar a prova que pretendia produzir, de modo a preencher todos os requisitos da petição inicial. Enquanto os extratos bancários são meios de prova, de modo que, sua ausência, eventualmente, ocasionaria a improcedência do pedido, não constituindo requisito indispensável à inicial. 4 - O indeferimento da inicial sob este fundamento, configura formalismo exacerbado e desnecessário, em nítido prejuízo aos princípios da primazia de julgamento de mérito e de acesso à justiça, razão pela qual deve a sentença ser anulada com retorno dos autos à origem. 5. Recurso conhecido e provido. (Apelação Cível - 0000034-13.2019.8.06.0148, Rel. Desembargador(a) HERACLITO VIEIRA DE SOUSA NETO, 1ª Câmara Direito Privado, data do julgamento: 16/06/2021, data da publicação: 16/06/2021) </p> <p style="text-align: justify; text-indent: 8%;"> Dessa forma, não há que falar em indeferimento da inicial pelas razões levantadas pelo juízo primevo, sob pena de inviabilizar o acesso à justiça em decorrência de formalismo exacerbado e desnecessário, comprometendo a finalidade do processo, que é a satisfação do direito material. </p> <p style="text-align: justify; text-indent: 8%;"> Por todo o exposto, conclui-se, portanto, que a petição inicial está devidamente instruída com os documentos indispensáveis à propositura da ação, nos termos insculpidos nos arts. 319 e 320, ambos do CPC, de modo que a anulação da sentença extintiva e o retorno dos autos ao Juízo de Origem, para regular processamento, é medida que se impõe. </p> <p style="text-align: justify; text-indent: 8%;"> ISTO POSTO, conheço do Recurso de Apelação manejado, para dar-lhe provimento, cassando a sentença extintiva e determinando o retorno dos autos à origem para prosseguimento do feito e, ao final, novo julgamento. </p> <p style="text-align: justify; text-indent: 8%;"> É como voto. </p> <p style="text-align: center; text-indent: 8%;">
 </p> <p style="text-align: center; text-indent: 8%;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p> <p style="text-align: center; text-indent: 8%;"> Relator </p> </div></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0629178-97.2023.8.06.0000
Número de ordem	208
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Confissão/Composição de Dívida
Polo ativo	HIDROTINTAS LTDA.
Advogado(s) - Polo ativo	CARLOS FERNANDO DE SIQUEIRA CASTRO - (CE14326-A)
Polo passivo	OZEAS DA SILVA ROSAS
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	0629178-97.2023.8.06.0000
Acórdão	 PROCESSO: 0629178-97.2023.8.06.0000 - AGRADO DE INSTRUMENTO (202) AGRAVANTE: HIDROTINTAS LTDA. AGRAVADO: OZEAS DA SILVA ROSAS EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PEDIDO DE ARRESTO ON-LINE ANTES DA CITAÇÃO. POSSIBILIDADE. TENTATIVAS FRUSTADAS DE LOCALIZAÇÃO DO DEVEDOR. APLICAÇÃO ANALÓGICA DO ART. 854 DO CPC. PRINCÍPIOS DA CELERIDADE, EFETIVIDADE E COOPERAÇÃO PROCESSUAL. RECURSO PARCIALMENTE PROVIDO. I. CASO EM EXAME 1. Agravo de instrumento interposto contra decisão que indeferiu pedido de arresto on-line de ativos financeiros do executado em ação de execução, sob fundamento de ausência de citação válida. O agravante sustenta a desnecessidade do exaurimento das tentativas de citação para a adoção da medida constritiva, requerendo a reforma da decisão. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se é cabível o arresto on-line de ativos financeiros do executado antes da citação, quando já frustrada tentativa de localização, sem necessidade de esgotamento de outras diligências. III. RAZÕES DE DECIDIR 3. O Superior Tribunal de Justiça consolidou entendimento de que, frustrada a tentativa de citação, é admissível o arresto executivo, inclusive na modalidade eletrônica, por aplicação analógica do art. 854 do CPC, não sendo necessário o esgotamento de todas as diligências. 4. Além disso, o art. 830 do CPC respalda a constrição de bens quando o devedor não é encontrado, e sua compatibilidade com o bloqueio eletrônico garante a efetividade do processo. Negar o arresto nessas circunstâncias fragilizaria a tutela jurisdicional e violaria os princípios da celeridade e da cooperação processual previstos nos arts. 4º e 6º do CPC. 5. No caso concreto, a execução tramita desde 2018 sem citação válida do executado, que se encontra em local incerto, havendo registro de outras execuções fiscais contra ele, o que reforça o risco de frustração da cobrança. Esse cenário justifica o deferimento do arresto on-line como meio de assegurar utilidade ao processo. 6. Todavia, quanto ao imóvel indicado, a ausência de comprovação de titularidade e de regularidade registral inviabiliza a medida constritiva, devendo o indeferimento ser mantido nessa parte. IV. DISPOSITIVO 7. Recurso parcialmente provido. DISPOSITIVOS RELEVANTES CITADOS: STJ, REsp n. 1.993.898/BA, Rel. Min. Ricardo Villas Bôas Cueva, 3ª Turma, j. 24.05.2022, DJe 30.05.2022; STJ, AgInt no AREsp n. 1.956.886/RJ, Rel. Min. Nancy Andrichi, 3ª Turma, DJe 04.05.2022. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para, no mérito, dar-lhe parcial provimento nos termos do voto do Relator. Fortaleza, data constante no sistema. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Relator DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA

Processo	0629178-97.2023.8.06.0000
	small;">&#160;</p> <hr style="font-family: arial, helvetica, sans-serif;" /> <p style="font-family: arial, helvetica, sans-serif;">&#160;</p> <p style="text-align: center;"> RELATÓRIO </p> <p style="text-align: justify; text-indent: 8%;"> Trata-se de Agravo de Instrumento interposto por HIDROTINTAS INDÚSTRIA DE TINTAS LTDA em face de interlocutória proferida pelo juízo da 9ª Vara Cível de Fortaleza, nos autos da Ação de Execução n. 0107369-81.2018.8.06.0001 que o agravante ajuizou em face de OZEAS DA SILVA ROSAS. </p> <p style="text-align: justify; text-indent: 8%;">A decisão agravada (ID 95361398 dos autos de origem) indeferiu pedido de arresto de ativos financeiros da conta do agravado (executado), nos seguintes termos, em suma: </p> <p style="text-align: justify; padding-left: 240px;"> [...] O executado ainda não foi citado, conforme se verifica no retorno infrutífero da Carta Precatória, segundo a quaa não obteve sucesso, motivo pelo qual não se pode autorizar o bloqueio em contas de titularidade do devedor, conforme pretendido. Assim, indefiro o pedido de arresto on line, e determino que a parte exequente diligencie e forneça o endereço da parte executada para fins de citação, no prazo de 5(cinco) dias, sob pena de indeferimento do seu pleito exordial. [...] </p> <p style="text-align: justify; text-indent: 8%;"> Neste recurso (ID 21904782), o agravante (exequente) busca a reforma da decisão. Para isso, argumenta que não é necessário o esgotamento de todos os meios de citação para que possa promover o arresto executivo. Pleiteou pela concessão de antecipação de tutela recursal, para o fim de se autorizar o arresto pretendido. No mérito, requer o provimento do recurso, com a consequente reforma da decisão </p> <p style="text-align: justify; text-indent: 8%;"> Preparo recursal recolhido, guia e comprovante de pagamento juntados nos IDs 21904776 e 21904944. </p> <p style="text-align: justify; text-indent: 8%;"> Em interlocutória (ID 21904741) deferi parcialmente o pedido liminar, apenas para autorizar o arresto na modalidade online, via sistema SISBAJUD. </p> <p style="text-align: justify; text-indent: 8%;"> Sem contrarrazões, parte agravada não citada na origem. </p> <p style="text-align: justify; text-indent: 8%;"> É o relatório. </p> <p style="text-align: justify; text-indent: 8%;"> Adotando o Pacto Nacional do Judiciário pela Linguagem Simples do CNJ, passo a proferir meu voto. </p> <p style="text-align: justify; text-indent: 8%;"> VOTO </p> <p style="text-align: justify; text-indent: 8%;"> Presentes os pressupostos de admissibilidade, conheço do agravo de instrumento, interposto com fundamento no parágrafo único do art. 1.015 do CPC. </p> <p style="text-align: justify; text-indent: 8%;"> Quanto ao mérito, a controvérsia limita-se ao acerto ou não da decisão que indeferiu pedido de arresto online das contas do executado, em razão da ausência de citação. </p> <p style="text-align: justify; text-indent: 8%;"> Pois bem. </p> <p style="text-align: justify; text-indent: 8%;"> Antecipo que é caso de parcial provimento &#160;do recurso. </p> <p style="text-align: justify; text-indent: 8%;"> Sobre o tema posto, o Superior Tribunal de Justiça tem adotado posicionamento no sentido de que " Frustrada a tentativa de localização do devedor para citação, é possível o arresto de seus bens na modalidade on-line, com base na aplicação analógica do art. 854 do CPC/15, sendo prescindível que haja o exaurimento das tentativas" (STJ, REsp n. 1.993.898/BA, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 24/5/2022, DJe de 30/5/2022). </p> <p style="text-align: justify; text-indent: 8%;"> Em outras palavras, frustrada a tentativa de citação do executado, admite-se o arresto de bens, independentemente de indícios ou evidências de que o(s) agravado(s) esteja(m) dilapidando seu patrimônio ou praticando atos que importem em prejuízo ou fraude contra credores, tais como transferências, onerações ou alienações de bens capazes de reduzi-los ao estado de insolvência. </p> <p style="text-align: justify; text-indent: 8%;"> Ademais, a possibilidade está disciplinada na legislação, mais especificadamente no art.&#160;830 do CPC, no qual dispõe que, frustrada a citação, ainda que pautada em uma única tentativa, é autorizado o arresto de bens pelo oficial de justiça responsável por localizar o executado. </p>

Processo	0629178-97.2023.8.06.0000
	<p style="text-align: justify; text-indent: 8%;">Outrossim, ainda que o dispositivo não mencione expressamente a modalidade online, a adoção da medida é plenamente cabível, por aplicação analógica do art. 854 do Código de Processo Civil, como se vê: <p style="text-align: justify; padding-left: 240px;">Art. 854. Para possibilitar a penhora de dinheiro em depósito ou em aplicação financeira, o juiz, a requerimento do exequente, sem dar ciência prévia do ato ao executado, determinará às instituições financeiras, por meio de sistema eletrônico gerido pela autoridade supervisora do sistema financeiro nacional, que torne indisponíveis ativos financeiros existentes em nome do executado, limitando-se a indisponibilidade ao valor indicado na execução <p style="text-align: justify; padding-left: 240px;"> <p style="text-align: justify; text-indent: 8%;">No presente caso, a ação executiva, em que pese ajuizada em 2018, corre ainda sem citação do executado, que se encontra em local incerto, havendo diversas tentativas frustradas de localizá-lo. Soma-se a esse contexto o fato de que o agravado figura como devedor em outras execuções fiscais, circunstância que evidencia risco concreto de frustração da tutela jurisdicional executiva. <p style="text-align: justify; text-indent: 8%;">Assim, a negativa quanto ao arresto on-line de ativos financeiros poderia importar em esvaziamento da efetividade da execução, o que se mostra incompatível com os princípios da celeridade e da efetividade processual (arts. 4º e 6º do CPC). Dessa forma, o indeferimento do pedido configuraria violação ao dever de cooperação processual, uma vez que impediria a adoção da medida mais adequada para assegurar a utilidade do processo. <p style="text-align: justify; text-indent: 8%;">Neste contexto, colacionado julgados desta Corte a respeito do assunto tratado no recurso, senão vejamos: <p style="text-align: justify; padding-left: 240px;">DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO DE EXECUÇÃO. DECISÃO QUE INDEFERIU O PEDIDO DE ARRESTO DE BENS PRÉVIO OU PRÉ-PENHORA. MEDIDA QUE PODE SER REALIZADA APÓS TENTATIVA INFRUTÍFERA DE CITAÇÃO DA PARTE EXECUTADA, NOS TERMOS DO ART. 830 C/C 854 DO CPC. DESNECESSIDADE DE EXAURIMENTO DAS TENTATIVAS DE CITAÇÃO. ARRESTO ON-LINE. POSSIBILIDADE. APLICAÇÃO ANALÓGICA DO ART. 854 DO CPC. APLICAÇÃO PRINCÍPIOS DA COOPERAÇÃO, CELERIDADE PROCESSUAL E EFETIVIDADE DA TUTELA JURISDICIONAL. PRECEDENTES STJ E TJCE. DECISÃO AGRAVADA REFORMADA. AGRAVO DE INSTRUMENTO CONHECIDO E PROVIDO. <p style="text-align: justify; padding-left: 240px;">1. O cerne da presente ação recursal consiste em apreciar se é cabível o deferimento do arresto prévio, na modalidade on-line, sem que tenha sido citado a parte exequida. <p style="text-align: justify; padding-left: 240px;">2. É cediço que o arresto é medida processual que visa garantir a execução, uma vez que se converterá em penhora se o executado não adimplir com sua obrigação, podendo tal medida ser aplicada na hipótese do devedor não ser encontrado. <p style="text-align: justify; padding-left: 240px;">3. Da leitura do art. 830 do CPC, depreende-se que a Lei Adjetiva Civil possibilita a efetivação de medidas assecuratórias da execução, embora não integralizada a relação processual. Assim, a aplicação do art. 830 do CPC está condicionada ao preenchimento de dois requisitos, conforme a própria dicção legal: não ser localizado o devedor, quando da tentativa de sua citação por mandado, e não serem encontrados bens penhoráveis, pelo oficial de justiça, naquela ocasião. <p style="text-align: justify; padding-left: 240px;">4. Não obstante exista divergência jurisprudencial a respeito do tema, conforme precedentes do Superior Tribunal de Justiça, é possível o arresto online antes da citação, fazendo-se desnecessário o esgotamento dos meios de localização do devedor. 5. In casu, vislumbra-se que existe risco de dano em face da parte Recorrente, uma vez que a conduta do Agravado, que busca evitar o recebimento dos autos de comunicação do Juízo, em flagrante violação ao dever de cooperação, probidade e boa-fé processuais, previsto nos artigos 5º e 6º do CPC, é indicativo de que possa, nesses mesmos desideratos, esvaziar-se dos bens pessoais que poderiam fazer frente ao pagamento do débito exequente, caso se confirme existente. <p style="text-align: justify; padding-left: 240px;">6. Com efeito, resta evidente que o arresto executivo prescinde da citação do executado, o que é uma condição apenas para a sua conversão em penhora, e não para a efetivação em si, circunstância que confere virtual probabilidade de provimento do recurso manejado pela parte Agravante. É que, embora o art. 830 do CPC, ao disciplinar o arresto executivo, isto é, a constrição de bens do executado quando ele não for encontrado para a citação, não preveja a expressamente a modalidade de indisponibilidade de ativos financeiros em conta bancária, é fato que também não o proíbe, o que autoriza o Juízo a decidir sobre a sua viabilidade, em razão da lacuna legislativa, podendo, nesse caso, ser aplicado por analogia o art. 854 do CPC. <p style="text-align: justify; padding-left: 240px;">7. Assim, percebe-se que a indisponibilidade de ativos financeiros depositados em conta bancária, ou bloqueio on-line como se convencionou chamar, trata-se também de uma medida preparatória à efetivação da penhora, tal qual o arresto executivo, porém nunca se confundido com a própria penhora em si. Tanto é assim, que antes que se efetive a conversão da indisponibilidade (bloqueio on-line) em penhora (penhora on-line), é necessário que haja a prévia intimação do executado para opor sua impugnação ao

Processo	0629178-97.2023.8.06.0000
	bloqueio, o que na doutrina processualista é chamado de mini-embargos, tudo conforme §§ 2º, 3º e 5º do art. 854 do CPC.&#160;
 8. Destarte, a indisponibilidade de ativos financeiros previstos no art. 854 do CPC enquadra-se, perfeitamente, nos contornos do instituto do arresto on-line de ativos financeiros, com previsão no art. 830 do mesmo diploma legal, sendo precisamente esse o entendimento conferido aos dispositivos pelo c. Superior Tribunal de Justiça, como se verifica dos julgamentos acima transcritos, que se amolda com perfeição ao caso em comento. Precedentes TJCE.&#160;
 9. Desse modo, em observância aos preceitos fundamentais estabelecidos na Constituição Federal e nas disposições do Código de Processo Civil, especialmente aos princípios da cooperação, celeridade processual e efetividade da tutela jurisdicional, tem-se que a reforma da decisão agravada é medida que se impõe. 10. Recurso CONHECIDO e PROVIDO.&#160;
 ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em CONHECER do recurso para lhe DAR PROVIMENTO, reformando a decisão de origem, nos termos do voto do eminente Relator. Fortaleza, data e hora indicadas pelo sistema. JOSÉ EVANDRO NOGUEIRA LIMA FILHO Presidente do Órgão Julgador DESEMBARGADOR FRANCISCO JAIME MEDEIROS NETO Relator
 (Agravado de Instrumento - 0627923-07.2023.8.06.0000, Rel. Desembargador(a) FRANCISCO JAIME MEDEIROS NETO, 4ª Câmara Direito Privado, data do julgamento:&#160; 17/12/2024, data da publicação:&#160; 17/12/2024)
 AGRAVO DE INSTRUMENTO. AÇÃO DE EXECUÇÃO. AUSÊNCIA DE CITAÇÃO. NÃO LOCALIZAÇÃO DOS DEVEDORES. EXAURIMENTO DAS TENTATIVAS. PRESCINDIBILIDADE. ARRESTO EXECUTIVO ELETRÔNICO. ADMISSIBILIDADE. PRECEDENTES DO STJ E DESTA CORTE. AGRAVO DE INSTRUMENTO CONHECIDO E NÃO PROVIDO. DECISÃO MANTIDA.&#160;
 1. De acordo com o art. 830 do CPC: "Se o oficial de justiça não encontrar o executado, arrestar-lhe-á tantos bens quantos bastem para garantir a execução", além de ser possível a solicitação de medidas urgentes pelo credor com a finalidade de satisfazer o seu crédito, nos termos do art. 799, VIII, do CPC. Estabelece ainda o art. 835, I, do CPC que o dinheiro, em espécie ou em depósito, ou aplicação financeira, é o primeiro na ordem de preferência da penhora.&#160;
 2. Diante das peculiaridades do caso, verifica-se que não há nulidade no fato de ter sido determinado o arresto executivo eletrônico em contas-correntes de titularidade dos agravantes.&#160;
 ACÓRDÃO: Vistos, relatados e discutidos estes autos 0626644-49.2024.8.06.0000, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer e negar provimento ao agravo de instrumento, mantendo a decisão objurgada de primeiro grau. Fortaleza, DESEMBARGADOR JOSÉ EVANDRO NOGUEIRA LIMA FILHO Presidente do Órgão Julgador e Relator
 (Agravado de Instrumento - 0626644-49.2024.8.06.0000, Rel. Desembargador(a) JOSE EVANDRO NOGUEIRA LIMA FILHO, 4ª Câmara Direito Privado, data do julgamento:&#160; 25/06/2024, data da publicação:&#160; 25/06/2024)
 CIVIL. PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO EM CUMPRIMENTO DE SENTENÇA. PRETENSÃO DA PARTE EXEQUENTE DE REALIZAR ARRESTO EXECUTIVO ELETRÔNICO DIANTE DA TENTATIVA FRUSTRADA DE LOCALIZAÇÃO DO EXECUTADO. ADMISSIBILIDADE. PRESCINDIBILIDADE DE EXAURIMENTO DAS TENTATIVAS DE CITAÇÃO. RECURSO CONHECIDO E PROVIDO.&#160;
 1. Aplica-se, ao caso, o entendimento sedimentado no âmbito do Superior Tribunal de Justiça, na reiteração de precedentes expressivos que adotaram diretiva segundo a qual "Frustrada a tentativa de localização do devedor para citação, é possível o arresto de seus bens na modalidade on-line, com base na aplicação analógica do art. 854 do CPC/15, sendo prescindível que haja o exaurimento das tentativas" (AgInt no AREsp n. 1.956.886/RJ, relatora Ministra Nancy Andrighi, Terceira Turma, DJe de 4/5/2022.) 2. Recurso conhecido e provido. Decisão reformada para autorizar, de logo, o arresto on-line sobre ativos financeiros da parte executada, nos termos do artigo 830 do CPC. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, acorda a Turma Julgadora da Primeira Câmara de Direito Privado do Egrégio Tribunal de Justiça do Estado do Ceará, por votação unânime, em conhecer e dar provimento ao Agravo de Instrumento interposto, na conformidade do voto proferido pelo Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Relator/Presidente do Órgão Julgador
 (Agravado de Instrumento - 0635621-98.2022.8.06.0000, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160; 12/04/2023, data da publicação:&#160; 12/04/2023) <p style="text-align: justify;">
 <p style="text-align: justify; text-indent: 8%;">Contudo, deve ser mantido o indeferimento quanto ao arresto do bem imóvel, tendo em vista que não existe comprovação da titularidade e da condição jurídica do referido bem, cabendo à instância de origem aprofundar a análise quanto à existência de registro formal em nome do executado, bem como à viabilidade jurídica da constrição. <p style="text-align: justify; text-indent: 8%;">Diante do exposto, firme nas razões acima delineadas, conheço o recurso para, no mérito,

Processo	0629178-97.2023.8.06.0000
	style="text-decoration: underline;"/>< strong="">dar-lhe parcial provimento </p> <p style="text-align: justify; text-indent: 8%;"> #160;Após o decurso de prazo, sem que nada tenha sido apresentado pelas partes, certifique-se o trânsito em julgado, dê-se baixa nos sistemas eletrônicos de acompanhamento processual e arquivem-se os autos.&#160;</p> <p style="text-align: justify; text-indent: 8%;"> Comunique-se ao d. Juízo da causa sobre o teor desta decisão.&#160;</p> <p style="text-align: justify; text-indent: 8%;"> Expedientes necessários.&#160;</p> <p style="text-align: justify; text-indent: 8%;"> E como voto. </p> <p style="text-align: justify; text-indent: 8%;"> Fortaleza, data constante no sistema.&#160;</p> <p style="text-align: center; ">
 DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA
 Relator </p> <p>
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Processo	0633788-11.2023.8.06.0000
Número de ordem	209
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Partilha
Polo ativo	GIULIANA IGNACIO TEIXEIRA CAVALCANTE
Advogado(s) - Polo ativo	FABIANO GIOVANI DE OLIVEIRA - (CE19466-A)
Polo passivo	FRANCISCO SILAS DUARTE CAVALCANTE
Advogado(s) - Polo passivo	TIAGO DAMASCENO DE ANDRADE - (CE16528-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0633788-11.2023.8.06.0000
Acórdão	 PROCESSO: 0633788-11.2023.8.06.0000 - AGRADO DE INSTRUMENTO (202) AGRAVANTE: G. I. T. C. AGRAVADO: F. S. D. C. PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA EMENTA: DIREITO DE FAMÍLIA. AGRADO DE INSTRUMENTO. AÇÃO DE DIVÓRCIO CUMULADA COM GUARDA, REGULAMENTAÇÃO DE CONVIVÊNCIA E ALIMENTOS. PRETENSÃO DE MAJORAÇÃO DOS ALIMENTOS PROVISÓRIOS. PLANILHA UNILATERAL. AUSÊNCIA DE COMPROVAÇÃO DOCUMENTAL DAS NECESSIDADES ALEGADAS. MANUTENÇÃO DA DECISÃO. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Agravo de instrumento interposto contra decisão que reduziu de cinco para quatro salários-mínimos o valor dos alimentos provisórios fixados em favor de filho menor, a serem pagos pelo genitor. A parte agravante pleiteia a majoração da verba para, no mínimo, seis salários-mínimos, alegando aumento das necessidades do alimentando e superior capacidade financeira do genitor. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se há fundamento jurídico e probatório para majorar os alimentos provisórios fixados em quatro salários-mínimos para o patamar não inferior a seis salários-mínimos. III. RAZÕES DE DECIDIR 3. A fixação dos alimentos deve observar o equilíbrio entre as necessidades do menor e a capacidade financeira dos pais, conforme os arts. 1.694 e 1.695 do Código Civil. 4. A majoração pretendida exige prova inequívoca da necessidade acrescida do alimentando ou da maior capacidade do alimentante, o que não ocorreu no caso em questão, pois as despesas alegadas foram apresentadas em planilha unilateral, sem documentação comprobatória. 5. Por outro lado, restou comprovado que o genitor já arca com despesas essenciais, como mensalidade escolar, plano de saúde, internet, empregadas domésticas e prestação de financiamento do imóvel em que residem a agravante e o filho, mostrando-se razoável e proporcional o valor fixado em primeiro grau, ainda mais pela falta de prova de desequilíbrio, não havendo justificativa para a majoração dos alimentos provisórios em sede recursal. 6. A decisão não impede futura revisão pelo juízo de origem, caso demonstrada alteração superveniente na situação financeira das partes ou nas necessidades do menor. IV. DISPOSITIVO 7. Recurso desprovido. Dispositivos relevantes citados: CF/1988, art. 227; CC, arts. 1.694 e 1.695; CPC, arts. 1.015, parágrafo único, e 1.026, § 2º. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para, no mérito, negar-lhe provimento nos termos do voto do Relator. Fortaleza, data constante no sistema. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator Trata-se de Agravo de Instrumento interposto por G. I. T.

Processo	0633788-11.2023.8.06.0000
	C objetivando reforma da decisão interlocutória proferida pelo juízo da 4ª Vara de Família de Fortaleza, nos autos da Ação de Divórcio, Guarda, Regulamentação de Convivência e Alimentos n. 0217913-97.2022.8.06.0001, ajuizada na origem pela agravante em face de F.S.D.C.&#160;</p><p style="text-align: justify; text-indent: 8%;"> A decisão agravada (ID 147604817 dos autos de origem) reduziu os alimentos provisórios fixados anteriormente em desfavor do agravado, a serem pagas ao filho menor, nos seguintes termos:</p><p style="text-align: justify; padding-left: 240px; "> [...] Do exposto, e em consonância com o parecer ministerial de fls. 185/187, bem como diante das comprovações das despesas do menor, fixo a verba alimentar provisória em 4 (quatro) salários-mínimos, valor a ser pago até o dia 10 (dez) de cada mês, mediante depósito em conta bancária de titularidade da genitora do infante.&#160;</p><p style="text-align: justify; padding-left: 240px; ">
 <p style="text-align: justify; text-indent: 8%; "> Inconformada, neste recurso (ID 21917487), a agravante relata que o juízo de origem reduziu o valor dos alimentos provisórios, anteriormente fixados em 05 (cinco) salários-mínimos, para 04 (quatro) salários-mínimos, após a apresentação de defesa pelo agravado.&#160;</p><p style="text-align: justify; text-indent: 8%; "> Sustenta que a diminuição não observou o trinômio necessidade, possibilidade e razoabilidade, considerando que, desde o ajuizamento da ação, sua situação financeira sofreu agravamento, com decréscimo em sua renda, bem como aumentaram as necessidades do menor, notadamente em razão do reajuste da mensalidade escolar.</p><p style="text-align: justify; text-indent: 8%; "> Argumenta, ainda, que o agravado exerce a profissão de cirurgião plástico e auferir renda mensal muito superior à sua, que atualmente é de R\$ 7.761,48, razão pela qual teria ampla capacidade contributiva para o sustento do filho.</p><p style="text-align: justify; text-indent: 8%; "> Requer, a título de antecipação de tutela recursal e também no mérito, o recebimento do presente agravo nos efeitos ativo e suspensivo, a fim de que seja reformada a decisão agravada, elevando-se o valor dos alimentos provisórios para patamar não inferior a 06 (seis) salários-mínimos.</p><p style="text-align: justify; text-indent: 8%; "> Ausente o recolhimento do preparo recursal, tendo em vista que a agravante é beneficiária da justiça gratuita.</p><p style="text-align: justify; text-indent: 8%; "> Em decisão interlocutória (ID 21917455), foi indeferido o pleito liminar formulado no recurso.</p><p style="text-align: justify; text-indent: 8%; "> O agravado apresentou contrarrrazões (ID 21917464), nas quais pugna pela manutenção da decisão, sustentando que assegura ao filho o mesmo padrão de vida, especialmente em razão da guarda alternada, e destacando que a agravante não comprovou documentalmente os valores alegados como despesas do menor, não havendo fundamento para a majoração pretendida.</p><p style="text-align: justify; text-indent: 8%; "> O Ministério Público, em parecer (ID 21917473), manifestou-se pelo conhecimento e desprovemento do recurso.</p><p style="text-align: justify; text-indent: 8%; "> É o relatório.</p><p style="text-align: justify; text-indent: 8%; "> Adotando o Pacto Nacional do Judiciário pela Linguagem Simples do CNJ , passo a proferir meu voto. </p><p style="text-align: justify; ">
 <p style="text-align: center; "> <u>VOTO</u> </p><p style="text-align: justify; ">
 <p style="text-align: justify; text-indent: 8%; "> Presentes os pressupostos de admissibilidade, conheço do agravo de instrumento, interposto com fundamento no parágrafo único do art. 1.015 do CPC.&#160;</p><p style="text-align: justify; text-indent: 8%; "> Quanto ao mérito, a controvérsia restringe-se a verificar o acerto, ou não, da decisão que reduziu os valores fixados a título de alimentos provisórios. Em outras palavras, importa analisar se há fundamento jurídico e probatório para a majoração da verba alimentar, atualmente estabelecida em 04 (quatro) salários-mínimos, em benefício do filho menor, para o patamar não inferior a 06 (seis) salários-mínimos.</p><p style="text-align: justify; text-indent: 8%; "> Importante frisar que a análise feita nesta seara recursal ocorre de forma superficial e precária, típica de sua natureza, haja vista que acontece sem o esgotamento da produção probatória que as partes possuem direito no processo da origem, sendo feita tão somente no que foi apresentado até então e sem prejuízo que novos fatos, argumentos e provas induzam a entendimento distinto.&#160;</p><p style="text-align: justify; text-indent: 8%; "> Pois bem.</p><p style="text-align: justify; text-indent: 8%; "> Antecipo que é caso de <u>não provimento</u> do recurso.</p><p style="text-align: justify; text-indent: 8%; "> </p>

Processo	0633788-11.2023.8.06.0000
	small;">Em se tratando de litígios que tangenciam interesses de crianças e adolescentes, mormente quando se cuida de fixação de alimentos, o julgador deve manter em mira, a todo o tempo, o interesse do infante envolvido na discussão. Trata-se de obrigação decorrente da doutrina da absoluta prioridade, extraído do art. 227 da Constituição Federal, e aplicado de forma transversal em todo o ordenamento jurídico naquilo que atine a tutela do interesse de crianças e adolescentes, inclusive, naturalmente, em demandas que versam sobre direito de família.</p><p style="text-align: justify; text-indent: 8%;"> Partindo dessa premissa, é sabido que a obrigação alimentar decorre do poder familiar, cabendo a ambos os genitores o dever de assegurar ao alimentando o necessário para sua manutenção. Tal obrigação deve ser compreendida em seu sentido mais amplo, abrangendo todos os meios essenciais para a subsistência digna do beneficiário.</p><p style="text-align: justify; text-indent: 8%;"> O valor dos alimentos, por sua vez, deve atender exclusivamente às necessidades vitais básicas do alimentando, observando o padrão e as possibilidades econômicas de cada família. A pensão alimentícia, portanto, não se destina à formação de patrimônio, mas sim a garantir a subsistência, veja:</p><p style="text-align: justify; padding-left: 240px;">Art. 1.694. Podem os parentes, os cônjuges ou companheiros pedir uns aos outros os alimentos de que <strong style="font-size: small;">necessitem para viver de modo compatível com a sua condição social, inclusive para atender às necessidades de sua educação.&#160;
<strong style="font-size: small;">§1º Os alimentos devem ser fixados na proporção das necessidades do reclamante e dos recursos da pessoa obrigada.&#160;
[...]</p><p style="text-align: justify; padding-left: 240px;"> Art. 1.695. São devidos os alimentos quando quem os pretende não tem bens suficientes, nem pode prover, pelo seu trabalho, à própria manutenção, e aquele, de quem se reclamam, pode fornecê-los, sem desfalque do necessário ao seu sustento. [Grifo nosso]</p><p style="text-align: justify;">
</p><p style="text-align: justify; text-indent: 8%;"> Deve-se, portanto, observar com rigor o trinômio necessidade/possibilidade/proporcionalidade, tanto no momento da fixação quanto na eventual revisão do valor dos alimentos. Embora não haja critério absoluto para a definição do quantum da pensão alimentícia, é dever do magistrado atentar-se às condições econômicas do alimentante e às necessidades concretas do alimentando, de modo a garantir a subsistência digna de ambos, em consonância com o princípio da dignidade da pessoa humana.</p><p style="text-align: justify; text-indent: 8%;"> A fixação do valor ideal, assim, exige apreciação criteriosa das provas constantes nos autos, permitindo ao julgador aferir, com maior precisão, a real situação financeira das partes envolvidas.</p><p style="text-align: justify; text-indent: 8%;"> No caso dos autos, verifica-se que a decisão de primeiro grau reduziu os alimentos provisórios para 04 (quatro) salários-mínimos, após análise das manifestações e documentos apresentados pelo genitor (agravado). E razão não assiste à agravante em pretender a majoração do valor.</p><p style="text-align: justify; text-indent: 8%;"> Isso porque, para que haja a autorização de uma majoração dos alimentos, ainda que provisórios, exige-se a prova inequívoca da possibilidade financeira do alimentante e/ou da necessidade do alimentando, nos termos do art. 1.694 do Código Civil.&#160;</p><p style="text-align: justify; text-indent: 8%;"> Entretanto, a genitora não logrou êxito em comprovar as necessidades alegadas</p><p style="text-align: justify;">, limitando-se a apresentar planilha unilateral de despesas que, segundo afirma, alcançariam o montante de R\$ 6.614,44, porém sem qualquer documentação idônea que ampare tais valores. Constam, por exemplo, gastos com material escolar de R\$ 250,00 mensais, vestuário de R\$ 80,00, aulas particulares no importe de R\$ 250,00, além de cursos, odontologia e lazer, todos desacompanhados de comprovantes que atestem sua efetiva realização e habitualidade.</p><p style="text-align: justify; text-indent: 8%;"> De outro lado, restou demonstrado nos autos que o genitor agravado já arca, mensalmente, com despesas essenciais em favor do menor, tais como mensalidade escolar de R\$ 2.354,00, plano de saúde no valor de R\$ 499,29, internet no valor de R\$ 130,44 além de despesas com empregadas domésticas na quantia de R\$ 1.570,00 (ID 147604796 dos autos de origem).</p><p style="text-align: justify; text-indent: 8%;"> Ademais, o recorrido comprovou ainda custear integralmente a prestação do financiamento do apartamento em que residem a agravante e o filho, no valor de R\$ 2.510,11 (ID 147604804 dos autos de origem), encargo que não pode ser desconsiderado quando da análise do quantum alimentar, ainda mais quando há também nos autos elementos que constatarem que a guarda do filho encontra-se alternada entre ambos os genitores.</p><p style="text-align: justify; text-indent: 8%;"> Dessa forma, não há comprovação de gastos a maior que justifiquem o pedido de majoração, sequer é possível a análise do pleito diante da ausência de lastro probatório.</p><p style="text-align: justify; text-indent: 8%;"> Neste contexto, seguem jurisprudências desta Corte, em

Processo	0633788-11.2023.8.06.0000
	casos semelhantes: DIREITO DE FAMÍLIA. AGRAVO DE INSTRUMENTO. ALIMENTOS. BINÔMIO NECESSIDADE/POSSIBILIDADE. AUSÊNCIA DE PROVAS IDÔNEAS PARA MAJORAÇÃO. RECURSO DESPROVIDO.&#160;
 I. CASO EM EXAME&#160;
 1. Agravo de instrumento interposto por Bárbara Carla Santos da Silva contra decisão interlocutória proferida no curso de ação de alimentos c/c fixação de guarda e regulamentação de convivência, ajuizada por Antônio Nilson Bernardino Silva Júnior, na qual o juízo de origem fixou alimentos em 80% do salário-mínimo, deferiu guarda compartilhada com residência da menor com a genitora e regulamentou o direito de visitas do pai. A agravante sustenta que está desempregada, não possui condições de arcar com as despesas da menor e requer a majoração dos alimentos para 100% do salário-mínimo, além do custeio integral das despesas escolares, plano de saúde, vestuário e medicamentos pelo &#160;
 II. QUESTÃO EM DISCUSSÃO&#160;
 2. A questão em discussão consiste em definir se estão presentes os elementos fáticos e jurídicos que autorizem a majoração dos alimentos fixados em 80% do salário-mínimo para 100%, com inclusão de outras despesas, com base no binômio necessidade &#160;
 III. RAZÕES DE DECIDIR&#160;
 3. A análise de alimentos deve observar o binômio necessidade do alimentado e possibilidade do alimentante, nos termos dos arts. 1.694, §1º, e 1.695 do Código Civil, o que exige ponderação proporcional entre os direitos fundamentais envolvidos, sem promover enriquecimento sem &#160;
 4. A presunção da necessidade da menor, por sua tenra idade (06 anos), não é suficiente, por si só, para justificar a majoração dos alimentos, sendo necessária a comprovação efetiva da impossibilidade da genitora em prover qualquer parcela e da aptidão financeira do genitor para arcar com a totalidade dos custos.&#160;
 5. A planilha apresentada pela agravante (fls. 05/06), bem como a carteira de trabalho sem nenhum preenchimento (fls. 15/20), não se revestem de força probatória suficiente para afastar a conclusão do juízo de origem, especialmente diante da alegação do agravado de ausência de vínculo de trabalho fixo e existência de outros &#160;
 6. A revisão do valor fixado demandaria dilação probatória para aferição mais precisa da real capacidade econômica do alimentante e da veracidade das despesas alegadas, providência incompatível com a via estreita do agravo de instrumento.
 7. A jurisprudência consolidada nos tribunais pátrios rechaça a majoração de alimentos sem prova cabal da alteração do trinômio necessidade-possibilidade-proporcionalidade, impondo a manutenção do quantum arbitrado enquanto não demonstrado o desequilíbrio.
 8. A obrigação alimentar deve ser compartilhada entre os genitores, na proporção de suas possibilidades, conforme o art. 1.703 do Código Civil, não se podendo presumir, nesta fase, que o genitor deva suportar integralmente os &#160;
 IV. DISPOSITIVO E TESE&#160;
 9. Recurso desprovido.&#160;
 Tese de julgamento: 1. A majoração dos alimentos exige demonstração inequívoca da alteração do binômio necessidade possibilidade, sendo necessária dilação probatória para averiguar a real necessidade de majoração do quantum adequado. 2. A obrigação alimentar é solidária entre os genitores e deve observar a proporção de seus recursos, nos termos do art. 1.703 do Código Civil. 3. A simples alegação de desemprego da genitora não autoriza a imposição integral dos encargos ao genitor sem prova concreta da real situação econômica de ambas as partes. Dispositivos relevantes citados: CC, arts. 1.694, §1º; 1.695; 1.703; CPC/2015, art. 300.&#160;
 Jurisprudência relevante citada: TJCE, AgInt no AI 0632194-25.2024.8.06.0000, Rel. Des. Everardo Lucena Segundo, 2ª Câmara Direito Privado, j. 30.10.2024; TJCE, AgInt no AI 0632603-98.2024.8.06.0000, Rel. Des. Marcos William Leite de Oliveira, 3ª Câmara Direito Privado, j. 21.03.2025; TJDF, AI 0763482-94.2019.8.07.0016, Rel. Des. Diaulas Costa Ribeiro, 8ª Turma Cível, j. 10.12.2020. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso para lhe negar provimento, nos termos do voto do relator. Fortaleza, data da assinatura digital JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator
 (Agravo de Instrumento - 0624034-74.2025.8.06.0000, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do &#160;
 julgamento:&#160; 18/06/2025, data da publicação:&#160; 18/06/2025 [Grifo nosso]

 DIREITO DE FAMÍLIA. AGRAVO DE INSTRUMENTO. AÇÃO DE

Processo	0633788-11.2023.8.06.0000
	INVESTIGAÇÃO DE PATERNIDADE C/C ALIMENTOS. FIXAÇÃO DE ALIMENTOS PROVISÓRIOS. BINÔMIO NECESSIDADE/POSSIBILIDADE. A AUSÊNCIA DE PROVAS CONCRETAS DA MAIOR CAPACIDADE FINANCEIRA DO ALIMENTANTE. IMPOSSIBILIDADE DE MAJORAÇÃO EM SEDE RECURSAL. RECURSO DESPROVIDO. I. CASO EM EXAME Agravo de instrumento interposto contra decisão proferida em ação de investigação de paternidade cumulada com alimentos, na qual foram fixados alimentos provisórios em 20% (vinte por cento) do salário-mínimo equivalente a R\$ 303,60 (trezentos e três reais e sessenta centavos). A parte agravante pleiteia a majoração do valor, sob o argumento de que o genitor possui melhores condições financeiras do que aquelas consideradas pelo juízo a quo. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em definir se estão presentes elementos probatórios suficientes para justificar a majoração dos alimentos provisórios fixados na origem, à luz do binômio necessidade do alimentando e possibilidade do alimentante. III. RAZÕES DE DECIDIR O exame da admissibilidade do recurso confirma o preenchimento dos pressupostos recursais extrínsecos e intrínsecos, razão pela qual o recurso é conhecido. A fixação de alimentos, provisórios ou definitivos, deve observar o binômio necessidade do alimentando e possibilidade do alimentante, conforme dispõem os arts. 1.694, §1º, 1.695 e 1.699 do Código Civil. Os alimentos provisórios foram fixados em valor proporcional às necessidades da menor e às condições financeiras presumidas do genitor, com base nos indícios de paternidade e elementos constantes dos autos até o momento. A alegação da agravante acerca de suposta maior capacidade financeira do agravado não está acompanhada de provas robustas e incontroversas, sendo imprescindível dilação probatória, inviável na via estreita do agravo de instrumento. Conforme entendimento consolidado nos tribunais pátrios, a majoração da verba alimentar demanda comprovação inequívoca da modificação no binômio necessidade/possibilidade, o que deve ser apurado em sede de instrução probatória sob o crivo do contraditório e da ampla defesa. IV. DISPOSITIVO E TESE Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, em que figuram as partes acima referidas. Acordam os Senhores Desembargadores integrantes da 4ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará em CONHECER do presente recurso, para NEGAR-LHE PROVIMENTO, tudo nos termos do voto do Desembargador Relator, observadas as disposições de ofício. Fortaleza/CE, data da assinatura eletrônica DESEMBARGADOR FRANCISCO BEZERRA CAVALCANTE Relator (Agravado de Instrumento - 0621168-93.2025.8.06.0000, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento: 17/06/2025, data da publicação: 17/06/2025) [Grifo nosso] DIREITO CIVIL. PROCESSUAL CIVIL. FAMÍLIA. AGRAVO DE INSTRUMENTO. ALIMENTOS PROVISÓRIOS. FILHO MAIOR UNIVERSITÁRIO. PEDIDO DE MAJORAÇÃO. MATRÍCULA E MENSALIDADES DE CURSO SUPERIOR. AUSÊNCIA DE PROVAS SUFICIENTES. RECURSO DESPROVIDO. I. Caso em exame Trata-se de agravo de instrumento interposto na qual agravante pleiteia pela fixação de alimentos provisórios, estes indeferidos pelo juízo a quo, em razão da ausência de elementos que evidenciem concessão da liminar, antes de ouvida parte contrária. Agravante requer a majoração das verbas alimentícias anteriormente fixadas, além do pagamento de sua matrícula e mensalidade do curso de graduação em andamento. II. Questão em discussão Há duas questões em discussão: (i) verificar se estão presentes os requisitos para a fixação liminar de alimentos provisórios em patamar superior ao acordado; (ii) determinar se há comprovação suficiente da matrícula e do valor da mensalidade universitária da agravante, apta a justificar o deferimento imediato do pedido de custeio educacional. III. Razões de decidir 3. A obrigação alimentar entre pais e filhos maiores persiste quando comprovada a necessidade do alimentando, especialmente durante a frequência em curso universitário, sendo ônus do requerente a comprovação da necessidade de receber os alimentos. 4. Os alimentos devem observar o trinômio necessidade, possibilidade e proporcionalidade, conforme previsão do art. 1.694 do Código Civil e entendimento consolidado na jurisprudência pátria. 5. No caso concreto, o pedido de majoração dos alimentos provisórios não está acompanhado de elementos suficientes que demonstrem de forma clara as necessidades da agravante, tampouco os rendimentos do agravado, sendo inadequado deferi-lo em sede de tutela de urgência.

Processo	0633788-11.2023.8.06.0000
	/> 6. A agravante não juntou comprovante de matrícula nem demonstrativo de custos da mensalidade do curso superior, inviabilizando o deferimento do pedido de pagamento das despesas educacionais de forma imediata.&#160;
 7. A prudência recomenda a formação do contraditório e a instrução probatória antes de eventual alteração no valor dos alimentos fixados, sobretudo diante da ausência de prova robusta que sustente a urgência pretendida.&#160;
 IV. Dispositivo&#160;
 7. Agravo de Instrumento conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade dos votos, em conhecer o Agravo de Instrumento, para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data indicada no sistema DESEMBARGADOR EVERARDO LUCENA SEGUNDO Relator
 (Agravo de Instrumento - 0638028-09.2024.8.06.0000, Rel. Desembargador(a) EVERARDO LUCENA SEGUNDO, 2ª Câmara Direito Privado, data do julgamento:&#160; 04/06/2025, data da publicação:&#160; 04/06/2025) [Grifo nosso]</p><p style="text-align: justify;">
 </p><p style="text-align: justify; text-indent: 8%;"> Dessa forma, percebo que a recorrente não comprovou que o valor fixado esteja desproporcional, nem desarrazoado, o que me leva a conclusão de que o valor arbitrado atende de forma razoável ao trinômio possibilidade-necessidade proporcionalidade.</p><p style="text-align: justify; text-indent: 8%;"> Evidentemente, tal quantia poderá ser modificada a qualquer tempo pelo juízo de origem, desde que a autora demonstre, de forma concreta, eventual alteração nas necessidades do alimentando ou nos custos de vida que demande revisão do montante fixado. A análise mais aprofundada dos elementos probatórios poderá proporcionar uma visão mais clara e precisa da capacidade financeira do agravado e das necessidades do alimentante, permitindo uma revisão equitativa e adequada do valor dos alimentos.</p><p style="text-align: justify; text-indent: 8%;"> Diante do exposto, conheço o recurso e, no mérito, NEGO-LHE PROVIMENTO, mantendo inalterada a decisão agravada.</p><p style="text-align: justify; text-indent: 8%;"> Comunique-se ao d. juízo singular sobre o teor desta decisão, para os devidos fins.&#160;</p><p style="text-align: justify; text-indent: 8%;"> Advertem-se as partes quanto aos termos do art. 1.026, § 2º, do CPC, para o caso de interposição de eventuais embargos de declaração protelatórios, cuja multa não está abarcada pela gratuidade processual (art. 98, § 4º, do CPC).&#160;&#160;</p><p style="text-align: justify; text-indent: 8%;"> É como voto.</p><p style="text-align: justify; text-indent: 8%;"> Fortaleza – CE, data constante no sistema</p><p style="text-align: justify;">
 </p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA
 Relator</p><p>&#160;</p><p style="text-align: center;"> &#160;</p></td>
Processo	0125923-30.2019.8.06.0001
Número de ordem	210
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Reconhecimento / Dissolução
Polo ativo	MARIA PEREIRA DA SILVA
Advogado(s) - Polo ativo	JOSE OSMAR CELESTINO JUNIOR - (CE33490-A)
Polo passivo	YURI MATIAS DE LIMA
Advogado(s) - Polo passivo	MARIA DA CONCEICAO SILVA FEIJAO - (CE35117-A) SASKIA CRISTHINE BEDE CAMILO - (CE8847-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0125923-30.2019.8.06.0001
	class="TextRun SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 27px;" lang="PT-BR" xml:lang="PT-BR">1. Embargos de declaração opostos por Maria Pereira da Silva contra acórdão da 1ª Câmara de Direito Privado que negou provimento à apelação interposta na Ação de Reconhecimento de União Estável Post Mortem ajuizada em face de Yuri Matias de Lima. A embargante sustenta omissão e contradição no acórdão, afirmando que não foram considerados os períodos de convivência após a separação. Requer efeitos modificativos. &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. QUESTÃO EM DISCUSSÃO &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. A questão em discussão consiste em verificar se o acórdão embargado incorreu em omissão ou contradição quanto à análise da continuidade da convivência entre a autora e o falecido, de modo a justificar a integração ou modificação do julgado por meio de embargos de declaração. &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. RAZÕES DE DECIDIR &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;

Processo	0125923-30.2019.8.06.0001
	direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. Os embargos de declaração são cabíveis apenas para sanar obscuridade, eliminar contradição, suprir omissão ou corrigir erro material, conforme o art. 1.022 do CPC. &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. O acórdão embargado enfrentou expressamente as razões da apelação, apreciando o marco inicial da união estável e os requisitos legais previstos no art. 226, § 3º, da CF/1988, art. 1º da Lei 9.278/1996 e art. 1.723 do CC. &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. A decisão concluiu pela ausência de provas da continuidade da união estável após a separação em 2016, afastando a configuração da entidade familiar. &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. Não há omissão nem contradição a ser sanada, mas tentativa de rediscutir matéria de mérito já apreciada, hipótese repelida pela Súmula nº 18 do TJ/CE. &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -

Processo	0125923-30.2019.8.06.0001
	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 27px;" lang="PT-BR" xml:lang="PT-BR"> 7. O magistrado não está obrigado a enfrentar todos os argumentos das partes, bastando fundamentação clara e suficiente, conforme entendimento consolidado do STJ. &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-numeric: normal; background-color: transparent; color: windowtext; text-align: justify;"> IV. DISPOSITIVO E TESE &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-numeric: normal; background-color: transparent; color: windowtext; text-align: justify;"> 8. Embargos de declaração desprovidos &#160; </p> </div> <div class="OutlineElement Ltr SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW196128989 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-numeric: normal; background-color: transparent; color: windowtext; text-align: justify;"> Tese de julgamento:

Processo	0125923-30.2019.8.06.0001
	Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câmara Direito Privado, j. 12.04.2023. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e, no mérito, negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO Trata-se de embargos de declaração opostos por Maria Pereira Da Silva em face de

Processo	0125923-30.2019.8.06.0001
	acórdão proferido pela 1ª Câmara de Direito Privado, sob a minha relatoria, que negou provimento ao recurso de apelação interposto pelo recorrente contra a sentença proferida nos autos da Ação De Reconhecimento De União Estável Post Mortem, movida pela autora em face de Yuri Matias De Lima Yuri Matias De Lima Em suas razões recursais, o embargante alega a existência de omissão e contradição no julgado, sustentando que juiz não foi capaz de analisar e considerar o tempo ral de convivência dela com o falecido mesmo depois da separação , pois aduz que a convivência era nítida na sociedade , continua e duradoura.

Processo	0125923-30.2019.8.06.0001
	BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Por fim, roga pelo conhecimento e provimento dos embargos, para que seja provimento para efeitos modificativos. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Foram apresentadas contrarrazões sob o ID. 21930457 , requer que sentença seja mantida. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o que importa relatar. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="TextRun SCXW72374642 BCX0" style="-webkit-user-

Processo	0125923-30.2019.8.06.0001
	drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 27px;" lang="PT-BR" xml:lang="PT-BR"> Conheço do recurso, uma vez que presentes os requisitos extrínsecos e extrínsecos de admissibilidade. Passo ao exame do mérito. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerling: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Os embargos de declaração, previstos no art. 1.022, do CPC, são cabíveis contra qualquer decisão judicial e objetivam: I esclarecer obscuridade ou eliminar contradição; II -suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material, sendo igualmente cabíveis para o prequestionamento de matéria constitucional e legal para fins de interposição de Recursos Especial e Extraordinário. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerling: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Essa modalidade de recurso proporciona uma nova oportunidade para que o Julgador, prolator de decisão atacada, revise o julgado à vista de possíveis defeitos sanáveis pontuados pelos Embargantes. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerling: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Quando se vislumbrar que a mácula, ao ser detectada, venha causar alteração no dispositivo da decisão, de maneira que sejam modificadas ou invertidas as conclusões originárias, há que se reconhecer os embargos de declaração com efeitos modificativos ou infringentes. &#160; </p> </div> <div class="OutlineElement Ltr

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	SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Nesse sentido, ressalta-se que o acórdão embargado não é omissão, nem obscuro quanto aos motivos pelos quais negou provimento ao recurso de apelação no ID 21931638 > posto que trata de forma assertiva e clara sobre a reconhecimento de união estável, veja-se:&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 189px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Conforme se extrai do relatório, a apelante pretende a reforma da sentença, para que o feito seja julgado totalmente procedente, com o reconhecimento da união estável que afirma ter mantido com o falecido de julho de 2004 até o dia 29/03/2019, tendo a sentença reconhecido a união estável a partir de 2005, quando o casal passou a morar junto em virtude do nascimento da filha comum, até março de 2016.&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 189px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> A respeito do tema, disciplina o § 3º, do artigo 226 da Constituição Federal que:&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 236px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline;

Processo	0125923-30.2019.8.06.0001
	baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> § 3º. Para efeito da proteção do Estado, é reconhecida a união estável entre o homem e a mulher como entidade familiar, devendo a lei facilitar sua conversão em casamento.&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 189px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> De conformidade com o que determina a disposição constitucional transcrita, para o reconhecimento da união estável como entidade familiar, necessário se faz a convivência duradoura, pública e contínua, entre pessoas legalmente desimpedidas, com o objetivo de constituição de família.&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 189px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> O art. 1º da Lei 9.278 de 10.05.1996, bem como o art. 1.723, caput, do Código Civil, que disciplinam a união como entidade preconizada pela Carta Magna como entidade familiar, estão assim redigidos:&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 236px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 1º É reconhecida como entidade familiar a convivência duradoura, pública e contínua, de um homem e uma mulher, estabelecida com objetivo de constituição de família. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 236px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">

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	baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ()&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 236px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 1.723. É reconhecida como entidade familiar a união estável entre o homem e a mulher, configurada na convivência pública, contínua e duradoura e estabelecida com o objetivo de constituição de família.&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 189px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Os requisitos postos em destaque, indispensáveis à caracterização da união estável devem estar presentes simultânea e concomitantemente. Neste particular, em que pesem as alegações da apelante, no meu sentir, as provas colacionadas aos autos não foram suficientes para ilidir os fundamentos da sentença hostilizada. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 189px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...] &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 189px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">

Processo	0125923-30.2019.8.06.0001
	line-height: 18px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Ficou evidenciado que o referido rapaz, que inclusive teve prole com a filha da apelante, passou a frequentar a residência, não tendo ficado claro se ali passou a residir, mas sua presença era frequente, o que motivou o então companheiro da apelante a sair do apartamento, voltando a residir em uma casa, que anteriormente havia sido lar da família, fato ocorrido em março de 2016. A controvérsia se instaurou com relação à continuidade ou não da união estável a partir do momento que o de cujos deixou o lar para morar em outro endereço até o advento da sua morte, ou seja, 29 de março de 2019. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Assim, não se observa a presença dos vícios previstos no art. 1.022, do CPC. O que se nota, a bem da verdade, é a clara intenção do embargante de rever o entendimento proposto por esta relatoria pela via equivocada, o que é vedado pela Súmula nº 18: São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ademais, é entendimento consolidado do c. STJ que o magistrado não está obrigado a se manifestar acerca de todos os fatos, teses e argumentos expostos pelas partes, apenas sobre aqueles capazes de modificar a conclusão adotada, veja-se: &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-

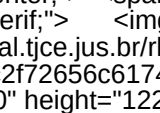
Processo	0125923-30.2019.8.06.0001
	highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> PROCESSO PENAL. AGRAVO REGIMENTAL EM RECURSO ESPECIAL. ESTUPRO DE VULNERÁVEL. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA DOS FUNDAMENTOS DA DECISÃO AGRAVADA. SÚMULA 182/STJ. ALEGADA INSUFICIÊNCIA DE PROVAS. REVOLVIMENTO DO CONJUNTO FÁTICO-PROBATÓRIO. IMPOSSIBILIDADE. SÚMULA 7/STJ. PALAVRA DA VÍTIMA. ESPECIAL RELEVÂNCIA. PRINCÍPIO DO LIVRE CONVENCIMENTO MOTIVADO. SÚMULA N. 83/STJ. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I - O julgador não é obrigado a se manifestar sobre todas as teses suscitadas pelas partes na hipótese em que já há provas suficientes a amparar a condenação. Ademais, o princípio do livre convencimento motivado autoriza o magistrado a divergir do laudo psicológico, desde que sua convicção esteja amparada em outros elementos de prova, como ocorreu na espécie. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II - Segundo a orientação desta Corte, para que haja a transposição do óbice da Súmula n. 7, STJ, o agravo precisa demonstrar em que medida as teses não exigem a alteração do quadro fático delineado pelo Tribunal local, não bastando a assertiva genérica de que o recurso visa à reavaliação das provas. &#160; </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select:

Processo	0125923-30.2019.8.06.0001
	<p>text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ="" >iii="" -="" 83,="" <span="" a="" alterar="" capazes="" class="NormalTextRun SCXW72374642 BCX0" contemporâneos="" da="" de="" de<="" demonstração="" do="" exige="" indicação="" julgado,="" lang="PT-BR" modificação="" n.="" ou="" precedentes="" span="" stj,="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;" superação="" supervenientes="" súmula="" xml:lang="PT-BR"> distinguishing<="" class="NormalTextRun SpellingErrorV2Themed SCXW72374642 BCX0" span="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;"> ,="" autos.<="" caso="" class="NormalTextRun SCXW72374642 BCX0" dos="" no="" não="" o="" ocorreu="" que="" span="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;"> &#160;<="" class="EOP SCXW72374642 BCX0" span="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 18px;"> </p> <div >="" >iv="" -="" 182,="" <p="" <span="" a="" agravada="" as="" assertivas="" ausência="" class="NormalTextRun SCXW72374642 BCX0" conhecimento="" controvérsia.="" da="" de="" decisão="" do="" dos="" e="" específica="" foram="" fundamentos="" impugnação="" incidência="" insuficientes="" inviabiliza="" lang="PT-BR" mérito="" n.="" o="" os="" ou="" pormenorizada="" precedentes.<="" preenchidos="" que="" recurso,="" reiteração="" requisitos="" sendo="" span="" stj.="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;" súmula="" todos="" xml:lang="PT-BR"> &#160;<="" class="EOP SCXW72374642 BCX0" span="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 18px;"> <div >="" >agravamento="" <p="" <span="" class="NormalTextRun SCXW72374642 BCX0" conhecido.<="" lang="PT-BR" não="" regimental="" span="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;" xml:lang="PT-BR"> &#160;<="" class="EOP SCXW72374642 BCX0" span="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 18px;"> <div >="" ><="" <p="" <span="" class="NormalTextRun SCXW72374642 BCX0" lang="PT-BR" span="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;" xml:lang="PT-BR"> </div> </div> </div>

Processo	0125923-30.2019.8.06.0001
	repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;";>tal razão, encontra-se o acórdão eivado de vício. 2. Dito isto, adianta-se que não assistem razão os aclaratórios . Isso porque, pela análise da decisão guerreada, é perceptível que todos os pontos relevantes para a resolução da controvérsia foram adequadamente explicados, tendo o improvimento da apelação se dado após a observação da legislação médica pertinente, bem como de notas técnicas e os pormenores do caso concreto. 3. Além disso, importa salientar que o julgador não é obrigado a se manifestar sobre todos os pontos trazidos pelos sujeitos, desde que se expresse de maneira clara, objetiva e fundamentada, o que, ressalte-se, ocorreu. 4. Posto isto, nota-se uma tentativa de rediscussão de matéria de mérito já resolvida e, a ser assim, torna-se incabível o recurso manejado. Com fulcro na súmula n. 18 do TJ/CE, rejeita-se, pois, os aclaratórios opostos. 5. Embargos de declaração conhecidos e improvidos. (Embargos de Declaração Cível - 0271987-72.2020.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160; 12/04/2023, data da publicação:&#160; 12/04/2023) Grifou-se. &#160;</p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;";> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;";> Diante do exposto, conheço do recurso, mas nego-lhe provimento <span class="TextRun SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-

Processo	0125923-30.2019.8.06.0001
	variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 27px;" lang="PT-BR" xml:lang="PT-BR"> , em decorrência da ausência de quaisquer dos vícios elencados no art. 1.022, do CPC. #160;</p> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kering: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ficam as partes, desde logo, advertidas de que a oposição de embargos de declaração, com nítido intuito protelatório, ensejará a aplicação da multa prevista no art. 1.026, §§2º e 3º, do CPC/2015. #160; </p> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kering: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o voto que submeto à apreciação dos meus eminentes pares. #160; </p> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kering: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Fortaleza - CE, data da assinatura digital. #160; </p> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.2px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kering: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="TextRun MacChromeBold SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; -webkit-

Processo	0125923-30.2019.8.06.0001
	font-smoothing: antialiased; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 18px; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR"> Desembargador CARLOS AUGUSTO GOMES CORREIA </p> </div> <div class="OutlineElement Ltr SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW72374642 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relator </p> </div></div><p> </p> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	0231432-13.2020.8.06.0001
Número de ordem	211
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	FUNDACAO CESP
Advogado(s) - Polo ativo	GISELE ALVES DE LIMA - (SP336279)
Polo passivo	ANTONIO SOARES FERREIRA
Advogado(s) - Polo passivo	DAVI FERREIRA FROTA - (CE41989-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0231432-13.2020.8.06.0001
Acórdão	 PROCESSO: 0231432-13.2020.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: FUNDACAO CESP APELADO: ANTONIO SOARES FERREIRA EMENTA: PROCESSO CIVIL. EMBARGOS DE DECLARAÇÃO. AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS EM VIRTUDE DE DESCUMPRIMENTO DE CONTRATO DE SEGURO DE VIDA. QUESTÃO CONTROVERTIDA SOBRE LEGITIMIDADE PASSIVA QUE SE CONFUNDE COM MÉRITO. SUPOSTA OBSCURIDADE E OMISSÃO A SER ELIMINADA NA DECISÃO RECORRIDA. AUSÊNCIA DE CONSTATAÇÃO. PROPÓSITO DE REAPRECIACÃO DA MATÉRIA. INEXISTÊNCIA DOS PRESSUPOSTOS DO ARTIGO 1.022 DO CPC. INCIDÊNCIA DA SÚMULA Nº 18 DO TJCE. REDISCUSSÃO. INADEQUAÇÃO. NÃO PROVIMENTO. 1 - Trata-se de Embargos de Declaração opostos por FUNDAÇÃO CESP, contra acórdão de ID 21942032, no julgamento da Apelação Cível interposta pelo mesmo. 2 - Ao pretender o reexame da controvérsia, trazendo à baila questão de mérito, configura a inadequação da via recursal eleita, a teor do que preceitua a Súmula n.º 18 deste Tribunal. 3 - Embargos de Declaração conhecido e não provido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e negar provimento recurso, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Relator RELATÓRIO Trata-se de Embargos de Declaração opostos por FUNDAÇÃO CESP, contra acórdão de ID 21942032, no julgamento da Apelação Cível interposta pelo mesmo. Nestes aclaratórios, o embargante aponta suposta omissão, quanto ser impossível a VIVEST restabelecer seguro sobre o qual não detém controle, pugnando que fosse sanado o vício apontado e ao final reformada a decisão atacada. Contrarrrazões apresentadas, ID 21942038. É o Relatório. VOTO

Processo	0231432-13.2020.8.06.0001
	O recurso é tempestivo. Presentes os demais pressupostos de admissibilidade, conheço dos embargos. Nego provimento a esta impugnação. Ressalte-se que o recurso de embargos declaratórios possui hipótese de cabimento, especificamente atrelada à finalidade integrativa de aperfeiçoamento das decisões judiciais, que tem expressa previsão no art. 1.022 do atual Código de Processo; quando houver, na sentença ou acórdão, obscuridade, contradição, erro material ou no caso de omissão de ponto sobre o qual devia pronunciar-se o juiz ou tribuna, a saber: I - esclarecer obscuridade ou eliminar contradição; II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material. Parágrafo único. Considera-se omissa a decisão que: I - deixe de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicável ao caso sob julgamento; II - incorra em qualquer das condutas descritas no art. 489, § 1º. Analisando-se a decisão atacada, verifica-se que o ponto apontado como omissa foi devidamente analisado no acórdão, inobstante às alegações do embargante, evidencia-se que a fundamentação da decisão foi abordada em todos os seus aspectos e de maneira coerente e fundamentada, sobre a legitimidade passiva da VIVEST que se confundia com o próprio mérito, decidindo que o embargante não comprovou ter possibilitado ao embargado manter o seguro com a nova seguradora, sendo o responsável por manter comunicação eficaz entre seguradora e segurado e deve responder por isso, de acordo com o que vem sendo sedimentado nos tribunais superiores sobre a matéria, representando a presente insurgência mero inconformismo com o decurso recorrido, que foi exarado em consonância com os ditames legais que regem a matéria e como posicionamento professado pela jurisprudência pátria sobre o tema. EMBARGOS DE DECLARAÇÃO NO AGRAVO REGIMENTAL NA AÇÃO RESCISÓRIA. AUSÊNCIA DE OMISSÃO, CONTRADIÇÃO, OBSCURIDADE OU ERRO MATERIAL. REDISCUSSÃO DA MATÉRIA. EFEITOS INFRINGENTES. IMPOSSIBILIDADE. SUPOSTA OMISSÃO QUANTO AO VALOR DA CAUSA. INOCORRÊNCIA. PEDIDO DE CONCESSÃO DA GRATUIDADE DE JUSTIÇA E DE PARCELAMENTO DO VALOR DAS CUSTAS REFERENTES ÀS AÇÕES RESCISÓRIAS 2.615/DF E 2.699/RS. NECESSIDADE ECONÔMICA NÃO DEMONSTRADA. CONSTITUCIONALIDADE DO DEPÓSITO PARA INGRESSO EM JUÍZO. EMBARGOS DE DECLARAÇÃO REJEITADOS. (...) O valor da causa em ação rescisória, em regra, deve corresponder ao da ação originária atualizada monetariamente, salvo quando houver manifesta discrepância entre o valor atribuído à ação originária e o benefício econômico pretendido na rescisória, hipótese na qual deve prevalecer este último. No caso em tela, existe flagrante discrepância entre o valor atribuído à causa e o benefício econômico que se busca, não restando dúvidas quanto à incorreção no valor da causa. Precedentes. (...) (AR 2699 AgR-ED, Relator(a): Min. RICARDO LÉWANDOWSKI, Tribunal Pleno, julgado em 22/02/2019, PROCESSO ELETRÔNICO DJe-047 DIVULG 08-03-2019 PUBLIC 11-03-2019) RECURSO ESPECIAL. AÇÃO RESCISÓRIA. ASSISTÊNCIA JUDICIÁRIA GRATUITA. IMPUGNAÇÃO PROCESSADA NOS AUTOS PRINCIPAIS. POSSIBILIDADE, ANTE A AUSÊNCIA DE DEMONSTRAÇÃO DO PREJUÍZO. INSTRUMENTALIDADE DO PROCESSO. REVOGAÇÃO DO BENEFÍCIO. REVISÃO NESTA SEDE. IMPOSSIBILIDADE. SÚMULA N.º 07/STJ. DEPÓSITO PRÉVIO. AUSÊNCIA DE RECOLHIMENTO. EXTINÇÃO DA AÇÃO SEM APRECIÇÃO DO MÉRITO. INTIMAÇÃO

Processo	0231432-13.2020.8.06.0001
	PESSOAL DA PARTE. DESNECESSIDADE. SÚMULA 83/STJ. (...) Segundo entendimento da Segunda Seção desta Corte, '[...] a falta ou insuficiência do depósito prévio motiva o indeferimento da petição inicial, conduzindo à extinção da ação rescisória sem apreciação do mérito, nos termos do art. 267, I, do CPC (...)' (REsp XXXXX/ES, Rel. Ministro PAULO DE TARSO SANSEVERINO, TERCEIRA TURMA, julgado em 18/12/2012, DJe 04/02/2013)&#160; </p><p style="text-align: justify; padding-left: 120px;"> "RESCISÓRIA Sentença homologatória de acordo Ação anulatória como demanda cabível Indeferimento da petição inicial Processo extinto sem julgamento do mérito." (Ação Rescisória nº 516.780.4/0-00, Nona Câmara de Direito Privado, Rel. Des. Piva Rodrigues, v.u., j. 31.07.2007).&#160; </p><p> Sobre o tema, vale referir alguns precedentes desta colenda Câmara:&#160;</p><p style="text-align: justify; padding-left: 120px;"> EMBARGOS DE DECLARAÇÃO EM AGRAVO DE INSTRUMENTO. REDISCUSSÃO DO MÉRITO. INEXISTÊNCIA. AFRONTA AO ART. 1.022, I, DO CPC. DECISÃO MANTIDA. Na casuística, toda a matéria trazida em sede de embargos de declaração foi devidamente analisada e fundamentada. Inexiste quaisquer das hipóteses do art. 1.022, do CPC. É desnecessário que o acórdão contenha expressa menção a todos os dispositivos legais e jurídicos invocados pelas partes, se os pontos levantados foram devidamente apreciados, como na hipótese em apreço. Embargos de Declaração conhecidos, mas rejeitados. (Embargos de Declaração Nº 0622561-68.2016.8.0000/50000, 4ª Câmara de Direito Privado, TJ- CE, Relator: Des. Francisco Bezerra Cavalcante, Julgado em 04/07/2017). PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO PREQUESTIONAMENTO. OMISSÃO, CONTRADIÇÃO, OBSCURIDADE ou erro material. INEXISTÊNCIA. CORREÇÃO MONETÁRIA. ÍNDICE. DECISÃO EXTRAPETITA. NÃO OCORRÊNCIA. A CORREÇÃO MONETÁRIA é consectário lógico e ex lege da condenação, devendo o julgador agir, nesse seara, até mesmo de ofício. PRECEDENTES STJ. REDISCUSSÃO. IMPOSSIBILIDADE. SUMULA 18 TJCE. RECURSO CONHECIDO E IMPROVIDO.(Embargos de Declaração Nº 0837558-40.2014.8.0001/50000, 4ª Câmara de Direito Privado, TJ- CE, Relator: Des. Durval Aires Filho, Julgado em 25/07/2017).&#160;&#160; </p><p style="text-align: justify;"> Ao pretender o reexame da controvérsia, trazendo à baila questão de mérito, configura a inadequação da via recursal eleita, a teor do que preceitua a Súmula nº 18 deste Tribunal:&#160; </p><p style="padding-left: 120px; text-align: justify;"> "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada". </p><p style="text-align: justify;"> Ante o exposto, conheço dos aclaratórios para negar-lhes provimento e mantenho, na íntegra, a decisão embargada.&#160; </p><p style="text-align: justify;"> É o voto.&#160; </p><div style="text-align: center;"> CARLOS AUGUSTO GOMES CORREIA </div><div style="text-align: center;"> DESEMBARGADOR RELATOR </div>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p></div>
Processo	3000999-46.2018.8.06.0221
Número de ordem	212
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Defeito, nulidade ou anulação
Polo ativo	DISTRIBUIDORA VIA COSMETICOS LTDA
Advogado(s) - Polo ativo	THALES DE OLIVEIRA MACHADO - (CE29558-A) JOSE TELES BEZERRA JUNIOR - (CE25238-A)
Polo passivo	BANCO SANTANDER (BRASIL) S.A. DISTRIBUIDORA VIA COSMETICOS LTDA
Advogado(s) - Polo passivo	ARMANDO MICELI FILHO - (RJ48237-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	3000999-46.2018.8.06.0221
Acórdão	 PROCESSO: 3000999-46.2018.8.06.0221 - APELAÇÃO CÍVEL (198) APELANTE: DISTRIBUIDORA VIA COSMETICOS LTDA APELADO: BANCO SANTANDER (BRASIL) S.A., DISTRIBUIDORA VIA COSMETICOS LTDA Ementa DIREITO CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. DUPLICATA PROTESTADA. ENDOSSO-MANDATO. LEGITIMIDADE PASSIVA DO BANCO ENDOSSATÁRIO. NEGLIGÊNCIA CONFIGURADA. RESPONSABILIDADE SOLIDÁRIA RECONHECIDA. QUANTUM INDENIZATÓRIO MANTIDO. RECURSO PARCIALMENTE PROVIDO. I. CASO EM EXAME Apelação cível interposta pela parte autora contra sentença da 4ª Vara Cível da Capital que julgou parcialmente procedentes os pedidos formulados em ação declaratória de inexistência de débito c/c reparação por danos morais. A insurgência recursal busca: (i) o reconhecimento da legitimidade passiva do Banco Santander S/A, em razão da responsabilidade solidária prevista no Código de Defesa do Consumidor; e (ii) a majoração do valor da indenização por danos morais para R\$ 15.000,00. II. QUESTÃO EM DISCUSSÃO Há duas questões em discussão: - definir se o Banco Santander S/A, atuando como endossatário por endosso-mandato, possui legitimidade passiva para responder por protesto indevido de duplicata; - verificar se o valor da indenização por danos morais deve ser majorado em face do protesto irregular. III. RAZÕES DE DECIDIR O banco que apresenta título a protesto, mesmo na condição de mandatário, deve responder pelos danos decorrentes se não comprova a diligência exigida para aferir a regularidade da cártula. O ônus de demonstrar que atuou apenas como mandatário cabe à instituição financeira, sendo indevida a transferência dessa carga probatória ao consumidor. A negligência da instituição ao protestar duplicata desacompanhada de comprovação de entrega das mercadorias caracteriza ato culposo próprio, ensejando sua responsabilidade solidária. A jurisprudência do STJ, em recurso repetitivo (REsp nº 1.063.474/RS), e a Súmula nº 476 consolidam que o endossatário-mandatário responde por protesto indevido quando age culposamente ou extrapola seus poderes. O protesto indevido de título de crédito acarreta dano moral in re ipsa, configurando violação aos direitos da personalidade. O valor fixado a título de indenização por danos morais (R\$

Processo	3000999-46.2018.8.06.0221
	6.000,00) observa os princípios da razoabilidade e proporcionalidade, cumprindo função compensatória e pedagógica, não se justificando majoração. IV. DISPOSITIVO E TESE Recurso parcialmente provido. Tese de julgamento O banco endossatário responde solidariamente pelos danos causados quando age com negligência, ainda que figure formalmente como mandatário. O protesto indevido de duplicata configura dano moral presumido, prescindindo de prova do prejuízo. A fixação do quantum indenizatório por danos morais deve observar os critérios de proporcionalidade e razoabilidade, evitando enriquecimento indevido e garantindo caráter compensatório e pedagógico. Dispositivos relevantes citados CF/1988, art. 5º, X; CC, arts. 186 e 927; CDC, art. 14; CPC/2015, art. 373, II. Jurisprudência relevante citada STJ, Resp nº 1.063.474/RS, Rel. Min. Nancy Andrighi, 2ª Seção, j. 22.10.2008 (recurso repetitivo); STJ, Súmula nº 476; STJ, AgInt no AREsp 1.288.642/RS, Rel. Min. Ricardo Villas Bôas Cueva, 3ª Turma, j. 17.12.2018; STJ, AgRg nos EDcl no REsp 795.425/RS, Rel. Min. Ricardo Villas Bôas Cueva, 3ª Turma, j. 12.02.2015; TJCE, Apelação Cível nº 0268056-61.2020.8.06.0001, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara Direito Privado, j. 27.03.2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará por uma de suas turmas e por idade dar lhe parcial provimto, nos termos do voto do Relator. Fortaleza, data constante no sistema. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO &#160; Tratam os autos de apelação cível interposta por ALDEMILIAM PATRÍCIA DA CONSTA MENEZES - ME contra sentença pro ferida pelo Juízo da 4

Processo	3000999-46.2018.8.06.0221
	Vara Cível da Comarca de Fortaleza, nos autos da ação declaratória de inexistência de débito c/c reparação por danos morais ajuizada p elo apelante em face de H.C DE SOUZA COMÉRCIO DE COSMÉTICOS e BANCO SANTANDER (BRASIL) S.A , ora apelados , que julgou procedente a demanda autoral, nos seguintes termos: </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> "Ante todo o exposto e o que mais dos autos consta, acolho a preliminar suscitada pelo Banco Santander S/A, excluindo-o do feito por ausência de legitimidade passiva, a teor do contido no art. 485, VI do CPC, bem como JULGO PROCEDENTE EM PARTE o pedido autoral, nos termos do artigo 487, I do CPC, declarando inexistente o débito reclamado no feito e condenar H.C DE SOUZA COMÉRCIO DE COSMÉTICOS para que proceda a retirada do nome da parte requerente dos cadastros de inadimplentes e ao pagamento do valor de R\$ 6.000,00 (seis mil reais) a título de danos morais, como juros de mora de 1% a contar da citação e correção monetária pelo INPC a contar do arbitramento. </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> "Sucumbente, condeno a parte requerida vencida ao pagamento das custas, despesas processuais e honorários advocatícios, que fixo em 10% sobre o valor da causa, atualizado pelo INPC-A a partir da citação, nos termos do artigo 85, § 2º do CPC. </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> "Publique-se. Registre-se. Intimem-se. "</p><p style="line-height: 150%; text-indent: 8%;" align="justify"> "Irresignada com o julgado , a parte autora interpôs Embargos Declaratórios (ID. 21944607 – 21945338), rejeitados pelo Juízo a quo (ID. 21944610), e, posteriormente, com recurso apelatório (ID. 21945303) , postulando o reconhecimento d a necessária legitimidade passiva do Banco Santander S/A, diante de sua responsabilidade solidária, conforme estabelece o Código de defesa do Consumidor, bem como, a majoração dos danos morais arbitrados para R\$ 15.000,00 (quinze mil reais).</p><p style="line-height: 150%; text-indent: 8%;" align="justify"> "Contrarrrazões de HC DE SOUSA COMÉRCIO DE COSMÉTICOS (ID. 21945300) e do BANCO SANTANDER BRASIL S/A (id. 21944606).</p><p style="line-height: 150%; text-indent: 8%;" align="justify"> "Parecer do Ministério Público (ID. 21943886), sem manifestação de mérito. </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> "Audiência de conciliação (ID. 21944602), sem êxito na composição de acordo. </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> "É o relatório. </p><p style="line-height: 150%; text-align: center;"> "VOTO </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> "Presentes os pressupostos recursais de admissibilidade intrínsecos (legitimidade, interesse, cabimento e inexistência de fato impeditivo ou extintivo) e extrínsecos (tempestividade, preparo e regularidade formal), conheço do recurso. </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> "Cuida-se de Recurso de Apelação Cível interposto pela parte autora, impugnando sentença proferida pelo Juízo da 4ª Vara Cível desta Capital, que julgou procedentes em parte os pedidos iniciais formulados na ação declaratória de inexistência de débito c/c reparação por danos morais, pugnando pelo reconhecimento da necessária legitimidade passiva do Banco Santander S/A, diante de sua responsabilidade solidária, conforme estabelece o Código de defesa do Consumidor, bem como, a majoração dos danos morais arbitrados para R\$ 15.000,00 (quinze mil reais).</p><p style="line-height: 150%; text-indent: 8%;" align="justify"> "</p>

Processo	3000999-46.2018.8.06.0221
	style="font-size: 12pt;"/> Da legitimidade passiva do Banco Santander Brasil S/A </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> Entendo que neste ponto o recurso do autor merece acolhimento. Explico. </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> A legitimidade do banco promovido é evidente, porquanto quem, por meio do endosso, apresenta título para protesto, é parte legítima para figurar no polo passivo de ação visando o seu cancelamento, bem como ser indenizado por danos morais decorrentes do referido protesto. </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> Em se tratando de endosso-mandato, a princípio, não pode a instituição financeira, simples portadora do título, ser responsabilizada por eventuais prejuízos causados porque o endosso-mandato não transfere a propriedade do título, tampouco a titularidade do crédito. Ao contrário, apenas constitui o endossatário-mandatário como procurador do endossante. </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> No entanto, excepcionalmente, responderá o endossatário pelo protesto indevido e pela consequente inscrição do nome da parte nos cadastros de inadimplentes. </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> Ressalte-se que a duplicata é um título de crédito causal e deve estar acompanhada da nota fiscal e do comprovante de entrega das mercadorias para que seja considerada válida. </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> É inequívoco que a instituição financeira portadora do título, ainda que na condição de mandatária, deve verificar a regularidade da duplicata, sobretudo antes de apresentá-la a protesto. </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> Dessa forma, cabe divergir do entendimento esposado pelo magistrado a quo de ilegitimidade passiva do banco apelado, sob o argumento de que a instituição financeira não teria extrapolado os poderes de mandatário ou praticado ato culposos, pois, apenas conduziu a cártula de crédito mencionado nos autos ao protesto cartorário em conformidade com o mandato a ele outorgado pelo alegado credor (empresa apelada), uma vez que a instituição financeira não acostou nenhum documento comprovando que ela agiu somente na qualidade de mandatária, sendo certo que era ônus do banco, não do autor, e dele não se desincumbiu. </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> Ora, com ou sem contrato de endosso-mandato, ao banco apelado caberia comprovar que tomara as cautelas necessárias para aferir a regularidade/higidez do título. Ao agir de forma negligente, deve responder pelos danos causados à parte autora. </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> Com efeito, é inegável o dever do mandatário de averiguar a procedência da cártula ao recebê-la do endossante, principalmente para se resguardar em caso de protestá-la em nome do suposto credor. </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> Registre-se que a Segunda Seção do Superior Tribunal de Justiça, no julgamento do REsp nº 1.063.474/RS, sob o rito dos recursos repetitivos, firmou o entendimento de que "só responde por danos materiais e morais o endossatário que recebe título de crédito por endosso-mandato e o leva a protesto se extrapola os poderes de mandatário ou em razão de ato culposos próprio, como no caso de apontamento depois da ciência acerca do pagamento anterior ou da falta de higidez da cártula." </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> Significa afirmar que o apelante deve responder por ter participado do evento danoso contra a parte autora. Nesse sentido a Súmula nº 476 do STJ: " O endossatário de título de crédito por endosso-mandato só responde por danos decorrentes de protesto indevido se extrapolar os poderes de mandatário." </p><p style="line-height: 150%; text-indent: 8%;," align="justify"> Nessa toada, colho da jurisprudência do STJ: </p><p style="line-height: 150%; padding-left: 150px;," align="justify"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITOS CONJUGADA COM DANOS MORAIS. ART. 1.022 DO CPC/2015. VIOLAÇÃO. NÃO OCORRÊNCIA. RAZÕES DISSOCIADAS. SÚMULA Nº 284/STF. DUPLICATA. PROTESTO INDEVIDO. ENDOSSO-MANDATO. CULPA. NECESSIDADE. RESPONSABILIDADE DO BANCO. REEXAME DE PROVAS. SÚMULA Nº 7/STJ. DIVERGÊNCIA JURISPRUDENCIAL. ANÁLISE PREJUDICADA. 1. Recurso especial interposto contra acórdão publicado na vigência do Código de Processo Civil de 2015 (Enunciados Administrativos nºs 2 e 3/STJ). 2. Não há

Processo	3000999-46.2018.8.06.0221
	falar em negativa de prestação jurisdicional se o tribunal de origem motiva adequadamente sua decisão, solucionando a controvérsia com a aplicação do direito que entende cabível à hipótese, apenas não no sentido pretendido pela parte. 3. Estando as razões do recurso dissociadas do que decidido no acórdão recorrido, é inadmissível o inconformismo por deficiência na sua fundamentação. Aplicação da Súmula nº 284 do Supremo Tribunal Federal. 4. A Segunda Seção do Superior Tribunal de Justiça, no julgamento do REsp nº 1.063.474/RS, sob o rito dos recursos repetitivos, firmou o entendimento de que apenas responde por danos materiais e morais o banco endossatário que recebe o título de crédito mediante endosso-mandato e o leva a protesto, extrapolando os poderes de mandatário, ou em razão de ato culposo próprio. 5. Na hipótese, rever o entendimento do tribunal de origem, para aferir a existência de conduta culposa do banco, demandaria a análise de circunstâncias fático-probatórias dos autos, procedimento inviável em recurso especial em virtude do óbice da Súmula nº 7/STJ. 6. Consoante iterativa jurisprudência desta Corte, a necessidade do reexame da matéria fática impede a admissão do recurso especial tanto pela alínea a quanto pela alínea c do permissivo constitucional. 7. Agravo interno não provido. (STJ - AgInt no AREsp: 1288642 RS 2018/0104718-1, Relator: Ministro RICARDO VILLAS BOAS CUEVA, Data de Julgamento: 17/12/2018, T3 - TERCEIRA TURMA, Data de Publicação: DJe 01/02/2019). AGRAVO REGIMENTAL NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. DIREITO CIVIL. AÇÃO INDENIZATÓRIA. PROTESTO INDEVIDO. FALTA DE HIGIDEZ DO TÍTULO. DUPLICATA SEM ACEITE E CARENTE DE CAUSA SUBJACENTE. ENDOSSO-MANDATO. INSTITUIÇÃO FINANCEIRA MANDATÁRIA. NEGLIGÊNCIA AFERIDA. LEGITIMIDADE PASSIVA. REEXAME DE PROVAS. IMPOSSIBILIDADE. SÚMULA Nº 7/STJ. 1. Só responde por danos materiais e morais o endossatário que recebe título de crédito por endosso-mandato e o leva a protesto se extrapola os poderes de mandatário ou em razão de ato culposo próprio, como no caso de apontamento depois da ciência acerca do pagamento anterior ou da falta de higidez da cártula. 2. No caso, as instâncias de cognição plena concluíram que a instituição financeira ora recorrente recebeu o título por endosso-mandato e agiu culposamente ao apontá-lo a protesto sem atentar para sua falta de higidez, sendo, portanto, parte legítima para figurar no polo passivo da demanda indenizatória. 3. A revisão do entendimento do tribunal de origem requer o reexame de provas, medida obstada, em sede de recurso especial, em virtude da incidência da Súmula nº 7/STJ. 4. Agravo regimental não provido. (STJ - AgRg nos EDcl no REsp: 795425 RS 2005/0185610-3, Relator: Ministro RICARDO VILLAS BOAS CUEVA, Data de Julgamento: 12/02/2015, T3 - TERCEIRA TURMA, Data de Publicação: DJe 23/02/2015). EMENTA: AGRAVO REGIMENTAL. RECURSO ESPECIAL. PROTESTO. DUPLICATA. ENDOSSO MANDATO. LEGITIMIDADE. INSTITUIÇÃO FINANCEIRA. ATUAÇÃO NEGLIGENTE. NÃO PROVIMENTO. No caso em apreço, a instituição financeira levou a protesto duplicata recebida via endosso mandato desprovida de aceite e desacompanhada de documentos comprobatórios da prestação do serviço ou entrega da mercadoria, o que torna legítima para a ação indenizatória e de sustação do protesto face à sua atuação negligente. Agravo Regimental a que se nega provimento. (STJ. AgRg no Resp/RS. Relatoria de Maria Isabel Gallotti, DJe de 23.05.2012). Nesse sentido segue entendimento deste e. Tribunal: PROCESSO CIVIL. APELAÇÃO CÍVEL. DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANO MORAL. DUPLICATA PROTESTADA. ENDOSSO MANDATO CONFIGURADO. LEGITIMIDADE DO BANCO ENDOSSATÁRIO QUE LEVOU O TÍTULO A PROTESTO. MANUTENÇÃO INDEVIDA DO PROTESTO. NEGATIVA DE FORNECIMENTO DE CARTA DE ANUÊNCIA. PAGAMENTO DA DUPLICATA COMPROVADO. APELANTE QUE NÃO SE DESINCUMBIU DE SEU ÔNUS DE COMPROVAR REGULAR MANUTENÇÃO DO PROTESTO. DANO MORAL IN RE IPSA. QUANTUM INDENIZATÓRIO. MANUTENÇÃO. CRITÉRIOS DA RAZOABILIDADE E DA PROPORCIONALIDADE. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. 1. O magistrado de primeiro grau entendeu por julgar procedente os pedidos autorais, por entender que a parte autora/apelada comprovou o pagamento do referido título, desse modo, o protesto foi mantido de maneira indevida; declarando satisfeito o débito referente a duplicata protestada, bem como, o débito referente aos títulos de nºs 19/101060-6, 19/101061-4, 19/101062-2 e 19/101063-0, tendo em vista o depósito judicial realizado, e ainda, condenando a instituição financeira ao pagamento de R\$ 5.000,00 (cinco mil reais) a título de danos morais. 2. Da legitimidade passiva ad causum - Preliminarmente, o banco/recorrente defende que deve haver a substituição do polo passivo para constar apenas Cooperativa de Crédito, Poupança e Investimento do Noroeste do Estado de São Paulo � Sincredi Noroeste, ao argumento que são pessoas

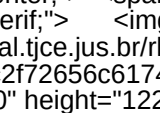
Processo	3000999-46.2018.8.06.0221
	jurídicas diversas e que não existe solidariedade entre os bancos e cooperativas. Defende, ainda, que não possui legitimidade passiva para figurar na presente demanda, haja vista ter atuado como mera mandatária. 3. Com efeito, pelo cotejo da certidão positiva acostada às fls. 20 verifiquei que consta como apresentante/credor/cedente, o Banco Cooperativo Sincredi, ou seja, quem apresentou a duplicata ao Cartório para o devido protesto. 4. Presente no caso dos autos endosso mandato, concernente à entrega da duplicata à instituição bancária para o procedimento de cobrança do valor nela mencionado, o que evidencia a legitimidade do Banco Cooperativo Sincredi/recorrente, para figurar no polo passivo da demanda, sobretudo por ter apresentado o título a protesto. Reconheço, desta feita, a legitimidade do Banco Cooperativo Sincredi para figurar no polo passivo da demanda. 5. A controvérsia recursal consiste em saber se a manutenção do protesto realizado em nome do autor/apelado, referente a duplicata nº 1426-1-5, é devida, bem como, se tal fato enseja dano moral indenizável. 6. Vislumbro que não se desincumbiu de seu ônus o banco/recorrente, uma vez que, não acosta aos autos, nenhum instrumento comprobatório capaz de excluir sua culpabilidade no caso em análise. Esclareço que, por mais que o protesto, a princípio, se mostrasse adequado, este se tornou indevido e abusivo após a quitação integral da dívida, ocasionando assim, o ato ilícito, passível de indenização. 7. Assim, demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, o qual enseja pronta reparação dos danos causados, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. 8. Ressalta-se, que a conduta da entidade bancária/recorrente é tipificadora de dano moral, pois conforme já pacificou o Eg. Superior Tribunal de Justiça (STJ) e a jurisprudência pátria, a manutenção indevida de protesto configura dano moral in re ipsa, isto é, o dano é presumido. 9. Fixação ç Fatores - Para quantificar a indenização por danos morais deve se levar em conta, dentre outros fatores, a extensão do dano, as condições socioeconômicas dos envolvidos e o sofrimento da vítima. Nessa ordem de ideias, considero adequada a quantia arbitrada de R\$ 5.000,00 (cinco mil reais), porque afinada coma jurisprudência pátria. 10. Recurso conhecido e desprovido. Sentença confirmada. (TJ-CE - Apelação Cível: 0268056-61.2020.8.06.0001 Fortaleza, Relator: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 27/03/2024, 1ª Câmara Direito Privado, Data de Publicação: 27/03/2024). APELAÇÕES CÍVEIS. DIREITO CAMBIAL E CIVIL. AÇÃO DECLARATÓRIA E INDENIZAÇÃO POR PERDAS E DANOS. PROTESTO INDEVIDO DE TÍTULO CAMBIAL. ENDOSO- MANDATO. SENTENÇA DE PROCEDÊNCIA. RESPONSABILIDADE DAS INSTITUIÇÕES FINANCEIRAS POR ATO CULPOSO. TÍTULO LEVADO A PROTESTO SEM HIGIDEZ DA CARTULA. NEGLIGÊNCIA VERIFICADA. APLICAÇÃO DO JULGAMENTO PARADIGMA NO RESP 1.063.474/RS. PROTESTO INDEVIDO. DANOS MORAIS PRESUMIDOS. REDUÇÃO DO QUANTUM ARBITRADO EM PRIMEIRO GRAU. ADEQUAÇÃO. RECURSOS PARCIALMENTE PROVIDOS. 1. Cuida-se de APELAÇÕES CÍVEIS interpostas por ITAU UNIBANCO S.A e BANCO DAYCOVAL S.A adversando sentença proferida pelo Juízo da 34ª Vara Cível da Comarca de Fortaleza/Ce. O pedido autoral foi julgado procedente, com a declaração de inexistência das relações cambiais objeto dos protestos nºs. 1823 e 1832, condenando as partes requeridas, de forma solidária, em danos morais arbitrados no valor de R\$ 30.000,00 (trinta mil reais). 2. Em suas razões recursais, os bancos promovidos suscitam a preliminar de ilegitimidade passiva, ao argumento de que figuraram como mero destinatário de endosso-mandato da empresa credora da duplicata protestada, cabendo-lhe, portanto, somente a cobrança do valor do título em seu nome e na medida dos poderes transferidos. 3. Sobre o tema, tem-se que o endosso mandato é uma espécie de endosso impróprio mediante o qual cabe a outra pessoa a tarefa de proceder à cobrança do crédito representado pelo título. No endosso mandato não há a transferência da titularidade do crédito, configurando-se o mesmo, apenas, como um ato que torna legítima a posse do endossatário sobre o documento, sendo este investido na condição de mandatário do endossante. 4. O Colendo STJ, no julgamento do Resp 1.063.474/RS, submetido ao Rito do artigo 543-C, do Código de Processo Civil, firmou a seguinte tese: ç Só responde por danos materiais e morais o endossatário que recebe título de crédito por endosso-mandato e o leva a protesto, se extrapola os poderes do mandatário ou em razão de ato culposo próprio, como no caso de apontamento depois da ciência acerca do pagamento anterior ou falta de higidez da cártula 5. Assim, em regra, a instituição financeira que recebe título de crédito por endosso-mandato não é responsável pelos efeitos de eventual protesto indevido, exceto se exceder os poderes do mandato, agir de modo negligente ou, caso alertada sobre falha do título, levá-lo a protesto. 6. Na espécie, os estabelecimentos bancários, eram responsáveis pela concretização dos direitos presentes no título levado a protesto, e conforme os documentos reunidos nos autos, impossível, eximir os apelantes de sua responsabilidade pelos prejuízos causados à autora, uma vez que contribuíram diretamente para a negatificação sem exigir comprovação de que o título era válido. Em suma, era dever dos apelantes exigirem, no momento do endosso, a apresentação de um comprovante de entrega das mercadorias ou prestação dos serviços, o que não foi feito. 7. Dito isto, mantenho o entendimento exarado pelo d.

Processo	3000999-46.2018.8.06.0221
	julgador de origem quanto à responsabilidade civil destes para indenizar a parte autora por danos morais presumidos, contudo, reduzindo o quantum condenatório para o patamar de R\$ 20.000,00 (vinte mil reais) por ser mais adequado ao caso concreto, valor este razoável para reparar o dano sofrido pela promovente, preservando as finalidades educativa e sancionatória do instituto. 8. Apelos parcialmente providos. Sentença parcialmente reformada. (TJ-CE - Apelação Cível: 0867251-69.2014.8.06.0001 Fortaleza, Relator: MARIA DE FÁTIMA DE MELO LOUREIRO, Data de Julgamento: 11/10/2023, 2ª Câmara Direito Privado, Data de Publicação: 11/10/2023). RESPONSABILIDADE CIVIL. APELAÇÃO. CANCELAMENTO DE PROTESTOS INDEVIDOS. REPARAÇÃO DE DANOS MORAIS. BANCO. ILEGITIMIDADE PASSIVA. EMBORA ALEGUE SE TRATAR DE ENDOSSO MANDATO, O BANCO APELANTE JAMAIS APRESENTOU QUALQUER DOCUMENTAÇÃO A SUBSTANCIAR A ALEGAÇÃO. NO CASO DOS AUTOS, É FATO INCONTESTE QUE AS DUPLICATAS OBJETOS DA LIDE FORAM EMITIDAS SEM LASTRO EM RELAÇÃO JURÍDICA SUBJACENTE. E, MESMO QUE SE TRATASSE DE TRANSFERÊNCIA DE TÍTULO VIA ENDOSSO MANDATO, ANTES DE APRESENTAR O TÍTULO A PROTESTO, COMPETIA À INSTITUIÇÃO FINANCEIRA INVESTIGAR A RESPEITO DA REGULARIDADE DAS CÁRTULAS EM COBRANÇA, CERTIFICANDO-SE SOBRE A EXISTÊNCIA DE ACEITE OU DE DOCUMENTO APTO A COMPROVAR A DÍVIDA REPRESENTADA POR ELE, ESPECIALMENTE EM FUNÇÃO DE QUE SE TRATA DE DUPLICATA MERCANTIL, TÍTULO EMINENTEMENTE CAUSAL, O QUE NÃO OCORREU. LEGITIMIDADE PASSIVA E DANOS MORAIS RECONHECIDOS. ARBITRAMENTO EM OITO MIL REAIS. JURISPRUDÊNCIA SEDIMENTADA DOS TRIBUNAIS SUPERIORES E DESTA EG. CORTE. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. (TJ-CE - AC: 05097833120118060001 Fortaleza, Relator: DURVAL AIRES FILHO, Data de Julgamento: 13/09/2022, 4ª Câmara Direito Privado, Data de Publicação: 13/09/2022) Enfim, resta configurada a legitimidade passiva e consequentemente a responsabilidade solidária do banco apelante pelos danos causados à parte autora/apelante, mesmo que tenha figurado como mero mandatário na apresentação do título a protesto. Isso porque, consoante orientação do colendo Superior Tribunal de Justiça, o protesto indevido de título, por si só, configura constrangimento ilegal e enseja a reparação de ordem moral, tendo em vista que atinge os direitos da personalidade, seja da pessoa natural ou jurídica, incumbindo à parte ré, ora apelado o dever de indenizar a lesão causada ao suposto devedor. A propósito: AGRAVO REGIMENTAL. AGRAVO DE INSTRUMENTO. PROTESTO INDEVIDO DE TÍTULO. DANO IN RE IPSA, AINDA QUE SOFRIDO POR PESSOA JURÍDICA. SÚMULA 83/STJ. 1. Nos casos de protesto indevido de título ou inscrição irregular em cadastros de inadimplentes, o dano moral configura-se in re ipsa, prescindindo de prova, ainda que a prejudicada seja pessoa jurídica. 2. "Não se conhece do recurso especial pela divergência, quando a orientação do tribunal se firmou no mesmo sentido da decisão recorrida" (súmula 83/STJ). 3. AGRAVO REGIMENTAL DESPROVIDO. (STJ, AgRg no Ag 1261225 / PR, Terceira Turma, Rel. Min. Paulo de Tarso Sanseverino, j. 09/08/2014). Do pedido de majoração dos danos morais. No tocante ao quantum indenizatório, insta registrar que o conceito de ressarcimento, em se tratando de dano moral, abrange dois critérios: um de caráter pedagógico, objetivando repreender o causador do dano pela ofensa que praticou; outro de caráter compensatório, que proporcionará à vítima algum bem em contrapartida ao mal sofrido. Assim, para o arbitramento da reparação por dano moral o julgador deve valer-se de moderação, levando em conta o grau de culpa e a extensão do dano causado, bem como a situação econômica das partes. A quantia arbitrada não pode servir de enriquecimento indevido, mas também não pode ser ínfima, a ponto de não reprimir a conduta do infrator e desvalorizar os sentimentos da vítima. Ao se analisar as peculiaridades do caso concreto e os precedentes de casos similares, observa-se que a verba indenizatória, fixada em R\$ 6.000,00 (seis mil reais), não merece reproche, visto que reflete, de maneira adequada, a reparação para os prejuízos extrapatrimoniais suportados, considerada sua

Processo	3000999-46.2018.8.06.0221
	extensão e a capacidade econômica das partes. Nesse aspecto, para efeito de argumentação, confira-se a jurisprudência deste Tribunal de Justiça: APELO. SENTENÇA A QUO QUE DECLAROU INEXEQUÍVEL A DÍVIDA COBRADA EM FACE DA APELANTE, MAS REJEITOU O SEU PEDIDO DE INDENIZAÇÃO POR DANOS MORAIS. RÉ-REVEL. PROVA DO PROTESTO INDEVIDO. PESSOA JURÍDICA. DANO MORAL IN RE IPSA. PRECEDENTES. INDENIZAÇÃO DEVIDA. VALOR ARBITRADO EM R\$ 5.000,00 (CINCO MIL REAIS). RAZOABILIDADE. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA NESTE PONTO. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em unanimidade de votos, por conhecer e prover o recurso. Fortaleza, 22 de maio de 2024 RELATOR.(Apelação Cível&#160;- 0065651-33.2016.8.06.0112, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160; 22/05/2024, data da publicação:&#160; 24/05/2024) APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. PROTESTO INDEVIDO DE TÍTULO. DUPLICATA. SENTENÇA DE PARCIAL PROCEDÊNCIA QUE NÃO RECONHECEU A CONFIGURAÇÃO DE DANOS MORAIS. INSURGÊNCIA DA AUTORA. PRELIMINAR DE OFENSA AO PRINCÍPIO DA DIALETICIDADE. NÃO OCORRÊNCIA. RESPONSABILIDADE CIVIL. DANO MORAL IN RE IPSA. PRECEDENTES. RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. 1. Trata-se de Apelação Cível interposta por RIO VERDE ENGENHARIA E CONSTRUÇÕES LTDA. com o objetivo de reformar a sentença proferida pelo Juízo da 25ª Vara Cível da Comarca de Fortaleza, que julgou parcialmente procedente a presente Ação Declaratória de Inexistência de Débito e Indenização por Danos Morais ajuizada pela ora apelante em desfavor de FREDDOS SERVIÇOS E LOCAÇÕES DE EQUIPAMENTOS & EIRELLI. 2. Do cotejo do arrazoado da autora e da sentença objurgada, não se vislumbra violação ao princípio da dialeticidade. Da simples leitura da peça recursal, denota-se que a parte recorrente tenta reformar parte da sentença (fixação de quantum indenizatório a título de danos morais), ainda que reiterando alguns dos argumentos já apresentados no feito. Assim, não merece ser acolhida a preliminar arguida pela apelada. 3. A controvérsia a ser dirimida reside na análise do cabimento de indenização por danos morais no contexto relatado, considerando-se a natureza do abalo que a Apelante alega ter suportado e o nexo de causalidade entre as condutas discutidas, para, diante de tal análise, examinar se a decisão de primeiro grau merece reforma. 4. No caso em análise, restou incontroverso que a parte recorrida efetuou cobranças relativas a períodos em que não houve execução dos serviços contratados, o que teria resultado da ocorrência de greve dos funcionários, indisponibilidade de equipamentos, dentre outros motivos. Assim, constatou-se que a Recorrida imputou à ora Apelante inadimplência ainda que não tenha sido realizada a devida contraprestação, razão pela qual a sentença reconheceu a inexigibilidade dos respectivos valores e, conseqüentemente, a ilicitude dos atos de cobrança efetuados. 5. Tratando-se a parte ofendida, ora Apelante, de pessoa jurídica, entende-se que esta é titular de honra objetiva e, de acordo com a Súmula 227 do STJ, pode sofrer dano moral e obter a devida reparação desde que atenda tais requisitos. Nesse sentido, conforme entendimento da jurisprudência dos tribunais pátrios e do Superior Tribunal de Justiça, o protesto indevido configura dano moral na modalidade in re ipsa, sendo, deste modo, presumido o abalo indenizável. 6. Configurada, portanto, a responsabilidade da Apelada/Requerida, assim como bem delineado o dano moral pelo protesto indevido, que, a propósito, afigura-se in re ipsa, independentemente de comprovação, merece reforma a sentença recorrida, para que seja fixada indenização a título de danos morais. 7. Ao fixar o quantum indenizatório, deve o magistrado atentar-se a critérios de razoabilidade e proporcionalidade, em observância às circunstâncias em que o ato ilícito foi cometido, às consequências da ofensa ao lesado, o grau de culpa do ofensor, à eventual contribuição do ofendido no evento danoso e à situação econômica das partes. 8. Partindo dessas premissas, tenho que o montante de R\$ 5.000,00 (cinco mil reais) atende aos critérios de razoabilidade e proporcionalidade, e observa devidamente as circunstâncias do caso concreto, atendendo ao caráter punitivo e pedagógico da indenização por dano extrapatrimonial, sem implicar em quantia ínfima nem em enriquecimento ilícito ao lesado, estando afinado com decisões jurisprudenciais deste Tribunal. 9. Recurso conhecido e provido. Sentença reformada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará em conhecer do Recurso de Apelação para dar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator.(Apelação Cível&#160;- 0036876-16.2017.8.06.0001, Rel. Desembargador(a) JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 27/03/2024, data da publicação:&#160; 27/03/2024) &#160; </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> &#160; </p>

Processo	3000999-46.2018.8.06.0221
	150%; padding-left: 150px;" align="justify"> CÍVEL E PROCESSUAL CÍVEL. APELAÇÃO CÍVEL. AÇÃO DE CANCELAMENTO DE PROTESTO DE TÍTULO DE CRÉDITO C/C INDENIZAÇÃO POR DANOS MORAIS. PRELIMINARES REJEITADAS. LEGITIMIDADE PASSIVA DO ENDOSSATÁRIO MANDATÁRIO. SÚMULA N. 476/STJ. ATUAÇÃO NEGLIGENTE E ALÉM DOS PODERES DO MANDATÁRIO. PROTESTO INDEVIDO. DÍVIDA QUITADA. DANO MORAL IN RE IPSA. RECURSO CONHECIDO E IMPROVIDO. 1. Cinge-se a controvérsia recursal em saber se houve cerceamento do direito de defesa, se a recorrente é parte legitimada passiva para a causa, se houve protesto indevido das duplicatas fustigadas e, em caso afirmativo, se é devida a reparação por danos morais. 2. PRELIMINARES. 2.1. Inicialmente, cumpre destacar que a alegação de cerceamento do direito de defesa da apelante não merece acolhimento. É que o instituto da denunciação da lide não tem aplicação obrigatória, salvo quando seu indeferimento implicar em perda do direito de regresso, o que não é o caso dos autos. Precedente do STJ. 2.2. Ademais, segundo jurisprudência pacífica do Superior Tribunal de Justiça, a denunciação da lide, com fundamento no art. 125, II, do CPC, não deve ser admitida se o denunciante objetiva eximir-se da responsabilidade pelo evento danoso, atribuindo-o com exclusividade a terceiro, como no caso em análise. Preliminar rejeitada. Precedente do STJ. 2.3. Melhor sorte não guarda a preliminar de ilegitimidade passiva, na medida em que a presente demanda trata de pedido de cancelamento de protesto indevido combinado com pedido de indenização por danos morais, buscando aferir se houve a extrapolação dos deveres do endossatário mandatário. Preliminar rejeitada. Precedentes do STJ. 3. MÉRITO. 3.1. O endossatário que recebe título de crédito por endosso-mandato apenas responde pelos danos decorrentes de protesto indevido quando extrapolar seus poderes de mandatário ou em razão de ato culposo próprio. Inteligência da Súmula nº 476/STJ. 3.2. Perante a documentação analisada, constata-se que é devido o cancelamento dos protestos, sobretudo porque as duplicatas já haviam sido quitadas pela recorrida, sendo, assim, inexigíveis os débitos em questão. Outrossim, conclui-se que a apelante, mesmo que seja mera mandatária, não agiu com a devida diligência e, por ato culposo, protestou indevidamente títulos de créditos já quitados sem confirmar, previamente, a regularidade das cobranças junto ao endossante ou ao credor original. Por esse motivo, deve responder solidariamente pelos danos causados em razão dos protestos indevidos. 3.3. Como se não bastasse, a recorrente não agiu como mero apresentante das duplicatas para protesto, mas como credora/cedente, como é possível extrair-se das informações constantes dos instrumentos de protestos de fls. 37 e 39, extrapolando seus poderes de mera mandatária. Precedentes do TJCE, do TJMG e do TJSP. 3.4. Verificado o protesto indevido por endossatário que agiu com negligência e em extrapolação de seus poderes, o dano moral em face do devedor, ora apelado, configura-se in re ipsa, ou seja, independentemente de comprovação. Precedente do STJ. 3.5. Ao se analisar as peculiaridades do caso concreto e os precedentes de casos similares, observa-se que a verba indenizatória, fixada em R\$5.000,00 (cinco mil reais) não merece reproche, visto que reflete, de maneira adequada, a reparação para os prejuízos extrapatrimoniais suportados, considerada sua extensão e a capacidade econômica das partes. Precedente do TJCE. 4. Recurso conhecido e improvido. (TJ-CE - AC: 01834775920158060001 Fortaleza, Relator: CARLOS ALBERTO MENDES FORTE, Data de Julgamento: 02/03/2022, 2ª Câmara Direito Privado, Data de Publicação: 02/03/2022). </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> APELAÇÃO CÍVEL - INDENIZAÇÃO POR PERDAS E DANOS - PROTESTO INDEVIDO - ENDOSSO-MANDATO - RESPONSABILIDADE DA INSTITUIÇÃO FINANCEIRA – ATO CULPOSO - TÍTULO LEVADO A PROTESTO APÓS CIÊNCIA DO PAGAMENTO - NEGLIGÊNCIA VERIFICADA - APLICAÇÃO DO JULGAMENTO PARADIGMA NO RESP 1.063.474/RS – RECURSO DESPROVIDO SENTENÇA MANTIDA. 1. Cuida-se de Apelação interposta contra sentença que julgou procedente o pedido autoral nos autos da Ação de Indenização, responsabilizando o banco promovido pelo protesto indevido. 2. O endosso-mandato é uma espécie de endosso impróprio mediante o qual cabe a outra pessoa a tarefa de proceder à cobrança do crédito representado pelo título. No endosso mandato não há a transferência da titularidade do crédito, configurando-se o mesmo, apenas, como um ato que torna legítima a posse do endossatário sobre o documento, sendo este investido na condição de mandatário do endossante. 3. O Colendo STJ, no julgamento do Resp 1.063.474/RS, submetido ao Rito do artigo 543-C, do Código de Processo Civil, firmou a seguinte tese: "Só responde por danos materiais e morais o endossatário que recebe título de crédito por endosso-mandato e o leva a protesto, se extrapola os poderes do mandatário ou em razão de ato culposo próprio, como no caso de apontamento depois da ciência acerca do pagamento anterior ou falta de higidez da cártula. 4. Assim, em regra, a instituição financeira que recebe título de crédito por endosso-mandato não é responsável pelos efeitos de eventual protesto indevido, exceto se exceder os poderes do mandato, agir de modo negligente ou, caso alertada sobre falha do título, levá-lo a protesto. 5. Na espécie, o apelante agiu de modo culposo praticando conduta negligente na execução de sua obrigação, na medida em que promoveu o apontamento após ter ciência do pagamento da cártula, o que enseja

2459

Processo	0200269-68.2022.8.06.0090
Acórdão	 PROCESSO: 0200269-68.2022.8.06.0090 - APELAÇÃO CÍVEL (198) APELANTE: JOSE GERALDO DE ALENCAR APELADO: DIOGO SAMPAIO DE ALENCAR, RODRIGO SAMPAIO DE ALENCAR Ementa: DIREITO DE FAMÍLIA. APELAÇÃO CÍVEL. EXONERAÇÃO DE ALIMENTOS. FILHO MAIOR PORTADOR DE ESQUIZOFRENIA E OUTROS TRANSTORNOS PSIQUIÁTRICOS. AUSÊNCIA DE CAPACIDADE LABORATIVA. IMPOSSIBILIDADE DE AUTOPROVIMENTO DA SUBSISTÊNCIA. MANUTENÇÃO DA OBRIGAÇÃO ALIMENTAR. RECURSO DESPROVIDO. I. Caso em exame 1. Apelação cível interposta contra sentença que julgou parcialmente procedente pedido de exoneração de alimentos, liberando o alimentante da obrigação em relação a uma filha, mas mantendo a pensão aos filhos Rodrigo e Diogo Sampaio de Alencar, no percentual de 33,33% do benefício previdenciário do autor. O recorrente busca a exoneração apenas em relação a Diogo Sampaio, alegando que este possui formação superior em enfermagem, já exerceu atividade profissional e não teria comprovada incapacidade laborativa. II. Questão em discussão 2. A questão em discussão consiste em definir se subsiste o dever de prestar alimentos a filho maior de idade, graduado em enfermagem, mas portador de esquizofrenia indifferenciada e outros transtornos psiquiátricos, com laudos médicos que atestam sua incapacidade laboral. III. Razões de decidir 3. O dever alimentar após a maioridade decorre da relação de parentesco (CC, arts. 1.694 e 1.695), persistindo quando comprovada a impossibilidade de o alimentando prover a própria subsistência. 4. O binômio necessidade/possibilidade rege a prestação alimentar, cabendo ao alimentante demonstrar incapacidade financeira ou ao alimentando a inexistência de necessidade, ônus não cumprido pelo recorrente. 5. Laudos médicos constantes dos autos atestam que o recorrido é portador de esquizofrenia (CID 10 F20.3), depressão grave (CID 10 F32.2) e transtornos depressivos recorrentes (CID 10 F33.2 + F90.9), resultando em ausência de capacidade laborativa. 6. A exoneração da pensão acarretaria violação à dignidade do alimentando, pois este não dispõe de meios de subsistência próprios. 7. O Ministério Público opinou pelo improvimento do recurso, reforçando que as limitações psiquiátricas do alimentado inviabilizam sua inserção laboral. 8. A jurisprudência consolidada reconhece que a maioridade civil não extingue automaticamente o dever alimentar quando demonstrada a incapacidade permanente do filho para o trabalho. IV. Dispositivo 9. Recurso desprovido. Tese de julgamento: 1. A maioridade civil não extingue o dever de prestar alimentos quando o alimentando, por enfermidade grave, não possui condições de prover a própria subsistência.

Processo	0200269-68.2022.8.06.0090
	style="font-size: small; ">2. O binômio necessidade/possibilidade deve ser analisado à luz de laudos médicos que atestem incapacidade laboral do alimentado.&#160;</p><p style="text-align: justify; padding-left: 30px;"> 3. A exoneração da obrigação alimentar não se admite quando compromete a dignidade e a subsistência mínima do alimentando.&#160;</p><p style="text-align: justify;"> Dispositivos relevantes citados: CF/1988, art. 229; CC, arts. 1.694 e 1.695.&#160;</p><p style="text-align: justify;"> Jurisprudência relevante citada: TJCE, Apelação Cível nº 0200724-80.2023.8.06.0160, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara de Direito Privado, j. 27.03.2024; TJCE, Agravo de Instrumento nº 0636616-48.2021.8.06.0000, Rel. Des. Francisco Darival Beserra Primo, 2ª Câmara Direito Privado, j. 23.03.2022; TJCE, Agravo de Instrumento nº 0633966-23.2024.8.06.0000, Rel. Des. Raimundo Nonato Silva Santos, 3ª Câmara Direito Privado, j. 11.12.2024; TJMG, Apelação Cível nº 1.0000.23.187509-7/001, Rel. Des. Carlos Roberto de Faria, 8ª Câmara Cível Especializada, j. 01.02.2024.&#160;</p><p style="text-align: justify;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para, no mérito, negar-lhe provimento nos termos do voto do Relator.</p><p>
 </p><p style="text-align: justify;"> Fortaleza, data da assinatura digital. </p><p>
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 </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do Órgão Julgador </p><p style="text-align: center;">
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 DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p><p>&#160;</p><div> <p style="text-align: center;"> RELATÓRIO </p> <p style="text-align: justify; text-indent: 8%;"> Trata-se de apelação cível interposta por José Geraldo de Alencar, contra sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Icó (id. 21956689), que julgou parcialmente procedente o pedido deduzido nos autos da Ação de Exoneração c/c pedido liminar em desfavor do Diogo Sampaio de Alencar. </p> <p style="text-align: justify; text-indent: 8%;"> Confira-se o excerto da decisão:&#160; </p> <p style="text-align: justify; padding-left: 150px;"> "Ante o exposto, e por tudo mais que conste dos autos, JULGO PARCIALMENTE PROCEDENTE A PRETENSÃO AUTORAL, no sentido de exonerar o autor do encargo alimentício em relação a filha Juliana Sampaio de Alencar Viana, porém, mantê-lo aos filhos Rodrigo Sampaio de Alencar e Diogo Sampaio de Alencar, no percentual de 33,33% (trinta e três virgula trinta e três por cento) do benefício do demandante. Ademais, considerando que a parte requerida sucumbiu em parte mínima do pedido, condeno a parte autora ao pagamento das custas processuais e de honorários advocatícios, estes fixados no percentual de 10% (dez por cento) sobre o valor da condenação. (...)" </p> <p style="text-align: justify; text-indent: 8%;"> Inconformado, a apelante, nas razões recursais apresentadas sob id. 21957543, pleiteia o provimento do recurso, com o objetivo de reformar a sentença somente em relação ao Sr Diogo Sampaio Alencar, pois alega que este nível superior, já tendo exercido sua profissão.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Ainda, alega que o atestado médico juntado aos autos não ratifica as alegações feitas em sede de contestação, quais sejam, que o recorrido é portador de depressão severa, que o incapacita para trabalhar.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Continuamente, aduz que o diagnóstico de TDAH, não o incapacitaria ao trabalho, visto que tal doença não se enquadra no rol de doenças incapacitantes. Pelas razões apresentadas, requer o provimento do recurso para exorar o recorrente do dever de prestar alimentos ao recorrido Diogo Sampaio.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Contrarrazões apresentadas sob id. 21956675, requerendo a manutenção da sentença, visto que a parte não tem capacidade laborativa, pois é portador da CID 10 F20.3 (esquizofrenia

Processo	0200269-68.2022.8.06.0090
	diferenciada), em tratamento no CAPS desde 29/04/2008, com histórico de internação psiquiátrica pela CID 10 F32.2 (Episódio depressivo grave único e sem sintomas psicóticos), CID 10 F33.2 + F90.9 (Transtorno depressivo recorrente, episódio atual grave sem sintomas psicóticos + Transtorno hiperkinético não especificado. Os transtornos de conduta são caracterizados por padrões persistentes de conduta dissocial, agressiva ou desafiante). Ainda, alega que a parte recorrente teria condições de arcar com os alimentos determinado pelo juízo, visto que é aposentado e possui empreendimentos que o redêem proventos mensais. Manifestação do Ministério Público (id. 21956658), pelo conhecimento do recurso, mas pelo seu improvimento. Audiência infrutífera (id. 21956664). É o relatório. Adotando o Pacto Nacional do Judiciário Pela Linguagem Simples, do CNJ, passo a proferir o meu voto. VOTO Realizado o juízo de admissibilidade (análise dos pressupostos intrínsecos – atinentes à existência do direito de recorrer – e extrínsecos – atinentes ao seu exercício, parte beneficiária da justiça gratuita) e observo que todas as exigências legais foram cumpridas, razão pela qual conheço o recurso. Passo ao juízo de mérito. Cinge-se a controvérsia à análise da decisão proferida pelo Juízo da 1ª Vara Cível da Comarca de Icó (id. 21956689), no sentido de exonerar o autor do encargo alimentício em relação a filha Juliana Sampaio de Alencar Viana, porém, mantê-lo aos filhos Rodrigo Sampaio de Alencar e Diogo Sampaio de Alencar, no percentual de 33,33% (trinta e três virgula trinta e três por cento) do benefício do demandante. A parte recorrente, em suas razões recursais, pugna pela reforma da decisão, para que seja exonerado do dever de alimentos em face de Diogo Sampaio de Alencar. Para tanto, sustenta que “o recorrido possui profissão definida, já tendo exercido suas funções de enfermeiro junto à prefeitura de Icó, fato esse não impugnado pelo recorrido. Para justificar a necessidade de prestação de alimentos, sustentou ser portador de depressão e que estaria incapacitado para trabalhar. No entanto, o atestado médico carreado pelo recorrido não ratifica tais informações, uma vez que apresenta uma dificuldade na execução de suas atividades laborativas.” Ainda, aduz que “o laudo de fls. 97 a 98 aponta que desde a adolescência o réu é acompanhado com diagnóstico de TDAH, o que não foi fato impeditivo para laborar para o Município de Icó.” Por fim, alega que “está apto a retornar à suas atividades, talvez com limitações, mas que não implicam na total incapacidade laborativa, já que assim o fosse não teria trabalhado em 2011 e 2012 nem teria conseguido lograr êxito em concluir ensino superior.” Quanto à fixação dos alimentos, a matéria encontra-se albergada no art. 1.694, §1º e art. 1.695 do Código Civil Brasileiro, onde resta claro que deverá ser atendido o binômio necessidade-possibilidade. Art. 1694. Podem os parentes, os cônjuges ou companheiros pedir uns aos outros os alimentos de que necessitem para viver de modo compatível com a sua condição social, inclusive para atender às necessidades de sua educação. §1º Os alimentos devem ser fixados na proporção das necessidades do reclamante e dos recursos da pessoa obrigada. Art. 1.695 – São devidos os alimentos quando quem os pretende não tem bens suficientes, nem pode prover, pelo seu trabalho, à própria manutenção, e aquele, de quem se reclama, pode fornecê-los, sem desfalque do necessário ao seu sustento. A doutrinadora MARIA BERENICE DIAS (Manual de Direito das Famílias, 8ª ed. Ed. Revista dos Tribunais, 2011, pag. 515), ao definir a expressão alimentos, nos ensina que: “Expressão alimentos vem adquirindo dimensão cada vez mais abrangente. Engloba tudo que é necessário para alguém viver com dignidade, dispondo o juiz de poder discricionário para quantificar o seu valor. O alargamento do conceito de alimentos levou a doutrina a distinguir alimentos civis e naturais. Alimentos naturais são os

Processo	0200269-68.2022.8.06.0090
	<p style="text-align: justify; padding-left: 150px;"> indispensáveis para garantir a subsistência, como alimentação, vestuário, saúde, habitação, educação, etc. Alimentos civis destinam-se a manter a qualidade de vida do credor, de modo a preservar o mesmo padrão e status social do alimentante."/> <p style="text-align: justify; text-indent: 8%;"> Nessa seara, pertinente citar também o ensinamento de Fabrício Zamproga Matiello, in Código Civil Comentado, 2ª edição, segundo o qual:/> <p style="text-align: justify; padding-left: 150px;"> (...) o momento da fixação dos alimentos é marcado por detida análise do binômio necessidade/possibilidade. O alimentado não receberá mais do que precisa, nem o parente ou cônjuge será obrigado a pagar além do que suas condições econômicas permitem. Chegar ao equilíbrio entre essas forças contrárias significa fazer justiça, adequando a prestação alimentar ao quadro real vivenciado pelos envolvidos."/> <p style="text-align: justify; text-indent: 8%;"> Da leitura dos dispositivos acima transcritos, constata-se que dois fatores são primordiais na fixação do valor dos alimentos: a possibilidade do obrigado e a necessidade do beneficiário, tendo como vetor o princípio da proporcionalidade.&#160;/> </p> <p style="text-align: justify; text-indent: 8%;"> Sobre a necessidade de observância do trinômio necessidade, possibilidade e proporcionalidade, destaca-se:&#160;/> </p> DIREITO DE FAMÍLIA. APELAÇÃO CÍVEL. AÇÃO DE ALIMENTOS PARA MAIOR DE 18 ANOS. ALIMENTANDO CURSANDO ENSINO SUPERIOR. PEDIDO DE REDUÇÃO DO QUANTUM. IMPOSSIBILIDADE. TRINÔMIO POSSIBILIDADE / NECESSIDADE / PROPORCIONALIDADE. RÉU NÃO SE DESINCUMBIU DO ÔNUS DE COMPROVAR IMPOSSIBILIDADE DE PRESTAR ALIMENTOS AO FILHO. QUANTUM PROPORCIONAL. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. Trata-se de recurso de Apelação Cível interposto contra sentença prolatada pelo Juízo da 1ª Vara Cível da Comarca de Santa Quitéria/CE, que julgou parcialmente procedente o pedido autoral nos autos da Ação de Alimentos para maior de 18 anos c/c liminar inaudita altera pars, fixando o valor da obrigação alimentar em 28% (vinte e oito por cento) do salário mínimo. 2. Acerca da temática, é imperioso ressaltar que a jurisprudência é uníssona em decidir pela manutenção da pensão alimentícia fixada em favor de prole enquanto perdurar o estudo profissionalizante do alimentando, mesmo maior de idade (curso de ensino superior ou técnico), com o objetivo de assegurar-lhe as condições e circunstâncias necessárias para o adequado ingresso no mercado de trabalho. 3. No que tange especificamente ao pedido de redução do quantum da pensão, cumpre apontar que a obrigação alimentar deve ser adimplida e o critério para fixação do valor da prestação alimentícia consiste na verificação da proporcionalidade entre a necessidade do alimentando e da possibilidade econômica do indivíduo obrigado. 4. Com efeito, não obstante as situações apresentadas pelo genitor/apelante, o mesmo não se desincumbiu do ônus de comprovar a impossibilidade cabal de prover a pensão de seu filho no quantum fixado pelo juízo primevo, pois, em que pese possuir renda variável, não se encontra desempregado, ao contrário, é profissional autônomo e apto ao trabalho. 5. Dito isso, ao considerar a responsabilidade solidária dos pais em relação ao sustento dos filhos (art. 229 da CF/88), e atento ao trinômio possibilidade / necessidade / proporcionalidade (art. 1.694, §1º, do CC), e também sem olvidar os aspectos fáticos atrelados à condição financeira do alimentante e os elementos de prova coligidos aos autos mostra-se razoável e proporcional a manutenção da sentença recorrida, com o quantum da pensão alimentícia estabelecido em 28% (vinte e oito por cento) do salário mínimo vigente pelo juízo a quo, até que o autor/alimentando conclua o curso superior ou complete 24 (vinte e quatro) anos de idade. 6. Recurso conhecido e desprovido. Sentença mantida. (Apelação Cível - 0200724-80.2023.8.06.0160, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 27/03/2024, data da publicação: 27/03/2024)&#160;/> </p> <p style="text-align: justify; padding-left: 150px;"> DIREITO CIVIL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. INSURGÊNCIA EM FACE DE DECISÃO INTERLOCUTÓRIA QUE FIXOU ALIMENTOS PROVISÓRIOS. VERIFICAÇÃO DO TRINÔMIO NECESSIDADE, POSSIBILIDADE E PROPORCIONALIDADE. DESTAQUE AO PARECER MINISTERIAL DESFAVORÁVEL AO RECURSO. QUEBRA DO SIGILO FISCAL E BANCÁRIO DA GENITORA. IMPOSSIBILIDADE. DELIBERAÇÃO SINGULAR MANTIDA. RECURSO CONHECIDO E DESPROVIDO. 1. A exórdial concerne à uma Ação Revisional de Alimentos com Pedido de Tutela de Urgência, movida pelo Recorrente, com fito de obter a minoração dos alimentos provisórios fixados em favor dos Impúberes-Agravados. Tal rogatória não logrou provimento, uma vez que o Juízo a quo entendeu por arbitrar o encargo no importe de 50% (cinquenta por cento) da remuneração bruta do Alimentante. 2. Em suas razões recursais, o Agravante aduz que o provento alimentar deve ser minorado, tendo em vista que a sua renda líquida mensal – qual seja, a importância de R\$ 22.534 (vinte e dois mil, quinhentos e trinta e quatro reais) – já não se

Processo	0200269-68.2022.8.06.0090
	mostra suficiente para adimplir a obrigação arbitrada, uma vez que constituiu nova família, com gêmeos de tenra idade. Adiante, arrazoa que a Genitora, representante dos Demandados, é professora universitária e médica renomada, de modo que não lhe parece proporcional que todo o encargo alimentar recaia sobre o Alimentante. 3. No caso sub judice, em que pesem as alegações do Agravante sobre o seu dispêndio financeiro, depreendo que não foram colacionados aos fólios processuais documentos que comprovassem a sua impossibilidade cabal de arcar com o quantum arbitrado pelo Magistrado Singular. Do contrário, vislumbro que a majoração do encargo levou em consideração o diagnóstico de doenças neurológicas em dois dos três filhos (vide fls. 615, 622 e 625), sendo de clareza meridiana que tais patologias enquadram-se no conceito de necessidade. 4. Em uma segunda análise, no que toca à quebra do sigilo fiscal e bancário da Agravada, depreendo que tal pleito é, nesse momento processual demasiadamente inexequível. Explico. Não obstante seja o Juízo a quo o legítimo destinatário da prova, a medida requestada é medida excepcional, sendo admitida apenas quando presentes indícios que justifiquem a investigação dos rendimentos da Parte Requerida, do contrário, estar-se-á diante de clara violação à direitos individuais de cunho constitucional. 5. Ex positis, diante de toda a perquirição técnico-jurídica realizada alhures, conheço do recurso para negar-lhe provimento, mantendo irretocável a deliberação primeva. (Agravado de Instrumento - 0636616-48.2021.8.06.0000, Rel. Desembargador(a) FRANCISCO DARIVAL BESERRA PRIMO, 2ª Câmara Direito Privado, data do julgamento: 23/03/2022, data da publicação: 23/03/2022)&#160; </p> <p style="text-align: justify; padding-left: 150px;"> DIREITO CIVIL. PROCESSO CIVIL. AGRAVO DE INSTRUMENTO. EXONERAÇÃO DE ALIMENTOS. FILHO MAIOR DE IDADE DIAGNOSTICADO COM TRANSTORNO DO ESPECTRO AUTISTA. OBSERVÂNCIA AO TRINÔMIO DA NECESSIDADE, POSSIBILIDADE E PROPORCIONALIDADE. RECURSO CONHECIDO E PROVIDO. I. CASO EM EXAME 1. Agravo de Instrumento objetivando a reforma de decisão interlocutória proferida nos autos de Ação de Exoneração de Alimentos ajuizada em face da parte ora recorrente. II. QUESTÃO EM DISCUSSÃO 2. A questão posta em discussão consiste em avaliar a possibilidade de reforma da decisão que exonerou o genitor, parte ora agravada, da obrigação alimentícia. III. RAZÕES DE DECIDIR 3. Como cediço, a prestação alimentar visa assegurar ao alimentando o necessário para a sua manutenção, entendida esta em sentido amplo, proporcionando-lhe os meios de subsistência. O quantum a de atender às suas necessidades vitais básicas, nos padrões e possibilidades de cada família exclusivamente, não sendo a pensão meio de formação de patrimônio, mas de subsistência. 4. Dois fatores são primordiais na fixação do valor dos alimentos: a possibilidade do obrigado e a necessidade do beneficiado, tendo como vetor o princípio da proporcionalidade. 5. Dos documentos anexados aos autos, percebe-se que apesar de o agravante ser pessoa maior de idade (25 anos), o que induziria a um juízo de que não mais necessita do recebimento de pensão alimentícia ou que já possui condições de arcar com o próprio sustento, este é portador do espectro autista (TEA). 6. Consta, ainda, laudo médico, atestando a incapacidade da parte recorrente de exercer atividade laborativa por tempo indeterminado. 7. Nesse sentido, a exoneração da obrigação alimentar neste momento acarretaria um abalo não apenas na subsistência do agravante, mas também na sua dignidade, desconsiderando a própria finalidade da obrigação alimentar, que visa à garantia de condições mínimas de vida. IV. DISPOSITIVO 8. Recurso conhecido e provido. Dispositivos relevantes citados: CC, art. 1.694 e 1.695. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer o recurso para dar-lhe provimento, nos termos do voto do desembargador relator. Fortaleza/CE, 11 de dezembro de 2024. DESEMBARGADORA CLEIDE ALVES DE AGUIAR Presidente do Órgão Julgador DESEMBARGADOR RAIMUNDO NONATO SILVA SANTOS Relator (Agravado de Instrumento - 0633966-23.2024.8.06.0000, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 3ª Câmara Direito Privado, data do julgamento:&#160; 11/12/2024, data da publicação:&#160; 11/12/2024)&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Dos documentos anexados aos autos, percebe-se que apesar de o recorrido alimentado é pessoa maior de idade com nível superior de ensino, o que induziria a um juízo de que não mais necessita do recebimento de pensão alimentícia ou que já possui condições de arcar com o próprio sustento.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Contudo, a parte recorrida é portador de Esquizofrenia indiferenciada (CID 10 F20.3), conforme laudo de id. 21957561 (fls. 03), episódio depressivo grave único e sem sintomas psicóticos (CID 10 F32.2), conforme laudo de id. 21957561 (fls. 04), transtorno depressivo recorrente + transtorno hipercinético não especificado (CID 10 F33.2 + F90.9), conforme laudo de id. 21957562 (fls. 03).&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Ainda, observo que no atestado médico (id. 21957561, fls. 04), de médico especialista, afirma que a parte recorrida apresenta ausência de capacidade laborativa.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Nesse sentido, a exoneração da obrigação alimentar neste

2465

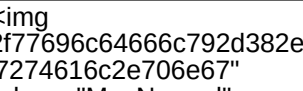
Processo	0637964-96.2024.8.06.0000
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO 0637964-96.2024.8.06.0000 AGRAVO DE INSTRUMENTO (202) AGRAVANTE: A PREDIAL ADMINISTRADORA CEARENSE DE BENS IMOV LTDA - EPP AGRAVADO: LDI ADMINISTRADORA LTDA Ementa: DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO EM AGRAVO DE INSTRUMENTO. CUMPRIMENTO DE SENTENÇA. DESPACHO QUE RECEBE O PEDIDO E DETERMINA A INTIMAÇÃO DO EXECUTADO PARA PAGAMENTO. ATO DE MERO EXPEDIENTE. IRRECORRIBILIDADE. INOVAÇÃO RECURSAL. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Agravo interno interposto por Predial – Administradora Cearense de Bens Imóveis Ltda. contra decisão monocrática que não conheceu de agravo de instrumento manejado em face de despacho que recebeu o cumprimento de sentença requerido por LDI Administradora Ltda. e determinou a intimação do executado para pagamento do débito no prazo legal. 2. A agravante sustenta a recorribilidade da decisão e a necessidade de interpretação ampliativa do art. 1.015 do CPC. II. QUESTÃO EM DISCUSSÃO 3. Há duas questões em discussão: (i) definir se a decisão que recebe o cumprimento de sentença e determina a intimação do executado para pagamento possui conteúdo decisório e, portanto, é agravável; (ii) verificar se houve inovação recursal por parte da agravante ao suscitar matérias próprias de impugnação ao cumprimento de sentença. III. RAZÕES DE DECIDIR 4. A decisão que apenas recebe o pedido de cumprimento de sentença e determina a intimação do devedor para pagar ou garantir a execução constitui mero despacho de expediente, pois apenas impulsiona o processo, sem conteúdo decisório. 5. O Superior Tribunal de Justiça pacificou o entendimento de que tal decisão é irrecorrível, por decorrer de imposição legal prevista no art. 523 do CPC. 6. A interposição de agravo de instrumento contra despacho sem carga decisória afronta a taxatividade mitigada do art. 1.015 do CPC, que não alcança esse tipo de ato judicial. 7. Configura inovação recursal a inclusão, em sede de agravo, de matérias próprias de impugnação ao cumprimento de sentença, que devem ser primeiramente submetidas ao juízo de origem. IV. DISPOSITIVO E TESE Recurso desprovido. Tese de julgamento 1. A decisão que recebe o cumprimento de sentença e determina a intimação do executado para pagamento constitui mero despacho de expediente, irrecorrível por agravo de instrumento. 2. A inovação recursal, com a inclusão de matérias próprias de impugnação ao cumprimento de sentença, inviabiliza o conhecimento do recurso. Dispositivos relevantes citados: CPC, arts. 1.015, parágrafo único; 513, § 2º; 523. Jurisprudência relevante citada: STJ, Resp nº 1.837.211/MG, Rel. Min. Moura Ribeiro, 3ª Turma, j. 09.03.2021, DJe 11.03.2021; TJCE, AI nº 0625086-42.2024.8.06.0000, Rel. Des. Antônio Abelardo Benevides Moraes, 1ª Câmara de Direito Privado, j. 11.06.2025; TJCE, AI nº 0621084-29.2024.8.06.0000, Rel. Des. Emanuel Leite

Processo	0637964-96.2024.8.06.0000
	Albuquerque, 1ª Câmara de Direito Privado, j. 17.04.2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso de agravo interno, mas negar-lhe provimento, tudo nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATORIO Trata-se de Agravo Interno interposto por Predial – Administradora Cearense de Bens Imóveis Ltda em face de decisão monocrática proferida sob minha relatoria, nos autos do Agravo de Instrumento interposto pela ora agravante em face de despacho que recebeu o cumprimento de sentença movido por LDI Administradora Ltda e determinou a intimação da parte ré para pagamento do débito exequendo. A decisão vergastada não conheceu do agravo de instrumento, nos seguintes termos: O ato judicial impugnado no presente agravo de instrumento nada mais é que o impulsionamento do feito pelo Magistrado, de ordem legal, em respeito ao rito processual previsto nos arts. 523 e 525, §1º, do CPC, que assim determinam: [...]. A bem da verdade, observa-se que as insurgências lançadas neste recurso tratam de matéria que deve ser ventilada em sede de impugnação ao cumprimento de sentença e não em agravo de instrumento. Portanto, não há conteúdo decisório no ato judicial impugnado e, assim sendo, descabe a insurgência pela via do agravo de instrumento. Sobre o tema, colaciono jurisprudência deste TJCE: [...] Ainda que assim não fosse, as matérias alegadas neste recurso não foram apreciadas ainda pelo magistrado de primeira instância, motivo pelo qual também não podem ser decididas por este tribunal, sob pena de supressão de instâncias, o que é vedado pela legislação processual civil brasileira. Diante do exposto e fundamentação apresentada, NÃO CONHEÇO do presente agravo de instrumento, por ser manifestamente inadmissível, conforme disciplina o inciso III, do artigo 932, do CPC, bem como pela vedação a supressão de instâncias. Irresignada, a Predial interpôs o presente agravo interno, no qual alega, em suma, que a decisão agravada possui, sim, conteúdo decisório, já que determinou a intimação do executado para, no prazo de 15 (quinze) dias, quitar o débito objeto do cumprimento de sentença. Aduz, também, que a

Processo	0637964-96.2024.8.06.0000
	jurisprudência do STJ já se posicionou no sentido de que o art. 1.015, do CPC, deve ser interpretado de forma ampla, em especial no sentido de que as decisões interlocutórias proferidas em cumprimento de sentença são agraváveis. Ao final, roga pelo conhecimento e provimento do recurso interno, para que seja proferida decisão de mérito sobre o agravo de instrumento. Foram apresentadas contrarrazões sob o ID. 21986817, mediante o qual a parte agravada postula a manutenção da decisão monocrática que não conheceu do agravo de instrumento. É o que importa relatar. Decido. VOTO Presentes os requisitos de admissibilidade, conheço do agravo interno e passo à análise do mérito recursal. Em que pese os argumentos ventilados pela parte agravante, entendo que seu recurso não merece prosperar, posto que, conforme bem delineado na decisão monocrática agravada, a decisão, ainda que proferida em sede de cumprimento de sentença, que apenas recebe a peça e determina que haja o pagamento do débito exequendo não possui conteúdo decisório. Nos termos do § único, do art. 1.015, do CPC, realmente as decisões proferidas em fase de liquidação de sentença são agraváveis, contudo, é entendimento consolidado do c. Superior Tribunal de Justiça, que: [...] Com o advento do Novo Código de Processo Civil, o início da fase de cumprimento de sentença para pagamento de quantia certa passou a depender de provocação do credor . Assim, a intimação do devedor para pagamento é consectário legal do requerimento, e, portanto, irrecorrível, por se tratar de mero despacho de expediente, pois o juiz simplesmente cumpre o procedimento determinado pelo Código de Processo Civil (art. 523 do NCPC), impulsionando o processo. (REsp n. 1.837.211/MG, relator Ministro Moura Ribeiro, Terceira Turma, julgado em 9/3/2021, DJe de 11/3/2021.) Esse é exatamente o caso dos autos, uma vez que a decisão recorrida apenas recebeu o cumprimento de sentença, nos termos do art. 513, §2º, do CPC, bem como determinou a intimação da parte agravada para pagar ou garantir a execução, o que impede a interposição de agravo de instrumento. Não é destoante o entendimento deste e. Tribunal de Justiça do Ceará, veja-se: DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO EM AGRAVO DE INSTRUMENTO. FASE DE CUMPRIMENTO DE SENTENÇA. IRRECORRIBILIDADE DO ATO DE INTIMAÇÃO PARA PAGAMENTO. ATO DE MERÓ IMPULSO PROCESSUAL. AUSÊNCIA DE CONTEÚDO DECISÓRIO. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Agravo Interno interposto contra decisão monocrática que não conheceu do Agravo de Instrumento nº 0625086-42.2024.8.06.0000, por ausência de interesse recursal, considerando incabível a apreciação do recurso em razão da inexistência de prévia impugnação ao cumprimento de sentença, nos termos dos artigos 523 e 525 do CPC. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se é cabível a interposição de Agravo de Instrumento contra o ato judicial que determina a intimação do executado para pagamento no prazo legal, sob pena de incidência de multa e honorários, no âmbito do cumprimento de sentença. III. RAZÕES DE DECIDIR 3. O artigo 1.015, parágrafo único, do CPC admite a interposição de Agravo de Instrumento contra decisões interlocutórias proferidas na fase de cumprimento de sentença, desde que possuam conteúdo decisório. 4. O ato que determina a intimação do executado para pagamento, nos termos do artigo 523 do CPC, configura mero despacho de impulso processual, sem conteúdo decisório, razão pela qual não é passível de impugnação por Agravo de Instrumento. 5. A jurisprudência do Superior Tribunal de Justiça é firme no sentido de que tal ato não é recorrível, por não conter juízo valorativo autônomo, sendo mera formalidade decorrente da lei processual (STJ, REsp nº 1.733.560/SP). 6. A tese firmada no Tema 988 do STJ, que excepciona o rol do artigo 1.015 do CPC em hipóteses de urgência, não se

Processo	0637964-96.2024.8.06.0000
	aplica ao caso, pois não restou demonstrada situação que configure risco de inutilidade da discussão em sede de impugnação ao cumprimento de sentença. 7. A via adequada para discutir questões relativas aos encargos sucumbenciais e à exigibilidade da obrigação no cumprimento de sentença é a impugnação prevista no artigo 525 do CPC, e não o Agravo de Instrumento. IV. DISPOSITIVO E TESE 5. Recurso conhecido e desprovido. Tese de julgamento: 2O ato judicial que determina a intimação do executado para pagamento no cumprimento de sentença, previsto no artigo 523 do CPC, tem natureza de mero despacho de expediente, desprovido de conteúdo decisório, sendo, portanto, irrecorrível por meio de Agravo de Instrumento.2 Dispositivos relevantes citados: CPC, arts. 203, §2º; 523, caput e §1º; 525, §1º, VII; 1.015, parágrafo único. Jurisprudência relevante citada: STJ, REsp nº 1.733.560/SP. (Agravo Interno Cível160;- 0625086-42.2024.8.06.0000, Rel. Desembargador(a) ANTÔNIO ABELARDO BENEVIDES MORAES, 1ª Câmara Direito Privado, data do julgamento:160; 11/06/2025, data da publicação:160; 11/06/2025)</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">PROCESSUAL CIVIL. AGRAVO INTERNO. AGRAVO DE INSTRUMENTO NÃO CONHECIDO. CUMPRIMENTO DE SENTENÇA. INTIMAÇÃO DO EXECUTADO PARA PAGAMENTO. DESPACHO DE MERO EXPEDIENTE. NÃO CABIMENTO DA ESPÉCIE ELEITA PELA PARTE AGRAVANTE. AGRAVO INTERNO CONHECIDO E DESPROVIDO. 1. As decisões proferidas em liquidação ou cumprimento de sentença, execução e inventário, são de fato impugnáveis por agravo de instrumento (art. 1.015 , parágrafo único, do NCPC); porém, com o advento do atual Código de Processo Civil, o início da fase de cumprimento de sentença para pagamento de quantia certa dar-se mediante despacho de mero expediente, pois o juiz simplesmente cumpre o procedimento determinado pelo Código de Processo Civil (art. 523 do NCPC), impulsionando o processo, não sendo daí impugnável pela via do agravo de instrumento, mas pelas outras ferramentas próprias previstas na rologia processual civil. 2. Recurso conhecido e desprovido. (Agravo Interno Cível160;- 0621084-29.2024.8.06.0000, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:160; 17/04/2024, data da publicação:160; 17/04/2024)</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;">Em adendo, outro ponto pelo qual o agravo de instrumento não foi conhecido, por consectário lógico da irrecurribilidade da decisão agravada, se deu em razão da clara inovação recursal.</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;">Em seu recurso, a parte agravante suscita matérias que, na verdade, devem ser tratadas primeiro em sede de impugnação ao cumprimento de sentença, as quais serão inicialmente decididas pelo magistrado de origem e, apenas então, poderão ser objeto de apreciação por este tribunal.</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;">Destarte, conheço do presente agravo interno, mas nego-lhe provimento, mantendo inalterada a decisão monocrática vergastada.</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;">É como voto.</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;">Fortaleza, data da assinatura digital.</p> <p class="MsoNormal" style="margin-bottom: 0cm; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;">160;</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;">MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot;DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA<!--[if supportFields]><![endif]>160; </p> <p>160;</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"><!--[if supportFields]><span style="mso-

Processo	0636662-32.2024.8.06.0000
Número de ordem	215
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Tratamento médico-hospitalar
Polo ativo	MARIA LUCIA DA SILVEIRA
Advogado(s) - Polo ativo	MARISLEY PEREIRA BRITO - (CE8530-A)
Polo passivo	FUNDACAO ASSISTENCIAL DOS SERVIDORES DO MINISTERIO DA FAZENDA
Advogado(s) - Polo passivo	POLIANA LOBO E LEITE - (DF29801-A) LUCAS DIAS LEITE CORRÊA - (DF23706)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0636662-32.2024.8.06.0000
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0636662-32.2024.8.06.0000 - AGRADO DE INSTRUMENTO (202) AGRAVANTE: MARIA LUCIA DA SILVEIRA AGRAVADO: FUNDACAO ASSISTENCIAL DOS SERVIDORES DO MINISTERIO DA FAZENDA Ementa: DIREITO CIVIL E PROCESSUAL CIVIL. AGRADO DE INSTRUMENTO. PLANO DE SAÚDE DE AUTOGESTÃO. TUTELA DE URGÊNCIA. FORNECIMENTO DE TRATAMENTO EM REGIME DE HOMECARE. PRESCRIÇÃO MÉDICA. POSSIBILIDADE. RECURSO PRINCIPAL PROVIDO. AGRADO INTERNO PREJUDICADO I. CASO EM EXAME 1. Agravo de instrumento interposto por beneficiária de plano de saúde contra decisão que indeferiu pedido de tutela de urgência em ação ordinária visando obrigar a operadora, entidade de autogestão, a custear tratamento em regime de homecare, com fornecimento de insumos, equipamentos e cuidadores 24 horas, conforme prescrição médica. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se estão presentes os requisitos da probabilidade de direito e do perigo de dano para que a operadora de plano de saúde de autogestão custeie o tratamento domiciliar (homecare) prescrito pelo médico assistente da paciente idosa e portadora de doenças graves. III. RAZÕES DE DECIDIR 3. A inaplicabilidade do Código de Defesa do Consumidor aos planos de saúde de autogestão, nos termos da Súmula nº 608 do STJ, não autoriza a imposição de cláusulas abusivas ou que restrinjam direitos assegurados por lei, devendo prevalecer os princípios da função social do contrato, da boa-fé objetiva e da dignidade da pessoa humana. 4. A prescrição médica detalha a necessidade de homecare, incluindo gastrostomia, dieta enteral, cama hospitalar, colchão especial, fraldas geriátricas e cuidadores 24h, o que configura probabilidade do direito, diante da comprovação clínica da indispensabilidade do tratamento. 5. O perigo de dano está evidenciado pela idade avançada e pelo estado de saúde da paciente, que demandam tratamento imediato sob pena de ineficácia da tutela jurisdicional. 6. A jurisprudência do STJ e do TJCE reconhece a obrigação das operadoras de planos de saúde em custear tratamento domiciliar e insumos quando prescritos por profissional habilitado, desde que necessários à manutenção da saúde e da vida do beneficiário. IV. DISPOSITIVO E TESE 7. Recurso principal provido. Agravo Interno prejudicado. Tese de julgamento: 1. Estão presentes os requisitos da tutela de urgência quando demonstrados prescrição médica idônea e risco à saúde do beneficiário idoso em caso de demora no fornecimento do tratamento. Dispositivos relevantes citados: CF/1988, art. 1º, III; CC, arts. 421 e 422; Lei nº 9.656/1998; Súmula nº 608 do STJ. Jurisprudência relevante citada: STJ, REsp nº 2.017.759/MS, Rel. Min. Nancy Andrighi, 3ª Turma, DJe 16.02.2023; TJCE, ApC nº 0215828-07.2023.8.06.0001, Rel. Des. José Ricardo Vidal Patrocínio, j. 11.09.2024; TJCE, AI nº 0638091-68.2023.8.06.0000, Rel. Des. Francisco Mauro Ferreira Liberato, j. 29.05.2024; TJCE, ApC nº 0212336-41.2022.8.06.0001, Rel. Des. Emanuel Leite Albuquerque, j. 17.05.2023; TJCE, AgInt nº 0266748-82.2023.8.06.0001, Rel. Des. André

Processo	0636662-32.2024.8.06.0000
	Luiz de Souza Costa, j. 29.04.2025; TJCE, AI nº 0631909-32.2024.8.06.0000, Rel. Des. José Evandro Nogueira Lima Filho, j. 30.10.2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em CONHECER do Recurso de Agravo de Instrumento e, no mérito DAR-LHE PROVIMENTO, bem como julgado PREJUDICADO o recurso de Agravo Interno, tudo nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator EmentadoAcrdo RELATÓRIO Trata-se de Agravo de Instrumento interposto por MARIA LUCIA DA SILVEIRA em face de decisão proferida pela 37ª Vara Cível de Fortaleza, nos autos da Ação Ordinária de Obrigação de Fazer com Tutela de Urgência de Natureza Antecipada e Ressarcimento por Danos Materiais e Morais movida pela agravante em desfavor de FUNDACAO ASSISTENCIAL DOS SERVIDORES DO MINISTERIO DA FAZENDA. A decisão recorrida indeferiu o pedido de tutela de urgência formulado pela parte autora, nos seguintes termos: Note-se que a paciente recebeu alta hospitalar, de sorte que não se encontra em situação de internação domiciliar substituta de internação hospitalar. Além disso, os cuidados referidos no relatório médico acima não são exclusivos de pacientes internados, mas aplicam-se àqueles que se encontram restritos ao leito, mesmo em casos em que a internação não é recomendada. Daí que se entende que o caso é de assistência domiciliar, pois a parte autora parece necessitar dos serviços de um cuidador, definido como a "pessoa com ou sem vínculo familiar capacitada para auxiliar o paciente em suas necessidades e atividades da vida cotidiana" (item 3.5 da Resolução RDC n.º 11, de 26 de janeiro de 2006, acima referida). No caso, a promovida afirmou já estar prestando o serviço, conforme o plano terapêutico apresentado na fl. 122, que não foi objeto de impugnação pela promovente. No regime de assistência domiciliar, os serviços de cuidador e fornecimento de alimentação, fraudas geriátricas, cama / colchão e outros, não é de responsabilidade da empresa requerida, mas da própria paciente e de sua família. Ausente, portanto, a probabilidade do direito no tocante ao pedido de tutela provisória, que se refere à colocação da parte autora em situação de internação domiciliar. Deliberações.

Processo	0636662-32.2024.8.06.0000
	height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">Postas estas considerações, indefiro o pedido de tutela de urgência.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt;margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Irresignada, a parte autora interpôs o presente recurso no qual defende que foi diagnosticada com demência avançada e acostou prescrição médica contento necessidade de uso de gastrostomia para alimentação (GTT), dieta específica para a sonda de gastrostomia, cuidados para paciente acamado com cama hospitalar, colchão de pressão dinâmica (bio-air), uso de fraldas geriátricas 24horas, cuidadores 24horas por ser altamente dependente para autocuidado, e, de acordo com relatório médico, atualizado no dia 27/08/2024, o profissional que assiste a parte autora assevera que ela precisa de tratamento em homecare.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt;margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Requer, em sede de tutela antecipada recursal, que seja determinado o custeio e disponibilização integral do tratamento em homecare, previsto contratualmente e prescrito pelo médico. Por fim, roga pelo provimento do recurso com a manutenção da liminar concedida.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt;margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Foi proferida interlocutória sob o ID. 22078437, mediante a qual foi deferida a tutela requerida pela agravante, nos seguintes termos:</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt;margin-left:4.0cm;text-align:justify;line-height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">Deve o recorrido, no prazo de 5 (cinco) dias, providenciar o tratamento home care prescrito pelo médico da recorrente às fls. 04, qual seja, gastrostomia para alimentação (GTT), dieta específica para a sonda de gastrostomia, cuidados para paciente acamado com cama hospitalar, colchão de pressão dinâmica (bio-air), fraldas geriátricas e cuidadores 24horas.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;line-height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">Arbitro multa no valor de R\$2.000,00 (dois mil reais) por dia de descumprimento, limitada a R\$50.000,00 (cinquenta mil reais).</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt;margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Em face da referida decisão foi interposto agravo interno sob o ID. 22079108, no qual a fundação roga pela reconsideração da liminar deferida.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Também foi apresentada, no ID. 22078859, contraminuta ao agravo de instrumento, na qual defende, em suma, que o relatório médico de 27/08/2024 diverge do inicial, que previa apenas cuidador, indicando agora requisitos incompatíveis com o custeio de homecare, como o fornecimento de cuidadores 24h.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt;margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Sustenta, também, que consta no processo originário que a agravante obteve 7 pontos na tabela NEAD e, embora necessite de cuidados especiais, não há indicação de homecare, mas sim de assistência multidisciplinar. Roga, por fim, pelo desprovimento do agravo de instrumento, a fim de que seja indeferida a liminar postulada.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt;margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Sob o ID. 22078866, o Ministério Público apresentou parecer mediante o qual opina pelo conhecimento e parcial provimento do agravo.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Foi solicitada a inclusão em pauta tanto do agravo de instrumento (recurso principal), quanto do agravo interno.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">É o que importa relatar. Decido.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm; margin-bottom:6.0pt;margin-left:0cm;text-align:center;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none" align="center">VOTO</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-

Processo	0636662-32.2024.8.06.0000
	autospace:none">Presentes os pressupostos intrínsecos e extrínsecos de admissibilidade, conheço do agravo de instrumento e passo, à análise do mérito da insurgência.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">A matéria devolvida a este Tribunal tem como questão central verificar se deve ou não ser mantida a decisão que negou o pedido de tutela de urgência formulado pela autora para que houvesse o custeio pela operadora de plano de saúde do serviço de homecare prescrito pelo médico assistente da parte agravante.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Da análise dos autos, verifico que a parte autora informa, em suma, que tem 84 anos, é beneficiária de plano de saúde da Fundação Assistencial dos Servidores do Ministério da Fazenda (Assefaz) e que foi diagnosticada com Parkinson e Alzheimere, de modo que necessita de gastrostomia para alimentação (GTT), dieta específica para a sonda de gastrostomia, cuidados para paciente acamado com cama hospitalar, colchão de pressão dinâmica (bio-air), uso de fraldas geriátricas 24horas, cuidadores 24horas, conforme prescrição médica (IDs. 22079091, 22079092, 22079095 e 22079107).</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">No entanto, o plano de saúde negou o fornecimento do homecare e demais insumos, alegando não haver cobertura contratual, conforme documento de ID. 22078884.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Importa salientar que, por se tratar de plano de saúde administrado sob o regime de autogestão, resta afastada a incidência das normas do Código de Defesa do Consumidor, conforme orientação sedimentada pelo Colendo Superior Tribunal de Justiça na Súmula nº 608, que dispõe: "Aplica-se o Código de Defesa do Consumidor aos contratos de plano de saúde, salvo os administrados por entidades de autogestão."</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Contudo, a inaplicabilidade das normas consumeristas não confere à operadora o direito de impor cláusulas abusivas ou restritivas de direitos assegurados por lei, eis que as operadoras de autogestão estão submetidas às normas da Lei nº 9.656/98 e demais legislações aplicáveis ao setor, devendo observar, ainda, os princípios da função social do contrato, da boa-fé objetiva e da dignidade da pessoa humana.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Feitas tais considerações, passo à análise das razões recursais.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">A operadora de plano de saúde argumenta que os requisitos para concessão da tutela de urgência (probabilidade do direito e perigo de dano) não estão presentes.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Afirma que o tratamento homecare solicitado não tem cobertura contratual nem legal obrigatória e que a agravada não se enquadra no perfil para internação domiciliar, apenas para assistência domiciliar mais limitada. Por isso, não há obrigação legal ou contratual de fornecer insumos, materiais, equipamentos e dieta enteral de forma domiciliar.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Entendo, porém, que seus argumentos não merecem prosperar. Explico.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">De acordo com os relatórios juntados sob os Ids. 22079091, 22079092, 22079095 e 22079107, o médico assistente da agravada dr. Charlys Barbosa Nogueira (CRM/CF 7373), com especialidade em geriatria, prescreveu o seguinte tratamento:</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;line-height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">A paciente Maria Luisa da Silveira (CPF 319.087.803-01) é acompanhada por mim em domicílio e é portadora de demência avançada, com necessidade de uso de sonda (gastrostomia) para alimentação.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">

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	top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;text-indent:0cm;line-height:normal; mso-pagination:none;mso-list:l0 level1 lfo1;tab-stops:list 36.0pt;mso-layout-grid-align: none;text-autospace:none"> Alimentação: Alimentação específica para alimentação via sonda (Isosource 1.5).</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;text-indent:0cm;line-height:normal; mso-pagination:none;mso-list:l0 level1 lfo1;tab-stops:list 36.0pt;mso-layout-grid-align: none;text-autospace:none"> Cuidados: Cuidados para paciente acamado, com cama hospitalar, colchão de pressão d'água (Bio-air), uso de fraldas geriátricas 24 horas.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;text-indent:0cm;line-height:normal; mso-pagination:none;mso-list:l0 level1 lfo1;tab-stops:list 36.0pt;mso-layout-grid-align: none;text-autospace:none"> Acompanhamento: Cuidadores 24 horas, pois a paciente é completamente dependente para autocuidado.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">No que diz respeito ao fornecimento de alimentação enteral, trata-se item de custeio obrigatório pela operadora do plano de saúde, haja vista que é imprescindível ao correto e efetivo tratamento da autora diante do seu estado de saúde. Diferente não é o entendimento desta Primeira Câmara de Direito Privado:</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;line-height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">PLANO DE SAÚDE. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA. PACIENTE COM SEQUELAS DE AVC. FORNECIMENTO DE SERVIÇO UNIMED LAR. SITUAÇÃO DA AUTORA QUE SE ENQUADRA NA MODALIDADE DE ASSISTÊNCIA DOMICILIAR, E NÃO DE INTERNAÇÃO DOMICILIAR. ANÁLISE QUANTO À OBRIGATORIEDADE DE FORNECIMENTO DE DIETA ENTERAL, CAMA HOSPITALAR E MEDICAMENTOS DE USO DOMICILIAR. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA PARCIALMENTE REFORMADA. 1. Cinge-se a controvérsia recursal em analisar se deve ou não ser mantida a condenação em obrigação de fazer determinada na sentença, que obrigou a operadora do plano de saúde a custear o tratamento domiciliar da beneficiária, bem como se é cabível o fornecimento, pelo plano de saúde, de todos os serviços e produtos necessários, tais como dieta enteral e medicamentos. 2. A contratante do plano de saúde padece de sequela neurológica por acidente vascular cerebral, hidrocefalia, imobilidade, disfagia e síndrome convulsiva). Em virtudes das sequelas graves (coma vigil), foi dada alta a requerente, através do programa Unimed Lar (home care), contudo, alega que a ré/apelante não forneceu cama hospitalar, alimentação enteral, os materiais descartáveis necessários para administração da dieta, nem os fármacos prescritos pelos médicos, material este, que a autora/apelada necessita para continuar com o tratamento, e que era fornecido pela requerida/apelante durante o internamento hospitalar o tratamento com suporte domiciliar multiprofissional na modalidade home care. 3. Resta incontroversa a necessidade da autora de obter tratamento domiciliar na modalidade home care, tal como lhe foi indicado. Contudo, cabe analisar quais fornecimentos são obrigatórios por parte da apelante. 4. No que pertine ao fornecimento de alimentação enteral, trata-se item de custeio obrigatório pela operadora do plano de saúde, haja vista que é imprescindível ao correto e efetivo tratamento da autora diante do seu estado de saúde. Como consectário lógico, revela-se imperioso o fornecimento, pelo plano de saúde, dos insumos relacionados ao fornecimento da dieta enteral, como o frasco, o equipo e a seringa, por serem inerentes à efetiva prestação do serviço. 5. No que pertine à requisição medicamentos de uso domiciliar, o custeio, em regra, deve ser realizado de forma particular, pelo paciente, e não imposto ao plano de saúde, haja vista exclusão de cobertura expressamente constante na Lei nº 9.656/98. 6. Da mesma forma, encontra-se clara vedação legal ao pedido de fornecimento de cama hospitalar, por encontrar vedação expressa no inciso VII do artigo 10 da Lei nº 9.656/98. 7. A própria parte está ciente de que o Unimed Lar é um serviço oferecido aos seus usuários na forma de assistência domiciliar, com acompanhamento de equipe multidisciplinar e habilitação da família (ou terceiros) para auxiliar a paciente em suas necessidades e atividades da vida cotidiana, e não de uma internação domiciliar. Assim, demonstra-se consonância com as normas vigentes. 7. Recurso conhecido e parcialmente provido. Sentença parcialmente reformada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para dar-lhe parcial provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator (TJCE - Apelação Cível&#160;- 0215828-07.2023.8.06.0001, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 11/09/2024, data da publicação:&#160; 11/09/2024)</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;line-height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">AGRAVO DE INSTRUMENTO. PLANO DE SAÚDE.

Processo	0636662-32.2024.8.06.0000
	DIREITO DO CONSUMIDOR. PACIENTE COM DIAGNÓSTICO DE EPILEPSIA, PARALISIA CEREBRAL E SÍNDROME DE ANGELMAN. PRÉVIA INCLUSÃO NO PROGRAMA UNIMED LAR. ALIMENTAÇÃO ENTERAL E INSUMOS NECESSÁRIOS À SUA ADMINISTRAÇÃO. EXPRESSIVA VULNERABILIDADE DO PACIENTE QUE APRESENTA QUADRO DE DESNUTRIÇÃO CRÔNICA E ALIMENTAÇÃO EXCLUSIVAMENTE POR GASTROTOMIA. PROBABILIDADE DO DIREITO E PERIGO DE DANO EVIDENCIADOS. TUTELA QUE DEVE SER MANTIDA. ENFERMAGEM. SERVIÇO QUE NÃO SE CONFUNDE COM O ACOMPANHAMENTO POR CUIDADOR. PARTE AUTORA QUE NÃO SE DESINCUMBIU DO ÔNUS DE DEMONSTRAR A PRESENÇA DOS REQUISITOS DO ART. 300 DO CPC. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. DECISÃO REFORMADA. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em CONHECER do recurso para DAR-LHE PARCIAL PROVIMENTO, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (TJCE - Agravo de Instrumento&#160;- 0638091-68.2023.8.06.0000, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160;29/05/2024, data da publicação:&#160;29/05/2024)</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Do mesmo modo, no que se refere ao fornecimento de fraldas geriátricas, cama hospitalar, colchão de pressão d'água (Bio-air) e cuidadores 24h, verifico que houve indicação expressa do médico assistente da parte autora para que houvesse o seu fornecimento, o que é amparado pelo entendimento do c. STJ, veja-se:</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;line-height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">RECURSO ESPECIAL. AÇÃO DE OBRIGAÇÃO DE FAZER. PLANO DE SAÚDE. HOME CARE. INTERNAÇÃO DOMICILIAR SUBSTITUTIVA DA INTERNAÇÃOHOSPITALAR. INSUMOS NECESSÁRIOS AO TRATAMENTO DE SAÚDE. COBERTURA OBRIGATÓRIA. CUSTO DO ATENDIMENTO DOMICILIARLIMITADO AO CUSTO DIÁRIO EM HOSPITAL. 1. Ação de obrigação de fazer ajuizada em 23/01/2020, da qual foi extraído o presente recurso especial, interposto em 25/04/2022 e concluso ao gabinete em 10/08/2022. 2. O propósito recursal é decidir sobre a obrigação de a operadora do plano de saúde custear os insumos necessários ao tratamento médico da usuária, na modalidade de home care (internação domiciliar). 3. Nos termos da jurisprudência desta Corte, é abusiva a cláusula contratual que veda a internação domiciliar (home care) como alternativa à internação hospitalar. Precedentes. 4. A cobertura de internação domiciliar, em substituição à internação hospitalar, deve abranger os insumos necessários para garantir a efetiva assistência médica ao beneficiário; ou seja, aqueles insumos a que ele faria jus acaso estivesse internado no hospital, sob pena de desvirtuamento da finalidade do atendimento em domicílio, de comprometimento de seus benefícios, e da sua subutilização enquanto tratamento de saúde substitutivo à permanência em hospital. 5. O atendimento domiciliar deficiente levará, ao fim e ao cabo, a novas internações hospitalares, as quais obrigarão a operadora, inevitavelmente, ao custeio integral de todos os procedimentos e eventos delas decorrentes. 6. Hipótese em que deve a recorrida custear os insumos indispensáveis ao tratamento de saúde da recorrente - idosa, acometida de tetraplegia, apresentando grave quadro clínico, com dependência de tratamento domiciliar especializado - na modalidade de home care, conforme a prescrição feita pelo médico assistente, limitado o custo do atendimento domiciliar por dia ao custo diário em hospital. 7. Recurso especial conhecido e provido. (STJ. REsp nº 2.017.759/MS. Rel. Min. Nancy Andrighi. Terceira Turma. DJe: 16/02/2023)</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Não é destoante o entendimento deste e. Tribunal de Justiça do Ceará, veja-se</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;line-height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">SAÚDE. APELAÇÃO CÍVEL. ENFERMAGEM 24H. LAUDO QUE FALA EM NECESSIDADE DE "CUIDADOR DIUTURNAMENTE" MAS QUE NA VERDADE DIZ RESPEITO A CUIDADOS POR PROFISSIONAL ESPECIALIZADO. PACIENTE COM DOENÇA DE PARKINSON E HÁ MENÇÃO AS PROBLEMAS DE DEGLUTIÇÃO E MOVIMENTOS EM GERAL, INCLUSIVE COM A UTILIZAÇÃO DE UMA Sonda PARA ALIMENTAÇÃO. NECESSIDADE DA COBERTURA. SITUAÇÃO ESPECIAL. RECURSO CONHECIDO E PROVIDO. 1 Só existe apelação do autor sobre o desprovidimento, em sentença, do pedido de enfermeiro 24h. 2 O CASO TEM UMA PARTÍCULA ESPECIAL. O recorrente tem 78 anos de idade, com diagnóstico de Doença de Parkinson e há menção as problemas de deglutição e movimentos em geral, inclusive com a utilização de uma sonda para

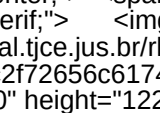
Processo	0636662-32.2024.8.06.0000
	alimentação. Embora o laudo médico fale o termo "cuidador diuturnamente", não se expressando especificamente dos cuidados de um "enfermeiro", pode-se deduzir que as tarefas que circundam a alimentação do paciente, POR SONDA, não podem ser feitas pela família, mas somente por profissional especializado, justificando, assim, a procedência da pretensão autoral. Isso fica inequívoco quando o próprio laudo fala: "requer acompanhamento ESPECIALIZADO" (apesar de chamar o profissional de cuidador). 3 RECURSO CONHECIDO E PROVIDO. SENTENÇA REFORMADA. (Apelação Cível&#160;- 0212336-41.2022.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160; 17/05/2023, data da publicação:&#160; 17/05/2023)</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;line-height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">DIREITO DO CONSUMIDOR. AGRAVO INTERNO EM APELAÇÃO. PLANO DE SAÚDE. NEGATIVA DE COBERTURA. INTERNAÇÃO DOMICILIAR. HOME CARE. IDOSO COM PARKINSON. ROL DA ANS. MITIGAÇÃO DEVIDA. ART. 10, §§ 12 E 13, DA LEI Nº 9.656/98. CONCESSÃO. FORNECIMENTO DE FRALDAS GERIÁTRICAS E CAMA HOSPITALAR. PRESCRIÇÃO MÉDICA. COBERTURA OBRIGATÓRIA. JURISPRUDÊNCIA STJ E TJCE. DECISÃO MONOCRÁTICA MANTIDA. RECURSO CONHECIDO E NÃO PROVIDO. I. CASO EM ANÁLISE. 1. Agravo interno que objetiva a reforma da decisão monocrática que negou provimento à Apelação da recorrente e ratificou a obrigação do plano de saúde fornecer o tratamento home care de acordo com a prescrição médica. II. QUESTÃO EM DISCUSSÃO. 2. A questão em discussão consiste em avaliar se há obrigação do plano de saúde de fornecer e custear o tratamento, atendimento domiciliar e insumos como parte da cobertura mínima obrigatória. III. RAZÕES DE DECIDIR. 3. Considera-se abusiva a cláusula contratual que limita ou exclui tratamento prescrito para garantir a saúde ou a vida do segurado, podendo haver a declaração de nulidade (art. 51 do CDC), pois não pode o Plano de Saúde querer se eximir da responsabilidade de prestação do serviço e adentrar no mérito da modalidade de tratamento indicado como favorável à melhora da doença que acomete a paciente, uma vez que essa avaliação compete ao médico, profissional especializado, que prescreve os meios mais adequados ao restabelecimento da saúde. 4. A jurisprudência do Superior Tribunal de Justiça considera que a internação domiciliar é uma extensão da internação hospitalar, contratualmente prevista, sendo abusiva a negativa de sua cobertura. 5. Em casos semelhantes o Tribunal de Justiça do Estado do Ceará tem interpretado que a obrigação de custeio de tratamento no sistema home care abrange os casos de assistência domiciliar em face do quadro de saúde do beneficiário. 6. Quanto ao fornecimento de fraldas geriátricas e cama hospitalar, a cobertura de internação domiciliar deve abranger os insumos e medicamentos de uso diário, conforme prescrição médica, os profissionais especializados e os materiais de higiene pessoal e ambiental onde será instalado o home care. Precedentes TJCE. IV. DISPOSITIVO. 7. Recurso conhecido e não provido. Manutenção da decisão agravada. _____ Dispositivos relevantes citados: Art. 10, §§ 12 e 13, da Lei nº 9.656/98. Jurisprudências relevantes citadas: STJ: REsp nº 2.032.929/SP, Rel. Min. Antonio Carlos Ferreira, Quarta Turma, DJe: 20/04/2023; e REsp nº 2.017.759/MS, Rel. Min. Nancy Andrighi, Terceira Turma, DJe: 16/02/2023. TJCE: AgInt nº 0632990-16.2024.8.06.0000/50000, Rel. Des. André Luiz de Souza Costa, 4ª Câmara Direito Privado, DJe: 04/02/2025; e AI nº 0631909-32.2024.8.06.0000, Rel. Des. Jose Evandro Nogueira Lima Filho, 4ª Câmara Direito Privado, DJe:&#160; 30/10/2024. (Agravo Interno Cível&#160;- 0266748-82.2023.8.06.0001, Rel. Desembargador(a) ANDRÉ LUIZ DE SOUZA COSTA, 4ª Câmara Direito Privado, data do julgamento:&#160; 29/04/2025, data da publicação:&#160; 30/04/2025)</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:4.0cm;text-align:justify;line-height:normal;mso-pagination:none; mso-layout-grid-align:none;text-autospace:none">DIREITO CIVIL E DO CONSUMIDOR. AGRAVO DE INSTRUMENTO. PLANO DE SAÚDE. HOME CARE. INSUMOS NECESSÁRIOS AO TRATAMENTO DE SAÚDE. COBERTURA OBRIGATÓRIA. CUSTO DO ATENDIMENTO DOMICILIARLIMITADO AO CUSTO DIÁRIO EM HOSPITAL. RECURSO CONHECIDOE PROVIDO. DECISÃO REFORMADA. 1. Trata-se de recurso de Agravo de Instrumento interposto em face de decisão interlocutória proferida nos autos da ação ordinária que deferiu parcialmente a tutela de urgência para determinar que a operadora de assistência médica realize o tratamento prescrito à beneficiária. 2. O cerne da controvérsia trazida no agravo de instrumento consiste em analisar se o plano de saúde possui ou não a obrigação de prestar o serviço de internação domiciliar à paciente nos moldes da prescrição médica, com o fornecimento de profissional de enfermagem, bem como do depósito plástico, cama hospitalar, colchões e fraldas. 3. Analisando a documentação apresentada, verifica-se que o pleito da autora se trata de ¸internação domiciliar¸, e não de "assistência domiciliar¸, estando a empresa recorrida, a teor da jurisprudência da Corte Superior de Justiça, obrigada a prestar o serviço requerido nos moldes da prescrição médica. 4. Assim, considerando que o tratamento domiciliar é extensão dos cuidados médicos hospitalares, não se desobrigando, portanto, no fornecimento dos insumos necessários para o adequado tratamento da agravada, uma vez que o home care é uma

Processo	0636662-32.2024.8.06.0000
	verdadeira estrutura hospitalar na residência da paciente, não pode a agravante se furtar a fornecer os insumos e medicamentos necessários ao tratamento, como alimentação especial industrializada, fraldas e medicamentos de uso diário constantes da recomendação médica, bem como profissionais especializados (enfermagem, fisioterapeuta, fonoaudiólogo, etc.) e os materiais de higiene pessoal e ambiental onde será instalado o home care. 5. Agravo de instrumento conhecido e provido. Decisão decotada. (TJCE. AI nº 0631909-32.2024.8.06.0000. Rel. Des. Jose Evandro Nogueira Lima Filho. 4ª Câmara Direito Privado. DJe: 30/10/2024). Assim, encontra-se presente o requisito da probabilidade do direito no que se refere à necessidade de a operadora de saúde fornecer o tratamento homecare, da forma como prescrita pelo médico assistente da autora. Quando ao requisito do perigo de dano, também se encontra presente e consubstanciado no quadro de saúde fragilizado da paciente e sua idade avançada, havendo risco de ineficácia da prestação jurisdicional caso o tratamento não seja fornecido de imediato, conforme aponta o próprio laudo médico. No que se refere ao agravo interno da operadora de saúde, apesar de estarem presentes os requisitos extrínsecos de admissibilidade (tempestividade, adequação e regularidade formal), conforme os artigos 1.016 e 1.017 do CPC, é certo que o recurso não deve ser conhecido devido à perda superveniente do objeto. Isso porque, o agravo de instrumento principal foi devidamente julgado nesta mesma sessão. Destarte, entendo que o interesse recursal da parte recorrente não mais subsiste, uma vez que a decisão combatida, de cognição sumária, foi substituída por decisum de cognição exauriente. Assim, com a perda superveniente do objeto do recurso, evidenciada está a inutilidade de qualquer discussão acerca do acerto ou não da decisão recorrida, o que enseja a prejudicialidade do presente agravo interno. Diferente não é o entendimento desta 1ª Câmara de Direito Privado: DIREITO PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO PRINCIPAL JULGADA NA ORIGEM. PERDA DO OBJETO DO RECURSO EM RAZÃO DE SENTENÇA SUPERVENIENTE. RECURSO PREJUDICADO. ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acordam os membros da Primeira Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, em julgar PREJUDICADO o recurso, nos termos do voto do Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator (TJCE - Agravo de Instrumento - 0637750-76.2022.8.06.0000, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 10/05/2023, data da publicação: 10/05/2023; Dito isso, uma vez prejudicado, deixo de conhecer do agravo interno, uma vez que manifestamente prejudicado pela perda superveniente do seu objeto. Diante do exposto, firme nas razões acima delineadas, conheço do recurso de agravo de instrumento para, no mérito, dar-lhe provimento, mantendo a liminar já deferida. Deixo de conhecer do agravo interno, posto que prejudicado diante do julgamento, nesta sessão, do recurso principal. Ficam as partes, desde logo, advertidas de que a oposição de embargos de declaração, com nítido intuito protelatório, ensejará a aplicação da multa prevista no art. 1.026, §§2º e 3º, do CPC/2015.

Processo	0636662-32.2024.8.06.0000
	top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">É como voto.</p> <p class="MsoNormal" style="margin-top:6.0pt;margin-right:0cm;margin-bottom:6.0pt; margin-left:0cm;text-align:justify;text-indent:2.0cm;line-height:150%; mso-pagination:none;mso-layout-grid-align:none;text-autospace:none">Fortaleza, data da assinatura digital.</p> <p class="MsoNormal" style="margin-bottom:0cm;line-height:normal;mso-pagination: none;mso-layout-grid-align:none;text-autospace:none">&#160;</p> <p class="MsoNormal" style="margin-bottom:0cm;text-align:center; line-height:normal;mso-pagination:none;mso-layout-grid-align:none;text-autospace: none" align="center"><!--[if supportFields]>MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot;<!--[endif]>DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA<!--[if supportFields]><!--[endif]>&#160; </p> <p class="MsoNormal" style="margin-bottom:0cm;text-align:center; line-height:normal;mso-pagination:none;mso-layout-grid-align:none;text-autospace: none" align="center"><!--[if supportFields]>MERGEFIELD &quot;Designi&ccedil;&atilde;o do relator atual do processo com g&ecirc;nero#Designi&ccedil;&atilde;o do relator atual do processo considerando seu g&ecirc;nero=933@PROC&quot;<!--[endif]> Relator<!--[if supportFields]><!--[endif]></p> </div></div><p>
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<p>&#160;</p><p>&#160;</p><p style="text-align:center;"> &#160; </p>
Processo	0462469-89.2011.8.06.0001
Número de ordem	216
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Usucapião Especial (Constitucional)
Polo ativo	VANDA CAVALCANTE DA COSTA
Advogado(s) - Polo ativo	KENNEDY FERREIRA LIMA - (CE10914-A) LUCIANO BRAGA CAVALCANTE - (CE34090-A)
Polo passivo	Espolio de Filomena de Castro Freire
Advogado(s) - Polo passivo	ROBERTO REIAL LINHARES - (CE10128-A) ISABELLE DE CASTRO MACIEL - (CE18323-A) FRANCISCO FERREIRA MACIEL - (CE2582-A) MARIA FILOMENA DE CASTRO MACIEL - (CE11671-A) VERONICA CAMILA LIMA MAIA - (CE24747-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado
Processo	0128684-39.2016.8.06.0001
Número de ordem	217
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Anulação
Polo ativo	BANCO BRADESCO FINANCIAMENTOS S.A.

Processo	0128684-39.2016.8.06.0001
Advogado(s) - Polo ativo	ANDRE NIETO MOYA - (SP235738-A)
Polo passivo	RUTE PECK DE SOUSA
Advogado(s) - Polo passivo	MARCIO BORGES DE ARAUJO - (CE18920-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0128684-39.2016.8.06.0001
Acórdão	 PROCESSO: 0128684-39.2016.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: BANCO BRADESCO FINANCIAMENTOS S.A. APELADO: RUTE PECK DE SOUSA Ementa: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. CONTRATO DE EMPRÉSTIMO CONSIGNADO. ASSINATURA IMPUGNADA. LAUDO PERICIAL QUE ATESTA FALSIDADE. ÔNUS DA PROVA DA AUTENTICIDADE DO DOCUMENTO QUE INCUMBE A QUEM O PRODUZIU (CPC, ART. 429, II). INEXIGIBILIDADE DO TÍTULO EXECUTIVO. EXTINÇÃO DA EXECUÇÃO MANTIDA. RECURSO DESPROVIDO. I. CASO EM EXAME Apelação cível interposta por instituição financeira contra sentença que acolheu embargos à execução, reconheceu a falsidade da assinatura constante em contrato de empréstimo consignado e declarou extinta a execução de título extrajudicial, sem resolução de mérito, com fundamento no art. 485, VI, do CPC. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em definir se a sentença que reconheceu a falsidade da assinatura no contrato e extinguiu a execução deve ser reformada diante da alegação do banco apelante de autenticidade do título e de depósitos em favor da cliente. III. RAZÕES DE DECIDIR O contrato de empréstimo consignado que embasa a execução foi objeto de impugnação pela parte embargante, que negou a autoria da assinatura aposta no título. 4.

Processo	0128684-39.2016.8.06.0001
	mérito, com base no art. 485, VI, do CPC, diante do reconhecimento da falsidade da assinatura aposta no título executado. Consta da sentença que o Magistrado <i>a quo</i> decidiu nos seguintes termos: Isto posto, hei por bem, com fulcro nos dispositivos legais citados e na jurisprudência, julgar PROCEDENTE a presente ação de embargos à execução, por via de consequência, declaro extinta a ação de execução nº 0881185- 94.2014.8.06.0001, sem resolução de mérito, com base no art. 485, VI, do CPC, diante do reconhecimento da falsidade da assinatura aposta em seu nome no verso do título executado. Por fim, requer o conhecimento e o provimento do recurso para que seja anulada a decisão recorrida, determinando a improcedência dos Embargos à Execução e determinando a prosseguimento da Ação de Execução. Condenando ainda a parte recorrida ao pagamento dos ônus sucumbenciais. Contrarrazões ID 22092695 (SAJ fls. 283). Após, os autos ascenderam para julgamento nesta Corte. Parecer do Ministério Público ID 22091519 (Saj 297), opinando pela desnecessidade de intervenção do Parquet, por se tratar de matéria de cunho patrimonial, envolvendo partes capazes e direitos disponíveis. É o relatório. VOTO Conheço do presente recurso, porquanto presentes os pressupostos intrínsecos e extrínsecos de admissibilidade recursal. Conforme relatado, trata-se de recurso de apelação adversando a sentença que julgou procedente os pedidos formulados nos Embargos à Execução apresentado pelo embargante, em face de execução movida pelo banco apelado. O negócio jurídico questionado pela embargante consiste na cédula de crédito do Banco Bradesco Financiamento S/A – Empréstimo Consignado nº 245.975 (588234990), no valor de R\$ 23.769,74 (vinte e três mil, setecentos e sessenta e nove reais e setenta e quatro centavos). Dito isso, a controvérsia recursal consiste em apurar o acerto ou não da sentença que julgou procedentes os embargos à execução ajuizados pelo apelado e extinguiu a ação de execução de título extrajudicial nº 0881185- 94.2014.8.06.0001. Nesse contexto, rememorando o caso dos autos, o Apelado ingressou com Embargos à Execução afirmando que não reconhecia o débito, aduzindo que a assinatura aposta no contrato não era sua. Em sequência, foi deferida

Processo	0128684-39.2016.8.06.0001
	a realização de prova pericial para fins de verificação da assinatura aposta no título, tendo o Laudo pericial ID (SAJ 157/194) concluído que as assinaturas questionadas, constantes na cédula de crédito do Banco Bradesco Financiamento S/A não são da embargante, constatando-se serem falsificações, por imitação. </p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;> Tal fato, ocasiona a presunção da existência de fraude no momento da pactuação do negócio jurídico.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;> Dessa forma, diante da existência de perícia judicial nos autos, que atesta não ser do suplicante a assinatura constante no instrumento, tem-se como prova suficiente para atestar os argumentos autorais de que o contrato impugnado não vale como prova da contratação, uma vez que eivado de nulidade insanável.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;> À vista disso, fazendo uma análise imperiosa dos autos, o banco não se desincumbiu do ônus de demonstrar os fatos impeditivos, modificativos ou extintivos do direito autoral (art. 373, II, do CPC).</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;> Tal inércia certamente desabona o seu pleito e reflete no julgamento procedente dos embargos executórios.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;> Seguindo a mesma conclusão, colho os seguintes precedentes:</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> RECURSO DE APELAÇÃO. EMBARGOS À EXECUÇÃO. SENTENÇA DE PROCEDÊNCIA QUE EXTINGUIU O PROCESSO DE EXECUÇÃO. IRRESIGNAÇÃO DA INSTITUIÇÃO FINANCEIRA. CERCEAMENTO DE DEFESA NÃO VERIFICADO. PRECLUSÃO. REJEIÇÃO. AUSÊNCIA DE COMPROVAÇÃO PELA EMBARGADA DA AUTENTICIDADE DA ASSINATURA CONSTANTE NO CONTRATO. ÔNUS QUE LHE INCUMBIA. INTELIGÊNCIA DO ART. 429, II, DO CPC. SENTENÇA MANTIDA. RECURSO CONHECIDO E IMPROVIDO. 1 - Tendo sido proporcionada à parte apelante a produção de provas, e tendo esta afirmado não ter interesse na inserção do feito na fase instrutória, pleiteando pelo julgamento antecipado do litígio, operou-se a preclusão consumativa da questão, impedindo que, ao se deparar com o desprovimento desfavorável aos seus interesses, busque a anulação da sentença para produzir prova que dispensou no curso do processo. Cerceamento de defesa, portanto, não verificado. 2 – O ônus de comprovar a veracidade da assinatura contestada pela parte adversa é da parte que produziu o documento, de acordo com o art. 429, II, do Código de Processo Civil. 3 - Na vertente hipótese, o título de crédito foi confeccionado pela apelante, que utilizou o mesmo para manejar sua pretensão executiva, sendo ônus desta demonstrar a autenticidade da assinatura aposta no documento. 4 - Sendo assim, não tendo a apelante comprovado a autenticidade da assinatura aposta no Contrato de Abertura de Crédito, deve ser mantida a sentença que acolheu os embargos executórios e extinguiu a ação de execução. 5 – Recurso conhecido e improvido. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos em que são partes as acima indicadas, acordam os desembargadores integrantes da 4ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do apelo para negar-lhe provimento, nos termos do relatório e do voto da Relatora, que passam a fazer parte integrante do presente acórdão. Fortaleza (CE), 14 de dezembro de 2021. MARIA DO LIVRAMENTO ALVES MAGALHÃES Desembargadora Relatora (TJ-CE - Apelação Cível: 0047263-11.2016.8.06.0071 Crato, Relator: MARIA DO LIVRAMENTO ALVES MAGALHÃES, Data de Julgamento: 14/12/2021, 4ª Câmara Direito Privado, Data de Publicação: 14/12/2021) (Destaquei)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. CHEQUE. IMPUGNAÇÃO DA AUTENTICIDADE DA ASSINATURA. ÔNUS DA PROVA. PARTE QUE PRODUZIU O DOCUMENTO. ART. 429, INC. II, DO CPC. PRODUÇÃO DE PROVA. NÃO REQUERIDA. NULIDADE DO CHEQUE. RECONHECIDA. RECURSO CONHECIDO E NÃO PROVIDO. 1. Cheque é título de crédito que se submete a formalidades próprias para que possa circular, de acordo com os preceitos do direito cambial. Sem as formalidades essenciais, dentre as quais a regular assinatura do emitente ou de seu mandatário com poderes especiais, deve ser reconhecida a inexistência do título de crédito, à luz dos artigos 1º e 2º da Lei do Cheque. 2. Sendo a assinatura do eminente do cheque requisito primordial da sua validade, uma vez comprovada que a assinatura aposta na cártula é falsa, deve-se reconhecer a inexigibilidade do título do crédito no valor estampado no cheque. 3. Em regra, o ônus da prova incumbe aquele que alega. Todavia, o art. 429 do CPC excepciona tal encargo quando se tratar de questão relacionada à veracidade da assinatura aposta no cheque, transferindo o ônus probatório àquele que o apresentou nos autos, isso porque o interesse de sua validade é de quem

Processo	0128684-39.2016.8.06.0001
	serif;letter-spacing:.1pt; background:white"><![endif]--> &#160;</p><p>&#160;</p>

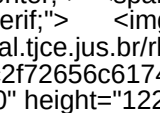
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0629087-12.2020.8.06.0000
Número de ordem	218
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Inventário e Partilha
Polo ativo	ALBERTO JORGE PARENTE VIEIRA LEONARDO PARENTE VIEIRA
Advogado(s) - Polo ativo	Não informado
Polo passivo	MARIA TAIS RODRIGUES DE OLIVEIRA VIEIRA
Advogado(s) - Polo passivo	ADEMAR MENDES BEZERRA JUNIOR - (CE15786-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0629087-12.2020.8.06.0000
Acórdão	 PROCESSO: 0629087-12.2020.8.06.0000 - AGRADO DE INSTRUMENTO (202) / EMBARGOS DE DECLARAÇÃO EMBARGANTES: ALBERTO JORGE PARENTE VIEIRA, LEONARDO PARENTE VIEIRA EMBARGADA: MARIA TAIS RODRIGUES DE OLIVEIRA VIEIRA Ementa: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM AGRADO DE INSTRUMENTO. SOBREPARTILHA. ALEGAÇÃO DE OMISSÃO QUANTO À PRESCRIÇÃO, NATUREZA SALARIAL DE CRÉDITOS E REGIME DE BENS. INEXISTÊNCIA DE VÍCIOS. PRETENSÃO DE REDISCUSSÃO DO MÉRITO. EMBARGOS REJEITADOS. I. CASO EM EXAME 1. Embargos de Declaração contra acórdão que afastou a prescrição da ação de sobrepartilha de créditos trabalhistas do falecido, aplicando a teoria da actio nata. Os embargantes alegam omissão quanto ao termo inicial da prescrição e à natureza salarial dos créditos. II. QUESTÃO EM DISCUSSÃO 2 A questão em discussão consiste em verificar se o acórdão foi omisso quanto à prescrição da ação de sobrepartilha, bem como quanto à natureza dos créditos discutidos na origem. III. RAZÕES DE DECIDIR 3. O acórdão embargado já examinou a prescrição da ação de sobrepartilha, fixando o prazo decenal a partir da habilitação do cônjuge sobrevivente no cumprimento de sentença da Justiça Federal, quando se instaurou a disputa entre os herdeiros, aplicando a teoria da actio nata. 4. Por sua vez, o Tribunal já enfrentou a questão da natureza dos créditos, destacando que a qualidade de herdeira necessária do cônjuge sobrevivente prevalece, independentemente do regime de bens, sendo irrelevante a origem patrimonial. 5. Quanto à natureza dos créditos, a decisão reconheceu que a condição de herdeira necessária do cônjuge sobrevivente garante a concorrência na herança, independentemente do regime de bens ou da origem patrimonial dos valores. 6. Sobre os créditos em discussão, consignou-se que apenas 1/3 do montante permaneceu em disputa, já que os demais quinhões foram levantados pelos demais herdeiros, não havendo omissão. 7. Os embargos de declaração não se prestam a rediscutir matéria já apreciada, conforme a Súmula nº 18 do TJCE. IV. DISPOSITIVO 8. Embargos rejeitados. Dispositivos relevantes citados: CPC, arts. 1.022, 1.025 e 1.026, § 2º. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e rejeitar os Embargos de Declaração, nos termos do voto do Relator. Fortaleza, data constante no sistema. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator Trata-se

Processo	0629087-12.2020.8.06.0000
	de Embargos de Declaração interpostos por ALBERTO JORGE PARENTE VIEIRA e LEONARDO PARENTE VIEIRA em face do acórdão proferido por esta Câmara (ID 22142785), sob minha relatoria, nos autos do agravo de instrumento n. 0629087-12.2020.8.06.0000 em que litiga com MARIA TAÍS RODRIGUES DE OLIVEIRA VIEIRA. No presente recurso (ID 22143174), os embargantes sustentam que o acórdão recorrido foi omissso quanto à necessidade de se reconhecer que a embargada (autora da ação originária de sobrepartilha) não se desincumbiu do ônus de comprovar o momento em que teve ciência da existência do crédito objeto da demanda judicial (créditos salariais do de cujus), a fim de que fosse possível verificar a ocorrência da prescrição da ação, arguida pelos embargantes. Ademais, afirmam que, em juízo de origem, a embargada declarou ter tomado conhecimento dos créditos não partilhados somente após a conclusão do inventário extrajudicial. Entretanto, perante este juízo, afirmou ter tido ciência da existência dos créditos apenas quando se habilitou no processo em trâmite perante a Justiça Federal, tese esta que acabou sendo acolhida pelo acórdão ora embargado, que aplicou a teoria da actio nata para concluir pela não ocorrência da prescrição da ação. Além disso, apontam a existência de omissão no julgamento quanto à natureza salarial dos créditos (frutos civis do trabalho) que são objeto da ação de sobrepartilha. Alegam que o acórdão deixou de enfrentar a questão relativa à impossibilidade de tais créditos serem partilhados com o cônjuge supérstite, em razão do regime de separação de bens. Por fim, sustentam também ter sido omissso o acórdão quanto à ausência de partilha dos créditos vencimentais relativos ao período anterior ao casamento. Foram apresentadas contrarrazões aos embargos (ID 22143143). Aqui, a embargada defende a manutenção do acórdão. É o relatório. Adotando o Pacto Nacional do Judiciário pela Linguagem Simples do CNJ, passo a proferir meu voto. VOTO O recurso é tempestivo. Presentes os demais pressupostos de admissibilidade, conheço dos embargos. Os embargos declaratórios possuem hipótese de cabimento especificamente atrelada à finalidade integrativa de aperfeiçoamento das decisões judiciais, que tem expressão prevista no art. 1.022 do atual Código de Processo Civil, quando houver, na sentença ou acórdão, obscuridade, contradição, erro material ou no caso de omissão de ponto sobre o qual devia pronunciar-se o juiz ou tribuna, a saber: Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para: - I - esclarecer obscuridade ou eliminar contradição; - II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; - III - corrigir erro material. Parágrafo único. Considera-se omissa a decisão que: - I - deixe de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicável ao caso sob julgamento; - II - incorra em qualquer das condutas descritas no art. 489, § 1º. Nesse contexto, este recurso possui fundamentação vinculada, específica, de sorte que somente é admissível nos casos apontados anteriormente. Quanto a atribuição de efeitos infringentes aos embargos de declaração, esta é possível em hipóteses excepcionais, para corrigir premissa equivocada no julgamento, bem como nos casos em que, sanada a omissão, a contradição ou obscuridade, a alteração da decisão surja como consequência necessária. (EDcl nº AgRg no Ag nº 1.026. 222/SP, Relator Ministro Herman Benjamin, Segunda Turma, DJe 10/10/2014 ; STJ, EDcl no MS 22.157/DF, Rel. Min. Luis Felipe Salomão, Corte Especial, jul. 14.03.2019, DJe 11.06.2019) Pois

2490

Processo	0637723-62.2000.8.06.0001
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Litigância de Má-Fé
Polo ativo	JOAO BOSCO FERREIRA GOMES MARCIA HELENA COUTO FERREIRA GOMES AMADEU FERREIRA GOMES FILHO SUINO CAPRINO E AGROPECUARIA S A SUCASA
Advogado(s) - Polo ativo	Não informado
Polo passivo	BANCO DO NORDESTE DO BRASIL SA
Advogado(s) - Polo passivo	JOSE ESTENIO RAULINO CAVALCANTE - (CE9772-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0637723-62.2000.8.06.0001
Acordão	 PROCESSO: 0637723-62.2000.8.06.0001 - 160; APELAÇÃO CÍVEL (198) APELANTE: JOAO BOSCO FERREIRA GOMES, MARCIA HELENA COUTO FERREIRA GOMES, AMADEU FERREIRA GOMES FILHO, SUINO CAPRINO E AGROPECUARIA S A SUCASA APELADO: BANCO DO NORDESTE DO BRASIL SA EMENTA: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. CÉDULA DE CRÉDITO RURAL HIPOTECÁRIA. VALIDADE DO TÍTULO EXECUTIVO. JUROS REMUNERATÓRIOS LIMITADOS A 12% AO ANO. CAPITALIZAÇÃO ADMITIDA. COMISSÃO DE PERMANÊNCIA INADMITIDA. TJLP COMO ÍNDICE DE CORREÇÃO MONETÁRIA. MANUTENÇÃO DA SENTENÇA. RECURSO DESPROVIDO. I. CASO EM EXAME

Processo	0637723-62.2000.8.06.0001
	lang="PT-BR" xml:lang="PT-BR"> Apelação Cível interposta contra sentença que julgou parcialmente procedentes embargos à execução ajuizados contra o Banco do Nordeste do Brasil S.A., afastando a incidência da comissão de permanência e limitando os juros moratórios a 1% ao ano, mantendo a exigibilidade da Cédula de Crédito Rural hipotecária apresentada. &#160;</p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; font-weight: bold; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> II. QUESTÃO EM DISCUSSÃO &#160; </p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Há três questões em discussão: (i) definir se a Cédula de Crédito Rural hipotecária constitui título executivo líquido e exigível; ii) verificar a legalidade da cobrança dos encargos contratuais, em especial juros remuneratórios, capitalização e comissão de permanência; iii) estabelecer a validade da utilização da TJLP como índice de correção monetária quando expressamente pactuada. &#160;</p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph

Processo	0637723-62.2000.8.06.0001
	SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; font-weight: bold; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> III. RAZÕES DE DECIDIR &#160; </p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> A Cédula de Crédito Rural é título executivo extrajudicial, dotado de liquidez e exigibilidade, desde que acompanhada de demonstrativo do débito, conforme previsto no Decreto-Lei nº 167/67 e no CPC/1973 (art. 614, II, atual art. 798, I, "b", do CPC/2015). &#160;</p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Os juros remuneratórios nas cédulas de crédito rural estão submetidos ao regramento específico (Lei nº 6.840/80 e Decreto-Lei nº 413/69), cabendo ao Conselho Monetário Nacional fixar o limite; na omissão,

Processo	0637723-62.2000.8.06.0001
	aplica-se a Lei da Usura (Decreto nº 22.626/33), que limita os juros a 12% ao ano. É admitida a capitalização de juros nas cédulas de crédito rural, comercial e industrial, conforme Súmula 93 do STJ. A comissão de permanência não pode ser cobrada em contratos de crédito rural, em razão do regramento específico que prevê apenas juros remuneratórios, juros moratórios de 1% ao ano e multa, nos termos do Decreto-Lei nº 413/69.

Processo	0637723-62.2000.8.06.0001
	highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Tese de julgamento &#160; </p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> A Cédula de Crédito Rural hipotecária constitui título executivo extrajudicial líquido e exigível, quando acompanhada de demonstrativo do débito. &#160; </p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Os juros remuneratórios nas cédulas de crédito rural estão limitados a 12% ao ano, salvo deliberação diversa do Conselho Monetário Nacional. &#160;</p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> É admissível a capitalização de juros em cédulas de crédito <span class="TextRun

Processo	0637723-62.2000.8.06.0001
	SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> rural. &#160;</p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> A comissão de permanência é incompatível com as cédulas de crédito rural, comercial e industrial. &#160; </p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> É válida a utilização da TJLP como índice de correção monetária, quando expressamente pactuada. &#160; </p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Dispositivos relevantes citados <span class="TextRun SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR"

Processo	0637723-62.2000.8.06.0001
	xml:lang="PT-BR"> CF/1988, art. 5º, XXXV; CPC/1973, art. 614, II (CPC/2015, art. 798, I, "b"); CPC/2015, art. 86, parágrafo único, e art. 917, § 4º, II; Decreto-Lei nº 167/67, arts . 5º, parágrafo único, e 58; Decreto-Lei nº 413/69, arts . 5º e 58; Decreto nº 22.626/33 (Lei da Usura). &#160; <p></div> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Jurisprudência relevante citada : STJ, AgRg nos EDcl no Ag 1106028/MT, Rel. Min. Sidnei Beneti, 3ª Turma, j. 22.11.2011, DJJe 09.12.2011; STJ, AgInt no AREsp <span class="NormalTextRun SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	0637723-62.2000.8.06.0001
	padding: 0px; user-select: text;">1052751/PR, Rel. Min. Marco Buzzi ,">, 4ª Turma, j. 17.04.2018, DJe 26.04.2018; STJ, AgInt no AREsp 682.499/SC, Rel. Min. Raul Araújo, 4ª Turma, j. 14.09.2020, DJe 01.10.2020; STJ, REsp 1348081/RS, Rel. Min. João Otávio de Noronha, 3ª Turma, j. 02.06.2016, DJe 21.06.2016; STJ, AgInt no AREsp 280.147/SP, Rel. Min. Antonio Carlos Ferreira, 4ª Turma, j. 10.11.2016, DJe 16.11.2016; STJ, REsp 525.649/MG, Rel. Min. Carlos Alberto Menezes Direito, 3ª Turma, j. 20.11.2003, DJ 25.02.2004; STJ, REsp 337.957/RS, Rel. Min. Aldir Passarinho Junior, 4ª Turma, j. 17.10.2002, DJ 10.02.2003. <span class="EOP SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

Processo	0637723-62.2000.8.06.0001
	<p>padding: 0px; user-select: text; line-height: 27px;">&#160;</p> <div class="OutlineElement Ltr SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p>class="Paragraph SCXW94634428 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p> </div> <p> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso para neg ar-lhe provisamento , nos termos do voto do relator. &#160; </p> <p> Fortaleza, data da assinatura digital. </p> <p> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p> <p> </p> <p> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p> <p> </p> <p> <div class="OutlineElement Ltr SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p>class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO </p></div> </p>

Processo	0637723-62.2000.8.06.0001
	SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px;">>&#160; </p> </div> <div class="OutlineElement Ltr SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se os autos de Apelaç ão Cíve I interposta p or Sucasa Suino Caprino E Agropecuaria S.A Joao Bosco Ferreira Gomes, Marcia Helena Couto Ferreira Gomes e Amadeu Ferreira Gomes Filho contra sentença prolatada pelo Ju í í</p>

Processo	0637723-62.2000.8.06.0001
	padding: 0px; user-select: text;">z o de 6 ^a Vara Cível da Comarca de Fortaleza , em sede Ação de Embargos à Execução p roposta pelo Banco Do Nordeste Do Brasil S.A. &#160; &#160; &#160;</p> </div> <div class="OutlineElement Ltr SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Consta do dispositivo da sentença que o juiz de primeiro grau decidiu nos seguintes termos: &#160; </p> </div> <div class="OutlineElement Ltr SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="NormalTextRun SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-

Processo	0637723-62.2000.8.06.0001
	select: text; line-height: 27px;">&#160; </p> </div> <div class="OutlineElement Ltr SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Aduz ainda, que a cédula de crédito rural, portanto, não poderá ser título líquido já que sempre dependente de apuração do saldo devedor da conta corrente vinculada (liquidação). Alega que além de não ser líquido, não poderá ser executivo, pois não constava no elenco do art. 585 do CPC de 1973, vigente à época da contratação. &#160; </p> </div> <div class="OutlineElement Ltr SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Por fim, roga pelo provimento do recurso, a fim de reformar a sentença, por considerar excessivos os encargos cobrados pelo a pelado a título de juros, os quais entende serem ilegais e calculados de forma capitalizada, bem como dos demais encargos indevidamente previstos, tudo em conformidade com a Súmula 121 do E. STF e com os precedentes do colendo STJ. &#160; </p> </div> <div class="OutlineElement Ltr SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em contrarrazões recursais (ID 22165395), o a apelado a alega violação a diretriz da dialeticidade afirma que a a a

Processo	0637723-62.2000.8.06.0001
	SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">pelante se limita a repetir, em seu recurso, razões que foram apresentadas ao juízo de primeiro grau, sendo a maioria delas totalmente dissociadas do contexto fático deste processo, deixando de cotejar na apelação, com a articulação lógica-argumentativa necessária, quais seriam os erros de julgamento da sentença que mereceriam correção.&#160; &#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> S ustenta que a parte Apelante embasa suas alegações, erroneamente, no Decreto-Lei 413/69, que dispõe sobre Títulos de Crédito Industrial, em vez do Decreto-Lei 167/67, que dispõe sobre Títulos de Crédito Rural, que é o caso em comento. Aduz que, ao ajuizar a presente ação, o banco apelado, com o intuito de evitar dúvidas quanto ao valor exigido, não apenas apresentou os títulos executivos, mas também juntou aos autos da execução os demonstrativos de débito atualizados à época, em conformidade com o art. 614, II, do CPC/1973, correspondente ao art. 798, I, "b", do CPC/2015, demonstrando a evolução da dívida no próprio corpo da exordial executiva.&#160;Ao final, pugna pela manutenção da sentença, com a consequente improcedência do recurso interposto. </p> </div> <div class="OutlineElement Ltr SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> O Ministério Público por meio de parecer constante no ID 22164932 manifestou-se deixando de opinar sobre o mérito da demanda.</p> <p class="Paragraph SCXW249699498 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="TextRun SCXW224393727 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;

Processo	0637723-62.2000.8.06.0001
	line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">É o relatório. &#160;&#160; </p></div> </div></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Antes de enfrentar o mérito recursal, passo à análise das preliminares suscitadas em sede de contrarrazões recursais. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Da preliminar de Dialeiticidade &#160;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">De início, o recorrido sustenta que houve violação ao princípio da dialeticidade, uma vez que o apelante não apresentou, em suas razões fundamentos que confrontem a decisão recorrida.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;">

Processo	0637723-62.2000.8.06.0001
	12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> O ônus da dialeticidade recursal, conforme ensina Alexandre Freitas Câmara, "deve ser entendido como a exigência de que o recurso 'dialogue' com a decisão recorrida, impugnando-a de modo específico". (in Manual de direito processual civil [e-book]. 2. ed. Barueri/SP: Atlas, 2023, pág. 990)&#160;&#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Nesse viés, é ônus da parte que pretende a modificação da decisão recorrida apontar o equívoco praticado pelo julgador, mediante a insurgência direcionada aos seus fundamentos, sob pena de ausência de conhecimento do recurso. Entendo, no entanto, que não houve ofensa à dialeticidade no presente caso, pois os argumentos da apelante não estão dissociados dos fundamentos da sentença recorrida, bem como é possível identificar as razões de sua irresignação. Portanto, rejeito a referida preliminar. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Portanto, rejeito a preliminar de dialeticidade.&#160;&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Visto isso, passo a análise do mérito <span class="TextRun SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> A matéria devolvida à apreciação deste Tribunal refere-se à ação de embargos à execução ajuizada pelo apelante em face do apelado, tendo como objeto dívida oriunda de cédula de crédito rural hipotecária. Sustenta o apelante a inexigibilidade do crédito executado, bem como questiona a legalidade da cobrança dos encargos contratuais. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Inicialmente, cabe ressaltar que as cédulas de crédito rural são regidas pelo Decreto-Lei nº 167/67 . Verifico que, nos autos da ação de execução, o banco apelado acostou a Cédula de Crédito Rural Hipotecária (ID 101362105), acompanhada do Demonstrativo de Débito (ID 101362119), no qual consta que o vencimento final da obrigação ocorreu em 15/12/2001, estando registrado atraso no adimplemento desde 15/06/1996. Assim, resta evidenciado o saldo devedor em nome da apelante, mostrando válida a exigibilidade do título executivo apresentado. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Pois bem. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-

Processo	0637723-62.2000.8.06.0001
	kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> De logo, cumpre destacar que as Cédulas de Crédito Rural, Comercial e Industrial são submetidas a regimentos próprios (a Lei 6.840/80 e o Decreto-Lei 413/69) que, por sua vez, conferem ao Conselho Monetário Nacional o dever de fixar os juros a serem praticados. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Veamos os precedentes: &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> AGRAVOS REGIMENTAIS. RECURSO ESPECIAL. AÇÃO REVISIONAL. CÉDULA DE CRÉDITO RURAL. JUROS REMUNERATÓRIOS. LIMITAÇÃO EM 12% AO ANO. CAPITALIZAÇÃO MENSAL DOS JUROS. OMISSÃO NO ACÓRDÃO PROFERIDO PELO TRIBUNAL DE ORIGEM. SEDE IMPRÓPRIA PARA A ALEGAÇÃO. 1- Conquanto na regência da Lei n.º 4.595/64 não estejam os juros bancários limitados a 12% ao ano, as notas de crédito rural, comercial e industrialachamse submetidas a regimento próprio (Lei nº 6.840/80 e Decreto-Lei 413/69) que conferem ao Conselho Monetário Nacional o dever de fixar os juros a serem praticados. Diante da omissão desse órgão governamental, incide a limitação de 12% ao ano, prevista no Decreto n.º 22.626/33 (Lei da Usura) <span class="TextRun SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

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	text; line-height: 15px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> . [...]. AgRg nos EDcl no Ag 1106028/MT, Rel. Ministro SIDNEI BENETI, TERCEIRA TURMA, julgado em 22/11/2011, DJe 09/12/2011). &#160;</div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> AGRAVO INTERNO NO AGRAVO (ART. 1.042 DO CPC/15) - AÇÃO CONSTITUTIVA NEGATIVA DE NULIDADE DE CLÁUSULAS C/C DECLARATÓRIA E MANDAMENTAL DE PRORROGAÇÃO DE DÍVIDA CÉDULAS DE CRÉDITO RURAL - LIMITAÇÃO DE JUROS REMUNERATÓRIOS - DECISÃO MONOCRÁTICA DA PRESIDÊNCIA DO STJ QUE NEGOU PROVIMENTO AO RECLAMO - INSURGÊNCIA RECURSAL DO RÉU. 1. As questões postas à discussão foram dirimidas pelo Tribunal de origem de forma suficientemente ampla, fundamentada e sem omissões. Consoante entendimento desta Corte, não importa negativa de prestação jurisdicional o acórdão que adota para a resolução da causa fundamentação suficiente, porém diversa da pretendida pelo recorrente, decidindo de modo integral a controvérsia posta. 2 . As cédulas de crédito rural, comercial e industrial acham-se submetidas a regramento próprio (Lei nº 6.840/80 e Decreto-Lei nº 413/69) que confere ao Conselho Monetário Nacional o dever de fixar os juros a serem praticados e que, diante da omissão desse órgão governamental, incide a limitação de 12% ao ano, prevista no Decreto nº 22.626/33 (Lei da Usura). Precedentes. 3. O posicionamento adotado na decisão recorrida coincide com a orientação desta Corte Superior, portanto é inafastável a aplicação do óbice inserto na Súmula 83 do STJ. 4. Agravo interno desprovido. (<span class="NormalTextRun SpellingErrorV2Themed SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

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	user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;")>AgInt no aresp<="" class="NormalTextRun SpellingErrorV2Themed SCXW254303239 BCX8" span><br="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;"> 1052751/PR, Rel. Ministro MARCO BUZZI, QUARTA TURMA, julgado em 17/04/2018, dje<="" class="NormalTextRun SpellingErrorV2Themed SCXW254303239 BCX8" span><br="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;"> 26/04/2018 &#160; <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. CÉDULA DE CRÉDITO RURAL. EXECUÇÃO. ALEGAÇÃO DE OFENSA AO ART. 535 DO CPC/73. INEXISTÊNCIA. JUROS REMUNERATÓRIOS. LIMITAÇÃO. POSSIBILIDADE. EFEITO SUSPENSIVO ATRIBUÍDO AOS EMBARGOS À EXECUÇÃO. FUNDAMENTO AUTÔNOMO NÃO IMPUGNADO. INCIDÊNCIA DA SÚMULA 283/STF. MULTA MORATÓRIA. SÚMULA 83 DESTA CORTE. AGRAVO INTERNO DESPROVIDO. 1. Não configura ofensa ao art. 535 do CPC/73 o fato de o Tribunal de origem, embora sem examinar individualmente cada um dos argumentos suscitados pelo recorrente, adotar fundamentação contrária à pretensão da parte, suficiente para decidir integralmente a controvérsia. 2.="" (cmn)="" 12%="" 22.626="" 33.="" a="" ano,="" ao="" aos="" as="" bancário.="" class="TextRun SCXW254303239 BCX8" cmn,="" comercial="" conforme="" conselho="" crédito="" cédulas="" de="" decreto="" deliberação="" do="" e="" específicas="" espécies="" estabelecer="" estão="" função="" havendo="" incide="" industrial="" juros="" lang="PT-BR" limitação="" monetário="" nacional="" nestas="" normas="" nº="" não="" outorgam="" por="" praticada="" precedentes.<="" previsão="" quanto="" que="" regidas="" remuneratórios,="" rural,="" ser="" span><br="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 15px; font-weight: bold; font-variant-ligatures: none !important;" taxa="" todavia,="" xml:lang="PT-BR"> <br="" class="TextRun SCXW254303239 BCX8" lang="PT-BR" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 15px; font-variant-ligatures: none !important;" xml:lang="PT-BR"> 3. A ausência de impugnação, nas razões do recurso especial, de fundamento autônomo e suficiente à manutenção do aresto estadual atrai a incidência, por analogia, do óbice da Súmula 283 do STF. 4. Nas contratações celebradas após a edição da Lei 9.298/96, que alterou o CDC, a multa moratória deve incidir no percentual máximo de 2% (dois por cento). 5. Agravo interno a que se nega provimento. agint<="" class="NormalTextRun SpellingErrorV2Themed SCXW254303239 BCX8" span><br="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;"> no aresp<="" class="NormalTextRun SpellingErrorV2Themed SCXW254303239 BCX8" span><br="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;"> no

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	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">682.499/SC, Rel. Ministro RAUL ARAÚJO, QUARTA TURMA, julgado em 14/09/2020, DJe 01/10/2020) &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No caso, na Cédula de Crédito Rural (ID 101362105), consta expressamente a previsão de juros remuneratórios de 10,92% ao ano, valor inferior ao índice máximo permitido de 12% ao ano, permanecendo, portanto, dentro dos limites legais aplicáveis ". &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> E conforme a Súmula 93 do STJ, " a legislação sobre cédulas de crédito rural, comercial e Industrial admite o pacto de capitalização de juros " &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> BANCÁRIO

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	E PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. DECISÃO DA PRESIDÊNCIA DO STJ. SÚMULA N. 182 DO STJ. RECONSIDERAÇÃO. AÇÃO DE COBRANÇA. CÉDULA DE CRÉDITO RURAL. NEGATIVA DE PRESTAÇÃO JURISDICIONAL. NÃO OCORRÊNCIA. NULIDADE. JUROS MORATÓRIOS. TERMO INICIAL. FUNDAMENTAÇÃO DEFICIENTE. SÚMULA N. 284 DO STF. JUROS REMUNERATÓRIOS. DL N. 167/1967. CAPITALIZAÇÃO. POSSIBILIDADE. CORREÇÃO MONETÁRIA. CABIMENTO. MULTA MORATÓRIA. SÚMULA N. 285/STJ. AGRAVO INTERNO PROVIDO. AGRAVO EM RECURSO ESPECIAL DESPROVIDO. 1. Inexiste afronta aos SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;";>arts SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;";>. 489 e 1.022 do CPC/2015 quando o acórdão recorrido ContextualSpellingAndGrammarErrorV2Themed SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;";>pronuncia-se SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;";>, de forma clara e suficiente, acerca das questões suscitadas nos autos, manifestando-se sobre todos os argumentos que, em tese, poderiam infirmar a conclusão adotada pelo Juízo. 2. É inadmissível o recurso especial, se a deficiência na fundamentação não permitir a exata compreensão da controvérsia, a teor da Súmula n. 284/STF. 3. "As cédulas de crédito rural, industrial e comercial submetem-se a regramento próprio, que confere ao Conselho Monetário Nacional o dever de fixar os juros a serem praticados. Não havendo atuação do referido órgão, adota-se a limitação de 12% ao ano prevista no Decreto n. 22.626/1933" SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;";>AgRg SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;";>no REsp 1313569/MS, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 06/10/2015, SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;";>DJJe SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;";>19/10/2015). SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 15px; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> 4. "Possibilidade de cobrança de capitalização de juros, desde que pactuada, tendo em vista que o art. 5º do Decreto-Lei n. 167/67 autoriza a cobrança do encargo nas cédulas de crédito rural, industrial e comercial" SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;";>AgInt SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;";>no REsp 1365244/MG, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 23/02/2021, SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;";>DJJe SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;";>02/03/2021). SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 15px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> <span class="NormalTextRun SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px;

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	padding: 0px; user-select: text;">5. "A correção monetária não constitui um plus, representando tão-somente a recomposição do valor da moeda, independentemente a sua incidência de ajuste entre os contratantes" (AgRg no REsp 1108049/GO, Rel. Ministro PAULO DE TARSO SANSEVERINO, TERCEIRA TURMA, julgado em 14/06/2011, DJJe 27/06/2011). 6. Nos contratos bancários posteriores ao CDC deve incidir a multa moratória nele prevista. Súmula n. 285/STJ. 7. Agravo interno a que se dá provimento para reconsiderar a decisão da Presidência desta Corte e negar provimento ao agravo nos próprios autos. (AgInt no AREsp 1752240/GO, Rel. Ministro ANTONIO CARLOS FERREIRA, QUARTA TURMA, julgado em 03/05/2021, DJJe 06/05/2021) &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> No caso, na Cédula de Crédito Rural (ID 101362105), celebrada em 21/06/1996 , consta expressamente a previsão de capitalização de juros n a cláusula sobre o inadimplemento (ID 101362109) <span class="NormalTextRun SCXW254303239 BCX8" style="-

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	por cento) ao ano. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Art. 58. Em caso de cobrança em processo contencioso ou não, judicial ou administrativo, o emitente da cédula de crédito industrial responderá ainda pela multa de 10% (dez por cento) sobre o principal e acessórios em débito, devida a partir do primeiro despacho da autoridade competente na petição de cobrança ou de habilitação do crédito." &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Neste sentido, eis os precedentes do STJ: &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> RECURSO ESPECIAL. CRÉDITO RURAL. CONTRATOS FINDOS. LEGITIMIDADE ATIVA E PASSIVA. UNIÃO. BANCO DO BRASIL. LIMITAÇÃO DOS JUROS REMUNERATÓRIOS. CAPITALIZAÇÃO. ENCARGOS MORATÓRIOS. CORREÇÃO MONETÁRIA PELO BTN (MARÇO/1990). SUBSTITUIÇÃO DO IGP-M E DA VARIAÇÃO CAMBIAL PELA TR. DESCARACTERIZAÇÃO DA MORA. INCONSTITUCIONALIDADE DA MP N. 2.196-3/2001. POSSIBILIDADE DE INSCRIÇÃO DO DÉBITO EM DÍVIDA ATIVA. NULIDADE DA CDA. SUCUMBÊNCIA. 1. O responsável pelo alongamento das dívidas originárias de crédito rural é o agente financeiro envolvido no contrato de mútuo. Portanto, é o agente financeiro parte legítima para responder às demandas que tenham por objeto créditos securitizados. 2. A possibilidade de revisão de contratos bancários prevista na Súmula n. 286/STJ estendese a situações de extinção contratual decorrente de quitação, novação e renegociação. 3. De regra, aplica-se aos contratos de crédito rural o índice de correção monetária incidente sobre as cadernetas de poupança. Nessa linha, a jurisprudência do Superior Tribunal de Justiça firmou-se no sentido de que, em março de 1990, o índice de correção aplicável corresponde a 41,28%. <span class="TextRun SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-

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	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 15px; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">4. A comissão de permanência não deve ser aplicada às cédulas de crédito rural, que tem regramento próprio. As notas de crédito rural, comercial e industrial submetem-se a regramento próprio (Lei n. 6.840/1980 e Decreto-Lei n. 413/1969), que confere ao Conselho Monetário Nacional o dever de fixar os juros a serem praticados. Havendo omissão desse adota-se a limitação de 12% ao ano prevista no Decreto n. 22.626/1933. [...] 14. Recurso do Banco do Brasil conhecido em parte e desprovido. Recurso de Arroeira Chasqueiro >Ltda. e outros conhecido >em parte e provido também em parte. Recurso especial da União conhecido e provido em parte. (REsp 1348081/RS, Rel. Ministro JOÃO OTÁVIO DE NORONHA, TERCEIRA TURMA, julgado em 02/06/2016, DJe >21/06/2016) &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. APRECIAÇÃO DE TODAS AS QUESTÕES RELEVANTES DA LIDE PELO TRIBUNAL DE ORIGEM. AUSÊNCIA DE AFRONTA AO ART. 535 DO CPC/1973. CÉDULA DE CRÉDITO INDUSTRIAL. INADIMPLENTO. JUROS MORATÓRIOS. ELEVAÇÃO DE 1% AO ANO. DECISÃO MANTIDA. 1. Inexiste afronta ao art. 535 do CPC/1973 quando a Corte local pronunciou-se, de forma clara e suficiente, acerca das questões suscitadas nos autos, manifestando-se sobre todos os argumentos que, em tese, poderiam infirmar a conclusão adotada pelo Juízo. >2. "Nas Cédulas de Crédito Rural, Industrial ou Comercial, conforme entendimento pacífico desta Corte, a instituição financeira está autorizada a cobrar, após a inadimplência, apenas a taxa de juros remuneratórios pactuada, elevada de 1% ao ano, a título de juros de mora, além de multa e correção monetária. >Precedentes. Súmula n.83/STJ <span class="TextRun SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 15px; font-variant-ligatures: none !important;"

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	lang="PT-BR" xml:lang="PT-BR"> AgRg no AREsp n. 429.548/SP, Relator Ministro SIDNEI BENETI, TERCEIRA TURMA, julgado em 5/8/2014. DJe 29/8/2014). 3. Agravo interno a que se nega provimento. AgInt no AREsp 280.147/SP, Rel. Ministro ANTONIO CARLOS FERREIRA, QUARTA TURMA, julgado em 10/11/2016, DJe 16/11/2016) &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Na hipótese dos autos, no parágrafo da &#160;cláusula sobre o inadimplemento (ID 101362109), consta previsão de cobrança de comissão de permanência , o que, conforme a legislação específica das Cédulas de Crédito Rural, Industrial e Comercial (Decreto-Lei n. 413/1969) e a jurisprudência consolidada do STJ, não é admitido. <span class="NormalTextRun SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-

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	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">&#160; Dessa forma, a decisão que afastou a cobrança da comissão de permanência mostra-se corret a . &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Tocante ao outro ponto da sentença objeto da apelação, o contrato firmado entre as partes corresponde à Cédula de Crédito Bancário, portanto, vale, também, afirmar que o Colendo Superior Tribunal de Justiça já sedimentou entendimento quanto a possibilidade da utilização&#160;da TR e da TJLP como índice de correção monetária, desde que expressamente pactuado pelas partes. Nesse sentido: &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Crédito rural. Alongamento da dívida. Revisão do contrato. TJLP - Taxa de Juros de Longo Prazo como índice de correção monetária. Precedentes da Corte. 1. Não existe omissão a ser coberta pelo art. 458, II, do Código de Processo Civil quando a parte interessada apresentou embargos de declaração confinados à questão dos honorários de advogado. 2. Afirmando o acórdão recorrido que o alongamento é direito subjetivo do produtor rural e não faculdade da instituição financeira, o que está em consonância com a jurisprudência da Corte, e, ainda, que foram preenchidos os requisitos legais para o seu desfrute, fica sem sustentação o combate centrado na questão da incompatibilidade do enquadramento com o art. 239 da Constituição Federal. <span class="TextRun SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0637723-62.2000.8.06.0001
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 15px; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">3. Precedentes da Corte admitem a aplicação da TJLP - Taxa de Juros de Longo Prazo, devidamente pactuada, como índice de correção monetária, considerando a sua natureza em tudo similar à TR. 4. Recurso especial conhecido e provido, em parte. (REsp 525.649/MG, Rel. Ministro CARLOS ALBERTOMENEZES DIREITO, TERCEIRA TURMA, julgado em 20/11/2003, DJ 25/02/2004, p. 173) &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> "COMERCIAL E PROCESSUAL. ACÓRDÃO. EMBARGOS DE DECLARAÇÃO. NULIDADE NÃO CONFIGURADA. RECURSO ESPECIAL. CONTRATO DE FINANCIAMENTO E CÉDULARURAL PIGNORATÍCIA. COMISSÃO DE PERMANÊNCIA. MULTA MORATÓRIA. INACUMULAÇÃO. INEXIGIBILIDADE QUANTO A CRÉDITO RURAL. - JUROS. LIMITAÇÃO (12%AA). LEI DE USURA (DECRETO N. 22.626/33). INCIDÊNCIA APENAS QUANTO À SEGUNDA. LEI N. 4.595/64. DISCIPLINAMENTO LEGISLATIVO POSTERIOR. AUSÊNCIA DE FIXAÇÃO PELO CONSELHO MONETÁRIO NACIONAL CORREÇÃO MONETÁRIA. TR E TJLP. POSSIBILIDADE . I. Não padece de nulidade acórdão que enfrenta fundamentadamente a controvérsia fática, apenas com conclusão desfavorável à pretensão da parte recorrente. II. Inobstante a possibilidade da cobrança da comissão de permanência em contratos estabelecidos pelos bancos, a cédula rural pignoratícia tem disciplina específica no Decreto-lei n. 167/67, art. 5º, parágrafo único, que prevê somente a cobrança de juros e multa no caso de inadimplemento. Ademais, ainda que convencionalizada, a incidência cumulada com a correção monetária, multa esta última estipulada in casu , encontra óbice na própria norma instituidora (Resolução n. 1.129/86 do BACEN). III. Não se aplica a limitação de juros de 12% ao ano prevista na Lei de Usura aos contratos de mútuo bancário. IV. Ao Conselho Monetário Nacional, segundo o art. 5º do Decreto-lei n. 167/67, compete a fixação das taxas de juros aplicáveis aos títulos de crédito rural. Omitindo-se o órgão no desempenho de tal mister, torna-se

Processo	0637723-62.2000.8.06.0001
	aplicável a regra geral do art. 1º, caput, da Lei de Usura, que veda a cobrança de juros em percentual superior ao dobro da taxa legal (12% ao ano), afastada a incidência da Súmula n. 596 do C. STF, porquanto se dirige à Lei n. 4.595/64, ultrapassada, no particular, pelo diploma legal mais moderno e específico, de 1967. Precedentes do STJ. V. Quando pactuadas, é possível a aplicação da TR e da fatores de atualização monetária, porque possuem características semelhantes. VI. Recurso especial conhecido em parte e, nessa parte, parcialmente provido." (Resp 337.957/RS, Rel. Ministro ALDIR PASSARINHO JUNIOR, QUARTA TURMA, julgado em 17/10/2002, DJ 10/02/2003, p. 214). Existindo, pois, previsão expressa no contrato discutido nos autos de incidência da TJLP, não há que se falar em abusividade na cobrança do referido encargo, uma vez que plenamente admitido pela jurisprudência pátria. Portanto, diante do exposto, verifica-se que a sentença está em consonância com o ordenamento jurídico, respeitando a legislação específica das Cédulas de Crédito Rural e a jurisprudência consolidada do Superior Tribunal de Justiça, não havendo qualquer irregularidade que justifique sua reforma.

Processo	0637723-62.2000.8.06.0001
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Diante do exposto, firme nas razões acima delineadas, conheço do recurso para, no mérito, BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">NEGAR-LHE PROVIMENTO BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> mantendo a sentença recorrida em todos os seus termos.&#160; BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px;">&#160; SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; text-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Em razão da sucumbência do apelante nesta segunda instância, majoro os honorários advocatícios para 12% (doze por cento) do valor da causa, nos termos do art. 85, § 11, do CPC. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Fortaleza, data da assinatura digital.&#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph

Processo	0637723-62.2000.8.06.0001
	SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 1.33333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA &#160; </p></div><div class="OutlineElement Ltr SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW254303239 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 1.33333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relator &#160; </p></div><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>

Processo	0219353-02.2020.8.06.0001
Número de ordem	220
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Efeito Suspensivo / Impugnação / Embargos à Execução
Polo ativo	CLAUDIO SIEBRA DE MORAES
Advogado(s) - Polo ativo	MAYRA SANTANA PESSOA - (CE31489-A) ORLANDO AUGUSTO DA SILVA JUNIOR - (CE6324-A)
Polo passivo	BV FINANCEIRA S.A CRÉDITO FINANCIAMENTO E INVESTIMENTO
Advogado(s) - Polo passivo	MOISES BATISTA DE SOUZA - (CE15474-A) FERNANDO LUZ PEREIRA - (CE21974-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0219353-02.2020.8.06.0001
	user-select: text;">de Moraes contra acórdão da 1ª Câmara de Direito Privado que negou provimento a o recurso de apelação interposto em Embargos à Execução opostos pela BV Financieira S.A. Crédito, Financiamento e Investimento. O embargante sustenta omissão e contradição no julgado, alegando ausência de intimação para apresentação de planilha de cálculos e indevida aplicação do art. 321 do CPC. &#160; </p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. QUESTÃO EM DISCUSSÃO &#160; </p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. A questão em discussão consiste em verificar se o acórdão recorrido contém omissão ou contradição nos termos do art. 1.022 do CPC, a justificativa a integração ou modificação da decisão colegiada. &#160; </p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. RAZÕES DE DECIDIR &#160; </p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -

Processo	0219353-02.2020.8.06.0001
	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. Os embargos de declaração têm cabimento restrito às hipóteses de obscuridade, contradição, omissão ou erro material, não servindo para rediscutir matéria já apreciada. &#160;</p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. O acórdão embargado analisou de forma clara e objetiva a ausência de planilha discriminada de cálculos, documento essencial para o acolhimento da alegação de excesso de execução, nos termos do art. 917, §§ 3º e 4º, do CPC. &#160;</p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. Não há omissão quanto ao momento da sentença ou à aplicação do art. 321 do CPC, pois a apresentação da planilha é requisito da própria petição inicial dos embargos à execução. &#160;</p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6. Conforme a Súmula nº 18 do TJCE, embargos de declaração não podem ser utilizados para reexame da controvérsia jurídica já decidida. &#160;</p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-

Processo	0219353-02.2020.8.06.0001
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 7. A jurisprudência do STJ e deste Tribunal afirma que o julgador não está obrigado a se pronunciar sobre todos os argumentos das partes, mas apenas sobre aqueles aptos a alterar a conclusão do julgado (AgRg no REsp n. 2.094.487/TO; ED Cível nº 0271987-72.2020.8.06.0001). &#160; </p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV. DISPOSITIVO E TESE &#160; </p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 8. Embargos de declaração rejeitados. &#160; </p></div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Tese de julgamento: &#160; </p></div> <div class="ListContainerWrapper SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; position: relative; font-size: 12px;"> <ol class="NumberListStyle1 SCXW219538116 BCX0" style="-webkit-user-drag: none; -

Processo	0219353-02.2020.8.06.0001
	<pre> webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: text; overflow: visible;"> <li class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 24px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; display: block; font-size: 12pt; vertical-align: baseline;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. A ausência de planilha discriminada e atualizada inviabiliza a alegação de excesso de execução nos embargos do devedor. </p> </div> <div class="ListContainerWrapper SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; position: relative; font-size: 12px;"> <ol class="NumberListStyle1 SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: text; overflow: visible;"> <li class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 24px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; display: block; font-size: 12pt; vertical-align: baseline;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. Os embargos de declaração não se prestam ao reexame do mérito da decisão já apreciada. </p> </div> <div class="ListContainerWrapper SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; position: relative; font-size: 12px;"> <ol class="NumberListStyle1 SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: text; overflow: visible;"> <li class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 24px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; display: block; font-size: 12pt; vertical-align: baseline;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. O magistrado não está obrigado a se manifestar sobre todos os argumentos apresentados pelas partes, mas apenas sobre aqueles capazes de modificar a conclusão adotada. </p> </div> <div class="OutlineElement Ltr SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW219538116 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-</pre>

Processo	0219353-02.2020.8.06.0001
	word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se de embargos de declaração opostos por Cláudio Siebra de Moraes em face de acórdão proferido pela 1ª Câmara de Direito Privado, sob a minha relatoria, que negou provimento ao recurso de apelação interposto pelo recorrente contra a sentença proferida nos autos d o Embargos à execução opostos pela BV Financeira S.A. Crédito, Financiamento e Investimento . &#160;</p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="NormalTextRun SCXW264041336 BCX0" style="-webkit-user-drag: none; -

Processo	0219353-02.2020.8.06.0001
	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Em suas razões recursais, o embargante alega a existência de omissão e contradição no julgado, sustentando que não foi intimado em nenhum momento do processo para apresentar a planilha de cálculos referente aos valores a serem cobrados. Argumenta, ainda, que a sentença foi proferida, sem a aplicação do art. 321 do CPC, uma vez que o magistrado de origem julgou a demanda com fundamento na ausência de prova mínima do direito do autor. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Por fim, roga pelo conhecimento e provimento dos embargos, para que seja provimento para efeitos modificativos &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Foram apresentadas contrarrazões sob o ID. 22169538 requer que se ntença seja mantida.</p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o que importa relatar. <span class="EOP

Processo	0219353-02.2020.8.06.0001
	SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px;">&#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> VOTO &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Conheço do recurso, uma vez que presentes os requisitos extrínsecos e extrínsecos de admissibilidade. Passo ao exame do mérito. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Os embargos de declaração, previstos no art. 1.022, do CPC, são cabíveis contra qualquer decisão judicial e objetivam: I esclarecer obscuridade ou eliminar contradição; II -suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material, sendo igualmente cabíveis para o prequestionamento de matéria constitucional e legal para fins de interposição de Recursos Especial e Extraordinário. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Essa modalidade de recurso proporciona uma nova oportunidade para que o Julgador, prolator

Processo	0219353-02.2020.8.06.0001
	de decisão atacada, revise o julgado à vista de possíveis defeitos sanáveis pontuados pelos Embargantes. Quando se vislumbrar que a mácula, ao ser detectada, venha causar alteração no dispositivo da decisão, de maneira que sejam modificadas ou invertidas as conclusões originárias, há que se reconhecer os embargos de declaração com efeitos modificativos ou infringentes. Nesse sentido, ressalta-se que o acórdão embargado não é omissor, nem obscuro quanto aos motivos pelos quais egou provimento ao recurso de apelação no ID 22169870, por se tratar de excesso a execução, que o embargado deveria ter apontado o valor que é incontroverso por meio de planilha discriminativa e atualizada veja

Processo	0219353-02.2020.8.06.0001
	visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 236px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: justify;">§ 40 Não apontado o valor correto ou não apresentado o demonstrativo, os embargos à execução:&#160;&#160;</p></div><div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 236px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: justify;">I serãoliminarmente rejeitados, sem resolução de mérito, se o excesso de execução for o seu único fundamento:&#160;&#160;</p></div><div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 236px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: justify;">II serãoprocessados, se houver outro fundamento, mas o juiz não examinará a alegação de excesso de execução.&#160;</p></div><div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 189px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: justify;"><span class="TextRun SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 18px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-

Processo	0219353-02.2020.8.06.0001
	BR"> No caso dos autos, verifica-se que a sentença se amparou também na ausência da planilha para fins de rejeição dos embargos à execução relativo ao pleito de excesso de execução. De fato, na peça de ingresso, não houve individualização do valor discutido, ou seja, a parte embargante, ora apelante, não apontou o valor incontroverso, o que deveria ter feito, consoante imperativo cogente do art. 917, § 3º do CPC. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 189px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Com efeito, verifico que a peça de manejo dos embargos foi apresentada sem a indispensável planilha demonstrativa do valor incontroverso, razão pela qual não há que se falar em reforma da sentença quanto à tese de excesso de execução, uma vez que não se faz aplicável a intimação para emenda da inicial ao presente caso. &#160;</p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Desse modo, n ão existe obscuridade, nem omissão quando dá não verificação do momento em que a sentença fora proferida , uma vez que se trata de documento necessário à propositura da demanda. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none;

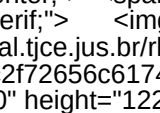
Processo	0219353-02.2020.8.06.0001
	background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Assim, não se observa a presença dos vícios previstos no art. 1.022, do CPC. O que se nota, a bem da verdade, é a clara intenção do embargante de rever o entendimento proposto por esta relatoria pela via equivocada, o que é vedado pela Súmula nº 18: São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada ". &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Ademais, é entendimento consolidado do c. STJ que o magistrado não está obrigado a se manifestar acerca de todos os fatos, teses e argumentos expostos pelas partes, apenas sobre aqueles capazes de modificar a conclusão adotada, veja-se: &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> PROCESSO PENAL. AGRAVO REGIMENTAL EM RECURSO ESPECIAL. ESTUPRO DE VULNERÁVEL. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA DOS FUNDAMENTOS DA DECISÃO AGRAVADA. SÚMULA 182/STJ. ALEGADA INSUFICIÊNCIA DE PROVAS. REVOLVIMENTO DO CONJUNTO FÁTICO-PROBATÓRIO. IMPOSSIBILIDADE. SÚMULA 7/STJ. PALAVRA DA VÍTIMA. ESPECIAL RELEVÂNCIA. PRINCÍPIO DO LIVRE CONVENCIMENTO MOTIVADO. SÚMULA N. 83/STJ. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p> </div> </div>

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	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 18px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> IV - A ausência de impugnação específica e pormenorizada dos fundamentos da decisão agravada inviabiliza o conhecimento do recurso, sendo insuficientes as assertivas de que todos os requisitos foram preenchidos ou a reiteração do mérito da controvérsia. Incidência da Súmula n. 182, STJ. Precedentes. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Agravos regimental não conhecido. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> (AgRg no REsp n. 2.094.487/TO, relator Ministro Messod Azulay Neto, Quinta Turma, julgado em 5/3/2024. DJJe de 8/3/2024.) Grifouse. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="TextRun SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-

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	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Não é destoante o entendimento deste e. Tribunal de Justiça do Ceará: &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. DIREITO MÉDICO. AÇÃO DE OBRIGAÇÃO DE FAZER COM PEDIDO DE TUTELA ANTECIPADA E INDENIZAÇÃO POR DANOS MORAIS. TAXATIVIDADE DE ROL DA ANS FLEXIBILIZADA. EMBARGANTE ALEGA OMISSÃO EM ACÓRDÃO POR NÃO TER TAL DECISÃO VERSADO SOBRE ENTENDIMENTO DO STJ. VÍCIO NÃO VERIFICADO. DECISÃO JUDICIAL EVIDENTEMENTE FUNDAMENTADA E PAUTADA NO ART. 93, IX, CF. JULGADOR QUE NÃO É OBRIGADO A PORMENORIZAR TODOS OS PONTOS TRAZIDOS PELOS LITIGANTES. MERO INCONFORMISMO DA RECORRENTE. TENTATIVA DE REDISCUSSÃO DE CONTROVÉRSIA JUDICIAL JÁ APRECIADA. APLICAÇÃO DA SÚMULA N. 18 DO TJ/CE. EMBARGOS DE DECLARAÇÃO CONHECIDOS E IMPROVIDOS. 1. Os presentes embargos de declaração vêm a pleito para reclamar suposta omissão em decisum prolatado por esta Relatoria. Alude a recorrente que a decisão combatida deixou de observar entendimento da Segunda Seção do STJ acerca da taxatividade do rol da ANS e, por tal razão, encontra-se o acórdão eivado de vício. 2. Dito isto, adianta-se que não assistem razão os aclaratórios . Isso porque, pela análise da decisão guerreada, é perceptível que todos os pontos relevantes para a resolução da controvérsia foram adequadamente explicados, tendo o improvimento da apelação se dado após a observação da legislação médica pertinente, bem como de notas técnicas e os pormenores do caso concreto. 3. Além disso, importa salientar que o julgador não é obrigado a se manifestar sobre todos os pontos trazidos pelos sujeitos, desde que se expresse de maneira clara, objetiva e fundamentada, o que, ressalte-se, ocorreu. 4. Posto isto, nota-se uma tentativa de rediscussão de matéria de mérito já resolvida e, a ser assim, torna-se incabível o recurso manejado. Com fulcro na súmula n. 18 do TJ/CE, rejeita-se, pois, os <span class="NormalTextRun SpellingErrorV2Themed SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-

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	select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data: border-bottom: 1px solid transparent;")>aclearatórios opostos. 5. Embargos de declaração conhecidos e improvidos. (Embargos de Declaração Cível - 0271987-72.2020.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160;12/04/2023, data da publicação:&#160;12/04/2023) Grifou-se. &#160;</p> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Dito isso, verifica-se que a fundamentação do acórdão embargado se encontra clara e objetiva, não sendo necessária a manifestação expressa sobre uma única tese . &#160; &#160; </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Diante do exposto, conheço do recurso, mas nego-lhe provimento , em decorrência da ausência de quaisquer dos vícios elencados no art. 1.022, do CPC. &#160; </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;">

Processo	0219353-02.2020.8.06.0001
	ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Ficam as partes, desde logo, advertidas de que a oposição de embargos de declaração, com nítido intuito protelatório, ensinará a aplicação da multa prevista no art. 1.026, §§2º e 3º, do CPC/2015. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o voto que submeto à apreciação dos meus eminentes pares. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-indent: 75px;"> Fortaleza - CE, data da assinatura digital. &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.2px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Desembargador CARLOS AUGUSTO GOMES CORREIA &#160; </p> </div> <div class="OutlineElement Ltr SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.33333px 0px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> <span class="NormalTextRun SCXW264041336 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

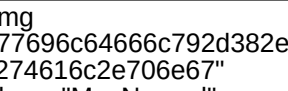
Processo	0202057-09.2024.8.06.0071
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0202057-09.2024.8.06.0071 - 160 APELAÇÃO CÍVEL (198) APELANTE: JARDEL FEITOSA DA SILVA APELADO: CECILIA EDVANIA DE SOUSA Ementa DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE BUSCA E APREENSÃO DE MENORES. OFENSA AO PRINCÍPIO DA DIALETICIDADE. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA AOS FUNDAMENTOS DA SENTENÇA. RECURSO NÃO CONHECIDO. I. CASO EM EXAME Recurso de apelação interposto por J. F. da S. contra sentença da Vara Única de Família e Sucessões da Comarca de Crato, que julgou procedentes os pedidos formulados por C. E. de S. em ação de busca e apreensão dos filhos menores, confirmando liminar anteriormente deferida. O apelante pleiteia a modificação da guarda, a suspensão do direito de visitas da mãe, a realização de estudo psicossocial, a intervenção do Conselho Tutelar e outras providências. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em definir se o recurso de apelação preenche os requisitos de admissibilidade, notadamente quanto ao princípio da dialeticidade, diante da ausência de impugnação específica aos fundamentos da sentença. III. RAZÕES DE DECIDIR O princípio da dialeticidade exige que o recorrente apresente razões capazes de infirmar os fundamentos da decisão impugnada, permitindo ao tribunal cotejar os argumentos recursais com o conteúdo da sentença. O apelante limitou-se a reproduzir os termos da contestação e a formular pedidos de alteração de guarda, sem demonstrar o desacerto da sentença, que apenas confirmou o acordo prévio sobre a residência materna e a convivência paterna. A ausência de impugnação específica inviabiliza o conhecimento do recurso, nos termos do art. 932, III, do CPC, da Súmula 43 do TJCE, da Súmula 182 do STJ e da Súmula 283 do STF. A jurisprudência do STJ e do TJCE consolida que a falta de impugnação dos fundamentos autônomos da decisão recorrida constitui vício formal insuprível, acarretando a inadmissibilidade do recurso. IV. DISPOSITIVO E TESE Recurso não conhecido. Tese de julgamento

Processo	0202057-09.2024.8.06.0071
	bottom: 0.21cm;" align="justify">&#160;</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Irresignado, o Requerido interpôs recurso de apelação sob Id. 22170077, aduzindo, em suma, a necessidade de reavaliação da guarda dos filhos menores, referindo a ocorrência de agressões físicas praticadas pela apelada contra os menores, alvitrando a reforma da sentença para o fim de fixar a guarda unilateral paterna, a realização de estudo psicossocial, a suspensão do direito de visita da mãe, a intervenção do Conselho Tutelar, a requisição de informações à autoridade policial e a designação de assistente social para acompanhar o ambiente familiar da genitora dos menores. </p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Contrarrazões sob Id. 22169189.</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Em parecer de Id. 22169172, a Procuradoria Geral de Justiça manifestou-se pelo não conhecimento do apelo.</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> É o relatório.</p><p class="western" style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="center"> VOTO </p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Juízo de admissibilidade. Ofensa ao princípio da dialeticidade. Recurso não conhecido. </p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Analizando os pressupostos de admissibilidade recursal, verifiquei que o presente recurso de apelação é inadmissível, de modo que não deve ser conhecido. Explico.</p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Na decisão recorrida, foi decidido: Convém registrar desde logo que a discussão acerca da necessidade ou não da alteração da guarda das crianças deverá ser tratada nos autos do processo 0200842-95.2024.8.06.0071 , a qual terá um procedimento mais amplo, respeitando o contraditório e a ampla defesa. No caso em apreço, como já dito, restou comprovado que as partes acordaram que as crianças teriam como base de moradia a residência materna, assegurando a convivência como genitor aos finais de semana (página 18). No entanto, a parte requerida descumpriu o acordo por não devolver as crianças ao lar materno, além de prejudicá-las com o afastamento das atividades escolares (página 22). Em outros termos, o acordo da página 18 permanece hígido e somente pode ser alterado tecnicamente por ambas partes em comum acordo ou por decisão judicial. Nunca por uma só parte ou pelo Conselho Tutelar. Ante o exposto, julgo procedentes os pedidos formulados na inicial, confirmando a medida liminar já deferida na decisão de páginas 29/30, por permanecerem hígidos seus requisitos, mesmo após a contestação, nos termos do artigo 487, inciso I, do Código de Processo Civil. (Id. 22170056)</p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> A parte apelante, em suas razões recursais, não fundamenta qual seria o desacerto da sentença e nem explica por qual motivo a decisão deveria ser reformada, pois limitou-se a reproduzir os termos da contestação, não trazendo razões para modificar a decisão recorrida.</p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Com efeito, de acordo com o parecer ministerial, “Há de se observar, a propósito, que a pretensão do Recorrente não ostenta a mais remota possibilidade de prosperar, tendo em vista a inadequação do meio utilizado para reverter a guarda da filha. O aspecto teratológico da pretensão do Recorrente é evidente, eis que somente em sede de ação ordinária de modificação de guarda, com ampla cognição e exercício do contraditório é que se pode, validamente, aferir se ocorreram fatos supervenientes que autorizem a pretendida reversão.” (Id. 22169172)</p><p class="western" style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Dessa forma, verifico que o recorrente pleiteia a reforma da decisão sem impugnação específica a qualquer fundamento que esteja presente no julgado. Entretanto, as razões recursais configuram componente imprescindível para que o Tribunal ao qual se dirige possa julgar o mérito do recurso, cotejando-as com os motivos da decisão recorrida. A falta de relação entre elas e o que restou decidido, tal como ocorre no presente caso, acarreta o não conhecimento do recurso interposto. </p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> </p>

Processo	0202057-09.2024.8.06.0071
	0.21cm; padding-left: 150px;" align="justify"> (STJ. AgInt no AgInt no AREsp n. 2.376.134/MS. Rel. Min. Maria Isabel Gallotti. Quarta Turma. DJe: 03/07/2024)</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify">
</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ORDINÁRIO EM MANDADO DE SEGURANÇA. MATÉRIA SUSCITADA SOMENTE NO AGRAVO INTERNO. INOVAÇÃO RECURSAL. INADMISSIBILIDADE. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA AOS FUNDAMENTOS DO ACÓRDÃO RECORRIDO. INOBSERVÂNCIA AO PRINCÍPIO DA DIALETICIDADE. USO DO MANDADO DE SEGURANÇA COMO SUCEDÂNEO RECURSAL. IMPOSSIBILIDADE.&#160;</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> [...]</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> 3. Conforme a jurisprudência desta Corte, o recurso ordinário deve observar o princípio da dialeticidade, ou seja, apresentar as razões pelas quais a parte recorrente não se conforma com o acórdão proferido pelo Tribunal de origem, a fim de permitir ao julgador cotejar os fundamentos lançados na decisão judicial com as razões de insurgência.</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> [...]</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> 5. Agravo interno parcialmente conhecido e, nessa extensão, não provido.</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> (STJ. AgInt no RMS n. 71.953/SP. Rel. Min. Nancy Andrighi. Terceira Turma. DJe: 04/04/2024)</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify">
</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO EM APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO. INEXISTÊNCIA DE IMPUGNAÇÃO ESPECÍFICA AOS FUNDAMENTOS DA DECISÃO. INOBSERVÂNCIA AO PRINCÍPIO DA DIALETICIDADE. INCIDÊNCIA DA SÚMULA Nº 42, DO TJCE. ART. 1.010, II E III CUMULADA COM ART. 932, III, DO CPC. RECURSO NÃO CONHECIDO.&#160;</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> 1. Em face do princípio da dialeticidade, os recursos devem evidenciar os motivos de fato e de direito da reforma da decisão recorrida (art. 1.010, II e III, do CPC). Por força desse princípio, a parte recorrente deve impugnar todos os fundamentos suficientes para reformar a decisão recorrida, de maneira a demonstrar que o julgamento proferido merece ser modificado. Portanto, não basta que faça alegações genéricas em sentido contrário às afirmações da decisão recorrida.</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> 2. A impugnação específica contra a decisão recorrida constitui exigência recursal, sem a qual a apelação não pode ser conhecida (Súmula nº 42 do TJCE e art. 932, III, do CPC). Nesse contexto, a atuação do órgão recursal encontra-se necessariamente adstrita ao confronto dos fundamentos lançados na decisão recorrida, mediante o cotejo dos motivos de fato e de direito que ensejam o pedido de reforma da decisão, inócua na peça do recurso em apreciação, de forma que o seu não conhecimento é medida que se impõe, ante a inobservância ao princípio da dialeticidade.</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> 3. Evidenciada a falha da parte agravante que deixou de impugnar, especificamente os fundamentos da decisão recorrida, esta subsiste inatacada e enseja a inadmissão do recurso.</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> 4. Recurso não conhecido.</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> &#160;</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; padding-left: 150px;" align="justify"> (TJCE. AgInt nº 0201148-64.2022.8.06.0029. Rel. Des. André Luiz de Souza Costa. 4ª Câmara Direito Privado. DJe: 12/03/2024)&#160;</p><p style="line-height: 100%; margin-left: 4cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Evidenciado o equívoco da parte recorrente ao deixar de impugnar especificamente os fundamentos da decisão recorrida, esta subsiste inatacada, o que enseja a inadmissão do recurso.</p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> <span style="font-size:

Processo	0202057-09.2024.8.06.0071
	small;">Em face do exposto, em consonância com o parecer de Procuradoria Geral de Justiça, NÃO CONHEÇO do presente recurso por ofensa ao princípio da dialeticidade (arts. 932, III, do CPC; e 76, XIV, do RITJCE).</p><p style="line-height: 150%; text-indent: 2cm; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> É como voto.</p><p style="line-height: 100%; margin-top: 0.04cm; margin-bottom: 0.04cm;" align="center">

 </p><p style="line-height: 100%; margin-top: 0.04cm; margin-bottom: 0.04cm;" align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p>&#160;</p><p style="line-height: 100%; margin-top: 0.04cm; margin-bottom: 0.04cm;" align="center"> RELATOR </p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0210208-92.2015.8.06.0001
Número de ordem	222
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	COMPANHIA DOCAS DO CEARA
Advogado(s) - Polo ativo	ALEXSANDRO SILVA ARAUJO - (CE26509) JOAO CARVALHO QUIXADA NETO - (CE20511-A) REBECA ALVES SOARES - (CE17279)
Polo passivo	V. CASTRO & CIA LTDA
Advogado(s) - Polo passivo	MANUEL GOMES FILHO - (CE3252-A) JULIO NOGUEIRA MILITAO NETO - (CE3144-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado
Processo	0633042-12.2024.8.06.0000
Número de ordem	223
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Rescisão do contrato e devolução do dinheiro
Polo ativo	BRIC DEVELOPMENT BRASIL LTDA.
Advogado(s) - Polo ativo	JOSE FROTA CARNEIRO NETO - (CE19603-A) RUI BARROS LEAL FARIAS - (CE16411-A) MIGUEL ROCHA NASSER HISSA - (CE15469-A) RODRIGO MACEDO DE CARVALHO - (CE15470-A)
Polo passivo	ANGELA MARIA SANTOS ALMEIDA
Advogado(s) - Polo passivo	RAIMUNDO IVAN VASCONCELOS MOURA - (CE9424-A) ALINE MACIEL LIMA - (CE36005-A) VITORIA SOARES BRITO DA SILVA - (CE47381-A) LETICIA MOURA BARBOSA - (CE43302-A) ELIENNAY GOMES ALVES - (CE30314-A)
Terceiros	Não informado

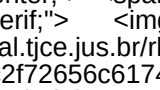
Processo	0633042-12.2024.8.06.0000
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0633042-12.2024.8.06.0000 - AGRAVO DE INSTRUMENTO (202) AGRAVANTE: BRIC DEVELOPMENT BRASIL LTDA. AGRAVADO: ANGELA MARIA SANTOS ALMEIDA Ementa: DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO EM AGRAVO DE INSTRUMENTO. CUMPRIMENTO DE SENTENÇA. DECISÃO QUE RECEBE A PEÇA E INTIMA O EXECUTADO PARA PAGAMENTO. AUSÊNCIA DE CONTEÚDO DECISÓRIO. IRRECORRIBILIDADE. INOVAÇÃO RECURSAL. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Agravo interno interposto por Bric Development Brasil Ltda. contra decisão monocrática que não conheceu de agravo de instrumento manejado contra despacho que recebeu o cumprimento de sentença, movido por Angela Maria Santos Almeida, e determinou a intimação da parte ré para pagamento do débito exequendo. 2. A agravante sustenta que a decisão possui conteúdo decisório por impor encargos além do acordo homologado, requerendo apreciação de mérito do agravo de instrumento. II. QUESTÃO EM DISCUSSÃO 3. Há duas questões em discussão: (i) definir se a decisão que recebe o cumprimento de sentença e determina a intimação para pagamento possui conteúdo decisório apto a ensejar agravo de instrumento; (ii) verificar se houve inovação recursal na insurgência da agravante. III. RAZÕES DE DECIDIR 4. A decisão que apenas recebe a peça de cumprimento de sentença e determina a intimação da parte executada não possui conteúdo decisório, tratando-se de mero despacho, insuscetível de recurso. 5. O art. 1.015, parágrafo único, do CPC, autoriza agravo de instrumento contra decisões proferidas em liquidação ou cumprimento de sentença, mas somente quando revestidas de carga decisória. 6. O Superior Tribunal de Justiça consolidou o entendimento de que a decisão que apenas determina a intimação do devedor para pagar ou garantir a execução não comporta agravo de instrumento (REsp 1.837.211/MG, Rel. Min. Moura Ribeiro, 3ª Turma, j. 09/03/2021). 7. O Tribunal de Justiça do Ceará adota orientação idêntica, reputando irrecorrível esse tipo de despacho (Agravo Interno Cível nº 0625086-42.2024.8.06.0000; Agravo Interno Cível nº 0621084-29.2024.8.06.0000). 8. Configura inovação recursal a inclusão de matérias no agravo de instrumento que deveriam ser suscitadas, primeiro, em sede de impugnação ao cumprimento de sentença, perante o juízo de origem. IV. DISPOSITIVO E TESE 9. Recurso desprovido. Tese de julgamento: 1. A decisão que apenas recebe o cumprimento de sentença e determina a intimação do executado para pagamento não possui conteúdo decisório e, por isso, não é passível de agravo de instrumento. 2. A inovação recursal impede o conhecimento de matérias não submetidas previamente ao juízo de origem em sede de impugnação ao cumprimento de sentença. Dispositivos relevantes citados: CPC, art. 1.015, parágrafo único, e 513, § 2º. Jurisprudência relevante citada:

Processo	0633042-12.2024.8.06.0000
	STJ, REsp 1.837.211/MG, Rel. Min. Moura Ribeiro, 3ª Turma, j. 09/03/2021, DJe 11/03/2021; TJCE, Agravo Interno Cível nº 0625086-42.2024.8.06.0000, Rel. Des. Antônio Abelardo Benevides Moraes, 1ª Câmara de Direito Privado, j. 11/06/2025; TJCE, Agravo Interno Cível nº 0621084-29.2024.8.06.0000, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara de Direito Privado, j. 17/04/2024. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em 160;conhecer do recurso de agravo interno, mas negar-lhe provimento, tudo nos termos do voto do Relator. Ementado Acrdo 160; Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO Trata-se de Agravo Interno interposto por BRIC DEVELOPMENT BRASIL LTDA em face de decisão monocrática proferida sob minha relatoria, nos autos do Agravo de Instrumento interposto pela ora agravante em face de despacho que recebeu o cumprimento de sentença movido por ANGELA MARIA SANTOS ALMEIDA e determinou a intimação da parte ré para pagamento do débito exequendo. A decisão vergastada não conheceu do agravo de instrumento, nos seguintes termos: O ato judicial impugnado no presente agravo de instrumento nada mais é que o impulsionamento do feito pelo Magistrado, de ordem legal, em respeito ao rito processual previsto nos arts. 523 e 525, §1º, do CPC, que assim determinam: [...]. A bem da verdade, observa-se que as insurgências lançadas neste recurso tratam de matéria que deve ser ventilada em sede de impugnação ao cumprimento de sentença e não em agravo de instrumento. Portanto, não há conteúdo decisório no ato judicial impugnado e, assim sendo, descabe a insurgência pela via do agravo de instrumento. Sobre o tema, colaciono jurisprudência deste TJCE: [...] Ainda que assim não fosse, as matérias alegadas neste recurso não foram apreciadas ainda pelo magistrado de primeira instância, motivo pelo qual também não podem ser decididas por este tribunal, sob pena de supressão de instâncias, o que é vedado pela legislação processual civil brasileira.

Processo	0633042-12.2024.8.06.0000
	margin-left: 4.0cm; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;">Diante do exposto e fundamentação apresentada, NÃO CONHEÇO do presente agravo de instrumento, por ser manifestamente inadmissível, conforme disciplina o inciso III, do artigo 932, do CPC, bem como pela vedação a supressão de instâncias. Irresignada, a Bric Development interpôs o presente agravo interno, no qual alega, em suma, que a decisão agravada possui, sim, conteúdo decisório, posto ter determinado o cumprimento da obrigação com encargos financeiros que extrapolam os limites do acordo homologado. Ao final, roga pelo conhecimento e provimento do recurso interno, para que seja proferida decisão de mérito sobre o agravo de instrumento. Foram apresentadas contrarrazões sob o ID. 22202735, mediante o qual a parte agravada postula a manutenção da decisão monocrática que não conheceu do agravo de instrumento. É o que importa relatar. Decido. VOTO Presentes os requisitos de admissibilidade, conheço do agravo interno e passo à análise do mérito recursal. Em que pese os argumentos ventilados pela parte agravante, entendo que seu recurso não merece prosperar, posto que, conforme bem delineado na decisão monocrática agravada, a decisão, ainda que proferida em sede de cumprimento de sentença, que apenas recebe a peça e determina que haja o pagamento do débito exequendo não possui conteúdo decisório. Nos termos do § único, do art. 1.015, do CPC, realmente as decisões proferidas em fase de liquidação de sentença são agraváveis, contudo, é entendimento consolidado do c. Superior Tribunal de Justiça, que: [...] Com o advento do Novo Código de Processo Civil, o início da fase de cumprimento de sentença para pagamento de quantia certa passou a depender de provocação do credor . Assim, a intimação do devedor para pagamento é consectário legal do requerimento, e, portanto, irrecurável, por se tratar de mero despacho de expediente, pois o juiz simplesmente cumpre o procedimento determinado pelo Código de Processo Civil (art. 523 do NCPC), impulsionando o processo. (REsp n. 1.837.211/MG, relator Ministro Moura Ribeiro, Terceira Turma, julgado em 9/3/2021, DJe de 11/3/2021.) Esse é exatamente o caso dos autos, uma vez que a decisão recorrida apenas recebeu o cumprimento de sentença, nos termos do art. 513, §2º, do CPC, bem como determinou a intimação da parte agravada para pagar ou garantir a execução, o que impede a interposição de agravo de instrumento. Não é destoante o entendimento deste e. Tribunal de Justiça do Ceará, veja-se: DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO EM AGRAVO DE INSTRUMENTO. FASE DE CUMPRIMENTO DE SENTENÇA. IRRECORRIBILIDADE DO ATO DE INTIMAÇÃO PARA PAGAMENTO. ATO DE MERO IMPULSO PROCESSUAL. AUSÊNCIA DE CONTEÚDO DECISÓRIO. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Agravo Interno interposto contra decisão monocrática que não conheceu do Agravo de Instrumento nº 0625086-42.2024.8.06.0000, por ausência de interesse recursal, considerando incabível a apreciação do recurso em razão da inexistência de prévia impugnação ao cumprimento de sentença, nos termos dos artigos 523 e 525 do CPC. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se é cabível a interposição de Agravo de Instrumento contra o ato judicial que determina a intimação do executado para pagamento no prazo legal, sob pena

Processo	0633042-12.2024.8.06.0000
	de incidência de multa e honorários, no âmbito do cumprimento de sentença. III. RAZÕES DE DECIDIR 3. O artigo 1.015, parágrafo único, do CPC admite a interposição de Agravo de Instrumento contra decisões interlocutórias proferidas na fase de cumprimento de sentença, desde que possuam conteúdo decisório. 4. O ato que determina a intimação do executado para pagamento, nos termos do artigo 523 do CPC, configura mero despacho de impulso processual, sem conteúdo decisório, razão pela qual não é passível de impugnação por Agravo de Instrumento. 5. A jurisprudência do Superior Tribunal de Justiça é firme no sentido de que tal ato não é recorrível, por não conter juízo valorativo autônomo, sendo mera formalidade decorrente da lei processual (STJ, REsp nº 1.733.560/SP). 6. A tese firmada no Tema 988 do STJ, que excepciona o rol do artigo 1.015 do CPC em hipóteses de urgência, não se aplica ao caso, pois não restou demonstrada situação que configure risco de inutilidade da discussão em sede de impugnação ao cumprimento de sentença. 7. A via adequada para discutir questões relativas aos encargos sucumbenciais e à exigibilidade da obrigação no cumprimento de sentença é a impugnação prevista no artigo 525 do CPC, e não o Agravo de Instrumento. IV. DISPOSITIVO E TESE 5. Recurso conhecido e desprovido. Tese de julgamento: 2. O ato judicial que determina a intimação do executado para pagamento no cumprimento de sentença, previsto no artigo 523 do CPC, tem natureza de mero despacho de expediente, desprovido de conteúdo decisório, sendo, portanto, irrecurável por meio de Agravo de Instrumento. 3. Dispositivos relevantes citados: CPC, arts. 203, §2º; 523, caput e §1º; 525, §1º, VII; 1.015, parágrafo único. Jurisprudência relevante citada: STJ, REsp nº 1.733.560/SP. (Agravo Interno Cível nº 0625086-42.2024.8.06.0000, Rel. Desembargador(a) ANTÔNIO ABELARDO BENEVIDES MORAES, 1ª Câmara Direito Privado, data do julgamento: 11/06/2025, data da publicação: 11/06/2025) PROCESSUAL CIVIL. AGRAVO INTERNO. AGRAVO DE INSTRUMENTO NÃO CONHECIDO. CUMPRIMENTO DE SENTENÇA. INTIMAÇÃO DO EXECUTADO PARA PAGAMENTO. DESPACHO DE MERO EXPEDIENTE. NÃO CABIMENTO DA ESPÉCIE ELEITA PELA PARTE AGRAVANTE. AGRAVO INTERNO CONHECIDO E DESPROVIDO. 1. As decisões proferidas em liquidação ou cumprimento de sentença, execução e inventário, são de fato impugnáveis por agravo de instrumento (art. 1.015, parágrafo único, do NCPC); porém, com o advento do atual Código de Processo Civil, o início da fase de cumprimento de sentença para pagamento de quantia certa dar-se mediante despacho de mero expediente, pois o juiz simplesmente cumpre o procedimento determinado pelo Código de Processo Civil (art. 523 do NCPC), impulsionando o processo, não sendo daí impugnável pela via do agravo de instrumento, mas pelas outras ferramentas próprias previstas na rotina processual civil. 2. Recurso conhecido e desprovido. (Agravo Interno Cível nº 0621084-29.2024.8.06.0000, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 17/04/2024, data da publicação: 17/04/2024) Em seu recurso, a parte agravante suscita matérias que, na verdade, devem ser tratadas primeiro em sede de impugnação ao cumprimento de sentença, as quais serão inicialmente decididas pelo magistrado de origem e, apenas então, poderão ser objeto de apreciação por este tribunal. Destarte, conheço do presente agravo interno, mas nego-lhe provimento, mantendo inalterada a decisão monocrática vergastada. É como voto. Fortaleza, data da assinatura digital. Relator do Processo com Tratamento#Retorna o

Processo	0633042-12.2024.8.06.0000
	relator com tratamento=801@PROC" <![endif--> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA<!--[if supportFields]><![endif--> &#160; </p> <p>&#160;</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"><!--[if supportFields]>MERGEFIELD &quot;Designi&ccedil;&atilde;o do relator atual do processo com g&ecirc;nero#Designi&ccedil;&atilde;o do relator atual do processo considerando seu g&ecirc;nero=933@PROC" <![endif--> Relator<!--[if supportFields]><![endif--> </p> </div></div><p>
 </p><p>&#160;</p>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0638496-07.2023.8.06.0000
Número de ordem	224
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Despejo por Inadimplemento
Polo ativo	MARIA MARY BEZERRA MAXIMO
Advogado(s) - Polo ativo	ANA PAULA CRUZ FARIAS - (CE50877-A)
Polo passivo	SERGIO MOREIRA PHILOMENO GOMES
Advogado(s) - Polo passivo	FRANCISCO FREITAS CORDEIRO - (CE1990-A) NAIANDRA RAPHAELA PIMENTA LUCAS - (CE17663-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA ANA MARIA FONTENELLE PHILOMENO GOMES

Processo	0638496-07.2023.8.06.0000
Acórdão	 PROCESSO: 0638496-07.2023.8.06.0000 - AGRADO DE INSTRUMENTO (202) AGRAVANTE: MARIA MARY BEZERRA MAXIMO AGRAVADO: SERGIO MOREIRA PHILOMENO GOMES EMENTA: DIREITO PROCESSUAL CIVIL E CIVIL. AGRAVO DE INSTRUMENTO. AÇÃO DE DESPEJO POR FALTA DE PAGAMENTO CUMULADA COM COBRANÇA DE ALUGUÉIS. CONCESSÃO DE LIMINAR SEM PEDIDO EXPRESSO. PRINCÍPIO DA CONGRUÊNCIA. DECISÃO EXTRA PETITA. NULIDADE RECONHECIDA. RECURSO PROVIDO. RELATÓRIO: I. CASO EM EXAME Agravado de instrumento interposto por locatária contra decisão interlocutória que, em ação de despejo por falta de pagamento cumulada com cobrança de aluguéis, deferiu liminar inaudita altera

Processo	0638496-07.2023.8.06.0000
	BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data: border-bottom: 1px solid transparent;")>pars de desocupação do imóvel, condicionada à prestação de caução pelo autor, embora ausente pedido expresso na petição inicial. &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> II. QUESTÃO EM DISCUSSÃO &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> A questão em discussão consiste em verificar se a concessão de medida liminar de despejo, sem requerimento expresso do autor na inicial, configura decisão extra petita, em afronta ao princípio da congruência previsto no CPC. &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> III. RAZÕES DE DECIDIR &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR">

Processo	0638496-07.2023.8.06.0000
	text;">O princípio da congruência (arts . 141 e 492 do CPC) impõe ao magistrado a observância dos limites objetivos da demanda, vedando decisão sobre pedido não formulado, em quantidade superior ou em objeto diverso. &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> A decisão que concede liminar de despejo sem requerimento expresso do autor extrapola os limites da lide e caracteriza decisão extra petita. &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> A nulidade se reconhece ainda que a medida não tenha sido efetivada, pois o vício decorre do ato decisório em si, e não de sua execução. &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Precedente desta Corte reconhece que a concessão de tutela de urgência não requerida pela parte caracteriza decisão extra petita e deve ser reformada. &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun

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	SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> IV. DISPOSITIVO E TESE &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Recurso provido. &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Tese de julgamento &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> A concessão de liminar de despejo sem pedido expresso do autor configura decisão extra petita. &#160; </p></div> <div class="OutlineElement Ltr SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW197537093 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> O princípio da congruência impõe ao julgador decidir estritamente dentro dos limites da

Processo	0638496-07.2023.8.06.0000
	BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px;">&#160; </p></div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se de Agrav de Ins trum ento interposto por Maria Mary Bezerra Maximo , contra decis interlocut (ID 121281735 proferida pelo ju da 4 a Vara C de Fortaleza <span class="NormalTextRun SCXW123940967

Processo	0638496-07.2023.8.06.0000
	BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">, nos autos d a Ação De Despejo por Falta de Pagamento Cumulado c om Cobrança de A luguéis e encargos e por não convir a locação nº 0264971-62.2023.8.06.0001 , movida p or Sergio Moreira Philomeno Gomes . &#160; </p> </div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> A decisão recorrida , foi proferida nos seguintes termos: &#160; </p> </div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0638496-07.2023.8.06.0000
	highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Nesse diapasão, defiro o pedido liminar inaudita altera pars e determino: &#160; </p> </div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 1. Inicialmente determino a intimação do autor para prestar caução real no valor equivalente a três meses de aluguel, com base no art. 59, §1º da lei 12.112/2009, a serem depositados em juízo, com a devida comprovação nos presentes autos. &#160; </p> </div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. Após o cumprimento do item 01, determino a expedição de mandado único de desocupação voluntária do imóvel descrito na inicial, no prazo de 15 (quinze) dias, sob pena de, em não o fazendo, ser despejado compulsoriamente com auxílio de força policial e ordem de arrombamento, se necessário for, conforme art. 65 da Lei do Inquilinato. Se o oficial verificar que o imóvel já se encontra abandonado, deverá promover a imediata imissão na posse com fundamento no art. 66 da Lei nº 8.245/91. &#160; </p> </div> <div class="OutlineElement

Processo	0638496-07.2023.8.06.0000
	Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;">Em suas razões recursais (ID 22226820), a parte agravante sustenta, em pedido de efeito suspensivo, que a legislação aplicável prevê a obrigatoriedade do depósito da caução para a concessão da liminar, além da necessidade de requerimento expresso pelo Autor. Aduz, ainda, que o juiz de primeiro grau concedeu a medida liminar sem a ouvir da parte contrária e que o prazo fixado não foi observado sendo imprescindível a garantia de permanência da Agravante na posse do imóvel até que os fatos jurídicos ensejadores da ação sejam devidamente discutidos, nos termos do art. 300 do CPC. &#160; </p> </div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No mérito, defende a parte agravante que a decisão recorrida é extra petita, uma vez que o agravado, em sua petição inicial, não formulou qualquer requerimento de concessão de medida liminar, razão pela qual a decisão que a deferiu de ofício é nula. &#160; </div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Aduz, ainda, que a legislação prever o depósito da caução como requisito para a concessão da medida liminar, observa-se que, mesmo após a concessão ora impugnada, o juiz de primeiro grau fixou prazo para o recolhimento, o qual, contudo, não foi cumprido. &#160; </p> </div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color:

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	webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">(ID 22226289 o agravado alega que mesmo sem ter sido requerido, foi deferida liminar despej o , a qual, todavia, não chegou a ser efetivada pelo Agravado, justamente para evitar qualquer nulidade ou maior demora no deslinde da ação. Assim, este Juízo pode, em despacho de retratação, revogar a medida liminar concedida sem pedido expresse, sem ocasionar qualquer nulidade ao processo, visto que a decisão não chegou a ser executada pelo Agravado. &#160; </p> </div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Parecer do Ministério Público (ID 22226798) manifestou-se deixando de opinar sobre o mérito &#160; </p> </div> <div class="OutlineElement Ltr SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório Adoto o Pacto Nacional do Judiciário Pela Linguagem Simples, do CNJ, e passo a proferir o meu voto. <span class="EOP SCXW123940967 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height:

Processo	0638496-07.2023.8.06.0000
	27px;">&#160; </p> </div> </div></div><p>
 </p><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit- tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap- highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit- tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap- highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No que se refere ao agravo de instrumento, entendo presentes os pressupostos intrínsecos e extrínsecos de admissibilidade passo à análise do mérito do recurso. &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background- color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No mérito de sua insurgência recursal, o agravante alega que decisão recorrida é extra petita, uma vez que o agravado, em sua petição inicial, não formulou qualquer requerimento de concessão de medida liminar, razão pela qual a decisão que a deferiu de ofício é nula. &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background- color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> O cerne do presente agravo de instrumento reside na apreciação da ocorrência de decisão "extra petita" na interlocutória em análise . &#160; </p></div><div class="OutlineElement Ltr

Processo	0638496-07.2023.8.06.0000
	SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Compulsando os autos, verifica-se que o Autor não formulou pedido expresso de liminar na petição inicial (ID 121284197), limitando-se a requerer, em caráter principal, a desocupação ao final da demanda. Não obstante, a decisão interlocutória ora impugnada deferiu, inaudita altera pars , medida liminar determinando a desocupação voluntária do imóvel no prazo de 15 (quinze) dias, sob pena de despejo compulsório, inclusive com auxílio de força policial &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em contrarrazão (ID 22226289) o agravado afirma que mesmo sem ter sido requerido, foi deferida liminar despej o , a qual, todavia , não chegou a ser efetivada pelo agravado. &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="TextRun SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px;

Processo	0638496-07.2023.8.06.0000
	user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Para que uma decisão seja considerada correta e completa, é imprescindível que é fundamental que o magistrado se mantenha adstrito aos limites da demanda, examinando os pedidos efetivamente formulados pelas partes, em consonância com as provas e fundamentos jurídicos pertinentes. Quando há concessão de pedido não requerido, como no caso em exame, configura-se decisão &#160;</p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Conforme preconizado pelo princípio da congruência, igualmente denominado princípio da correlação ou adstrição, compete ao Magistrado a observância dos limites objetivos da lide, conferindo a tutela jurisdicional em estrita consonância com a pretensão formulada pelo autor, em estrito cumprimento das disposições contidas nos artigos 141 e 492 do Código de Processo Civil de 2015. Vejamos:&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ">Art. 141. O juiz decidirá o mérito nos limites propostos pelas partes, sendo-lhe vedado conhecer de questões não suscitadas a cu o respeito a lei exige iniciativa da parte ."(<span class="NormalTextRun SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select:

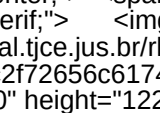
Processo	0638496-07.2023.8.06.0000
	text;">GN) &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> "Art. 492. É vedado ao juiz proferir decisão de natureza diversa da pedida, bem como condenar a parte em quantidade superior ou em objeto diverso do que lhe foi demandado. &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Parágrafo único. A decisão deve ser certa, ainda que resolva &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> relação jurídica condicional ". GN) &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span

Processo	0638496-07.2023.8.06.0000
	style="font-size: small; "> Portanto, tem-se que o princípio da congruência determina que a sentença deve ser proferida dentro dos estritos limites das alegações e dos pedidos apresentados pelas partes durante o desenvolvimento do processo. Isso significa que o magistrado não pode decidir sobre questões não alegadas (extra petita) , nem conceder mais do que foi solicitado (ultra petita) ou, ainda, deixar de analisar algum dos pedidos apresentados pelas partes (citra petita). &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No presente caso, o Juízo a quo concedeu medida liminar de desocupação sem que houvesse pedido expresso do autor nesse sentido, extrapolando, assim, os limites da demanda e configurando decisão extra petita. em afronta ao princípio da congruência previsto nos arts . 141 e 492 do CPC. &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> A propósito: &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span class="TextRun SCXW83956279

Processo	0638496-07.2023.8.06.0000
	BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 15px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">DIREITO DE SAÚDE. PLANO DE SAÚDE. DECISÃO INTERLOCUTÓRIA EXTRA PETITA. COMPROVADA. NECESSIDADE DE REFORMA. CONCESSÃO DE TRATAMENTO POR MÉTODO THERASUIT. AUSÊNCIA NO ROL DA ANS. PROCEDIMENTO INDICADO POR RELATÓRIO MÉDICO. NECESSIDADE DE CONCESSÃO DA TERAPIA MEDIANTE RELATÓRIOS MÉDICOS ATUALIZADOS E RENOVADOS EM PRAZO LEGAL OU FIXADO PELO JUÍZ. ENUNCIADO N. 2 DAS JORNADAS DE DIREITO DA SAÚDE DO CONSELHO NACIONAL DE JUSTIÇA. REEMBOLSO EM CASO DE AUSÊNCIA DE PROFISSIONAIS HABILITADOS. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. I - Cinge-se a controvérsia recursal acerca da existência dos requisitos para a concessão da tutela de urgência em favor do pleito da Agravante, bem como se ocorreu lesão ao art. 141 e 492 do Código de Processo Civil Brasileiro - CPCB, tratando-se a decisão agravada de decisum judicial extra petita; II – Ao analisar o decisum fácil é perceber, claramente, que se está diante de uma decisão judicial extra petita, após se constatar que o pleito autoral não faz qualquer menção à realização de qualquer tratamento nos articulados fáticos do pedido de concessão da tutela de urgência, limitando-se a requerer o ressarcimento do pagamento integral no prazo de 5 (cinco) dias, sob pena de multa diária de R\$ 500,00 (quinhentos reais). III - Conforme nos ensina Marcus Vinicius Gonçalves (2022, p. 186), decisão extra petita é quando "há pronunciamento judicial sobre algo que não foi pedido, ou embasado em fundamentos de fato que não foram trazidos pelas partes". O entendimento não se aplica tão somente à sentença prolatada, mas a qualquer pronunciamento judicial acerca do que foi pedido, tal qual o de concessão de tutela de urgência. IV - Em relação à disponibilização de tratamento não solicitado pela parte Autora, nos moldes que impera a decisão do juízo a quo, imperioso que deve ser excluído dos meandros da pretensão, sob pena de malferir dispositivo expresso do Código de Processo Civil Brasileiro - CPCB, nos termos anteriormente destacados. V [...]. X Recurso conhecido e parcialmente provido. (Agravamento - 0628114-96.2016.8.06.0000, Rel. Desembargador(a) IRANDES BASTOS SALES PORT. Nº 1748/2022, 2ª Câmara Direito Privado, data do julgamento: 26/10/2022, data da publicação: 26/10/2022) (G.N.) &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Desse modo, ante a impossibilidade de concessão de decisões de natureza extra petita, revogo a decisão interlocutória que deferiu liminar de des pejo , determinando que o processo prossiga regularmente nos limites do pedido inicial. &#160; </p></div><div

Processo	0638496-07.2023.8.06.0000
	webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; Relator &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 1.33333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; <span class="EOP SCXW83956279 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0638496-07.2023.8.06.0000
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-size: 12pt; line-height: 18px;"> </p></div> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	0200149-51.2022.8.06.0146
Número de ordem	225
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Efeito Suspensivo / Impugnação / Embargos à Execução
Polo ativo	MARIA OBNEUDA SILVA SANTOS MARIA LUZANIRA SOUSA DA SILVA EUDER BEZERRA DOS SANTOS
Advogado(s) - Polo ativo	DIEGO ALBUQUERQUE LOPES - (CE26053-A) CARLOS ALBERTO LOPES JUNIOR - (CE41753-A)
Polo passivo	BANCO DO NORDESTE DO BRASIL SA
Advogado(s) - Polo passivo	MARIZZE FERNANDA LIMA MARTINEZ DE SOUZA PACHECO - (PE25867-A) MARITZZA FABIANE LIMA MARTINEZ DE SOUZA OLIVEIRA ROSSITER - (CE44562-S) HAROLDO WILSON MARTINEZ DE SOUZA JUNIOR - (PE20366-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0200149-51.2022.8.06.0146
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0200149-51.2022.8.06.0146 - 160; APELAÇÃO CÍVEL (198) APELANTE: MARIA OBNEUDA SILVA SANTOS, MARIA LUZANIRA SOUSA DA SILVA, EUDER BEZERRA DOS SANTOS APELADO: BANCO DO NORDESTE DO BRASIL SA EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. GRATUIDADE DE JUSTIÇA. MICROEMPRESA. PRESUNÇÃO RELATIVA DE HIPOSSUFICIÊNCIA. IMPUGNAÇÃO REJEITADA. PRINCÍPIO DA DIALETICIDADE. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA DOS FUNDAMENTOS DA SENTENÇA. RECURSO NÃO CONHECIDO. I. CASO EM EXAME 1. Apelação Cível interposta por microempresa e outros contra sentença que julgou improcedentes embargos à execução ajuizados em face de instituição financeira. Os apelantes alegaram ausência de constituição em mora e nulidade da execução, além de questionarem a cobrança de encargos contratuais. O apelado apresentou contrarrazões, impugnando a concessão da gratuidade de justiça e defendendo a manutenção da sentença. II. QUESTÃO EM DISCUSSÃO 2. Há duas questões em discussão: (i) definir se subsiste o benefício da gratuidade de justiça concedido aos apelantes; (ii) verificar se o recurso de apelação atende ao princípio da dialeticidade, mediante impugnação específica dos fundamentos da sentença. III. RAZÕES DE DECIDIR 3. A gratuidade de justiça é assegurada à pessoa natural e à microempresa com presunção relativa de hipossuficiência, cabendo à parte adversa elidir a declaração de insuficiência com elementos concretos, o que não ocorreu, razão pela qual se mantém o benefício. 4. O princípio da dialeticidade impõe ao recorrente o dever de impugnar especificamente os fundamentos da decisão recorrida, conforme os arts. 1.010, II e III, e 932, III, do CPC. 5. A ausência de ataque específico aos fundamentos da sentença caracteriza irregularidade formal, impedindo o conhecimento do recurso, nos termos da Súmula 43 do TJCE.

Processo	0200149-51.2022.8.06.0146
	cível interposto por EUDER BEZERRA DOS SANTOS ME E OUTROS em face de sentença proferida pela Vara Única da Comarca de Pindoretama, nos autos dos embargos à execução ajuizados pelos apelantes em desfavor do BANCO DO NORDESTE DO BRASIL S.A. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> A sentença vergastada (ID 22240211) julgou improcedentes os pedidos autorais nos seguintes termos: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> [...] </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Ante o exposto, JULGO IMPROCEDENTES os pedidos formulados nos presentes embargos à execução, nos termos do art. 487, inciso I, do Código de Processo Civil. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Custas e honorários advocatícios, estes fixados em 10% sobre o valor atualizado atribuído aos embargos à execução, a serem suportados pela parte embargante, cuja exigibilidade resta suspensa na forma do art. 98, §3º, do CPC. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Publicação e registro eletrônicos. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Intimem-se. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> [...] </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Em sua peça recursal de ID 22239819, os apelantes sustentam que inexistente prova hábil nos autos capaz de demonstrar que foram notificados para pagamento da dívida, logo não houve constituição em mora, bem como aduzem que não houve protesto do título, o que acarreta nulidade da sentença, em face da ausência de pressupostos válidos essenciais ao desenvolvimento regular do processo executivo. Alegam também que inexistente mora, já que é indevida a aplicação da comissão de permanência cumulada com correção monetária e/ou com juros remuneratórios e moratórios, bem como quando o credor cobra valor superior ao efetivamente devido. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> A parte apelada apresentou contrarrazões de ID 22240196 e impugnou, preliminarmente, a gratuidade da justiça concedida. No mérito, refuta as teses recursais, requerendo o não provimento do recurso e a manutenção do julgado em todos os seus termos. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Parecer do Ministério Público juntado em ID 22239805, opinando pelo conhecimento da apelação. Quanto ao mérito, deixou de manifestar-se por entender desnecessária a intervenção ministerial. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Audiência de conciliação restou prejudicada, uma vez que a parte apelada não compareceu, conforme termo de ID 22239814. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É o relatório. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center">

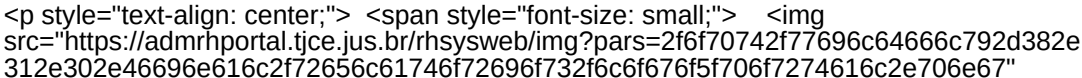
Processo	0200149-51.2022.8.06.0146
	style="font-family: arial, helvetica, sans-serif;">VOTO class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Inicialmente, passo à análise da preliminar suscitada em sede de contrarrazões recursais.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> O apelado impugna em suas contrarrazões a concessão da gratuidade da justiça aos apelantes.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Sobre a gratuidade da justiça, tem-se que o artigo 98 do Código Processual Civil assim preceitua: "A pessoa natural ou jurídica, brasileira ou estrangeira, com insuficiência de recursos para pagar as custas, as despesas processuais e os honorários advocatícios tem direito à gratuidade da justiça, na forma da lei."</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Ou seja, em relação à pessoa natural, deve haver presunção relativa de veracidade quanto à declaração de insuficiência de recursos. Cabe destacar que, quanto às microempresas, essas gozam de presunção de veracidade no tocante à alegação de hipossuficiência, em equiparação às pessoas naturais. Além disso, tenho que inexistem nos autos elementos capazes de gerar dúvida razoável acerca dos pressupostos autorizadores para concessão do benefício à parte autora.</p><p class="CorpoDoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> </p><p class="CorpoDoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É de se frisar que os argumentos expostos em sede de contrarrazões estão destituídos de comprovação, de tal forma que a presunção de veracidade relativa à hipossuficiência de recursos arguida pelos recorrentes não foi ilidida.</p><p class="CorpoDoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Impugnação rejeitada, de forma que o benefício fica mantido </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Antes de analisar o mérito, é necessário averiguar a presença dos pressupostos recursais intrínsecos – atinentes à existência do direito de recorrer – e extrínsecos – atinentes ao seu exercício, sem os quais resta inviabilizado o conhecimento do recurso.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> O ônus da dialeticidade recursal, conforme ensina Alexandre Freitas Câmara (in Manual de direito processual civil [e-book]. 2. ed.&#160;Barueri/SP: Atlas, 2023, pág. 990), "deve ser entendido como a exigência de que o recurso 'dialogue' com a decisão recorrida, impugnando-a de modo específico".</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> A propósito, dispõe o Código de Processo Civil (CPC/2015) que:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> </p>

Processo	0200149-51.2022.8.06.0146
	Art. 1.010. A apelação, interposta por petição dirigida ao juízo de primeiro </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> grau, conterà: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> I - os nomes e a qualificação das partes; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> II - a exposição do fato e do direito </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> III - as razões do pedido de reforma ou de decretação de nulidade; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> IV - o pedido de nova decisão. [destacou-se] </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> ¶ </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Assim, é ônus da parte que pretende a modificação da decisão recorrida apontar o equívoco praticado pelo julgador, mediante a insurgência direcionada aos seus fundamentos, sob pena de ausência de conhecimento do recurso por irregularidade formal. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Sobre o tema, lecionam Nelson Nery Júnior e Rosa Maria de Andrade Nery [in Código de Processo Civil Comentado - Ed. 2022. Revista dos Tribunais, Page¶&#160;RL-1.192 – versão digital] que: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 2. Regularidade formal. Para que o recurso de apelação preencha o pressuposto de admissibilidade da regularidade formal, é preciso que seja deduzido pela petição de interposição, dirigida ao juiz da causa (a quo), acompanhada das razões do inconformismo (fundamentação) e do pedido de nova decisão, dirigidos ao juízo destinatário (ad quem), competente para conhecer e decidir o mérito do recurso, tudo isso dentro dos próprios autos principais do processo. Faltando um dos requisitos formais da apelação, exigidos pela norma ora comentada, não estará satisfeito o pressuposto de admissibilidade e o tribunal não poderá conhecer do recurso. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> ¶ </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Isso porque o juízo a quo julgou improcedente o pleito autoral, reconhecendo, quanto à nota de crédito comercial, o preenchimento de todos os requisitos previstos no artigo 14 do Decreto-lei nº 413/69, o que torna o título executado em um documento dotado de certeza e liquidez. A sentença ainda reconhece a “ exigência dos seguintes encargos: juros moratórios à taxa de 1% ao ano e multa moratória de 2% sobre os valores em atraso”, bem como indica que “ não há previsão contratual acerca de cobrança da comissão de permanência como aduzido pelo embargante, tanto o é que na planilha de débito não foi utilizado esse encargo no cálculo, conforme fls. 113, dos autos principais”. Além disso, confirma-se a legalidade da cobrança de juros capitalizados, assim como, a inexistência de cobrança de juros remuneratórios abusivos. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-

Processo	0200149-51.2022.8.06.0146
	indent: 2.0cm; line-height: 150%;"> Já a peça recursal da promovente não combate os fundamentos apresentados na sentença. Além disso, utiliza argumentos que combatem temas que não foram tratados em sentença ou que se mostram contrários ao que consta nos próprios autos. Cumpre ainda registrar que em nenhum momento a peça recursal faz referência direta aos termos expressos na cédula de crédito comercial. Todas as alegações formuladas são feitas abstratamente sem dialogar com o caso concreto.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Logo, no caso dos autos, o apelante não impugna os fundamentos da decisão recorrida, mas os tangencia completamente. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Assim, é ônus da parte recorrente a impugnação específica dos fundamentos da decisão recorrida. A ausência de debate acerca dos motivos que embasaram o julgamento a quo configura falta de dialeticidade, razão pela qual o recurso não pode ser conhecido. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Nesse sentido, aplica-se a Súmula nº 43 deste Egrégio Tribunal, segundo a qual "não se conhece de recurso quando não é feita a exposição do direito e das razões do pedido de nova decisão."</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Por oportuno, colho a seguinte jurisprudência deste e. Tribunal de Justiça do Ceará:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> PROCESSUAL CIVIL. APELAÇÃO CÍVEL EM AÇÃO DE ESTORNO DE VALORES DEDUZIDOS EM CONTA CORRENTE DE PENSÃO ALIMENTÍCIA DE MAIOR INCAPAZ COM PEDIDO DE LIMINAR. RAZÕES RECURSAIS QUE NÃO IMPUGNARAM OS FUNDAMENTOS DA SENTENÇA. VIOLAÇÃO AO PRINCÍPIO DA DIALETICIDADE. ART. 932, III E 1.010 DO CPC. AUSÊNCIA DOS FUNDAMENTOS FÁTICOS E JURÍDICOS. NÃO ATAQUE ESPECÍFICO À DECISÃO. PRESSUPOSTOS INTRÍNSECOS. REGULARIDADE FORMAL. NECESSIDADE DE ARGUMENTOS QUE COMPORTAM AS RAZÕES. CAUSA DE PEDIR RECURSAL. 1. Cediço que a apelação deve infirmar os fundamentos da sentença impugnada a fim de evidenciar confronto de teses sob pena de violação do princípio da dialeticidade, conforme dispõem os artigos 932, inciso III e 1.010 do Código de Processo Civil. 2. O princípio da dialeticidade diz respeito ao elemento narrativo da apelação (fundamentos de fato e de direito e pedido), dessa forma, são insuficientes ao cumprimento do dever de dialeticidade recursal as alegações genéricas de inconformismo, devendo a parte autora, de forma clara, objetiva e concreta, demonstrar o desacerto da decisão impugnada. 3. Em suas razões recursais, o apelante expressou que o autor ajuizou a ação após ter recebido o valor que lhe era devido, assim como, houve apenas mero dissabor na demora do ressarcimento dos valores, não dedicando uma linha sequer ao fundamento da sentença, qual seja, que o banco promovido praticou ato ilícito, tendo em vista que descontou valores de verba alimentar de pessoa incapaz para quitar dívida de um cartão de crédito mesmo havendo outros caminhos para solucionar a dívida. 4. Com efeito, o recorrente não infirmou os fundamentos da sentença, uma vez que esta não adentrou no mérito da demanda. 5. Em verdade, infere-se que o inconformismo do apelante não indica vícios e nem enfrenta os motivos da sentença exarada pelo Juízo de Piso, pelo que resta evidenciada flagrante violação ao princípio da dialeticidade, haja vista a ausência de impugnação específica aos fundamentos determinantes da decisão atacada, não se desincumbindo a recorrente, portanto, do seu ônus de indicar, nas razões recursais, o equívoco da sentença apelada. Nesse sentido, o recurso não merece ser conhecido. APELAÇÃO NÃO CONHECIDA. SENTENÇA MANTIDA. (Apelação Cível - 0221023-70.2023.8.06.0001, Rel. Desembargador(a) PAULO AIRTON ALBUQUERQUE FILHO, 2ª Câmara Direito Privado, data do julgamento: 22/05/2024, data da publicação: 22/05/2024) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> <span style="font-family: arial, helvetica, sans-

Processo	0200149-51.2022.8.06.0146
	serif;">APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. TÍTULO EXTRAJUDICIAL. OFENSA AO PRINCÍPIO DA DIALETICIDADE. RECURSO NÃO CONHECIDO. I. Caso em Exame: Trata-se de apelação interposta contra sentença que julgou improcedentes os embargos à execução opostos em face de ação de execução de título extrajudicial, baseada em Cédula de Crédito Bancário. Os Apelantes reiteraram, de forma literal, os argumentos apresentados na petição inicial, sem impugnação específica aos fundamentos da sentença de primeiro grau. II. Questão em Discussão: Discute-se a admissibilidade do recurso de apelação, ante a inobservância do princípio da dialeticidade, que exige do recorrente a apresentação de fundamentos específicos para impugnar a decisão recorrida. III. Razões de Decidir: Verificou-se que o recurso é mera repetição dos argumentos iniciais, sem qualquer inovação ou análise específica dos fundamentos da sentença, o que contraria o artigo 1.010, II, do CPC. A jurisprudência dominante e a Súmula nº 42 deste Tribunal estabelecem que, sem a exposição das razões de impugnação, o recurso deve ser tido por inadmissível. IV. Dispositivo é Tese: Diante da ofensa ao princípio da dialeticidade, não se conhece do recurso, pois ele não atende aos requisitos de admissibilidade recursal. Recurso não conhecido. Tese: Para a admissibilidade do recurso, é imprescindível a exposição clara e específica dos motivos que justifiquem a reforma ou anulação da decisão recorrida. (Apelação Cível - 0200037-30.2023.8.06.0055, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento: 05/11/2024, data da publicação: 05/11/2024). </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> DIREITO CIVIL E PROCESSUAL CIVIL. AGRAVO INTERNO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE NEGÓCIO JURÍDICO C/C REPETIÇÃO DO INDÉBITO. DECISÃO MONOCRÁTICA QUE NÃO CONHECEU DO RECURSO POR AUSÊNCIA DE DIALETICIDADE. INSURGÊNCIA DA INSTITUIÇÃO FINANCEIRA. AFRONTA AO PRINCÍPIO DA DIALETICIDADE RECURSAL (ART. 1.021, §1º DO CPC). AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA AOS FUNDAMENTOS UTILIZADOS NA DECISÃO ADVERSADA. SÚMULA 43 DO TJCE. PRECEDENTES STJ E TJCE. RECURSO NÃO CONHECIDO. DECISÃO MONOCRÁTICA MANTIDA. 1. Trata-se de Agravo Interno interposto por BANCO BMG S/A em face da Decisão Monocrática exarada pelo então relator, que não conheceu do recurso por ausência de dialeticidade recursal. 2. O recurso de apelação fora devidamente interposto às fls. 164/174, mas com razões completamente alheias ao caso em questão, pois buscou a reforma da sentença no tocante à negatização de seu nome nos cadastros de restrição ao crédito, enquanto que a Sentença, em verdade, tratou sobre contrato de empréstimo consignado não pactuado. Ademais, também buscou a reforma da sentença no tocante aos danos morais, questão que não foi objeto de deliberação no decisum adversado. Tendo em vista a ausência de dialeticidade recursal, o recurso não foi conhecido. 3. A instituição financeira, com isso, interpôs Agravo Interno, mas desprovido de impugnação específica aos fundamentos da Decisão Monocrática exarada, não tendo, em nenhum momento da peça recursal, se referido a quaisquer dos fundamentos utilizados na Decisão adversada. O recurso interposto, em nenhum momento, apontou qual seria o desacerto da Decisão Monocrática combatida, uma vez que se limitou em afirmar a regularidade da contratação do contrato de empréstimo questionado e a inexistência de danos morais e materiais, sem apontar as razões pelas quais não teria violado a dialeticidade em seu apelo. 4. Em verdade, o agravante busca, com o presente recurso, fazer o que não fez em seu recurso de apelação: impugnar especificamente a sentença exarada. Entretanto, deveria ter feito isso em suas razões do apelo. Saliente-se, também, que no presente Agravo Interno há razões dissociadas da Sentença exarada, como em relação aos danos morais, onde pugna a reforma da sentença nesse tocante, sendo que não foi disciplinado em sentença condenação por danos morais. 5. Evidencia-se que a recorrente comete flagrante violação ao princípio da dialeticidade, por não ter impugnado especificamente os fundamentos determinantes da Decisão Monocrática atacada, não se desincumbindo, portanto, do seu ônus de indicar, nas razões recursais, o equívoco do julgado em questão. 6. Agravo Interno não conhecido. (Agravo Interno Cível - 0035260-03.2011.8.06.0167, Rel. Desembargador(a) MARIA REGINA OLIVEIRA CAMARA, 1ª Câmara Direito Privado, data do julgamento: 16/10/2024, data da publicação: 16/10/2024) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Portanto, ausente condição essencial de conhecimento da insurgência, não compete ao tribunal deslindar o recurso que apresenta motivos completamente dissociados da decisão impugnada. </p><p>

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	class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Isso posto, NÃO CONHEÇO do recurso de apelação, por desrespeito da parte apelante ao princípio da dialeticidade. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Com o resultado, majoro para 12% do valor da causa os honorários advocatícios de responsabilidade dos promoventes, o que faço com amparo no art. 85, § 11, do CPC, todavia, suspensos, em razão da justiça gratuita deferida. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Ficam as partes, desde logo, advertidas de que a oposição de embargos de declaração, com nítido intuito protelatório, ensejará a aplicação da multa prevista no art. 1.026, §§2º e 3º, do CPC/2015. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É como voto. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p>&#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> Relator &#160; </p></div><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p></p></td></tr> <tr> <td>Processo</td><td>0626161-19.2024.8.06.0000</td></tr> <tr> <td>Número de ordem</td><td>226</td></tr> <tr> <td>Órgão julgador</td><td>4º Gabinete da 1ª Câmara de Direito Privado</td></tr> <tr> <td>Órgão julgador colegiado</td><td>1ª Câmara de Direito Privado</td></tr> <tr> <td>Relator</td><td>CARLOS AUGUSTO GOMES CORREIA</td></tr> <tr> <td>Classe judicial</td><td>AGRAVO DE INSTRUMENTO</td></tr> <tr> <td>Assunto principal</td><td>Locação de Móvel</td></tr> <tr> <td>Polo ativo</td><td>CAIO HENRIQUE FILGUEIRA DE SOUSA</td></tr> <tr> <td>Advogado(s) - Polo ativo</td><td>GLAUBER BENICIO PEREIRA SOARES - (CE23317-A)</td></tr> <tr> <td>Polo passivo</td><td>RONALDO PINTO ARRUDA</td></tr> <tr> <td>Advogado(s) - Polo passivo</td><td>VALDENER VIEIRA MILFONT - (CE32537-A)</td></tr> <tr> <td>Terceiros</td><td>Não informado</td></tr>	Processo	0626161-19.2024.8.06.0000	Número de ordem	226	Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado	Órgão julgador colegiado	1ª Câmara de Direito Privado	Relator	CARLOS AUGUSTO GOMES CORREIA	Classe judicial	AGRAVO DE INSTRUMENTO	Assunto principal	Locação de Móvel	Polo ativo	CAIO HENRIQUE FILGUEIRA DE SOUSA	Advogado(s) - Polo ativo	GLAUBER BENICIO PEREIRA SOARES - (CE23317-A)	Polo passivo	RONALDO PINTO ARRUDA	Advogado(s) - Polo passivo	VALDENER VIEIRA MILFONT - (CE32537-A)	Terceiros	Não informado
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Processo	0626161-19.2024.8.06.0000
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0626161-19.2024.8.06.0000 - AGRAVO DE INSTRUMENTO (202) AGRAVANTE: CAIO HENRIQUE FILGUEIRA DE SOUSA AGRAVADO: RONALDO PINTO ARRUDA EMENTA: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM AGRAVO DE INSTRUMENTO. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. CONTRATO DE LOCAÇÃO. INEXISTÊNCIA DE OMISSÃO, CONTRADIÇÃO, OBSCURIDADE OU ERRO MATERIAL. PRETENSÃO DE REDISCUSSÃO DO MÉRITO. DESPROVIMENTO. I. CASO EM EXAME

Processo	0626161-19.2024.8.06.0000
	padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> 1. Embargos de declaração opostos por Caio Henrique Filgueira de Sousa contra acórdão da 1ª Câmara de Direito Privado que não conheceu de agravo de instrumento interposto contra decisão em ação de execução de título extrajudicial, fundada em contrato de locação. O embargante alega omissão do julgado quanto à análise de questão de ordem pública e sustenta a necessidade de cláusula específica para a prorrogação contratual. Requer o provimento dos embargos com efeitos modificativos para atribuir efeito suspensivo ao agravo. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II. QUESTÃO EM DISCUSSÃO &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 2. A questão em discussão consiste em definir se o acórdão embargado incorreu em omissão, contradição, obscuridade ou erro material ao não conhecer do agravo de instrumento, justificando a oposição de embargos de declaração. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III. RAZÕES DE DECIDIR &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">

Processo	0626161-19.2024.8.06.0000
	transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 3. O art. 1.022 do CPC limita os embargos de declaração a hipóteses de omissão, contradição, obscuridade ou erro material, não servindo como meio de reexame da controvérsia. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. O acórdão embargado apresenta fundamentação clara sobre a inadequação da exceção de pré -executividade para discutir a inexigibilidade do título, por demandar dilação probatória, nos termos do art. 917, I, do CPC e da jurisprudência do STJ em recursos repetitivos. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 5. A ausência de análise de todos os argumentos não configura omissão, pois o julgador deve se manifestar apenas sobre os pontos capazes de alterar a conclusão adotada, conforme entendimento consolidado do STJ. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 6.

Processo	0626161-19.2024.8.06.0000
	A Súmula nº 18 do TJ/CE veda a utilização de embargos de declaração como meio de rediscussão do mérito já apreciado. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 7. O art. 1.025 do CPC prevê que os pontos suscitados em embargos de declaração rejeitados se consideram incluídos no acórdão para fins de prequestionamento, tornando desnecessária a oposição de aclaratórios exclusivamente com esse propósito. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV. DISPOSITIVO E TESE &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 8. Embargos de declaração desprovidos. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text;">

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	text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> ="" >&#160;<="" >1.="" >2.="" >tese="" <="" <div="" <li="" <ol="" <p="" <="" <span="" a="" ao="" apenas="" aptos="" aqueles="" argumentos="" class="NormalTextRun SCXW50055255 BCX0" da="" das="" de="" decisão="" declaração="" div>="" do="" embargos="" enfrentar="" está="" fundamentada.<="" julgador="" julgamento.<="" julgamento:<="" já="" lang="PT-BR" li>="" mas="" modificar="" mérito="" não="" o="" obrigado="" ol>="" os="" p>="" partes,="" prestam="" reexame="" resultado="" se="" span="" span>="" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;" todos="" xml:lang="PT-BR">

Processo	0626161-19.2024.8.06.0000
	padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> 3. Questões que demandam dilação probatória não podem ser conhecidas em sede de exceção de pré -executividade. &#160; </p> </div> <div class="ListContainerWrapper SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; position: relative;"> <ol class="NumberListStyle1 SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: text; overflow: visible;"> <li class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 24px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; display: block; font-size: 12pt; vertical-align: baseline;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> 4. O art. 1.025 do CPC dispensa a interposição de embargos de declaração apenas para fins de prequestionamento. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">&#160;</p> </div> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Dispositivos relevantes citados: CPC/2015, arts . 917, I; 1.022; 1.025; 1.026, §§2º e 3º. &#160; </p> </div> <div class="OutlineElement Ltr SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> <span

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	class="TextRun SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-style: italic; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> Jurisprudência relevante citada: STJ, AgRg no REsp 2.094.487/TO, Rel. Min. Messod Azulay Neto, Quinta Turma, j. 05.03.2024, DJJe 08.03.2024. STJ, EDcl no AgInt nos EDcl no REsp 1.395.172/RS, Rel. Min. Antonio Carlos Ferreira, Quarta Turma, j. 09.02.2021, DJJe 12.02.2021. TJ/CE, Embargos de Declaração Cível 0271987-72.2020.8.06.0001, Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câmara de Direito Privado, j. 12.04.2023. <span class="EOP SCXW50055255 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-

Processo	0626161-19.2024.8.06.0000
	SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR"> contra decisão proferida nos autos d a ação de execução de título extrajudicial (contrato de locação) ajuízada contra CAIO HENRIQUE FILGUEIRA DE SOUSA LUIS ALBERTO DE SOUSA JUNIOR ANA VIRGINIA FILGUEIRA MACIEL DE SOUSA ora embargados. &#160;</p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em suas razões recursais, o embargante sustenta a existência de omissão no acórdão embargado, ao argumento de que este deixou de considerar que a decisão de origem se tratava de questão de ordem pública, e não de dilação probatória. Aduz, ainda, que o contrato deveria conter cláusula específica acerca da prorrogação contratual, sendo suficientes, para tanto, os documentos acostados aos autos. &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;">

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	transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Por fim, roga pelo conhecimento e provimento dos embargos, para que seja dado provimento ao recurso de agravo de instrumento , atribuindo efeito suspensivo &#160;</p></div><div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em que pese devidamente intimada, a parte embargada não apresentou impugnação. &#160;</p></div><div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o que importa relatar. &#160;</p></div><div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160;</p></div>

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	<div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Conheço do recurso, uma vez que presentes os requisitos extrínsecos e extrínsecos de admissibilidade. Passo ao exame do mérito. </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Os embargos de declaração, previstos no art. 1.022, do CPC, são cabíveis contra qualquer decisão judicial e objetivam: I esclarecer obscuridade ou eliminar contradição; II -suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material, sendo igualmente cabíveis para o prequestionamento de matéria constitucional e legal para fins de interposição de Recursos Especial e Extraordinário. </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Essa modalidade de recurso proporciona uma nova oportunidade para que o Julgador, prolator de decisão atacada, revise o julgado à vista de possíveis defeitos sanáveis pontuados pelos Embargantes. </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Quando se vislumbrar que a mácula, ao ser detectada, venha causar alteração no dispositivo da decisão, de maneira que sejam modificadas ou invertidas as conclusões originárias, há que se reconhecer os embargos de declaração com efeitos modificativos ou </p> </div>

Processo	0626161-19.2024.8.06.0000
	infringentes. &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Nesse sentido, ressalta-se que o acórdão embargado não é omissivo quanto aos fundamentos pelos quais deixou de conhecer do agravo de instrumento interposto pela parte embargante, uma vez que não se trata de matéria de ordem pública, passíveis de ser em discutidas em exceção de pré -executividade, veja-se: &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> É que, ContextualSpellingAndGrammarErrorV2Themed SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; background-position: 0px 100%; background-repeat: repeat-x; background-image: url(&quot;data; border-bottom: 1px solid transparent;">a exceção de pré -executividade não é a via adequada à discussão da matéria suscitada, na medida em que, de acordo com o art. 917, I, do CPC, a inexistência do título ou inexigibilidade da obrigação são questões a serem suscitadas em sede de embargos à execução, cabendo a objeção em <span class="NormalTextRun SpellingErrorV2Themed SCXW56009141 BCX0" style="-webkit-

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	transparent; margin: 7.93333px 0px 7.93333px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II – penhora incorreta ou avaliação errônea; &#160;</p> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III –excesso de execução ou cumulação indevida de execuções; &#160;</p> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> IV – r etensão por benfeitorias necessárias ou úteis, nos casos de execução para entrega de coisa certa;&#160; &#160;</p> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">

Processo	0626161-19.2024.8.06.0000
	outras palavras, a meu ver, a conclusão de inexigibilidade do título, ante a não constatação até mesmo de outros documentos que comprovassem a executividade do título, deveria, por certo, ser averiguada em instrução probante ou mesmo ante a concessão de oportunidade de apresentação de outros documentos e/ou complementação de informações. Assim, não se observa a presença dos vícios previstos no art. 1.022, do CPC. O que se nota, a bem da verdade, é a clara intenção do embargante de rever o entendimento proposto por esta relatoria pela via equivocada, o que é vedado pela Súmula nº 18: São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada Ademais, é entendimento consolidado do c. STJ que o magistrado não está obrigado a se manifestar acerca de todos os fatos, teses e argumentos expostos pelas partes, apenas sobre aqueles capazes de modificar a conclusão adotada, veja-se: PROCESSO PENAL. AGRAVO REGIMENTAL EM RECURSO ESPECIAL. ESTUPRO DE VULNERÁVEL. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA DOS FUNDAMENTOS DA DECISÃO AGRAVADA. SÚMULA 182/STJ. ALEGADA INSUFICIÊNCIA DE PROVAS.

Processo	0626161-19.2024.8.06.0000
	REVOLVIMENTO DO CONJUNTO FÁTICO-PROBATÓRIO. IMPOSSIBILIDADE. SÚMULA 7/STJ. PALAVRA DA VÍTIMA. ESPECIAL RELEVÂNCIA. PRINCÍPIO DO LIVRE CONVENCIMENTO MOTIVADO. SÚMULA N. 83/STJ. &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> >I - O julgador não é obrigado a se manifestar sobre todas as teses suscitadas pelas partes na hipótese em que já há provas suficientes a amparar a condenação. Ademais, o princípio do livre convencimento motivado autoriza o magistrado a divergir do laudo psicológico, desde que sua convicção esteja amparada em outros elementos de prova, como ocorreu na espécie. &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> >II - Segundo a orientação desta Corte, para que haja a transposição do óbice da Súmula n. 7, STJ, o agravo precisa demonstrar em que medida as teses não exigem a alteração do quadro fático delineado pelo Tribunal local, não bastando a assertiva genérica de que o recurso visa à reavaliação das provas. &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> >III - A superação da Súmula n. 83, STJ, exige a indicação de precedentes contemporâneos ou supervenientes capazes de alterar a modificação do julgado, ou a demonstração de distinguishing <span class="NormalTextRun SCXW56009141

Processo	0626161-19.2024.8.06.0000
	BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">, o que não ocorreu no caso dos autos.&#160;</p></div><div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">IV - A ausência de impugnação específica e pormenorizada dos fundamentos da decisão agravada inviabiliza o conhecimento do recurso, sendo insuficientes as assertivas de que todos os requisitos foram preenchidos ou a reiteração do mérito da controvérsia. Incidência da Súmula n. 182, STJ. Precedentes.&#160;</p></div><div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">Agravos regimental não conhecido.&#160;</p></div><div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">AgRgno REsp n. 2.094.487/TO, relator MinistroMessodAzulay Neto, Quinta Turma, julgado em 5/3/2024,DJe<span class="NormalTextRun

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	SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">de 8/3/2024.) Grifouse. &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Não é destoante o entendimento deste e. Tribunal de Justiça do Ceará: &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 13.3333px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. DIREITO MÉDICO. AÇÃO DE OBRIGAÇÃO DE FAZER COM PEDIDO DE TUTELA ANTECIPADA E INDENIZAÇÃO POR DANOS MORAIS. TAXATIVIDADE DE ROL DA ANS FLEXIBILIZADA. EMBARGANTE ALEGA OMISSÃO EM ACÓRDÃO POR NÃO TER TAL DECISÃO VERSADO SOBRE ENTENDIMENTO DO STJ. VÍCIO NÃO VERIFICADO. DECISÃO JUDICIAL DEVIDAMENTE FUNDAMENTADA E PAUTADA NO ART. 93, IX, CF. JULGADOR QUE NÃO É OBRIGADO A PORMENORIZAR TODOS OS PONTOS TRAZIDOS PELOS LITIGANTES. MERO INCONFORMISMO DA RECORRENTE. TENTATIVA DE REDISCUSSÃO DE CONTROVÉRSIA JUDICIAL JÁ APRECIADA. APLICAÇÃO DA SÚMULA N. 18 DO TJ/CE. EMBARGOS DE DECLARAÇÃO CONHECIDOS E IMPROVIDOS. 1. Os presentes embargos de declaração vêm a pleito para reclamar suposta omissão em decisum prolatado por esta Relatoria. Alude a recorrente que a decisão combatida deixou de observar entendimento da Segunda Seção do STJ acerca da taxatividade do rol da ANS e, por tal razão, encontra-se o acórdão eivado de vício. 2. Dito isto, adianta-se que não assistem razão os aclaratórios . Isso porque, pela análise da decisão guerreada, é perceptível que todos os pontos relevantes para a resolução da controvérsia foram adequadamente explicados, tendo o improvimento da apelação se dado após a observação da legislação médica pertinente, bem como de notas técnicas e os pormenores do caso concreto. 3. Além disso, importa salientar que o julgador não é obrigado a se manifestar sobre todos os pontos trazidos pelos

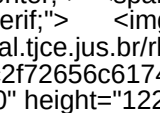
Processo	0626161-19.2024.8.06.0000
	sujeitos, desde que se expresse de maneira clara, objetiva e fundamentada, o que, ressalte-se, ocorreu. >4. Posto isto, nota-se uma tentativa de rediscussão de matéria de mérito já resolvida e, a ser assim, torna-se incabível o recurso manejado. Com fulcro na súmula n. 18 do TJ/CE, rejeita-se, pois, os aclaratórios opostos. 5. Embargos de declaração conhecidos e improvidos. (Embargos de Declaração Cível - 0271987-72.2020.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 12/04/2023, data da publicação: 12/04/2023) Grifou-se. EOP &#160;</p></div><div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;">Dito isso, verifica-se que a fundamentação do acórdão embargado se encontra clara e objetiva, não sendo necessária a manifestação expressa sobre uma única tese, para que sejaprequestionadaa matéria, nos termos do art. 1.025, do CPC,inverbis.&#160;</p></div><div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">Art. 1.025. Consideram-se incluídos no acórdão os elementos que o embargante

Processo	0626161-19.2024.8.06.0000
	suscitou, para fins de prequestionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade. SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 16px;">&#160; SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;">Destarte,desnecessária a interposição de embargos de declaração exclusivamente para fins de prequestionamento, em especial quando não restam configurados nenhum dos vícios previstos no Art. 1.022, do CPC, e quando a intenção do embargante é, evidentemente, se insurgir contra o resultado da decisão. Nesse escólio, transcreve-se a seguinte ementa do c. Superior Tribunal de Justiça:&#160;</div><div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px 7.93333px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO NO AGRAVO INTERNO NOS EMBARGOS DE DECLARAÇÃO NO RECURSO ESPECIAL. AUSÊNCIA DE QUALQUER DOS VÍCIOS ELENCADOS NO ART. 1.022 DO CPC/2015. MATÉRIA CONSTITUCIONAL. APRECIACÃO PELO STJ. IMPOSSIBILIDADE, AINDA QUE PARA FINS DE PREQUESTIONAMENTO. EMBARGOS DE DECLARAÇÃO REJEITADOS. 1. Os embargos de declaração somente são cabíveis quando houver na decisão obscuridade, contradição, omissão ou erro material, consoante dispõe o art. 1.022 do CPC/2015. 2. Ausente qualquer dos mencionados vícios, incabível a utilização de embargos de declaração para fins de prequestionamento de matéria constitucional, com o objetivo de permitir a interposição de recurso extraordinário. 3. Embargos de declaração rejeitados. (STJ -EDclnoAgInt<span class="NormalTextRun

Processo	0626161-19.2024.8.06.0000
	SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">nos EDcl no RESp: 1395172 RS 2013/0240537-9, Relator: Ministro ANTONIO CARLOS FERREIRA, Data de Julgamento: 09/02/2021, T4 - QUARTA TURMA, Data de Publicação: DJJe 12/02/2021).&#160; &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Diante do exposto, conheço do recurso, mas nego-lhe provimento em decorrência da ausência de quaisquer dos vícios elencados no art. 1.022, do CPC. &#160;</p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ficam as partes, desde logo, advertidas de que a oposição de embargos de declaração, com nítido intuito protelatório, ensejará a aplicação da multa prevista no art. 1.026, §§2º e 3º, do CPC/2015. &#160; </p> </div> <div class="OutlineElement Ltr SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW56009141 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 7.93333px 0px; padding: 0px; user-select: text;">

Processo	0625104-63.2024.8.06.0000
Polo ativo	JOAO VICTOR BORGES DE SOUSA
Advogado(s) - Polo ativo	JOAO VICTOR FERNANDES DE ALMEIDA MESSIAS - (CE29776-A)
Polo passivo	JOSE BONIFACIO DE SOUSA NETO
Advogado(s) - Polo passivo	CAMILLY MARIA TELES DE LIMA - (CE45674-A) GEORGIA CAMPOS TELES DA SILVA - (CE18141-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	0149639-91.2016.8.06.0001
Número de ordem	228
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Prescrição e Decadência
Polo ativo	CONDOMINIO RESIDENCIAL FORTE IRACEMA
Advogado(s) - Polo ativo	EVANILDO DA SILVA BERNARDINO - (CE41621-A) JOANA CARVALHO BRASIL - (CE14892-A)
Polo passivo	CLAUDIA PAZ DE ANDRADE
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0149639-91.2016.8.06.0001
Acórdão	 PROCESSO: 0149639-91.2016.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: CONDOMÍNIO RESIDENCIAL FORTE IRACEMA APELADO: CLAUDIA PAZ DE ANDRADE Ementa: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PRESCRIÇÃO QUINQUENAL. AUSÊNCIA DE CITAÇÃO VÁLIDA. INEFICIÊNCIA DO EXEQUENTE NA LOCALIZAÇÃO DO DEVEDOR. INAPLICABILIDADE DA SÚMULA Nº 106/STJ. RECURSO DESPROVIDO. I. CASO EM EXAME Apelação interposta por CONDOMÍNIO RESIDENCIAL FORTE IRACEMA contra sentença da 6ª Vara Cível da Comarca de Fortaleza/CE que, em execução de título extrajudicial ajuizada contra CLAUDIA PAZ DE ANDRADE, reconheceu ex officio a prescrição da pretensão executiva, diante da ausência de citação válida no prazo prescricional de 5 (cinco) anos. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em verificar se a demora na realização da citação decorreu exclusivamente de falhas atribuíveis ao Poder Judiciário — hipótese em que não se configuraria a prescrição, à luz da Súmula nº 106/STJ — ou se resultou da ineficiência do exequente em localizar a devedora, circunstância que atrairia o reconhecimento da prescrição quinquenal prevista no art. 206, § 5º, I, do Código Civil. RAZÕES DE DECIDIR 2. A questão em discussão consiste em verificar se a demora na realização da citação decorreu exclusivamente de falhas atribuíveis ao Poder Judiciário — hipótese em que não se configuraria a prescrição, à luz da Súmula nº 106/STJ — ou se resultou da ineficiência do exequente em localizar a devedora, circunstância que atrairia o reconhecimento da prescrição quinquenal prevista no art. 206, § 5º, I, do Código Civil. III. RAZÕES DE DECIDIR 3. A prescrição visa conferir segurança jurídica, limitando temporalmente o exercício de direitos e evitando a perpetuação de litígios indefinidos. 4. O art. 240 do CPC estabelece que o despacho citatório interrompe a prescrição, retroagindo à data da propositura da ação, desde que o autor adote tempestivamente as providências para viabilizar a citação. 5. O § 3º do art. 240 do CPC excepciona o autor apenas quando a demora decorrer de falha exclusiva do serviço judiciário, situação consolidada na Súmula nº 106/STJ. 6. No caso concreto, embora a ação tenha sido ajuizada em 2016 e o despacho citatório tenha sido proferido em 2017, as diversas diligências de citação restaram infrutíferas, sem que se pudesse imputar ao Judiciário a demora, mas sim à ineficiência do exequente na localização da parte devedora. 7. A ausência de citação válida no quinquênio legal impede a interrupção do prazo

Processo	0149639-91.2016.8.06.0001
	prescricional, caracterizando a prescrição da pretensão executiva. 8. A jurisprudência do TJCE e do STJ reafirma que diligências citatórias infrutíferas não suspendem nem interrompem a prescrição, exigindo-se a efetiva citação do devedor. IV. DISPOSITIVO E TESE 9. Recurso desprovido. Tese de julgamento: O despacho citatório só interrompe a prescrição se a citação se concretizar mediante a diligência tempestiva do exequente. A demora na citação só afasta a prescrição quando decorrente exclusivamente de falha do Poder Judiciário, nos termos da Súmula nº 106/STJ. A ausência de citação válida, ainda que precedida de diligências infrutíferas, caracteriza a prescrição da pretensão executiva. Dispositivos relevantes citados: CC/2002, art. 206, § 5º, I; CPC/2015, art. 240 e §§ 1º a 4º. Jurisprudência relevante citada: STJ, Súmula nº 106; TJCE, AI nº 0637127-75.2023.8.06.0000, Rel. Des. Marcos William Leite de Oliveira, j. 18.06.2025; TJCE, AC nº 0012090-45.2015.8.06.0075, Rel. Des. Djalma Teixeira Benevides, j. 26.11.2024; TJCE, AC nº 0197125-77.2013.8.06.0001, Rel. Des. Maria de Fátima de Melo Loureiro, j. 05.06.2024. “Times New Roman” ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO Trata-se de recurso de Apelação interposto por CONDOMÍNIO RESIDENCIAL FORTE IRACEMA, em face da sentença de Id. 22287397, proferida pelo Juízo de Direito da 6ª Vara Cível da Comarca de Fortaleza/CE, que reconheceu ex officio a prescrição da pretensão formulada pela ora recorrente em desfavor de CLAUDIA PAZ DE ANDRADE.

Processo	0149639-91.2016.8.06.0001
	0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify"> Em suas razões de Id. 22287842, a recorrente requer "seja reformada integralmente, no sentido de que haja o RECONHECIMENTO DA NÃO OCORRÊNCIA DA PRESCRIÇÃO INTERCORRENTE e consequente prosseguimento regular da ação de execução de título extrajudicial."/ </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify"> Ausentes contrarrazões. </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify"> Parecer de Id. 22286690, no qual a Procuradoria Geral de Justiça informou não possuir interesse no feito. </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify"> É o relatório. </p><p style="margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="center"> VOTO </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify"> Presentes os requisitos intrínsecos (cabimento, legitimidade, interesse recursal e ausência de fato impeditivo ou modificativo do direito de recorrer) e extrínsecos (tempestividade, preparo e regularidade formal) de admissibilidade, conheço do recurso. </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify"> Conforme relatado, trata-se de recurso de Apelação interposto por CONDOMÍNIO RESIDENCIAL FORTE IRACEMA, em face da sentença de Id. 22287397, proferida pelo Juízo de Direito da 6ª Vara Cível da Comarca de Fortaleza/CE, que reconheceu ex officio a prescrição da pretensão formulada pela ora recorrente em desfavor de CLAUDIA PAZ DE ANDRADE. </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify"> A controvérsia central reside em verificar se o atraso na citação da demandada decorreu exclusivamente de mora imputável ao Poder Judiciário, circunstância que afastaria a configuração da prescrição, nos moldes da Súmula nº 106 do Superior Tribunal de Justiça. </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify"> Com efeito, o instituto da prescrição objetiva delimitar temporalmente o exercício de determinado direito, funcionando como mecanismo de estabilização das relações jurídicas. À luz do princípio da segurança jurídica, não se revela razoável que o titular de um direito possa exercê-lo de forma indefinida, a qualquer tempo, sob pena de perpetuar a insegurança nas relações intersubjetivas. </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify"> A propósito, leciona Yussef Said Cahali: </p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%; align="justify"> Já não há mais espaço para questionar o embaraçoso fundamento escorado em considerações éticas e lógicas, articulado contra a prescrição, nela identificando uma aparente iniquidade, ou mesmo sua duvidosa eticidade, na consideração de que o credor poderia ficar privado de receber o seu crédito, ou ser o proprietário privado da coisa que lhe pertencia, pelo simples fato de não ter tido o cuidado de exercer oportunamente os seus direitos, fato que, a rigor, não consubstancia nenhuma infração, e que não deveria alterar as relações jurídicas. Hoje esta colocação está definitivamente superada, sendo a prescrição um instituto tranqüilo e universalmente aceito pro bono publico. Na expressão de Teixeira Freitas, esta filha do tempo e da paz patrona do gênero humano de que todas as legislações não têm podido prescindir'. (in Prescrição e Decadência. São Paulo: Editora Revista dos Tribunais, 2008, pp. 18/19.) </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; align="justify">

Processo	0149639-91.2016.8.06.0001
	

</p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%;" align="justify"> Nesse tema, a norma processual civil estabelece que o despacho que ordena a citação possui o efeito de interromper o curso do prazo prescricional, retroagindo à data do ajuizamento da ação. Esse efeito, contudo, está condicionado à diligência do credor em adotar, de forma tempestiva, as providências necessárias para viabilizar a concretização do ato citatório. </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%;" align="justify"> A propósito, confira-se: </p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify"> CPC/2015. </p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify">&#160;</p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify"> Art. 240. A citação válida, ainda quando ordenada por juízo incompetente, induz litispendência, torna litigiosa a coisa e constitui em mora o devedor, ressalvado o disposto nos arts. 397 e 398 da Lei nº 10.406, de 10 de janeiro de 2002 (Código Civil). </p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify">&#160;</p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify">&#160;</p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify"> § 1º A interrupção da prescrição, operada pelo despacho que ordena a citação, ainda que proferido por juízo incompetente, retroagirá à data de propositura da ação. </p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify">&#160;</p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify"> § 2º Incumbe ao autor adotar, no prazo de 10 (dez) dias, as providências necessárias para viabilizar a citação, sob pena de não se aplicar o disposto no § 1º. </p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify">&#160;</p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify"> § 3º A parte não será prejudicada pela demora imputável exclusivamente ao serviço judiciário. </p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify">&#160;</p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify"> § 4º O efeito retroativo a que se refere o § 1º aplica-se à decadência e aos demais prazos extintivos previstos em lei." </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%;" align="justify">

</p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%;" align="justify"> A legislação processual civil apenas excepciona a parte de eventual prejuízo decorrente da não interrupção da prescrição, quando demonstrado que a demora na realização da citação decorreu dos trâmites e procedimentos inerentes ao funcionamento do Poder Judiciário, conforme disposto no § 3º mencionado. Nesse sentido, alinha-se o entendimento consagrado na Súmula nº 106 do Superior Tribunal de Justiça, que dispõe: </p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify">&#160;</p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;" align="justify"> Súmula nº 106/STJ: Proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da Justiça, não justifica </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%;" align="justify">&#160;</p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%;" align="justify"> <span style="font-

Processo	0149639-91.2016.8.06.0001
	size: 12pt;">Na espécie, extrai-se que, em 5 de julho de 2016, a recorrente propôs EXECUÇÃO DE TÍTULO EXTRAJUDICIAL DE COTAS CONDOMINIAIS. Em decisão interlocutória de Id. 22287399, datada de 19/05/2017, o Juízo de origem determinou a citação da parte adversa para que efetuassem o pagamento da dívida. As diversas diligências citatórias, contudo, não foram exitosas. Em razão disso, o juízo de origem reconheceu a incidência da prescrição intercorrente de ofício, nos seguintes termos: À vista dos dispositivos extrai-se que somente a citação válida interrompe a prescrição, somente assim tornando possível retroagir o prazo para a data da propositura da ação, fato que não ocorreu no caso concreto. Assim, considerando que até a atualidade não houve a concretização da citação, o reconhecimento da prescrição é medida que se impõe. Além disso, convém dizer que, por meio deste juízo, foram realizadas tentativas de citação, contudo sem sucesso em localizar os executados, conforme se observam das certidões de págs. 183, 239 e 256. Esse fato, por si, descarta qualquer atribuição de culpa ao Poder Judiciário pelo ocorrido. Nesse espeque, como a prescrição da pretensão da ação de execução é de 5 (cinco) anos, nos termos do inc. I, do § 5º, do art. 206, do Código Civil Brasileiro, tenho que há muito está consumado esse fenômeno neste caso concreto em relação a pretensão executória. Por tudo exposto, diante do decurso do lapso temporal previsto no inciso I, do § 5º, do art. 206, do Código Civil, não resta outra medida a este magistrado senão o RECONHECIMENTO EX OFFICIO DA PRESCRIÇÃO em relação a pretensão executória. Apesar de a tese recursal sustentar que o atraso na citação decorreu de falhas atribuídas aos mecanismos operacionais do Poder Judiciário, essa alegação não merece prosperar, pois se verifica que o uso de origem atuou com a devida diligência processual, determinando a reiteração das diligências citatórias sempre que apresentados novos endereços pelo apelante. Desta feita, não é o caso de aplicação da Súmula nº 106 do Superior Tribunal de Justiça, eis que não restou configurada demora ou falha imputável ao serviço judiciário, mas sim a existência de conduta ineficiente do exequente em proceder com a localização dos devedores. Em situações análogas, esta Corte de Justiça tem consolidado entendimento no sentido de que a mera propositura da ação dentro do prazo legal, desacompanhada de efetiva citação do devedor — ainda que precedida de diversas tentativas de concretização do ato — não possui, por si só, o efeito de interromper o curso da prescrição. Nesse sentido: DIREITO CIVIL E PROCESSUAL CIVIL. AGRAVO DE INSTRUMENTO. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. EXCEÇÃO DE PRÉ-

Processo	0149639-91.2016.8.06.0001
	EXECUTIVIDADE . PRESCRIÇÃO INTERCORRENTE. INÉRCIA DO EXEQUENTE. RECONHECIMENTO. RECURSO PROVIDO . I. CASO EM EXAME [...] 4. A ausência de atos processuais eficazes entre 2011 e 2020 caracteriza inércia injustificada, atraindo a incidência da prescrição intercorrente, nos termos do art. 206-A do Código Civil e da jurisprudência consolidada do STJ. 5 . Diligências processuais infrutíferas não têm o condão de suspender ou interromper o prazo prescricional, conforme reiterada orientação do STJ, sendo necessária a efetiva constrição de bens ou outros atos que revelem o impulso eficaz do processo. [...]. (TJ-CE - Agravo de Instrumento: 06371277520238060000 Fortaleza, Relator.: MARCOS WILLIAM LEITE DE OLIVEIRA, Data de Julgamento: 18/06/2025, 3ª Câmara Direito Privado, Data de Publicação: 18/06/2025)</p><p style="margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; padding-left: 150px;" align="justify">
 </p><p style="margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; padding-left: 150px;" align="justify"> DIREITO CIVIL E PROCESSUAL CIVIL. AÇÃO MONITÓRIA. PRESCRIÇÃO DIRETA CARACTERIZADA. RECURSO DESPROVIDO . SENTENÇA REFORMADA DE OFÍCIO. I. Caso em exame: Trata-se de ação monitoria proposta por MALHAS WILSON LTDA em desfavor de HTM INDÚSTRIA COMÉRCIO DE TECIDOS LTDA EPP, objetivando receber o pagamento de quantia avaliada, à época da propositura da ação, em R\$ 40.399,27, oriunda de cheques emitidos pela requerida, mas não adimplidos . O Juízo de primeira instância extinguiu o processo com resolução de mérito, reconhecendo a ocorrência de prescrição intercorrente. O autor interpôs recurso de apelação alegando a inexistência de prescrição. II. Questão em discussão: a questão em discussão consiste em saber se houve prescrição da pretensão monitoria, tendo em vista as diversas tentativas de citação da requerida, que não lograram êxito . III. Razões de decidir: o Superior Tribunal de Justiça possui entendimento de que o prazo prescricional para a ação monitoria em face do emitente de cheque sem força executiva é de 5 anos, a contar do dia seguinte à data de emissão estampada na cártula, conforme Tema 628. No caso, as cártulas foram emitidas entre 23/12/2014 e 05/02/2015, de modo que a prescrição da pretensão monitoria ocorreria entre as datas de 24/12/2019 e 05/02/2020. Apesar das diversas tentativas de citação, o autor não logrou êxito em viabilizar a citação da requerida dentro do prazo prescricional, configurando-se, assim, a prescrição direta, e não a prescrição intercorrente . A jurisprudência deste Tribunal de Justiça é firme no sentido de que a mera propositura da ação e os pedidos de diligências sem êxito na citação não são suficientes para interromper ou suspender a prescrição, sendo necessária a efetiva citação válida do réu. [...]. (TJ-CE - Apelação Cível: 00120904520158060075 Eusebio, Relator.: DJALMA TEIXEIRA BENEVIDES, Data de Julgamento: 26/11/2024, 4ª Câmara Direito Privado, Data de Publicação: 26/11/2024) </p><p style="margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; padding-left: 150px;" align="justify">
 </p><p style="margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; padding-left: 150px;" align="justify"> &#160; </p><p style="margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%; padding-left: 150px;" align="justify"> APELAÇÃO CÍVEL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PRESCRIÇÃO DA PRETENSÃO EXECUTIVA EMBASADA EM INSTRUMENTO PARTICULAR. PRESCRIÇÃO QUINQUENAL RECONHECIDA . AUSÊNCIA DE CITAÇÃO APTA A INTERROMPER O PRAZO PRESCRICIONAL DA EXECUÇÃO. DEMORA NÃO ATRIBUÍDA AO SERVIÇO JUDICIÁRIO. DILIGÊNCIAS DEFERIDAS E REALIZADAS EM PRAZO RAZOÁVEL. BUSCA INEFICIENTE NA LOCALIZAÇÃO DA PARTE DEVEDORA . PRESCRIÇÃO RECONHECIDA. RECURSO IMPROVIDO. SENTENÇA INALTERADA. 1 . Trata-se de recurso de apelação adversando a sentença que declarou extinta a execução de título extrajudicial, com fundamento na prescrição da pretensão executiva. 2. Em se tratando de execução de título extrajudicial lastreada em instrumento particular, o prazo prescricional é quinquenal, a contar do vencimento da última parcela, nos termos do artigo 206, § 5º, inciso I, do Código Civil. 3 . Consoante o entendimento do Superior Tribunal de Justiça, somente ocorrerá a interrupção do prazo prescricional quando ocorrer a citação válida, não bastando que tenha havido o despacho citatório. Portanto, não tendo ocorrido a citação da devedora no caso concreto, não restou interrompida a prescrição, que manteve seu marco inicial inalterado. 4. No caso vertente, diversamente do que alega a apelante, a demora na tramitação do feito não pode ser atribuída exclusivamente ao serviço judiciário, que atuou prontamente quando provocado, de modo que não aplica o enunciado da Súmula 106 do STJ . 5. Configurada, portanto, a prescrição da pretensão executiva, sendo consumada durante o curso do processo, uma vez que o prazo prescricional não foi interrompido pela ausência da citação válida da devedora. 6. Recurso improvido . Sentença inalterada. (TJ-CE - Apelação Cível: 0197125-77.2013 .8.06.0001 Fortaleza, Relator.: MARIA DE FÁTIMA

Processo	0149639-91.2016.8.06.0001
	DE MELO LOUREIRO, Data de Julgamento: 05/06/2024, 2ª Câmara Direito Privado, Data de Publicação: 05/06/2024) </p><p style="margin-left: 4cm; margin-bottom: 0cm; line-height: 100%;," align="justify">&#160;</p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%;," align="justify"> Dessa forma, considerando o transcurso de mais de 05 (cinco) anos desde o despacho que ordenou a citação, sem que as diligências realizadas tenham logrado êxito na concretização da angularização processual, impõe-se a manutenção da sentença que reconheceu a prescrição, como medida de resguardo à segurança jurídica e à estabilidade das relações processuais. </p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%;," align="justify"> Ante o exposto, conheço do recurso para NEGAR-LHE PROVIMENTO , mantendo-se incólume a sentença vergastada. </p><p style="text-align: center;">&#160;</p><p style="text-indent: 2.5cm; margin-top: 0.18cm; margin-bottom: 0.18cm; line-height: 150%;," align="justify"> É como voto. </p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p><p style="text-align: center;"> &#160; </p><p>&#160;</p><p>&#160;</p><div> <p>&#160;</p> </div></div><p>&#160;</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>
Processo	0083190-98.2009.8.06.0001
Número de ordem	229
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Expurgos Inflacionários / Planos Econômicos
Polo ativo	JACINTO DE OLIVEIRA PONTE ITAU UNIBANCO S.A. SANTA LUZIA EMPREENDIMIENTOS IMOBILIARIOS S. A. - EM LIQUIDACAO
Advogado(s) - Polo ativo	VANESSA FERNANDES COSTA LANDIM - (CE26381-A) VANESSA FERNANDES COSTA LANDIM - (CE26381-A)
Polo passivo	ITAU UNIBANCO S.A. SANTA LUZIA EMPREENDIMIENTOS IMOBILIARIOS S. A. - EM LIQUIDACAO JACINTO DE OLIVEIRA PONTE
Advogado(s) - Polo passivo	CAIO LUCIO MONTANO BRUTTON - (MG101649-A) MARIANA BARROS MENDONCA - (MG103751-A) LUIS CARLOS MONTEIRO LAURENCO - (CE16780-A) JULIANO RICARDO SCHMITT - (SC20875-A) MARIANA BARROS MENDONCA - (MG103751-A) CAIO LUCIO MONTANO BRUTTON - (MG101649-A) JULIANO RICARDO SCHMITT - (SC20875-A) LUIS CARLOS MONTEIRO LAURENCO - (CE16780-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0083190-98.2009.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO 160;0083190-98.2009.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: JACINTO DE OLIVEIRA PONTE, ITAU UNIBANCO S.A., SANTA LUZIA EMPREENDIMENTOS IMOBILIARIOS S. A. - EM LIQUIDACAO APELADO: ITAU UNIBANCO S.A., SANTA LUZIA EMPREENDIMENTOS IMOBILIARIOS S. A. - EM LIQUIDACAO, JACINTO DE OLIVEIRA PONTE Ementa: DIREITO PROCESSUAL CIVIL. APELAÇÕES CÍVEIS. AÇÃO ORDINÁRIA DE COBRANÇA. FALECIMENTO DA PARTE AUTORA ANTES DA SENTENÇA. AUSÊNCIA DE SUSPENSÃO DO PROCESSO E HABILITAÇÃO DOS HERDEIROS. NULIDADE DOS ATOS PROCESSUAIS POSTERIORES AO ÓBITO. SENTENÇA CASSADA. RECURSOS PREJUDICADOS. REMESSA DOS AUTOS À ORIGEM. I. CASO EM EXAME 1. Apelações cíveis interpostas por Jacinto de Oliveira Ponte, Itaú Unibanco S/A e Santa Luzia Empreendimentos Imobiliários S/A – em liquidação (antigo Banco Banorte S/A – em liquidação extrajudicial) contra sentença que julgou procedente ação ordinária de cobrança referente a diferenças de correção em cadernetas de poupança. Após os recursos, verificou-se que o autor havia falecido em 2013, antes da prolação da sentença, sem que houvesse suspensão do processo para habilitação dos herdeiros. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se a sentença proferida após o falecimento da parte autora, sem a suspensão do processo e a regular habilitação dos herdeiros, é válida ou nula. III. RAZÕES DE DECIDIR 3. O falecimento da parte acarreta a perda imediata da capacidade processual, impondo ao juízo suspender o processo e intimar os herdeiros ou o espólio para prosseguir na demanda (CPC, art. 313, I e §2º). IV. DISPOSITIVO E TESE 4. A ausência de suspensão processual após a morte do autor gera nulidade dos atos praticados a partir da data do óbito, inclusive da sentença. 5. A jurisprudência deste Tribunal de Justiça do Ceará reconhece que a nulidade deve retroagir à data do falecimento, e não ao momento em que este é comunicado nos autos. 6. Recursos prejudicados. Sentença cassada. Autos remetidos à origem para regularização do polo ativo. Tese de julgamento: 1. A morte da parte autora antes da sentença impõe a nulidade dos atos processuais subsequentes, inclusive da decisão final, por ausência de capacidade processual. 2. A suspensão do processo deve ocorrer imediatamente após o falecimento, cabendo a intimação dos herdeiros ou do espólio para habilitação. 3. A nulidade processual retroage à data do óbito, e não ao momento em que este é comunicado nos autos. Dispositivos relevantes citados: CPC, art. 313, I e §2º. Jurisprudência relevante citada: TJCE, Apelação Cível nº 0249725-94.2021.8.06.0001, Rel. Des. Carlos Alberto Mendes Forte, 2ª Câmara de Direito Privado,

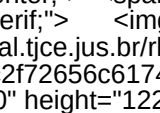
Processo	0083190-98.2009.8.06.0001
	j. 08.05.2024; TJCE, Apelação Cível nº 0010074-70.2013.8.06.0049, Rel. Des. Francisco Lucídio de Queiroz Júnior, 3ª Câmara de Direito Privado, j. 29.01.2025; TJCE, Apelação Cível nº 0001235-85.2000.8.06.0122, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara de Direito Privado, j. 12.06.2024. ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em NÂO CONHECER dos recursos de apelação, por prejudicados, e, de ofício, reconhecer a nulidade da sentença em razão de sua prolação após o falecimento da parte autora, sem a devida habilitação, com a determinação de retorno dos autos à origem, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator Trata-se de Apelações Cíveis interpostas por Jacinto De Oliveira Ponte, Itau Unibanco S/A e Santa Luzia Empreendimentos Imobiliários S/A - Em Liquidação, em face de sentença proferida pela 15ª Cível de Fortaleza, nos autos da Ação Ordinária de Cobrança movida pelo primeiro em desfavor das instituições financeiras. O juízo de origem julgou procedentes os pedidos iniciais, nos seguintes termos: Ex positis, julgo procedente o pedido autoral, condenando os requeridos ao pagamento da diferença entre a remuneração efetivamente paga às cadernetas de poupança e os índices devidos, pelos critérios definidos neste, referente aos planos econômicos aqui discutido, qual seja, Plano Collor I e Plano Collor II, tudo em conformidade com o entendimento pelo Superior Tribunal de Justiça. No mesmo determino a correção da diferença, encaminhe-se o processo a Contadoria do Fórum para cálculos dos índices devidos, pelos critérios definidos da decisão acima. Quanto ao pagamento das custas e honorários, condeno a parte ré a pagar ao patrono do autor, que fixo em 20% (vinte por cento) sobre o valor da condenação atualizada com correção e juros legais, na forma do art. 20, § 3º do . Foram opostos embargos de declaração pelo Banco Itaú e pelo Banco Banorte, os quais foram rejeitados, nos termos da sentença de ID. 22369042.

Processo	0083190-98.2009.8.06.0001
	150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Irresignado, o promovente interpôs recurso de apelação sob o ID. 22368933, no qual alega, a necessidade de aplicação da Súmula 37, do STF, da 4ª Região no que se refere à atualização das diferenças dos contratos de poupança, e na aplicação dos juros de mora a partir da citação, além dos juros remuneratórios capitalizados desde a ocorrência do ato ilícito. Ao final, roga pelo conhecimento e provimento do apelo, para que seja modificada a forma de correção dos valores.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Também insatisfeito, o Banco Itaú interpôs apelação sob o ID. 22368917, na qual defende que a sentença é omissa e obscura, por não ter se manifestado sobre os índices de atualização do valor da condenação, bem como sua ilegitimidade passiva para atuar no polo passivo do feito, além da regularidade dos percentuais aplicáveis nas correções monetárias. Por fim, postula o conhecimento e provimento do recurso, para que seja julgada improcedente a ação.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Ainda no exercício de sua retinência, o Banco Banorte interpôs o apelo de ID. 22369063, mediante o qual sustenta a incompetência absoluta da justiça estadual para processar e julgar o feito, bem como a necessidade de exclusão da condenação dos expurgos inflacionários relativos ao Plano Collor I, posto a inexistência de saldo pela abertura da conta em data posterior. Ao fim, requer o conhecimento e provimento do recurso, para que seja declarada a incompetência da Justiça Estadual para processar o feito e, de forma subsidiária, que sejam julgados improcedentes os pleitos exordiais.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Foram apresentadas contrarrazões pelo autor sob o ID. 22369248, pelo desprovimento do apelo.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Remetidos os autos a esta instância revisora, foram distribuídos inicialmente a minha antecessora, des. Vera Lúcia, a qual determinou o sobrestamento do feito por determinação dada pelo Ministro Dias Toffoli no Recurso Extraordinário nº 626.307/SP e pelo Ministro Gilmar Mendes no Agravo de Instrumento nº 754.745.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Os autos foram, posteriormente, distribuídos à minha relatoria por sucessão. Contudo, SANTA LUZIA EMPREENDIMENTOS IMOBILIÁRIOS S.A. – EM LIQUIDAÇÃO, nova denominação de BANCO BANORTE S.A. – EM LIQUIDAÇÃO EXTRAJUDICIAL, apresentou a petição de ID. 22367870, na qual aduz que a parte autora está falecida desde 2013, em data anterior à sentença, pelo que postula a nulidade desta e a remessa dos autos à primeira instância para que seja procedida à habilitação dos herdeiros.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Através da interlocutória de ID. 22367879, foi determinada a intimação dos herdeiros para demonstrarem interesse no prosseguimento do feito.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Parecer do Ministério Público sob o ID. 22368554, mediante o qual opina pela nulidade dos atos processuais praticados desde a data da morte da parte autora, e remessa dos autos ao juízo originário para correta habilitação dos herdeiros.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> É o que importa relatar. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> VOTO </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Antes de adentrar no mérito dos apelos, percebo que assiste razão à SANTA LUZIA EMPREENDIMENTOS IMOBILIARIOS

Processo	0083190-98.2009.8.06.0001
	S. A. - EM LIQUIDACAO, bem como à d. Procuradoria de Justiça do Ceará, posto que a sentença foi prolatada em 18/06/2014, contudo, consta informação de falecimento do autor no ano de 2013 (ID. 22367870). Nos termos do art. 313, I e §2º, do CPC, cabe ao juiz suspender o processo quando noticiado o falecimento de uma das partes, a fim de que haja a intimação dos herdeiros ou do espólio do de cujos, o que não ocorreu no caso em apreço ensejando a nulidade dos atos processuais ocorridos após o falecimento do recorrido. Sobre o tema, acosto a seguinte jurisprudência deste e. Tribunal de Justiça Alencarino: DIREITO PROCESSUAL CIVIL E CIVIL. APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. FALECIMENTO DOS EMBARGANTES DURANTE A TRAMITAÇÃO DO PROCESSO EXECUTIVO. PROLAÇÃO DA SENTENÇA ANTES DA SUCESSÃO PROCESSUAL DEVIDA. NULIDADE DOS ATOS POSTERIORES. CASSAÇÃO DA SENTENÇA. RECURSO CONHECIDO E PROVIDO. 1. Ocorrendo o falecimento de uma das partes litigantes o feito não pode prosseguir, tendo em vista que desconstituída a relação processual, e tampouco ser prolatada sentença sem a ocorrência da devida sucessão processual pelo espólio ou sucessores. 2. Ocorrendo o falecimento do autor, incumbe ao magistrado suspender o feito para que seja concretizada a sucessão processual, nos termos previstos na norma do artigo 313, inciso I do CPC/2015, sob pena de flagrante nulidade processual. 3. Ausente habilitação e regularização da sucessão processual, deve ser declarada a nulidade dos atos processuais posteriores ao óbito da parte. 4. Recurso conhecido e provido. Sentença anulada. (Apelação Cível&#160;-0249725-94.2021.8.06.0001, Rel. Desembargador(a) CARLOS ALBERTO MENDES FORTE, 2ª Câmara Direito Privado, data do julgamento:&#160;08/05/2024, data da publicação:&#160;08/05/2024) Direito Civil e Processual Civil. Apelação Cível em Ação de Usucapião. Sucessão Processual. Falecimento de Parte. Nulidade da Sentença. Retorno dos Autos ao Juízo de Origem. Recurso conhecido e provido. I. Caso em Exame 1. Apelação Cível interposta contra sentença que julgou improcedente ação de usucapião. Os apelantes alegam posse exclusiva, mansa e pacífica de imóvel rural por mais de vinte anos, enquanto os apelados, herdeiros, contestam, afirmando posse compartilhada. Sentença de primeiro grau reconheceu o domínio em favor dos herdeiros. II. Questão em Discussão 2. A questão em discussão consiste em: (i) verificar a nulidade processual devido ao falecimento de uma das partes antes da prolação da sentença; (ii) determinar a necessidade de suspensão do processo para habilitação dos sucessores. III. Razões de Decidir 3. A morte de uma das partes antes da sentença exige a suspensão imediata do processo para sucessão processual, que não foi observada, resultando em nulidade dos atos processuais posteriores ao óbito. 4. Constatou-se que a sentença foi proferida muito após o óbito de um dos autores, sem a participação dos sucessores do falecido, comprometendo o devido processo legal e os direitos de representação dos herdeiros. Assim, reconhece-se a necessidade de anulação de todos os atos posteriores ao falecimento e o retorno do processo ao primeiro grau, para habilitação dos sucessores e retomada do feito. IV. Dispositivo e Tese 5. Recurso conhecido e provido. Sentença anulada. Tese de julgamento: " O falecimento de uma das partes suspende automaticamente o processo, invalidando os atos praticados após o óbito." Dispositivos relevantes citados: CPC/2015, arts. 110, 313, 314. Jurisprudência relevante citada: STJ, AREsp nº 1644073/SP, Rel. Min. Marco Aurélio Bellizze, DJ 25.02.2021; AP Civ. nº 0057413-88.2017.8.06.0112, Rel. Des. Francisco Bezerra Cavalcante, j. 17.05.2022. (Apelação Cível&#160;- 0010074-70.2013.8.06.0049, Rel. Desembargador(a) FRANCISCO LUCÍDIO DE QUEIROZ JÚNIOR, 3ª Câmara Direito Privado, data do julgamento:&#160;29/01/2025, data da publicação:&#160;29/01/2025) 0001235-85.2000.8.06.0122 - Apelação Cível Apelantes: Constantino Moreira de Sousa, Carmem Fátima Moreira Martins e José Aldemir Martins Apelado: José Wilton Barros de Quental EMENTA: DIREITO CIVIL E PROCESSUAL CIVIL. RECURSO DE APELAÇÃO CÍVEL EM AÇÃO PAULIANA. SENTENÇA DE PROCEDÊNCIA. FALECIMENTO DE UM DOS PROMÓVIDOS. SUSPENSÃO AUTOMÁTICA DO FEITO. PRECEDENTES STJ E DESTA SODALÍCIO. VEDAÇÃO DA PRÁTICA DE QUALQUER ATO PROCESSUAL. NECESSIDADE DE ABRIR PRAZO PARA HABILITAÇÃO DOS HERDEIROS. DECLARAÇÃO DE OFÍCIO DA NULIDADE DA SENTENÇA E DE TODOS OS ATOS

Processo	0083190-98.2009.8.06.0001
	PROCESSUAIS PRATICADOS APÓS O FALECIMENTO DA PROMOVIDA. SENTENÇA CASSADA. RAZÕES RECURSAIS PREJUDICADAS. (Apelação Cível#160;- 0001235-85.2000.8.06.0122, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:#160; 12/06/2024, data da publicação:#160; 14/06/2024) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; tab-stops: 56.85pt; mso-layout-grid-align: none; text-autospace: none;"> Ressalte-se que a suspensão do processo deve ser imediata a partir do óbito da parte, uma vez que a perda da capacidade processual ocorre em razão da morte e não da posterior declaração, razão pela qual a nulidade dos atos processuais retroage até a data do falecimento e não de quando este foi informado nos autos.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; tab-stops: 56.85pt; mso-layout-grid-align: none; text-autospace: none;"> Diante do exposto, declaro, de ofício, a nulidade dos atos praticados após a morte da parte autora, inclusive da sentença prolatada, julgo prejudicados os recursos de apelações e determino a remessa dos autos à origem, para regularização do polo ativo da demanda, nos termos do art. 313, I e §2º, do CPC.&#160;</p><p class="Normal1" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É como voto.</p><p class="Normal1" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Fortaleza – CE, data da assinatura digital.</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"><!--[if supportFields]>MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot;<!--[endif]>DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA<!--[if supportFields]><!--[endif]>&#160; </p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"><!--[if supportFields]>MERGEFIELD &quot;Design&iuml;&iquest;&frac12;&iuml;&iquest;&frac12;o do relator atual do processo com g&iuml;&iquest;&frac12;nero#Design&iuml;&iquest;&frac12;&iuml;&iquest;&frac12;o do relator atual do processo considerando seu g&iuml;&iquest;&frac12;nero=933@PROC&quot;<!--[endif]>Relator<!--[if supportFields]><!--[endif]>&#160; </p><p>&#160;</p><p>&#160;</p><p style="text-align: center;">&#160; </p>
Processo	0621310-97.2025.8.06.0000
Número de ordem	230
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Fixação
Polo ativo	MILENE CARVALHO CAMILO
Advogado(s) - Polo ativo	ELIZA MARIA DE AGUIAR AZEVEDO - (CE44105-A)

Processo	0621310-97.2025.8.06.0000
Polo passivo	LEONARDO BRAGA DE OLIVEIRA
Advogado(s) - Polo passivo	JULIA DALGE MONTALVERNE BARRETO - (CE33685-A)
Terceiros	Não informado

Processo	0621310-97.2025.8.06.0000
Acórdão	 PROCESSO: 0621310-97.2025.8.06.0000 - AGRAVO DE INSTRUMENTO (202) AGRAVANTE: MILENE CARVALHO CAMILO AGRAVADO: LEONARDO BRAGA DE OLIVEIRA Ementa: DIREITO DE FAMÍLIA. AGRAVO DE INSTRUMENTO. UNIÃO ESTÁVEL. PEDIDO DE ALIMENTOS COMPENSATÓRIOS. BINÔMIO NECESSIDADE/POSSIBILIDADE NÃO DEMONSTRADO. AUSÊNCIA DE PROVAS DE INCAPACIDADE DA AGRAVANTE PARA O TRABALHO. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Agravo de Instrumento interposto contra decisão da 18ª Vara de Família da Comarca de Fortaleza/CE, nos autos de Ação de Reconhecimento e Dissolução de União Estável cumulada com alimentos, guarda e regulamentação de visitas, que indeferiu pedido de fixação de alimentos compensatórios. A agravante alegou ter abandonado o mercado de trabalho por incentivo do companheiro e requereu 15% dos rendimentos brutos do agravado, além de um ano de aluguel para viabilizar sua saída do imóvel comum. O juízo de origem indeferiu o pedido por falta de comprovação da incapacidade laboral da agravante. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em verificar se estão presentes os requisitos para a fixação de alimentos compensatórios em favor da agravante diante do alegado desequilíbrio econômico-financeiro após a dissolução da união estável. III. RAZÕES DE DECIDIR 3. Os alimentos, conforme o art. 1.694, §1º, do CC, devem observar o binômio necessidade/capacidade, não sendo possível impor obrigação alimentar sem comprovação da real necessidade do alimentando. 4. Os alimentos compensatórios possuem natureza indenizatória e excepcional, destinando-se a mitigar desequilíbrio patrimonial abrupto, mas não se confundem com pensão alimentícia nem com alimentos ressarcitórios (STJ, REsp 1.290.313/AL, Rel. Min. Antonio Carlos Ferreira, Quarta Turma, DJe 07.11.2014; STJ, REsp 1.954.452/SP, Rel. Min. Marco Aurélio Bellizze, Terceira Turma, DJe 22.06.2023). 5. A agravante possui formação superior em administração, idade compatível com atividade laboral e não apresentou prova de incapacidade física ou psicológica que a impeça de prover seu sustento. 6. Os autos demonstram que a decisão de se desligar do emprego anterior decorreu de insatisfação pessoal com a função exercida, e não de imposição do agravado, havendo inclusive indícios de retorno ao mercado de trabalho em 2024. 7. Diante da ausência de comprovação da necessidade e da permanência da agravante fora do mercado de trabalho, não se justifica a fixação de alimentos compensatórios. DISPOSITIVO E TESE 8. Recurso conhecido e desprovido. Tese de julgamento: 1. Os alimentos compensatórios possuem caráter excepcional e indenizatório, sendo cabíveis apenas quando demonstrado desequilíbrio econômico-financeiro relevante decorrente da dissolução da união estável ou do casamento. 2. A concessão da verba

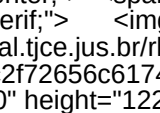
Processo	0621310-97.2025.8.06.0000
	de 2024, razão peal qual entende que o pedido em relação aos alimentos compensatórios não merece prosperar.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> É o relatório. </p> <p style="text-align: justify; text-indent: 8%;"> Adotando o Pacto Nacional do Judiciário Pela Linguagem Simples, do CNJ, passo a proferir o meu voto.&#160; </p> <p style="text-align: center;"> VOTO </p> <p style="text-align: justify; text-indent: 8%;"> Presentes os pressupostos intrínsecos ou subjetivos (legitimidade, inexistência de súmula impeditiva, cabimento, interesse) e extrínsecos ou objetivos (tempestividade, preparo – parte beneficiária da justiça gratuita), regularidade formal e a inexistência de fatos extintivos ou impeditivos do direito de recorrer) de admissibilidade recursal, conheço dos Recursos de Apelação.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Com efeito, pelo que se vislumbra dos autos, à luz da documentação carreada por ambas as partes, bem como do entendimento jurisprudencial sobre o tema, visualizo que a decisão do juízo a quo não merece reproche. Explico.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> O Código Civil, em seu artigo 1.694, § 1º, dispõe que os alimentos devem ser fixados na proporção das necessidades do reclamante e dos recursos da pessoa obrigada, o que significa dizer, por outras palavras, que a obrigação alimentar deve ser fixada de acordo com o binômio necessidade (do alimentando) - capacidade (do alimentante). </p> <p style="text-align: justify; text-indent: 8%;"> A doutrinadora MARIA BERENICE DIAS (Manual de Direito das Famílias, 8ª ed. Ed. Revista dos Tribunais, 2011, pag. 515), ao definir a expressão alimentos, nos ensina que: </p> <p style="text-align: justify; padding-left: 150px;"> "Expressão alimentos vem adquirindo dimensão cada vez mais abrangente. Engloba tudo que é necessário para alguém viver com dignidade, dispondo o juiz de poder discricionário para quantificar o seu valor. O alargamento do conceito de alimentos levou a doutrina a distinguir alimentos civis e naturais. Alimentos naturais são os indispensáveis para garantir a subsistência, como alimentação, vestuário, saúde, habitação, educação, etc. Alimentos civis destinam-se a manter a qualidade de vida do credor, de modo a preservar o mesmo padrão e status social do alimentante." </p> <p style="text-align: justify; text-indent: 8%;"> Nessa seara, pertinente citar também o ensinamento de Fabrício Zamprogna Matiello, in Código Civil Comentado, 2ª edição, segundo o qual: </p> <p style="text-align: justify; padding-left: 150px;"> "(...) o momento da fixação dos alimentos é marcado por detida análise do binômio necessidade/possibilidade. O alimentado não receberá mais do que precisa, nem o parente ou cônjuge será obrigado a pagar além do que suas condições econômicas permitem. Chegar ao equilíbrio entre essas forças contrárias significa fazer justiça, adequando a prestação alimentar ao quadro real vivenciado pelos envolvidos". </p> <p style="text-align: justify; text-indent: 8%;"> Assim, salienta-se que o caso em comento não se trata de simples determinação sobre alimentos, mas sim da análise de um pedido de alimentos compensatórios, que deve ser feita com atenta apreciação das provas, para que seja possível aferir as condições financeiras das partes, capaz de ensejar se de fato a parte que requerer os alimentos deve receber tal tipo de auxílio de acordo com os parâmetros determinados em juízo.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Antes de mais nada, convém esclarecer ser cediço o entendimento de que "Os chamados alimentos compensatórios, ou prestação compensatória, não têm por finalidade suprir as necessidades de subsistência do credor, tal como ocorre com a pensão alimentícia regulada pelo art. 1.694 do CC/2002, senão corrigir ou atenuar grave desequilíbrio econômico-financeiro ou abrupta alteração do padrão de vida do cônjuge desprovido de bens e de meação" (REsp 1.290.313/AL , Rel. Ministro ANTONIO CARLOS FERREIRA, QUARTA TURMA, julgado em 12/11/2013, DJe de 07/11/2014). Não se confundem com os alimentos ressarcitórios: </p> <p style="text-align: justify; padding-left: 150px;"> RECURSO ESPECIAL. DIREITO DE FAMÍLIA. NEGATIVA DE PRESTAÇÃO JURISDICIONAL. NÃO OCORRÊNCIA. ADMINISTRAÇÃO EXCLUSIVA DE PATRIMÔNIO COMUM BILIONÁRIO. ALIMENTOS RESSARCITÓRIOS. CABIMENTO. DECISÃO EXTRA PETITA. INEXISTÊNCIA. RECURSO ESPECIAL CONHECIDO E DESPROVIDO. 1. O Tribunal de origem analisou todas as questões relevantes para a solução da lide de forma fundamentada, não havendo falar em negativa de prestação jurisdicional. 2. Os alimentos compensatórios são fruto de construção doutrinária e jurisprudencial, fundada na dignidade da pessoa humana, na solidariedade familiar e na vedação ao abuso de direito. De natureza indenizatória e excepcional, destinam-se a mitigar uma queda repentina do padrão de vida do ex-cônjuge ou excompanheiro que, com o fim do relacionamento, possuirá patrimônio irrisório se comparado ao do outro consorte, sem, contudo, pretender a igualdade econômica do ex-casal, apenas reduzindo os efeitos deletérios oriundos da carência social. 3. Apesar da corriqueira confusão conceitual, a prestação compensatória

Processo	0621310-97.2025.8.06.0000
	não se confunde com os alimentos ressarcitórios, os quais configuram um pagamento ao ex-consorte por aquele que fica na administração exclusiva do patrimônio, enquanto não há partilha dos bens comuns, tendo como fundamento a vedação ao enriquecimento sem causa, ou seja, trata-se de uma verba de antecipação de renda líquida decorrente do usufruto ou da administração unilateral dos bens comuns. 4. O alimentante está na administração exclusiva dos bens comuns do ex-casal desde o fim do relacionamento, haja vista que a partilha do patrimônio bilionário depende do fim da ação de separação litigiosa que já se arrasta por quase 20 (vinte) anos, o que justifica a fixação dos alimentos ressarcitórios. 5. Não existe decisão fora dos limites da demanda quando o julgador, mediante interpretação lógico-sistemática da petição inicial, examina a pretensão deduzida em juízo como um todo, afastando-se a alegação de ofensa ao princípio da adstrição ou congruência. As instâncias ordinárias apreciaram o pedido em concordância com a causa de pedir remota, dentro dos limites postulados na exordial, não havendo falar em decisão extra petita. 6. Recurso especial conhecido e desprovido. (STJ - REsp: 1954452 SP 2021/0011820-2, Relator: Ministro MARCO AURÉLIO BELLIZZE, Data de Julgamento: 13/06/2023, T3 - TERCEIRA TURMA, Data de Publicação: DJe 22/06/2023). (grifo nosso). Corroborando, ao dissertar sobre os alimentos compensatórios, ensina Rolf Madaleno: "O propósito da pensão compensatória é indenizar por algum tempo ou não o desequilíbrio econômico causado pela repentina redução do padrão socioeconômico do cônjuge desprovido de bens e meação, sem pretender a igualdade econômica do casal que desfez sua relação, mas que procura reduzir os efeitos deletérios surgidos da súbita indigência social, causada pela ausência de recursos pessoais, quando todos os ingressos eram mantidos pelo parceiro, mas que deixaram de portar com o divórcio. (...) "Conforme Jorge O. Azpiri, um dos cônjuges pode ser obrigado a abonar o outro com uma prestação destinada a compensar, até onde for possível, a disparidade material causada pela ruptura do relacionamento, e neste sentido difere sensivelmente da pensão transitória, esta última com larga aplicação nas dissensões conjugais, mesmo sem expressa previsão legal, por considerar a necessidade passageira do alimentando. Outro é o propósito da pensão compensatória que equilibra o padrão econômico-financeiro, servindo quase para indenizar a perda do padrão social causada pelo divórcio e embora nem a pensão transitória e tampouco a pensão compensatória tenham previsão expressa no ordenamento jurídico brasileiro, não há qualquer sombra de dúvida acerca da viabilidade de sua aplicação, tal qual vem se firmando a doutrina e mostrando a jurisprudência brasileira tanto em relação aos alimentos transitórios como no tocante aos alimentos compensatórios. (...) "Nos alimentos compensatórios o decreto de divórcio trará de dissolver a relação conjugal e assegurar ao cônjuge destituído de meação e de valores amealhados no curso do casamento uma prestação proporcional aos bens e às rendas que conformaram o patrimônio particular e incomunicável construído durante a relação afetiva do casal." (Curso de Direito de Família. 4ª edição. Rio de Janeiro: Forense, 2001, p. 952). Apesar de não existir regra expressa acerca do tema, a doutrina e a jurisprudência vêm permitindo a fixação de alimentos compensatórios como forma de garantir o dever de mútua assistência decorrente do casamento, previsto no artigo 1.566, inciso III, do Código Civil. "O objetivo desses alimentos é, portanto, o de compensar o cônjuge prejudicado, fixando um valor a ser pago a ele, podendo essa verba ser determinada por período certo ou incerto, bem como em parcela única ou em prestações. "O instituto não busca retomar a situação financeira que o cônjuge detinha durante o casamento/união estável, mas, sim, minorar os efeitos causados pelo divórcio. "Assim, compulsando os autos principais, observo que a parte agravante possui formação de nível superior em administração, tem 43 (quarenta e três) anos e não informa, ou demonstra, nenhum empecilho físico e psicológico que a impeça de adentrar em seu ramo de atuação de trabalho. "Ato contínuo, verifico que, de acordo com os documentos colacionados aos autos do agravo de instrumento em exame, conclui-se que a agravante, apesar de requerer alimentos compensatórios por não trabalhar a pedido de seu cônjuge, não abdicou de seu trabalho por este motivo. Neste sentido, sob id. 22413412, foi juntado pelo agravado prints de conversas, onde resta demonstrado que a parte agravante iria pedir demissão da empresa, que até então trabalhava, pois estava desgastada do seu trabalho e

Processo	0621310-97.2025.8.06.0000
	infeliz. </p> <p style="text-align: justify; text-indent: 8%;"> Ainda, observo que em sede de contrarrazões o agravado alega que a parte agravante teria adentrado novamente no mercado de trabalho no final de 2024 e junta, sob id. 22413411, prints de conversas e de mídias sociais que corroboram com tais alegações.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Ademais, a parte agravante não demonstra indícios que está fora do mercado de trabalho a tempo relevante.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Isso posto, entendo que não restou comprovado o direito de concessão dos alimentos compensatórios requeridos em sede de agravo. </p> <p style="text-align: justify; text-indent: 8%;"> Segue jurisprudência nesse sentido:&#160; </p> <p style="text-align: justify; padding-left: 150px;"> APELAÇÃO CÍVEL. AÇÃO DE DIVÓRCIO LITIGIOSO C/C FIXAÇÃO DE PENSÃO ALIMENTÍCIA E PARTILHA DE BENS. PARTILHA DOS BENS OCULTADOS. AUSÊNCIA DE PROVAS . FIXAÇÃO DE ALIMENTOS. BINÔMIO NECESSIDADE/POSSIBILIDADE. NÃO COMPROVAÇÃO. 1 . No casamento sob o regime da comunhão parcial de bens, tudo aquilo que tem expressão econômica e que foi adquirido pelos cônjuges na constância da união deve ser partilhado, quando do divórcio, consoante a inteligência do artigo 1.658 do Código Civil. 2. A propriedade dos semoventes mencionados na inicial não ficou comprovada, vez que o arquivo juntado para esse fim se trata de uma simples fotografia de gado, a qual não é suficiente para demonstrar a efetiva propriedade e amparar a partilha pretendida . 3. Segundo o art. 1.702 do Código Civil, quando do divórcio, será fixada pensão alimentícia ao cônjuge que dela necessitar . Todavia, no caso concreto, a apelante não demonstrou sua incapacidade financeira, já que é servidora pública municipal concursada, tampouco a capacidade de contribuição do apelado, que labora como trabalhador rural. Logo, o binômio necessidade/possibilidade não resta configurado nos autos. RECURSO CONHECIDO E DESPROVIDO. (TJ-GO - Apelação Cível: 5582821-43 .2021.8.09.0102 MARA ROSA, Relator.: Des(a) . ANTÔNIO CÉZAR PEREIRA MENESES, 10ª Câmara Cível, Data de Publicação: (S/R) DJ). (grifo nosso) </p> <p style="text-align: justify; padding-left: 150px;"> AGRAVO INTERNO. SUPLICA DE INSTRUMENTO. AÇÃO DE RECONHECIMENTO E DISSOLUÇÃO DE UNIÃO ESTÁVEL C/C PEDIDO DE GUARDA, PARTILHA DE BENS E ALIMENTOS. ALIMENTOS PROVISÓRIOS. FIXAÇÃO EM FAVOR DA EX-COMPANHEIRA. REQUISITO DA AUSÊNCIA DE MEIOS PARA PROVER O PRÓPRIO SUSTENTO (NECESSIDADE) NÃO DEMONSTRADO. REGULAMENTAÇÃO DE GUARDA E VISITAS DE ANIMAIS DE ESTIMAÇÃO . GUARDA COMPARTILHADA ENTRE EX-CÔNJUGES. SENTIMENTOS DOS TUTORES, BEM-ESTAR DOS ANIMAIS, LAÇOS DE AFETO E CUIDADO. ASPECTOS NÃO SUFICIENTEMENTE DEMONSTRADOS. NEGATIVA DE PROVIMENTO À IRRESIGNAÇÃO INSTRUMENTAL . MANUTENÇÃO DO DECISUM ORA AGRAVADO. DESPROVIMENTO DA INSATISFAÇÃO REGIMENTAL. - O Superior Tribunal de Justiça firmou sua jurisprudência no sentido de que a prestação de alimentos entre ex-cônjuges é medida excepcional e possui caráter transitório, devendo atender, ainda, ao binômio necessidade/possibilidade, conforme as peculiaridades do caso concreto. - "(...) É entendimento desta Corte Superior que os alimentos fixados para ex-cônjuges, via de regra, são excepcionais e possuem caráter transitório. Ademais, a fixação deve atender ao binômio necessidade/possibilidade, conforme as peculiaridades do caso concreto. (...) (STJ, AgInt no AREsp n. 2.068.437/SP, relator Ministro Raul Araújo, Quarta Turma, julgado em 22/8/2022, DJe de 26/8/2022 .)" - "(...) Fixação alimentícia fixada em pressupostos materiais para concessão: i) necessidade do alimentando; ii) possibilidade do alimentante; iii) e proporcionalidade. 6. Requisito da ausência de meios para prover o próprio sustento (necessidade) não configurada. (...) (STJ, AgInt no REsp n. 2.006.635/PB, relatora Ministra Maria Isabel Gallotti, Quarta Turma, julgado em 14/11/2022, DJe de 18/11/2022 .)" - Não comprovado o requisito da necessidade, inviável se revela a fixação de alimentos provisórios em favor da ex-companheira, consoante proclama a jurisprudência da Corte da Cidadania. - No que se refere à guarda compartilhada dos animais de estimação, tem-se que a jurisprudência já se consolidou acerca da possibilidade de regulamentação de visitas destes, devendo ser levados em consideração os sentimentos dos tutores e o bem-estar dos bichanos, bem como os laços de afeto e cuidado com estes, aspectos que não restaram suficientemente comprovados pela agravante até o presente momento. - "(...) III - Para a definição acerca da custódia dos animais, deve-se levar em conta o fato de que são seres sencientes – dotados de sensibilidade – e que, portanto, deve-se considerar o seu bem-estar, bem como o vínculo afetivo do dono com o animal, em cada caso concreto. (...) (TJGO; AI 5590640-53.2022.8.09 .0051; Goiânia; Sétima Câmara Cível; Rel. Des. Sérgio Mendonça de Araújo; Julg. 26/01/2023; DJEGO 31/01/2023; Pág . 6978)" VISTOS, relatados e discutidos os autos acima referenciados. ACORDA a Primeira Câmara Especializada Cível do Egrégio Tribunal de Justiça da Paraíba, à unanimidade de votos, NEGAR PROVIMENTO AO RECURSO. (TJ-PB - AGRAVO DE INSTRUMENTO: 08130339320248150000, Relator.: Gabinete 11 - Des. José Ricardo Porto, 1ª Câmara Cível). (grifo nosso). </p>

Processo	0621310-97.2025.8.06.0000
	<p style="text-align: justify; text-indent: 8%;"> Diante o exposto, através da fundamentação apresentada, CONHEÇO do presente Agravo de Instrumento para lhe NEGAR-LHE PROVIMENTO, mantendo a decisão interlocutória deferida pelo juízo a quo, para indeferir o pedido de alimentos compensatórios feito pela parte agravante. </p> <p style="text-align: justify; text-indent: 8%;"> É como voto. </p> <p style="text-align: justify; text-indent: 8%;"> Fortaleza – CE, data da assinatura digital. </p> <p style="text-align: justify;">
 <p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p> <p style="text-align: center;"> Relator </p> </div></div><p>&#160;</p><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>
Processo	0200292-76.2022.8.06.0134
Número de ordem	231
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Efeito Suspensivo / Impugnação / Embargos à Execução
Polo ativo	MARIA DO SOCORRO VIEIRA COUTINHO ANTONIO DATIVO GOMES COUTINHO FILHO
Advogado(s) - Polo ativo	Não informado
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	NEI CALDERON - (CE33485-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0200292-76.2022.8.06.0134
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0200292-76.2022.8.06.0134 - 160; APELAÇÃO CÍVEL (198) APELANTE: MARIA DO SOCORRO VIEIRA COUTINHO, ANTONIO DATIVO GOMES COUTINHO FILHO APELADO: BANCO DO BRASIL SA EMENTA: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. CÉDULA DE CRÉDITO RURAL PIGNORATÍCIA E HIPOTECÁRIA. NULIDADE DO TÍTULO EXECUTIVO. INOCORRÊNCIA. JUROS REMUNERATÓRIOS LIMITADOS A 12% AO ANO. CAPITALIZAÇÃO MENSAL ADMITIDA. COBRANÇA DE IOF DILUÍDO NAS PARCELAS. LEGALIDADE. COBRANÇA DE SEGURO PENHOR. VENDA CASADA. ILEGALIDADE. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 1. Apelação Cível interposta por devedores contra sentença que julgou parcialmente procedentes embargos à execução opostos em face de instituição financeira, afastando apenas a cobrança de comissão de permanência. Os apelantes pleiteiam: (i) nulidade da execução por ausência de liquidez, certeza e exigibilidade do título; (ii) reconhecimento da abusividade na cobrança de seguro penhor, por configurar venda casada; (iii) exclusão do IOF diluído nas prestações; e (iv) suspensão da cobrança do crédito com fundamento na Lei nº 14.166/2021 e no Decreto-Lei nº 11.796/2023. II. QUESTÃO EM DISCUSSÃO 2. Há cinco questões em discussão: (i) definir se o crédito rural objeto da execução deve ser suspenso pela aplicação da Lei nº 14.166/2021 e do Decreto-Lei nº 11.796/2023; (ii) verificar se a cédula de crédito rural constitui título executivo extrajudicial líquido, certo e exigível; (iii) estabelecer a legalidade da taxa de juros remuneratórios e da capitalização mensal; (iv) determinar a validade da cobrança de IOF diluído nas parcelas do financiamento; (v) examinar a legalidade da cobrança de seguro penhor à luz do art. 25 da Lei nº 4.829/1965. III. RAZÕES DE DECIDIR 3. A suspensão prevista no art. 6º da Lei nº 14.166/2021 aplica-se apenas a dívidas relacionadas à atividade cacaujeira e vigorou até 30/12/2022, não alcançando a cédula de crédito rural em exame, destinada a atividade pecuária. O Decreto-Lei nº 11.796/2023 não prevê qualquer suspensão de créditos rurais. 4. A cédula de crédito rural pignoratícia e hipotecária é título executivo extrajudicial líquido, certo e exigível, nos termos do art. 10 do Decreto-Lei nº 167/1967 e da jurisprudência pacífica do STJ.

Processo	0200292-76.2022.8.06.0134
	class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">5. As cédulas de crédito rural submetem-se à limitação de juros remuneratórios a 12% ao ano, conforme Decreto nº 22.626/1933, quando ausente fixação pelo Conselho Monetário Nacional; no caso, a taxa pactuada (5,5% a.a.) respeita esse limite. class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">6. É admitida a capitalização mensal de juros em contratos de crédito rural, desde que expressamente pactuada, conforme Súmula 93 do STJ. class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">7. É válida a cobrança do IOF financiado de forma diluída nas parcelas do contrato, nos termos do entendimento firmado pelo STJ. class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">8. A cobrança de seguro penhor sem a observância das exigências do art. 25, §§1º a 3º, da Lei nº 4.829/1965 configura prática abusiva equiparada à venda casada, pois não foi assegurado ao mutuário o direito de escolha entre seguradoras. class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">IV. DISPOSITIVO E TESE class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">9. Recurso conhecido e parcialmente provido. class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">Dispositivos relevantes citados: CPC/2015, arts. 85, §§ 2º e 11; Decreto-Lei nº 167/1967, art. 10; Lei nº 4.829/1965, art. 25, §§1º a 3º; Lei nº 6.840/1980; Lei nº 13.195/2015; Lei nº 14.166/2021, art. 6º. class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">Jurisprudência relevante citada: Súmula 93/STJ; STJ, REsp 1.940.292/PR, Rel. Min. Nancy Andrighi, 3ª T., j. 03.05.2022; STJ, REsp 1.874.910/DF, Rel. Min. Marco Aurélio Bellizze, 3ª T., j. 23.04.2024; STJ, REsp 1.255.573/RS, Rel. Min. Maria Isabel Gallotti, 2ª Seção, j. 28.08.2013 (repetitivo); STJ, AgInt no AREsp 1052751/PR, Rel. Min. Marco Buzzi, 4ª T., j. 17.04.2018; STJ, AgInt no AREsp 1398041/SC, Rel. Min. Maria Isabel Gallotti, 4ª T., j. 08.06.2020; STJ, REsp 1365596/RS, Rel. Min. Nancy Andrighi, 3ª T., j. 10.09.2013. class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em CONHECER do recurso para DAR-LHE PARCIAL PROVIMENTO, nos termos do voto do relator. class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">Fortaleza, data da assinatura digital. class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;">DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;">Presidente do Órgão Julgador

Processo	0200292-76.2022.8.06.0134
	align="center"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; line-height: 150%;"> &#160; </p> &#160; </p> Relator </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.25pt; margin-bottom: 0cm; margin-left: 0cm; text-align: justify; text-indent: 53.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Trata-se de Apelação Cível interposta por MARIA DO SOCORRO VIEIRA COUTINHO e ANTONIO DATIVO GOMES COUTINHO FILHO objetivando a reforma da sentença (ID 22468778) proferida pelo Juízo da Vara Única da Comarca de Novo Oriente nos autos da Ação de Embargos à Execução ajuizada em face de Banco do Brasil S.A. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.25pt; margin-bottom: 0cm; margin-left: 0cm; text-align: justify; text-indent: 53.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Eis o dispositivo da sentença: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.85pt; margin-bottom: 0cm; margin-left: 110.55pt; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.85pt; margin-bottom: 0cm; margin-left: 110.55pt; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> III Dispositivo Ante o exposto, JULGO PROCEDENTES EM PARTE os embargos do devedor, para acolher a tese quanto à impossibilidade de cobrança de comissão de permanência, que deve ser retirada da Cédula de Crédito. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.85pt; margin-bottom: 0cm; margin-left: 110.55pt; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Considerando que o embargado sucumbiu em parte mínima do pedido (art. 86, parágrafo único, CPC), condeno a parte embargante ao pagamento das custas e honorários advocatícios, os quais fixo em 10% sobre o valor da causa, conforme o art. 85, §2º, do CPC1 . Todavia, suspendo a exigibilidade do pagamento por ser a parte embargante beneficiária da justiça gratuita, nos termos do art. 98, §3º, do CPC. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.85pt; margin-bottom: 0cm; margin-left: 110.55pt; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Publique-se. Intimem-se. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.85pt; margin-bottom: 0cm; margin-left: 110.55pt; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.25pt; margin-bottom: 0cm; margin-left: 0cm; text-align: justify; text-indent: 53.85pt; line-height: 150%;"> &#160; </p>

Processo	0200292-76.2022.8.06.0134
	indent: 53.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Nas razões recursais (ID 22468772), os apelantes, preliminarmente, pugnam pela suspensão da cobrança do crédito em razão da aplicação da lei 14.166/2021 e decreto-lei 11.796/2023. Ademais, requerem o provimento do recurso para declarar a nulidade da execução por falta de certeza, liquidez e exigibilidade do título executivo, além de reconhecer a abusividade na cobrança de seguro penhor, uma vez que a contratação se deu sob forma de venda casada. Por fim, alega que se deve excluir os valores cobrados de IOF que foram diluídos nas prestações do financiamento. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.25pt; margin-bottom: 0cm; margin-left: 0cm; text-align: justify; text-indent: 53.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Contrarrazões em ID 22469046, em que o embargado/apelado requer a negativa de provimento ao recurso e a manutenção da sentença. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Parecer do Ministério Público de ID 22468749, em que se manifesta pelo prosseguimento do feito, deixando de opinar acerca do mérito da demanda ao alegar ausência de hipótese de intervenção do órgão ministerial. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 2.25pt; margin-bottom: 0cm; margin-left: 0cm; text-align: justify; text-indent: 53.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Audiência de conciliação que se realizou com a presença das partes, restando infrutífera a tentativa de acordo, conforme termo de ID 22468757. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É o relatório. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> VOTO </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Inicialmente, pontuo que o juízo concedeu os benefícios da gratuidade judiciária aos recorrentes, motivo pelo qual mantenho a sua concessão e os dispense de comprovar o recolhimento do preparo, nos termos do art. 98, §1º, VIII, do CPC/2015, já que a gratuidade da justiça compreende os depósitos previstos em lei para interposição de recurso. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Antes de enfrentar o mérito recursal, passo à análise da preliminar suscitada em sede de razões recursais. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Os apelantes sustentam, em sede preliminar, a necessidade de suspensão da cobrança do crédito em razão da aplicação da Lei nº 14.166/2021 e do Decreto-Lei nº 11.796/2023. Todavia, tal alegação não merece prosperar. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Com efeito, o artigo 6º da Lei nº 14.166/2021 limitou-se a dispor acerca da suspensão de execuções relacionadas especificamente à atividade cacauieira, não abrangendo, portanto, contratos de financiamento destinados a outras atividades rurais. No caso em exame, a cédula de crédito rural objeto da demanda refere-se a atividades pecuárias, razão pela qual se mostra inaplicável a suspensão pretendida. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Ademais, ainda que se cogitasse pela incidência da referida norma,

Processo	0200292-76.2022.8.06.0134
	a própria lei fixou prazo determinado, restringindo a suspensão até 30 de dezembro de 2022, de modo que não subsiste qualquer efeito jurídico no presente momento processual. No que toca ao Decreto-Lei nº 11.796/2023, igualmente não há respaldo à pretensão recursal, uma vez que o referido diploma não estabeleceu qualquer determinação de suspensão da cobrança de créditos rurais, limitando-se a tratar de matérias distintas. Assim, inexistindo fundamento legal que ampare a tese dos apelantes, a preliminar deve ser rejeitada, prosseguindo-se no exame do mérito recursal. Os Embargos à Execução têm como objeto da discussão uma CÉDULA RURAL PIGNORATÍCIA E HIPOTECÁRIA Nº 40/00720-0, firmada em 16/06/2016, com vencimento final previsto para 28/05/2026, no valor à época de R\$ 102.510,00 (cento e dois mil e quinhentos e dez reais). Tendo em vista o inadimplemento das obrigações assumidas pelos Apelantes, tal operação está sendo cobrada por meio de ação de execução de título extrajudicial, autos de nº 0050100-05.2020.8.06.0134. Segundo o Banco, os devedores inadimpliram com o contrato, já que deixaram de pagar as parcelas devidas, restando infrutíferas as tentativas de negociação, desenvolvidas com o intuito de uma solução amistosa para a pendência. Pois bem. Pois bem. Da Cédula de Crédito Rural e da obrigação líquida, certa e exigível É certo que a Cédula de Crédito Rural consubstancia obrigação líquida, certa e exigível, nos termos do artigo 10 do Decreto-Lei nº 167/67, tanto em sua redação original quanto na alteração conferida pela legislação superveniente. Veja-se: Art. 10. A cédula de crédito rural é título civil, líquido e certo, exigível pela soma dêla constante ou do endosso, além dos juros, da comissão de fiscalização, se houver, e demais despesas que o credor fizer para segurança, regularidade e realização de seu direito creditório. (Redação original) Art. 10. A cédula de crédito rural é título civil, líquido e certo, transferível e de livre negociação, exigível pelo seu valor ou pelo de seu endosso, além dos juros, da comissão de fiscalização, se houver, e das demais despesas feitas pelo credor para a segurança, a regularidade e a realização de seu direito creditório. (Redação dada pela Medida Provisória nº 897, de 2019) Art. 10.0

Processo	0200292-76.2022.8.06.0134
	top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Art. 10. A cédula de crédito rural é título civil, líquido e certo, transferível e de livre negociação, exigível pelo seu valor ou pelo valor de seu endosso, além dos juros, da comissão de fiscalização, se houver, e das demais despesas feitas pelo credor para a segurança, a regularidade e a realização de seu direito creditório.&#160;&#160;(Redação dada pela Lei nº 13.986, de 2020 </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Nesse sentido, a jurisprudência do Superior Tribunal de Justiça é pacífica ao reconhecer que a Cédula de Crédito Rural Pignoratícia ostenta natureza de título executivo extrajudicial, apto, portanto, a aparelhar a execução. Confira-se: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> PROCESSUAL CIVIL. AGRAVO REGIMENTAL NO AGRAVO EM RECURSO ESPECIAL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. CÉDULA DE CRÉDITO RURAL PIGNORATÍCIA E HIPOTECÁRIA. EMITENTE. PESSOA FÍSICA. TERCEIRO GARANTIDOR. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 1. O STJ possui entendimento assente no sentido de que a melhor interpretação do art. 60 do DL 167/67 não inclui as cédulas de crédito rural no rol de nulidades das garantias, mas apenas as notas e duplicatas rurais. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 2. Agravo regimental a que se nega provimento (AgRg no AREsp 470.759/PR, Rel. Ministra MARIA ISABEL GALLOTTI, QUARTA TURMA, julgado em 04/08/2015, DJe 10/08/2015) (G.N) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> PROCESSO CIVIL. EXECUÇÃO DE TÍTULO EXECUTIVO EXTRAJUDICIAL. CÉDULA DE CRÉDITO RURAL PIGNORATÍCIA. EMBARGOS DO DEVEDOR. ALEGAÇÃO DE CLÁUSULAS CONTRATUAIS ABUSIVAS. EXCESSO DE EXECUÇÃO. NECESSIDADE DE DECLARAÇÃO NA PETIÇÃO INICIAL DO VALOR QUE SE ENTENDE CORRETO E APRESENTAÇÃO DA CORRESPONDENTE MEMÓRIA DO CÁLCULO. ÔNUS LEGAL IMPOSTO AO DEVEDOR. ARTIGO ANALISADO: 739-A, § 5º, CPC. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 1. Embargos do devedor opostos em 16/09/2011, do qual foi extraído o presente recurso especial, concluso ao Gabinete em 20/02/2013. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 2. Discute-se a dispensabilidade, em sede de embargos do devedor com pedido de revisão contratual, da indicação do valor devido e apresentação da respectiva memória do cálculo. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 3. O pedido de revisão contratual, deduzido em sede de embargos do devedor, tem natureza mista de matéria ampla de defesa (art. 745, V, CPC) e de excesso de execução (at. 745, III, CPC), com preponderância, entretanto, desta última, dada sua inevitável repercussão no valor do débito. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 4. Assim, incumbe ao devedor declarar na petição inicial o valor que entende correto e apresentar a respectiva memória de cálculo, por imposição do art. 739-A, § 5º, CPC. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 5. Divisão de responsabilidades entre as partes, decorrente da tônica legislativa que pautou a

Processo	0200292-76.2022.8.06.0134
	reforma do processo de execução, segundo a qual, de forma paritária, equilibram-se e equanamente distribuem-se os ônus processuais entre credor e devedor. 6. Recurso especial conhecido em parte e, nesta parte, provido. (REsp 1365596/RS, Rel. Ministra NANCY ANDRIGHI, TERCEIRA TURMA, julgado em 10/09/2013, DJe 23/09/2013) (G.N) 4. É viável a execução de parcelas dos juros vencidas decorrentes de dívida constante de cédula de crédito rural pignoratícia e objeto de securitização (Lei n. 9.138/95) mediante aditivo contratual, por se traduzirem em acessórios que, igualmente com o principal, constituem obrigação líquida, certa e exigível, de acordo com as disposições dos arts. 10 e 13 do Decreto-lei n. 167/67. (...) (REsp 730.687/MT, Rel. Ministro JOÃO OTÁVIO DE NORONHA, QUARTA TURMA, julgado em 02/02/2010, DJe 11/02/2010) (G.N) Assim, não assiste razão aos embargantes/apelantes ao sustentar a inexistência do título, uma vez que a obrigação nele consubstanciada é plenamente líquida, sendo suficiente para embasar a presente execução. - Da limitação dos juros Sobre o tema, “Conquanto na regência da Lei n.º 4.595/64 não estejam os juros bancários limitados a 12% ao ano, as notas de crédito rural, comercial e industrial acham-se submetidas a regramento próprio (Lei nº 6.840/80 e Decreto-Lei 413/69) que conferem ao Conselho Monetário Nacional o dever de fixar os juros a serem praticados. Diante da omissão desse órgão governamental, incide a limitação de 12% ao ano, prevista no Decreto n.º 22.626/33 (Lei da Usura). [...].” (AgRg nos EDcl no Ag 1106028/MT, Rel. Ministro SIDNEI BENETI, TERCEIRA TURMA, julgado em 22/11/2011, DJe 09/12/2011). No mesmo sentido:

Processo	0200292-76.2022.8.06.0134
	margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> AGRAVO INTERNO NO AGRAVO (ART. 1.042 DO CPC/15) - AÇÃO CONSTITUTIVA NEGATIVA DE NULIDADE DE CLÁUSULAS C/C DECLARATÓRIA E MANDAMENTAL DE PRORROGAÇÃO DE DÍVIDA - CÉDULAS DE CRÉDITO RURAL - LIMITAÇÃO DE JUROS REMUNERATÓRIOS - DECISÃO MONOCRÁTICA DA PRESIDÊNCIA DO STJ QUE NEGOU PROVIMENTO AO RECLAMO - INSURGÊNCIA RECURSAL DO RÉU. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 1. As questões postas à discussão foram dirimidas pelo Tribunal de origem de forma suficientemente ampla, fundamentada e sem omissões.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Consoante entendimento desta Corte, não importa negativa de prestação jurisdicional o acórdão que adota para a resolução da causa fundamentação suficiente, porém diversa da pretendida pelo recorrente, decidindo de modo integral a controvérsia posta. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 2. As cédulas de crédito rural, comercial e industrial acham-se submetidas a regramento próprio (Lei nº 6.840/80 e Decreto-Lei nº 413/69) que confere ao Conselho Monetário Nacional o dever de fixar os juros a serem praticados e que, diante da omissão desse órgão governamental, incide a limitação de 12% ao ano, prevista no Decreto nº 22.626/33 (Lei da Usura). Precedentes. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 3. O posicionamento adotado na decisão recorrida coincide com a orientação desta Corte Superior, portanto é inafastável a aplicação do óbice inserto na Súmula 83 do STJ.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 4. Agravo interno desprovido. (AglInt no AREsp 1052751/PR, Rel. Ministro MARCO BUZZI, QUARTA TURMA, julgado em 17/04/2018, DJe 26/04/2018) (G.N.) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> CIVIL E PROCESSUAL CIVIL. RECURSO ESPECIAL. EMBARGOS À EXECUÇÃO. EMBARGOS DE DECLARAÇÃO. OMISSÃO, CONTRADIÇÃO, OBSCURIDADE OU ERRO DO ACÓRDÃO EMBARGADO. AUSÊNCIA. VIOLAÇÃO DO ART. 489, § 1º, DO CPC/2015. NÃO OCORRÊNCIA. CÉDULA DE CRÉDITO RURAL. LIMITAÇÃO DOS JUROS REMUNERATÓRIOS. MANUAL DE CRÉDITO RURAL. OMISSÃO DO CONSELHO MONETÁRIO NACIONAL. OCORRÊNCIA. DECRETO Nº 22.626/1933. INCIDÊNCIA. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 1. Embargos à execução opostos em 30/10/2018, dos quais foi extraído o presente recurso especial, interposto em 22/05/2020 e concluso ao gabinete em 30/04/2021. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 2. O propósito recursal é decidir se, na hipótese de cédula de crédito rural, as taxas de juros remuneratórios devem obedecer ao limite de 12% ao ano, previsto no Decreto nº 22.626/1933, mesmo após a edição da Resolução nº 4.234/2013 do Conselho Monetário Nacional. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> 3. Não há ofensa aos arts. 489 e 1.022 do CPC/2015 quando o Tribunal de origem examina de forma fundamentada, a questão submetida à apreciação judicial na medida necessária para o deslinde da controvérsia, ainda que em sentido contrário à pretensão da parte. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Precedentes. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;">

Processo	0200292-76.2022.8.06.0134
	serif;">4. Conforme a jurisprudência pacífica desta Corte, as cédulas de crédito rural, industrial e comercial se submetem a regramento próprio, que confere ao Conselho Monetário Nacional o dever de fixar os juros a serem praticados. Não havendo atuação do referido órgão, adota-se a limitação de 12% ao ano prevista no Decreto nº 22.626/1933. Precedentes. 5. O art. 5º do Decreto-Lei nº 167/1967, ao determinar que as taxas de juros remuneratórios devem obedecer ao limite fixado pelo CMN, sem ressalvas quanto à possibilidade de livre pactuação, tem por objetivo evitar a fixação de taxas abusivas por parte das instituições financeiras e, simultaneamente, permitir certa flexibilidade, uma vez que o limite pode ser constantemente alterado pelo CMN. 6. O CMN, por meio do item 1 do MCR 6-3, autorizou que as partes, em cédulas de crédito rural com recursos não controlados, pactuem livremente as taxas de juros, mas permaneceu omissa quanto à fixação de um limite, como determina o art. 5º do Decreto-Lei nº 167/1967, de modo que, não havendo limite estabelecido pelo CMN, as taxas acordadas entre as partes não podem ultrapassar o limite de 12% ao ano previsto no Decreto nº 22.626/1933. 7. Recurso especial conhecido e não provido. (REsp n. 1.940.292/PR, relatora Ministra Nancy Andrighi, Terceira Turma, julgado em 3/5/2022, DJe de 27/5/2022.) (G.N.) Na hipótese dos autos, do exame do contrato (ID 22469042), vê-se que a taxa de juros contratada não ultrapassou a limitação de 12% a.a. prevista no Decreto nº 22.626/1933, estando dentro da legalidade. Ressalte-se, por oportuno, que a taxa de juros aplicada é 5,50% ao ano. Da capitalização de juros Neste tocante, conforme a Súmula 93 do STJ, “a legislação sobre cédulas de crédito rural, comercial e Industrial admite o pacto de capitalização de juros.” Sobre o tema: Sobre o tema: AGRAVO INTERNO. AGRAVO EM RECURSO ESPECIAL. PROCESSUAL CIVIL. EXECUÇÃO. CÉDULA DE CRÉDITO INDUSTRIAL. CLÁUSULAS ILEGAIS. NULIDADE DO TÍTULO. INEXISTÊNCIA. CAPITALIZAÇÃO MENSAL DOS JUROS. POSSIBILIDADE. SÚMULA N. 93/STJ. 1. A liquidez do título não fica prejudicada pela alegação de cobrança abusiva de determinados encargos, devendo os eventuais excessos ser decotados do montante exequendo. Precedentes.

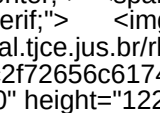
Processo	0200292-76.2022.8.06.0134
	OCORRÊNCIA. NULIDADE. JUROS MORATÓRIOS. TERMO INICIAL. FUNDAMENTAÇÃO DEFICIENTE. SÚMULA N. 284 DO STF. JUROS REMUNERATÓRIOS. DL N. 167/1967. CAPITALIZAÇÃO. POSSIBILIDADE. CORREÇÃO MONETÁRIA. CABIMENTO. MULTA MORATÓRIA. SÚMULA N. 285/STJ. AGRAVO INTERNO PROVIDO. AGRAVO EM RECURSO ESPECIAL DESPROVIDO. 1. Inexiste afronta aos arts. 489 e 1.022 do CPC/2015 quando o acórdão recorrido pronuncia-se, de forma clara e suficiente, acerca das questões suscitadas nos autos, manifestando-se sobre todos os argumentos que, em tese, poderiam infirmar a conclusão adotada pelo Juízo. 2. É inadmissível o recurso especial, se a deficiência na fundamentação não permitir a exata compreensão da controvérsia, a teor da Súmula n. 284/STF. 3. "As cédulas de crédito rural, industrial e comercial submetem-se a regramento próprio, que confere ao Conselho Monetário Nacional o dever de fixar os juros a serem praticados. Não havendo atuação do referido órgão, adota-se a limitação de 12% ao ano prevista no Decreto n. 22.626/1933" (AgRg no REsp 1313569/MS, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 06/10/2015, DJe 19/10/2015). 4. "Possibilidade de cobrança de capitalização de juros, desde que pactuada, tendo em vista que o art. 5º do Decreto-Lei n. 167/67 autoriza a cobrança do encargo nas cédulas de crédito rural, industrial e comercial" (AgInt no REsp 1365244/MG, Rel. Ministro LUIS FELIPE SALOMÃO, QUARTA TURMA, julgado em 23/02/2021, DJe 02/03/2021). 5. "A correção monetária não constitui um plus, representando tão-somente a recomposição do valor da moeda, independentemente a sua incidência de ajuste entre os contratantes" (AgRg no REsp 1108049/GO, Rel. Ministro PAULO DE TARSO SANSEVERINO, TERCEIRA TURMA, julgado em 14/06/2011, DJe 27/06/2011). 6. Nos contratos bancários posteriores ao CDC deve incidir a multa moratória nele prevista. Súmula n. 285/STJ. 7. Agravo interno a que se dá provimento para reconsiderar a decisão da Presidência desta Corte e negar provimento ao agravo nos próprios autos. (AgInt no AREsp 1752240/GO, Rel. Ministro ANTÔNIO CARLOS FERREIRA, QUARTA TURMA, julgado em 03/05/2021, DJe 06/05/2021) Na hipótese vertente, analisando os encargos financeiros incidentes na cédula de crédito rural (ID 22469042), observa-se que houve pactuação expressa da capitalização mensal dos juros. Do seguro penhor

Processo	0200292-76.2022.8.06.0134
	arial, helvetica, sans-serif;">No que se refere ao seguro incidente sobre os bens dados em garantia (seguro penhor), a Lei nº 4.829/1965, que institucionaliza o crédito rural, estabelece de forma expressa que a validade da contratação desse produto depende da prévia disponibilização ao contratante de opções de seguradoras, assegurando-lhe a liberdade de escolha. Das garantias do crédito rural Art. 25. Poderão constituir garantia dos empréstimos rurais, de conformidade com a natureza da operação creditícia, em causa: (...) § 1º A instituição financeira que exigir a contratação de apólice de seguro rural como garantia para a concessão de crédito rural fica obrigada a oferecer ao financiado a escolha entre, no mínimo, duas apólices de diferentes seguradoras, sendo que pelo menos uma delas não poderá ser de empresa controlada, coligada ou pertencente ao mesmo conglomerado econômico-financeiro da credora. (Incluído pela Lei nº 13.195, de 2015) § 2º Caso o mutuário não deseje contratar uma das apólices oferecidas pela instituição financeira, esta ficará obrigada a aceitar apólice que o mutuário tenha contratado com outra seguradora habilitada a operar com o seguro rural. (Incluído pela Lei nº 13.195, de 2015) § 3º A instituição financeira deverá fazer constar dos contratos de financiamento ou das cédulas de crédito, ainda que na forma de anexo, comprovação de que foi oferecida ao mutuário mais de uma opção de apólice de seguradoras diferentes e que houve expressa adesão do mutuário a uma das apólices oferecidas ou, se for o caso, que ele optou por apólice contratada com outra seguradora, na forma estatuída nos §§ 1o e 2o deste artigo". (Incluído pela Lei nº 13.195, de 2015) ¶160 No caso concreto, verifica-se que o seguro penhor foi apenas previsto de maneira genérica na Cédula de Crédito Rural (SEGURO DOS BENS EM GARANTIA: obrigo-me(amo-nos) a segurar os bens constitutivos da garantia, com cláusula irrevogável e irretratável, em favor do BANCO DO BRASIL S.A., até o final liquidação da dívida) além de cobrado nos cálculos iniciais (ID 105131187 – autos do processo nº 0050100-05.2020.8.06.0134). Todavia, não foi acostada aos autos a respectiva apólice, tampouco comprovado que foi oportunizado ao embargante o direito de optar pela seguradora, circunstância que evidencia a ilegalidade da exigência. Assim, embora não seja ilegal a exigência de contratação de seguro sobre os bens dados em garantia, é certo que o mutuário não pode ser compelido a contratar diretamente com a instituição financeira mutuante ou com terceiro por ela indicado. Para a validade da avença, impõe-se que o contrato contenha de forma expressa e clara todos os termos pertinentes ao seguro, não se admitindo disposição meramente genérica ou obscura acerca do referido encargo, bem como seja facultado ao mutuário a escolha da seguradora. Sobre o tema, há elucidativo precedente do Superior Tribunal de Justiça, que reforça a

Processo	0200292-76.2022.8.06.0134
	imprescindibilidade da observância dos requisitos legais para a cobrança do seguro em contratos de mútuo rural. Observe-se: 1. A controvérsia posta no presente recurso especial centra-se em saber se, em execução lastreada em cédula de crédito rural pignoratícia e hipotecária, afigura-se exigível a cobrança de valores atinentes à contratação de seguro de penhor rural, sem que a instituição financeira mutuante tenha observado as exigências legais estabelecidas nos §§ 1º, 2º e 3º do art. 25 da Lei n. 4.829/1965. PRÁTICA ABUSIVA, QUE OBSTA A COBRANÇA RELATIVA AOS PRÊMIOS DA APÓLICE DO SEGURO CONTRATADA. RECURSO ESPECIAL PROVIDO. 2. O seguro rural obrigatório para a concessão de crédito rural, introduzido pelo Decreto-Lei n. 73/1966 (que dispôs sobre o Sistema Nacional de Seguros Privados e regula as operações de seguros e resseguros), o qual estendeu, ainda, a obrigatoriedade para as instituições financeiras integrantes do Sistema Nacional de Crédito Rural (arts. 18 e 20, i, respectivamente), mostrou-se de difícil implementação na prática, razão pela qual foi revogado pela Lei Complementar n. 126 de 2007. A detida regulação, a disseminação do seguro rural facultativo - conforme estabelecido pelas leis que se seguiram - e, principalmente, a previsão de custeio suplementar da cobertura securitária por diversos agentes econômicos e pelo Estado (subvenção econômica ao prêmio do seguro rural) afiguraram-se de extrema relevância para a implementação do seguro rural no País. 3. Além de não se tratar propriamente de seguro obrigatório, o seguro rural não se presta a atender exclusivamente aos interesses do produtor rural, como assentado pelo Tribunal de origem. Também garante ao agente financiador o retorno do capital emprestado, com os inerentes lucros da operação creditícia, pela preservação do bem dado em garantia, o que, por evidente, encerra indiscutível vantagem a seu favor. Mais do que isso, o seguro rural - concebido como importante instrumento de política agrícola, de assento constitucional (art. 187, V, da CF/1988), destina-se a reduzir os complexos e particulares riscos da atividade rural, absolutamente relevante para a coesão e higidez do sistema financeiro como um todo. 4. No caso do seguro rural, a lei de regência é peremptória em determinar que o agente financiador garanta o direito de escolha do produtor quanto à seguradora, obrigando-o a oferecer ao financiado, no mínimo, duas apólices de diferentes seguradoras, sendo que pelo menos uma delas não poderá ser de empresa controlada, coligada ou pertencente ao mesmo conglomerado econômico-financeiro da credora. Exige-se, inclusive, que a instituição financeira faça prova quanto ao cumprimento desta exigência legal. A preservação do direito de escolha quanto à seguradora permite ao produtor rural reduzir os custos de sua produção (com o pagamento de prêmio em valores menores, segundo a

Processo	0200292-76.2022.8.06.0134
	oferta de mercado), impedindo, por outro lado, que a casa bancária condicione a concessão do crédito à adesão de apólice de seguro, por preços unilateralmente impostos. 4.1 Como o agente financiador também é diretamente beneficiado pela instituição da garantia em comento, não há nenhuma razão idônea que justifique a inobservância das providências legais que lhe são impostas, a fim de preservar o direito de escolha do produtor rural na contratação da seguradora, em proceder que, na verdade, reverte em seu próprio benefício (já que redonda na prestação de mais um serviço bancário, segundo valores impostos unilateralmente), o que não pode ser admitido pelo Direito. 5. De acordo com a jurisprudência do Superior Tribunal de Justiça, tanto nos seguros obrigatórios, como naqueles de contratação facultativa, destinados a assegurar acessoriamente o objeto de um contrato bancário de financiamento, o mutuário/consumidor não está obrigado a contratar o seguro com a instituição financeira mutuante ou com seguradora pertencente ao mesmo grupo econômico ou por ela indicada. Ou seja, mesmo nos casos dos seguros obrigatórios - do que não se cogita a hipótese dos autos -, o que a lei estabelece como compulsória é a estipulação do seguro, e não uma contratação obrigatória desse seguro com o próprio agente financeiro ou por seguradora pertencente ao mesmo grupo ou por este indicada, o que constitui, em si, prática comercial abusiva e, por isso, ilícita, nos termos do art. 39, I, do Código de Defesa do Consumidor. 6. Na hipótese dos autos, as instâncias ordinárias foram uníssonas em assentar que o recorrido não observou as exigências legais estabelecidas nos §§ 1º, 2º e 3º do art. 25 da Lei n. 4.829/1965, sem, todavia, atribuir nenhuma consequência jurídica ao descumprimento de norma cogente, seja quanto à nulidade do ato, seja quanto à sanção ao agente violador, como se se tratasse de norma imperfeita. Nesse quadro, a contratação do seguro penhor rural apresenta-se ilícita, a inviabilizar a cobrança dos correlatos prêmios. 7. Recurso especial provido. (REsp n. 1.874.910/DF, relator Ministro Marco Aurélio Bellizze, Terceira Turma, julgado em 23/4/2024, DJe de 25/4/2024.) Da alegação de cobrança de IOF diluída nas prestações - Da alegação de cobrança de IOF diluída nas prestações No que concerne à alegação dos apelantes de que, no memorial de cálculo apresentado pela parte exequente, haveria cobrança abusiva do IOF em razão de sua diluição nas parcelas, tal argumentação não merece prosperar. Isso porque a legalidade da cobrança do referido imposto de forma diluída encontra-se pacificada pela jurisprudência, em especial no âmbito do Superior Tribunal de Justiça, que, ao julgar o REsp nº 1.255.573/RS, submetido ao rito do artigo 543-C do Código de Processo Civil, firmou entendimento de que é lícito às partes convencionar o pagamento do Imposto sobre Operações Financeiras – IOF de maneira diluída, integrando-o ao financiamento acessório e sujeitando-o aos mesmos encargos previstos no mútuo principal.

Processo	0200292-76.2022.8.06.0134
	style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> O mencionado julgado restou assim ementado: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> CIVIL E PROCESSUAL CIVIL. RECURSO ESPECIAL. CONTRATO DE FINANCIAMENTO COM GARANTIA DE ALIENAÇÃO FIDUCIÁRIA. COMISSÃO DE PERMANÊNCIA. COMPENSAÇÃO/REPETIÇÃO SIMPLES DO INDÉBITO. RECURSOS REPETITIVOS. TARIFAS BANCÁRIAS. TAC E TEC. EXPRESSA PREVISÃO CONTRATUAL. COBRANÇA. LEGITIMIDADE. PRECEDENTES. FINANCIAMENTO DO IOF. POSSIBILIDADE. [...] 9. É lícito aos contratantes convencionar o pagamento do Imposto sobre Operações Financeiras e de Crédito (IOF) por meio de financiamento acessório ao mútuo principal, sujeitando-o aos mesmos encargos contratuais. 10. Teses para os efeitos do art. 543-C do CPC: [...] - 3ª Tese: Podem as partes convencionar o pagamento do Imposto sobre Operações Financeiras e de Crédito (IOF) por meio de financiamento acessório ao mútuo principal, sujeitando-o aos mesmos encargos contratuais. [...] (REsp 1255573/RS, Rel. Ministra MARIA ISABEL GALLOTTI, SEGUNDA SEÇÃO, julgado em 28/08/2013, DJe 24/10/2013) (G.N.) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Assim, reputo válida pois a cobrança do IOF, eis que expressamente previsto no contrato celebrado entre as partes. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Diante do exposto, firme nas razões acima delineadas, conheço do recurso para, no mérito, dar-lhe parcial provimento, apenas para reconhecer a abusividade da cláusula contratual que prevê a cobrança do seguro penhor, determinando a exclusão dos valores cobrados a este título, mantendo a sentença recorrida em seus demais termos. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Há de se destacar que a instituição financeira, que é a parte apelada/embargada, sucumbiu em parte mínima dos pedidos, razão pela qual os embargantes deverão arcar integralmente com as custas processuais e honorários advocatícios, que foram fixados em sentença no importe de 10% (dez por cento) sobre o valor da causa, com fulcro no artigo 85, §2º, do CPC. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Por ter o recurso recebido parcial provimento, deixo de majorar os honorários advocatícios, a teor do art. 85, §11, CPC/2015, nos termos da jurisprudência consolidada (STJ – Tema Repetitivo 1059 - A majoração dos honorários de sucumbência prevista no art. 85, § 11, do CPC pressupõe que o recurso tenha sido integralmente desprovido ou não conhecido pelo tribunal, monocraticamente ou pelo órgão colegiado competente. Não se aplica o art. 85, § 11, do CPC em caso de provimento total ou parcial do recurso, ainda que mínima a alteração do resultado do julgamento ou limitada a consectários da condenação). </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Ficam as partes, desde logo, advertidas de que a oposição de embargos de declaração, com nítido intuito protelatório, ensejará a aplicação da multa prevista no art. 1.026, §§2º e 3º,&#160;do&#160;CPC/2015. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É como voto. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;">

Processo	0633091-53.2024.8.06.0000
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0633091-53.2024.8.06.0000 - AGRAVO DE INSTRUMENTO (202) AGRAVANTE: BANCO DO BRASIL SA AGRAVADO: CARLOS ALBERTO MENDONCA OLIVEIRA EMENTA: EMBARGOS DE DECLARAÇÃO EM AGRAVO DE INSTRUMENTO. EXPURGOS INFLACIONÁRIOS. PLANO VERÃO. CUMPRIMENTO DE SENTENÇA PROFERIDA EM AÇÃO CIVIL PÚBLICA (AÇÃO CIVIL PÚBLICA – IDEC X BANCO DO BRASIL). PRESCRIÇÃO. CAUTELAR DE PROTESTO AJUIZADA PELO MINISTÉRIO PÚBLICO. LEGITIMIDADE. INTERRUÇÃO DA PRESCRIÇÃO. OMISSÃO VERIFICADA QUANTO AO EXAME DOS ARTS. 202 E 204 DO CÓDIGO CIVIL. OMISSÃO SUPRIDA SEM EFEITOS INFRINGENTES. CONTA POUPANÇA COM ANIVERSÁRIO NA SEGUNDA QUINZENA DO MÊS. QUESTÃO NÃO ANALISADA PELO JUÍZO A QUO. IMPOSSIBILIDADE DE SUPRESSÃO DE INSTÂNCIA. INTUITO DE PREQUESTIONAMENTO. INCIDÊNCIA DO ARTIGO 1.025 DO CPC. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO MANTIDO. 1. O embargante defende que o acórdão é omisso quanto ao enfrentamento dos artigos 202 e 204 do Código Civil e da questão preliminar de ordem pública – da conta poupança com aniversário na segunda quinzena do mês – impossibilidade jurídica do reconhecimento de direito – falta de interesse de agir. 2. À luz do art. 204 do CC, a interrupção é ato pessoal, beneficiando apenas aquele que a promoveu, salvo as exceções constantes dos parágrafos do referido artigo. E com base nesse dispositivo legal, tem-se entendimento jurisprudencial no sentido de que o ajuizamento da Ação Cautelar pelo Ministério Público do Distrito Federal e Territórios, como substituto processual, não tem o condão de interromper o prazo prescricional em relação aos poupadores em geral, para a propositura do cumprimento individual da sentença prolatada na referida Ação Civil Pública (Processo nº. 1998.01.1.016798-9). 3. Neste tocante, conquanto não haja homogeneidade de entendimento, este Relator corrobora do entendimento da Terceira Turma do Superior Tribunal de Justiça e das 2ª e 3ª Câmaras Direito Privado desta Corte de que “O Ministério Público possui legitimidade para o ajuizamento da medida cautelar de protesto interruptivo do prazo prescricional, que visa a garantia dos direitos dos diversos poupadores lesados pela conduta de instituição financeira. Precedentes. (AgInt no REsp 1789034/RS, Rel. Ministra NANCY ANDRIGHI, TERCEIRA TURMA, julgado em 23/09/2019, DJe 26/09/2019).” Mais precedentes do STJ e do TJCE. 4. A medida cautelar pelo Órgão Ministerial interrompeu o prazo prescricional supracitado, na forma do artigo 202, inciso II, do Código Civil. 5. A matéria considera-se automaticamente prequestionada, por intermédio da abordagem objetiva e fundamentada a respeito das questões relevantes para a solução da presente querela, a teor do que determina o art. 1.025 do CPC. Precedentes do TJCE. 6. Embargos conhecidos e parcialmente providos sem efeitos infringentes. Acórdão mantido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, por unanimidade, em conhecer dos Embargos de Declaração e dar-lhes parcial provimento sem efeitos infringentes, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador

Processo	0633091-53.2024.8.06.0000
	size: small;">
 <p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator <p>
 </p><p style="text-align: center;"> RELATÓRIO&#160; </p><p>
 </p><p style="text-align: justify;"> Trata-se de Embargos de Declaração opostos pelo Banco do Brasil S/A em face do acórdão de ID 22487073, de minha Relatoria, proferido por esta Colenda Primeira Câmara de Direito Privado, nos autos do Agravo de Instrumento interposto pelo ora embargante, assim ementado: </p><p style="text-align: justify; padding-left: 120px;"> “EMENTA: DIREITO PROCESSUAL. AGRAVO DE INSTRUMENTO. CUMPRIMENTO DE SENTENÇA COLETIVA. CORREÇÃO DOS EXPURGOS INFLACIONÁRIOS DA CADERNETA DE POUPANÇA (PLANO VERÃO, DE 1989). HOMOLOGAÇÃO DOS CÁLCULOS. IRRESIGNAÇÃO DO BANCO DO BRASIL S/A. PRESCRIÇÃO. INOCORRÊNCIA. EXCESSO DE EXECUÇÃO. NÃO CONFIGURAÇÃO. APLICAÇÃO DOS ÍNDICES ESTABELECIDOS NA SENTENÇA COLETIVA. JUROS A PARTIR DA CITAÇÃO DA AÇÃO COLETIVA. INCIDÊNCIA DOS EXPURGOS INFLACIONÁRIOS POSTERIORES A TÍTULO DE CORREÇÃO MONETÁRIA PLENA. RECURSO CONHECIDO E NÃO PROVIDO.” </p><p style="text-align: justify;"> Em suas razões recursais, o embargante defende omissão no acórdão em face da ausência da análise da aplicação dos artigos 202 e 204 do Código Civil. </p><p style="text-align: justify;"> Prequestiona todos os artigos suscitados, em especial à violação aos artigos 202 e 204 do Código Civil de 2002; Art. 489, VI §1; Art. 927, IV; Art. 1.022, II; Art. 485; e Art. 319, todos do Código de Processo Civil </p><p style="text-align: justify;"> Pede sejam estes Embargos Declaratórios conhecidos e providos, para o fim de que, suprimindo a omissão supra. </p><p style="text-align: justify;"> Seguiram os autos conclusos a esta relatoria. </p><p style="text-align: justify;"> É o relatório. </p><p style="text-align: center;"> V O T O </p><p> Presentes os pressupostos de admissibilidade, conheço do recurso. </p><p> Como é cediço, destinam-se os Embargos de Declaração a suprir omissão, a harmonizar pontos contraditórios ou a esclarecer obscuridades, objetivando, assim, afastar óbices que porventura se antepõemham, dificultem ou inviabilizem a execução de decisão, como também para corrigir erro material, nos termos do art. 1.022, do Código de Processo Civil, in verbis: </p><p style="padding-left: 120px;"> Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para: </p><p style="padding-left: 120px;"> I - esclarecer obscuridade ou eliminar contradição; </p><p style="padding-left: 120px;"> II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de </p><p style="padding-left: 120px;"> ofício ou a requerimento; </p><p style="padding-left: 120px;"> III - corrigir erro material. </p><p> Como acima relatado, o embargante defende que o acórdão é omisso quanto ao enfrentamento dos artigos 202 e 204 do Código Civil. </p><p> Razão lhe assiste. </p><p> Passo ao exame: </p><p style="text-align: center;">

Processo	0633091-53.2024.8.06.0000
	style="font-family: arial, helvetica, sans-serif;"/> Da prescrição </p><p style="text-align: justify;"/> No tocante ao enfrentamento dos arts. 202 e 204 do Código Civil, passo ao exame. </p><p style="text-align: justify;"/> Eis a redação de ambos: </p><p style="padding-left: 120px; text- align: justify;"/> "Art. 202. A interrupção da prescrição, que somente poderá ocorrer uma vez, dar-se-á: </p><p style="padding-left: 120px; text-align: justify;"/> I - por despacho do juiz, mesmo incompetente, que ordenar a citação, se o interessado a promover no prazo e na forma da lei processual; </p><p style="padding- left: 120px; text-align: justify;"/> II - por protesto, nas condições do inciso antecedente; </p><p style="padding-left: 120px; text-align: justify;"/> III - por protesto cambial; </p><p style="padding-left: 120px; text-align: justify;"/> IV - pela apresentação do título de crédito em juízo de inventário ou em concurso de credores; </p><p style="padding-left: 120px; text-align: justify;"/> V - por qualquer ato judicial que constitua em mora o devedor; </p><p style="padding-left: 120px; text-align: justify;"/> VI - por qualquer ato inequívoco, ainda que extrajudicial, que importe </p><p style="padding-left: 120px; text-align: justify;"/> reconhecimento do direito pelo devedor. </p><p style="padding- left: 120px; text-align: justify;"/> Parágrafo único A prescrição interrompida recomeça a correr da data do ato que a interrompeu, ou do último ato do processo para a interromper. . </p><p style="padding-left: 120px; text-align: justify;"/> Art. 204. A interrupção da prescrição por um credor não aproveita aos outros; semelhantemente, a interrupção operada contra o co-devedor, ou seu herdeiro, não prejudica aos demais coobrigados. </p><p style="padding-left: 120px; text-align: justify;"/> § 1o.A interrupção por um dos credores solidários aproveita aos outros; assim como a interrupção efetuada contra o devedor solidário envolve os demais e seus herdeiros. </p><p style="padding-left: 120px; text-align: justify;"/> § 2oA interrupção operada contra um dos herdeiros do devedor solidário não prejudica os outros herdeiros ou devedores, senão quando se trate de obrigações e direitos indivisíveis. </p><p style="padding-left: 120px; text-align: justify;"/> § 3oA interrupção produzida contra o principal devedor prejudica o fiador. </p><p style="padding-left: 120px; text-align: justify;"/>
 </p><p style="text-align: justify;"/> Assim, à luz do artigo 204 do Código Civil, a interrupção é ato pessoal, beneficiando apenas aquele que a promoveu, salvo as exceções constantes dos parágrafos do referido artigo. </p><p style="text-align: justify;"/> E com base nesse dispositivo legal, tem-se entendimento jurisprudencial no sentido de que o ajuizamento da Ação Cautelar pelo Ministério Público do Distrito Federal e Territórios, como substituto processual, não tem o condão de interromper o prazo prescricional em relação aos poupadores em geral, para a propositura do cumprimento individual da sentença prolatada na referida Ação Civil Pública (Processo nº. 1998.01.1.016798-9). </p><p style="text-align: justify;"/> Conforme assinalado no acórdão embargado, não desconheço que o tema não tem homogeneidade de entendimento no Superior Tribunal de Justiça, vez que a Terceira Turma tem assentado que a medida cautelar de protesto apresentada pelo Ministério Público interrompe o prazo prescricional para o ajuizamento da execução individual, enquanto a Quarta Turma tem se posicionado pela impossibilidade de interrupção do prazo prescricional. </p><p style="text-align: justify;"/> Contudo, compartilho do entendimento da Terceira Turma do Superior Tribunal de Justiça e das 2ª e 3.ª Câmaras Direito Privado desta Corte de que "O Ministério Público possui legitimidade para o ajuizamento da medida cautelar de protesto interruptivo do prazo prescricional, que visa a garantia dos direitos dos diversos poupadores lesados pela conduta de instituição financeira".

Processo	0633091-53.2024.8.06.0000
	Precedentes. (AgInt no REsp 1789034/RS, Rel. Ministra NANCY ANDRIGHI, TERCEIRA TURMA, julgado em 23/09/2019, DJe 26/09/2019). Neste sentido: PROCESSUAL CIVIL. AGRAVO INTERNO EM RECURSO ESPECIAL. RECURSO MANEJADO SOB A ÉGIDE DO NCPC. AÇÃO COLETIVA. EXPURGOS INFLACIONÁRIOS. CADERNETA DE POUPANÇA. CUMPRIMENTO DE SENTENÇA. PRESCRIÇÃO. AJUIZAMENTO DE AÇÃO CAUTELAR PROTESTO. MINISTÉRIO PÚBLICO. LEGITIMIDADE. INTERRUÇÃO. OCORRÊNCIA. PRECEDENTES. RECURSO PROTETÓRIO. INCIDÊNCIA DA MULTA DO ART. 1.021, § 4º, DO NCPC. AGRAVO INTERNO NÃO PROVIDO, COM IMPOSIÇÃO DE MULTA. 1. Aplica-se o NCPC a este julgamento ante os termos do Enunciado Administrativo nº 3, aprovado pelo Plenário do STJ na sessão de 9/3/2016: Aos recursos interpostos com fundamento no CPC/2015 (relativos a decisões publicadas a partir de 18 de março de 2016) serão exigidos os requisitos de admissibilidade recursal na forma do novo CPC. 2. O Ministério Público possui legitimidade para a propositura de ação cautelar de protesto, visando a interrupção do prazo prescricional para o ajuizamento da execução individual de sentença coletiva. Precedentes. 3. Em virtude do não provimento do presente recurso, e da anterior advertência em relação a aplicabilidade do NCPC, incide ao caso a multa prevista no art. 1.021, § 4º, do NCPC, no percentual de 3% sobre o valor atualizado da causa, com observância da gratuidade da justiça. 4. Agravo interno não provido, com imposição de multa. (AgInt no REsp 1710202/DF, Rel. Ministro MOURA RIBEIRO, TERCEIRA TURMA, julgado em 19/08/2019, DJe 21/08/2019) AGRAVO INTERNO NO RECURSO ESPECIAL. EXPURGOS INFLACIONÁRIOS. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA PROFERIDA EM AÇÃO CIVIL PÚBLICA. LEGITIMIDADE DO MINISTÉRIO PÚBLICO PARA AJUIZAR AÇÃO CAUTELAR DE PROTESTO. DEFESA DE DIREITOS INDIVIDUAIS HOMOGÊNEOS DOS POUPADORES. RECONHECIMENTO DA INTERRUÇÃO DO PRAZO PRESCRICIONAL. ADEQUAÇÃO DA DECISÃO AGRAVADA. AGRAVO INTERNO DESPROVIDO. (AgInt nos EDcl no REsp 1746660/RS, Rel. Ministro PAULO DE TARSO SANSEVERINO, TERCEIRA TURMA, julgado em 23/09/2019, DJe 25/09/2019) PROCESSUAL CIVIL. AGRAVO INTERNO EM RECURSO ESPECIAL. RECURSO MANEJADO SOB A ÉGIDE DO NCPC. AÇÃO COLETIVA. EXPURGOS INFLACIONÁRIOS. CADERNETA DE POUPANÇA. CUMPRIMENTO DE SENTENÇA. PRESCRIÇÃO. AJUIZAMENTO DE AÇÃO CAUTELAR PROTESTO. MINISTÉRIO PÚBLICO. LEGITIMIDADE. INTERRUÇÃO. OCORRÊNCIA. PRECEDENTES. AGRAVO INTERNO NÃO PROVIDO. 1. Aplica-se o NCPC a este julgamento ante os termos do Enunciado Administrativo nº 3, aprovado pelo Plenário do STJ na sessão de 9/3/2016: Aos recursos interpostos com fundamento no CPC/2015 (relativos a decisões publicadas a partir de 18 de março de 2016) serão exigidos os requisitos de admissibilidade recursal na forma do novo CPC. 2. O Ministério Público possui legitimidade para a propositura de ação cautelar de protesto, visando a interrupção do prazo prescricional para o ajuizamento da execução individual de sentença coletiva. Precedentes. 3. Agravo interno não provido. (AgInt nos EDcl no REsp 1753227/RS, Rel. Ministro MOURA RIBEIRO, TERCEIRA TURMA, julgado em 02/12/2019, DJe 05/12/2019) AGRAVO INTERNO NO RECURSO ESPECIAL. EXPURGOS INFLACIONÁRIOS. CUMPRIMENTO DE SENTENÇA. EXECUÇÃO INDIVIDUAL DE SENTENÇA COLETIVA. MEDIDA CAUTELAR DE PROTESTO. AJUIZAMENTO. MINISTÉRIO PÚBLICO. INTERRUÇÃO DA PRESCRIÇÃO. OCORRÊNCIA. 1. Recurso especial interposto contra acórdão publicado na vigência do Código de Processo Civil de 2015 (Enunciados Administrativos nºs 2 e 3/STJ). 2. O Superior Tribunal de Justiça possui entendimento no sentido de que na demanda coletiva o prazo de prescrição para a execução individual do título pode ser interrompido por protesto interposto pelo Ministério Público. 3. Agravo interno não provido. (AgInt no REsp 1822430/SP, Rel. Ministro RICARDO VILLAS BÔAS CUEVA, TERCEIRA TURMA, julgado em 24/08/2020, DJe 31/08/2020) E além desta Primeira Câmara de Direito Privado, a Segunda e Terceira Câmaras desta Corte seguem a mesma diretiva da Terceira Turma do STJ, ou seja, no sentido de que a medida cautelar de protesto apresentada pelo Ministério Público interrompe o prazo prescricional para o ajuizamento da execução individual. Vejamos: Ementa: PROCESSO CIVIL. SENTENÇA COLETIVA.

Processo	0633091-53.2024.8.06.0000
	EXECUÇÃO INDIVIDUAL PRESCRIÇÃO. INTERRUÇÃO. OCORRÊNCIA. -- Cuida-se da Apelação interposta às págs. 67/77 por Maria Lucilene Azevedo e Francisco Almir Aguiar Azevedo contra a decisão de págs. 56/62, que, nesta execução individual de sentença coletiva, proclamou a prescrição ao argumento de que o trânsito em julgado acontecera no dia 27/10/2009, enquanto o pedido fora apresentado em 18/04/2018, ou seja, além do prazo de 5 (cinco) anos referido no art. 21 da Lei nº 4.717/65. - O recurso, no entanto – e em síntese – sustenta que houve interrupção daquele prazo por conta de um protesto judicial a cargo do MPDFT (autos nº 2014.01.1178561-3), cujos efeitos dimanariam do dia 26/09/2014. - Pacificação da tese na 1ª Câmara de Direito Privado: O Ministério Público dispõe de legitimidade para propor medida cautelar de protesto, para interromper prazo prescricional (quinquenal), em face de direito material individual dos consumidores, de maneira que a sua legitimidade extraordinária não se encerra com o trânsito em julgado da sentença. - Assim, tendo em conta que o trânsito em julgado acontecera no dia 27/10/2009 e o pedido fora apresentado em 18/04/2018, a existência de fato interruptivo (protesto judicial) afasta a ocorrência da prescrição. - Apelação conhecida e provida, com ressalva do ponto de vista da Relatora, em prol da Colegialidade. (TJCE – Apelação Cível 0003413-36.2018.8.06.0167, Rel. Des. VERA LÚCIA CORREIA LIMA, 1ª Câmara Direito Privado, publicação 05/02/2021) 120px; 120px; Ementa: PROCESSUAL CIVIL. AGRAVO INTERNO. CUMPRIMENTO DE SENTENÇA. AÇÃO CIVIL PÚBLICA. DIFERENÇAS DE EXPURGOS INFLACIONÁRIOS NO SALDO DE CADERNETA DE POUPANÇA. PRAZO PRESCRICIONAL QUINQUENAL PARA A EXECUÇÃO DA SENTENÇA PROFERIDA NA AÇÃO CIVIL PÚBLICA DO IDEC. AÇÃO CAUTELAR MOVIDA PELO MPDFT. INTERRUÇÃO DO PRAZO PRESCRICIONAL. PRESCRIÇÃO FASTADA. RECURSO CONHECIDO E NÃO PROVIDO. 1. Na hipótese, a insurgência recursal gravita em torno da alegada interrupção do transcurso do prazo prescricional para o ajuizamento dos cumprimentos individuais da sentença coletiva advinda da ação civil pública tombada sob o n.º 1998.01.1.016.798-9/98, diante do ajuizamento da Medida Cautelar de Protesto Judicial n.º 2014.01.1.148561-3, pelo MPDFT no ano de 2014, através da 1.ª e 160; Promotoria de Justiça de Defesa do Consumidor (PRODECON). 3. À luz do entendimento esposado pelo Superior Tribunal de Justiça, por ocasião do julgamento do REsp nº 1.273.643/PR, submetido ao rito dos Recursos Repetitivos, "no âmbito do Direito Privado, é de cinco anos o prazo prescricional para ajuizamento da execução individual em pedido de cumprimento de sentença proferida em Ação Civil Pública" (STJ; REsp 1273643/PR, Rel. Ministro SIDNEI BENETI, SEGUNDA SEÇÃO, julgado em 27/02/2013, DJe 04/04/2013). 4. A Constituição Federal de 1988, ao ressaltar a importância da cidadania no controle dos atos da administração, com a eleição dos valores imateriais do art. 37, da CF/1988 como tuteláveis judicialmente, coadjuvados por uma série de instrumentos processuais de defesa dos interesses transindividuais, criou um micro-sistema de tutela de interesses difusos referentes à probidade da administração pública, nele encartando-se a Ação Cautelar Inominada, Ação Popular, a Ação Civil Pública e o Mandado de Segurança Coletivo, como instrumentos concorrentes na defesa desses direitos eclipsados por cláusulas pétreas. Sob esse prisma, a Carta Federal outorgou ao Ministério Público a incumbência de promover a defesa dos interesses individuais indisponíveis, podendo, para tanto, exercer outras atribuições previstas em lei, desde que compatível com sua finalidade institucional (CF/1988, arts. 127 e 129). 4. De igual modo ficou sedimentado que "tratando-se de demanda coletiva, o prazo de prescrição para a execução individual do título pode ser interrompido pela propositura do protesto, voltando a correr pela metade a partir do ato interruptivo" (AgRg no Ag 1.223.632/RS, Rel. Ministro ROGERIO SCHIETTI CRUZ, SEXTA TURMA, julgado em 9/9/2014, DJe 24/9/2014). A legitimidade do Ministério Público, desta feita, para propor a ação cautelar de protesto e promover, consequentemente, a interrupção do prazo prescricional, encontra alicerce na lei da Ação Civil Pública (Lei n. 7.347/85). 5. Desse modo, pelas funções que lhe são inerentes, o Ministério Público detém capacidade de representar interesses da coletividade, por meio da ação civil pública, e ao mesmo tempo, não obstante a classificação dos direitos como homogêneos, estes não perdem a sua natureza, pois a classificação como direito individual desponta somente com a fase liquidatória ou de cumprimento de sentença, quanto se manifesta e constata-se a divisibilidade dos direitos individuais homogêneos. 6. Por isso é que nos julgados do Superior Tribunal de Justiça há entendimento de que o Ministério Público possui legitimidade para a propositura de ação cautelar de protesto interruptivo do prazo prescricional aplicável às pretensões de cumprimento de sentença proferida em ação civil pública, haja vista que, nestes casos, a medida tem por objetivo a defesa de relevantes interesses individuais homogêneos de milhares de poupadores lesados pela conduta da instituição financeira, e que não ajuizaram a respectiva execução individual, em relação

Processo	0633091-53.2024.8.06.0000
	aos valores devidos em face dos expurgos inflacionários. 7. Nesta ordem de ideias, tem-se que houve a interrupção do referido prazo quinquenal por força de Medida Cautelar de Protesto manejada pelo Ministério Público do Distrito Federal e Territórios (processo nº 2014.01.1.148561-3), razão pela qual o prazo deve ser novamente contado a partir do deferimento do protesto, em 26/09/2014, conforme o disposto no art. 202, I, II, do Código Civil c/c 240, §1º, do CPC, de sorte que, uma vez a presente ação ter sido proposta em 2016, não há que se falar em prescrição da pretensão. 8. Agravo interno conhecido, mas desprovido. (TJCE – Agravo Interno 0013471-45.2016.8.06.0175 – Rel. Des. EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, publicação 12.08.2021)
 </p> <p style="text-align: justify; padding-left: 120px;"> Ementa: APELAÇÃO. DIREITO CIVIL E PROCESSUAL CIVIL. CUMPRIMENTO INDIVIDUAL DE SENTENÇA COLETIVA. AÇÃO CIVIL PÚBLICA. DIFERENÇA DE EXPURGOS INFLACIONÁRIOS NO SALDO DE CADERNETA DE POUPANÇA. AÇÃO CAUTELAR MOVIDA PELO MPDFT. INTERRUPTÃO DA PRESCRIÇÃO&#160; PRETENSÃO EXECUTIVA. LEGITIMIDADE DO MINISTÉRIO PÚBLICO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. 1. O cerne da controvérsia consiste em analisar se acertada a decisão proferida pelo juízo de origem quanto ao reconhecimento da prescrição do cumprimento individual da sentença coletiva proferida nos autos da Ação Civil Pública promovida pelo IDEC – Instituto Brasileiro de Defesa ao Consumidor contra o Banco do Brasil. 2. O prazo para propositura do cumprimento de sentença individual da sentença coletiva é de 5 (cinco) anos, contados do trânsito em julgado, consoante disposto na Súmula 150 do Supremo Tribunal Federal, segundo a qual "prescreve a execução no mesmo prazo de prescrição da ação". 3. No caso concreto, a decisão executada transitou em julgado em 27 de outubro de 2009, enquanto a execução individual foi protocolada&#160;</p> no ano de 2019, após, a princípio, o prazo prescricional quinquenal. 4. Contudo, deve-se registrar a peculiaridade de que, em 26 de setembro de 2014, foi proposta Medida Cautelar de Protesto Judicial pelo MPDFT (processo nº 2014.01.1.1148561), motivo pelo qual houve a interrupção da prescrição nessa data. 5. De acordo com o STJ, "o Ministério Público possui legitimidade para a propositura de ação cautelar de protesto, visando a interrupção do prazo prescricional para o ajuizamento da execução individual de sentença coletiva" (AgInt nos EDcl no REsp 1753227/RS, Rel. Ministro MOURA RIBEIRO, TERCEIRA TURMA, julgado em 02/12/2019, DJe 05/12/2019). 6. Acrescente-se que, tratando-se de causa interruptiva judicial, o prazo prescricional só recomeça a correr após o último ato praticado no processo, que, no caso da medida cautelar proposta pelo Ministério Público, ocorreu apenas em 2015, quando o procedimento findou. 7. Nesse contexto, considerando a interrupção</p> <p style="text-align: justify; padding-left: 120px;"> do prazo prescricional em meados de 2014 e reinício apenas em 2015, nos termos do artigo 202, do diploma civil, conclui-se que a demanda protocolada em 25 de setembro de 2019 não fora fulminada pela prescrição, devendo o feito ter prosseguimento. 8. Apelação conhecida e provida. Sentença anulada. (TJCE – Apelação 017.213-49.2013.8.06.0001, Rel. Des. HERACLITO VIEIRA DE SOUSA NETO 1ª Câmara Direito Privado, publicação 11.11.2021) </p> <p style="text-align: justify; padding-left: 120px;">
 </p> <p style="text-align: justify; padding-left: 120px;"> Ementa: AGRAVO DE INSTRUMENTO. CUMPRIMENTO DE SENTENÇA COLETIVA. AÇÃO CIVIL PÚBLICA Nº 1998.01.1.016798-9. EXPURGOS INFLACIONÁRIOS. PLA VERÃO. SOBRESTAMENTO. INOCORRÊNCIA. IMPUGNAÇÃO IMPROCEDENTE. PRELIMINARES: ILEGITIMIDADE ATIVA. INCOMPETÊNCIA DO JUÍZO. REJEITADAS. PREJUDICIAL DE PRESCRIÇÃO. INOCORRÊNCIA. EXCESSO DE EXECUÇÃO INEXISTENTE. JUROS DE MORA CONTADOS DA CITAÇÃO NA AÇÃO COLETIVA. JUROS REMUNERATÓRIOS AFASTADOS NA DECISÃO AGRAVADA. RECURSO CONHECIDO E IMPROVIDO. DECISÃO MANTIDA. 1. De início, deixo de apreciar a impugnação relativamente à incidência de juros remuneratórios, eis que decisão objurgada afastou sai aplicação. Ademais, adiante-se que não merecem guarida as preliminares arguidas pelo banco recorrente. Explicase. 2. Em consulta realizada no sítio eletrônico do Supremo Tribunal Federal, verifica-se que a Ministra Rosa Weber e o Ministro Gilmar Mendes negaram seguimento aos pedidos de sobrestamento de processos que versavam sobre matéria idêntica à discutida nos presentes autos, por entender que não mais subsiste a ordem de suspensão processual dos feitos onde se discutem os expurgos inflacionários dos planos econômicos Bresser, Verão, Collor I e Collor II. 3. Assim, não há que se falar em sobrestamento do feito. 4. A ilegitimidade do agravado para manejar o cumprimento de sentença, em razão da incompetência do juízo ante o fato da decisão coletiva somente ter efeito na circunscrição do Tribunal prolator, conforme dispõe o art. 16 da Lei nº 7.347/85, não merece acolhida, em razão de ser aplicável a todos os

Processo	0633091-53.2024.8.06.0000
	poupadores, detentores de caderneta de poupança do Banco do Brasil, a sentença da ação civil coletiva n. 1998.01.1.016798-9, que condenou o Banco do Brasil ao pagamento de diferenças decorrentes de expurgos inflacionários sobre cadernetas de poupança ocorridos em janeiro de 1989 (Plano Verão), por força da coisa julgada, independentemente de sua residência ou domicílio no Distrito Federal, reconhecendo-se ao beneficiário o direito de ajuizar o cumprimento individual da sentença coletiva no Juízo de seu domicílio ou no Distrito Federal. 5. Melhor sorte não assiste a alegação de prescrição da pretensão da parte agravada, tendo em vista que o Superior Tribunal de Justiça firmou o entendimento de ser de cinco anos o prazo prescricional para ajuizamento da execução individual de pedido de cumprimento de sentença em ação coletiva, ao julgar o Recurso Especial Repetitivo nº 1.273.643-PR. Conforme certidão de inteiro teor da Ação Civil Pública nº 1998.01.1.016798-9-DF, o trânsito em julgado da sentença coletiva ocorreu em 27/10/2009. Logo, o prazo quinquenal para promover seu cumprimento individual expiraria em 27/10/2014. Contudo, o Ministério Público do Distrito Federal e Territórios ajuizou Ação Cautelar de Protesto contra o Banco do Brasil S/A em 29/09/2014, perante a 12ª Vara Cível de Brasília, processo nº 2014.01.1.148561-3, objetivando a interrupção da prescrição para os poupadores brasileiros ou seus sucessores promoverem a liquidação/execução da sentença proferida na referida ação civil pública. Assim, o prazo prescricional de 5 anos foi interrompido, reiniciando-se a sua contagem a partir do último ato praticado na mencionada ação cautelar, sendo evidente que o cumprimento de sentença não se encontra prescrito, pois manejado antes do termo final que ocorreu em setembro de 2019. . [...] 9. Agravo de instrumento conhecido e improvido. Decisão mantida. (TJCE – Agravo de Instrumento 0623273-87.2018.8.06.0000, Rel. Des. CARLOS ALBERTO MENDES FORTE, 2ª Câmara Direito Privado, publicação 16.03.2022)
 Ementa: EMBARGOS DE DECLARAÇÃO EM AGRAVO INTERNO EM APELAÇÃO. PRESCRIÇÃO EM EXPURGOS INFLACIONÁRIOS. TESE DE OMISSÃO NO ACÓRDÃO EMBARGADO. INEXISTÊNCIA. QUESTÕES SATISFATORIAMENTE ANALISADAS. TENTATIVA DE REDISCUSSÃO DA MATÉRIA. INADEQUAÇÃO DA VIA ELEITA. ACLARATÓRIOS CONHECIDOS, MAS DESPROVIDOS. 1. Reclama o banco embargante de omissão no acórdão do agravo interno, ao argumento de que não teriam sido aplicados os arts. 202 e 204 do Código Civil. 2. Na situação em apreço, porém, o julgado hostilizado restou alicerçado em jurisprudência extremamente pacífica deste Tribunal e do Eg. STJ, de que houve interrupção do prazo quinquenal com a Medida Cautelar de Protesto manejada pelo Ministério Público do Distrito Federal e Territórios (processo cadastrado no nº 2014.01.1.148561-3), razão pela qual o prazo deve ser novamente contado a partir do deferimento do protesto, em 26/09/2014, conforme o disposto no art. 202, I, II, do Código Civil c/c 240, §1º, do CPC, de sorte que, uma vez a presente ação ter sido proposta em 2015, não há que se falar em prescrição da pretensão. 3. Recurso conhecido e desprovido. (TJCE – Embargos à execução 0634529-22.2021.8.06.0000, Rel. Des. EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, publicação 19.10.2022)
 Ementa: AGRAVO INTERNO EM APELAÇÃO. CUMPRIMENTO INDIVIDUAL DE SENTENÇA. AÇÃO CIVIL PÚBLICA. BANCO DO BRASIL. EXPURGOS INFLACIONÁRIOS. SUSPENSÃO DO FEITO EM RAZÃO DE RECURSOS ESPECIAIS COM REPERCUSSÃO GERAL RECONHECIDA E PENDENTES DE JULGAMENTO. NÃO CABIMENTO. ILEGITIMIDADE ATIVA E INCOMPETÊNCIA DO JUÍZO. AFASTADAS&#160; PRESCRIÇÃO NÃO CONFIGURADA. TERMO INICIAL DOS JUROS DE MORA. ÍNDICE DE CORREÇÃO PARA JANEIRO DE 1989. INCLUSÃO DOS DEMAIS EXPURGOS NA CORREÇÃO DO DÉBITO. RECURSO CONHECIDO E DESPROVIDO. DECISÃO MONOCRÁTICA MANTIDA. 1. Trata-se de Agravo Interno (fls. 01/17) interposto pelo Banco do Brasil S/A em face da decisão monocrática de fls. 150/117 dos autos em apenso, a qual negou provimento ao agravo de instrumento apresentado pelo ora agravante, nos autos da Impugnação ao Cumprimento de Sentença apresentada em desfavor de Maria de Lourdes Fernandes de Oliveira e outros. 2. Na ação originária, os autores / agravados buscam o crédito decorrente do título executivo judicial da Ação Civil Pública nº 1998.01.1.16798-9, que reconheceu o direito dos poupadores ao recebimento da remuneração nas cadernetas de poupança referente ao Plano Verão. 3. Segundo a última decisão proferida nos autos do RE 626.307/SP, em 28.03.2019, da lavra da Ministra Cármen Lúcia, não mais subsiste a ordem de sobrestamento para as ações de cobrança e cumprimentos de sentença que versem sobre os expurgos decorrentes do Plano Verão. Pedido de sobrestamento do feito rejeitado. 4. O STJ firmou entendimento no sentido de que os poupadores ou seus sucessores detêm legitimidade ativa (também por força da coisa julgada), independentemente de fazerem parte ou não dos quadros associativos do IDEC, de ajuizarem o cumprimento individual da sentença coletiva proferida na ação civil

Processo	0633091-53.2024.8.06.0000
	pública (Tema 724). 5. Ainda no REsp nº 1.391.198/RS, o STJ reconheceu ao beneficiário o direito de ajuizar o cumprimento individual da sentença coletiva no juízo de seu domicílio ou no Distrito Federal. (Tema 723), motivo pelo qual não se pode acolher o argumento de incompetência. 6. O prazo prescricional para ajuizamento da execução individual em pedido de cumprimento de sentença proferida em Ação Civil Pública é de cinco anos, conforme entendimento do STJ no julgamento do Recurso Especial repetitivo nº 1.273.643/PR, sob a égide do art. 543-C, do CPC de 1973. Contudo, este e Tribunal de Justiça adota o entendimento de que o ajuizamento da Ação Cautelar de Protesto nº 2014.01.1.148561-3 pelo Ministério Público Federal do Distrito Federal e Territórios teve o condão de interromper a prescrição em tais casos. 7. Por força da propositura da aludida Ação Cautelar de Protesto, protocolada em 26 de setembro de 2014, ocorreu a interrupção do prazo prescricional, nos termos do art. 202, II, do Código Civil, prorrogado-se o prazo para o exequente promover o cumprimento individual de sentença até 26 de setembro de 2019. E, da análise dos autos (fl. 2), é de ver que a demanda foi ajuizada em 13 de novembro de 2017, ou seja, bem antes da consumação da prescrição. 8. Sobre o termo inicial dos juros de mora, aplica-se o tema 685, lançado no julgamento do REsp 1.370.899/SP e do REsp 1.361.800/SP, que orienta: "Os juros de mora incidem a partir da citação do devedor no processo de conhecimento da Ação Civil Pública quando esta se fundar em responsabilidade contratual, cujo inadimplemento já produza a mora, salvo a configuração da mora em momento anterior". 9. No que concerne ao índice para o mês de janeiro de 1989, a correção deve obedecer as diretrizes traçadas no julgamento conjunto do REsp 1.107.201/DF e REsp 1.147.595/RS, submetidos à sistemática dos recursos repetitivos (Temas 303 e 304). 10. "Na execução de sentença que reconhece o direito de poupadores aos expurgos inflacionários decorrentes do Plano Verão (janeiro de 1989), incidem os expurgos inflacionários posteriores a título de correção monetária plena do débito judicial, que terá como base de cálculo o saldo existente ao tempo do referido plano econômico, e não os valores de eventuais depósitos da época de cada plano subsequente" (REsp Repetitivo 1.314.478/RS, Tema 891). 11. Agravo interno conhecido e desprovido. . (TJCE – Agravo Interno 0623415-52.2022.8.06.0000, Rel. Des. JOSÉ RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, publicação 26.10.2022) Assim, com efeito, a medida cautelar pelo Órgão Ministerial interrompeu o prazo prescricional supracitado, na forma do artigo 202, inciso II, do Código Civil. Sobre o tema: RECURSOS ESPECIAIS. DIREITO CIVIL. AÇÃO DE COBRANÇA. INTERRUPÇÃO DO PRAZO ATÉ O TRÂNSITO EM JULGADO. NOVA INTERRUPÇÃO. PROTESTO JUDICIAL. IMPOSSIBILIDADE. PRESCRIÇÃO. RECONHECIDA. HONORÁRIOS ADVOCATÍCIOS. VALOR IRRISÓRIO OU EXAGERADO. AUSÊNCIA. 1. O propósito recursal consiste em determinar a possibilidade da interrupção da prescrição por mais de uma vez de pretensão de cobrança fundamentada em mesma relação jurídica. 2. Em se tratando de causa interruptiva judicial, a contagem do prazo prescricional reinicia após o último ato do processo, ou seja, o trânsito em julgado. Precedentes. (...) (REsp 1504408/SP, Rel. Ministro MARCO AURÉLIO BELLIZZE, Rel. p/ Acórdão Ministra NANCY ANDRIGHI, TERCEIRA TURMA, julgado em 17/09/2019, DJe 26/09/2019) Logo, se de acordo com entendimento do Colendo STJ, em julgamento do repetitivo do REsp 1.273.643-PR, o prazo prescricional para o ajuizamento do cumprimento de sentença individual é de 05 (cinco) anos, contados do trânsito em julgado da Ação Civil Pública (Processo nº. 1998.01.1.016798-9), que ocorreu em 27.10.2009, e segundo entendimento jurisprudencial supra, houve a interrupção do

Processo	0633091-53.2024.8.06.0000
	referido prazo quinquenal por força de Medida Cautelar de Protesto manejada pelo Ministério Público do Distrito Federal e Territórios (processo nº 2014.01.1.148561-3), razão pela qual o prazo deve ser novamente contado a partir do deferimento do protesto, em 26.09.2014, conforme o disposto no art. 202, I, II, do Código Civil c/c 240, §1º, do CPC, incidindo o termo final em 26.09.2019, tendo a presente demanda sido protocolada em 20/08/2014, não há que se falar em prescrição da pretensão executiva. Por fim, as matérias e dispositivos suscitados consideram-se automaticamente prequestionados, por intermédio da abordagem objetiva e fundamentada a respeito das questões relevantes para a solução da presente querela, a teor do que determina o art. 1.025 do CPC: “Art. 1.025. Consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de pré-questionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade”. Neste sentido: Ementa: PROCESSO CIVIL. EMBARGOS DE DECLARAÇÃO DE DECISÃO COLEGIADA QUE CONHECEU E NEGOU PROVIMENTO A APELAÇÃO NA AÇÃO ANULATÓRIA DE TESTAMENTO. OMISSÃO E ERRO MATERIAL, INEXISTENTES. VÍCIOS DO ARTIGO 1.022, DO CPC, NÃO EVIDENCIADOS. CONDUTA MANIFESTAMENTE TEMERÁRIA E COM FINALIDADE PROTETATÓRIA. LITIGÂNCIA DE MÁ-FÉ, CARACTERIZADA. CONDUTAS TIPIFICADAS NO ARTIGO 80, V E VII, DO CÓDIGO DE PROCESSO CIVIL. APLICAÇÃO DE MULTA, CONDENAÇÃO EM HONORÁRIOS ADVOCATÍCIOS E DESPESAS PROCESSUAIS, REALIZADAS PELOS EMBARGADOS PARA SE DEFENDEREM NOS PRESENTES ACLARATÓRIOS. (ART. 81, DO CPC). PREQUESTIONAMENTO. INCIDÊNCIA DO ARTIGO 1.025, DO CPC. RECURSO CONHECIDO E IMPROVIDO. [...] 6. Portanto, inexistente no acórdão embargado os vícios apontados pelo embargante, sendo descabida a interposição dos presentes aclaratórios, porém, com a finalidade de prevenir a interposição de novos embargos, consigne-se que o Prequestionamento apresentado, não obstante, desfigurar-se em virtude da ausência de vícios no acórdão objurgado, "consideram-se incluídos no acórdão os elementos que o embargante suscitou, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão ou obscuridade", nos termos do artigo 1.025, do Código de Processo Civil. 7. Por fim, o contexto delineado no caderno processual denota a prática pelo embargante de conduta temerária, mediante o apontamento de vícios inexistentes (artigo 80, V, do CPC) e manifestamente protelatória, com o intuito de postergar o trânsito em julgado da demanda (art. 80, VII, do CPC), as quais merecem reprimenda e, por essa razão, acolhe-se o pedido formulado pelos embargados de condenação do recorrente nas penalidades previstas no artigo 81, do Código de Processo Civil, impondo-se, por via de consequência, a sua submissão à multa de 5% (cinco por cento) sobre o valor atualizado da causa e ao pagamento dos honorários advocatícios e despesas processuais realizadas pelos recorridos para se defenderem nos presentes aclaratórios. 8. Recurso conhecido e improvido. Decisão Mantida. (TJCE – Embargos de Declaração 0000652-22.2007.8.06.0101, Rel. Des. 2ª Câmara Direito Privado, publicação em 17.02.2021) Ementa: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. INEXISTÊNCIA DE OMISSÃO, OBSCURIDADE, CONTRADIÇÃO OU ERRO MATERIAL. IMPOSSIBILIDADE DE REDISCUSSÃO DA MATÉRIA JÁ DECIDIDA. MANUTENÇÃO DO JULGADO. INCIDÊNCIA DA SÚMULA N. 18 DO TJCE. PREQUESTIONAMENTO FICTO. ART. 1.025 DO CPC/15. RECURSO CONHECIDO E NÃO PROVIDO. Em narração jurídica, o embargante alega, em suma, omissão da decisão no que se refere ao valor dos honorários, pois incompatíveis com a presente lide, ensejando a apreciação em até 20% (vinte por cento) do valor da condenação, ou de outra forma que se adeque ao proveito econômico obtido pelo autor. Aduz também a necessidade de prequestionamento explícito dos dispositivos legais suscitados pela embargante, qual seja o art. 85 § 2º. Após análise minuciosa do acórdão, verifica-se que este solucionou todos os pontos controvertidos. Não subsiste, portanto, razão às embargantes para pretender seja o decum integrado para suprir omissão, contradição, obscuridade ou erro material, mediante reexame das provas contidas nos autos. Os aclaratórios, cujo objetivo é a integração da decisão embargada, não servem como meio de rediscussão da matéria já julgada (Súmula 18 do TJCE). Quanto ao pedido de prequestionamento da matéria (fls. 20), o art. 1.025 do CPC-15 prevê que, mesmo que os embargos declaratórios sejam rejeitados ou inadmitidos, consideram-se incluídos no acórdão os elementos que o embargante suscitou, consolidando o entendimento consagrado anteriormente pelo Supremo Tribunal Federal sobre a possibilidade de prequestionamento ficto. Embargos de declaração conhecidos e não providos. (TJCE –

Processo	0633091-53.2024.8.06.0000
	Embargos de Declaração 0106590-63.2017.8.06.0001, Rel. Des. LIRA RAMOS DE OLIVEIRA, 3ª Câmara Direito Privado, publicação 14.04.2021) Ementa: EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. INEXISTÊNCIA DE VÍCIO A SER SANADO. MATÉRIA TRATADA DE FORMA CLARA E ENFÁTICA NO ACÓRDÃO EMBARGADO. PREQUESTIONAMENTO DESNECESSÁRIO. RECURSO CONHECIDO E IMPROVIDO. 1 - Da simples leitura do acórdão embargado, percebe-se claramente que o entendimento lançado por este colegiado é no sentido de desacolher a pretensão recursal deduzida pelos autores nas razões da apelação, deixando claramente expresso o entendimento de que o ajuizamento de ação cautelar de protesto pelo Ministério Público do Distrito Federal e Territórios não interrompeu o prazo prescricional para o ajuizamento de execução individual da sentença proferida na Ação Civil Pública nº 1998.01.1.016798-9, que tramitou perante da 12ª Vara Cível da Circunscrição Especial Judiciária de Brasília-DF, que tinha por objetivo compelir o Banco do Brasil S/A a repor os expurgos inflacionários referentes ao Plano Verão de 1989. 2 - Eventuais contradições entre o que restou decidido e o que entende o recorrente como justo ou certo, ou entre o julgado e entendimentos jurisprudenciais ou doutrinários contrários, devem ser objeto de outra espécie recursal. 3 - Embora não se constate omissões a serem sanadas, as matérias e dispositivos suscitados consideram-se automaticamente prequestionados, por força do que determina o art. 1.025 do CPC. 4 – Embargos Declaratórios conhecidos e improvidos. (TJCE – Embargos de Declaração 0000294-42.2016.8.06.0198, Rel. Des. RAIMUNDO NONATO SILVA SANTOS, 4ª Câmara Direito Privado, publicação 13.04.2021) EMENTA: EMBARGOS DE DECLARAÇÃO - OMISSÃO, CONTRADIÇÃO OU OBSCURIDADE - INEXISTÊNCIA – PREQUESTIONAMENTO. - Os embargos de declaração não servem para rediscussão do mérito da causa, pois restritos às hipóteses do art. 1.022 do CPC. - Para fins de recurso em tribunal superior, conforme doutrina do prequestionamento ficto, consideram-se incluídos no acórdão os elementos que a parte embargante suscitou, ou seja, a simples interposição dos embargos de declaração já é suficiente para prequestionar a matéria, ainda que os embargos de declaração sejam inadmitidos ou rejeitados (CPC, art. 1.025). (TJMG Embargos de Declaração-Cv&#160; 1.0351.11.000061-6/005, Relator(a): Des.(a) Ramom Tácio , 16ª CÂMARA CÍVEL, julgamento em 19/08/2020, publicação da súmula em 20/08/2020) Ementa: EMBARGOS DE DECLARAÇÃO. LICITAÇÃO E CONTRATOS ADMINISTRATIVOS. PREGÃO ELETRÔNICO. DESCUMPRIMENTO DE EXIGÊNCIAS EDITALÍCIAS. PRETENSÃO DE PREQUESTIONAMENTO DE TODOS OS DISPOSITIVOS LEGAIS INVOCADOS. DESCABIMENTO. PREQUESTIONAMENTO FICTO. PRECEDENTES DESTA CORTE. - Nos termos do art. 1.022 do CPC, cabem embargos de declaração contra qualquer decisão judicial para (i) esclarecer obscuridade ou eliminar contradição, (ii) suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento, bem como para (iii) corrigir erro material. - Mesmo quando tenham por fim o prequestionamento, os embargos de declaração devem se embasar em uma das hipóteses elencadas no art. 1.022 do CPC. - Ainda que a embargante alegue omissão em relação ao prequestionamento dos dispositivos legais invocados, o magistrado não é obrigado a se manifestar sobre todos eles; basta que traga, de forma fundamentada, solução à controvérsia, tal como ocorreu no caso. - Dispositivos de lei suscitados pela parte embargante que se consideram incluídos no acórdão para fins de prequestionamento, a teor do art. 1.025 do CPC. EMBARGOS DE DECLARAÇÃO DESACOLHIDOS.(Embargos de Declaração Cível, Nº 70084998624, Vigésima Segunda Câmara Cível, Tribunal de Justiça do RS, Relator: Marilene Bonzanini, Julgado em: 14-04-2021) Do exposto, conheço dos presentes Embargos de Declaração e dou-lhes parcial provimento para suprir a omissão verificada, sem, todavia, atribuir-lhes efeitos infringentes, mantendo-se, portanto, a decisão embargada. É como voto. CARLOS AUGUSTO GOMES CORREIA Desembargador Relator Fortaleza, data assinatura eletrônica.

Processo	0633091-53.2024.8.06.0000
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Processo	0104012-30.2017.8.06.0001
Número de ordem	233
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Cédula de Crédito Comercial
Polo ativo	Caixa de Previdencia dos Funcionarios do Banco do Brasil
Advogado(s) - Polo ativo	MIZZI GOMES GEDEON - (CE40794-A)
Polo passivo	Jose William Arraes
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA Curadoria Especial de Ausentes da Defensoria Publica

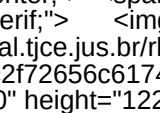
Processo	0104012-30.2017.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0104012-30.2017.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: CAIXA DE PREVIDENCIA DOS FUNCIONARIOS DO BANCO DO BRASIL APELADO: JOSE WILLIAM ARRAES Ementa: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. AÇÃO MONITÓRIA. ALEGAÇÃO DE OMISSÃO QUANTO À INCIDÊNCIA DE ENCARGOS CONTRATUAIS. ACOLHIMENTO APENAS PARA INTEGRAÇÃO DO ACÓRDÃO. RECURSO PROVIDO. I. CASO EM EXAME 1. Embargos de declaração opostos pela Caixa de Previdência dos Funcionários do Banco do Brasil – PREVI contra acórdão da 1ª Câmara de Direito Privado do TJCE que dera provimento à apelação interposta em ação monitória ajuizada contra José William Arraes. 2. A embargante sustenta omissão no acórdão quanto à incidência de encargos contratuais na atualização do saldo devedor, requerendo expressa determinação de aplicação das cláusulas contratuais. II. QUESTÃO EM DISCUSSÃO 3. A questão em discussão consiste em definir se os encargos previstos no contrato de abertura de crédito devem incidir na atualização do saldo devedor após o ajuizamento da ação monitória ou apenas até a constituição do título executivo judicial. III. RAZÕES DE DECIDIR 4. Os embargos de declaração são cabíveis para sanar omissão, contradição, obscuridade ou erro material, inclusive com efeitos modificativos quando a integração altera a conclusão do julgado (CPC, art. 1.022). 5. O acórdão embargado fixou o valor da dívida em R\$ 97.326,86, acrescido de multa contratual e honorários, mas deixou de consignar expressamente a limitação temporal dos encargos contratuais. 6. A jurisprudência reconhece que, proposta a ação monitória, os encargos estipulados no contrato incidem apenas até a data do ajuizamento, pois, com a sentença de procedência, o título executivo judicial passa a reger a obrigação. 7. Após o ajuizamento, a atualização do saldo deve observar os encargos legais: INPC e juros de mora de 1% ao mês até 30/08/2024 e, a partir de 31/08/2024, aplicação do IPCA e da Taxa SELIC, abatido o IPCA, conforme Lei nº 14.905/2024. IV. DISPOSITIVO E TESE 8. Embargos de declaração providos para suprir omissão, sem alteração do resultado do julgamento. Tese de julgamento: 1. Os encargos contratuais incidem apenas até a data do ajuizamento da ação monitória. 2. Após o ajuizamento, a dívida deve ser atualizada pelos índices legais e juros moratórios previstos no ordenamento jurídico. 3. Com a entrada em vigor da Lei nº 14.905/2024, aplicam-se o IPCA como índice de correção e a Taxa SELIC, deduzido o IPCA, como juros de mora. Dispositivos relevantes citados: CPC, art. 1.022; CC, arts. 313 e 405; Lei nº 14.905/2024. Jurisprudência relevante citada: TJCE, Apelação Cível nº 0154669-39.2018.8.06.0001, Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câmara de Direito Privado, j. 02.10.2024; TJCE, Apelação Cível nº 0149585-28.2016.8.06.0001, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara de Direito Privado, j. 22.01.2025; TJCE, Apelação Cível nº 0018627-57.2017.8.06.0117, Rel. Des. Marcos William Leite de Oliveira,

Processo	0104012-30.2017.8.06.0001
	3ª Câmara de Direito Privado, j. 19.06.2024.</p> <p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%;">ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em&#160;conhecer dos embargos de declaração, e dar-lhes provimento, apenas para suprir a omissão apontada, nos termos do voto do Relator.</p> <p class="EmentadoAcordo" style="text-align: justify; line-height: 150%;"> </p><p> Fortaleza, data da assinatura digital. </p><p>
 </p><p> </p><p> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do Órgão Julgador </p><p style="text-align: center; ">
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 </p><div> </div></div><p class="CorpoDoTexto" style="text-align: center; text-indent: 0cm; align="center"> RELATÓRIO</p><p class="CorpoDoTextoSAJSG" style="text-align: justify; text-indent: 8%; ">Trata-se de embargos de declaração opostos por CAIXA DE PREVIDÊNCIA DOS FUNCIONÁRIOS DO BANCO DO BRASIL – PREVI em face de acórdão proferido pela 1ª Câmara de Direito Privado, sob a minha relatoria, que deu provimento ao recurso de apelação interposto pela ora embargante contra sentença prolatada pela 36ª Vara Cível de Fortaleza, nos autos da Ação Monitória ajuizada pela apelante em desfavor de JOSÉ WILLIAM ARRAES.</p><p class="CorpoDoTextoSAJSG" style="text-align: justify; text-indent: 8%; "> Em suas razões recursais, o embargante alega que a decisão recorrida foi omissa ao destacar a aplicação de encargos, correção e demais índices contratualmente definidos, mesmo que a parte apelante, ora embargante, tenha requerido a atualização do saldo devedor em consonância com as cláusulas gerais do contrato de abertura de crédito.</p><p class="CorpoDoTextoSAJSG" style="text-align: justify; text-indent: 8%; "> Defende que o saldo devedor total indicado na inicial foi R\$ 97.326,86 deve ser atualizado em conformidade com os encargos financeiros conveniados entre as partes, de acordo com o princípio do Pacta Sunt Servanda e o art. 313, do Código Civil, porém, no acórdão embargado, não restou expressa a incidência dos encargos acessórios estipulados contratualmente para atualização do saldo devedor.</p><p class="CorpoDoTextoSAJSG" style="text-align: justify; text-indent: 8%; "> Por fim, roga pelo conhecimento e provimento dos embargos, para que seja sanada a omissão e aplicada na atualização do saldo devedor os termos celebrados no contrato objeto da ação, a fim de que seja integrado ao dispositivo da sentença que, na atualização do saldo devedor, deverão recair os demais encargos contratuais previstos no contrato de empréstimo simples.</p><p class="CorpoDoTextoSAJSG" style="text-align: justify; text-indent: 8%; "> Em que pese devidamente intimada, a parte embargada não apresentou impugnação.</p><p class="CorpoDoTextoSAJSG" style="text-align: justify; text-indent: 8%; "> É o que importa relatar.</p><p class="CorpoDoTexto" style="text-align: center; "> VOTO</p></p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify; text-indent: 8%; "> Os embargos de declaração, previstos no art. 1.022, do CPC, são cabíveis contra qualquer decisão judicial e objetivam: I - esclarecer obscuridade ou eliminar contradição; II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material, sendo igualmente cabíveis para o prequestionamento de matéria constitucional e legal para fins de interposição de Recursos Especial e Extraordinário.</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify; text-indent: 8%; "> Essa modalidade de recurso proporciona uma nova oportunidade para que o Julgador, prolator de decisão atacada, revise o julgado à vista de possíveis defeitos sanáveis pontuados pelos Embargantes.</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify; text-indent: 8%; "></p>

Processo	0104012-30.2017.8.06.0001
	150%; text-align: justify; text-indent: 8%;"> Quando se vislumbrar que a mácula, ao ser detectada, venha causar alteração no dispositivo da decisão, de maneira que sejam modificadas ou invertidas as conclusões originárias, há que se reconhecer os embargos de declaração com efeitos modificativos ou infringentes.</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify; text-indent: 8%;"> Nesse sentido, verifico que, de fato, houve pequena omissão no acórdão vergastado acerca dos encargos a serem utilizados na atualização do saldo devedor, visto que, na apelação, a parte autora defende que deveriam ser utilizados os termos celebrados no contrato objeto da ação, em especial, os parâmetros estabelecidos nas Cláusulas Gerais do Contrato de Abertura de Crédito.</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify; text-indent: 8%;"> No acórdão embargado, foi determinado apenas que o título executivo judicial deveria ser de R\$ 97.326,86 (noventa e sete mil e trezentos e vinte e seis reais e oitenta e seis centavos), que compõe o valor das parcelas do empréstimo em atraso, acrescido da multa de 2% sobre o valor atualizado e honorários advocatícios de 20%, nos termos requeridos na inicial. Assim, acresço à decisão recorrida a seguinte fundamentação.</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify; text-indent: 8%;"> Na inicial de ID. 22524338, verifico que o valor da dívida em discussão já foi devidamente atualizado pelos índices constantes no instrumento contratual até a data da propositura do feito, conforme planilha de ID. 22524608 em conjunto com aquela apresentada na peça exordial, às fls. 10.</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify; text-indent: 8%;"> É pacífico o entendimento de que, ao propor a ação monitoria, o credor objetiva transformar em título executivo um documento escrito que, por si só, não possui força executiva. Uma vez constituído o título judicial, o processo passa a seguir o rito próprio do cumprimento de sentença, destinado à satisfação do débito reconhecido judicialmente. Assim, fica evidente que a fase de cumprimento não mais se funda no documento apresentado na inicial, mas sim no título judicial formado a partir dele, em virtude da sentença de procedência da monitoria.</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify; text-indent: 8%;"> Diante desse contexto, entende-se que os encargos estipulados no instrumento particular são devidos apenas até o momento do ajuizamento da ação monitoria.</p><p class="MsoNormal" style="margin: 6pt 0cm; line-height: 150%; text-align: justify; text-indent: 8%;"> A partir do ajuizamento e do pedido de constituição do título executivo judicial, passam a incidir os encargos legais, de modo que o débito passa a ser atualizado conforme os índices oficiais e acrescido de juros de mora de 1% (um por cento) ao mês, contados a partir da citação, nos termos do art. 405 do Código Civil. Sobre o tema, acosto farta jurisprudência deste e. Tribunal de Justiça do Ceará:</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO MONITÓRIA. CONTRATO DE ABERTURA DE CRÉDITO EM CONTA CORRENTE ç BB GIRO CARTÕES. PRETENSÃO DE INCIDÊNCIA DE ENCARGOS CONTRATUAIS DE INADIMPLENTO (COMISSÃO DE PERMANÊNCIA) APÓS O AJUIZAMENTO DA AÇÃO. NÃO CABIMENTO. APENAS INCIDE CORREÇÃO MONETÁRIA PELOS ÍNDICES OFICIAIS E JUROS DE MORA LEGAIS. PRECEDENTE. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA CONFIRMADA. (Apelação Cível&#160;- 0154669-39.2018.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160;02/10/2024, data da publicação:&#160;02/10/2024) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> Direito civil e processual civil. Recurso de apelação cível em ação monitoria. Contrato de abertura de crédito. Pretensão de incidência de encargos contratuais após o ajuizamento da ação. Impossibilidade. Encargos contratuais. Termo final. ajuizamento da demanda. Após a propositura da demanda incidem ao montante a correção monetária pelos índices oficiais e juros moratórios legais. Precedentes. Recurso conhecido, todavia, desprovido. I. Caso em Exame 1. Recurso de apelação cível oposto em face de sentença que julgou procedente a ação monitoria, constituindo o título executivo judicial. II. Questão em discussão 2. Cinge-se a controvérsia em analisar a possibilidade de aplicação dos encargos contratuais após o ajuizamento da ação, considerando que restou constituído o título executivo judicial no valor indicado na petição inicial. III. Razões de decidir 3. O entendimento da jurisprudência é no sentido de que, na cobrança de débito mediante ação monitoria, os encargos contratuais têm incidência somente até a data do ajuizamento da demanda, quando então a dívida passa a ser corrigida pelos índices oficiais. 4. Isso porque, os encargos moratórios, após formação do título judicial, devem ser aplicados conforme estabelecidos em lei, e não mais aqueles previstos no contrato. Dito de outra

Processo	0104012-30.2017.8.06.0001
	forma, a decisão que converte o mandado monitorio em executivo não confere executividade ao documento que deu origem à ação monitoria, existindo, na realidade, a constituição de um título executivo judicial (sentença), como ocorre na ação de cobrança. IV. Dispositivo 5. Recurso conhecido, todavia, desprovido. Sentença mantida na íntegra. (Apelação Cível&#160;- 0149585-28.2016.8.06.0001, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 22/01/2025, data da publicação:&#160; 22/01/2025) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> RECURSO DE APELAÇÃO. DIREITO PROCESSUAL CIVIL. AÇÃO MONITÓRIA. CONVERSÃO DO MANDADO MONITÓRIO EM TÍTULO EXECUTIVO. ENCARGOS CONTRATUAIS INCIDENTES ATÉ O AJUIZAMENTO DA MONITÓRIA. ENCARGOS LEGAIS INCIDENTES DESDE O AJUIZAMENTO DA AÇÃO MONITÓRIA. PRECEDENTES. APELAÇÃO CÍVEL CONHECIDA E DESPROVIDA. 01.Cuida-se de Recurso de Apelação que visa a reforma da sentença que entendeu pela procedência da Ação Monitoria ¿para o fim de constituir em favor do autor, como título executivo judicial, o valor de R\$ 416.953,07¿, devidamente atualizados. Em suas razões de recurso, alega o banco autor a necessidade de que incidam os encargos contratuais na atualização da dívida. 02. A partir da constituição do título judicial, com a sentença que converte o mandado monitorio em mandado executivo, a ação terá seguimento na forma definida para adimplemento de débito judicial, cuja cobrança prosseguirá em sede de cumprimento de sentença. 03. O seguimento do cumprimento de sentença para adimplemento da dívida não terá por base mais o documento inicialmente apresentado pelo autor, mas sim o título judicial constituído a partir dele e por meio da sentença de procedência da monitoria. 04. Os encargos previstos no instrumento particular têm incidência até a data do ajuizamento da ação monitoria. A partir do ajuizamento do feito e do pleito de constituição de título executivo judicial, passam a incidir os encargos legais, ou seja, o débito passa a ser corrigido pelos índices oficiais e acrescido de juros de mora de 1% (um por cento) ao mês, a partir da citação (art. 405, do CC). Precedentes. 05. Recurso de Apelação conhecido e desprovido. (Apelação Cível&#160;- 0018627-57.2017.8.06.0117, Rel. Desembargador(a) MARCOS WILLIAM LEITE DE OLIVEIRA, 3ª Câmara Direito Privado, data do julgamento:&#160; 19/06/2024, data da publicação:&#160; 19/06/2024)</p><p class="CorpodotextoSAJSG" style="text-align: justify; text-indent: 8%;"> Diante do exposto, conheço dos embargos de declaração, apenas para suprir a omissão apontada e acrescentar à fundamentação do acórdão embargado os trechos acima delineados, em resumo, para determinar que os encargos contratuais somente têm incidência até a data do ajuizamento da ação monitoria, no caso 19/01/2017, devendo a atualização do saldo devedor ser feita pelo INPC e juros de 1% ao mês após o ajuizamento da ação até 30/08/2024. A partir de 31/08/2024, deverão ser aplicados o IPCA como índice de correção e a Taxa SELIC subtraída do IPCA como juros moratórios, nos termos da Lei nº 14.905/2024. Os juros de mora incidirão desde a citação inicial.</p><p class="CorpodotextoSAJSG" style="text-align: justify; text-indent: 8%;"> Ficam as partes, desde logo, advertidas de que a oposição de embargos de declaração, com nítido intuito protelatório, ensejará a aplicação da multa prevista no art. 1.026, §§2º e 3º,&#160;do&#160;CPC/2015.</p><p class="CorpodotextoSAJSG" style="text-align: justify; text-indent: 8%;"> É o voto que submeto à apreciação dos meus eminentes pares.</p><p class="MsoBodyText" style="margin-top: 6pt; text-align: justify; line-height: 150%; text-indent: 8%;"> Fortaleza - CE, data da assinatura digital.</p><p class="MsoNormal" style="margin-top: 10.0pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 0cm; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> Desembargador CARLOS AUGUSTO GOMES CORREIA</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> Relator</p><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p></p>
Processo	0506039-28.2011.8.06.0001
Número de ordem	234
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Despejo para Uso Próprio

Processo	0506039-28.2011.8.06.0001
Polo ativo	Daniele Anunciada dos Santos Rep Por Ivonilde Moreira dos Santos
Advogado(s) - Polo ativo	Não informado
Polo passivo	FRANCINILDA MOREIRA DOS SANTOS
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0506039-28.2011.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0506039-28.2011.8.06.0001 - 160; APELAÇÃO CÍVEL (198) APELANTE: DANIELE ANUNCIADA DOS SANTOS REP POR IVONILDE MOREIRA DOS SANTOS APELADO: FRANCINILDA MOREIRA DOS SANTOS Ementado Acrdo DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE DESPEJO POR FALTA DE PAGAMENTO C/C COBRANÇA DE DÉBITO LOCATÍCIO. JULGAMENTO ANTECIPADO DA LIDE. AUSÊNCIA DE INTIMAÇÃO DA PARTE AUTORA PARA MANIFESTAR INTERESSE NO PROSSEGUIMENTO. CERCEAMENTO DE DEFESA CONFIGURADO. NULIDADE DA SENTENÇA. RECURSO PROVIDO. I. CASO EM EXAME 1. Apelação Cível interposta por Daniel Anunciado dos Santos e Daniele Anunciado dos Santos, esta representada por curadora, contra sentença da 19ª Vara Cível de Fortaleza/CE que julgou parcialmente procedente ação de despejo por falta de pagamento c/c cobrança de débito locatício ajuizada por Nireide Pereira Jeronimo, decretando o despejo, condenando ao pagamento dos aluguéis atrasados e encargos da locação, bem como fixando honorários sucumbenciais. Os apelantes sustentam cerceamento de defesa pelo julgamento antecipado da lide, ausência de manifestação da parte autora por longo período e a vulnerabilidade de Daniele Anunciado dos Santos, pessoa com deficiência. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se a sentença proferida pelo juízo de origem deve ser anulada por cerceamento de defesa, em razão de julgamento antecipado sem prévia intimação da parte autora para impulsionar o feito, mesmo diante de indícios de abandono da causa e da condição de vulnerabilidade de uma das rés. III. RAZÕES DE DECIDIR

Processo	0506039-28.2011.8.06.0001
	12.Opt; margin-right: 0cm; margin-bottom: 10.Opt; margin-left: 36.Opt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.Opt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 3. &#160;&#160;&#160;<!--[endif]--> O julgamento antecipado da lide sem oportunizar a manifestação da parte autora após longo período de inércia caracteriza error in procedendo, violando os princípios da cooperação processual e do devido processo legal.</p> <p class="EmentadoAcordo" style="margin-top: 12.Opt; margin-right: 0cm; margin-bottom: 10.Opt; margin-left: 36.Opt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.Opt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 4. &#160;&#160;&#160;<!--[endif]--> A presença de pessoa absolutamente incapaz entre os réus exige maior cautela, pois o despejo de pessoa com deficiência deve ser medida de ultima ratio, à luz do art. 8º do Estatuto da Pessoa com Deficiência.</p> <p class="EmentadoAcordo" style="margin-top: 12.Opt; margin-right: 0cm; margin-bottom: 10.Opt; margin-left: 36.Opt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.Opt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 5. &#160;&#160;&#160;<!--[endif]--> O indeferimento da produção de provas requerida pela Defensoria Pública e a ausência de intimação da parte autora configuram cerceamento de defesa, impondo a nulidade da sentença.</p> <p class="EmentadoAcordo" style="margin-top: 12.Opt; margin-right: 0cm; margin-bottom: 10.Opt; margin-left: 36.Opt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.Opt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 6. &#160;&#160;&#160;<!--[endif]--> A jurisprudência do TJCE reconhece a necessidade de intimação pessoal antes da decretação de extinção por abandono, bem como a nulidade de decisões que impedem a adequada participação das partes na formação do convencimento judicial.</p> <p class="EmentadoAcordo" style="margin-top: 12.Opt; margin-right: 0cm; margin-bottom: 10.Opt; margin-left: 36.Opt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.Opt; line-height: 150%; mso-list: l0 level1 lfo4; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 7. &#160;&#160;&#160;<!--[endif]--> Recurso provido. Sentença anulada.</p> <p class="EmentadoAcordo" style="margin-top: 12.Opt; margin-right: 0cm; margin-bottom: 10.Opt; margin-left: 36.Opt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.Opt; line-height: 150%; mso-list: l3 level1 lfo5; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 1. <span style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-size-adjust: none; font-kerning: auto; font-

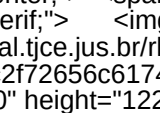
Processo	0506039-28.2011.8.06.0001
	optical-sizing: auto; font-feature-settings: normal; font-variation-settings: normal; font-variant-position: normal; font-variant-emoji: normal; font-stretch: normal; font-size: 7pt; line-height: normal; font-family: "Times New Roman";>&#160;&#160;&#160; <!--[endif]--> O julgamento antecipado da lide sem intimação da parte autora para manifestação caracteriza cerceamento de defesa e nulidade da sentença.</p> <p class="EmentadoAcordo" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 10.0pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; line-height: 150%; mso-list: l3 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 2. &#160;&#160;&#160; <!--[endif]--> O despejo de pessoa absolutamente incapaz deve observar o princípio da dignidade da pessoa humana, sendo medida de ultima ratio.</p> <p class="EmentadoAcordo" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 10.0pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; line-height: 150%; mso-list: l3 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 3. &#160;&#160;&#160; <!--[endif]--> A inércia processual do autor não dispensa a observância do contraditório e da cooperação processual, impondo a intimação prévia para prosseguimento do feito.</p> <div class="EmentadoAcordo" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 10.0pt; margin-left: 0cm; text-align: center; line-height: 150%;"> <p class="EmentadoAcordo" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 10.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Dispositivos relevantes citados : CPC/2015, arts. 6º, 85, § 2º, 86, parágrafo único, 98, § 3º, 272, parágrafo único, 275, 373, I e II, 485, III, e 487, I; Lei nº 8.245/1991, arts. 9º, III, 11, I, 39 e 63, § 1º; Estatuto da Pessoa com Deficiência (Lei nº 13.146/2015), art. 8º. </p> <p class="EmentadoAcordo" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 10.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Jurisprudência relevante citada : TJCE, Apelação Cível nº 0268219-70.2022.8.06.0001, Rel. Des. Elizabeth Silva Pinheiro, 3ª Câmara de Direito Público, j. 28.07.2025; TJCE, Apelação Cível nº 0205761-22.2022.8.06.0064, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara Direito Privado, j. 29.01.2025. </p> <p class="EmentadoAcordo" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: 10.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acorda a 1ª Câmara de Direito Privado do Egrégio Tribunal de Justiça do Ceará, por unanimidade, em CONHECER e DAR PROVIMENTO ao recurso, anulando-se a sentença recorrida e determinando o retorno dos autos para regular prosseguimento do feito, em conformidade com o voto do Relator. </p></div> <p>&#160;</p><p style="text-align: center;"> Fortaleza, data da assinatura digital.</p><p>&#160;</p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do Órgão Julgador</p><p style="text-align: center;">
</p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA<br style="text-align: center;" />Relator</p> <div class="MsoNormal" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 0cm; text-align: center; line-height: 200%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> RELATÓRIO</div> <p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> <span style="font-size: 12pt; line-height: 150%; font-family: Arial,

Processo	0506039-28.2011.8.06.0001
	sans-serif;">Trata-se de Apelação Cível interposta por Daniel Anunciado dos Santos e Daniele Anunciado dos Santos - esta representada por Daniel Anunciado dos Santos -, em face de sentença proferida pelo MM. Juiz da 19ª Vara Cível da Comarca de Fortaleza/CE, que julgou parcialmente procedente a Ação de Despejo por Falta de Pagamento c/c Cobrança do Débito Locatício proposta por Nireide Pereira Jeronimo, nos seguintes termos (Id. 22526426): &#160; Diante do exposto e pelo mais que dos autos consta, nos termos do artigo 487, I, do Código de Processo Civil, combinado com os artigos 9º, III, 11, I, e 63, § 1º, da Lei de Locações (Lei 8.245/1991), JULGO PARCIALMENTE PROCEDENTES os pedidos iniciais, para decretar o DESPEJO do imóvel localizado na Rua Aprendizess Marinheiros, 532, Jacarecanga, nesta capital, em desfavor dos atuais réus DANIEL ANUNCIADO DOS SANTOS e DANIELE ANUNCIADO DOS SANTOS (representada por IVONILDE MOREIRA DOS SANTOS), sucessores da falecida locatária FRANCINILDA MOREIRA DOS SANTOS. Após o pagamento, pelo autor ESPÓLIO DE JOÃO JERÔNIMO FILHO E MARIA PEREIRA JERÔNIMO (representado por NIREIDE PEREIRA JERÔNIMO), das custas atinentes às diligências de oficiais de justiça, conforme tabela atualizada do FERMOJU, expeça-se, independentemente de novo despacho, mandado de despejo compulsório, direcionado ao endereço mencionado no parágrafo anterior, com a utilização, se necessário for, de força policial e ordem de arrombamento. Caberá ao espólio promovente, às suas expensas, providenciar os meios necessários para o sucesso da diligência, inclusive transporte, capatazia e chaves. CONDENO, também, os réus supramencionados ao pagamento do valor de R\$ 2.413,77 (dois mil, quatrocentos e treze reais e setenta e sete centavos), acrescido de correção monetária pelo INPC desde abril de 2011, data dos cálculos de fls. 31 a 33, e juros de mora de 1% (um por cento) ao mês desde a citação válida, além do pagamento de todos os aluguéis e encargos da locação vencidos e vincendos até a efetiva entrega do imóvel objeto da lide, conforme preconiza o artigo 39 da Lei de Locações, estes corrigidos monetariamente pelo INPC desde o vencimento de cada parcela inadimplida e igualmente com juros de mora a partir da citação. Sem prejuízo, CONDENO os demandados, vencidos, ao pagamento das custas processuais e dos honorários de sucumbência, estes fixados em 10% (dez por cento) sobre o montante condenatório, o que faço com arrimo nos artigos 85, § 2º, e 86, parágrafo único, do CPC, ressaltando-se, contudo, o disposto no artigo 98, § 3º, do Código de Ritos, eis que beneficiários da justiça gratuita. se, contudo, o disposto no artigo 98, § 3º, do Código de Ritos, eis que beneficiários da justiça gratuita. &#160; Irresignada, a parte promovida interpôs Recurso de Apelação sob Id. 22526668, no qual postula a anulação da sentença, alegando a ocorrência cerceamento de defesa pelo julgamento antecipado da lide. Acrescenta que haveria intuito das partes recorrentes em resolver a demanda de forma amigável, tendo sido reportado nos autos, de forma reiterada, que não conseguiam negociar a dívida em razão de desconhecer o locador e seu paradeiro. Defendeu que a parte autora claramente abandonou a lide e deixou de apresentar qualquer interesse no deslinde do feito, considerando que sua última manifestação nos autos já contava com quase 6 (seis) anos. Por fim, suscita a situação de vulnerabilidade dos recorrentes, especialmente de Daniela Anunciada dos Santos. Ausentes contrarrazões. Ausentes contrarrazões.

Processo	0506039-28.2011.8.06.0001
	text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Em parecer de Id. 22525598, a Procuradoria Geral de Justiça manifestou-se "pelo conhecimento e provimento do Recurso, anulando-se a sentença vergastada, com o retorno dos autos ao juízo de origem, para que se dê nova oportunidade da parte autora em manifestar interesse na lide, sob pena de extinção do feito."</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> É o relatório.</p><p class="MsoNormal" style="margin-top: 5.65pt; margin-right: 0cm; margin-bottom: 0cm; margin-left: 0cm; text-align: center; line-height: 200%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"> VOTO </p><p class="MsoNormal" style="margin: 3pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;"> &#160; &#160; &#160;Presentes os pressupostos recursais de admissibilidade intrínsecos e extrínsecos, conheço do recurso.</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Conforme relatado, trata-se de Apelação Cível interposta por Daniel Anunciado dos Santos e Daniele Anunciado dos Santos - esta representada por Daniel Anunciado dos Santos -, em face de sentença proferida pelo MM. Juiz da 19ª Vara Cível da Comarca de Fortaleza/CE, que julgou parcialmente procedente a Ação de Despejo por Falta de Pagamento c/c Cobrança do Débito Locatício proposta por Nireide Pereira Jeronimo.</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Preliminarmente, a recorrente alega cerceamento de defesa, em razão de o Juízo primevo ter julgado antecipadamente a lide sem reconhecer o abandono processual, o que merece acolhida. Explico.</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> De início, cumpre pontuar que a relação locatícia é representada pelo contrato acostado e a inadimplência quanto ao pagamento dos aluguéis e encargos contratuais é incontroversa, já que não contestada, em nenhum momento, pelos sucessores da falecida locatária, nem mesmo na contestação, sendo razão suficiente para a decretação do despejo requerido pela parte autora, nos termos dispostos no artigo 9º, III, da Lei de Locações (Lei n. 8.245/1991).</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Contudo, em análise aos autos, verifica-se que o Juízo primevo deferiu a habilitação de DANIEL ANUNCIADO DOS SANTOS e DANIELE ANUNCIADO DOS SANTOS (representada por IVONILDE MOREIRA DOS SANTOS, por ser pessoa absolutamente incapaz) como sucessores da falecida promovida FRANCINILDA MOREIRA DOS SANTOS. Em seguida, determinou a expedição imediata de mandado de despejo compulsório e a citação dos sucessores da ré para contestarem a lide. Não se chegou, contudo, a expedir o mandado de despejo, pois os sucessores da reclamada requereram reconsideração da decisão, tendo sido prolatada nova decisão interlocutória, na qual a liminar de despejo foi suspensa até 31 de outubro de 2022, em virtude da pandemia.</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Verifica-se que, de fato, conforme explanado no parecer ministerial, "após a habilitação dos sucessores Daniel Anunciado dos Santos e Daniele Anunciado dos Santos nos autos, não houve oportunidade de pagamento dos débitos ou de conciliação das partes litigantes, notadamente considerando que o despejamento de pessoa absolutamente incapaz, interdita judicialmente (fls. 136/141), deve ser providência adotada como ultima ratio." (Id. 22525598).</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Com efeito,

Processo	0506039-28.2011.8.06.0001
	no dia marcado (26/04/2024), o que, entretanto, não ocorreu. 11. Evidenciado, pois, o equívoco do Juízo a quo (error in procedendo), que resultou em indevido cerceamento de defesa, a declaração de nulidade de seu decisum é medida que se impõe a este Tribunal, devendo o feito retornar, com urgência, à origem, para regular prosseguimento. IV. DISPOSITIVO 12. Recurso conhecido e provido. (Apelação Cível&#160;- 0268219-70.2022.8.06.0001, Rel. Desembargador(a) ELIZABETE SILVA PINHEIRO - PORTARIA 1550/2024, 3ª Câmara Direito Público, data do julgamento:&#160; 28/07/2025, data da publicação:&#160; 28/07/2025)</p><p class="MsoBodyText" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> &#160;</p><p class="MsoBodyText" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: normal;"> >Direito Processual Civil. Recurso de apelação cível em ação de usucapião. Extinção sem resolução de mérito por suposto abandono da causa pela parte autora. Diploma processual que determina a intimação pessoal do autor para dar andamento ao feito (art. 485, III, cpc). Ausência verificada. A presunção de intimação, prevista no art. 272, parágrafo único, do cpc, é aplicável em caso de mudança de endereço da parte, o que não restou comprovada. Devolução do aviso de recebimento com a informação de que a destinatária se encontrava &#223ausente&#223. extinção prematura. lei processual que preceitua a intimação por oficial de justiça, quando frustrada a realização por meio eletrônico ou pelo correio (art. 275). Erro in procedendo. Recurso conhecido e provido. Sentença cassada. I. Caso em Exame 1. Apelação Cível interposta em face de sentença que julgou extinta a ação, sem resolução de mérito, em face do abandono da causa pela demandante. II. Questão em discussão 2. O cerne da controvérsia consiste em analisar o acerto ou desacerto da sentença que extinguiu o feito sem resolução de mérito por abandono processual pela autora. III. Razões de decidir 3. Resta evidente a extinção prematura do feito, dado que inadequada e incompatível com o ordenamento jurídico, máxime os princípios da primazia do julgamento do mérito e da economia processual, visto que a intimação pessoal da parte autora não foi devidamente realizada. 4. Da análise do A.R. (aviso de recebimento), a única conclusão a que se pode chegar é a de que a correspondência não foi entregue no endereço indicado nem retirada na agência dos Correios, não havendo nenhuma indicação de que a pessoa identificada na correspondência tenha mudado de endereço. 5. Nesse contexto, verifico o erro de procedimento no processamento do feito, pois diante da frustração da intimação pela via postal, sem que houvesse elementos para presumir a mudança de endereço da parte, competia ao juízo a aplicação do art. 275 do CPC, para determinar a realização do ato de intimação pessoal por meio de oficial de justiça. 6. Configura cerceamento do direito de defesa a ausência de tentativa da intimação pessoal por meio de oficial de justiça, após a frustração da intimação pela via postal, constituindo causa de nulidade da sentença por violação aos princípios do devido processo legal, ainda que não houvesse sido arguida em apelação. IV. Dispositivo 7. Recurso conhecido e provido. Sentença cassada. (Apelação Cível&#160;- 0205761-22.2022.8.06.0064, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 29/01/2025, data da publicação:&#160; 29/01/2025)</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.9pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Evidenciado, pois, o equívoco do Juízo a quo (error in procedendo), que resultou em indevido&#160;&#160;cerceamento&#160;de&#160;defesa, a declaração de nulidade de seu decisum é medida que se impõe, devendo o feito retornar, com urgência, à origem, para regular prosseguimento, notadamente a intimação da parte autora para dar andamento ao feito (art. 485, III, CPC), sob pena de extinção.</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Ante o exposto, em consonância com o parecer ministerial, conheço do recurso para dar-lhe provimento, anulando-se a sentença recorrida e determinando o retorno dos autos para regular prosseguimento do feito.</p><p style="text-align: center;">&#160;</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 70.85pt; line-height: 150%; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> É como

Processo	0506039-28.2011.8.06.0001
	voto.</p><p style="text-align: center;">#160;</p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p><p>#160;</p><div> <p>#160;</p> </div></div><p>#160;</p><p>#160;</p> <p>#160;</p><p>#160;</p><p style="text-align: center;"> #160; </p>
Processo	0620523-68.2025.8.06.0000
Número de ordem	235
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Fixação
Polo ativo	MARCOS DANILO DA SILVA SOUZA
Advogado(s) - Polo ativo	YURI ANDERSON DE ALMEIDA CALIXTO - (CE36590-A)
Polo passivo	M. S. C. S. R. P. J. C. L.
Advogado(s) - Polo passivo	CINTIA GREGORIO DOS SANTOS - (CE44295-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0620523-68.2025.8.06.0000
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0620523-68.2025.8.06.0000 - AGRAVO DE INSTRUMENTO (202) AGRAVANTE: MARCOS DANILO DA SILVA SOUZA AGRAVADO: M. S. C. S. R. P. J. C. L. EMENTA: DIREITO DE FAMÍLIA. AGRAVO DE INSTRUMENTO. AÇÃO DE ALIMENTOS. FIXAÇÃO DE ALIMENTOS PROVISÓRIOS EM FAVOR DE MENOR. REDUÇÃO DO PERCENTUAL DE 30% PARA 15% DOS VENCIMENTOS E VANTAGENS DO ALIMENTANTE. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. I. CASO EM EXAME 1. Agravo de instrumento interposto contra decisão que, em ação de alimentos com pedido de alimentos provisórios, fixou pensão no percentual de 30% da renda mensal do agravante, incidindo também sobre 13º salário e terço de férias. O recorrente alega impossibilidade de cumprimento da obrigação no patamar estabelecido, diante de sua modesta remuneração e da existência de outros dois filhos menores. Requer a redução do percentual para 19% do salário-mínimo ou, subsidiariamente, valor menor. II. QUESTÃO EM DISCUSSÃO 2. Há duas questões em discussão: (i) definir se deve ser mantida a concessão do benefício da justiça gratuita ao agravante; (ii) estabelecer se o percentual fixado a título de alimentos provisórios deve ser reduzido para adequar-se ao trinômio necessidade-possibilidade-razoabilidade. III. RAZÕES DE DECIDIR 3. A concessão da justiça gratuita a pessoa natural se presume verdadeira a partir da declaração de hipossuficiência, salvo prova em contrário, a qual não foi apresentada pela agravada, razão pela qual deve ser mantido o benefício (CPC, art. 98). 4. A fixação dos alimentos deve observar o trinômio necessidade do alimentando, possibilidade do alimentante e proporcionalidade, de modo a equilibrar os encargos parentais. 5. A necessidade do menor é presumida, mas deve ser cotejada com a renda do agravante e a existência de outros dois filhos que também demandam sustento.

Processo	0620523-68.2025.8.06.0000
	center;" align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p class="MsoNormal" style="text-align: center;" align="center"> Relator </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;">&#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> RELATÓRIO </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Trata-se de agravo de instrumento interposto por M. D. da S. S. contra decisão proferida pelo Juízo da Vara Única da Comarca de Aurora, nos autos da Ação de Alimentos com Pedido de Fixação de Alimentos Provisórios, processo nº 0200486- 93.2024.8.06.0041, movido pela menor M. S. C. S., representada pela genitora J. C. L., ora agravadas.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> A decisão recorrida fixou alimentos provisórios em favor da menor, conforme abaixo transcrito: </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Dentro desse contexto, é presumível a possibilidade do promovido em arcar com os alimentos, o que, portanto, permite-lhe cumprir a obrigação para com sua filha, sem, porém, que isso venha a inviabilizar a sua sobrevivência. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Digo: a obrigação e a necessidade do alimentador é inconteste. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Assim sendo, afigura-se como razoável, pelo menos em princípio, a fixação dos alimentos em valor correspondente à 30% (trinta por cento) do valor referente a sua renda mensal, a ser pago pela parte Ré mensalmente em prol da autora.</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Registra-se que, posteriormente, tal fixação poderá ser alterada para mais ou para menos, conforme fiquem demonstradas as condições e necessidades dos envolvidos no decorrer da instrução do feito. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Assim, defiro o pedido de alimentos provisórios a serem pagos por Marcos Danilo da Silva Souza, em favor da menor Maria Sther Cavalcante Souza, no valor de 30% (trinta por cento) do valor referente a sua renda mensal, deverá ser descontado em folha de pagamento do requerido e repassado mensalmente o valor correspondente à parte autora. A pensão alimentícia incide sobre o décimo terceiro salário e o terço constitucional de férias, também conhecidos, respectivamente, por gratificação natalina e gratificação de férias (Tema Repetitivo 192, STJ) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Oficie-se. </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> O agravante se insurge contra a decisão que fixou alimentos provisórios no valor de 30% referente à própria renda mensal, alegando absoluta impossibilidade de cumprir a obrigação nos moldes estipulados, tendo em vista que, além da agravada, possui outros dois filhos menores de idade.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> <span style="font-family: arial, helvetica, sans-

Processo	0620523-68.2025.8.06.0000
	serif;">Ademais, o agravante sustenta que jamais se furtou ao cumprimento de suas obrigações, dentro das limitações de sua realidade financeira, ressaltando que o percentual fixado mostra-se excessivamente oneroso. Argumenta, ainda, que não lhe foi oportunizado demonstrar sua efetiva condição econômica e a real participação na vida da agravada, frisando que exerce a profissão de tratorista, não possui estabilidade no emprego e auferir rendimentos modestos, inferiores a dois salários-mínimos, dos quais resta-lhe menos de um salário-mínimo após os descontos referentes à pensão alimentícia. Assim, requereu, em sede liminar, a redução dos alimentos para o percentual de 19% do salário-mínimo vigente ou, de forma subsidiária, a diminuição do valor fixado. Requereu, ainda, a concessão dos benefícios da justiça gratuita. Em decisão interlocutória de ID 22528446 foi concedido o benefício da justiça gratuita, bem como deferido parcialmente o pedido de tutela de urgência recursal, atribuindo-se efeito suspensivo ativo ao recurso no sentido de reduzir os alimentos provisórios para o valor equivalente a 15% dos vencimentos e vantagens do agravante. Devidamente intimada, a agravada apresentou contrarrazões de ID 22528454 e, preliminarmente, impugnou a concessão da justiça gratuita. No mérito, sustenta, em síntese, que é incontroversa a necessidade da alimentanda, bem como o fato de o agravante possuir outros dois filhos menores, circunstâncias reconhecidas pelo próprio recorrente. Argumenta, contudo, que a alegada impossibilidade financeira do agravante não restou comprovada, uma vez que este teria recorrido a informações falsas e documentos incompletos para fundamentar seu recurso. Destaca que a redução pontual da renda ocorreu em razão de adiantamento salarial, não refletindo a real capacidade contributiva do alimentante. Diante disso, pugna pelo desprovemento do agravo de instrumento, por se apoiar em alegações distorcidas e desprovidas de lastro probatório. Com vistas dos autos, o Ministério Público, por seu Procurador de Justiça, lançou o parecer de ID 22528460, posicionando-se pelo conhecimento do presente recurso, e por seu provimento parcial, para minorar os alimentos provisórios de 30% para 15% dos rendimentos do alimentante até ulterior decisão. É o relatório. VOTO Antes de enfrentar o mérito recursal, passo à análise da preliminar suscitada em sede de contrarrazões recursais. A agravada sustenta em suas contrarrazões, que não pode prosperar a presunção de hipossuficiência do agravante, uma vez que os documentos que instruíram o recurso não servem de prova hábil a demonstrar a alegada hipossuficiência financeira.

Processo	0620523-68.2025.8.06.0000
	Sobre a gratuidade da justiça, tem-se que o artigo 98 do Código Processual Civil assim preceitua: "A pessoa natural ou jurídica, brasileira ou estrangeira, com insuficiência de recursos para pagar as custas, as despesas processuais e os honorários advocatícios tem direito à gratuidade da justiça, na forma da lei." </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Ou seja, em relação à pessoa natural, deve haver presunção relativa de veracidade quanto à declaração de insuficiência de recursos. Além disso, tenho que inexistem nos autos elementos capazes de gerar dúvida razoável acerca dos pressupostos autorizadores para concessão do benefício à parte agravante. </p><p class="CorpoDoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É de se frisar que os argumentos expostos em sede de contrarrazões estão destituídos de comprovação, de tal forma que a presunção de veracidade relativa à hipossuficiência de recursos arguida pelo recorrente não foi ilidida. </p><p class="CorpoDoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Impugnação rejeitada, de forma que o benefício fica mantido &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> O recurso deve ser conhecido, pois preenche os requisitos intrínsecos e extrínsecos de admissibilidade.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Passo à análise do mérito.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> O Código Civil, em seu artigo 1.694, § 1º, dispõe que os alimentos devem ser fixados na proporção das necessidades do reclamante e dos recursos da pessoa obrigada, o que significa dizer, por outras palavras, que a obrigação alimentar deve ser fixada de acordo com o binômio necessidade (do alimentando) - capacidade (do alimentante). </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> A doutrinadora MARIA BERENICE DIAS (Manual de Direito das Famílias, 8ª ed. Ed. Revista dos Tribunais, 2011, pag. 515), ao definir a expressão alimentos, nos ensina que:</p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Nessa seara, pertinente citar também o ensinamento de Fabrício Zamproga Matiello, in Código Civil Comentado, 2ª edição,

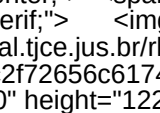
Processo	0620523-68.2025.8.06.0000
	segundo o qual: (...) o momento da fixação dos alimentos é marcado por detida análise do binômio necessidade/possibilidade. O alimentado não receberá mais do que precisa, nem o parente ou cônjuge será obrigado a pagar além do que suas condições econômicas permitem. Chegar ao equilíbrio entre essas forças contrárias significa fazer justiça, adequando a prestação alimentar ao quadro real vivenciado pelos envolvidos". Em vista do exposto, é certo que não há qualquer critério absoluto para definir a fixação dos alimentos, mas não se olvida que deve o magistrado se ater às necessidades daquele que os recebe e às possibilidades daquele que arcará com o ônus. Assim, a análise de um pedido de pensão alimentícia deve ser feita com atenta apreciação das provas, para que seja possível aferir as condições financeiras das partes, capaz de ensejar um valor mais preciso, que atenda os parâmetros da legislação. Como visto, a insurgência desafia decisão proferida <i>in initio litis</i> no processo de conhecimento, restando fixados alimentos provisórios em favor da menor alimentanda no <i>quantum</i> equivalente a 30% do valor referente à renda mensal do agravante. A princípio, importa esclarecer que, ao fixar alimentos provisórios para um menor, o Juiz deve considerar vários aspectos, a fim de garantir que as necessidades imediatas da criança sejam atendidas, enquanto se aguarda a resolução final do processo. Portanto, o Magistrado deve considerar, em primeiro lugar, as necessidades do alimentando que, embora sejam presumidas, abrangem custos com alimentação, saúde, educação, moradia, vestuário, dentre outros, ou seja, as necessidades inafastáveis da criança, que devem ser garantidas independentemente da situação financeira dos pais. Deve-se ainda avaliar a capacidade financeira do alimentante, para se garantir que a pensão alimentícia estabelecida seja proporcional aos seus recursos financeiros. O intuito é que os alimentos devem ser fixados de forma a não comprometer a subsistência do alimentante, enquanto ainda atende às necessidades do menor. No caso em apreço, observa-se que o valor dos alimentos provisórios foi fixado em 30% da renda do agravante. Contudo, à vista das peculiaridades do caso concreto, notadamente os proventos do agravante, bem como o fato de que ele possui, além da agravada, outros dois filhos menores que igualmente demandam seu sustento, referido percentual mostra-se excessivamente oneroso, comprometendo sua capacidade financeira de forma desproporcional. Por outro lado, a pretensão recursal de redução do encargo para 19% do salário-mínimo vigente não se revela adequada, porquanto o montante correspondente não se mostra suficiente para atender às necessidades básicas da alimentanda, conforme exige o princípio do melhor interesse da criança. Assim, em atenção ao trinômio necessidade/possibilidade/razoabilidade, e em estrita aderência ao bem lançado parecer da Procuradoria-Geral de Justiça, entende-se que a fixação dos alimentos provisórios no

Processo	0620523-68.2025.8.06.0000
	patamar de 15% da renda líquida aferida pelo alimentante apresenta-se a medida mais justa e equilibrada, assegurando tanto a subsistência da menor quanto a preservação da capacidade contributiva do alimentante diante de suas demais responsabilidades familiares. Corroborando com o entendimento adotado, colaciono: EMENTA: AGRAVO DE INSTRUMENTO - DIREITO DE FAMÍLIA - AÇÃO DE ALIMENTOS - FIXAÇÃO DE ALIMENTOS PROVISÓRIOS - FILHOS MENORES - NECESSIDADE PRESUMIDA - TRINÔMIO NECESSIDADE-POSSIBILIDADE-PROPORCIONALIDADE - CAPACIDADE DO ALIMENTANTE - INDÍCIOS DE ONEROSIDADE EXCESSIVA DA VERBA FIXADA EM PRIMEIRA INSTÂNCIA - NOVA FAMÍLIA - PRINCÍPIO DA PATERNIDADE RESPONSÁVEL - OBRIGAÇÃO RECÍPROCA DOS GENITORES - PARECER DA PROCURADORIA-GERAL DE JUSTIÇA - PARCIAL PROVIMENTO DO RECURSO. 1. A fixação da verba alimentar provisória deve observar, mesmo em juízo de cognição sumária, o trinômio necessidade-possibilidade-proporcionalidade, equilibrando as necessidades vitais do alimentando com a real capacidade do alimentante. 2. A necessidade dos filhos menores é presumida devido à sua condição peculiar de desenvolvimento e dependência. 3. Embora a constituição de nova família e a existência de outros dependentes não desonere o genitor de seu dever para com os filhos anteriores, o valor arbitrado deve ser condizente com a capacidade econômica do alimentante, evitando o comprometimento integral de sua subsistência e a consequente inviabilidade do cumprimento da obrigação. 4. Diante dos elementos probatórios preliminares que indicam excessividade na fixação originária dos alimentos provisórios, impõe-se a redução da verba, em conformidade com o parecer ministerial, de forma a readequar o equilíbrio do trinômio alimentar. 5. Recurso conhecido e parcialmente provido. (TJMG; Agravo de Instrumento-Cv &#160;1.0000.24.531224-4/001, Relator(a): Des.(a) Fabiana da Cunha Pasqua (JD 2G) , 2º Núcleo de Justiça 4.0 - Cív, julgamento em 11/08/2025, publicação da súmula em 13/08/2025) (G.N) AGRAVO DE INSTRUMENTO. AÇÃO DE ALIMENTOS. FIXAÇÃO DE ALIMENTOS PROVISÓRIOS. PEDIDO DE REDUÇÃO. APRECIACÃO DO BINÔMIO NECESSIDADE / POSSIBILIDADE. REDUÇÃO DO VALOR ARBITRADO. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 1. Cuida-se o feito de agravo de instrumento interposto em face de decisão prolatada nos autos da Ação de Alimentos na qual o juízo a quo fixou alimentos provisórios no percentual de 40% dos rendimentos do agravante em favor dos agravados. 2. É cediço, que a prestação alimentar visa assegurar ao alimentando o necessário para a sua manutenção, entendida esta em sentido amplo, proporcionando-lhe os meios de subsistência. O quantum deve atender às suas necessidades vitais básicas, nos padrões e possibilidades de cada família. 3. Os alimentos devem ser fixados na proporção das necessidades do alimentado e dos recursos da pessoa obrigada, ficando a cargo do prudente arbítrio do juiz estabelecer critério razoável de fixação, segundo as circunstâncias do caso concreto (disposição do art. 1.694, §1º, do Código Civil). Deve-se, portanto, observar o binômio necessidade e possibilidade no momento da fixação do valor dos alimentos. 4. Nesse sentido, merece prosperar a alegação da parte agravante de que o valor fixado não observou o binômio necessidade-possibilidade tendo em vista que, em análise acurada do caderno processual, não obstante a perfunctoriedade da cognição própria desta fase recursal, vislumbra-se que o agravante logrou êxito em demonstrar que o valor dos alimentos fixados pelo juízo a quo está em desequilíbrio, dado às reais necessidades dos alimentados e as condições econômicas do alimentante, razão pela qual a minoração parcial mostra-se razoável. 5. Diante das provas até o momento constantes nos autos e em atenção ao binômio possibilidade e necessidade, mostra-se adequada a redução do valor fixado a título de alimentos provisionais, mas não no valor postulado, ante a inexistência de uma instrução processual, razão pela qual fixo ao patamar de 30% (trinta por cento) sobre vencimentos e vantagens do agravante. 6. Recurso conhecido e parcialmente provido. (TJCE, Agravo de Instrumento&#160;-0632780-33.2022.8.06.0000, Rel. Desembargador(a) MARIA DO LIVRAMENTO ALVES MAGALHÃES, 4ª Câmara Direito Privado, data do julgamento:&#160; 28/03/2023, data da publicação:&#160; 28/03/2023) (G.N)

Processo	0620523-68.2025.8.06.0000
	style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> DIREITO CIVIL. PROCESSUAL CIVIL. DIREITO DE FAMÍLIA. DUAS APELAÇÕES CÍVEIS NA AÇÃO DE EXONERAÇÃO/REVISÃO DE ALIMENTOS. SENTENÇA DE PARCIAL PROCEDÊNCIA PARA DIMINUIR A PENSÃO ALIMENTÍCIA DE 02 (DOIS) PARA 01 (UM) SALÁRIO-MÍNIMO. PRELIMINARES REJEITADAS. NULIDADE DE SENTENÇA POR AUSÊNCIA DE FUNDAMENTAÇÃO. INOCORRÊNCIA. ERRO NA CONTAGEM DE PRAZO PARA APRESENTAR MEMORIAIS. PREJUÍZO NÃO CONFIGURADO. MÉRITO. MAIORIDADE CIVIL DA ALIMENTANDA QUE NÃO IMPLICA EM EXONERAÇÃO AUTOMÁTICA. ESTUDANTE DE ENSINO SUPERIOR. NECESSIDADE EM CONTINUAR PERCEBENDO ALIMENTOS COMPROVADA. FATO NOVO DECORRENTE DA CONSIDERÁVEL REDUÇÃO DA CAPACIDADE FINANCEIRA DO ALIMENTANTE (ART. 1699, CC). ATENÇÃO AO BINÔMIO NECESSIDADE/POSSIBILIDADE. MINORAÇÃO DOS ALIMENTOS SOMENTE PARA 1,3 (UM VÍRGULA TRÊS) SALÁRIOS-MÍNIMOS, DE MODO A MELHOR ATENDER A CARÊNCIA DA CREDORA ALIMENTÍCIA. PRIMEIRO APELO CONHECIDO E IMPROVIDO. SEGUNDO APELO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. 1. Das preliminares. 1.1. O primeiro apelante, José Irapuan Vidal Filho, alega preliminar de nulidade da sentença decorrente da suposta ausência de fundamentação idônea, com mero apontamentos de teses genéricas por parte do magistrado a quo. Não assiste razão ao recorrente, visto que a sentença guerreada está dotada de fundamentação, apesar de reduzida, voltada ao caso concreto. Rejeitada, então, a preliminar. 1.2. O primeiro recorrente aduz ainda preliminar impugnando o erro na contagem do prazo para a apresentação dos memoriais escritos, o que ensejaria a nulidade da sentença, no entanto, não restou demonstrado efetivo prejuízo para a parte. Assim, não acolho a presente preliminar. 2. Do mérito. 2.1. No que pertine ao mérito, o primeiro apelante, José Irapuan Vidal Filho, pugna pela exoneração do encargo alimentar ou, alternativamente por sua redução para 30% (trinta por cento) do salário-mínimo. A segunda apelante, Isadora Martins Dias Vidal, por sua vez, busca pelo restabelecimento da pensão alimentícia para o valor originário de 02 (dois) salários-mínimos. 2.2. Em se tratando de alimentos prestados pelo genitor a sua prole, a circunstância da credora alimentícia atingir a maioridade civil não implica, de modo automático, na cessação da obrigação alimentícia, porquanto, embora cessada a compulsoriedade, subsiste o dever de assistência fundado no parentesco consanguíneo. A despeito disto, passa-se a exigir a prova da respectiva necessidade. 2.3. De acordo com o enunciado da Súmula n.º 358 do STJ: "O cancelamento de pensão alimentícia de filho que atingiu a maioridade está sujeito à decisão judicial, mediante contraditório, ainda que nos próprios autos". 2.4. Na hipótese, a credora alimentícia comprovou que continua cursando ensino superior em Odontologia, persistindo sua necessidade em receber ajuda paterna, para arcar com as despesas da sua educação, bem como de sua própria subsistência, enquanto não possuir independência financeira, de forma que incumbe ao seu genitor propiciar-lhe condições estáveis de entrada no mercado de trabalho. Portanto, incabível a exoneração da obrigação alimentar, ora pleiteada. Precedentes. 2.5. Em relação à redução do encargo alimentar, é admitida, nos moldes do artigo 1699 do Código Civil, desde que sobrevenha mudança na situação financeira do alimentante ou da alimentanda, atribuindo-se ao autor que pede a revisão a demonstração da efetiva modificação das circunstâncias fáticas capazes de justificar a modificação do pensionamento anteriormente fixado. 2.6. No caso concreto, extrai-se a ocorrência de uma alteração considerável na capacidade financeira do alimentante, o que justifica a revisão do encargo alimentar, para reduzir-lhe, adequando-o à nova realidade fática. Todavia, atendendo ao binômio necessidade/possibilidade, entendo por diminuir os alimentos apenas para a quantia de 1,3 (um vírgula três) salários-mínimos, de forma a melhor atender as necessidades da alimentanda, sem onerar excessivamente o devedor do encargo. 3. Primeiro apelo conhecido para rejeitar as preliminares arguidas e, no mérito, negar-lhe provimento. Segunda apelação conhecida para dar-lhe parcial provimento. 4. Sentença reformada em parte.
 (TJCE, Apelação Cível&#160;- 0184177-98.2016.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160; 25/09/2019, data da publicação:&#160; 26/09/2019) (G.N) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Diante da fundamentação apresentada, CONHEÇO do Agravo de Instrumento para, no mérito, DAR-LHE PARCIAL PROVIMENTO, mantendo incólume a decisão proferida em ID &#160;22528446, para o fim de reduzir o valor dos alimentos provisórios para o patamar de 15% dos vencimentos e vantagens do agravante, até o julgamento do processo. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-

Processo	0620523-68.2025.8.06.0000
	right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É como voto. </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p>&#160;</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> Relator &#160;</p></div><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p></p>
Processo	0150670-15.2017.8.06.0001
Número de ordem	236
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Rescisão do contrato e devolução do dinheiro
Polo ativo	MANHATTAN INCORPORACAO E CONSTRUCAO LTDA MANHATTAN SUMMER PARK - EMPREENDIMENTO IMOBILIARIO LTDA GERMANO YURI MARTINS DE OLIVEIRA RAQUEL DE OLIVEIRA FREIRE
Advogado(s) - Polo ativo	RENATA CARVALHO FREIRE - (CE27057-A) RENATA CARVALHO FREIRE - (CE27057-A)
Polo passivo	RAQUEL DE OLIVEIRA FREIRE GERMANO YURI MARTINS DE OLIVEIRA MANHATTAN INCORPORACAO E CONSTRUCAO LTDA MANHATTAN SUMMER PARK - EMPREENDIMENTO IMOBILIARIO LTDA
Advogado(s) - Polo passivo	JAIME DE MORAIS VERAS JUNIOR - (CE16921-A) JAIME DE MORAIS VERAS JUNIOR - (CE16921-A)
Terceiros	Não informado

Processo	0150670-15.2017.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0150670-15.2017.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTES: MANHATTAN SUMMER PARK - EMPREENDIMENTO IMOBILIARIO LTDA, GERMANO YURI MARTINS DE OLIVEIRA, RAQUEL DE OLIVEIRA FREIRE APELADOS: RAQUEL DE OLIVEIRA FREIRE, GERMANO YURI MARTINS DE OLIVEIRA E MANHATTAN SUMMER PARK - EMPREENDIMENTO IMOBILIARIO LTDA EMENTA: DIREITO DO CONSUMIDOR E CIVIL. APELAÇÃO CÍVEL. PROMESSA DE COMPRA E VENDA DE IMÓVEL NA PLANTA. ATRASO NA ENTREGA. RESCISÃO CONTRATUAL. RESTITUIÇÃO INTEGRAL DAS PARCELAS PAGAS. ÍNDICES DE CORREÇÃO MONETÁRIA FIXADOS PELO CONTRATO (INCC ATÉ O PRAZO DE ENTREGA E IGP-M APÓS). INVERSÃO DA CLÁUSULA PENAL DE 2% AO MÊS EM FAVOR DO CONSUMIDOR (TEMA 971/STJ). LUCROS CESSANTES INDEVIDOS (TEMA 970/STJ). ATRASO EXCESSIVO QUE CONFIGURA DANO MORAL. INDENIZAÇÃO MANTIDA. RECURSO DA RÉ DESPROVIDO. RECURSO DOS AUTORES PARCIALMENTE PROVIDO. I. CASO EM EXAME 1. Apelações cíveis interpostas em ação de rescisão contratual c/c devolução de valores, indenização por danos materiais, morais e lucros cessantes, ajuizada em razão de atraso de 21 meses na entrega de imóvel adquirido na planta. A sentença determinou restituição integral das parcelas pagas, fixou indenização por danos morais em R\$ 4.000,00 e rejeitou parte dos pedidos. A ré recorreu para afastar os danos morais; os autores apelaram buscando alteração do índice de correção monetária, aplicação da multa contratual por atraso, majoração dos danos morais e condenação em lucros cessantes. II. QUESTÃO EM DISCUSSÃO 2. Há quatro questões em discussão: (i) definir os índices de correção monetária incidentes sobre os valores a serem restituídos; (ii) verificar a aplicabilidade da cláusula penal em caso de atraso na obra e a possibilidade de inversão da penalidade contratual; (iii) analisar a cumulação ou não de multa contratual com lucros cessantes; (iv) avaliar a manutenção ou majoração da indenização por danos morais. III. RAZÕES DE DECIDIR 3. A relação contratual configura relação de consumo (arts. 2º e 3º do CDC), aplicando-se a responsabilidade objetiva do fornecedor, bastando a comprovação do atraso para caracterizar inadimplemento. 4. Em relação à correção monetária, trata-se de mera recomposição do valor da moeda, não de penalidade, devendo prevalecer os índices livremente pactuados: INCC até setembro/2015 (prazo de entrega com tolerância) e, a partir de então, IGP-M. 5. Em relação à cláusula penal, o contrato previa penalidade de 2% apenas contra os compradores em caso de inadimplemento, ao passo que a multa estipulada contra a fornecedora pelo atraso da obra era de apenas 0,2% e condicionada à quitação integral do imóvel. Tal desproporção caracteriza desequilíbrio contratual, em afronta ao art. 51, IV e §1º, I, do CDC. 6. Diante disso, aplica-se a tese firmada pelo STJ no Tema 971, segundo a qual a cláusula penal prevista exclusivamente contra o consumidor pode ser invertida em seu favor quando configurada desvantagem exagerada. No caso concreto, impõe-se à fornecedora a multa de 2% sobre o valor do imóvel, por cada mês de atraso, em substituição à penalidade irrisória prevista contratualmente. 7. Em relação aos lucros cessantes, a jurisprudência consolidada (Tema 970/STJ) reconhece que a cláusula penal moratória possui natureza indenizatória, substituindo as perdas e danos. Por isso, é inviável a cumulação com lucros cessantes. 8. Por fim, quanto aos danos morais, o atraso excessivo na entrega do imóvel extrapola mero inadimplemento contratual, configurando violação anormal aos direitos da personalidade. Todavia, o valor de R\$ 4.000,00 fixado em primeiro grau revela-se razoável e proporcional ao caso concreto, devendo ser mantido. IV. DISPOSITIVO 9. Recurso da ré desprovido.

Processo	0150670-15.2017.8.06.0001
	Recurso dos autores parcialmente provido. Dispositivos relevantes citados: CF/1988, art. 5º, XXXII; CDC, arts. 2º, 3º, 51, IV e §1º, I; CPC, arts. 85, §2º e §11, 1.013, §3º. Jurisprudência relevante citada: STJ, Tema 970 (REsp 1635428/SC e REsp 1498484/DF, Rel. Min. Luis Felipe Salomão, 2ª Seção, j. 22.05.2019, DJe 25.06.2019); STJ, Tema 971 (REsp 1614721/DF, Rel. Min. Luis Felipe Salomão, 2ª Seção, j. 25.10.2017, DJe 06.12.2017); STJ, REsp 1.640.085/RJ; AgInt no REsp 1.874.409/RJ; REsp 1.551.968/SP. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer dos recurso para, no mérito, negar provimento ao recurso da parte ré e parcial provimento ao recurso dos autores, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO Trata-se de recursos de Apelação Cível interpostos, de um lado, pelos autores GERMANO YURI MARTINS DE OLIVEIRA e RAQUEL DE OLIVEIRA FREIRE, e, de outro, pela parte MANHATTAN SUMMER PARK – EMPREENDIMENTO IMOBILIÁRIO LTDA, contra a sentença de parcial procedência proferida pelo Juízo da 34ª Vara Cível da Comarca de Fortaleza (ID 22553657), nos autos da Ação de Rescisão Contratual c/c Devolução de Valores, Indenização por Danos Materiais, Morais e Lucros Cessantes. O dispositivo da sentença foi proferido nos seguintes termos: [...] Isto posto, JULGO PARCIALMENTE PROCEDENTE o pedido do requerente, condenando a requerida a restituir de forma integral e imediata os valores já pagos pelo autor (Súmula 543, STJ), a saber: R\$ 216.988,70 (duzentos e dezesseis mil novecentos e oitenta e oito reais e setenta centavos), com correção monetária pelo INPC e juros de mora devidos a taxa de 1% (um por cento) ao mês (12% ao ano), a partir da data do pagamento, devendo este valor ser apurado em sede de liquidação de sentença. Em relação ao dano moral, entendo por configurado e condeno a promovida ao pagamento da quantia de R\$ 4.000,00 (quatro mil reais), com correção monetária pelo INPC e juros de mora de 1% (um por cento) ao mês, a partir da data da sentença (Súmula 362 do STJ). Por fim, condeno a demandada a arcar com as custas processuais e honorários de sucumbência de 10% (dez por cento) sobre o valor da condenação, nos termos do art. 85, §2º, CPC. A parte ré, em seu recurso (ID 22553364), pleiteia a reforma da sentença quanto à condenação por danos morais, sustentando que o mero atraso na entrega do imóvel não configura abalo moral indenizável. Para tanto, cita precedentes do Superior Tribunal de Justiça que afastam a reparação nessa hipótese. O preparo foi devidamente recolhido (ID 22553705). Os autores, por sua vez, em recurso próprio (ID 22553357), insurgem-se contra: i) a aplicação do INPC, defendendo que deve ser utilizado o índice contratual (INCC), com acréscimo de 2%; ii) a ausência de condenação da ré ao pagamento da multa prevista no contrato em caso de atraso na obra, requerendo sua fixação em 0,5% ao mês, ou, subsidiariamente, em 0,2%, conforme admitido pela própria requerida; iii) o valor arbitrado a título de dano moral, que consideram ínfimo, postulando sua majoração para R\$ 15.000,00 (quinze mil reais). Não houve preparo recursal pelos autores, por serem beneficiários da justiça gratuita. Apresentaram-se contrarrazões por ambas as partes (IDs 22553363 e 22553847).

Processo	0150670-15.2017.8.06.0001
	size: small;">Realizou-se audiência de conciliação (ID 22552734), sem êxito. O Ministério Público ofertou parecer (ID 22553345), sem manifestação quanto ao mérito. É o relatório. Adotando o Pacto Nacional do Judiciário pela Linguagem Simples do CNJ, passo a proferir meu voto. VOTO Presentes os pressupostos intrínsecos e extrínsecos de admissibilidade, conheço dos recursos interpostos e passo à sua análise. O caso em apreço trata de rescisão de contrato de compra e venda de imóvel e reparação de danos em virtude de atraso na entrega do bem e a controvérsia devolvida à apreciação desta instância cinge-se a definir: (i) o índice de correção monetária e de juros incidentes na devolução dos valores pagos pelos autores; (ii) a incidência ou não da multa contratual em razão do atraso na entrega do imóvel; (iii) a condenação ao pagamento de lucros cessantes; e (iv) a manutenção ou eventual majoração da indenização por danos morais. Apenas a título de contextualização, os autores firmaram, em 02/05/2012, contrato de promessa de compra e venda de imóvel em construção, referente à unidade 202D do Empreendimento “Manhattan Summer Park”, com previsão de entrega para março de 2015, admitido o prazo de tolerância contratual de 180 dias. Ocorre que o empreendimento somente foi concluído em dezembro de 2016, configurando atraso de aproximadamente 21 meses além do prazo ajustado. Nesse contexto, os adquirentes ajuizaram a presente demanda, postulando a rescisão contratual com a restituição integral das parcelas pagas, devidamente corrigidas, além da aplicação da cláusula penal pelo atraso, indenização por lucros cessantes e compensação por danos morais. De início, insta destacar que o caso deve ser analisado à luz das normas consumeristas. Os autores enquadram-se no conceito de consumidores, previsto no art. 2º do Código de Defesa do Consumidor, enquanto a promovida caracteriza-se como fornecedora, nos termos do art. 3º do mesmo diploma legal. No âmbito das relações consumeristas, a responsabilidade civil é objetiva, independendo da comprovação de dolo ou culpa do fornecedor. Assim, basta a comprovação da ação, do nexo de causalidade e do dano para que se reconheça o dever do fornecedor de reparar o prejuízo causado. Conforme aludido anteriormente, o juízo de primeiro grau declarou a rescisão do contrato firmado entre as partes, reconhecendo a culpa exclusiva da ré em razão do não cumprimento do prazo para a entrega do imóvel adquirido pelos autores. Pois bem, passo a análise dos inconformismos das partes. 1. Do índice de correção monetária. A sentença de origem determinou a devolução integral dos valores pagos, com aplicação do INPC como índice de correção monetária. Contudo, compulsando os autos, observa-se que a cláusula 3.2 do contrato (ID 22553720 – fl. 4) dispõe que: “Todas as parcelas citadas, integrantes do saldo do preço, inclusive a anterior, serão atualizadas pela variação do INCC/FGV (Índice Nacional da Construção Civil) até a conclusão da obra, e a parcela com vencimento a partir do mês da conclusão do empreendimento será atualizada pelo IGP-M/FGV (Índice Geral de Preços do Mercado), acrescidas de juros capitalizados de 1% ao mês, calculados na forma da tabela price, tudo nos termos previstos neste contrato ‘parte geral’.” Dessa forma, restou ajustado entre as partes que a atualização monetária do saldo devedor incidiria pelo INCC até a conclusão da obra e, após, pelo IGP-M, com juros simples de 1% ao mês. Cumprido esclarecer que a correção monetária não constitui penalidade, mas tão somente mecanismo de preservação do poder aquisitivo da moeda diante da inflação, sendo devida independentemente do cumprimento ou inadimplemento do contrato. Assim, dou provimento ao apelo dos autores neste ponto para o reconhecer a incidência do INCC até a data limite para a entrega da unidade (setembro/2015, incluído o prazo de tolerância contratual), passando a vigorar, a partir de então, a atualização pelo IGP-M, conforme pactuado livremente pelas partes. A propósito:

Processo	0150670-15.2017.8.06.0001
	normal; padding-left: 90px;">DIREITO PROCESSUAL CIVIL E CIVIL. APELAÇÃO CÍVEL. AÇÃO DE RESOLUÇÃO DE CONTRATO. COMPRA E VENDA DE IMÓVEL. PRÉLIMINAR DE ILEGITIMIDADE PASSIVA. AFASTADA. RELAÇÃO CONSUMERISTA. CONFIGURADA. CONTRATO DE COMPRA E VENDA. RESCISÃO CONTRATUAL E DEVOLUÇÃO DOS VALORES PAGOS. INTEGRALIDADE. ÍNDICE DE CORREÇÃO MONETÁRIA APLICÁVEL. INCC PACTUADO. COMISSÃO DE CORRETAGEM. DEVOLUÇÃO DEVIDA. CORREÇÃO MONETÁRIA. A PARTIR DA CITAÇÃO. LUCROS CESSANTES. CONDENAÇÃO DEVIDA. RECURSO CONHECIDO E DESPROVIDO. 1. Cinge-se a controvérsia acerca da culpa exclusiva da promitente vendedora, quanto a rescisão do contrato por demora na entrega do imóvel, assim como da legalidade da cobrança de comissão de corretagem, bem como da possibilidade de condenação por danos morais e materiais. 2. Cumpre destacar que celebrado contrato de promessa de compra e venda de imóvel, não tendo mais o devedor interesse na avença, dado o atraso na entrega da obra, é possível a rescisão contratual. 3. Examinando o contrato celebrado entre as partes, observa-se que o prazo previsto para a entrega da infraestrutura seria 30 de setembro de 2018. Todavia, referido pacto admite uma prorrogação automática de 180 (cento e oitenta) dias para a entrega, depois de ultrapassada a referida data. Assim, deve ser considerado o mês de março de 2019 a incidir o direito da recorrida decorrente do atraso da obra, conforme orientação do Superior Tribunal de Justiça. 4. Nota-se que, no caso, os responsáveis pela entrega da obra não trouxeram nenhuma explicação plausível, a fim de justificar o descumprimento contratual, sobretudo porque os possíveis atrasos decorrente de fatos alheios às apelantes ou força maior, etc. já estão inclusos no prazo de tolerância contratualmente previsto, não sendo motivo suficiente para justificar tão elástico 5. Diante do descumprimento injustificado dos termos do contrato por parte da apelante, a rescisão da avença enseja a devolução integral dos valores pagos pelos compradores, não havendo como acolher a tese das apelantes de retenção de 25% do valor pago. 6. Quanto a devolução da comissão de corretagem, resolvido o contrato de promessa de compra e venda de imóvel por inadimplemento do vendedor, é cabível a restituição das partes ao status quo ante, com a devolução integral dos valores pagos pelo comprador, o que inclui a comissão de corretagem (AgInt no AREsp n. 2.119.524/PR, relator Ministro Raul Araújo, Quarta Turma, julgado em 5/6/2023, DJe de 13/6/2023). 7 . Melhor sorte não guardam as recorrentes quanto ao índice de correção monetária aplicável à espécie, pois, nos termos da cláusula 5.1 do contrato firmado entre as partes, Todas as parcelas que se vencerem até a disponibilização da unidade serão atualizadas, conforme Lei 10.192/01, de acordo com a variação do INCC-DI/FGV (Índice Nacional da Construção Civil), publicado mensalmente pela Fundação Getúlio Vargas, ou outro índice oficial que venha a substituí-lo, tomando-se por base para a primeira atualização o índice relativo ao segundo mês anterior ao de assinatura do presente Contrato, a contar da assinatura deste instrumento de contrato até o efetivo pagamento de cada parcela. No caso de negatividade do índice o valor da parcela permanecerá o mesmo da anterior. 8. Logo, tem-se que deve ser aplicado no caso o índice de correção acordado, qual seja, INCC, uma vez que o desejo de rescisão do contrato, por parte dos consumidores, decorreu do atraso injustificado e imoderado na entrega do empreendimento. 9. Diante da ausência de evidências que respaldem a conformidade da entrega da obra ou alguma justificativa plausível para o atraso, resta caracterizado o direito da parte em obter a rescisão do contrato de compra e venda por inadimplência do promitente vendedor, com as consequências diretas desse tipo de rescisão. A jurisprudência pátria vem se consolidando no sentido de que são devidos lucros cessantes no caso de demora excessiva na entrega do bem imóvel adquirido. 10. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. ACÓRDÃO Acordam os Desembargadores integrantes da 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e negar-lhe provimento, tudo em conformidade como voto da relatora. Fortaleza, data da assinatura digital. DES. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente DESA. MARIA REGINA OLIVEIRA CAMARA Relatora</p><p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; text-align: justify; line-height: normal; padding-left: 90px;">(Apelação Cível;&#160;- 0161615-90.2019.8.06.0001, Rel. Desembargador(a) MARIA REGINA OLIVEIRA CAMARA, 1ª Câmara Direito Privado, data do julgamento:&#160; 19/02/2025, data da publicação:&#160; 19/02/2025)</p><p style="text-align: justify;">
</p><p style="text-align: justify; text-indent: 8%;">2. Das cláusulas penais moratórias e dos lucros cessantes.</p><p style="text-align: justify; text-indent: 8%;">Os autores pleiteiam a reforma da sentença para que seja reconhecida a inversão, em seu favor, da multa legal por inadimplemento contratual, estipulada na Cláusula IX – Inadimplemento do contrato (ID 22553721 – fl. 2), no valor de 2% sobre o débito corrigido e atualizado. Requerem, ainda, a condenação da parte ré ao pagamento da multa prevista por atraso na obra, constante da cláusula Construção XI – Construção (ID 22553721 – fl. 6), correspondente a 0,2% do valor atualizado do imóvel,

Processo	0150670-15.2017.8.06.0001
	desde que quitado. Neste ponto, de fato, o juízo de origem deixou de se manifestar quanto à inversão da multa legal, bem como quanto à condenação por lucros cessantes. Apesar de a omissão configurar hipótese de sentença citra petita, passível de nulidade, cognoscível de ofício, entendo que não se faz necessária a devolução dos autos ao juízo de origem, uma vez que a causa já se encontra madura para julgamento, nos termos do art. 1.013, § 3º do CPC, sendo possível a apreciação e decisão acerca do pedido não analisado. Passando à análise da questão, portanto, o Superior Tribunal de Justiça, ao julgar o Tema 971, fixou a seguinte tese: No contrato de adesão firmado entre o comprador e a construtora/incorporadora, havendo previsão de cláusula penal apenas para o inadimplemento do adquirente, deverá ela ser considerada para a fixação da indenização pelo inadimplemento do vendedor. As obrigações heterogêneas (obrigações de fazer e de dar) serão convertidas em dinheiro, por arbitramento judicial. [Grifo nosso] A tese foi estabelecida sob o argumento de que, em face dos princípios gerais do direito, pelas normas de proteção ao consumidor e pelo imperativo de equidade " mostra-se abusiva a prática de estipular cláusula penal exclusivamente ao consumidor, para a hipótese de mora ou de inadimplemento contratual absoluto, ficando isento de tal reprimenda o fornecedor em situações de análogo descumprimento da avença". Contudo, conforme já mencionado, o contrato prevê também cláusula penal moratória aplicável ao inadimplemento das rés (atraso na obra), de modo que ambas as partes contratantes estariam sujeitas à obrigação de indenizar ou compensar a outra em caso de descumprimento contratual. Todavia, é patente o desequilíbrio entre as penalidades estipuladas, considerando que a cláusula penal imposta aos autores (consumidores), em razão de eventual atraso no pagamento, é significativamente mais onerosa do que aquela aplicável às partes rés (vendedoras), mesmo diante do atraso incontroverso na entrega do imóvel, que deveria ter ocorrido em março de 2015, mas só se concretizou em dezembro de 2016. Dessa forma, com o intuito de preservar o equilíbrio contratual e a função indenizatória da cláusula penal, admite-se a inversão da penalidade contratual originalmente imposta ao consumidor, quando esta se mostrar manifestamente desequilibrada ou abusiva, a fim de se alcançar uma compensação mais justa e proporcional. Importante pontuar que este entendimento encontra respaldo direto no Código de Defesa do Consumidor, especialmente no art. 51, IV e §1º, I, que considera nulas de pleno direito as cláusulas contratuais que: " estabeleçam obrigações consideradas iníquas, abusivas, que coloquem o consumidor em desvantagem exagerada, ou sejam incompatíveis com a boa-fé ou a equidade" e que " impliquem renúncia ou disposição de direitos inerentes à natureza do contrato, de modo a ameaçar seu objeto ou o equilíbrio contratual entre as partes". Assim, a manutenção da cláusula penal desproporcional que impõe ao consumidor penalidade mais severa do que aquela imposta ao fornecedor, em hipóteses análogas de inadimplemento, configura violação aos princípios da boa-fé objetiva, da função social do contrato e do equilíbrio contratual, norteadores das relações de consumo. No presente caso, a cláusula penal por atraso na obra foi estipulada em 0,2% ao mês sobre o valor do imóvel, desde que integralmente quitado, o que não restou comprovado nos autos. Ainda que fosse possível aplicar o percentual sobre o valor efetivamente pago pelos autores (R\$ 216.988,20), a multa mensal corresponderia a apenas R\$ 433,98, valor extremamente ínfimo, incapaz de cumprir a finalidade compensatória da cláusula penal. Ressalte-se, ademais, que os compradores anexaram aos autos anúncios de locação de unidades semelhantes ao imóvel adquirido, com valores mensais variando entre R\$ 3.500,00 e R\$ 3.900,00, o que reforça a insuficiência da penalidade contratualmente estipulada para reparar os prejuízos presumíveis do atraso. Por tais razões, entendo ser justa e adequada a inversão da cláusula penal legal de 2%, originalmente estipulada em desfavor dos consumidores, para que seja aplicada à parte vendedora, a título de indenização material correspondente ao período de atraso da obra. Para fins argumentativos, colaciono julgados desta Corte, em situações semelhantes: PROCESSUAL CIVIL. DIREITO CIVIL E DO

Processo	0150670-15.2017.8.06.0001
	CONSUMIDOR. APELAÇÃO CÍVEL DA AUTORA E APELAÇÃO ADESIVA DA RÉ EM AÇÃO DE OBRIGAÇÃO DE FAZER C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS . CONTRATO DE PROMESSA DE COMPRA E VENDA. ATRASO NA ENTREGA DO IMÓVEL. TEMA 971 DO STJ. INVERSÃO DA CLÁUSULA PENAL COMPENSATÓRIA. APLICAÇÃO DA MULTA MORATÓRIA. ALEGAÇÃO DE CASO FORTUITO E FORÇA MAIOR. FORTUITO INTERNO. RISCO DA ATIVIDADE. DANOS MORAIS DEVIDOS. RECURSOS CONHECIDOS, APELO AUTURAL PROVIDO E RECURSO ADESIVO DESPROVIDO. 2. Questão em discussão: Cinge-se a controvérsia recursal em verificar o acerto da sentença a quo que indeferiu o pedido de inversão da cláusula compensatória contra as requeridas, julgando parcialmente procedente o mérito da demanda, condenando as promovidas de forma solidária, ao pagamento de indenização por danos morais, pelo atraso na entrega do imóvel, no valor de R\$ 5.000,00 (cinco mil reais). A primeira apelante (autora) objetiva a inversão da cláusula penal compensatória com a condenação das promovidas a multa pela inadimplência, majoração dos danos morais e exclusão da multa por litigância de má-fé, ao passo que a empresa ré Andrade Furtado Empreendimento Imobiliário LTDA, segunda apelante, recorre do julgado para exclusão de sua responsabilidade pelo atraso na entrega do imóvel e, consequentemente, a condenação em danos morais. 3. Razões de decidir: Importante destacar que a relação entre as partes é, de fato, tipicamente consumerista, diante disso, aplica-se ao deslinde a responsabilidade objetiva da fornecedora do serviço, conforme artigo 14, caput, do CDC. O Superior Tribunal de Justiça consolidou o entendimento pela inversão a cláusula penal (compensatória) em favor do consumidor, para se determinar a indenização ante o inadimplemento do vendedor, em caso de atraso na entrega do imóvel, quando esta é estimada apenas para o comprador, conforme tese fixada no Tema Repetitivo nº 971. Para compensar os prejuízos presumíveis e equilibrar a relação de consumo entre as partes, compreendo ser suficiente a inversão da multa por inadimplência, prevista na Cláusula Sexta (item 6.1 - fl. 34), que prevê a aplicação de multa moratória de 2% (dois por cento) do débito, além da incidência de juros moratórios de 1% (um por cento) ao mês. 4. É cabível a fixação dos danos extrapatrimoniais, posto que é inegável que o atraso ultrapassou a razoabilidade, frustrando as legítimas expectativas da autora. Observo que, quanto aos danos morais, a sentença recorrida não merece qualquer reforma. 5. Dispositivo e tese: Conheço de ambos os recursos de apelação, para dar provimento a apelação autoral, invertendo a cláusula penal compensatória para condenar solidariamente as requeridas ao pagamento de multa contratual por inadimplência causada pela mora na entrega do imóvel, em 2% do valor atualizado do contrato, com incidência de juros de 1% ao mês a partir da citação e correção pelo IGPM desde da data limite para entrega do imóvel (30/03/2015); e para negar provimento ao recurso adesivo da promovida Andrade Furtado Empreendimento Imobiliário LTDA. Tema Repetitivo nº 971/STJ. Art. 14 do Código de Defesa do Consumidor. Art. 927 c/c art. 186 do Código Civil. 6. Recursos conhecidos, provido apelo da autora e desprovido apelo adesivo. Sentença alterada para condenar as promovidas a multa moratória. ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Terceira Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, conhecer dos recursos de apelação cível, para dar provimento ao recurso autoral e negar provimento ao recurso adesivo, nos termos do voto do Relator. Fortaleza, na data da assinatura digital. CLEIDE ALVES DE AGUIAR Presidente do Órgão Julgador FRANCISCO LUCÍDIO DE QUEIROZ JÚNIOR Desembargador Relator 3ª Câmara Direito Privado, data do julgamento: 04/12/2024, data da publicação: 04/12/2024 [Grifo nosso] DIREITO PROCESSUAL CIVIL E CIVIL. APELAÇÕES CÍVEIS. COMPRA E VENDA DE IMÓVEL. CLÁUSULA ARBITRAL. NULIDADE. RELAÇÃO CONSUMERISTA. ATRASO NA ENTREGA DA OBRA E OUTORGA DE ESCRITURA DEFINITIVA. INVERSÃO DE CLÁUSULA PENAL. RESPONSABILIDADE DAS CONSTRUTORAS E AGENTE

Processo	0150670-15.2017.8.06.0001
	FINANCEIRO. LUCROS CESSANTES. MULTA MORATÓRIA. SÚMULA Nº 308/STJ. TEMA 970 E 971 VINCULANTES DO STJ. SENTENÇA MANTIDA. DISTRIBUIÇÃO DO ÔNUS SUCUMBENCIAL MANTIDO. RECURSOS CONHECIDOS MAS DESPROVIDOS. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> [...] </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> II. QUESTÃO EM DISCUSSÃO: </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> 2. Há cinco questões em discussão: (i) definir se o Banco Bradesco deve ser excluído do polo passivo por alegada ilegitimidade; (ii) se é válida a cláusula arbitral inserido no contrato de adesão; (iii) estabelecer se é cabível a inversão da cláusula penal em favor dos compradores e a condenação das construtoras pelo atraso; (iv) determinar se cabe a cumulação da multa moratória com lucros cessantes; e (v) verificar a validade das cláusulas contratuais que estipulam penalidade somente ao comprador, excluindo as construtoras. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> III. RAZÕES DE DECIDIR: </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> [...] </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> 5. A inversão da cláusula penal em favor dos adquirentes é cabível, conforme entendimento do STJ (Tema 971), aplicando-se a multa de 2% sobre o valor do imóvel cumulada com juros de 1% ao mês pelo atraso na entrega da obra e outorga da escritura (fato incontroverso). </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> 6. Não é permitida a cumulação de multa moratória com lucros cessantes, conforme entendimento do STJ (Tema 970), por configurarem "bis in idem". </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> 7. A cláusula penal que estipula penalidade apenas ao comprador é nula, devendo ser invertida em prol dos adquirentes, conforme precedentes do STJ. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> 8. A fixação de indenização complementar a título de lucros cessantes somente é possível se a cláusula penal não servir para reparar o prejuízo suportado pela parte adquirente. In casu, não restou comprovada a desproporção dos valores atribuídos a título de cláusula penal, situação que acarreta a rejeição do pleito formulado pelos adquirentes. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> [...] </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> IV. DISPOSITIVO E TESE: </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> 11. Recursos conhecidos mas desprovidos. Tese de julgamento: 1. O agente financeiro que participa da cadeia contratual pode ser responsabilizado solidariamente em relações de consumo. 2. Cláusulas compromissórias de arbitragem em contratos de adesão consumeristas são nulas quando não há paridade entre as partes, em especial em relações de consumo. 3. A cláusula penal estipulada exclusivamente em desfavor do comprador pode ser invertida para penalizar a construtora em caso de inadimplemento. 4. A cumulação de multa moratória com lucros cessantes é vedada por configurarem "bis in idem". 5. A fixação de indenização complementar a título de lucros cessantes não é possível quando não se comprova inadequação do valor atribuído à cláusula penal fixada em favor dos adquirentes. 6. A hipoteca firmada entre construtora e agente financeiro não tem eficácia contra o adquirente do imóvel. Dispositivos relevantes citados: CF/1988, art. 5º, XXXII; CC, arts. 421, 422, 475; CDC, art. 14; Súmula 308 do STJ. Jurisprudência relevante citada: STJ, REsp 1635428/SC, Rel. Min. Luis Felipe Salomão, j. 13.12.2018 (Tema 970); STJ, REsp 1498484/DF, Rel. Min. Paulo de Tarso Sanseverino, j. 13.12.2018 (Tema 971); TJCE, Proc. 0144247-73.2016.8.06.0001, Rel. Des. Heráclito Vieira de Sousa Neto, j. 10.08.2022. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> (TJCE, Apelação Cível - 0049730-74.2016.8.06.0034, Rel. Desembargador(a) CARLOS ALBERTO MENDES FORTE, 2ª Câmara Direito Privado, data do julgamento: 06/11/2024, data da publicação: 06/11/2024) [Grifo nosso] </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> direito civil e do consumidor. Apelação cível. Rescisão contratual. Compra e venda de imóvel. Atraso na entrega. Comissão de corretagem. Inversão de cláusula penal. Danos morais. Juros de mora. Conhecimento e desproimento do recurso. </p> <p>

Processo	0150670-15.2017.8.06.0001
	class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;">]I. Caso em exame Ação de rescisão contratual cumulada com pedido de indenização por danos morais e lucros cessantes ajuizada por promitente comprador contra empresas promitentes vendedoras de imóvel em loteamento fechado. Sentença do Juízo da 11ª Vara Cível da Comarca de Fortaleza/CE que julgou parcialmente procedentes os pedidos iniciais para declarar rescindido o contrato, condenar as rés à restituição integral dos valores pagos, ao pagamento de indenização por danos morais e à inversão da cláusula penal, além de julgar improcedente o pedido de lucros cessantes. Apelação cível interposta pelas rés, com arguição de preliminares de incompetência do juízo em razão de cláusula de eleição de foro e ilegitimidade passiva de uma das rés, além de impugnações quanto à retenção de comissão de corretagem, à inversão da cláusula penal, à existência e ao valor dos danos morais e ao termo inicial dos juros moratórios. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> II. Questões em discussão Há quatro questões em discussão: (i) saber qual o termo inicial dos juros de mora aplicáveis à restituição dos valores pagos; (ii) saber se é devida a retenção da comissão de corretagem em caso de inadimplemento contratual por culpa do fornecedor; (iii) saber se a cláusula penal estipulada em desfavor do consumidor pode ser invertida em benefício deste; e (iv) saber se é devida indenização por danos morais diante do atraso superior a dois anos na entrega do imóvel. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> III. Razões de decidir [...] </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> &#160;A inversão da cláusula penal é cabível quando houver previsão contratual de multa exclusivamente em desfavor do consumidor, devendo haver reciprocidade e equilíbrio contratual conforme o Tema 971 do STJ e os arts. 4º, III, 6º, II e 51 do CDC. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> &#160;O dano moral foi corretamente reconhecido, diante do atraso injustificado superior a dois anos na entrega da obra, o que extrapola o mero inadimplemento e causa aflição, frustração e angústia ao promitente comprador, sendo razoável o valor fixado em R\$ 5.000,00, em consonância com precedentes do STJ (AgInt no AREsp 2.273.419/BA) e do TJCE (Apelação Cível n. 0153226-19.2019.8.06.0001). Os juros de mora incidem a partir da citação, conforme entendimento consolidado do STJ (AgInt no AREsp 1.698.841/MS), sendo correto o termo fixado na sentença. Manutenção integral da sentença. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> IV. Dispositivo e tese Recurso conhecido e desprovido. Tese de julgamento: É inválida a cláusula de eleição de foro em contratos de consumo; é devida a restituição integral dos valores pagos, inclusive comissão de corretagem, quando o inadimplemento do contrato de promessa de compra e venda é imputável à vendedora; a cláusula penal estipulada apenas em desfavor do consumidor pode ser invertida; e o atraso superior a dois anos na entrega do imóvel caracteriza dano moral indenizável, sendo os juros de mora devidos a partir da citação. É Dispositivos relevantes citados: Código de Defesa do Consumidor, arts. 2º, 3º, 4º, III, 6º, II e VIII, 7º, parágrafo único, 14, 51, IX, XI e XII. Código de Processo Civil, arts. 85, §§ 2º e 11º, 487, I, e 1.013. Jurisprudência relevante citada: STJ, REsp 1.049.639/MG STJ, REsp 1.551.968/SP STJ, REsp 1.599.511/SP (Tema 938) STJ, REsp 1.820.330/SP STJ, AgInt no AREsp 2.273.419/BA STJ, AgInt no AREsp 1.698.841/MS TJCE, Apelação Cível n. 0153226-19.2019.8.06.0001 TJCE, Apelação Cível n. 0137420-75.2018.8.06.0001. </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> ACÓRDÃO Vistos, relatados e discutidos estes autos, acorda a Terceira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade, em CONHECER do apelo PARA NEGAR-LHE PROVIMENTO, nos termos do voto do eminente Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADORA CLEIDE ALVES DE AGUIAR Presidente do Órgão Julgador DESEMBARGADOR PAULO DE TARSO PIRES NOGUEIRA Relator </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> (Apelação Cível&#160;- 0168684-81.2016.8.06.0001, Rel. Desembargador(a) PAULO DE TARSO PIRES NOGUEIRA, 3ª Câmara Direito Privado, data do julgamento:&#160; 16/04/2025, data da publicação:&#160; 16/04/2025) [Grifo nosso] </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> &#160; </p> <p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; padding-left: 90px;"> &#160;Por fim, deixo de acolher o pedido de condenação da parte ré ao pagamento de lucros cessantes, uma vez que, conforme entendimento consolidado do Superior Tribunal de Justiça, em especial no julgamento do Tema 970, a cláusula penal moratória, quando fixada com razoabilidade, tem natureza indenizatória e substitui os lucros cessantes, não sendo possível sua cumulação, salvo exceções específicas não configuradas nos autos.&#160; </p>

Processo	0150670-15.2017.8.06.0001
	Além disso, eventual condenação cumulativa aqui implicaria dupla penalização das rés, que já serão responsabilizadas pela devolução integral dos valores pagos pelos autores, bem como pela indenização por atraso na entrega da obra, mediante a inversão da cláusula penal de 2%, de forma a atender aos princípios da equidade e do equilíbrio contratual. Assim, mostra-se inviável o acolhimento do pedido de lucros cessantes, diante da função compensatória já exercida pela cláusula penal aplicada. A propósito: RECURSO ESPECIAL REPRESENTATIVO DE CONTROVÉRSIA. COMPRA E VENDA DE IMÓVEL NA PLANTA. ATRASO NA ENTREGA. NOVEL LEI N. 13.786/2018. CONTRATO FIRMADO ENTRE AS PARTES ANTERIORMENTE À SUA VIGÊNCIA. NÃO INCIDÊNCIA. CONTRATO DE ADESÃO. CLÁUSULA PENAL MORATÓRIA. NATUREZA MERAMENTE INDENIZATÓRIA, PREFIXANDO O VALOR DAS PERDAS E DANOS. PREFIXAÇÃO RAZOÁVEL, TOMANDO-SE EM CONTA O PERÍODO DE INADIMPLÊNCIA. CUMULAÇÃO COM LUCROS CESSANTES. 1.A tese a ser firmada, para efeito do art. 1.036 do CPC/2015, é a seguinte: A cláusula penal moratória tem a finalidade de indenizar pelo adimplemento tardio da obrigação, e, em regra, estabelecida em valor equivalente ao locativo, afasta-se sua cumulação com lucros cessantes. 2. No caso concreto, recurso especial não provido (REsp 1635428/SC e REsp 1498484/DF, Rel. Ministro LUIS FELIPE SALOMÃO, SEGUNDA SEÇÃO, julgado em 22/05/2019, DJe 25/06/2019) [Grifo nosso] Dessa forma, dou parcial provimento ao apelo dos autores, neste ponto, para condenar as rés, solidariamente, ao pagamento de multa no valor correspondente a 2% sobre o valor do imóvel, acrescida de juros de mora de 1% ao mês, por cada mês de atraso na entrega da obra. 3. Dos danos morais. No que diz respeito aos danos morais, a jurisprudência é firme no sentido de que o mero inadimplemento contratual não enseja dano extrapatrimonial, vez que o dissabor inerente à expectativa frustrada decorrente de simples inadimplemento contratual se insere no cotidiano das relações comerciais e não implica lesão à honra ou violação da dignidade humana. Acrescento que o c. Superior Tribunal de Justiça vem assentando que a caracterização do dano moral, em hipóteses com esta, não é presumida e não tem caráter absoluto, sendo imprescindível a análise do caso concreto para aferir a presença ou a ausência dessa espécie de dano. Isso porque o mero descumprimento contratual não enseja dano moral, devendo, para tanto, estar associado a outra circunstância excepcional que ocasione o dano. A propósito: REsp 1.640.085/RJ, AgInt no REsp 1.874.409/RJ e REsp 1.551.968/SP (recurso repetitivo). Na mesma toada é o posicionamento desta egrégia Primeira Câmara, de que apenas o atraso excessivo e desarrazoado extrapola o mero dissabor e causa abalo aos direitos da personalidade. No presente caso, observa-se que, inicialmente, a data proposta pela promovida para entrega do imóvel era março de 2015, tendo até setembro de 2015 para realizar a entrega por causa da prorrogação de 180 dias no contrato. Contudo, consta apenas informação de que foi concluída em dezembro de 2016, tendo as rés justificado o atraso em virtude de greves da construção civil, o que na realidade não justifica. Ora, ao prever prazo para conclusão de obras de imóvel negociado na planta, o contrato já deve considerar os infortúnios que porventura possam ocorrer durante o período das obras, inclusive greves dos operários da construção civil, não sendo razoável admitir a prorrogação por tempo indeterminado, como pretende a promovida. Nesse contexto, o atraso na entrega do imóvel revela circunstância excepcional que importa em significativa e anormal violação a direito da personalidade do promitente comprador, apto a ensejar indenização por danos morais. Na

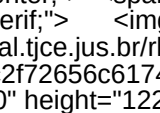
Processo	0150670-15.2017.8.06.0001
	fixação do quantum indenizatório, deve o magistrado atentar-se a critérios de razoabilidade e proporcionalidade em observância às circunstâncias em que o ato ilícito foi cometido, às consequências da ofensa ao lesado, o grau de culpa do ofensor, à eventual contribuição do ofendido no evento danoso e à situação econômica das partes. Em casos análogos ao dos autos, esta egrégia Câmara de Justiça tem entendido como razoável e proporcional a fixação da indenização entre R\$ 4.000,00 (quatro mil reais) e R\$ 6.000 (seis mil reais), em sua maioria. Veja-se: APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. CONTRATO DE COMPRA E VENDA DE IMÓVEL . ATRASO NA ENTREGA DO BEM. CULPA EXCLUSIVA DA PROMITENTE VENDEDORA.DEVOLUÇÃO DOS VALORES PAGOS PELO PROMITENTE COMPRADOR A TÍTULO DE JUROS DE EVOLUÇÃO DE OBRA REFERENTE APENAS AO PERÍODO DO ATRASO. INVERSÃO DE CLÁUSULA PENAL MORATÓRIA EM FAVOR DO CONSUMIDOR. POSSIBILIDADE. TEMA 971 DO STJ. DANO MORAL CONFIGURADO.QUANTUM INDENIZATÓRIO PROPORCIONAL E RAZOÁVEL EM CONFORMIDADE COM OS PARÂMETROS DO TRIBUNAL. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA EM PARTE. Trata-se de recurso de Apelação Cível interposto por CREDMOBILE ASSESSORIA, CONSTRUÇÕES E SERVIÇOS LTDA, buscando a reforma de sentença prolatada pelo Juízo da 13ª Vara Cível da Comarca de Fortaleza, que julgou parcialmente procedentes os pleitos formulados na Ação de Indenização por Danos Morais e Materiais, ajuizada por WAGNER PEREIRA FALCÃO. O cerne da controvérsia recursal consiste em verificar se é devida a indenização por danos materiais em favor do recorrido, essa consubstanciada no ressarcimento dos valores pagos a título de taxa de evolução da obra e da inversão, em prol do consumidor, da cláusula penal prevista no contrato; bem como se restou configurada a incidência de danos morais ao autor em razão do atraso na entrega da unidade imobiliária, como questiona a parte promovida em seu apelo. De início, ressalto que, nos termos do entendimento jurisprudencial pátrio, não há abusividade na inclusão de cláusula de tolerância de 180 (cento e oitenta) dias nos compromissos de compra e venda firmado com o consumidor, a fim de contemplar as variáveis que envolvem a construção civil. No entanto, no presente caso, restou evidenciada a falha na prestação dos serviços e, por conseguinte, o inadimplemento contratual da empresa requerida, dado que o imóvel não foi entregue na data aprazada, extrapolando, inclusive, o prazo de tolerância em mais de um ano. Assim, resta configurada a responsabilidade civil pelo ato ilícito cometido. No que atine ao primeiro ponto, o recorrente alega que não é devido o ressarcimento dos valores dispendidos a título de taxa de evolução de obra, pois o atraso ocorrido não se deu por negligência ou culpa de sua parte, mais sim por motivos totalmente imprevisíveis, não cabendo ao recorrido a restituição, ainda que de forma simples, dos valores pagos pela evolução da obra, referente ao período de maio de 2013 a abril de 2015 (data de recebimento do imóvel), quando o autor tinha plena ciência que o empreendimento poderia ser recebido até abril de 2014, considerando a prorrogação de 180 dias. Convém evidenciar, neste momento, que não está em discussão a legalidade da cobrança da taxa de evolução de obra, mas, sim, a responsabilidade pelo seu pagamento, se deve recair sobre o promitente comprador ou sobre a promitente vendedora do bem. Sendo evidente a mora da apelante, é forçoso reconhecer que os encargos moratórios são de sua responsabilidade, e não do consumidor. A promitente vendedora deve ser responsabilizada pelo pagamento da taxa de evolução de obra quando descumpre o prazo para entrega do imóvel. Assim, pelo período que o autor foi privado do bem, isto é, durante o atraso (abril/2014 a abril/2015), a ré/apelante deve custear a taxa de juros de obra. Tema 996 do STJ: É ilícito cobrar do adquirente juros de obra ou outro encargo equivalente, após o prazo ajustado no contrato para a entrega das chaves da unidade autônoma, incluído o período de tolerância. Reforma nesse ponto a sentença apenas para fixar o termo inicial em abril de 2014 (data máxima da entrega, considerando o prazo de tolerância). Quanto à cláusula penal, o entendimento consolidado do c. Superior Tribunal de Justiça, sedimentado em sede de recursos repetitivos (Tema 971), é no sentido de ser devida a inversão dessa cláusula penal que prevê multa exclusivamente em benefício do fornecedor na hipótese de mora ou inadimplemento do consumidor, uma vez comprovado o atraso na entrega do imóvel. No caso, sendo incontestado o descumprimento contratual pela promovida, entendo prudente a inversão da cláusula penal em favor do consumidor, tendo em vista que o atraso na entrega do imóvel se deu por culpa exclusiva da apelante, conduta pela qual deve responder. Quanto aos danos morais, o atraso na entrega do imóvel por mais de um ano revela circunstância excepcional que importa em significativa e anormal violação a direito da personalidade do promitente comprador, apto a ensejar a referida indenização.Considerando as circunstâncias do caso concreto, sobretudo o valor do imóvel adquirido e o período de atraso, entendo que o montante de

Processo	0150670-15.2017.8.06.0001
	R\$ 4.000,00 (quatro mil reais) é razoável e proporcional para compensar o dano sofrido, além de atender o caráter pedagógico da medida a efeito de permitir reflexão das rés sobre a necessidade de atentar para critério de organização e métodos no sentido de evitar condutas lesivas aos interesses dos consumidores. Recurso conhecido e parcialmente provido. ACORDÃO Vistos, relatados e discutidos os presentes autos da Apelação Cível, em que figuram as partes acima indicadas, acorda a Primeira Câmara de Direito Privado do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer e dar parcial provimento ao recurso de Apelação nº 0160264-87.2016.8.06.0001, nos termos do voto do eminente Relator. Fortaleza, data e assinatura digital registradas no sistema processual eletrônico DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator 07/06/2023, data da publicação: 07/06/2023) [Grifo nosso] APELAÇÃO CÍVEL. AÇÃO DE RESCISÃO CONTRATUAL. COMPRA E VENDA DE IMÓVEL. ATRASO NA CONCLUSÃO DA OBRA. CONFIGURAÇÃO. RESTITUIÇÃO INTEGRAL DOS VALORES EFETIVAMENTE PAGOS. DANO MORAL. COMISSÃO DE CORRETAGEM. AUSÊNCIA DE PEDIDO EXPRESSO NA PETIÇÃO INICIAL. SENTENÇA EXTRA PETITA. RECURSOS CONHECIDO E PARCIALMENTE PROVIDO. 1. Trata-se o caso dos autos de Ação de Resolução Contratual cumulada com indenização por danos morais ajuizada pela ora apelada em desfavor da apelante, cuja causa de pedir consistiu no atraso da entrega do empreendimento adquirido por ocasião do contrato de compra e venda, referente a um lote de nº 0001, quadra 002, no Reserva Eco Park, do loteamento Park Maracanaú, pelo valor total de R\$ 110.191,60 (Cento e Dez mil, cento e noventa e um Reais e Sessenta Centavos). O juiz de primeiro grau julgou procedentes os pedidos autorais, declarando a rescisão do contrato e determinando a devolução integral das parcelas adimplidas, devidamente corrigidas, além da devolução da comissão de corretagem e da multa contratual, bem como do pagamento de indenização por dano moral em R\$ 5.000,00 (cinco mil reais). 2. Inicialmente, vale lembrar que, em se tratando de uma relação de consumo, impõe-se, a responsabilidade solidária, perante o consumidor, de todos aqueles que tenham integrado a cadeia de prestação de serviço, em caso de defeito ou vício, sendo este o posicionamento do STJ, firmado, inclusive, em sede de julgamento de recurso repetitivo, pelo que a preliminar de ilegitimidade passiva suscitada na peça recursal deve ser rechaçada. 3. Considero incontroverso o fato de que houve atraso na conclusão da obra e transferência do empreendimento, que deveria ter sido entregue em meados de junho de 2016 (já considerando o prazo de tolerância), diante da confissão do Recorrente, em sede de contestação e de apelação, operada pela alegação dos motivos que levaram à mencionada delonga, tais como fortes chuvas e déficit de mão de obra da construção civil. 4. Por certo, os atrasos decorrentes de greves, ou fatores outros atinentes ao ramo da construção civil, chamados de fortuitos internos, compreendem riscos da própria atividade e integram o negócio empresarial, ficando o fornecedor responsável pelas suas consequências. E não por outra razão é que, ao ofertar o empreendimento com data certa de entrega, o construtor deve se precaver de todos os possíveis imprevistos, até mesmo porque o Código de Defesa do Consumidor é expresso ao determinar a vinculação do proponente à oferta, podendo, desta feita, ser estipulado prazo de tolerância para a entrega do imóvel, como aconteceu na espécie. 5. Resta evidenciada, então, a culpa exclusiva da empresa pela inadimplência contratual, ao atrasar injustificadamente a obra do imóvel, de sorte que a sua mora contratual autoriza o ressarcimento das perdas e danos ocasionados ao consumidor, de acordo com o art. 475 do CC. Vale dizer que, o atraso na entrega da obra do imóvel, aliada à perda do interesse da parte Autora na manutenção do contrato, torna plenamente cabível a rescisão do negócio jurídico nos termos do art. 475 do CC, deve aquele que deu causa à resolução contratual, na hipótese, a empresa, proceder à devolução integral dos valores comprovadamente pagos pelo empreendimento, com acréscimo de correção monetária e de juros moratórios. 6. Por outro lado, quanto à indenização por dano moral, em julgamento realizado em 4 de abril de 2021, esta col. Câmara de Direito Privado passou a entender que, em que pese o c. STJ já ter reconhecido a possibilidade de condenação de construtoras ao pagamento de indenização por danos extrapatrimoniais, em decorrência de atraso na entrega de imóvel, em diversos precedentes (ad exemplum: AgRg no AREsp 684.176/RJ, 4ª Turma, DJe 30/06/2015), com fundamento, principalmente, no direito à moradia, o mesmo órgão julgador também vem assentando que a caracterização do dano moral nessa hipótese não é presumida e não tem caráter absoluto, sendo imprescindível a

Processo	0150670-15.2017.8.06.0001
	análise do caso concreto para aferir a presença ou a ausência dessa espécie de dano. Isso porque o mero descumprimento contratual não enseja dano moral, devendo, para tanto, estar associado a outra circunstância excepcional que ocasione o dano. Na situação analisada, está ausente o dano moral, pois a parte autora não comprovou fato extraordinário capaz de provocar dano moral indenizável, não demonstrando, dentre outros fatores, que o imóvel destinava-se à sua moradia e de sua família. Assim, depreende-se que foram ocasionados ao consumidor apenas prejuízos de ordem econômica, decorrendo sua frustração unicamente do abalo patrimonial, e não moral. 7. Agravo interno conhecido e parcialmente provido, tão somente para excluir da condenação os danos morais. (Relator (a): HERACLITO VIEIRA DE SOUSA NETO; Comarca: Fortaleza; Órgão julgador: 10ª Vara Cível; Data do julgamento: 14/04/2021; Data de registro: 16/04/2021). Na situação analisada, está presente o dano moral, pois a parte autora demonstrou que o imóvel destinava-se à sua moradia e de sua família, pelo que a decisão do juízo que condenou o recorrente ao pagamento de indenização por dano moral não deve ser alterada, devendo o valor de R\$ 5.000,00 (cinco mil reais) ser mantido, por ser proporcional e condizente com o dano ocasionado. 7. De outro lado, cotejando a petição inicial, verifiquei que não houve pedido de devolução da comissão de corretagem, de modo que a sentença nesse aspecto é considerada extra petita, tendo decidido fora do pedido autoral proposto. 8. Recurso conhecido e parcialmente provido, para decotar da condenação a ordem de restituição da comissão de corretagem, permanecendo, no mais, os termos sentenciados, sobretudo em relação ao pagamento dos ônus sucumbenciais. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e dar-lhe parcial provimento, nos termos do voto do Relator. Fortaleza, 10 de abril de 2024 FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator (Apelação Cível - 0027233-11.2016.8.06.0117, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 10/04/2024, data da publicação: 10/04/2024) [Grifo nosso] DIREITO CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. ATRASO NA ENTREGA DE IMÓVEL. RESPONSABILIDADE OBJETIVA DA CONSTRUTORA. CUMULAÇÃO DE CLÁUSULA PENAL COMPENSATÓRIA E LUCROS CESSANTES. DANOS MORAIS CONFIGURADOS. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Apelação Cível interposta contra sentença que condenou, em ação de indenização por danos morais e materiais cumulada com cobrança de aluguéis, ao pagamento de (i) restituição dos aluguéis despendidos pela autora em razão do atraso na entrega do imóvel, (ii) penalidades contratuais pelo descumprimento da obrigação de entrega e (iii) indenização por danos morais no valor de R\$ 5.000,00, além de custas e honorários advocatícios. II. QUESTÃO EM DISCUSSÃO 2. Há três questões em discussão: (i) definir se há justificativa para o atraso na entrega do imóvel, considerando a pandemia de Covid-19; (ii) estabelecer se é cabível a cumulação da cláusula penal compensatória com lucros cessantes; e (iii) determinar se estão presentes os requisitos para a condenação por danos morais. III. RAZÕES DE DECIDIR 3. O fornecedor responde objetivamente pelos danos causados ao consumidor, nos termos do art. 14 do Código de Defesa do Consumidor, sendo suficiente a comprovação do dano e do nexo causal para que se configure a obrigação de indenizar. 4. O atraso na entrega do imóvel decorreu de culpa exclusiva da construtora, pois, mesmo considerando os efeitos da pandemia e os decretos estaduais que impuseram restrições temporárias à construção civil, o prazo máximo previsto contratualmente, incluindo o período de tolerância de 180 dias, foi ultrapassado sem justificativa idônea. 5. O prazo para entrega do imóvel não pode estar vinculado à obtenção de financiamento pelo comprador, conforme entendimento consolidado pelo STJ no REsp 1.729.593/SP, julgado sob a sistemática dos recursos repetitivos. 6. A cumulação da cláusula penal compensatória com lucros cessantes (aluguéis) é admitida, pois ambas possuem naturezas distintas: a cláusula penal visa compensar o inadimplemento, enquanto os lucros cessantes indenizam o prejuízo pelo atraso na entrega do imóvel, conforme entendimento fixado no REsp 1.614.721/DF, também sob a sistemática de recursos repetitivos. 7. O atraso prolongado na entrega do imóvel ultrapassa o mero inadimplemento contratual e configura dano moral indenizável, considerando o impacto negativo sobre a esfera pessoal e patrimonial do comprador, que teve sua expectativa frustrada. 8. O valor fixado para a indenização por danos morais em R\$ 5.000,00 observa os princípios da razoabilidade e proporcionalidade, estando alinhado à jurisprudência do

Processo	0150670-15.2017.8.06.0001
	tribunal . IV. DISPOSITIVO E TESE 9. Recurso desprovido. Tese de julgamento: 1. O prazo contratual para entrega do imóvel não pode estar condicionado à obtenção de financiamento pelo comprador. 2. A cláusula penal compensatória pode ser cumulada com a indenização por lucros cessantes, pois possuem finalidades distintas. 3. O atraso excessivo e injustificado na entrega de imóvel adquirido na planta configura dano moral indenizável. Dispositivos relevantes citados: CF/1988, art. 5º, LXXIV; CDC, arts. 3º, §1º, 14 e 47; CC, art. 423; CPC, arts. 85, §2º e §11, e 86, parágrafo único. Jurisprudência relevante citada: STJ, REsp 1.729.593/SP, Rel. Min. Marco Aurélio Bellizze, Segunda Seção, j. 25.09.2019; STJ, REsp 1.614.721/DF, Rel. Min. Luis Felipe Salomão, Segunda Seção, j. 22.05.2019; STJ, AgInt no AREsp 632.890/RS, Rel. Min. Marco Aurélio Bellizze, Terceira Turma, j. 24.10.2017; STF, RE 205.746/RS, Rel. Min. Carlos Velloso, Segunda Turma, j. 28.02.1997. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data conforme assinatura digital eletrônica. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator
 (Apelação Cível&#160;- 0237471-89.2021.8.06.0001, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento <strong style="font-size: small;">&#160; 26/03/2025 , data da publicação:&#160; 26/03/2025) [Grifo nosso]</p><p style="text-align: justify; text-indent: 8%;"> &#160;</p><p style="text-align: justify; text-indent: 8%;"> Considerando as circunstâncias do caso concreto, sobretudo o valor do imóvel adquirido e o período de atraso, entendo que, neste caso, o montante de R\$ 4.000,00 (quatro mil reais) fixado na decisão de primeiro grau é razoável e proporcional para compensar o dano sofrido, além de atender o caráter pedagógico da medida a efeito de permitir reflexão das rés sobre a necessidade de atentar para critério de organização e métodos no sentido de evitar condutas lesivas aos interesses dos consumidores.</p><p style="text-align: justify; text-indent: 8%;"> 4. Do dispositivo. </p><p style="text-align: justify; text-indent: 8%;"> Diante de todo o exposto, conheço dos recursos e, no mérito;</p><p style="text-align: justify; text-indent: 8%;"> 1) Nego provimento ao recurso interposto pela ré;</p><p style="text-align: justify; text-indent: 8%;"> 2) Dou parcial provimento ao recurso dos autores para:</p><p style="text-align: justify; text-indent: 8%;"> a) Condenar as rés, solidariamente, ao pagamento de multa compensatória de 2% sobre o valor do imóvel, por mês de atraso na entrega da obra, com juros de 1% ao mês, a título de indenização material, nos termos da inversão da cláusula penal (Tema 971/STJ);</p><p style="text-align: justify; text-indent: 8%;"> b) Reformar a sentença quanto à correção monetária incidente sobre a restituição dos valores pagos, que deverá seguir os índices contratuais: INCC até setembro/2015 e, a partir de então, IGP-M, afastando-se o INPC;</p><p style="text-align: justify; text-indent: 8%;"> Mantida, no mais, a sentença.</p><p style="text-align: justify; text-indent: 8%;"> Em razão do desprovimento do recurso da parte ré, majoro os honorários em 12% sobre valor da condenação, nos termos do art. 85, §11 do CPC/15.</p><p style="text-align: justify; text-indent: 8%;"> É como voto.</p><p style="text-align: justify; text-indent: 8%;"> Fortaleza – CE, data constante no sistema.</p><p style="text-align: center;">
 </p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA
 Relator</p><p class="MsoNormal" style="margin: 0cm 0cm 0cm 4cm; line-height: normal; text-align: justify;">
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Processo	0638229-98.2024.8.06.0000
Número de ordem	237
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA

Processo	0638229-98.2024.8.06.0000
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Fixação
Polo ativo	THIAGO DE ALENCAR NESS
Advogado(s) - Polo ativo	IGOR PAIVA AMARAL - (CE44347-A)
Polo passivo	NATALIA PARENTE PINHEIRO B. P. D. A. N.
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0638229-98.2024.8.06.0000
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0638229-98.2024.8.06.0000 - 160; AGRAVO DE INSTRUMENTO (202) AGRAVANTE: THIAGO DE ALENCAR NESS AGRAVADO: NATALIA PARENTE PINHEIRO, B. P. D. A. N. Ementa: DIREITO DE FAMÍLIA. AGRAVO DE INSTRUMENTO. AÇÃO REVISIONAL DE ALIMENTOS. PEDIDO DE TUTELA PROVISÓRIA PARA REDUZIR PENSÃO ALIMENTÍCIA. AUSÊNCIA DE PROVAS DE ALTERAÇÃO NO BINÔMIO POSSIBILIDADE/NECESSIDADE. DILAÇÃO PROBATÓRIA NECESSÁRIA. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Agravo de instrumento interposto por genitor contra decisão interlocutória que, em ação revisional de alimentos c/c tutela de urgência, indeferiu pedido de redução da pensão alimentícia fixada em R\$ 3.500,00 para R\$ 1.190,00, ao fundamento de ausência de comprovação de alteração superveniente do binômio possibilidade/necessidade. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se estão presentes os requisitos legais para a concessão de tutela de urgência a fim de reduzir o valor da pensão alimentícia pactuada anteriormente. III. RAZÕES DE DECIDIR 3. A concessão de tutela de urgência exige a presença simultânea da probabilidade do direito e do perigo de dano ou risco ao resultado útil do processo, conforme o art. 300 do CPC. 4. A fixação e eventual revisão de alimentos devem observar o binômio necessidade/possibilidade, previsto no art. 1.694, §1º, e no art. 1.703 do Código Civil, bem como o art. 227 da CF/1988. 5.

Processo	0638229-98.2024.8.06.0000
	variant-alternates: normal; font-size-adjust: none; font-kerning: auto; font-optical-sizing: auto; font-feature-settings: normal; font-variation-settings: normal; font-variant-position: normal; font-variant-emoji: normal; font-stretch: normal; line-height: normal;">&#160;&#160;&#160;O agravante não apresenta elementos probatórios suficientes que demonstrem alteração relevante em sua condição financeira desde a fixação da pensão, tampouco comprova adequadamente as despesas do alimentando.</p><p class="Standard" style="margin-left: 36.0pt; text-align: justify; text-indent: -18.0pt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 6. &#160;&#160;&#160;Os documentos juntados, como a declaração de imposto de renda com rendimentos significativos em aplicações financeiras, contradizem a narrativa de incapacidade econômica do alimentante.</p><p class="Standard" style="margin-left: 36.0pt; text-align: justify; text-indent: -18.0pt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 7. &#160;&#160;&#160;Em sede de agravo de instrumento, a cognição é limitada e não permite dilação probatória, necessária para a aferição da real extensão das necessidades do alimentando e das possibilidades do alimentante.</p><p class="Standard" style="margin-left: 36.0pt; text-align: justify; text-indent: -18.0pt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 8. &#160;&#160;&#160;A jurisprudência do TJCE, do STJ e de outros tribunais estaduais reafirma que a ausência de prova robusta acerca da modificação no binômio inviabiliza a concessão liminar de redução ou majoração de alimentos, impondo-se a manutenção da decisão até instrução probatória completa.</p><p class="Standard" style="text-align: justify; line-height: 150%;">IV. DISPOSITIVO E TESE</p><p class="Standard" style="margin-left: 36.0pt; text-align: justify; text-indent: -18.0pt; line-height: 150%; mso-list: l0 level1 lfo4; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 9. &#160;&#160;&#160;&#160; <!--[endif]--> Recurso desprovido.</p><p class="Standard" style="text-align: justify; line-height: 150%;">Tese de julgamento</p><p class="Standard" style="margin-left: 36.0pt; text-align: justify; text-indent: -18.0pt; line-height: 150%; mso-list: l3 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 1. &#160;&#160;&#160;&#160; <!--[endif]--> A revisão liminar de alimentos exige prova robusta de alteração superveniente no binômio possibilidade/necessidade.</p><p class="Standard" style="margin-left: 36.0pt; text-align: justify; text-indent: -18.0pt; line-height: 150%; mso-list: l3 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 2. &#160;&#160;&#160;&#160; <!--[endif]--> A ausência de comprovação suficiente da modificação financeira do alimentante inviabiliza a concessão de tutela provisória para redução da pensão.</p><p class="Standard" style="margin-left: 36.0pt; text-align: justify; text-indent: -18.0pt; line-height: 150%; mso-list: l3 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 3. &#160;&#160;&#160;&#160; <!--[endif]--> Questões relativas ao equilíbrio entre necessidades do alimentando e possibilidades do alimentante demandam

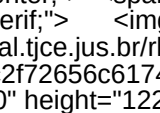
Processo	0638229-98.2024.8.06.0000
	dilação probatória a ser produzida na ação originária. Dispositivos relevantes citados: CF/1988, art. 227; CC, arts. 1.694, §1º, e 1.703; CPC, art. 300. Jurisprudência relevante citada: TJCE, AI nº 0637445-63.2020.8.06.0000, Rel. Des. Carlos Alberto Mendes Forte, j. 28.04.2021; TJ-MG, AI nº 10000212368633001, Rel. Des. Alexandre Santiago, j. 03.06.2022; TJDF, AI nº 0702375-34.2018.8.07.0000, Rel. Des. Diaulas Costa Ribeiro, j. 27.06.2018; TJRS, AI nº 70075338392, Rel. Des. Ricardo Moreira Lins Pastl, j. 09.11.2017. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de agravo de instrumento, para negar-lhe provimento, nos termos do voto do Relator. ACÓRDÃO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO Trata-se de Agravo de Instrumento interposto por THIAGO DE ALENCAR NESS, contra decisão interlocutória prolatada pelo MM. Juiz de Direito da 4ª Vara de Família da Comarca de Fortaleza, em sede de AÇÃO DE REVISIONAL DE ALIMENTOS C/C PEDIDO DE TUTELA PROVISÓRIA DE URGÊNCIA movida pelo agravante em desfavor de B. P. de A. N., representado por N. P. P. Na decisão interlocutória agravada de fls. 205/209 (SAJ), dos autos de origem, o juiz de primeiro grau entendeu por indeferir o pedido formulado pela parte autora, ora agravante, nos seguintes termos: Compulsando os autos, não vislumbro, neste momento processual, elementos suficientes para o deferimento do pleito antecipatório, posto que inexistem provas que demonstrem a alteração da situação fática alegada, quanto ao binômio POSSIBILIDADE/NECESSIDADE. Nesse sentido, a jurisprudência: Posto isso, não patenteados os pressupostos legais aptos à concessão da tutela de urgência requestada, em vista do disposto no art. 300 do CPC, indefiro o pleito antecipatório formulado pela parte requerente na exordial. Inconformado com a decisão, o agravante interpôs o presente recurso, aduzindo a necessidade de revisão da prestação alimentícia anteriormente acordada na Ação de Alimentos nº 0200144-08.2024.8.06.0001, na qual o genitor, ora agravante, obrigou-se a pagar R\$ 3.500,00 (três mil e quinhentos reais) a título de pensão

Processo	0638229-98.2024.8.06.0000
	alimentícia. Para tanto, alega não ter condições de arcar com o valor anteriormente arbitrado e que não estão sendo levados em consideração os proventos da genitora. Requer, em sede de tutela de urgência, a diminuição da pensão alimentícia para R\$ 1.190,00 (um mil cento e noventa reais). Por fim, roga pela reforma da decisão agravada, para que seja mantida a tutela deferida. Decisão interlocutória ID 22564145, indeferindo o pedido de antecipação de tutela requerido. Sem contrarrazões, conforme certidão ID 22564155 (SAJ 61). Parecer do Órgão Ministerial ID 22564163, opinando pelo desprovemento do recurso em apreço. É o relatório. VOTO Inicialmente, quanto aos requisitos de admissibilidade recursal, intrínsecos e extrínsecos, cumpre observar que o presente recurso de agravo de instrumento deve ser conhecido. Insurgência admitida, a controvérsia recursal consiste em analisar a possibilidade de reforma ou não, da decisão interlocutória de primeiro grau que indeferiu o pedido de tutela de urgência que pretendia reduzir a pensão alimentícia de R\$ 3.500,00 para R\$ 1.190,00, ao fundamento de inexistirem elementos probatórios suficientes a evidenciar alteração superveniente do binômio possibilidade-necessidade. Dito isso, cumpre destacar, <i>a priori</i>, que a cognição deste Juízo <i>ad quem</i> se restringe à análise perfunctória da matéria, verificando-se o acerto ou não da decisão recorrida, em razão da estreita via do agravo de instrumento, que veda a incursão aprofundada e definitiva no mérito da ação originária, sob pena de incorrer-se em prejuízo e, por conseguinte, em supressão de uma instância jurisdicional. Nesse viés, impõe-se acentuar que a legislação processual civil estabelece como requisitos motivadores da concessão da tutela de urgência (1) a probabilidade do direito e (2) o perigo de dano ou o risco ao resultado útil do processo, nos termos do art. 300 do CPC. Nesse cenário, adiantando que a não merece ser acolhida. Nesse contexto, deve-se destacar que a obrigação alimentar é imputada aos genitores por força do disposto no artigo 1.703 do Código Civil, segundo o qual "para a manutenção dos filhos, os cônjuges separados judicialmente contribuirão na proporção de seus recursos", corroborado pelo artigo 227 da Constituição Federal. A legislação vigente estabelece como parâmetro para a estipulação da pensão alimentícia o binômio necessidade/possibilidade, segundo o qual a verba alimentar deve ser fixada com observância das necessidades do alimentando e das possibilidades do alimentante. À vista disto, impõe-se aferir não apenas se o titular de fato necessita dos alimentos e se o devedor tem condições de arcar com a verba arbitrada, mas, especialmente, fixar o valor que mais se aproxime do equilíbrio que a Lei tenciona. Na hipótese dos autos, apesar de se tratar de alimentos em favor de menores, cujas necessidades são presumidas, a parte agravante não comprovou sequer minimamente que necessita do valor pleiteado. Veja-se que da planilha de fl.

Processo	0638229-98.2024.8.06.0000
	04, com a qual tenta justificar a necessidade mensal no valor de R\$1.190,00 (um mil cento e noventa reais), trata apenas da escola e do plano de saúde do menor, sem contar as demais despesas que se tem com uma criança, como vestimenta, remédios e lazer. Ademais, deixou de apresentar comprovantes relativos a transporte escolar, mensalidade escolar, TV a cabo, transporte, plano de saúde, dentre outros. Neste passo, analisando os autos originários, assim como o presente recuso, sou levado a concordar com o Magistrado quanto à inexistência de elementos probatórios que sustentem as alegações do agravante de que houve alteração do status financeiro desde o estabelecimento da primeira pensão alimentícia. Some-se a isso o fato de que o agravante juntou imposto de renda onde consta a importância de R\$ 158.121,65 (cento e cinquenta e oito mil, cento e vinte e um reais e sessenta e cinco centavos) a título unicamente de aplicações financeiras. O que vai de encontro à narrativa do recurso. Portanto, não está presente o requisito da probabilidade do direito, pelo menos nesse momento processual, de prévia cognição, carecendo os autos de melhores elementos de prova, sendo indispensável ampla dilação probatória. Nesse sentido, cito jurisprudência deste TJCE: &#160; PROCESSUAL CIVIL. AGRAVO INTERNO EM AGRAVO DE INSTRUMENTO. DIREITO DE FAMÍLIA. ALIMENTOS PARA FILHA E PARA EX-CONJUGE. PENSIONAMENTO ENTRE EX-CÔNJUGES. EXCEPCIONALIDADE. INDEFERIDO. MAJORAÇÃO ALIMENTOS PROVISÓRIOS. INDEFERIDO. RECURSO IMPROVIDO. 1. Cuidam os presentes autos de agravo interno interposto por Maiara Nogueira Avelar, contra decisão interlocutória, de minha relatoria, que indeferiu o efeito suspensivo requested no agravo de instrumento nos autos principal nº 0637445-63.2020.8.06.0000 (fls. 488/494). 2. De início, quanto aos alimentos fixados para a filha do casal, ao menos por ora não está demonstrada a manifesta incompatibilidade entre a verba alimentar fixada e o trinômio possibilidade-necessidade-proporcionalidade. Destaca-se, que o art. 1.694, § 1º, do Código Civil, estabelece que, ao fixar os alimentos, o juiz deve observar o justo equilíbrio entre as necessidades do alimentando e a possibilidade econômica da alimentante. Não se vislumbra que o pagamento dos alimentos provisórios no percentual fixado cause prejuízo à alimentanda e esteja em desacordo com o trinômio possibilidade-necessidade proporcionalidade. 3. Compulsando os autos, observa-se que por mais que invoque ou procure realçar suas necessidades, estas não são suficientes para justificar a majoração se não há demonstração cabal da possibilidade do alimentante, mediante prova da alteração para melhor da sua situação econômica. Assim, não parece razoável, a alteração dos alimentos para o montante de 10 (dez) salários-mínimos, já que o alimentante não sobeja ter a capacidade financeira alegada pelas agravantes, sobretudo quando se analisa o contracheque de 09/2020 do agravado, fl. 468, o qual demonstra que o alimentante percebe uma remuneração de R\$ 13.439,00 (treze mil, quatrocentos e trinta e nove reais). 4. Quanto a pensão alimentícia a ex-cônjuge, o Superior Tribunal de Justiça sedimentou o entendimento de que a pensão deve ser medida excepcional e se caso deferida ser fixada com termo certo, possibilitando-lhe a manutenção pelos seus próprios meios. No caso em comento, respeitou-se tais premissas já que a agravante tem capacidade para se reinserir no mercado de trabalho, afinal é engenheira de pesca, e porque se apresenta em boas condições de saúde. 5. Ademais, conforme já exposto, a genitora/gravante não obstante estivesse separada de fato desde fevereiro de 2019, manejou a ação de divórcio em 14/08/2019 sem requerer obrigação alimentar ao seu ex-cônjuge, demonstrando não necessitar de auxílio deste para prover o seu sustento. Outrossim, os alimentos pleiteados pela varoa possuem caráter excepcional entre cônjuges, e apenas devem ser deferidos quando houver comprovada necessidade, que não se presume em casos que tais, sendo imprescindível maior dilação probatória, para que se apure corretamente o binômio paradigma do arbitramento. 6. Precedente do STJ. 7. Recurso conhecido, mas para negar-lhe provimento. Vistos, relatados e discutidos os presentes autos, acordam os Desembargadores da 2ª Câmara de Direito Privado do egrégio Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do agravo interno interposto, mas para negar-lhe provimento, nos termos do voto do relator. Fortaleza, 28 de abril de 2021 FRANCISCO GOMES DE MOURA Presidente do Órgão Julgador DESEMBARGADOR CARLOS ALBERTO MENDES FORTE Relator (TJCE - AGT: 06374456320208060000 CE 0637445-63.2020.8.06.0000, Relator: CARLOS ALBERTO MENDES FORTE, Data de Julgamento: 28/04/2021, 2ª Câmara Direito Privado, Data de Publicação: 28/04/2021) (GN)

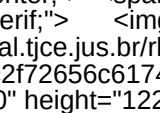
Processo	0638229-98.2024.8.06.0000
	small;">&#160;</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> De mais a mais, parece-me que a verba alimentar inicial foi fixada de acordo com a prova até o momento existente nos autos, não se vislumbrando, nesse momento, qualquer manifesta afronta ao que estabelece o §1º, do art. 1.694, do Código Civil, devendo o valor fixado ser mantido.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> No mais, entendo que no presente feito, a questão ainda deverá ser aprofundada durante a instrução processual, em sua origem, ocasião em que serão colhidos maiores elementos de prova acerca da possibilidade do cônjuge e das necessidades da parte agravada.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Nesse sentido, é fatta a jurisprudência:</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> AGRAVO DE INSTRUMENTO - AÇÃO REVISIONAL DE ALIMENTOS - TUTELA PROVISÓRIA&#160; MAJORAÇÃO DOS ÁLIMENTOS ANTERIORMENTE FIXADOS - BINÔMIO NECESSIDADE / POSSIBILIDADE - DILAÇÃO PROBATORIA. - Havendo necessidade de dilação probatória em relação às mudanças na situação financeira do alimentante e necessidade do alimentando, o indeferimento do pedido de tutela provisória de urgência de natureza antecipada, consistente na majoração da pensão alimentícia anteriormente fixada é medida que se impõe." (TJ-MG - AI: 10000212368633001 MG, Relator: Alexandre Santiago, Data de Julgamento: 03/06/2022, Câmaras Especializadas Cíveis / 8ª Câmara Cível Especializada, Data de Publicação: 22/06/2022)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">REVISÃO DE ALIMENTOS. ANTECIPAÇÃO TUTELA. MAJORAÇÃO. AUSÊNCIA DE PROVAS DE DA CAPACIDADE FINANCEIRA DO ALIMENTANTE. DILAÇÃO PROBATORIA. 1. A fixação de alimentos provisórios norteia-se pelo binômio necessidade/capacidade. 2. Ante a ausência de prova robusta da alegada modificação no binômio necessidade/capacidade, os alimentos estabelecidos na ação revisional devem ser mantidos até a adequada dilação probatória, a ser realizada sob o crivo do contraditório e da ampla defesa. 3. Agravo conhecido e desprovido." (TJDF 07023753420188070000 - Segredo Justiça 0702375-34.2018.8.07.0000, Relator: de DIAULAS COSTA RIBEIRO, Data de Julgamento: 27/06/2018, 8ª Turma Cível, Data de Publicação: Publicado no PJe : 06/07/2018 . Pág.: Sem Página Cadastrada.)</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;"> &#160;</p><p class="Standard" style="margin-left: 4.0cm; text-align: justify;">AGRAVO DE INSTRUMENTO. AÇÃO REVISIONAL DE ALIMENTOS. MAJORAÇÃO. DESCABIMENTO. DILAÇÃO PROBATORIA. MANUTENÇÃO DA DECISÃO RECORRIDA. Inexistindo no instrumento elementos a indicar de forma categórica a efetiva extensão das possibilidades paternas, inviável, por ora, o acolhimento do pleito liminar de majoração da verba alimentícia. Necessidade de dilação probatória. Decisão indeferitória mantida. AGRAVO DE INSTRUMENTO DESPROVIDO." (TJ-RS - AI: 70075338392 RS, Relator: Ricardo Moreira Lins Pastl, Data de Julgamento: 09/11/2017, Oitava Câmara Cível, Data de Publicação: Diário da Justiça do dia 14/11/2017)</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160;</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Ante o exposto, CONHEÇO do presente recurso, para NEGAR-LHE PROVIMENTO &#160;</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> É como voto.</p><p class="Standard" style="text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160;</p><p class="Standarduser" style="text-align: center; align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p>&#160;</p><p class="Standarduser" style="text-align: center; line-height: 150%;" align="center"> Relator &#160;</p>
<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160;</p>

Processo	0270246-89.2023.8.06.0001
Número de ordem	238
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	CONSTRUTORA CARVALHO FERREIRA LTDA
Advogado(s) - Polo ativo	JOSE FROTA CARNEIRO NETO - (CE19603-A) RUI BARROS LEAL FARIAS - (CE16411-A) MIGUEL ROCHA NASSER HISSA - (CE15469-A) RODRIGO MACEDO DE CARVALHO - (CE15470-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	DAIANY MARA RIBEIRO PAIVA - (CE16942-A)
Terceiros	Não informado

Processo	0270246-89.2023.8.06.0001
Acórdão	 PROCESSO: 0270246-89.2023.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: CONSTRUTORA CARVALHO FERREIRA LTDA APELADO: BANCO BRADESCO S/A EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EMBARGOS À EXECUÇÃO. INDEFERIMENTO DE JUSTIÇA GRATUITA. AUSÊNCIA DE COMPROVAÇÃO DE HIPOSSUFICIÊNCIA ECONÔMICA. NÃO RECOLHIMENTO DAS CUSTAS PROCESSUAIS. CANCELAMENTO DA DISTRIBUIÇÃO E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Apelação Cível interposta por Construtora Carvalho Ferreira Ltda. contra sentença que, nos autos de Embargos à Execução, indeferiu o pedido de gratuidade da justiça, cancelou a distribuição com base no art. 290 do CPC e extinguiu o processo sem resolução do mérito, nos termos do art. 485, I, do CPC, em razão da ausência de comprovação do pagamento das custas processuais. II. QUESTÃO EM DISCUSSÃO 2. Há duas questões em discussão: (i) definir se a pessoa jurídica recorrente faz jus ao benefício da gratuidade da justiça; (ii) estabelecer se o cancelamento da distribuição e a extinção do processo sem resolução do mérito foram corretamente aplicados diante da ausência de comprovação da hipossuficiência e do não recolhimento das custas. RAZÕES DE DECIDIR 3. A gratuidade da justiça pode ser concedida tanto a pessoas naturais quanto a pessoas jurídicas, desde que comprovada a insuficiência de recursos, nos termos dos arts. 98 e 99 do CPC/2015. 4. A presunção de veracidade da declaração de hipossuficiência prevista no § 3º do art. 99 do CPC aplica-se exclusivamente às pessoas naturais, inexistindo presunção para as pessoas jurídicas, que devem comprovar documentalmente a alegada incapacidade financeira. 5. É ônus da parte que requer a gratuidade apresentar documentos que demonstrem sua impossibilidade de arcar com as custas e despesas processuais, não bastando mera alegação de insuficiência. 6. O juízo de origem oportunizou à parte apelante prazo para comprovação da hipossuficiência, nos termos do art. 99, § 2º, do CPC, observando os princípios do contraditório e da ampla defesa, mas a parte permaneceu inerte. 7. Diante da ausência de comprovação e do não recolhimento das custas, impõe-se o cancelamento da distribuição, nos termos do art. 290 do CPC, e a consequente extinção do processo sem resolução do mérito, nos termos do art. 485, I, do CPC. 8. A jurisprudência consolidada dos Tribunais confirma a legalidade do indeferimento do benefício e do cancelamento da distribuição quando a parte não comprova hipossuficiência nem recolhe as custas processuais (TJCE, APL nº 0153762-35.2016.8.06.0001; TJCE, Apelação Cível nº 0168829-74.2015.8.06.0001). DISPOSITIVO E TESE 9. Recurso desprovido. Tese de julgamento: 1. A pessoa jurídica deve comprovar documentalmente sua hipossuficiência econômica para a concessão da gratuidade da justiça, não se aplicando a presunção do art. 99, § 3º, do CPC. 2. A inércia da parte em comprovar a alegada insuficiência financeira autoriza o indeferimento da gratuidade e a manutenção da obrigação de recolher custas. 3. A ausência de pagamento das custas no prazo legal impõe o cancelamento da distribuição (art. 290 do CPC) e a extinção do processo sem resolução do mérito (art. 485, I, do CPC). Dispositivos relevantes citados: CF/1988, art. 5º, XXXV e LV; CPC/2015, arts. 98, 99, §§ 2º e 3º, 290 e 485, I. Jurisprudência relevante citada: TJCE, APL nº 0153762-35.2016.8.06.0001, Rel. Des. Durval Aires Filho, 4ª Câmara Direito Privado, j. 07.07.2020; TJCE, Apelação

Processo	0270246-89.2023.8.06.0001
	Cível nº 0168829-74.2015.8.06.0001, Rel. Des. Francisco Bezerra Cavalcante, 4ª Câmara Direito Privado, j. 05.12.2023.</div> <p> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará,&#160;em CONHECER e NEGAR PROVIMENTO ao recurso, nos termos do voto do Desembargador Relator. </p><p>
 </p><p style="text-align: center;"> Fortaleza, data da assinatura digital.</p><p>&#160;</p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do Órgão Julgador</p><p style="text-align: center;">
 </p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p><p>&#160;</p></div><p style="text-align: center;"> RELATÓRIO </p><p style="text-align: justify;"> Trata-se de Apelação Cível interposta por Construtora Carvalho Ferreira Ltda., em face de Banco Bradesco S/A., adversando sentença (ID 22619782) proferida pelo Núcleo de Justiça 4.0, que cancelou a distribuição do feito, conforme art. 290 do CPC e extinguiu o processo sem resolução de mérito, nos termos do art. 485, inc. I do CPC, face à ausência de comprovação do pagamento das custas processuais, nos autos dos Embargos à Execução opostos pelo apelante.</p><p style="text-align: justify;"> Irresignada, a parte recorrente interpôs o presente apelo, aduzindo a impossibilidade de arcar com as despesas processuais, requerendo a reforma do decisor para que seja deferido o benefício requestado.</p><p style="text-align: justify;"> Contrarrazões, ID 22620348.</p><p style="text-align: justify;"> É o relatório.</p><p style="text-align: center;"> VOTO</p><p style="text-align: justify;"> Trata-se de Apelação Cível adversando sentença que extinguiu o processo sem resolução de mérito e cancelou a distribuição, nos termos dos arts. 485, I e 290 do CPC, face à ausência de comprovação do pagamento das custas processuais, nos autos da Ação de Execução / Embargos à Execução.</p><p style="text-align: justify;"> No caso em tela, a parte embargante requereu na origem a concessão do benefício da justiça gratuita, sob o argumento de que não possui recursos suficientes para pagamento das custas e despesas processuais. Embora oportunizada a juntada de comprovação da condição alegada, a parte se quedou inerte, de modo que o pedido fora indeferido em decisão fundamentada, ID 22619782.</p><p style="text-align: justify;"> Acerca do assunto, é cediço que, sob a égide do anterior Código de Processo Civil (Lei nº 5.869/73), o tema concernente à assistência judiciária aos necessitados (pessoas físicas) era inteiramente regulado pela Lei nº 1.060/50.&#160;</p><p style="text-align: justify;"> A partir da entrada em vigor do Código de Processo Civil de 2015 (Lei nº 13.105/2015), a matéria passou a ser disciplinada na Seção IV (Da Gratuidade da Justiça) do referido diploma legal, ocasião em que o legislador determinou, expressamente, nas disposições finais, a revogação quase que integral da Lei nº 1.060/50 (art. 1.072, III, CPC/15).</p><p style="text-align: justify;"> Entretanto, urge esclarecer que a presunção juris tantum de pobreza que já tinha previsão na Lei nº 1.060/50 (art. 4º) manteve-se de forma expressa em relação às pessoas naturais, consoante se infere da leitura do § 3º do art. 99 do CPC/15, senão:</p><p style="text-align: justify;">
 </p><p style="text-align: justify;"> Art. 98. A pessoa natural ou jurídica, brasileira ou estrangeira, com insuficiência de recursos para pagar as custas, as despesas processuais e os honorários advocatícios, tem direito à gratuidade da justiça, na forma da lei.</p><p style="text-align: justify;"> Art. 99. O pedido de gratuidade da justiça pode ser formulado na petição inicial, na contestação, na petição para ingresso de terceiro no processo ou em recurso.</p><p style="text-align: justify;"> § 3º Presume-se verdadeira a alegação de insuficiência deduzida exclusivamente por pessoa natural.</p><p style="text-align: justify;">
 </p><p style="text-align: justify;"> Havendo dúvida fundada acerca do alegado estado de precariedade financeira, é possível a intimação prévia do postulante à gratuidade, seja ela pessoa natural ou jurídica, para comprovação dos pressupostos legais para a concessão do beneplácito antes de indeferido o pleito, como aconteceu na espécie.</p><p style="text-align: justify;"> Ressalte-se que é ônus da parte autora demonstrar que faz jus ao benefício através de documentos que comprovem sua hipossuficiência econômica e/ou

Processo	0270246-89.2023.8.06.0001
	impossibilidade de pagamento das custas processuais. Nesse sentido, é inviável a concessão da assistência judiciária gratuita à parte que não comprovar efetivamente a situação financeira deficitária que de fato a impossibilite de pagar as despesas do processo. Não basta mera alegação da falta de condições de suportar as custas do processo, sendo necessário que faça prova inequívoca acerca de impossibilidade de arcar com tais despesas. Verifica-se que o juízo de origem facultou à parte apelante prazo para a comprovação da alegada precariedade financeira, concedendo-lhe 15 (quinze) dias para emendar a inicial e apresentar os documentos que comprovem sua hipossuficiência, observando, assim, o disposto no mencionado § 2º do art. 99 do CPC/15 e, com isso, os princípios constitucionais do contraditório e da ampla defesa. Entretanto, a parte apelante se quedou inerte, o que levou o magistrado a acertadamente indeferir o benefício. Ademais, devidamente intimada, a parte recorrente não efetuou o recolhimento das custas, dado ensejo ao cancelamento da distribuição. Art. 290. Será cancelada a distribuição do feito se a parte, intimada na pessoa de seu advogado, não realizar o pagamento das custas e despesas de ingresso em 15 (quinze) dias. Sobre o assunto destaque os seguintes julgados: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. INDEFERIMENTO DA CONCESSÃO DO BENEFÍCIO DA JUSTIÇA GRATUITA PELO JUÍZO A QUO A ABERTURA DE PRAZO PARA DEMONSTRAÇÃO DA NECESSIDADE. DETERMINAÇÃO DO RECOLHIMENTO DAS CUSTAS. INÉRCIA DA PARTE. EXTINÇÃO DO FEITO E CANCELAMENTO DA DISTRIBUIÇÃO. ARTS. 290, 485, IV, DO CPC. CONFIRMAÇÃO. RECURSO CONHECIDO E IMPROVIDO - O art. 290 do CPC é claro ao determinar o cancelamento da distribuição do feito se a parte, intimada na pessoa de seu advogado, não realizar o pagamento das custas e despesas de ingresso no prazo de 15 (quinze) dias. Jurisprudência sedimentada TJCE. (TJ-CE - APL: 01537623520168060001 CE 0153762-35.2016.8.06.0001, Relator: DURVAL AIRES FILHO, Data de Julgamento: 07/07/2020, 4ª Câmara Direito Privado, Data de Publicação: 07/07/2020) [destacou-se] APELAÇÃO CÍVEL. AÇÃO DE EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. PEDIDO DE JUSTIÇA GRATUITA. INDEFERIMENTO. DECISÃO INTERLOCUTÓRIA NÃO IMPUGNADA CORRETAMENTE. NÃO INTERPOSTO AGRAVO DE INSTRUMENTO. INTIMAÇÃO PARA RECOLHIMENTO DAS CUSTAS. DECURSO DO PRAZO. EXTINÇÃO DO PROCESSO POR DESERÇÃO. CANCELAMENTO DA DISTRIBUIÇÃO. PRECLUSÃO. ARTS. 290 E 507 DO CPC. APLICAÇÃO. RECURSO CONHECIDO E NÃO PROVIDO. SENTENÇA MANTIDA. I - Tratam os autos de recurso de Apelação Cível interposto por Massa Falida da Unânime Cooperativa de Economia e Crédito Mútuo dos Servidores Públicos do Poder Executivo do Estado do Ceará (págs. 65/71), visando reformar a Sentença proferida pelo Juízo da 6ª Vara Cível da Comarca de Fortaleza nas págs. 61/62, em sede de Execução de Título Extrajudicial, promovida pelo Apelante contra Jivago Donizetti Ribeiro; ambos já estão qualificados e representados nos autos. II - Se a parte autora não recorre da decisão que indeferiu o seu pedido de justiça gratuita, tampouco recolhe as custas quando intimada para tanto, não há se falar em reforma da sentença que determinou o cancelamento da distribuição do processo, sob o argumento de que detém os requisitos necessários para auferir o referido benefício. A questão referente ao indeferimento do benefício de justiça gratuita ficou acobertada pela preclusão, porquanto não combatida via de recurso adequado. Aplicação do art. 507 do CPC. Precedentes. III - Recurso de apelação conhecido e não provido. Sentença mantida. (Apelação Cível - 0168829-74.2015.8.06.0001, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento: 05/12/2023, data da publicação: 05/12/2023) [destacou-se] Dessa forma, a presente situação encaixa-se na hipótese prevista na legislação processual vigente, que permite ao julgador proceder com o cancelamento da distribuição, com amparo no art. 290 do CPC, considerando que não restou comprovado os requisitos para a concessão do benefício da justiça gratuita, encontrando-se a decisão em conformidade com legislação vigente. Diante o exposto, CONHEÇO DO PRESENTE RECURSO, NEGANDO-LHE PROVIMENTO, mantendo inalterada a sentença recorrida. É como voto. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA RELATOR

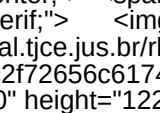
Processo	0257087-50.2021.8.06.0001
Acórdão	 PROCESSO: 0257087-50.2021.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: ALLISON FELIPE MACIEL DE ARAUJO E OUTROS APELADO: ALBERTO MARCIANO GRANGEIRO PINHEIRO Ementa: DIREITO PROCESSUAL CIVIL E AMBIENTAL. APELAÇÃO CÍVEL. AÇÃO DE REINTEGRAÇÃO DE POSSE. ÁREA DE PRESERVAÇÃO PERMANENTE. AUSÊNCIA DE INTIMAÇÃO DO MINISTÉRIO PÚBLICO EM PRIMEIRO GRAU. NULIDADE CONFIGURADA. SENTENÇA ANULADA. RECURSO PREJUDICADO. I. CASO EM EXAME 1. Apelação cível interposta por Allison Felipe Maciel de Araújo e outros contra sentença da 13ª Vara Cível da Comarca de Fortaleza/CE, que julgou procedente a Ação de Reintegração de Posse ajuizada por Alberto Marciano Grangeiro Pinheiro e rejeitou a reconvenção. Os apelantes sustentam a nulidade da sentença por ausência de intimação da Prefeitura e do Ministério Público, tendo em vista tratar-se de área de preservação permanente. O Ministério Público em segundo grau opinou pela nulidade da sentença, em razão de não ter sido intimado para intervir em primeiro grau. II. QUESTÃO EM DISCUSSÃO 2. Há duas questões em discussão: (i) verificar se houve ofensa ao princípio da dialeticidade; (ii) definir se a ausência de intimação do Ministério Público em primeiro grau de jurisdição, em ação envolvendo área de preservação permanente, acarreta nulidade processual insanável. III. RAZÕES DE DECIDIR 3. O princípio da dialeticidade exige que as razões recursais guardem pertinência temática com os fundamentos da decisão impugnada, o que se verifica no caso concreto, razão pela qual se afasta a preliminar de não conhecimento do recurso. 4. O pedido de gratuidade da justiça, formulado em contestação e não apreciado em sentença, considera-se tacitamente deferido, nos termos da jurisprudência do STJ, autorizando o conhecimento do recurso sem preparo. 5. O Ministério Público possui função institucional de intervir em processos que envolvam interesse público e social, especialmente nas hipóteses previstas no art. 178, I e III, do CPC/2015, como as demandas relativas a áreas de preservação permanente. 6. A ausência de intimação do Ministério Público em primeiro grau, para manifestar-se em momento oportuno, caracteriza nulidade processual, nos termos do art. 279, caput e §§ 1º e 2º, do CPC/2015, por se tratar de vício que gera prejuízo à adequada fiscalização da ordem jurídica. 7. O parecer do Ministério Público em segundo grau, quando expressamente aponta prejuízo e requer a nulidade, não supre a ausência de intervenção obrigatória em primeira instância. 8. Precedentes do TJMG consolida o entendimento de que, em tais hipóteses, deve ser anulada a sentença e invalidados os atos processuais praticados a partir do momento em que o Parquet deveria ter sido intimado. IV. DISPOSITIVO E TESE 9. Sentença anulada. Recurso prejudicado. Tese de julgamento:

Processo	0257087-50.2021.8.06.0001
	1. A ausência de intimação do Ministério Público em ação envolvendo área de preservação permanente configura nulidade processual insanável, nos termos do art. 279, caput e §§ 1º e 2º, do CPC/2015. 2. O parecer ministerial em segundo grau não supre a falta de intimação em primeira instância quando o próprio órgão aponta prejuízo e suscita a nulidade. Dispositivos relevantes citados: CF/1988, art. 127; CPC/2015, arts. 178, I e III; 179, II; 279, §§ 1º e 2º; Lei 12.651/2012, arts. 3º, II, e 8º. Jurisprudência relevante citada: STJ, AgRg nos EAREsp n. 440.971/RS, Rel. Min. Raul Araújo, Corte Especial, j. 03.02.2016, DJe 17.03.2016; STJ, AgInt nos EDcl no REsp 1.404.456/RS, Rel. Min. Raul Araújo, 4ª Turma, j. 04.02.2020, DJe 13.02.2020; STJ, EDcl no REsp 1.184.752/PI, Rel. Min. Luis Felipe Salomão, 4ª Turma, j. 16.10.2014, DJe 21.10.2014; TJMG, Apelação Cível 1.0000.22.256510-3/001, Rel. Des. Maria Inês Souza, 2ª Câmara Cível, j. 19.12.2023; TJMG, Apelação Cível 1.0000.22.095600-7/001, Rel. Des. Maurício Soares, 3ª Câmara Cível, j. 07.07.2023. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, em anular a sentença vergastada, ficando prejudicado a análise do recurso interposto, nos termos do voto do Relator. Fortaleza, data da assinatura digital. Relator DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO Trata-se de recurso de apelação interposto por ALLISON FELIPE MACIEL DE ARAUJO e outros, insurgindo-se contra a sentença prolatada pelo Juízo de Direito da 13ª Vara Cível da Comarca de Fortaleza/Ce (id. 23046357), que julgou procedente a Ação de Reintegração de Posse com Pedido de Antecipação de Tutela, movida por Alberto Marciano Grangeiro Pinheiro, em face dos apelantes, e rejeitou a reconvenção destes. Segue o julgado: Nestas condições, por sentença, para que produza seus jurídicos e regulares efeitos, JULGO PROCEDENTES os pedidos formulados pelo requerente, com base no art. 487, inciso I, do Código de Processo Civil, e com arrimo nos fundamentos elencados nas linhas precedentes. Ao passo em que REJEITO A RECONVENÇÃO apresentada pelos requeridos, uma vez que a usucapião deve ocorrer por meio próprio. Expeça-se o mandado definitivo de reintegração de posse em favor da parte autora, devendo os requeridos absterem-se de praticar qualquer ato de esbulho ou turbacão na posse do autor, sob pena de multa diária de R\$ 100,00 (cem reais). Condeno a parte requerida em custas processuais e ao pagamento dos honorários advocatícios sucumbenciais, que ora arbitro em 10% (dez por cento) sobre o valor atualizado da causa, o que faço com fundamento no § 2º do art. 85 do Código de Processo Civil. Irresignada com o julgado, as partes autoras interporão o recurso apelatório de id. 23046572, alegando que a sentença deve ser anulada, pois, deveria ter sido intimado a prefeitura para se manifestar no curso do processo, tendo em vista se tratar de área de preservação permanente. Contrarrrazões sob id. 23044956, alegando, preliminarmente, ofensa ao princípio da dialeticidade. No mérito, requer o improvimento do recurso. Parecer do Ministério Público sob id. 23044962, opinando pela nulidade

Processo	0257087-50.2021.8.06.0001
	da sentença, tendo em vista que o órgão ministerial, na primeira instância, deveria ter sido intimado para intervir no feito, visto o interesse deste na demanda.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Audiência de conciliação sob id. 23044971, sem êxito na composição de acordo. </p> <p style="text-align: justify; text-indent: 8%;"> É o relatório. </p> <p style="text-align: justify; text-indent: 8%;"> Adotando o Pacto Nacional do Judiciário Pela Linguagem Simples, do CNJ, passo a proferir o meu voto.&#160; </p> <p style="text-align: center;"> VOTO </p> <p style="text-align: justify; text-indent: 8%;"> Inicialmente, analiso a preliminar de ofensa ao princípio da dialeticidade arguido em sede de contrarrazões.&#160; </p> <p style="text-align: justify;"> 1 – Da preliminar de não obediência ao princípio da dialeticidade. </p> <p style="text-align: justify; text-indent: 8%;"> Por sua vez, o apelado em contrarrazões, suscitou o não conhecimento do recurso por ofensa ao princípio da dialeticidade. </p> <p style="text-align: justify; text-indent: 8%;"> É sabido que não há como se admitir um recurso cujas razões estejam inteiramente dissociadas da decisão combatida, uma vez que se impõe ao recorrente contrapor-se aos fundamentos da decisão, com o fito de demonstrar em que consistiu o erro, quer processual, quer material, sustentando as razões de sua reforma </p> <p style="text-align: justify; text-indent: 8%;"> A parte recorrente tem, portanto, o ônus processual de demonstrar quais falhas processuais ou materiais na decisão judicial que devem ensejar o provimento do recurso. Diz-se que esse ônus decorre direta e imediatamente do princípio da dialeticidade, que sugere a necessidade de existência de pertinência temática entre as razões recursais e os fundamentos da decisão impugnada. </p> <p style="text-align: justify; text-indent: 8%;"> No presente caso, vê-se que as partes recorrentes se insurgiram de forma clara sobre os fundamentos da sentença adversada, explanando os motivos pelos quais entendem que deve ser objeto de reforma.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Cumprido, assim, com todos os elementos formais de admissibilidade do recurso, por estar clara a sua pretensão de ver reformada a sentença recorrida. </p> <p style="text-align: justify; text-indent: 8%;"> Diante disso, é de se rejeitar a preliminar apresentada. </p> <p style="text-align: justify; text-indent: 8%;"> Ademais, considerando que as partes apelantes requereram o benefício da justiça gratuita em sede de contestação e não tiveram seu pedido devidamente apreciado em sede de sentença, o entendimento do Superior Tribunal de Justiça (STJ) é no sentido de que "a ausência de manifestação do Judiciário quanto ao pedido de assistência judiciária gratuita leva à conclusão de seu deferimento tácito, a autorizar a interposição do recurso cabível sem o correspondente preparo [destacou-se]" (AgRg nos EAREsp n. 440.971/RS, Relator Ministro RAUL ARAÚJO, CORTE ESPECIAL, julgado em 3/2/2016, DJe 17/3/2016). </p> <p style="text-align: justify; text-indent: 8%;"> Isso posto, entendo pela concessão dos benefícios da justiça gratuita para as partes recorrentes.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Realizado o juízo de admissibilidade (análise dos pressupostos intrínsecos – atinentes à existência do direito de recorrer – e extrínsecos – atinentes ao seu exercício) e observo que todas as exigências legais foram cumpridas, razão pela qual conheço o recurso.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Passo ao juízo de mérito. </p> <p style="text-align: justify; text-indent: 8%;"> Rememorando-se os fatos, cuida-se de Ação de Reintegração de Posse com Pedido de Antecipação de Tutela ajuizada por Alberto Marciano Granjeiro Pinheiro, onde teve sentença prolatada pelo Juízo da 13ª Vara Cível da Comarca de Fortaleza, que julgou procedente a ação em questão. Ainda em sentença, foi rejeitada a reconvenção apresentada pelas partes, ora apelantes.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Em manifestação de id. 23044962, o representante do Ministério Público atuante neste tribunal, opinou pela nulidade da sentença em razão da demanda envolver área de preservação permanente e de propriedade de ente municipal, havendo consequente interesse público e social.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Ainda, restou alegado que o órgão em questão não foi intimado para se manifestar no primeiro grau, razão pela qual requer a desconstituição da sentença com a declaração de nulidade dos atos a partir do momento em que o membro ministerial deveria ter sido intimado, nos moldes do art. 279, caput e § 1º, do CPC/2015, adotando-se os expedientes de estilo, bem como para mandar proceder a intimação do ente municipal competente.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Dessa forma a questão

Processo	0257087-50.2021.8.06.0001
	merece se analisada sobre a possibilidade de anulação da sentença, de ofício, em virtude da ausência de atuação do Ministério Público durante a instrução do feito na origem.&#160; </p> <p style="text-align: justify; text-indent: 8%;">Como relatado, afirmam os apelantes que "Conforme demonstrado, por documento extraído da prefeitura há divergência de medidas, além de que, segundo a Prefeitura de Fortaleza, a área ocupada pelos recorrentes pertence a Prefeitura, sendo ÁREA DE PRESERVAÇÃO PERMANENTE." (id. 23046572, fls. 20). </p> <p style="text-align: justify; text-indent: 8%;"> Pois bem. </p> <p style="text-align: justify; text-indent: 8%;"> Conforme parecer do órgão ministerial de id. 23044962, não foi concedida vista ao Ministério Público atuante em primeiro grau de jurisdição para se manifestar, cuja inobservância processual ocasionou prejuízo.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> O MP possui a incumbência da defesa dos interesses sociais e individuais indisponíveis (art. 127, CF/88), com a função de intervir como fiscal da ordem jurídica nos casos de a relevância pública e social (art. 178, I e III, CPC/15), sendo a identificação do interesse público ou social a demandar a intervenção ministerial exclusiva do membro do MP (art. 5º, da Resolução nº 047/2018 do Órgão Especial do Colégio de Procuradores de Justiça).&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Sob esse prisma, a ausência de intimação do Ministério Público para intervenção em processos dessa natureza acarreta nulidade do feito, em virtude de ser vício insanável, caso verificado a existência de prejuízo e após manifestação do Parquet, nos termos do art. 279, §§1º e 2º do Código de Processo Civil:&#160; </p> <p style="text-align: justify; padding-left: 150px;"> Art. 279. É nulo o processo quando o membro do Ministério Público não for intimado a acompanhar o feito em que deva intervir.&#160; </p> <p style="text-align: justify; padding-left: 150px;"> § 1º Se o processo tiver tramitado sem conhecimento do membro do Ministério Público, o juiz invalidará os atos praticados a partir do momento em que ele deveria ter sido intimado.&#160; </p> <p style="text-align: justify; padding-left: 150px;"> § 2º A nulidade só pode ser decretada após a intimação do Ministério Público, que se manifestará sobre a existência ou a inexistência de prejuízo.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Ademais, A Lei Federal nº 12.651/2012 estabelece normas gerais sobre a proteção da vegetação, áreas de Preservação Permanente e as áreas de Reserva Legal; a exploração florestal, o suprimento de matéria-prima florestal, o controle da origem dos produtos florestais e o controle e prevenção dos incêndios florestais, e prevê instrumentos econômicos e financeiros para o alcance de seus objetivos. </p> <p style="text-align: justify; text-indent: 8%;"> &#160;O art. 3º, II, do mencionado diploma legal define a área de proteção permanente - APP, como uma área protegida, coberta ou não por vegetação nativa, com função ambiental de preservar recursos hídricos, a paisagem, a estabilidade geológica e a biodiversidade, facilitar o fluxo gênico de fauna e flora, proteger o solo e assegurar o bem-estar das populações humanas.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> O uso desta área se faz somente nas hipóteses do art. 8º da Lei n. 12.651/2012, permitindo-se a intervenção ou a supressão de vegetação nativa com intuito de utilidade pública, de interesse social ou de baixo impacto ambiental. </p> <p style="text-align: justify; text-indent: 8%;"> Nesse contexto, após a apresentação de Réplica e a oportunização às partes para se manifestarem acerca das provas que pretendiam produzir, o Ministério Público devia ter sido intimado para se manifestar nos autos, para ciência do feito e para manifestação acerca das provas que eventualmente quisesse produzir, nos termos do art. 179, inciso II do Código de Processo Civil.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Ademais, antes da prolação da Sentença, devia o Ministério Público, de igual modo, ter sido intimado para apresentar seu parecer de mérito. Tais oportunizações, basiladas no Código de Processo Civil, possibilita ao Parquet formular algum requerimento ou emitir alguma manifestação vital ao processo, possibilitando o exercício de sua função de intervir nos processos que envolvam área de preservação permanente.&#160; </p> <p style="text-align: justify; text-indent: 8%;"> Nesse sentido cumpre destacar os seguintes julgados: </p> <p style="text-align: justify; text-align: center;">
 </p> <p style="text-align: justify; padding-left: 150px;"> EMENTA: APELAÇÃO CÍVEL - INSTALAÇÃO DE REDE DE ELÉTRICA - IMÓVEL RURAL - AUSÊNCIA DE INTIMAÇÃO DO MINISTÉRIO PÚBLICO DE PRIMEIRO GRAU - NULIDADE ARGUIDA PELO ÓRGÃO MINISTERIAL ATUANTE NO SEGUNDO GRAU DE JURISDIÇÃO - PREJUÍZO CARACTERIZADO - NULIDADE INSANÁVEL - SENTENÇA ANULADA. 1- O artigo 178 do Código de Processo Civil prevê a participação do Ministério Público nas ações que envolvam interesse público, evidenciado pela natureza

2709

Processo	0050862-49.2021.8.06.0081
Acórdão	 PROCESSO: 0050862-49.2021.8.06.0081 - APELAÇÃO CÍVEL (198) APELANTE: BANCO BRADESCO S/A APELADO: MARIA DO ROSARIO PEREIRA EMENTA: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS E REPETIÇÃO DE INDÉBITO. HONORÁRIOS ADVOCATÍCIOS SUCUMBENCIAIS. ERRO MATERIAL QUANTO À BASE DE CÁLCULO. INFRINGENTES. ACÓRDÃO: I. CASO EM EXAME Embargos de declaração opostos por Banco Bradesco S/A contra acórdão que desproveu apelação cível em ação declaratória de inexistência de débito cumulada com indenização por danos morais e repetição de indébito, movida por Maria do Rosário

Processo	0050862-49.2021.8.06.0081
	Pereira. O embargante sustenta obscuridade e omissão na fixação dos honorários advocatícios, afirmando que estes foram arbitrados sobre o valor da causa, em desacordo com o art. 85, § 2º, do CPC, que prevê como parâmetro o valor da condenação ou do proveito econômico obtido. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em verificar se o acórdão embargado incorreu em erro material ao fixar a base de cálculo dos honorários advocatícios sucumbenciais sobre o valor da causa, em vez de sobre o valor atualizado da condenação. III. RAZÕES DE DECIDIR Os embargos de declaração destinam-se a sanar obscuridade, contradição, omissão ou erro material, nos termos do art. 1.022 do CPC.

Processo	0050862-49.2021.8.06.0081
	transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px;">&#160; BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> O art. 85, § 2º, do CPC estabelece que os honorários advocatícios devem ser fixados entre 10% e 20% sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa. &#160; BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Constatado erro material no dispositivo do acórdão que determinou a incidência dos honorários sobre o valor da causa, quando deveria ser sobre o valor atualizado da condenação, impõe-se a correção para adequação ao comando legal. &#160; BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Nos termos do art. 85, § 11, do CPC e do Tema 1059 do STJ, a majoração dos honorários em grau recursal é obrigatória quando o recurso é integralmente desprovido, como no caso, fixando-se o percentual em 12%. &#160; BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> IV. DISPOSITIVO E TESE &#160;

Processo	0050862-49.2021.8.06.0081
	<p>padding: 0px; user-select: text; line-height: 27px;">&#160;</p> <div class="OutlineElement Ltr SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> xml:lang="PT-BR"> lang="PT-BR" xml:lang="PT-BR"> Embargos de declaração parcialmente providos, com efeitos modificativos. </p></div> <div class="OutlineElement Ltr SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> xml:lang="PT-BR"> lang="PT-BR" xml:lang="PT-BR"> Tese de julgamento </p></div> <div class="OutlineElement Ltr SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> xml:lang="PT-BR"> lang="PT-BR" xml:lang="PT-BR"> O erro material na fixação da base de cálculo dos honorários advocatícios sucumbenciais pode ser corrigido em embargos de declaração. </p></div> <div class="OutlineElement Ltr SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> xml:lang="PT-BR"> lang="PT-BR" xml:lang="PT-BR"> A base de cálculo dos honorários deve observar o valor da condenação ou o valor atualizado da causa, conforme o art. 85, § 2º, do CPC. </p></div> <div class="OutlineElement Ltr SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative;"> </div>

Processo	0050862-49.2021.8.06.0081
	direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> A majoração dos honorários advocatícios em sede recursal é obrigatória quando o recurso é integralmente desprovido, nos termos do art. 85, § 11, do CPC e do Tema 1059 do STJ. &#160; </p></div> <div class="OutlineElement Ltr SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p></div> <div class="OutlineElement Ltr SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Dispositivos relevantes citados : CPC/2015, arts . 85, §§ 2º e 11, 98, § 3º, e 1.022. &#160; </p></div> <div class="OutlineElement Ltr SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW149732401 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Jurisprudência relevante citada : STJ, Tema 1059. <span class="EOP SCXW149732401 BCX8" style="-webkit-user-drag: none; -

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Processo	0050862-49.2021.8.06.0081
	BR"> S/A , contra acórdão proferido por esta Primeira Câmara de Direito Privado, constante em (ID 23081719) dos autos principais, por meio do qual foi desprovido o recurso de Apelação Cível interposto p elo embargante em face de Maria Do Rosario Pereira , em Ação Declaratória de Inexistência de Débito c/c Indenização por Danos Morais com pedido de restituição do indébito. </p></div><div class="OutlineElement Ltr SCXW93930561 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93930561 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-variant-ligatures: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No presente recurso (ID 23082642 , a parte embargante sustenta a ocorrência de obscuridade <span class="NormalTextRun

Processo	0050862-49.2021.8.06.0081
	SCXW93930561 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">fixação dos honorários advocatícios, alega que sentença/decisão impugnada fixou os honorários em patamar inferior ao previsto em lei, sendo omissa em relação à faixa percentual que deve ser observada. &#160; class="OutlineElement Ltr SCXW93930561 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW93930561 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Aduz que, e m razão da condenação pecuniária proferida, os honorários advocatícios deveriam observar o valor da condenação, conforme disposto no artigo 85, § 2º, do Código de Processo Civil, deve ndo ser do proveito econômico obtido ou, não sendo possível mensurá-lo, o valor atualizado da causa. No entanto, a sentença determinou o pagamento dos honorários com base no valor da causa, mesmo tendo havido condenação em quantia certa. &#160; </p></div><div class="OutlineElement Ltr SCXW93930561 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW93930561 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ao final, requer o acolhimento dos presentes embargos, atribuindo-lhes o efeito infringente (modificativo) a fim de sanar obscuridade e seja excluída a condenação dos honorários advocatícios à faixa legal de 10% do valor da condenação. &#160; </p></div><div class="OutlineElement Ltr SCXW93930561 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW93930561 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none;

Processo	0050862-49.2021.8.06.0081
	visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> O recurso é tempestivo. Presentes os demais pressupostos de admissibilidade, conheço dos embargos.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Os embargos declaratórios possuem hipótese de cabimento especificamente atrelada à finalidade integrativa de aperfeiçoamento das decisões judiciais, que tem expressa previsão no art. 1.022 do atual Código de Processo Civil, quando houver, na sentença ou acórdão, obscuridade, contradição, erro material ou no caso de omissão de ponto sobre o qual devia pronunciar-se o juiz ou tribuna, a sabe: &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para: &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I - esclarecer obscuridade ou eliminar contradição; &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size:

Processo	0050862-49.2021.8.06.0081
	12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II - surpir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> III - corrigir erro material. &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Parágrafo único. Considera-se omissa a decisão que: &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> I - deixe de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicável ao caso sob julgamento; <span class="EOP SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-

Processo	0050862-49.2021.8.06.0081
	highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 16px;">&#160; SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"><p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> II inorra em qualquer das condutas descritas no art. 489, § 1º. &#160;<p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No presente recurso, tem-se que o embargante alega, no julgado, haver obscuridade fixação dos honorários advocatícios, alega que sentença/decisão impugnada fixou os honorários em patamar inferior ao previsto em lei, sendo omissa em relação à faixa percentual que deve ser observada. Sustenta que deveriam observar o valor da condenação, conforme disposto no artigo 85, § 2º, do Código de Processo Civil, deve ndo ser do proveito econômico obtido ou, não sendo possível mensurá-lo, o valor atualizado da causa. &#160;<p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> De fato, verifico erro material alegado no julgado

Processo	0050862-49.2021.8.06.0081
	quant o honorários advocatícios, visto que no dispositivo do acórdão constou que os honorários advocatícios sucumbenciais, majorados em sede recursal para 12%, incidiriam “sobre o valor da causa ”</p> <div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> O art. 85, § 2º, do CPC/2015 estabelece que “os honorários serão fixados entre o mínimo de dez e o máximo de vinte por cento sobre o valor da condenação, do proveito econômico obtido ou, não sendo possível mensurá-lo, sobre o valor atualizado da causa”. &#160; </p> </div> <div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No caso em análise, a sentença de primeiro grau foi parcialmente procedente, condenando a parte ao pagamento de honorários advocatícios no percentual de 10% (dez por cento) sobre o valor atualizado da causa. Em sede recursal, o recurso foi desprovido, sendo os honorários fixados em 12% (doze por cento), porém sobre o valor da causa, e não sobre o valor atualizado. Dessa forma, verifica-se a ocorrência de erro material, devendo ser corrigido o dispositivo para que os honorários recursais sejam calculados sobre o valor atualizado da causa ”, mantendo o percentual de 12% (doze por cento). &#160; </p> </div> <div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="NormalTextRun SCXW128310941 BCX8" style="-

Processo	0050862-49.2021.8.06.0081
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">Analisando-se a sentença outrora recorrida, verifica-se que os honorários sucumbenciais foram fixados: &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Em razão do resultado, majoro os honorários advocatícios sucumbenciais, a título recursal, para 12% (doze por cento) sobre o valor da causa. &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Mantendo na forma da proporcionalidade de acordo com a decisão de primeiro grau, e quanto à promovente, a suspensão de exigibilidade do montante à luz do art. 98, § 3º, do CPC, por ser beneficiária da gratuidade de justiça. &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Por sua vez, em acórdão (ID 23081719), esta Relatoria negou provimento ao recurso de apelação cível interposto por Banco Bradesco S/A . Nos termos do Tema 1059 do Superior Tribunal de Justiça, a majoração dos honorários de sucumbência prevista no art. 85, §11º do CPC , a propósito, leia-se: <span class="EOP SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height:

Processo	0050862-49.2021.8.06.0081
	27px;">&#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> Art. 85. A sentença condenará o vencido a pagar honorários ao advogado do vencedor. &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> [...]&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px 8px 192px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> § 11. O tribunal, ao julgar recurso, majorará os honorários fixados anteriormente levando em conta o trabalho adicional realizado em grau recursal , observando, conforme o caso, o disposto nos §§ 2º a 6º, sendo vedado ao tribunal, no cômputo geral da fixação de honorários devidos ao advogado do vencedor, ultrapassar os respectivos limites estabelecidos nos §§ 2º e 3º para a fase de conhecimento. &#160;</div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Pressupõe que o recurso tenha sido integralmente desprovido ou não conhecido pelo tribunal, monocraticamente ou pelo órgão colegiado competente, como

Processo	0050862-49.2021.8.06.0081
	ocorreu na presente hipótese, nesse contexto, a majoração dos honorários é um dever do segundo grau sendo, pois, devida a majoração dos honorários sucumbenciais em desfavor da parte apelante/embargad a. &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Ante o exposto, conheço do aclaratório para DAR-LHE PARCIAL PROVIMENTO , com efeitos modificativos, a fim de que os honorários advocatícios sejam calculados sobre o valor atualizado da causa a ser apurado em liquidação de sentença. &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> <span class="TextRun SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px; font-variant-ligatures: none !important;"

Processo	0050862-49.2021.8.06.0081
	lang="PT-BR" xml:lang="PT-BR">É como voto.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Fortaleza, data da assinatura digital. &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW128310941 BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> &#160; <span class="TextRun SCXW128310941

Processo	0050862-49.2021.8.06.0081
	BCX8" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 18px; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Relator </p></div><p> </p> <p> </p><p> </p><p style="text-align: center;"> </p>
Processo	0003909-53.2014.8.06.0087
Número de ordem	241
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Usucapião Extraordinária
Polo ativo	JOSE TARCISIO DE PAULA
Advogado(s) - Polo ativo	JOSE DE SALES NETO - (CE7328-A)
Polo passivo	Rita Leonor Ibiapina de Sousa Lucio Oliveira de Carvalho Junior Glenda Evelyn Oliveira Lima ANTONIO RIBEIRO DE MOURA ANTONIA RODRIGUES MOURA JOSE AURELITO DE SOUSA
Advogado(s) - Polo passivo	MARCOS WESLEY FERNANDES RODRIGUES SILVA - (CE19775-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0003909-53.2014.8.06.0087
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0003909-53.2014.8.06.0087 - 160; APELAÇÃO CÍVEL (198) APELANTE: JOSE TARCISIO DE PAULA APELADO: RITA LEONOR IBIAPINA DE SOUSA, LUCIO OLIVEIRA DE CARVALHO JUNIOR, GLENDA EVELYN OLIVEIRA LIMA, ANTONIO RIBEIRO DE MOURA, ANTONIA RODRIGUES MOURA, JOSE AURELITO DE SOUSA Ementa DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE USUCAPÃO EXTRAORDINÁRIA. REQUISITOS LEGAIS. POSSE MANSA, PACÍFICA, ININTERRUPTA E COM ANIMUS DOMINI POR 15 ANOS. NÃO COMPROVAÇÃO. ÔNUS PROBATÓRIO DO AUTOR. DELIMITAÇÃO INADEQUADA DA ÁREA. MANUTENÇÃO DA SENTENÇA. RECURSO DESPROVIDO. I. CASO EM EXAME Apeleção cível interposta por Francisca Sousa de Paula e José Tarcísio de Paula contra sentença da Vara Única da Comarca de Ibiapina/CE, que julgou improcedente ação de usucapião extraordinária sobre imóvel rural de 2,59 hectares, situado no Sítio Paratibe. Os apelantes alegam posse desde 1992, demonstrada por comprovantes de ITR, sustentando que a ausência de benfeitorias não descaracterizaria a posse e que a faixa de terra litigiosa constituiria sobra hereditária mantida sob sua guarda. II. QUESTÃO EM DISCUSSÃO Há duas questões em discussão: (i) verificar se os autores comprovaram os requisitos da usucapião extraordinária previstos no art. 1.238 do Código Civil, especialmente a posse contínua, ininterrupta, pacífica e com animus domini pelo prazo mínimo de 15 anos; (ii) definir se a ausência de delimitação precisa e incontroversa da área usucapienda impede o reconhecimento da prescrição aquisitiva. III. RAZÕES DE DECIDIR A usucapião extraordinária exige posse ininterrupta, mansa, pacífica e com ânimo de dono por 15 anos, independentemente de justo título e boa-fé, cabendo ao autor o ônus de demonstrar tais requisitos (CPC, art. 373, I). O pagamento de tributos, como o ITR, não comprova por si só o exercício da posse qualificada exigida pela lei para aquisição originária da propriedade. A oposição expressa de terceiros, acompanhada de matrículas e escrituras que abrangem a área em litígio, descaracteriza a posse pacífica e inquestionada dos apelantes. A prova oral colhida apresenta contradições e não atesta de forma convincente o exercício da posse com animus domini pelo período legal. A delimitação imprecisa da área pretendida, inicialmente superior e posteriormente retificada, compromete a segurança jurídica e impede a declaração de usucapião, sendo necessária discriminação exata de limites e confrontações.

Processo	0003909-53.2014.8.06.0087
	align="justify"> A ausência de prova robusta e inequívoca do preenchimento dos requisitos legais justifica a manutenção da sentença de improcedência. </p> <p style="line-height: 150%" align="justify"> IV. DISPOSITIVO E TESE </p> <p style="line-height: 150%" align="justify"> Recurso desprovido. </p> <p style="line-height: 150%" align="justify"> Tese de julgamento :</p> <p style="line-height: 150%" align="justify"> A usucapião extraordinária exige prova inequívoca da posse contínua, mansa, pacífica, ininterrupta e com animus domini pelo prazo mínimo de 15 anos. </p> <p style="line-height: 150%" align="justify"> O pagamento de tributos não comprova, por si só, o exercício da posse ad usucapionem. </p> <p style="line-height: 150%" align="justify"> A oposição de terceiros com documentos dominiais afasta a caracterização da posse pacífica. </p> <p style="line-height: 150%" align="justify"> A ausência de delimitação exata e incontroversa da área impede o reconhecimento da usucapião. </p> <p style="line-height: 150%" align="justify"> O ônus de comprovar todos os requisitos da prescrição aquisitiva incumbe exclusivamente ao autor. </p> <p style="line-height: 150%" align="justify"> Dispositivos relevantes citados : CF/1988, art. 5º, XXII; CC, art. 1.238; CPC/2015, arts. 373, I, 85, § 11, e 98, §§ 2º e 3º. </p><p style="line-height: 150%" align="justify"> Jurisprudência relevante citada :</p> <p style="line-height: 150%" align="justify"> TJCE, Apelação Cível nº 0000230-43.2019.8.06.0031, Rel. Des. José Ricardo Vidal Patrocínio, 1ª Câmara Direito Privado, j. 07.08.2024. </p> <p style="line-height: 150%" align="justify"> TJCE, Apelação Cível nº 0005076-97.2011.8.06.0156, Rel. Des. Raimundo Nonato Silva Santos, 1ª Câmara Direito Privado, j. 03.04.2024. </p> <p style="line-height: 150%" align="justify"> TJCE, Apelação Cível nº 0074563-13.2006.8.06.0001, Rel. Des. Vera Lúcia Correia Lima, 1ª Câmara Direito Privado, j. 19.05.2021. </p> <p style="line-height: 150%" align="justify"> TJCE, Apelação Cível nº 0184631-44.2017.8.06.0001, Rel. Des. José Evandro Nogueira Lima Filho, 4ª Câmara Direito Privado, j. 26.04.2022. </p> <p style="line-height: 150%" align="justify"> TJMG, Apelação Cível nº 1.0000.21.249278-9/001, Rel. Des. Arnaldo Maciel, 18ª Câmara Cível, j. 08.02.2022. </p> <p style="line-height: 150%" align="justify"> TJMG, Apelação Cível nº 1.0000.22.004682-5/002, Rel. Des. Alexandre Victor de Carvalho, 21ª Câmara Cível, j. 11.09.2023. </p> <p style="line-height: 150%" align="justify"> TJMG, Apelação Cível nº 1.0216.14.002227-0/001, Rel. Des. José Américo Martins da Costa, 15ª Câmara Cível, j. 22.07.2021. </p> <p style="line-height: 150%" align="justify">&#160;</p><p style="line-height: 150%" align="justify">

</p><p style="line-height: 150%; text-align: center;"> ACÓRDÃO </p><p style="line-height: 150%" align="justify">

</p><p style="line-height: 150%" align="justify"> A C O R D A a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, conhecer do recurso apelatório interposto, negar-lhe provimento , nos termos do voto do eminente Relator.</p></p>

Processo	0003909-53.2014.8.06.0087
	Fortaleza, data da assinatura eletrônica. JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO &#160; Trata-se de Apelação Cível interposta por FRANCISCA SOUSA DE PAULA e JOSÉ TARCÍSIO DE PAULA, contra sentença proferida pelo juízo da Vara Única da Comarca de Ibiapina/Ce, que julgou improcedente a presente ação de usucapião ajuizada pelo apelante apelante s/apelante referente a um imóvel localizado no Sítio Paratibe, zona rural de Ibiapina-CE, com área total de 2,59 hectares. Eis trechos da sentença impugnada: “ (...) Consta na matrícula nº 1801, de fls. 91/95, que a autora FRANCISCA SOUSA DE PAULA cedeu aos contestantes JOSÉ AURELITO DE SOUSA E LUCIO OLIVEIRA DE CARVALHO JUNIOR, os direitos hereditários, seu e de seus irmãos – dos quais recebeu procuração específica para tal –, relativo à parte do Sítio Paratibe ora em litígio, deixado pelos finados pais da requerente: Sr. Pedro Calixto de Sousa e sua esposa Sra. Maria Ferreira da Silva. Por sua vez, a nova área delimitada pelo perito à fl. 183 se encontra também inserida dentro de imóvel albergado por escritura pública, no caso, a de nº 1871, em área de propriedade do contestante ANTONIO RIBEIRO DE MOURA, que acusa ainda a construção de uma cerca indevida no local, pela parte autora. Nessa toada, não há nos autos prova de que os requerentes tenham ocupado o imóvel em liça como seu, de forma pública e sem oposição, produzido alimentos ou feito benfeitorias no local. Ademais, os autores sequer moram na área pretendida, a qual, pelas fotos carreadas com o laudo pericial, não passa de um terreno baldio, desocupado. Por fim, impende dizer que desde a exordial, assim como ao longo de todo o processo, a parte autora foi vacilante no pretensão direito: não apresentou nenhum documento legítimo que justificasse a alegada posse; não delimitou adequadamente o imóvel usucapitando, pleiteando inicialmente área muito superior àquela finalmente definida pelo perito; não contraditou em sua réplica as escrituras públicas trazidas pelos contestantes; os depoimentos pessoais e testemunhais foram dúbios. Enfim, a parte autora não provou o fato constitutivo de seu direito, ônus que lhe cabia, ex vi do disposto no art. 373, I do CPC. O conjunto probatório coligido nos autos, portanto, afasta a tese autoral da posse ad usucapionem, não logrando a parte autora demonstrar que possui o bem imóvel usucapiendo com ânimo de dono (animus domini), de modo contínuo e sem oposição, por período superior ao prazo legal de 15 anos, afastando-se a prescrição aquisitiva em tela, exigida pelo art. 1.238, do Código Civil.

Processo	0003909-53.2014.8.06.0087
	style="font-family: Arial, sans-serif;"> Ex positis, JULGO IMPROCEDENTE a pretensão, com fundamento no art. 487, I do CPC. </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> Em observância ao princípio da causalidade, condeno os requerentes ao pagamento das despesas processuais e dos honorários advocatícios na base de 10% do valor da causa, cuja obrigação, todavia, ficará sob condição suspensiva de exigibilidade, nos termos do art. 98, §§2º e 3º, do CPC. </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> Decorrido in albis o prazo recursal, certifique-se o trânsito em julgado e, não havendo requerimentos, archive-se, sem necessidade de nova conclusão. </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> P. R. I. </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> Irresignado com o julgado, a parte autora, ora apelantes, interpôs recurso apelatório (ID. 23092993), alegando que a sentença merece reforma, vez que, a prova documental e testemunhal comprovam a posse ininterrupta do imóvel em questão. </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> Afirma ainda que: </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> Além da prova testemunhal, vê-se às fls. 25, 26, 29 e 25, comprovantes de pagamentos do ITR de 4,5ha de terra no sítio Paratibe, a partir do ano de 1992, o que implica dizer que os autores tem posse de terra naquele lugar. Outrossim, as sessões de herança de terra adquirida pelos recorridos foram de pronto ocupadas pelos mesmos, e o que os recorrentes pleiteiam é uma pequena sobra que sempre lhes pertenceu e foi mantida e preservada, inclusive a parte em litígio para venda futura, ou seja, resguardada como uma espécie de poupança, ou como queira, especulação imobiliária. </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> (</p><p style="line-height: 150%; padding-left: 150px;" align="justify"> O fato dos recorrentes não terem edificado benfeitorias no terreno não descaracteriza o exercício da posse, pois há várias formas de se externar o exercício da mesma. No caso, é público e notório que o imóvel em questão é uma sobra da herança dos pais da recorrente. Tanto é assim que os recorridos, inclusive o Sr. José Aurelito de Sousa que é proprietário de imobiliária, jamais ousou construir ou tentar vender o terreno ora disputado. </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> (</p><p style="line-height: 150%; padding-left: 150px;" align="justify"> Não é verídico que os apelantes tenham vacilado na demonstração do direito pleiteado. O que ocorreu foi um erro do técnico que fez a planta, o qual foi detectado pelo advogado, o qual comunicou aos autores, que imediatamente e por quererem apenas o que lhes é de direito, mandaram retificar a área que entendem lhes pertencer, embora consideravelmente menor. </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> Requer provimento ao recurso para reformar a sentença e julgar procedente a presente ação de usucapião. </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> Sem contrarrazões. </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> Deixo de encaminhar os autos ao Órgão Ministerial em razão do feito abrange somente interesse individual disponível, sendo a manifestação meritória do Ministério Público despicienda.</p><p style="line-height: 150%; text-indent: 8%;" align="justify"> É o relatório. </p><p style="line-height: 150%; text-align: center;"> VOTO </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> Conheço do recurso de apelação, posto que satisfeitos os pressupostos de admissibilidade. </p><p style="line-height: 150%; text-indent: 8%;" align="justify"> O cerne da controvérsia cinge-se a analisar se restaram preenchidos os requisitos para a prescrição aquisitiva do imóvel reivindicado na exordial </p>

Processo	0003909-53.2014.8.06.0087
	da ação de usucapião extraordinária promovida pela parte autora/apelante. Afirma a recorrente que todos os elementos exigidos para a conversão da posse em domínio estariam caracterizados nos autos e que a sentença a quo deve ser reformada, vez que, os comprovantes de pagamentos do ITR de 4,5ha de terra no sítio Paratibe, a partir do ano de 1992, comprovam a posse da terra pelos apelantes lugar, bem com, que a faixa de terra objeto da presente ação é uma pequena sobra que sempre lhes pertenceu e foi mantida e preservada. Indagam ainda os recorrentes que o fato de não terem edificado benfeitorias no terreno não descaracteriza o exercício da posse, pois há várias formas de se externar o exercício da mesma, pois, o que ocorreu foi um erro do técnico na elaboração da planta, que foi retificada com área consideravelmente menor. Da análise dos elementos contidos nos autos, contudo, entendo que a pretensão dos apelantes não merecem prosperar. Explico, a seguir. A propriedade é um direito constitucional, descrito no Inciso XXII, do Artigo 5º, da Constituição Federal de 1988, elevado a direito fundamental do indivíduo. A legislação, assim, possibilita a ampliação de sua aquisição de forma originária, através da posse continuada, pelo decurso do tempo, vinculados aos pressupostos da lei, dentre eles a usucapião extraordinário, modalidade intentada pela autora/apelante nestes autos. Assim, o pedido de usucapião, por constituir forma originária de aquisição de propriedade, deve vir acompanhado de todos os requisitos legais autorizadores, ou seja, a posse ininterrupta sobre o imóvel, sem oposição e com ânimo de dono, além do lapso temporal de 15 (quinze) anos, independentemente de justo título e boa-fé. Na falta de comprovação de qualquer um desses pressupostos, impõe-se o julgamento improcedente a pretensão. Nesse contexto, a sentença encontra-se irretocável. O feito foi devidamente instruído, convencendo-se o juízo a quo, assim como esta relatoria, da ausência de comprovação suficiente dos pressupostos insertos artigo 1.238 do Código Civil, imprescindíveis à declaração do domínio da coisa, in verbis: Art. 1.238. Aquele que, por quinze anos, sem interrupção, nem oposição, possuir como seu um imóvel, adquire-lhe a propriedade, independentemente de título e boa-fé; podendo requerer ao juiz que assim o declare por sentença, a qual servirá de título para o registro no Cartório de Registro de Imóveis. Oportuno ressaltar que, diferentemente do que alegam os recorrentes, não houve engano do juízo a quo no julgamento do feito, vez que, conquanto insista a parte autora/apelante em afirmar que tem a sua posse mansa e pacífica com <i>animus domini</i> sobre o imóvel usucapiendo, a prova colhida nos autos não se mostra suficiente para, com a certeza necessária, atestar o período e a qualidade de posse exigidos pela legislação para o reconhecimento da procedência do pleito exordial. Com efeito, extrai-se dos autos que a documentação acostada pela parte autora/apelante não comprova a posse ininterrupta do imóvel reivindicado pelo período de 15 anos, tendo em vista que o feito foi contestado por Antonio Ribeiro de Moura e sua esposa, Antonia Rodrigues Moura, José Aurelito de Sousa e sua esposa Rita Leonor Ibiapina de Sousa, e Lucio Oliveira de Carvalho Junior e sua esposa Glenda Evelyn Oliveira Lima, que manifestaram oposição à pretensão dos autores, fazendo a juntada das respectivas matrículas de imóveis que abarcam toda a área usucapienda, conforme delimitada pelo perito judicial. Consta nos autos na matrícula nº 1801 (ID. 23092897 - 23092900), escritura de cessão de direitos hereditários (ID. 23092901 – 23092904), escritura pública de inventário e partilha (ID. 23092905 – 23092908), que o imóvel em questão foi cedido pela autora Francisca Sousa de Paula e seus irmão aos contestantes José Aurelito de Sousa e Lúcio Oliveira de Carvalho Junior, os direitos hereditários, relativos à parte do Sítio Paratibe ora em litígio, deixado pelos finados pais da requerente: Sr. Pedro Calixto de Sousa e sua esposa Sra. Maria Ferreira da Silva. Desta forma, não há nos autos prova de que os requerentes tenham ocupado o imóvel em liça como seu, de

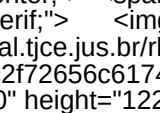
Processo	0003909-53.2014.8.06.0087
	forma pública e sem oposição, produzindo ou realizando benfeitorias no local, vez que, sequer residem na área pretendida, não apresentando nenhum documento legítimo que justificasse a alegada posse, ou mesmo, delimitasse adequadamente o imóvel usucapindo, tendo em vista que pleiteou inicialmente área muito superior àquela finalmente definida pelo perito, além de não ter impugnado em sua réplica os documentos trazidos pelos contestantes escrituras públicas trazidas pelos contestantes. A precisão na definição do imóvel a ser usucapido é de suma importância para assegurar a segurança jurídica e a estabilidade nas relações patrimoniais, evitando conflitos futuros e garantindo a efetividade ao instituto, em que pese a natureza erga omnes do direito em análise. Com efeito, sendo essencial a demarcação correta e segura do imóvel, sua ausência in casu, implica na ineficácia do processo de usucapião, uma vez que poderá levar a equívocos, prejudicando terceiros de boa-fé, aproveitando-se ao possuidor que não é proprietário. Dessa forma, ainda que a área tenha sido objeto de memorial descritivo, mapa e ART apresentados pela parte autora, é certo que referidos documentos foram produzidos de forma unilateral e parcial, não possuindo força probatória suficiente para afastar as provas da posse produzidas pela parte ré quanto a parte do imóvel usucapiendo. É cediço que existindo a confusão dos limites, nasce o direito à actio finium regundorum aos proprietários confinantes, devendo a questão ser decidida por meio da ação própria, isto é, através da demarcatória devidamente proposta pelos agora apelantes em desfavor dos apelados. Nesse sentido: EMENTA: APELAÇÃO CÍVEL - AÇÃO DE USUCAPIÃO - IMÓVEL RURAL - DELIMITAÇÃO EXATA DA ÁREA OCUPADA PELA PARTE AUTORA - NÃO COMPROVAÇÃO. Não tendo a parte autora comprovado, de forma sólida e incontroversa, nos termos do art. 373, I do CPC, a ocupação de forma mansa e pacífica, pelo lapso temporal exigido, da integralidade da área específica e exata descrita no memorial descritivo acostado ao feito, sem qualquer lacuna que pudesse dar azo ao questionamento quanto a eventual invasão de terreno alheio, ausentes os requisitos mínimos necessários para a configuração da usucapião pretendida. (TJMG - 1.0000.21.249278-9/001, Relator (a): Des.(a) Arnaldo Maciel, 18ª CÂMARA CÍVEL, julgamento em 08/02/2022, publicação da súmula em 09/02/2022) (g.n.) EMENTA: APELAÇÃO - USUCAPIÃO EXTRAORDINÁRIA - MANUTENÇÃO DA SENTENÇA - IMPOSSIBILIDADE - AUSÊNCIA DE DELIMITAÇÃO PRECISA DA ÁREA USUCAPIENDA - REQUISITO OBRIGATÓRIO. (TJMG - 1.0000.22.004682-5/002, Relator (a): Des.(a) Alexandre Victor de Carvalho, 21ª Câmara Cível Especializada, julgamento em 11/09/2023, publicação da súmula em 14/09/2023) EMENTA: APELAÇÃO CÍVEL - USUCAPIÃO EXTRAORDINÁRIA - REQUISITOS CONFIGURADOS - LAPSO TEMPORAL - DELIMITAÇÃO DA ÁREA USUCAPIDA - NECESSIDADE - PRESCRIÇÃO AQUISITIVA. 1. A usucapião é um modo originário de aquisição de propriedade e seu reconhecimento pressupõe a demonstração da posse mansa e pacífica, que deve ser exercida com animus domini; do lapso de tempo; da continuidade e da publicidade. 2. A declaração de usucapião deve ser limitada à área sobre a qual o demandante efetivamente comprovou o exercício da posse mansa, pacífica e ininterrupta. Não se pode reconhecer o domínio, por usucapião, de imóvel rural que não esteja devidamente discriminado por suas áreas, limites e confrontações. (TJMG - 1.0000.21.249278-9/001, Relator (a): Des.(a) José Américo Martins da Costa, 15ª CÂMARA CÍVEL, julgamento em 22/07/2021, publicação da súmula em 06/08/2021) EMENTA: APELAÇÃO CÍVEL - AÇÃO DE USUCAPIÃO - IMÓVEL RURAL - DELIMITAÇÃO EXATA DA ÁREA OCUPADA PELA PARTE AUTORA - NÃO COMPROVAÇÃO. Não tendo a parte autora comprovado, de forma sólida e incontroversa, nos termos do art. 373, I do CPC, a ocupação de forma mansa e pacífica, pelo lapso temporal exigido, da integralidade da área específica e exata descrita no memorial descritivo acostado ao feito, sem qualquer lacuna que pudesse dar azo ao questionamento quanto a eventual invasão de terreno alheio, ausentes os requisitos mínimos necessários para a configuração da usucapião pretendida. (TJMG - 1.0000.21.249278-9/001, Relator (a): Des.(a) Arnaldo Maciel, 18ª CÂMARA CÍVEL, julgamento em 08/02/2022, publicação da súmula em 09/02/2022) EMENTA: APELAÇÃO - USUCAPIÃO EXTRAORDINÁRIA - MANUTENÇÃO DA SENTENÇA - IMPOSSIBILIDADE - AUSÊNCIA DE DELIMITAÇÃO PRECISA DA ÁREA USUCAPIENDA - REQUISITO OBRIGATÓRIO. (TJMG - 1.0000.22.004682-5/002, Relator (a): Des.(a) Alexandre Victor de Carvalho, 21ª Câmara Cível Especializada, julgamento em 11/09/2023, publicação

Processo	0003909-53.2014.8.06.0087
	da súmula em 14/09/2023) </p><p style="line-height: 150%; text-indent: 8%; align="justify"> Por fim, cumpre destacar a contradição nos depoimentos pessoais e testemunhais colhidos em juízo que não comprovam a posse, mansa, pacífica, ininterrupta e com o ânimo de dono pelo tempo exigido legalmente, não tendo sido comprovado pelos autores o fato constitutivo de seus direitos, ônus que lhe cabiam, ex vi do disposto no art. 373, I do CPC. </p><p style="line-height: 150%; text-indent: 8%; align="justify"> Nesse sentido, confira-se o entendimento deste Tribunal de Justiça: </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> DIREITO CIVIL. RECURSO DE APELAÇÃO. AÇÃO DE USUCAPIÃO EXTRAORDINÁRIA. REQUISITOS DA PRESCRIÇÃO AQUISITIVA CONSISTENTES NA POSSE MANSA, PACÍFICA E COM ANIMUS DOMINI PELO PRAZO ESTIPULADO POR LEI. NÃO COMPROVAÇÃO (ART. 1.238 DO CÓDIGO CIVIL). PARTE QUE NÃO SE DESINCUMBIU DO ÔNUS PROBATÓRIO ACERCA DO REQUISITO TEMPORAL. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. O cerne da controvérsia cinge-se a analisar se restaram preenchidos os requisitos para a prescrição aquisitiva do imóvel reivindicado na exordial da ação de usucapião extraordinária promovida pela autora/apelante. 2. O pedido de usucapião, por constituir forma originária de aquisição de propriedade, nos termos do art. 1.238 do Código Civil, deve vir acompanhado de todos os requisitos legais autorizadores, ou seja, a posse ininterrupta sobre o imóvel, sem oposição e com ânimo de dono, além do lapso temporal de 15 (quinze) anos, independentemente de justo título e boa-fé. 3. Diferentemente do que alega a recorrente, não houve engano do juízo a quo no julgamento do feito. Conforme se observa da inicial, a autora/apelante intentou a aquisição do imóvel reivindicado através da modalidade usucapião extraordinária, fundamentada no art. 1.238 do Código Civil, e não da modalidade usucapião especial urbana fundamentada no art. 1.240. 4. Ademais, conquanto insista a autora/apelante em afirmar que tem a sua posse mansa e pacífica, com animus domini, sobre o imóvel usucapiendo, a prova colhida nos autos não se mostra suficiente para se atestar, com a certeza necessária, o período e a qualidade de posse exigidos pela legislação para o reconhecimento da procedência do pleito exordial. 5. Na inicial, o documento mais antigo juntado pela autora (ação de investigação de paternidade e procuração - fls. 22/25) data de 17/07/2000, já o segundo documento mais antigo (contrato de abertura de crédito ç fls. 26/30) data de 09/03/2009, o que demonstra haver um lapso temporal de 08 anos em que a recorrente não comprova a posse do bem. O mesmo ocorre também em relação ao período compreendido entre os anos de 2014 e 2017. 6. Frise-se, ainda, que os documentos referentes ao ano de 2019 (comprovante de inscrição do contribuinte ç fl. 18, certidão negativa de IPTU ç fl. 19 e certidão negativa de débitos municipais ç fl. 20) estão no nome da mãe adotiva da recorrente, tendo apenas uma fatura de energia elétrica (fl. 21) na titularidade da autora. 7. Assim, ainda que fosse aplicado ao caso o instituto da accessio possessionis,&#160;não haveria comprovação da posse ininterrupta pelo prazo de 15 anos, dado que só existem documentos em titularidade da mãe adotiva da recorrente relativos ao ano de 2019, ano em que ação em análise foi ajuizada. 8. Por fim, ressalte-se que, conforme petição de fls. 97/98, a recorrente abriu mão da inauguração da fase probatória e da produção de prova oral, por entender que os documentos já acostados aos autos eram suficientes para o deslinde da questão. 9. Não tendo a apelante/autora logrado êxito em provar de forma satisfatória o fato constitutivo de seu direito (artigo 373, I do CPC), ou seja, a posse, mansa, pacífica, ininterrupta e com o ânimo de dono pelo tempo exigido legalmente, impõe-se rejeitar a pretensão da prescrição aquisitiva. 10. Recurso conhecido e desprovido. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso de apelação para negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator. (Apelação Cível&#160;- 0000230-43.2019.8.06.0031, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento:&#160; 07/08/2024, data da publicação:&#160; 07/08/2024) [Destaquei] </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> DIREITO CIVIL. RECURSO DE APELAÇÃO. AÇÃO DE USUCAPIÃO EXTRAORDINÁRIA. REQUISITOS DA PRESCRIÇÃO AQUISITIVA CONSISTENTES NA POSSE MANSA, PACÍFICA E COM ANIMUS DOMINI PELO PRAZO ESTIPULADO POR LEI. NÃO COMPROVADOS (ART. 1.238 DO CÓDIGO CIVIL). NÃO DESINCUMBÊNCIA DO ÔNUS PROBATÓRIO. PARTE AUTORA QUE ABRIU MÃO DA FACULDADE DE PRODUÇÃO DE PROVA ORAL. INDÍCIO DE POSSE DEMONSTRADO. REQUISITO TEMPORAL NÃO COMPROVADO. AUSÊNCIA DE OPOSIÇÃO QUE CONFIGURA REQUISITO DO INSTITUTO. REVELIA QUE NÃO DESOBRIGA O AUTOR DE PROVAR A CONSTITUIÇÃO DOS REQUISITOS NECESSÁRIOS PARA A AQUISIÇÃO ORIGINÁRIA DO BEM IMÓVEL. RECURSO

Processo	0003909-53.2014.8.06.0087
	CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. 1. O cerne da demanda ora emapreço cinge-se em analisar o adimplemento pela parte autora/recorrente dos pressupostos insculpidos no artigo 1.238, do Código Civil, para fins de aquisição da propriedade do imóvel descrito nos autos, mediante a Usucapião Extraordinária. 2. A usucapião extraordinária é aquela prevista no artigo 1.238, do Código Civil, segundo o qual "aquele que, por quinze anos, sem interrupção, nem oposição, possuir como seu um imóvel, adquire-lhe a propriedade, independentemente de título e boa-fé; podendo requerer ao juiz que assim o declare por sentença, a qual servirá de título para o registro no Cartório de Registro de Imóveis". 3. Em que pesem as alegações recursais dos apelantes, entendo que fora correta a conclusão exarada pelo magistrado sentenciante de primeiro grau, uma vez que os requisitos necessários para a aquisição de imóvel pela usucapião extraordinária não restaram demonstrados. 4. Desse modo, compulsando os autos e analisando o acervo probatório colacionado, observo que há, no caso, indício de posse pelos apelantes, conforme a documentação referente ao pagamento do tributo incidente sobre o bem e a declaração de cadastro de imóvel perante o Município de Redenção, contudo, ausente, para o caso, a demonstração do lapso temporal exigido por lei e a qualidade da posse, uma vez que os documentos citados e demais juntados não fazem prova nesse sentido. 5. Em casos tais, como explanado na sentença de primeiro grau, a prova testemunhal torna-se crucial para a demonstração de situações fáticas e lastros temporais. Rememoro que era dever do requerente demonstrar no feito a decorrência do período de 15 anos como possuidor do imóvel com o ânimo de proprietário. 6. Entretanto, conforme petição de fls. 190/191, os recorrentes abriram mão da inauguração da fase probatória e da produção de prova oral. Entenderam os autores que os documentos já acostados aos autos eram suficientes para o deslinde da questão, já estando anexadas todas as provas necessárias para o deferimento meritório. 7. Porém, reforço que, ante a ausência de negócio jurídico formal/escrito que estabelecesse a tradição da coisa, bem como que demarcasse a origem e o início da posse, resultava essencial a produção de prova oral para o estabelecimento de tais premissas. 8. Em arremate, esclareço ainda que a ausência de oposição de terceiros é requisito configurador do instituto, dessa maneira, a revelia, apesar de trazer ao caso presunção de veracidade dos fatos alegados na exordial, não retira o dever do autor de comprovar a constituição do seu direito, seja por determinação legal (CC, art. 1.238), seja pela necessidade de evidenciar a verossimilhança das afirmações (CPC, art. 345, IV). 9. Em outras palavras, ainda que operante os efeitos da revelia, o requerente não está desobrigado a mostrar na demanda a configuração de todos os requisitos necessários para a aquisição originária do bem imóvel através da usucapião extraordinária. 10. Portanto, tendo em vista a não comprovação do preenchimento dos requisitos legais, não merece acolhimento a tese recursal, devendo ser mantida incólume a sentença recorrida, que obistou o deferimento da usucapião pleiteada. 11. Recurso conhecido e desprovido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso para negar-lhe provimento, nos termos do voto do relator. Fortaleza, 03 de abril de 2024. (Apelação Cível TJCE 0005076-97.2011.8.06.0156, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 1ª Câmara Direito Privado, data do julgamento: 03/04/2024, data da publicação: 03/04/2024). [Destaquei] </p><p style="line-height: 150%; padding-left: 150px;" align="justify"> CIVIL E PROCESSUAL CIVIL. USUCAPIÃO EXTRAORDINÁRIA. PRESSUPOSTOS. LAPSO TEMPORAL. PROVA. INEXISTÊNCIA. PRELIMINAR. REJEIÇÃO. APELAÇÃO. NÃO PROVIMENTO. - Trata-se da Apelação interposta às págs. 202/216 por Josefa Alves Cordeiro contra a decisão de págs. 175/182, via da qual o douto Juízo de origem julgou improcedente o pleito de usucapião extraordinária do imóvel referido à pág. 05, deduzido emdesfavor de Rafael Arcanjo Soares Araújo e de Nellie Nogueira Assunção Araújo. No intuito da reforma, argumenta-se, em preliminar, com a necessidade de regularização do feito, uma vez que foi apresentada contestação desacompanhada do instrumento de mandato, além de que, apesar da informação acerca do falecimento de Nellie Nogueira Assunção Araújo, dos autos não consta a respectiva certidão de óbito. No mérito, sustenta-se que os pressupostos das usucapião extraordinária estão devidamente comprovados, desinfluyente a tese da existência de enfiteuse. - A declaração de usucapião, forma de aquisição originária, depende de lastro probatório consistente. - Dos autos não constam provas indicativas do lapso temporal da usucapião extraordinária. A Apelante, ouvida em audiência, pouco disse sobre o imóvel. - Assim, tendo em vista que a preliminar suscitada na Apelação traduz preocupação com a existência, ou não, de revelia, tem-se o seu prejuízo no que se afasta a pretensão autoral por ausência de provas porquanto não se cogita de qualquer ônus da parte demandada. Para se vencer uma demanda processual, a citação não é imprescindível, bastando chamar ao comento a possibilidade de julgamento de improcedência liminar do pleito. - Apelação conhecida e não provida. Preliminar rejeitada. ACÓRDÃO: Vistos, relatados e discutidos estes autos nº 0074563-13.2006.8.06.0001, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer e negar provimento ao recurso, rejeitando a preliminar, nos termo

Processo	0003909-53.2014.8.06.0087
	do voto da Relatora, por votação unânime. Fortaleza, 19 de maio de 2021. VERA LÚCIA CORREIA LIMA DESEMBARGADORA RELATORA (Apelação Cível TJ-CE 0074563-13.2006.8.06.0001, Rel. Desembargador(a) VERA LÚCIA CORREIA LIMA, 1ª Câmara Direito Privado, data do julgamento: 19/05/2021, data da publicação: 19/05/2021). [Destaquei] DIREITO CIVIL E PROCESSUAL CIVIL - APELAÇÃO CÍVEL - AÇÃO DE USUCAPÃO EXTRAORDINÁRIA. RECURSO INTERPOSTO PELO MINISTÉRIO PÚBLICO, ATUANDO COMO CUSTOS LEGIS. NÃO REALIZAÇÃO DE AUDIÊNCIA DE INSTRUÇÃO REQUERIDA PELO PARQUET. PEDIDO JUSTIFICADO PARA FINS DE COMPROVAÇÃO DOS REQUISITOS PARA A DECLARAÇÃO DA PROPRIEDADE PELA PRESCRIÇÃO AQUISITIVA. SENTENÇA ANULADA. NECESSIDADE DE REALIZAÇÃO DO REFERIDO ATO PROCESSUAL PARA CONFERIR SEGURANÇA JURÍDICA À PRETENSÃO DA PRESCRIÇÃO AQUISITIVA, EM OBSERVÂNCIA AOS EFEITOS ERGA OMNES QUE GOZA A NATUREZA DA AÇÃO. RECURSO CONHECIDO E PROVIDO - RETORNO DOS AUTOS À ORIGEM PARA INSTRUÇÃO DO FEITO. 1.Trata-se de Recurso de Apelação interposto pelo Ministério Público do Estado do Ceará, em face da sentença de procedência do pedido prolatada pelo juízo da 10ª Vara Cível de Fortaleza/CE, na Ação de Usucapião proposta por José Gustavo de Oliveira. 2.Cinge-se a controvérsia no julgamento antecipado da lide, insurgindo-se o Ministério Público diante de parecer antes formulado pela necessidade de realização de audiência de instrução. 3.Para se determinar a certeza da aquisição da propriedade sobre a coisa, por meio da usucapião extraordinária, necessário o exame da matéria fática a demandar dilação probatória. 4. Na usucapião extraordinária mostra-se absolutamente indispensável a comprovação efetiva da posse do imóvel ora usucapiendo. No caso, há de fato considerável lapso temporal sem nenhuma comprovação da perseguida posse, nem mesmo a título documental, a fim de conferir a segurança jurídica na pretensão da prescrição aquisitiva, para observância aos efeitos erga omnes de que goza a natureza da ação. ACÓRDÃO: Vistos, relatados e discutidos estes autos 0000002-23.2005.8.06.0043, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer e dar provimento ao Recurso, nos termos do voto do Relator. Fortaleza, 26 de abril de 2022. (TJ-CE - AC: 01846314420178060001 Fortaleza, Relator: JOSE EVANDRO NOGUEIRA LIMA FILHO, Data de Julgamento: 26/04/2022, 4ª Câmara Direito Privado, Data de Publicação: 26/04/2022). [Destaquei] O pedido de usucapião, por constituir forma originária de aquisição de propriedade, deve vir acompanhado de todos os requisitos legais autorizados expostos na norma de regência, qual seja do art. 1.238, do Código Civil. Para tanto, há de estar presente a prova inequívoca da posse, elemento essencial ao reconhecimento do direito pleiteado, de forma ininterrupta e com ânimo de dono, pelo prazo previsto em lei, o que não foi observado no caso. Assim, tendo em vista a não comprovação do preenchimento dos requisitos legais, não merece acolhimento a tese recursal, devendo ser mantida incólume a sentença recorrida, que obistou o deferimento da usucapião pleiteada. Diante do exposto, com base nas razões fáticas e jurídicas explicitadas, conhece-se do recurso para negar-lhe provimento, mantendo hígida a sentença combatida. Com fulcro no art. 85, §11, do CPC, majoro para 1% (1%) do valor da causa (R\$ 1.000,00) a verba honorária fixada em primeiro grau, suspendendo sua exigibilidade, nos termos do art. 98, §§2º e 3º, do CPC. É como voto. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator Relator

Processo	0200946-47.2022.8.06.0107
Número de ordem	242
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	BANCO BRADESCO S/A
Advogado(s) - Polo ativo	FRANCISCO SAMPAIO DE MENEZES JUNIOR - (CE9075-A)
Polo passivo	JOSEFA NOGUEIRA LOPES
Advogado(s) - Polo passivo	SILVIA RENATA PINHEIRO FEITOSA - (CE20879-A)
Terceiros	Não informado

Processo	0200946-47.2022.8.06.0107
Acórdão	 PROCESSO: 0200946-47.2022.8.06.0107 - APELAÇÃO CÍVEL (198) APELANTE: BANCO BRADESCO S/A APELADO: JOSEFA NOGUEIRA LOPES EMENTA: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. ALEGAÇÃO DE OMISSÃO QUANTO À COMPENSAÇÃO DE VALORES. INEXISTÊNCIA DE VÍCIOS DO ART. 1.022 DO CPC. MERA REDISCUSSÃO DA MATÉRIA. EMBARGOS CONHECIDOS E DESPROVIDOS. I. CASO EM EXAME: Embargos de declaração opostos por Banco Bradesco S/A contra acórdão que, ao julgar apelação cível, negou provimento ao recurso. O embargante alega omissão do julgado quanto à compensação de valores, sustentando que houve crédito liberado em favor da parte autora em razão de empréstimo, e requer o acolhimento do recurso para sanar o vício apontado. II. QUESTÃO EM DISCUSSÃO: A questão em discussão consiste em verificar se o acórdão embargado incorreu em omissão por não apreciar expressamente a possibilidade de compensação de valores decorrentes de empréstimo bancário. RAZÕES DE DECIDIR: O art. 1.022 do CPC limita o cabimento dos embargos de declaração às hipóteses de omissão, obscuridade, contradição ou erro material, não se prestando à rediscussão da matéria julgada. O acórdão embargado enfrentou expressamente a questão da compensação de valores, concluindo que os prints das telas de seus sistemas não se prestam para comprovar a regularidade da celebração do pacto ou mesmo da disponibilização do numerário em conta do recorrido.

Processo	0200946-47.2022.8.06.0107
	36.Opt; text-align: justify; text-indent: -18.Opt; line-height: 150%; mso-list: l0 level1 lfo3; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 5. &#160;&#160;&#160;&#160; <!--[endif]--> A mera discordância do embargante com os fundamentos do acórdão não caracteriza vício sanável por embargos de declaração, sendo incabível utilizá-los como sucedâneo recursal.</p><p class="Standard" style="margin-left: 36.Opt; text-align: justify; text-indent: -18.Opt; line-height: 150%; mso-list: l0 level1 lfo3; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 6. &#160;&#160;&#160;&#160; <!--[endif]--> Jurisprudência consolidada do STJ afirma que o julgador não está obrigado a rebater, um a um, todos os argumentos das partes, devendo apenas enfrentar os pontos relevantes à solução da lide (REsp 1832148/RJ; AgInt no AREsp 1282598/RS).</p><p class="Standard" style="margin-left: 36.Opt; text-align: justify; text-indent: -18.Opt; line-height: 150%; mso-list: l0 level1 lfo3; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 7. &#160;&#160;&#160;&#160; <!--[endif]--> A Súmula 18 deste Tribunal dispõe que são indevidos embargos de declaração que visam apenas ao reexame da controvérsia já apreciada.</p><p class="Standard" style="text-align: justify; line-height: 150%;"> IV. DISPOSITIVO E TESE </p><p class="Standard" style="margin-left: 36.Opt; text-align: justify; text-indent: -18.Opt; line-height: 150%; mso-list: l2 level1 lfo4; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 8. &#160;&#160;&#160;&#160; <!--[endif]--> Embargos de declaração desprovidos.</p><p class="Standard" style="text-align: justify; line-height: 150%;"> Tese de julgamento</p><p class="Standard" style="margin-left: 36.Opt; text-align: justify; text-indent: -18.Opt; line-height: 150%; mso-list: l1 level1 lfo5; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 1. &#160;&#160;&#160;&#160; <!--[endif]--> Embargos de declaração não se prestam à rediscussão de matéria já apreciada.</p><p class="Standard" style="margin-left: 36.Opt; text-align: justify; text-indent: -18.Opt; line-height: 150%; mso-list: l1 level1 lfo5; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 2. &#160;&#160;&#160;&#160; <!--[endif]--> Não há omissão quando o acórdão enfrenta de forma fundamentada a questão debatida, ainda que rejeite a tese da parte.</p><p class="Standard" style="margin-left: 36.Opt; text-align: justify; text-indent: -18.Opt; line-height: 150%; mso-list: l1 level1 lfo5; tab-stops: list 36.Opt;"><!--[if !supportLists]--> 3. &#160;&#160;&#160;&#160; <!--[endif]--> O julgador não está obrigado a rebater todos os argumentos das partes, mas apenas os relevantes e necessários à resolução da controvérsia.</p><div class="Standard" style="text-align: center; line-height: 150%;"> <hr size="2" /></div><p class="Standard" style="text-align: justify; line-height: 150%;"> Dispositivos relevantes citados: CPC, arts. 489, § 1º, IV; 1.022; 1.026, §§ 2º e 3º; 494, I.</p><p class="Standard" style="text-align: justify; line-height: 150%;"> Jurisprudência relevante citada: STJ, REsp 1832148/RJ, Rel. Min. Nancy Andrighi, 3ª Turma, j. 20.02.2020, DJe 26.02.2020; STJ, AgInt

Processo	0200946-47.2022.8.06.0107
	no AREsp 1282598/RS, Rel. Min. Assusete Magalhães, 2ª Turma, j. 11.02.2020, DJe 20.02.2020; STJ, EDcl no AgInt no AREsp 1263871/SP, Rel. Min. Ricardo Villas Bôas Cueva, 3ª Turma, j. 19.04.2021, DJe 26.04.2021; STJ, EDcl no AgInt no AREsp 1022843/AM, Rel. Min. Maria Isabel Gallotti, 4ª Turma, j. 28.09.2020, DJe 01.10.2020; STJ, EDcl nos EDcl no REsp 1435837/RS, Rel. Min. Ricardo Villas Bôas Cueva, 2ª Seção, j. 23.09.2020, DJe 28.09.2020; STJ, AgInt no AREsp 1592737/SP, Rel. Min. Moura Ribeiro, 3ª Turma, j. 14.09.2020, DJe 21.09.2020. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, em conhecer do recurso de embargos de declaração e negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura eletrônica. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO Trata-se de Embargos de Declaração opostos por Banco Bradesco S/A, em face do acórdão proferido por esta eg. 1ª Câmara de Direito Privado ID 23150570, que ao analisar o recurso de Apelação Cível interposto pelo ora embargante, conheceu do recurso e negou-lhe provimento. O embargante alega, em suas razões recursais ID 23151243, que o acórdão incorre em omissão por supostamente não esclarecer de forma expressa se há compensação, visto que houve crédito liberado em favor da parte autora pelo réu em razão do empréstimo. Por fim, requer a parte embargante que sejam os presentes embargos acolhidos e providos, para sanar o vício apontado. Sem contrarrazões, ID 23150586. É o relatório. VOTO O recurso de embargos de declaração está regulamentado no Código de Processo Civil, em seu art. 1022, o qual transcrevo: Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para: I – esclarecer obscuridade ou eliminar contradição;

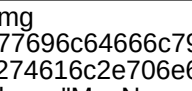
Processo	0200946-47.2022.8.06.0107
	style="font-size: small;">II – suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; class="Standarduser" style="margin-left: 4cm; text-align: justify;">III – corrigir erro material. class="Standard" style="text-align: justify; break-after: avoid;">quanto às hipóteses de cabimento dos embargos de declaração, Luiz Guilherme Marinoni, Sérgio Cruz Arenhart e Daniel Mitidiero, lecionam que quanto às hipóteses de cabimento dos embargos de declaração, Luiz Guilherme Marinoni, Sérgio Cruz Arenhart e Daniel Mitidiero, lecionam que Obscureza. A obscuridade é a decisão a que falta clareza. A obscuridade concerne à redação da decisão. A obscuridade compromete a adequada compreensão da ideia exposta na decisão judicial. Contradição. A decisão é contraditória quando encerra duas ou mais proposições ou dois ou mais enunciados inconciliáveis. A contradição ocorre entre proposições e os enunciados que se encontram dentro da mesma decisão. Omissão. A apreciação que o órgão jurisdicional deve fazer dos fundamentos levantados pelas partes em seus arrazoados tem de ser completa (art. 489, § 1º, IV, CPC). Vale dizer: a motivação da decisão deve ser completa – razão pela qual cabem embargos declaratórios quando for omitido 'ponto sobre o qual devia se pronunciar-se o juiz de ofício ou a requerimento' (art. 1.022, II, CPC). Erro material. Cabem embargos de declaração para sanção de erro material, assim entendidos os erros de cálculos e as inexatidões materiais (art. 494, I, CPC). Erro de cálculo consiste no erro aritmético (não se confunde, porém, com o erro quanto a critério de cálculo ou elementos do cálculo, que constituem erros de julgamento a respeito do cálculo). Inexatidão material constitui erro na redação da decisão – e não no julgamento nela expresso. (Novo Código de Processo Civil Comentado. São Paulo: Editora Revista dos Tribunais, 2015. págs. 953/954). Com efeito, tendo por base os mencionados conceitos, considera-se omissa a decisão que não se manifestar sobre um pedido, acerca de argumentos relevantes lançados pelas partes e em relação a questões de ordem pública, cognoscíveis de ofício pelo magistrado. Por outro lado, é obscura a decisão quando for ininteligível, faltar clareza e precisão suficiente a não permitir a certeza jurídica a respeito das questões resolvidas. Contraditória é a decisão que contiver proposições inconciliáveis entre si, de maneira que a afirmação de uma logicamente significará a negação da outra. Finalmente, erro material é aquele manifesto, sobre o qual não pode haver dúvida a respeito do desacerto do decisor como, <i>verbi gratia</i>, equívoco na redação. Nesse contexto, o recurso de embargos de declaração é espécie recursal de fundamentação vinculada, específica, de sorte que somente é admissível nos casos apontados anteriormente. Analisando a irresignação do embargante, nota-se que a pretensão expendida nas suas razões recursais é tão somente a rediscussão da matéria. No caso em foco, a bem da verdade, constata-se que é inviável o manejo dos Embargos Declaratórios com o fim de rediscutir questões tratadas e devidamente fundamentadas na decisão recorrida, haja vista serem incabíveis para provocar novo julgamento da lide, visto que, tais questionamentos foram enfrentados de forma fundamentada no acórdão embargado e que, portanto, deseja o embargante tão somente rediscutir a matéria já analisada, sem comprovar nenhuma omissão, obscuridade ou contradição no acórdão recorrido, o que, não se pode admitir, em sede de Embargos Declaratórios.

Processo	0200946-47.2022.8.06.0107
	CPC/2015. II. Trata-se, na origem, de ação ordinária, proposta por Jaqueline D'ávila Costa da Costa e outros em face do Município de Pedro Osório, objetivando a declaração do direito das autoras à atualização do piso nacional do magistério, a partir de janeiro de 2009, e reserva do limite máximo de 2/3 da carga horária para atividades de interação com educandos, bem como a condenação do réu ao pagamento das diferenças apuradas entre o período de 2009 a 2012, nos termos da Lei 11.738/2008. III. Não há falar, na hipótese, em violação ao art. 1.022 do CPC/2015, porquanto a prestação jurisdicional foi dada na medida da pretensão deduzida, de vez que os votos condutores do acórdão recorrido e do acórdão proferido em sede de Embargos de Declaração apreciaram fundamentadamente, de modo coerente e completo, as questões necessárias à solução da controvérsia, dando-lhes, contudo, solução jurídica diversa da pretendida. IV. Na forma da jurisprudência do STJ, não se pode confundir decisão contrária ao interesse da parte com ausência de fundamentação ou negativa de prestação jurisdicional. Nesse sentido: STJ, Resp 801.101/MG, Rel. Ministra DENISE ARRUDA, PRIMEIRA TURMA, DJe de 23/04/2008; Resp 1.672.822/SC, Rel. Ministro MAURO CAMPBELL MARQUES, SEGUNDA TURMA, DJe de 30/06/2017; Resp 1.669.867/SC, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, DJe de 30/06/2017. Com efeito, "não se configura a alegada ofensa aos arts. 489, § 1º, VI, e 1.022, I e II, do CPC/2015, uma vez que o Tribunal de origem julgou integralmente a lide e solucionou, de maneira amplamente fundamentada, a controvérsia, em conformidade com o que lhe foi apresentado. (...) O simples descontentamento da parte com o julgado não tem o condão de tornar cabíveis os Embargos de Declaração, que servem ao aprimoramento da decisão, mas não à sua modificação, que só muito excepcionalmente é admitida. In casu, fica claro que não há omissão a ser sanada e que os Aclaratórios veiculam mero inconformismo com o conteúdo da decisão embargada, que foi desfavorável à recorrente. O órgão julgador não é obrigado a rebater, um a um, todos os argumentos trazidos pelas partes em defesa da tese que apresentaram. Deve apenas enfrentar a demanda, observando as questões relevantes e imprescindíveis à sua resolução" (STJ, Resp 1.760.148/RJ, Rel. Ministro HERMAN BENJAMIN, SEGUNDA TURMA, DJe de 21/11/2018). V. A controvérsia foi dirimida, pelo acórdão recorrido, com fundamentação eminentemente constitucional, pelo que inviável a apreciação da matéria, em sede de Recurso Especial, sob pena de usurpação da competência, reservada ao STF, pela Constituição Federal. VI. No caso, o Tribunal de origem decidiu a controvérsia à luz de legislação local (Leis municipais 2.639/2011 e 2.763/2013), circunstância que torna inviável o exame da matéria, em Recurso Especial, ante óbice da Súmula 280 do STF. VII. Agravo interno improvido; STJ – AgInt no AREsp 1282598/RS – Agravo Interno no Agravo em Recurso Especial, Relatora a Ministra Assusete Magalhães, Segunda Turma, julgado em 11/02/2020, DJe 20/02/2020. O simples fato de o embargante não concordar com a conclusão do aresto impugnado, não enseja a propositura de embargos de declaração, devendo, nesse caso, fazer-se uso dos meios próprios para sua cogitada revisão. Na verdade, o que pretende o embargante é instaurar uma nova discussão sobre a controvérsia jurídica já apreciada, o que é incabível em sede de embargos declaratórios. Esse entendimento, aliás, restou sumulado por esta Corte de Justiça, através da Súmula 18 que aduz: "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada". Nesse cenário, eis os precedentes:

Processo	0200946-47.2022.8.06.0107
	<p class="Standard" style="margin-left: 4cm; text-align: justify;"> EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. VÍCIOS DE OMISSÃO, DE CONTRADIÇÃO E DE OBSCURIDADE NÃO CONFIGURADOS. BUSCA E APREENSÃO EM ALIENAÇÃO FIDUCIÁRIA. CONSTITUIÇÃO DO DEVEDOR FIDUCIANTE EM MORA. INOCORRÊNCIA. REMESSA DE NOTIFICAÇÃO AO ENDEREÇO DO AGRAVADO. RETORNO DO EXPEDIENTE SEM ÊXITO, SOB A JUSTIFICATIVA DE NÃO PROCURADO. ALEGAÇÃO DE NÃO OBSERVÂNCIA DO PRINCÍPIO DA BOA-FÉ. MANIFESTAÇÃO SOBRE TODOS OS PONTOS NECESSÁRIOS PARA O JULGAMENTO DO RECURSO. FINALIDADE DE REDISCUTIR A MATÉRIA JÁ JULGADA. INCIDÊNCIA DA SÚMULA Nº 18 DESTE TRIBUNAL DE JUSTIÇA. I - Manifesto inconformismo do Embargante com o mérito do julgamento proferido pelo Colegiado. Expressa manifestação desta Câmara de Direito Privado sobre toda a matéria necessária ao deslinde do caso. Posicionamento adotado no sentido de que a simples informação de que a carta não teria sido procurada não configura violação à boa-fé objetiva, pois apenas indica que o local de destino não é atendido pelo serviço de entregas da agência postal e que a correspondência não foi procurada pelo destinatário, para retirada, durante o período de guarda. A diligência adotada, desse modo, não foi suficiente para alcançar a finalidade estabelecida no § 2º do art. 2º do Decreto-Lei nº 911/1969, tendo em vista que a carta não foi efetivamente entregue no endereço do Demandado. II - Os embargos de declaração, recurso de fundamentação vinculada, servem para esclarecer obscuridade, eliminar contradição, suprir omissão ou corrigir erro material no acórdão embargado (art. 1.022 do CPC). Inexistindo os vícios elencados na Lei Processual, deve o aclaratório oposto ser rejeitado, com a consequente manutenção dos termos da decisão recorrida. Na esteira do entendimento adotado pelo Superior Tribunal de Justiça, o órgão julgador não está compelido a se posicionar expressamente sobre todos os pontos alegados pelas partes, mas somente sobre os necessários para o deslinde do caso. Diante do manejo dos embargos de declaração como mero mecanismo para veicular pedido de reconsideração, para provocar o reexame da matéria e das provas existentes nestes autos digitais, é aplicável a orientação contida na Súmula de nº 18 desta Corte de Justiça, que diz que são indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. RECURSO DE EMBARGOS DE DECLARAÇÃO CONHECIDO E NÃO PROVIDO.
 (Embargos de Declaração Cível&#160;- 0264192-44.2022.8.06.0001, Rel. Desembargador(a) EVERARDO LUCENA SEGUNDO, 2ª Câmara Direito Privado, data do julgamento:&#160; 08/02/2023, data da publicação:&#160; 08/02/2023) </p> <p class="Standard" style="margin-left: 4cm; text-align: justify;"> &#160; <p class="Standard" style="margin-left: 4cm; text-align: justify;"> DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO. OMISSÃO NÃO VERIFICADA. REDISCUSSÃO DE MATÉRIA JÁ ANALISADA. IMPOSSIBILIDADE. SÚMULA Nº 18 DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ. RECURSO CONHECIDO E DESPROVIDO. DECISÃO MANTIDA. 1. Cuidam os autos de Embargos de Declaração opostos por Banco do Brasil S/A contra o Acórdão que negou provimento à Apelação interposta pelo ora embargante, mantendo, assim, integralmente a sentença apelada que extinguiu, sem exame do mérito, por carência de pressuposto processual, a Ação de Busca e Apreensão ajuizada em face de Marcelo Lopes Bezerra. 2. Tal como decorre dos incisos do art. 1.022 do CPC, cabem Embargos de Declaração quando houver, na sentença ou acórdão, obscuridade, contradição, erro material ou no caso de omissão de ponto sobre o qual deveria pronunciar-se o juiz ou tribunal, ainda que o desiderato do Recurso seja o prequestionamento. 3. Do cotejo das razões deduzidas nos presentes Aclaratórios com o aresto, constata-se que a embargante pretende reverter o entendimento adotado pelo Órgão Jurisdicional, o que não é apropriado pela via dos Embargos de Declaração. 4. Com efeito, não há que se rediscutir a fundamentação do Acórdão com o fito de ver prevalecer ótica diversa da empreendida pelo Órgão Julgador. Inclusive é o que se absorve do Enunciado Sumular nº 18 deste Sodalício (Súmula 18 - "São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada"). 5. Recurso conhecido e desprovido. Decisão mantida.
 (Embargos de Declaração Cível&#160;- 0798212-73.2000.8.06.0001, Rel. Desembargador(a) JANE RUTH MAIA DE QUEIROGA, 3ª Câmara Direito Privado, data do julgamento:&#160; 08/02/2023, data da publicação:&#160; 08/02/2023) </p> <p class="Standard" style="margin-left: 4cm; text-align: justify;"> &#160; <p class="Standard" style="margin-left: 4cm; text-align: justify;"> EMBARGOS DE DECLARAÇÃO EM AGRAVO INTERNO. INEXISTÊNCIA DE OMISSÃO. IMPOSSIBILIDADE DE REDISCUSSÃO DA MATÉRIA JÁ DECIDIDA. INTELIGÊNCIA DA SÚMULA Nº 18 DO TJCE. RECURSO CONHECIDO E IMPROVIDO. ACÓRDÃO MANTIDO. 1. Inexiste omissão a ser sanada no acórdão embargado, uma vez que o Desembargador Relator analisou detalhadamente o pleito referente à comprovação da constituição do devedor em mora, de modo que não deixou margem para dúvidas ou omissões. 2.

Processo	0200946-47.2022.8.06.0107
	Ausente qualquer vício a ser sanado pelo presente recurso, constata-se que a pretensão recursal é voltada a rediscutir a matéria já decidida por este Colegiado, intento que encontra óbice no teor da Súmula nº 18 do TJCE. 3. Embargos Declaratórios conhecidos e improvidos. Acórdão mantido. (Embargos de Declaração Cível; 0050576-02.2021.8.06.0104, Rel. Desembargador(a) ANDRÉ LUIZ DE SOUZA COSTA, 3ª Câmara Direito Privado, data do julgamento: 08/02/2023, data da publicação: 09/02/2023) Dessa forma, ausente qualquer vício a ser sanado no caso em epígrafe, os embargos de declaração não merecem provimento. Por fim, advirto que se evidenciando o caráter protelatório do recurso o relator poderá aplicar a previsão contida nos §§ 2º e 3º, do art. 1.026, do Código de Processo Civil, in verbis: § 2º Quando manifestamente protelatórios os embargos de declaração, o juiz ou o tribunal, em decisão fundamentada, condenará o embargante a pagar ao embargado multa não excedente a dois por cento sobre o valor atualizado da causa. § 3º Na reiteração de embargos de declaração manifestamente protelatórios, a multa será elevada a até dez por cento sobre o valor atualizado da causa, e a interposição de qualquer recurso ficará condicionada ao depósito prévio do valor da multa, à exceção da Fazenda Pública e do beneficiário de gratuidade da justiça, que a recolherão ao final. CONHEÇO do presente recurso de embargos de declaração, mas para negar-lhe provimento, ante a ausência de quaisquer vícios delimitados no art. 1022, do Código de Processo Civil, a fim de manter a decisão recorrida em todos os seus termos. É como voto. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator
Processo	0629960-10.2000.8.06.0001
Número de ordem	243
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Nota Promissória
Polo ativo	FUJITA GRANITOS LTDA ESPÓLIO DE JOAO BATISTA FUJITA registrado(a) civilmente como JOAO BATISTA FUJITA
Advogado(s) - Polo ativo	THIAGO FIGUEIREDO FUJITA - (CE18776-A) MARCOS ANTONIO CABRAL FEITOSA FILHO - (CE20062-A)
Polo passivo	BANCO BRADESCO S/A
Advogado(s) - Polo passivo	FILIPE AUGUSTO DA COSTA ALBUQUERQUE - (CE20587-A) DAIANY MARA RIBEIRO PAIVA - (CE16942-A)

Processo	0629960-10.2000.8.06.0001
Terceiros	PROCURADORIA GERAL DE JUSTICA REJANE CARVALHO FUJITA

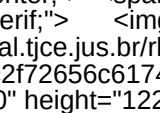
Processo	0629960-10.2000.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0629960-10.2000.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: FUJITA GRANITOS LTDA, JOAO BATISTA FUJITA APELADO: BANCO BRADESCO S/A EMENTA: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. ALEGAÇÃO DE CONTRADIÇÃO, OMISSÃO E ERRO MATERIAL. INOCORRÊNCIA. RESPONSABILIDADE DE AVALISTA PELO CONTRATO DE MÚTUO. PRAZO PRESCRICIONAL VINTENÁRIO. DESPROVIMENTO. I. CASO EM EXAME 1. Embargos de declaração opostos pelo Espólio de João Batista Fujita contra acórdão da 1ª Câmara de Direito Privado que negara provimento à apelação interposta em face de sentença da 4ª Vara Cível de Fortaleza, em ação de cobrança ajuizada pelo Banco do Estado do Ceará S/A (sucedido pelo Banco Bradesco). 2. O embargante sustenta contradição, omissão e erro material na decisão, alegando ilegitimidade passiva, ausência de responsabilidade pessoal e prescrição do aval. II. QUESTÃO EM DISCUSSÃO 3. Há três questões em discussão: (i) definir se o acórdão embargado incorreu em contradição ao reconhecer simultaneamente a assinatura do contrato de mútuo como representante da empresa e a responsabilidade pessoal do embargante; (ii) estabelecer se houve erro material e omissão quanto à análise da atuação do embargante como avalista e da prescrição do aval; (iii) determinar se estão configurados os vícios previstos no art. 1.022 do CPC a justificar o acolhimento dos embargos. III. RAZÕES DE DECIDIR 4. O acórdão embargado fundamenta de forma clara que João Batista Fujita, além de representante legal da empresa no contrato de mútuo, também figurou como avalista nas notas promissórias vinculadas, razão pela qual subsiste sua legitimidade passiva. 5. O avalista responde solidariamente pelas obrigações pactuadas, inclusive no contrato de mútuo, nos termos do art. 899 do CC, do art. 32 do Anexo I do Decreto nº 57.663/1966 e da Súmula 26 do STJ. 6. A pretensão de cobrança não está prescrita, pois as notas promissórias são vinculadas ao contrato de mútuo firmado em 1994, aplicando-se o prazo prescricional vintenário previsto no art. 177 do CC/1916, vigente à época da propositura da ação (2002). 7. O julgador não está obrigado a se manifestar sobre todos os argumentos e jurisprudências citados pelas partes, apenas sobre os capazes de alterar a conclusão do julgamento, conforme entendimento consolidado do STJ. 8. Os embargos de declaração não constituem meio adequado para rediscutir matéria já apreciada, conforme a Súmula nº 18 do TJCE. IV. DISPOSITIVO E TESE 9. Recurso desprovido. Tese de julgamento: 1. O avalista que assina notas promissórias vinculadas a contrato de mútuo responde solidariamente pelas obrigações contratuais. 2. O prazo prescricional aplicável à cobrança de contrato de mútuo firmado antes da vigência do CC/2002 é o vintenário previsto no art. 177 do CC/1916. 3. Os embargos de declaração não se prestam ao reexame da controvérsia jurídica já

Processo	0629960-10.2000.8.06.0001
	apreciada. O julgador deve enfrentar apenas as questões capazes de modificar o resultado do julgamento, não sendo obrigatória a análise individualizada de todos os argumentos apresentados. Dispositivos relevantes citados: CPC, arts. 1.022 e 1.025; CC/1916, art. 177; CC/2002, art. 899; Decreto nº 57.663/1966, Anexo I, art. 32. Jurisprudência relevante citada: STJ, Súmula 26; STJ, AgRg no REsp 2.094.487/TO, Rel. Min. Messod Azulay Neto, Quinta Turma, j. 05.03.2024, DJe 08.03.2024; TJCE, EDcl nº 0271987-72.2020.8.06.0001, Rel. Des. Francisco Mauro Ferreira Liberato, 1ª Câmara Direito Privado, j. 12.04.2023. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso e, no mérito, negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO Trata-se de embargos de declaração opostos por ESPÓLIO DE JOÃO BATISTA FUJITA em face de acórdão proferido pela 1ª Câmara de Direito Privado, sob a minha relatoria, que negou provimento ao recurso de apelação interposto pelo ora embargante contra sentença proferida pela 4ª Vara Cível de Fortaleza, nos autos da Ação de Cobrança movida por BANCO DO ESTADO DO CARÁ S/A -BEC (SUCEDIDA PELO BANCO BRADESCO), ora embargado. Em suas razões recursais, o embargante alega contradição no acórdão, por ter reconhecido expressamente que o sr. João Batista teria assinado o contrato de mútuo como representante legal da empresa, mas ter reconhecido que a pessoa física também seria responsável pelas obrigações contantes no pacto. Aduz, também, que houve erro material, por ser a decisão embargada reconhecido a responsabilidade do embargante pelas obrigações contraídas no contrato de mútuo pelo fato de este ter figurado no pacto como devedor solidário, o que não teria ocorrido. Defende, ainda, omissão no julgado vergastado, porque desconsiderou a alegação do Embargante de que assinou o contrato de mútuo apenas como representante da empresa Fujita Granitos S/A, sem assumir obrigações pessoais, e que a responsabilidade do Embargante se restringiu às notas promissórias, nas quais figurou apenas como avalista, inexistindo qualquer obrigação pessoal decorrente do contrato de mútuo, bem como por não apreciar a jurisprudência citada na apelação, a qual demonstra que, uma vez prescrito o aval, extingue-se a obrigação cambiária, não podendo o avalista ser responsabilizado. Ao final, roga pelo conhecimento e provimento dos embargos, a fim de que sejam sanados os vícios apontados, reconhecendo a ilegitimidade passiva do embargante para figurar no polo passivo da demanda, bem como a prescrição do aval dado às notas promissórias. Embora devidamente intimada, a parte embargada não apresentou contrarrazões. É o que importa relatar. VOTO Conheço do recurso, uma vez que presentes os requisitos extrínsecos e extrínsecos de admissibilidade. Passo ao exame do mérito.

Processo	0629960-10.2000.8.06.0001
	<p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;">Os embargos de declaração, previstos no art. 1.022, do CPC, são cabíveis contra qualquer decisão judicial e objetivam: I esclarecer obscuridade ou eliminar contradição; II -suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; III - corrigir erro material, sendo igualmente cabíveis para o prequestionamento de matéria constitucional e legal para fins de interposição de Recursos Especial e Extraordinário.</p> <p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;">Essa modalidade de recurso proporciona uma nova oportunidade para que o Julgador, prolator de decisão atacada, revise o julgado à vista de possíveis defeitos sanáveis pontuados pelos Embargantes.</p> <p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;">Quando se vislumbra que a mácula, ao ser detectada, venha causar alteração no dispositivo da decisão, de maneira que sejam modificadas ou invertidas as conclusões originárias, há que se reconhecer os embargos de declaração com efeitos modificativos ou infringentes.</p> <p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;">Nesse sentido, ressalta-se que o acórdão embargado não é contraditório, nem eivado de erro material, no que se refere à responsabilidade do sr. João Batista pelas obrigações contraídas no contrato de mútuo, fazendo menção expressa e clara do porquê a legitimidade passiva da pessoa física ainda subsiste, veja-se:</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">No que se refere à ilegitimidade passiva o de cujos João Fujita, verifico que, por mais que o contrato de mútuo de fls. 17-23 contenha a assinatura do réu apenas como representante legal da empresa Fujita Granitos, as demais notas promissórias, de fls. 24-45, contêm a assinatura dele como avalista.</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Da leitura da inicial, noto que a parte autora pretende, também, cobrar os valores referentes às notas promissórias que estariam vinculadas ao contrato objeto da demanda, razão pela qual o réu, ora apelante, como avalista, responde solidariamente pela dívida cobrada no título, nos termos do art. 899, do Código Civil e, anteriormente, art. 32, do Anexo I, do Decreto nº 57.663 de 24/01/1966.</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Aqui, importa destacar que, no que se refere à responsabilidade do avalista pelas obrigações previstas no contrato de mútuo, a Súmula 26, do STJ, prevê que "o avalista do título de crédito vinculado a contrato de mútuo também responde pelas obrigações pactuadas, quando no contrato figurar como devedor solidário".</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Da leitura do contrato de fls. 20-23, observo que o de cujos João Fujita também assinou referido contrato, motivo pelo qual entendo que o avalista é responsável, também, pelas obrigações contidas no contrato, visto que não restou clara a diferença da atuação dele como avalista e como emitente.</p> <p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;">Também não existe qualquer omissão no que se refere à fundamentação sobre o porquê a dívida em face do sr. João Batista não estaria prescrita, posto que o acórdão embargado é expresso em elencar os motivos pelos quais os argumentos nesse sentido não podem prosperar, veja-se:</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Ressalto, ainda, que o direito de ação do promovente sobre a dívida do contrato de mútuo não está prescrito, posto que as notas promissórias de fls. 24-43 são vinculadas ao contrato de fls. 20-23, conforme cláusula 8.1., abaixo colacionada [...].</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Logo, não se aplica em face do devedor o prazo prescricional de 03 anos, previsto nos artigos 70 e 77 da Lei Uniforme de Genebra, mas o prazo de 20 anos, nos termos do art. 177, do Código Civil de 1916, vigente à época da propositura da demanda (já que a vigência do Código Civil de 2002 iniciou apenas em 11/01/2003), abaixo transcrito:</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Art. 177. As ações pessoais prescrevem, ordinariamente, em vinte anos, as reais em dez, entre presentes e entre ausentes, em quinze, contados da data em que poderiam ter sido propostas.</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Destarte, uma vez que as notas promissórias estão vinculadas a contrato de mútuo pactuado em 01/03/1994, e que a ação de cobrança foi ajuizada em 14/10/2002, não há que se falar em prescrição da cobrança da dívida, posto que ajuizada antes do prazo vintenal previsto no Código Civil de 1916.</p> <p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;"></p>

Processo	0629960-10.2000.8.06.0001
	style="margin: 6pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;">Assim, não se observa a presença dos vícios previstos no art. 1.022, do CPC. O que se nota, a bem da verdade, é a clara intenção do embargante de rever o entendimento proposto por esta relatoria pela via equivocada, o que é vedado pela Súmula nº 18: “ São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada”.</p> <p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;">Ademais, é entendimento consolidado do c. STJ que o magistrado não está obrigado a se manifestar acerca de todos os fatos, teses e argumentos expostos pelas partes, apenas sobre aqueles capazes de modificar a conclusão adotada, veja-se:</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">PROCESSO PENAL. AGRAVO REGIMENTAL EM RECURSO ESPECIAL. ESTUPRO DE VULNERÁVEL. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA DOS FUNDAMENTOS DA DECISÃO AGRAVADA. SÚMULA 182/STJ. ALEGADA INSUFICIÊNCIA DE PROVAS. REVOLVIMENTO DO CONJUNTO FÁTICO-PROBATÓRIO. IMPOSSIBILIDADE. SÚMULA 7/STJ. PALAVRA DA VÍTIMA. ESPECIAL RELEVÂNCIA. PRINCÍPIO DO LIVRE CONVENCIMENTO MOTIVADO. SÚMULA N. 83/STJ.</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">I - O julgador não é obrigado a se manifestar sobre todas as teses suscitadas pelas partes na hipótese em que já há provas suficientes a amparar a condenação. Ademais, o princípio do livre convencimento motivado autoriza o magistrado a divergir do laudo psicológico, desde que sua convicção esteja amparada em outros elementos de prova, como ocorreu na espécie. </p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">II - Segundo a orientação desta Corte, para que haja a transposição do óbice da Súmula n. 7, STJ, o agravo precisa demonstrar em que medida as teses não exigem a alteração do quadro fático delineado pelo Tribunal local, não bastando a assertiva genérica de que o recurso visa à reavaliação das provas.</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">III - A superação da Súmula n. 83, STJ, exige a indicação de precedentes contemporâneos ou supervenientes capazes de alterar a modificação do julgado, ou a demonstração de distinguishing, o que não ocorreu no caso dos autos.</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">IV - A ausência de impugnação específica e pormenorizada dos fundamentos da decisão agravada inviabiliza o conhecimento do recurso, sendo insuficientes as assertivas de que todos os requisitos foram preenchidos ou a reiteração do mérito da controvérsia. Incidência da Súmula n. 182, STJ. Precedentes.</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">Agravos regimental não conhecido.</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">(AgRg no REsp n. 2.094.487/TO, relator Ministro Messod Azulay Neto, Quinta Turma, julgado em 5/3/2024, DJe de 8/3/2024.) Grifou-se.</p> <p class="MsoNormal" style="margin: 6pt 0cm; text-align: justify; line-height: 150%; text-indent: 8%;">Não é destoante o entendimento deste e. Tribunal de Justiça do Ceará:</p> <p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;">EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. DIREITO MÉDICO. AÇÃO DE OBRIGAÇÃO DE FAZER COM PEDIDO DE TUTELA ANTECIPADA E INDENIZAÇÃO POR DANOS MORAIS. TAXATIVIDADE DE ROL DA ANS FLEXIBILIZADA. EMBARGANTE ALEGA OMISSÃO EM ACÓRDÃO POR NÃO TER TAL DECISÃO VERSADO SOBRE ENTENDIMENTO DO STJ. VÍCIO NÃO VERIFICADO. DECISÃO JUDICIAL DEVIDAMENTE FUNDAMENTADA E PAUTADA NO ART. 93, IX, CF. JULGADOR QUE NÃO É OBRIGADO A PORMENORIZAR TODOS OS PONTOS TRAZIDOS PELOS LITIGANTES. MERO INCONFORMISMO DA RECORRENTE. TENTATIVA DE REDISCUSSÃO DE CONTROVÉRSIA JUDICIAL JÁ APRECIADA. APLICAÇÃO DA SÚMULA N. 18 DO TJ/CE. EMBARGOS DE DECLARAÇÃO CONHECIDOS E IMPROVIDOS. 1. Os presentes embargos de declaração vêm a pleito para reclamar suposta omissão em decisor prolatado por esta Relatoria. Alude a recorrente que a decisão combatida deixou de observar entendimento da Segunda Seção do STJ acerca da taxatividade do rol da ANS e, por tal razão, encontra-se o acórdão eivado de vício. 2. Dito isto, adianta-se que não assistem razão os aclaratórios. Isso porque, pela análise da decisão guerreada, é perceptível que todos os pontos relevantes para a resolução da controvérsia foram adequadamente explicados, tendo o improvimento da apelação se dado após a observação da legislação médica pertinente, bem como de

Processo	0629960-10.2000.8.06.0001
	notas técnicas e os pormenores do caso concreto. 3. Além disso, importa salientar que o julgador não é obrigado a se manifestar sobre todos os pontos trazidos pelos sujeitos, desde que se expresse de maneira clara, objetiva e fundamentada, o que, ressalte-se, ocorreu. 4. Posto isto, nota-se uma tentativa de rediscussão de matéria de mérito já resolvida e, a ser assim, torna-se incabível o recurso manejado. Com fulcro na súmula n. 18 do TJ/CE, rejeita-se, pois, os aclaratórios opostos. 5. Embargos de declaração conhecidos e improvidos. (Embargos de Declaração Cível&#160;- 0271987-72.2020.8.06.0001, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160; 12/04/2023, data da publicação:&#160; 12/04/2023) Grifou-se. Dito isso, verifica-se que a fundamentação do acórdão embargado se encontra clara e objetiva, não sendo necessária a manifestação expressa sobre uma única tese, para que seja prequestionada a matéria, nos termos do art. 1.025, do CPC, in verbis. Art. 1.025. Consideram-se incluídos no acórdão os elementos que o embargante suscitou, para fins de prequestionamento, ainda que os embargos de declaração sejam inadmitidos ou rejeitados, caso o tribunal superior considere existentes erro, omissão, contradição ou obscuridade. Diante do exposto, conheço do recurso, mas nego-lhe provimento, em decorrência da ausência de quaisquer dos vícios elencados no art. 1.022, do CPC. Ficam as partes, desde logo, advertidas de que a oposição de embargos de declaração, com nítido intuito protelatório, ensejará a aplicação da multa prevista no art. 1.026, §§2º e 3º,&#160;do&#160;CPC/2015. É o voto que submeto à apreciação dos meus eminentes pares. Fortaleza - CE, data da assinatura digital. Desembargador CARLOS AUGUSTO GOMES CORREIA &#160; Relator
Processo	0131486-15.2013.8.06.0001
Número de ordem	244
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	PORTO FREIRE ENGENHARIA E INCORPORACAO LTDA
Advogado(s) - Polo ativo	CARLOS ROBERTO DE SIQUEIRA CASTRO - (CE14325-A) JULIANA DE ABREU TEIXEIRA - (CE13463-A) MARCIO RAFAEL GAZZINEO - (CE23495-A) Nelson Bruno do Rego Valença - (CE15783-A) DANIEL CIDRAO FROTA - (CE19976-A) ANDRE RODRIGUES PARENTE - (CE15785-A) RAUL AMARAL JUNIOR - (CE13371-S)
Polo passivo	BRUNO CORDEIRO AMARANTES AMANDA ALVES DE AGUIAR AMARANTES
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0131486-15.2013.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0131486-15.2013.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: PORTO FREIRE ENGENHARIA E INCORPORACAO LTDA APELADO: BRUNO CORDEIRO AMARANTES, AMANDA ALVES DE AGUIAR AMARANTES Ementa DIREITO CIVIL E DO CONSUMIDOR. APELAÇÃO CÍVEL. CONTRATO DE PROMESSA DE COMPRA E VENDA DE IMÓVEL. ATRASO INJUSTIFICADO NA ENTREGA. RESPONSABILIDADE OBJETIVA DO FORNECEDOR. CLÁUSULAS ABUSIVAS. DANOS MORAIS CONFIGURADOS. LUCROS CESSANTES PRESUMIDOS. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Apelação Cível interposta pela Massa Falida de Porto Freire Engenharia e Incorporação Ltda. contra sentença que, nos autos de Ação de Indenização por Danos Morais e Materiais ajuizada por Bruno Cordeiro Amarante e Amanda Alves de Aguiar Amarante, condenou a construtora ao pagamento de multa contratual de 2% do valor do imóvel, juros moratórios de 1% ao mês até o pedido de recuperação judicial, danos morais de R\$ 5.000,00 para cada autor e lucros cessantes de 0,5% ao mês sobre o valor do contrato, desde a data prevista para a entrega do imóvel até a rescisão. II. QUESTÃO EM DISCUSSÃO 2. Há três questões em discussão: (i) definir se é válida a cláusula contratual de prorrogação da entrega do imóvel e de retenção de valores; (ii) estabelecer se é devida a indenização por danos morais em razão do atraso na entrega da obra; (iii) determinar se são devidos lucros cessantes pelo período em que os autores ficaram privados do imóvel. III. RAZÕES DE DECIDIR 3.

Processo	0131486-15.2013.8.06.0001
	kerning: auto; font-optical-sizing: auto; font-feature-settings: normal; font-variation-settings: normal; font-variant-position: normal; font-variant-emoji: normal; font-stretch: normal; font-size: 7pt; line-height: normal; font-family: "Times New Roman";">&#160;&#160;&#160; <!--[endif]--> O Código de Defesa do Consumidor, em seu art. 14, consagra a responsabilidade objetiva do fornecedor de serviços, fundada na teoria do risco do empreendimento, sendo irrelevante a alegação de caso fortuito interno como greve ou dificuldades administrativas.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; mso-list: l0 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 4. &#160;&#160;&#160; <!--[endif]--> A construtora descumpe obrigação essencial do contrato ao não entregar o imóvel no prazo ajustado, configurando falha na prestação do serviço e quebra contratual, que não pode ser justificada por cláusulas abusivas.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; mso-list: l0 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 5. &#160;&#160;&#160; <!--[endif]--> O art. 47 do CDC determina que as cláusulas devem ser interpretadas em favor do consumidor, autorizando a inversão de cláusula penal originalmente estipulada apenas em benefício da fornecedora.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; mso-list: l0 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 6. &#160;&#160;&#160; <!--[endif]--> O atraso excessivo na entrega do imóvel gera frustração que ultrapassa o mero aborrecimento, configurando dano moral indenizável, em consonância com os arts. 186 e 927 do CC e com a jurisprudência do STJ.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; mso-list: l0 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 7. &#160;&#160;&#160; <!--[endif]--> A fixação do valor da indenização por dano moral deve observar os princípios da razoabilidade e proporcionalidade, possuindo caráter compensatório e pedagógico, sendo adequado o arbitramento em R\$ 5.000,00 para cada autor.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; mso-list: l0 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 8. &#160;&#160;&#160; <!--[endif]--> Nos termos dos arts. 402 e 403 do CC, os lucros cessantes compreendem o que razoavelmente se deixou de lucrar, em contratos de promessa de compra e venda de imóvel na planta, o STJ admite a presunção dos prejuízos pela privação do bem, autorizando a condenação em 0,5% do valor do contrato ao mês até a rescisão.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph;"> <span style="font-family: Arial,

Processo	0131486-15.2013.8.06.0001
	sans-serif;">IV. DISPOSITIVO E TESE </p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; mso-list: l3 level1 lfo4; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 9. &#160;&#160;&#160; <!--[endif]--> Recurso desprovido.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph;"> Tese de julgamento "> </p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; mso-list: l1 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 1. &#160;&#160;&#160; <!--[endif]--> A cláusula contratual que prevê prorrogação unilateral da entrega do imóvel e retenção de valores em prejuízo exclusivo do consumidor é abusiva e deve ser afastada.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; mso-list: l1 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 2. &#160;&#160;&#160; <!--[endif]--> O atraso injustificado e prolongado na entrega do imóvel adquirido na planta configura falha na prestação do serviço e enseja reparação por danos morais.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; margin-right: 0cm; margin-bottom: .0001pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; mso-list: l1 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 3. &#160;&#160;&#160; <!--[endif]--> Os lucros cessantes, em casos de atraso na entrega de imóvel, possuem natureza presumida e são devidos no percentual de 0,5% ao mês sobre o valor do contrato, desde a data prevista para a entrega até a rescisão.</p> <div class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; text-align: center;"> <hr size="2" /> </div> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph;"> Dispositivos relevantes citados ">: CF/1988, art. 5º, V e X; CC/2002, arts. 186, 402, 403 e 927; CDC, arts. 14 e 47; CPC/2015, art. 487, I. </p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph;"> Jurisprudência relevante citada: STJ, Informativo nº 626; TJCE, Apelação Cível, 3ª Câmara de Direito Privado, Rel. Des. Jucid Peixoto do Amaral, j. 2021; TJCE, Apelação Cível, 4ª Câmara de Direito Privado, Rel. Des. Durval Aires Filho, j. 26.09.2017. </p> <p class="EmentadoAcf3rde3o" style="margin-top: 12.0pt; text-align: justify; text-justify: inter-ideograph;"> ">ACÓRDÃO: Vistos, relatados e discutidos os presentes autos, acorda a 1ª Câmara de Direito Privado do Egrégio Tribunal de Justiça do Ceará, por unanimidade, em CONHECER DA APELAÇÃO CÍVEL PARA NEGAR-LHE PROVIMENTO, em conformidade com o voto do Relator. </p> <p style="text-align: center;">&#160;</p><p style="text-align: center;"> Fortaleza, data da assinatura digital.</p> </p><p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do Órgão Julgador</p><p style="text-

Processo	0131486-15.2013.8.06.0001
	align: center;">
 </p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p><p class="MsoNormal" style="margin-top: 5.65pt; text-align: center;" align="center">&#160;</p><p class="MsoNormal" style="margin-top: 5.65pt; text-align: center;" align="center"> RELATÓRIO &#160;</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Trata-se de Apelação Cível interposta por MASSA FALIDA DE PORTO FREIRE ENGENHARIA E INCORPORAÇÃO LTDA., em face da sentença de Id. 23171671, proferida pelo Juízo da 19ª Vara Cível de Fortaleza, nos autos da Ação de Indenização por Danos Morais e Materiais ajuizada por Bruno Cordeiro Amarante e Amanda Alves de Aguiar Amarante, que julgou procedente o pleito autoral, nos seguintes termos (Id. 23171671):</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;">&#160;</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Ante o exposto, extinguindo o feito com resolução do mérito, com esteio no art.487, inciso I, do CPC, por tudo o que dos autos consta, JULGO PROCEDENTES os pedidos, para: </p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> A) Condenar a requerida ao pagamento da multa moratória de 2% do valor do imóvel, mais juros moratórios de 1% ao mês pro rata die, ambos contados até a data de 04 de janeiro de 2021, data do pedido de recuperação judicial; </p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> B) Condeno a Promovida ao pagamento de danos morais no valor de R\$ 5.000,00 (cinco mil reais) para cada Autor, os quais deverão ser corrigidos monetariamente pelo INPCa partir da data desta sentença (Súmula 362 do STJ) e juros de mora de 1% (um por cento) ao mês a partir da citação; </p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> C) Condenar a promovida ao pagamento de lucros cessantes no equivalente a 0,5% (meio por cento) ao mês, sobre o valor do contrato, pelo período compreendido entre a data prevista para a entrega do imóvel (30/12/2019) até a data de 04 de janeiro de 2021, data do pedido de recuperação judicial. </p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Deferir o a gratuidade à Massa Falida de Porto Freire Engenharia e Incorporação LTDA. </p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Condeno a requerida ao pagamento das custas e honorários de sucumbência no valor de 10% sobre o valor da condenação. </p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;">&#160;</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Opostos embargados de declaração, sobreveio sentença (Id. 23171606) com o seguinte dispositivo: "CONHEÇO os embargos de declaração de fls. 458 a 460, interpostos pelos autores/embargantes BRUNO CORDEIRO AMARANTES e AMANDA ALVES DE AGUIAR AMARANTES, para, ante a presença do requisito do artigo 1.022, III, do Código de Processo Civil, DAR-LHES PROVIMENTO, esclarecendo que, quanto aos lucros cessantes, o termo inicial de sua incidência é o dia 30 de outubro de 2011 e que as chaves do imóvel jamais foram entregues aos recorrentes."</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Inconformada, a Massa Falida de Porto Freire Engenharia e Incorporação LTDA, Porto Freire Consultoria e Serviços LTDA. interpôs recurso de apelação sob Id. 23171603, no qual requer "O total provimento do recurso de apelação para reconhecer: i. No mérito, o reconhecimento da legalidade

Processo	0131486-15.2013.8.06.0001
	cláusula de prorrogação de entrega do imóvel e da cláusula de retenção, a fim de afastar a condenação de restituição integral dos valores pagos; ii. O afastamento da condenação ao pagamento de indenização por danos morais. iii. Afastamento da condenação ao pagamento dos lucros cessantes." &#160;</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Contrarrazões recursais sob Id. 23171608.</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Em parecer de Id. 23171315, a Procuradoria Geral de Justiça informou não possuir interesse no feito.</p><p class="MsoNormal" style="margin-top: 3.0pt; margin-right: 0cm; margin-bottom: 3.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> É o relatório.</p><p class="MsoNormal" style="text-align: center;" align="center"> VOTO </p><p class="MsoNormal" style="text-align: center;" align="center"> &#160; </p><p class="MsoNormal" style="margin-top: 2.0pt; margin-right: 0cm; margin-bottom: 2.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Presentes os pressupostos que autorizam a admissibilidade do apelo, recebo-o.</p><p class="MsoNormal" style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: 5.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Conforme relatado, trata-se de Apelação Cível interposta por MASSA FALIDA DE PORTO FREIRE ENGENHARIA E INCORPORAÇÃO LTDA., em face da sentença de Id. 23171671, proferida pelo Juízo da 19ª Vara Cível de Fortaleza, nos autos da Ação de Indenização por Danos Morais e Materiais ajuizada por Bruno Cordeiro Amarante e Amanda Alves de Aguiar Amarante, que julgou procedente o pleito autoral. </p><p class="MsoNormal" style="margin-top: 5.0pt; margin-right: 0cm; margin-bottom: 5.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> &#160;Examinando minuciosamente as provas carreadas aos fólios, bem como as alegações recursais, observa-se que a sentença vergastada deve ser mantida em todos os seus termos, por atender aos princípios basilares do direito e jurisprudência pátria.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> O Código de Defesa do Consumidor, em seu art. 14, caput, estabelece a responsabilidade objetiva dos fornecedores de serviço pelos danos causados aos consumidores, por defeitos relativos à prestação dos serviços.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Trata-se de responsabilidade objetiva pela falha do serviço, fundada na teoria do risco do empreendimento, onde todo aquele que se dispõe a exercer alguma atividade no campo do fornecimento de bens e serviços, tem o dever de responder pelos fatos e vícios resultantes do empreendimento, independentemente de culpa.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Este dever é imanente ao dever de obediência às normas técnicas e de segurança, decorrendo a responsabilidade do simples fato de dispor-se alguém a realizar atividade e executar determinados serviços. Em suma, os riscos do empreendimento correm por conta do fornecedor (de produtos e serviços) e não do consumidor .</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> A falha na prestação do serviço restou incontestada nos autos, visto que a empresa requerida teria o dever de cumprir com os prazos previamente estipulados, contemplando, no curso da obra, todas as dificuldades que pudessem vir a encontrar (greve da construção civil, escassez de mão de obra, ausência de adesão ao empreendimento), o que, de fato, não aconteceu.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Compulsando a documentação trazida à baila, verifica-se que os autores cumpriram rigorosamente com todas as suas obrigações, efetuando os pagamentos em dia, tendo a Construtora promovida deixado de cumprir a contraprestação, evidenciando a efetiva quebra do contrato.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> O art. 47 do Código de Defesa do Consumidor, estabelece que as cláusulas contratuais devem ser interpretadas de maneira mais favorável ao consumidor, sendo as regras que favorecem exclusivamente a construtora abusivas, podendo serem invertidas em favor do consumidor.</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm;">

Processo	0131486-15.2013.8.06.0001
	line-height: 150%;"> Vejamos entendimento jurisprudencial deste Tribunal acerca do pleito:</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> ¶</p><p class="MsoNormal" style="margin-left: 113.25pt; text-align: justify; text-justify: inter-ideograph; text-indent: -.75pt; mso-line-height-alt: 10.0pt;"> Ementa: AÇÃO DE REPARAÇÃO DE DANOS MORAIS E MATERIAIS DECORRENTES DE RESCISÃO CONTRATUAL. ATRASO EXORBITANTE NA ENTREGA DE IMÓVEL PELA CONSTRUTORA. COMPROVAÇÃO DA VIOLAÇÃO AO CONTRATO. APLICAÇÃO DO CDC À ESPÉCIE. RELAÇÃO CONSUMERISTA. DANO MORAL CONFIGURADO. LUCROS CESSANTES INDEVIDOS. 1. É fato incontroverso nos autos o atraso demasiadamente excessivo na entrega da obra, que extrapolou em mais de quatro anos o próprio prazo de tolerância previsto no contrato. Afronta à boa fé contratual e ao princípio rebus sic stantibus. 2 – Na esteira da súmula 243 do STJ, deve a apelante arcar com a devolução dos valores já adimplidos pela apelada, devidamente corrigidos, haja vista a rescisão do contrato ter ocorrido por culpa exclusiva da construtora. 3 – No que se refere à pretendida indenização dos lucros cessantes, a indenização, na hipótese específica dos autos, não é devida, haja vista que o imóvel, inserido no programa "minha casa, minha vida", que recebe subsídio do Estado, visa a moradia própria e não é destinado à locação visando lucro. 4 – Validade da cláusula contratual que transfere ao promitente-comprador a obrigação de pagar a comissão de corretagem nos contratos de promessa de compra e venda de unidade autônoma em regime de incorporação imobiliária, desde que previamente informado o preço total da aquisição da unidade autônoma, com o destaque do valor da comissão de corretagem (vide REsp n. 1.599.511/SP). 5 – Restou configurada a ocorrência de dano moral, uma vez que a frustração ocasionada à apelada é irrefutável e extrapolou o limite do aborrecimento ou do mero dissabor, causando mácula a direito da personalidade da recorrida que se encontrava em situação de absoluta desvantagem diante da apelante. O juízo a quo arbitrou o quantum de R\$ 15.000,00 (quinze mil reais), valor que se mostra razoável e não merece reparo. 6 – Recursos conhecidos e não providos. Sentença mantida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade, em conhecer dos apelos para negar-lhes provimento, nos termos do voto do relator, parte integrante deste. JUCID PEIXOTO DO AMARAL Presidente do Órgão Julgador / Relator</p><p class="MsoNormal" style="margin-left: 113.25pt; text-align: justify; text-justify: inter-ideograph; text-indent: -.75pt; mso-line-height-alt: 10.0pt;"> ¶</p><p class="MsoNormal" style="margin-left: 113.25pt; text-align: justify; text-justify: inter-ideograph; text-indent: -.75pt; mso-line-height-alt: 10.0pt;"> Ementa: APELAÇÃO CÍVEL. CONTRATO DE PROMESSA DE COMPRA E VENDA DE IMÓVEL. RESCISÃO POR CULPA DA CONSTRUTORA. ATRASO INJUSTIFICADO NA ENTREGA DE IMÓVEL. CONDENAÇÃO EM DEVOLUÇÃO DE VALORES PAGOS. POSSIBILIDADE. INVERSÃO DE CLÁUSULA CONTRATUAL QUE PREVIA MULTA EXCLUSIVAMENTE EM BENEFÍCIO DO FORNECEDOR. VIABILIDADE. APLICAÇÃO DIRETA DAS NORMAS DO CDC QUE PREVEEM DIREITOS IGUAIS ENTRE AS PARTES CONTRATANTES. CONDENAÇÃO EM CLAUSULA PENAL. NÃO ACOLHIMENTO DO PEDIDO MAJORAÇÃO DE VALORES REFERENTES AOS HONORÁRIOS ADVOCATÍCIOS. VALOR FIXADO EM CONSONÂNCIA COM O ART. 20 DO CPC/73 VIGENTE À ÉPOCA DA PROLAÇÃO SENTENCIAL. PATAMAR DE 10% (DEZ POR CENTO) DO VALOR DA CONDENAÇÃO QUE SE MOSTRA RAZOÁVEL. APELO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em votação unânime, pelo conhecimento e parcial provimento do apelo, tudo em conformidade com os termos do voto do e. Desembargador Relator. Fortaleza, 26 de setembro de 2017 DURVAL AIRES FILHO Presidente do Órgão Julgador DESEMBARGADOR DURVAL AIRES FILHO Relator Procurador de Justiça</p><p class="MsoNormal" style="margin-left: 113.25pt; text-align: justify; text-justify: inter-ideograph; text-indent: -.75pt; mso-line-height-alt: 10.0pt;"> ¶ ¶</p><p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> ¶ ¶ Desse modo, é de rigor a aplicação inversa da cláusula contratual, em desfavor da ré, a fim de estabelecer o pagamento de multa contratual por inadimplemento equivalente a 2% sobre o valor corrigido do contrato, além de juros de mora de 1% ao mês, nos exatos termos da cláusula 13.1.1 do contrato.</p><p class="MsoNormal" style="margin-bottom: 8.5pt; text-align: justify; text-justify: inter-ideograph; text-indent: 70.5pt; line-height: 150%; tab-stops: 70.9pt;"> ¶

Processo	0131486-15.2013.8.06.0001
	background-origin: initial; background-clip: initial;">Por sua vez, os danos morais são vistos como qualquer ataque ou ofensa à honra, paz, mentalidade ou estado neutro de determinado indivíduo, sendo, por vezes, de difícil caracterização devido ao seu alto grau subjetivo. É imperioso ressaltar que, para que o mesmo se configure, é necessário que efetivamente tenha existido ato ilícito passível de reparação moral e que o mesmo seja devidamente comprovado, acompanhado do nexo de causalidade. Destarte, para que surja o dever de reparar, necessário se faz que estejam presentes ação ou omissão voluntária, negligência, imprudência ou imperícia, o efetivo prejuízo causado a outrem e o nexo de causalidade entre o fato e a conduta do agente. Sobre o ato ilícito, preconiza o Código Civil/2002 em seus artigos 186 e 927 que " todo aquele que causar dano a outrem, comete ato ilícito e tem o dever de repará-lo". É de notório conhecimento que a lei material civil atribui, de forma expressa, responsabilidade civil àquele que, por ato ilícito, causa dano, ainda que de caráter exclusivamente moral, a outrem. São, pois, pressupostos para o surgimento do dever de indenizar a ilicitude da conduta, o resultado danoso e o nexo de causalidade entre ambos. No caso em tela, é evidente o abalo emocional causado aos autores, uma vez que adquiriram um imóvel para morarem após o casamento e não chegaram nem a visualizar, mesmo que minimamente, a sua construção, efetuando o pagamento de um valor por um terreno sem a edificação do empreendimento. Na avaliação do dano moral, o órgão judicante deverá estabelecer uma reparação equitativa, baseada na culpa do agente, na extensão do prejuízo causado e na capacidade econômica do responsável. Além disso, deve-se atentar à dúplice finalidade da indenização: à compensatória, visando proporcionar lenitivo ao prejuízo causado aos autores e à pedagógica, objetivando desestimular a repetição de condutas semelhantes do réu. Assim, o valor da indenização não pode ser tão elevado a ponto de ensejar enriquecimento da parte lesada, tampouco ínfimo às condições econômicas do causador do dano, incapaz de sancionar sua conduta ilícita e coibir a reincidência na prática de tal ofensa. O Egrégio Superior Tribunal de Justiça, à vista da conhecida ausência de critério legal orientador para a fixação do quantum indenizatório, assentou a necessidade de observância dos princípios da Razoabilidade e da Proporcionalidade. Perscrutando as circunstâncias da causa, o grau de culpa do causador do dano, as consequências do ato e as condições econômicas e financeiras das partes, chego à conclusão de que é necessário a reparação dos requerentes pela requerida por danos morais. Em relação ao valor da indenização, a quantia de R\$ 5.000,00 (cinco mil reais) para cada autor demonstra-se proporcional e razoável, em cumprimento ao entendimento jurisprudencial adotado por este tribunal, bem como por esta câmara. Quanto aos lucros cessantes, é sabido que os mesmos são devidos quando a parte prejudicada deixa de auferir lucro pela ocorrência de um evento danoso, devendo o mesmo ser apurado, tudo em conformidade com os artigos 402 e 403 do Código Civil Brasileiro, in verbis

2760

Processo	0010871-67.2017.8.06.0126
Advogado(s) - Polo passivo	ROKYLANE GONCALVES BRASIL - (CE31058-A)
Terceiros	Não informado

Processo	0010871-67.2017.8.06.0126
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0010871-67.2017.8.06.0126 - APELAÇÃO CÍVEL (198) APELANTE: BANCO BRADESCO FINANCIAMENTOS S.A. APELADO: FRANCISCA DE SOUSA PEDROSA DIREITO CIVIL E PROCESSUAL CIVIL. AGRAVO INTERNO. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO. DESCONTOS INDEVIDOS EM BENEFÍCIO PREVIDENCIÁRIO. RESPONSABILIDADE EXTRACONTRATUAL. TERMO INICIAL DOS JUROS DE MORA. SÚMULA 54 DO STJ. REPETIÇÃO DO INDÉBITO. MODULAÇÃO DOS EFEITOS DO EARESP 676.608/RS. RESTITUIÇÃO SIMPLES MANTIDA. MAJORAÇÃO DOS DANOS MORAIS INDEFERIDA. RECURSO PARCIALMENTE PROVIDO. I. CASO EM EXAME 1. Agravo interno interposto por consumidora contra decisão monocrática que reconheceu a nulidade de contrato bancário, condenou a instituição financeira ao pagamento de danos morais e determinou a restituição simples dos descontos indevidos em benefício previdenciário. 2. A agravante postula (i) alteração do termo inicial dos juros de mora sobre os danos morais, (ii) devolução em dobro dos valores descontados e (iii) majoração da indenização para R\$ 10.000,00. II. QUESTÃO EM DISCUSSÃO 3. Há três questões em discussão: (i) definir se o termo inicial dos juros de mora sobre os danos morais deve corresponder à data do evento danoso ou da sentença; (ii) estabelecer se é cabível a restituição em dobro dos descontos indevidos realizados antes de 30/03/2021; (iii) avaliar se o valor da indenização por danos morais fixado em R\$ 3.000,00 deve ser majorado para R\$ 10.000,00. III. RAZÕES DE DECIDIR 4. A responsabilidade civil decorrente de descontos indevidos em benefício previdenciário sem contrato válido é extracontratual, atraindo a incidência da Súmula 54 do STJ, que fixa como termo inicial dos juros de mora a data do evento danoso. 5. A Corte Especial do STJ, no julgamento do EAREsp 676.608/RS, fixou tese de que a restituição em dobro do indébito prescinde da comprovação de má-fé, mas modulou os efeitos da decisão, restringindo sua aplicação às cobranças posteriores a 30/03/2021, quando não relacionadas a serviços públicos. 6. Como os descontos na hipótese dos autos ocorreram antes de 30/03/2021, mantém-se a restituição simples. 7. O valor de R\$ 3.000,00 arbitrado a título de danos morais atende aos critérios de razoabilidade e proporcionalidade, encontrando-se em consonância com precedentes deste Tribunal, não sendo cabível sua majoração. IV. DISPOSITIVO E TESE 8. Recurso parcialmente provido. Tese de julgamento: 1. Os juros de mora sobre danos morais em casos de responsabilidade extracontratual incidem a partir da data do evento danoso, nos termos da Súmula 54 do STJ. 2. A restituição em dobro do indébito somente se aplica a pagamentos posteriores a 30/03/2021, em razão da modulação dos efeitos do EAREsp 676.608/RS, quando não envolvida prestação de serviços públicos. 3. O valor de indenização por danos morais deve observar os critérios de razoabilidade e proporcionalidade, não sendo majorado quando já adequado às circunstâncias do caso e à

Processo	0010871-67.2017.8.06.0126
	jurisprudência consolidada. Dispositivos relevantes citados: CDC, art. 42, parágrafo único.
 Jurisprudência relevante citada: STJ, Súmula 54; STJ, Corte Especial, EAREsp nº 676.608/RS, Rel. Min. Og Fernandes, j. 21.10.2020; TJCE, EDcl nº 0200849-79.2019.8.06.0001, Rel. Des. Emanuel Leite Albuquerque, j. 14.05.2025; TJCE, ApC nº 0007822-70.2017.8.06.0141, Rel. Des. Francisco Mauro Ferreira Liberato, j. 06.11.2024. Fortaleza, data da assinatura digital. </p> <p>
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 </p> <p style="text-align: center;"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do Órgão Julgador </p> <p style="text-align: center;">
 </p> <p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p> <p style="text-align: center;"> </p> <p class="EmentadoAcrdo" style="margin-top: 1.0pt; margin-right: 0cm; margin-bottom: 1.0pt; margin-left: 0cm; text-align: center;" align="center"> RELATÓRIO </p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none;"> Trata-se de Agravo Interno interposto por FRANCISCA DE SOUSA PEDROSAem face de decisão monocrática proferida sob minha relatoria, nos autos do primeiro Agravo Interno interposto pela ora agravante adversando decisão monocrática proferida pela e. Desa. Vera Lúcia, que deu provimento ao recurso de apelação interposto por BANCO BRADESCO FINANCIAMENTOS S/A contra sentença proferida pela 1ª Vara da Comarca de Mombaca, nos autos da Ação Declaratória de Inexistência de Débito ajuizada pela ora recorrente em desfavor da instituição financeira.</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-pagination: none;"> A decisão vergastada deu provimento ao agravo interno, nos seguintes termos:</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> [...] No caso em análise, depreende-se que a parte autora é pessoa analfabeta, conforme comprovam seus documentos pessoais de fls. 29, no entanto, o banco apelado não se desincumbiu do seu ônus probatório, no sentido de juntar documento apto a extinguir ou desconstituir o direito autoral (artigo 373, II, do CPC). </p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> O instrumento contratual firmado entre as partes, apesar de constar a assinatura do nome da autora/apelante, não pode ser considerado válido porque, diante da condição de analfabeta da requerente, carece de assinatura a rogo. </p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Da mesma forma, não foi comprovado o repasse do valor empréstimo referente ao contrato em discussão nos autos, posto que o banco réu não apresentou qualquer comprovação de transferência e se limitou a mostrar apenas o contrato. </p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> Assim, observa-se que houve por caracterizada a falha na prestação do serviço, na medida em que o banco não demonstrou, na condição de fornecedor do serviço adquirido, a regular contratação do empréstimo, posto que não foi colhida a assinatura a rogo. Com efeito, entendo que o instrumento contratual não é válido. Nesse sentido, colaciono os seguintes

Processo	0010871-67.2017.8.06.0126
	julgados, inclusive desta eg. Primeira Câmara de Direito Privado, in verbis: [...] Destarte, tendo em vista que o banco não se desincumbiu do ônus de demonstrar os fatos impeditivos, modificativos ou extintivos do direito autoral (art. 373, II, do CPC), em razão da falha na prestação do serviço, não há outro caminho que não seja considerar a irregularidade da contratação e reformar a decisão monocrática neste ponto, bem como, por conseguinte, manter a sentença de primeiro grau em todos os seus termos. No tocante à repetição de indébito, conforme já mencionado, os valores descontados indevidamente da conta da parte autora, sem que houvesse autorização para a prática deste ato, indicam sem dúvida a presença do dano material. [...] Desse modo, amparado no entendimento esposado pelo STJ e na modulação dos efeitos fixada no acórdão paradigma, mantenho a sentença de origem neste ponto, para reconhecer o direito à devolução do indébito na forma simples, já que os descontos ocorreram antes de 30/03/2021. Por fim, no que se refere aos danos morais, entendo que o valor de R\$3.000,00 (três mil reais) arbitrado pelo magistrado de primeiro grau está de acordo com os princípios da razoabilidade e da proporcionalidade, bem como está em consonância com a jurisprudência desta e. Corte de Justiça, veja-se: [...] Dito isso, CONHEÇO do agravo interno, e, no mérito, DOU-LHE PROVIMENTO, a fim de reformar a decisão monocrática proferida pela e. Des. Vera Lúcia e manter a sentença de origem na íntegra. Irresignada, a parte autora interpôs o presente agravo interno, no qual alega, em suma, que o termo inicial da correção monetária sobre os danos morais está equivocado, posto que devem incidir a partir do evento danoso, nos termos da Súmula 54, do STJ. Sustenta, também, a necessidade de devolução em dobro dos descontos feitos em seu benefício previdenciário, em razão da má-fé do banco, bem como postula a majoração dos danos morais arbitrados para R\$10.000,00 (dez mil reais). Ao final, roga pelo conhecimento e provimento do recurso interno, para que seja adequada a decisão monocrática atacada. Em que pese devidamente intimada, a parte agravada não apresentou contrarrazões. É o que importa relatar. Decido. VOTO Presentes os requisitos de admissibilidade, conheço do agravo interno e passo à análise do mérito recursal.

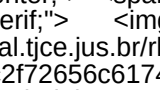
Processo	0010871-67.2017.8.06.0126
	autospace: none;"> Adianto que assiste razão parcial à parte autora, apenas no que se refere à data inicial para incidência dos juros de mora sobre a condenação ao pagamento de danos morais, uma vez que o contrato foi declarado nulo ensejando o reconhecimento de uma responsabilidade extracontratual, o que atrai a incidência da Súmula 54, do STJ, que dispõe que "os juros moratórios fluem a partir do evento danoso, em caso de responsabilidade extracontratual."</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Sobre o tema, acosto a seguinte jurisprudência deste e. Tribunal de Justiça do Ceará, em situações análogas à presente:</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> DIREITO CIVIL E PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO. CONTRATO BANCÁRIO. EMPRÉSTIMO CONSIGNADO. NULIDADE. ASSINATURA A ROGO. RESPONSABILIDADE EXTRACONTRATUAL. SÚMULA 54/STJ. JUROS DE MORA. COMPENSAÇÃO. CORREÇÃO MONETÁRIA. OMISSÃO SUPRIDA. EMBARGOS CONHECIDOS E PARCIALMENTE PROVIDOS. I. CASO EM EXAME [...] b)A responsabilidade civil decorrente da contratação bancária nula é extracontratual, atraindo a aplicação da Súmula 54 do STJ para fixação do termo inicial dos juros moratórios. c) A compensação de valores pagos em contrato nulo deve observar apenas a correção monetária pelo INPC, vedada a aplicação de juros de mora por ausência de mora. Dispositivos relevantes citados: CPC, art. 1.022; CC, arts. 405 e 595. Jurisprudência relevante citada: Embargos de Declaração Cível - 0201190-21.2023.8.06.0113, Rel. Desembargador(a) FRANCISCO JAIME MEDEIROS NETO, 4ª Câmara Direito Privado, data do julgamento: 29/04/2025, data da publicação: 29/04/2025. (Embargos de Declaração Cível&#160;- 0200849-79.2019.8.06.0001, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160;14/05/2025, data da publicação:&#160;14/05/2025) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> EMBARGOS DE DECLARAÇÃO EM APELAÇÃO. DIREITO PROCESSUAL CIVIL. EMPRÉSTIMO CONSIGNADO. AUSÊNCIA DE COMPROVAÇÃO DA REGULARIDADE CONTRATUAL. DESCONTOS INDEVIDOS. RECURSO NÃO CONHECIDO QUANTO A ALEGAÇÃO DE INEXISTÊNCIA DE DANOS MORAIS. REDISCUSSÃO DA MATÉRIA. VEDADO. ALEGAÇÃO DE OMISSÃO/ERRO. NÃO VERIFICADA. RELAÇÃO EXTRACONTRATUAL. JUROS DE MORA DEVIDOS DESDE O EVENTO DANOSO. SÚMULA 54 DO STJ. EMBARGOS PARCIALMENTE CONHECIDO E DESPROVIDO. ACÓRDÃO MANTIDO. [...] 3. Agora, quanto a alegação de omissão/erro em relação à definição do termo de incidência dos juros da mora dos danos morais. Sustenta que os juros da mora dos danos morais devem apenas incidir a partir do arbitramento. 4. Todavia, como se trata de relação extracontratual, os juros de mora devem ser aplicados desde o evento danoso, haja vista que não foi comprovada a regularidade da relação contratual entre as partes, portanto, os juros de mora devem ser contabilizados desde o evento danoso, nos termos do enunciado da Súmula 54 do Superior Tribunal de Justiça: "Os juros moratórios fluem a partir do evento danoso, em caso de responsabilidade extracontratual". 5. O simples inconformismo com a decisão embargada não possibilita um novo julgamento da causa por meio de embargos declaratórios, a teor da Súmula 18 deste egrégio Tribunal: "São indevidos os embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada." 6. Embargos conhecidos e desprovidos. (Embargos de Declaração Cível&#160;- 0201174-98.2022.8.06.0114, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento:&#160;03/07/2024, data da publicação:&#160;03/07/2024) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Dito isso, destaco que o termo inicial para incidência dos juros de mora referente aos danos morais deve ser a data do evento danoso, por se tratar de responsabilidade extracontratual, nos termos da Súmula 54, do STJ.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Contudo, no que se refere às demais teses ventiladas neste agravo interno, é certo que estas não prosperam.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> No que se refere à repetição de indébito, os descontos indevidos realizados na conta da parte autora configuram, de forma inequívoca, dano material. A Corte Especial do STJ, no julgamento do Recurso Repetitivo EAREsp nº 676.608/RS, firmou entendimento de que a restituição em dobro prescinde da

Processo	0010871-67.2017.8.06.0126
	comprovação de má-fé, quando a cobrança decorrer de serviços não contratados. Ressalte-se, contudo, que tal decisão teve seus efeitos modulados, de modo que, nas hipóteses que não envolvam serviços públicos, a tese somente se aplica a valores pagos a partir de 30/03/2021. Confira-se: Primeira tese: A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva. Modulação dos efeitos: Modular-se os efeitos da presente decisão – somente com relação à primeira tese – para que o entendimento aqui fixado quanto à restituição em dobro do indébito seja aplicado apenas a partir da publicação do presente acórdão. A modulação incide unicamente em relação às cobranças indevidas em contratos de consumo que não envolvam prestação de serviços públicos pelo Estado ou por concessionárias, as quais apenas serão atingidas pelo novo entendimento quando pagas após a data da publicação do acórdão.” (STJ. Corte Especial. EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020) Assim, em conformidade com o entendimento do STJ e a modulação dos efeitos do acórdão paradigma, mantém-se a sentença e a decisão monocrática para reconhecer a restituição simples, uma vez que os descontos são todos anteriores a 30/03/2021 e que não houve comprovação da má-fé do banco réu. O pedido de majoração de danos morais arbitrados em R\$3.000,00 para a importância de R\$10.000,00 também não deve prosperar, posto que o valor fixado em primeiro grau se encontra adequado, por atender aos princípios da razoabilidade e proporcionalidade, além de estar em consonância com a jurisprudência desta Corte, veja-se: CIVIL. PROCESSUAL CIVIL. APELAÇÃO CÍVEL. CÓDIGO DE DEFESA DO CONSUMIDOR. EMPRÉSTIMO CONSIGNADO. AÇÃO DECLARATÓRIA DE NULIDADE DE RELAÇÃO CONTRATUAL C/C REPETIÇÃO INDÉBITO E DANOS MORAIS. INSTITUIÇÃO FINANCEIRA QUE NÃO DEMONSTROU A REGULARIDADE DA CONTRATAÇÃO. AUSÊNCIA DE ASSINATURA A ROGO E TESTEMUNHAS. CONTRATO FIRMADO COM ANALFABETO. DESCONTOS INDEVIDOS EM BENEFÍCIO PREVIDENCIÁRIO. DANOS MORAIS CARACTERIZADOS. MAJORAÇÃO DO QUANTUM INDENIZATÓRIO. R\$ 3.000 (TRÊS MIL REAIS) QUE SE MOSTRA RAZOÁVEL, PROPORCIONAL E CONDIZENTE COM O DANO SOFRIDO. APELO CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA. (Apelação Cível nº 0007822-70.2017.8.06.0141, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento: 06/11/2024, data da publicação: 07/11/2024) Direito Civil e processual civil. Apelação Cível. Contrato de empréstimo consignado. Consumidor analfabeto. Inexistência de relação contratual válida. Descontos indevidos. Pleito de majoração de danos morais. Quantum indenizatório fixado em R\$ 3.000. Mantido. Razoável e proporcional. Recurso desprovido. I. Caso em exame 1. Apelação Cível interposta objetivando a reforma de sentença que julgou procedentes os pedidos de nulidade de contrato de empréstimo consignado, repetição de indébito e indenização por danos morais no valor de R\$ 3.000,00 (três mil reais), pleiteando a majoração do quantum indenizatório. II. Questão em discussão 2. A questão em discussão consiste em definir se o valor fixado a título de danos morais deve ser majorado em razão dos descontos indevidos no benefício previdenciário do autor. III. Razões de decidir 3. O

Processo	0010871-67.2017.8.06.0126
	contrato de empréstimo consignado foi corretamente declarado nulo, tendo em vista a ausência de cumprimento das formalidades necessárias para a contratação com pessoa analfabeta, conforme previsto no art. 595 do CC/02, e a falta de comprovação pela instituição financeira da regularidade do contrato, conforme art. 373, II, do CPC/2015. 4. Assim, o dano moral está configurado, uma vez que o montante dos descontos indevidos no benefício previdenciário (R\$ \$ 489,30) comprometeram cerca de 40% do benefício recebido pelo autor (R\$ 1.212,00), situação que não pode ser considerada mero aborrecimento, especialmente diante da condição de vulnerabilidade do apelante. 5. Contudo, o quantum indenizatório de R\$ 3.000,00 (três mil reais) revela-se adequado e proporcional aos danos sofridos, estando em consonância com os princípios da razoabilidade e proporcionalidade, além de estar alinhado aos parâmetros estabelecidos pela jurisprudência desta Câmara para casos semelhantes. Precedentes. 6. Diante disto, a pretensão de majoração do valor da indenização por danos morais não encontra respaldo, pois o valor fixado já cumpre sua função compensatória e pedagógica, sem gerar enriquecimento sem causa. IV. Dispositivo 7. Recurso desprovido. Dispositivos relevantes citados: CC/2002, art. 595; CPC/2015, art. 373, II; CF/1988, arts. 1º, III, e 5º, V e X; CDC, art. 14. Jurisprudência relevante citada: STJ, AgRg no REsp 1.269.246/RS, Rel. Min. Luis Felipe Salomão, Quarta Turma, j. 20.05.2014; STJ, AgInt no AREsp n. 2.157.547/SC, Rel. Min. Raul Araújo, Quarta Turma, j. 12.12.2022. (Apelação Cível&#160;- 0201314-20.2022.8.06.0119, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento:&#160; 23/10/2024, data da publicação:&#160; 23/10/2024) </p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 4.0cm; text-align: justify; line-height: normal; mso-layout-grid-align: none; text-autospace: none;"> DIREITO CIVIL E PROCESSUAL CIVIL. AGRAVO INTERNO EM APELAÇÃO CÍVEL. CARTÃO DE CRÉDITO CONSIGNADO. CONTRATAÇÃO NÃO COMPROVADA. CONFIGURADA FALHA NA PRESTAÇÃO DO SERVIÇO DO BANCO - DANO MORAL IN RE IPSA. QUANTUM INDENIZATÓRIO FIXADO CONFORME PRECEDENTES DESTE TRIBUNAL. DECISÃO MONOCRÁTICA MANTIDA. AGRAVO CONHECIDO E NÃO PROVIDO. 1. O cerne da controvérsia consiste em analisar a regularidade/existência de negócio jurídico supostamente firmado entre as partes litigantes e descrito na exordial, qual seja, o contrato: 20180313510045871000, inserido no benefício previdenciário da parte autora desde 03/06/2018. 2. Citado, o réu apresentou contestação de fls. 51/66. No entanto, não apresentou qualquer documentação para comprovar a regularidade da contratação pelo consumidor. Ou seja, impõe-se reconhecer que a instituição financeira não se desincumbiu do seu ônus processual (artigo 373, inciso II do CPC). 3. Dessa forma, forçoso é reconhecer a abusividade dos descontos respectivos, implicando em prática de ato ilícito por parte da instituição financeira, causadora de prejuízo patrimonial e extrapatrimonial ao demandante, que, em decorrência dos referidos descontos, se viu privado indevidamente de seus parcos recursos financeiros. Desta forma, acertada a decisão de primeiro grau em declarar a inexistência do negócio jurídico e condenar o banco ao pagamento dos danos materiais e morais. 4. No que diz respeito ao valor dos danos morais, é sabido da necessidade de se atentar aos critérios postos por doutrina e jurisprudência, aos parâmetros que vêm sendo fixados por este Tribunal de Justiça e ainda às peculiaridades da situação em apreço como a situação econômica das partes envolvidas, a gravidade do dano e o triplice escopo da reparação (indenizatória, punitiva e pedagógica). 5. Em observância ao que vêm sendo decidido por esta Corte em casos semelhantes, o valor descontado da conta do aposentado e por se tratar a promovida de uma instituição financeira de grande porte, mantenho a condenação em danos morais no valor de R\$ 3.000 (três mil reais), com correção monetária a ser feita com base no INPC a partir do arbitramento (súmula 362 do STJ) e juros moratórios de 1% (um por cento) ao mês a contar do evento danoso (súmula 54 do STJ). Precedentes TJCE. 6. Recurso conhecido e desprovido. (Agravado Interno Cível&#160;- 0202703-94.2022.8.06.0101, Rel. Desembargador(a) RAIMUNDO NONATO SILVA SANTOS, 1ª Câmara Direito Privado, data do julgamento:&#160; 14/02/2024, data da publicação:&#160; 14/02/2024)</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Destarte, conheço do presente agravo e dou-lhe parcial provimento, apenas para determinar que o termo inicial dos juros de mora incidentes sobre a condenação ao pagamento de danos morais seja a data do evento danoso, nos termos da Súmula 54, do STJ.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-paginatation: none; mso-layout-grid-align: none; text-autospace: none;"> É como voto.</p><p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-paginatation: none; mso-layout-grid-align: none; text-autospace: none;"> Fortaleza, data da assinatura digital.</p><p class="MsoNormal" style="margin-bottom: 0cm; line-height: normal;

Processo	0010871-67.2017.8.06.0126
	mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;"> &#160;</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"><!--[if supportFields]>MERGEFIELD &quot;Relator do Processo com Tratamento#Retorna o relator com tratamento=801@PROC&quot;<!--[endif]><!--> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA<!--[if supportFields]><!--[endif]>&#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: normal; mso-pagination: none; mso-layout-grid-align: none; text-autospace: none;" align="center"><!--[if supportFields]>MERGEFIELD &quot;Designi&ccedil;&atilde;o do relator atual do processo com g&ecirc;nero#Designi&ccedil;&atilde;o do relator atual do processo considerando seu g&ecirc;nero=933@PROC&quot;<!--[endif]>Relator<!--[if supportFields]><!--[endif]></p><div> <p>&#160;</p> </div></div><p>
</p><p>&#160;</p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0163607-23.2018.8.06.0001
Número de ordem	246
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Prestação de Serviços
Polo ativo	JOSE CLAUDIO DE SOUZA BARROS LTDA
Advogado(s) - Polo ativo	ADALBERTO RODRIGUES RIBEIRO - (CE4724-A)
Polo passivo	MV INDUSTRIA E COMERCIO DE PLASTICOS LTDA
Advogado(s) - Polo passivo	FRANCISCO JOATAN ALMEIDA ANDRADE - (CE5548) ANTONIO LUIZ PAIVA VIANA - (CE5439-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0163607-23.2018.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0163607-23.2018.8.06.0001 - 160; APELAÇÃO CÍVEL (198) APELANTE: JOSE CLAUDIO DE SOUZA BARROS LTDA APELADO: MV INDUSTRIA E COMERCIO DE PLASTICOS LTDA EMENTA: DIREITO PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO EM APELAÇÃO CÍVEL. ALEGAÇÃO DE OMISSÃO QUANTO À PROPRIEDADE DO BEM. INEXISTÊNCIA DE VÍCIO. PRETENSÃO DE REDISCUSSÃO DO MÉRITO. RECURSO CONHECIDO E DESPROVIDO. I. CASO EM EXAME 1. Embargos de Declaração opostos por José Cláudio de Souza Barros - ME contra acórdão que, em sede de Apelação Cível, conheceu do recurso, mas lhe negou provimento. O embargante alega omissão do julgado quanto à análise de fato superveniente relacionado à propriedade do bem objeto da demanda, requerendo o provimento dos aclaratórios para suprir o vício apontado. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em verificar se o acórdão embargado incorreu em omissão ao não analisar suposta prova superveniente acerca da titularidade do bem objeto da ação, legitimando, assim, o manejo dos embargos de declaração. III. RAZÕES DE DECIDIR 3.

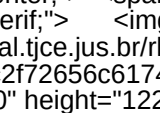
Processo	0163607-23.2018.8.06.0001
	size: 7pt; line-height: normal; font-family: "Times New Roman";">&#160;&#160;&#160; <!--[endif]--> O acórdão embargado aprecia expressamente a controvérsia relativa à propriedade do bem, reconhecendo que a concordância do autor com os termos do contrato, incluindo a apresentação do molde industrial como de sua propriedade, configura prova suficiente da titularidade.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 4. &#160;&#160;&#160; <!--[endif]--> O recurso de embargos de declaração tem cabimento restrito às hipóteses do art. 1.022 do CPC/2015 (omissão, contradição, obscuridade ou erro material), não se prestando à rediscussão do mérito da causa.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 5. &#160;&#160;&#160; <!--[endif]--> As provas invocadas pelo embargante foram analisadas e afastadas, tendo o acórdão consignado que não demonstram inadimplência do promovente nem infirmam a conclusão acerca da titularidade do bem.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; line-height: 150%; mso-list: l4 level1 lfo3; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 6. &#160;&#160;&#160; <!--[endif]--> A insurgência revela mero inconformismo com a decisão desfavorável, o que não caracteriza omissão e atrai a aplicação da Súmula nº 18 do TJCE, segundo a qual são incabíveis embargos de declaração destinados exclusivamente à rediscussão do mérito.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;">IV. DISPOSITIVO E TESE</p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; line-height: 150%; mso-list: l0 level1 lfo4; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 7. &#160;&#160;&#160; <!--[endif]--> Recurso conhecido e desprovido.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Tese de julgamento .</p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; line-height: 150%; mso-list: l2 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 1. &#160;&#160;&#160; <!--[endif]--> Os embargos de declaração não constituem meio hábil para rediscutir o mérito da decisão já analisada.</p> <p class="EmentadoAcf3rde3o">

Processo	0163607-23.2018.8.06.0001
	style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; line-height: 150%; mso-list: l2 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 2. &#160;&#160;&#160; <!--[endif]--> A decisão não é omissa quando aprecia de forma suficiente e fundamentada as questões centrais da controvérsia.</p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 36.0pt; text-align: justify; text-justify: inter-ideograph; text-indent: -18.0pt; line-height: 150%; mso-list: l2 level1 lfo5; tab-stops: list 36.0pt;"><!--[if !supportLists]--> 3. &#160;&#160;&#160; <!--[endif]--> A oposição de embargos de declaração com intuito de reabrir discussão sobre matéria decidida configura uso inadequado da via recursal.</p> <div class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;"> <hr size="2" /> </div> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Dispositivos relevantes citados : CPC/2015, arts. 1.022, I a III, parágrafo único, e 1.026, §§ 2º e 3º. </p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> Jurisprudência relevante citada : TJCE, Embargos de Declaração nº 0622561-68.2016.8.0000/50000, 4ª Câmara de Direito Privado, Rel. Des. Francisco Bezerra Cavalcante, j. 04.07.2017; TJCE, Embargos de Declaração nº 0837558-40.2014.8.0001/50000, 4ª Câmara de Direito Privado, Rel. Des. Durval Aires Filho, j. 25.07.2017; Súmula nº 18 do TJCE. </p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> &#160; </p> <p class="EmentadoAcf3rde3o" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; line-height: 150%;"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a <!--[if supportFields]>&nbsp;MERGEFIELD &quot;&iuml;&iquest;&frac12;rg&iuml;&iquest;&frac12;o Julgador#Retorna o nome da vara onde est&iuml;&iquest;&frac12; o processo=8@PROC&quot; <!--[endif]--> 1ª Câmara Direito Privado<!--[if supportFields]><!--[endif]--> do Tribunal de Justiça do Estado do Ceará, por uma de suas Turmas, por unanimidade, em conhecer e negar provimento ao recurso, nos termos do voto do Relator.&#160; &#160;</p> <p style="text-align: center;"> Fortaleza, data da assinatura digital.</p> <p>
 </p> <p style="text-align: center;">
 </p> <p style="text-align: center;">
 </p> <p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p> <p>&#160;</p> <div>

Processo	0163607-23.2018.8.06.0001
	<p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> RELATÓRIO &#160;</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Trata-se de Embargos de Declaração opostos por José Cláudio de Souza Barros - ME, contra acórdão de Id. 23646718, no julgamento da Apelação Cível, diante do qual o recurso interposto foi conhecido e desprovido. &#160;</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Nestes aclaratórios, o embargante aponta vícios no aparelhamento da demanda e, consequentemente, no julgamento. Ao final, requer sejam os embargos de declaração conhecidos e providos, no sentido de sanar os vícios. &#160;</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Contrarrazões sob Id. 23692136.</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> É o relatório. </p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: center; line-height: 150%;" align="center"> VOTO &#160;</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> O recurso é tempestivo. Presentes os demais pressupostos de admissibilidade, conheço dos embargos. &#160;</p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Analisando-se o presente recurso, tem-se que o embargante sustenta, no julgado, haver omissão "quanto às disposições existentes e os fatos informados no curso da demanda, em que um fato novo superveniente, umbilicalmente relacionado a propriedade do bem objeto da ação que ora se discute, veio à baila, antes da r. decisão da apelação interposta, pelo ora embargante, onde ficou demonstrada em provas cabais (fls. 140/164), a real propriedade do bem, que era, indevidamente avocada pela autora, ora embargada." </p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Contudo, vê-se que não assiste razão ao recorrente uma vez que as peculiaridades do caso concreto foram devidamente tratadas na decisão embargada, senão vejamos (Id. 23646718): </p> <p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: auto;"> Quanto à titularidade da coisa, apesar de o promovido/apelante sustentar em sua defesa que a parte promovente não comprovou a propriedade sobre o bem objeto da ação e, como consequência, seria parte ilegítima para ajuizar esta demanda, entendo que ao assinar o contrato e receber a peça industrial para produção das mercadorias plásticas recomendadas pelo promovente, a parte requerida reconheceu a condição de dono do contratante dos seus serviços sobre o aludido bem, de modo que a presente alegação de ilegitimidade ativa representa conduta que atenta contra a boa-fé contratual que se impõe em situações como a presente. </p> <p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: auto;"> No caso em exame, o elemento fundamental para a conclusão acerca da propriedade do bem móvel é o poder de fato sobre a coisa, ou seja, é possível aferir que a finalidade da reivindicatória é a recuperação dos poderes dominiais, e não do reconhecimento do direito de propriedade. </p> <p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: auto;"> Dessa forma, como bem fundamentou o Juízo primevo, "a concordância do autor com os termos do contrato, incluindo a apresentação do molde industrial como propriedade do promovente, representa prova suficiente da propriedade do autor sobre o referido bem móvel." (fl. 104) </p> <p class="MsoNormal" style="margin-left: 4.0cm; text-align: justify; text-justify: inter-ideograph; mso-hyphenate: auto;"> &#160;</p> <p>

Processo	0163607-23.2018.8.06.0001
	class="MsoNormal" style="margin: 6pt 0cm; text-indent: 2cm; line-height: 150%; text-align: justify;">> Assim, verifica-se não haver omissão no acórdão, tendo em vista que devidamente pontuado que os documentos apresentados pelo requerido/embargante (contra-notificação e cheque emitido pelo autor) não demonstram ter havido inadimplência do promovente quanto às obrigações, sobretudo financeiras, conforme comprovantes de fl. 70 e seguintes, assumidas no contrato estabelecido, de sorte que a recusa em devolver o molde industrial não se legitima. </p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;">> Ressalte-se que o recurso de embargos declaratórios possui hipótese de cabimento especificamente atrelada à finalidade integrativa de aperfeiçoamento das decisões judiciais, que tem expressa previsão no art. 1.022 do atual Código de Processo Civil, quando houver, na sentença ou acórdão, obscuridade, contradição, erro material ou no caso de omissão de ponto sobre o qual devia pronunciar-se o juiz ou tribuna, a saber: </p> <p class="Citae7e3o" style="padding-left: 150px; text-align: justify;">> Art. 1.022. Cabem embargos de declaração contra qualquer decisão judicial para: </p> <p class="Citae7e3o" style="padding-left: 150px; text-align: justify;">> I - esclarecer obscuridade ou eliminar contradição; </p> <p class="Citae7e3o" style="padding-left: 150px; text-align: justify;">> II - suprir omissão de ponto ou questão sobre o qual devia se pronunciar o juiz de ofício ou a requerimento; </p> <p class="Citae7e3o" style="padding-left: 150px; text-align: justify;">> III - corrigir erro material. </p> <p class="Citae7e3o" style="padding-left: 150px; text-align: justify;">> Parágrafo único. Considera-se omissa a decisão que: </p> <p class="Citae7e3o" style="padding-left: 150px; text-align: justify;">> I - deixe de se manifestar sobre tese firmada em julgamento de casos repetitivos ou em incidente de assunção de competência aplicável ao caso sob julgamento; </p> <p class="Citae7e3o" style="padding-left: 150px; text-align: justify;">> II - incorra em qualquer das condutas descritas no art. 489, § 1º; </p> <p class="MsoNormal" style="text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm;">> &#160; </p> <p class="MsoNormal" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;">> No entanto, inobstante às alegações da parte embargante, evidencia-se que a fundamentação da decisão foi abordada em todos os seus aspectos e de maneira coerente e fundamentada, representando a presente insurgência mero inconformismo com o decisum recorrido. </p> <p class="CorpodoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;">> Sobre o tema, vale referir precedente deste e. TJCE: </p> <p class="Citae7e3o" style="text-align: justify; padding-left: 150px;">> EMBARGOS DE DECLARAÇÃO EM AGRAVO DE INSTRUMENTO. REDISCUSSÃO DO MÉRITO. INEXISTÊNCIA. AFRONTA AO ART. 1.022, I, DO CPC. DECISÃO MANTIDA. Na casuística, toda a matéria trazida em sede de embargos de declaração foi devidamente analisada e fundamentada. Inexiste quaisquer das hipóteses do art. 1.022, do CPC. É desnecessário que o acórdão contenha expressa menção a todos os dispositivos legais e jurídicos invocados pelas partes, se os pontos levantados foram devidamente apreciados, como na hipótese em apreço. Embargos de Declaração conhecidos, mas rejeitados. (Embargos de Declaração Nº 0622561-68.2016.8.0000/50000, 4ª Câmara de Direito Privado, TJ- CE, Relator: Des. Francisco Bezerra Cavalcante, Julgado em 04/07/2017). PROCESSUAL CIVIL. EMBARGOS DE DECLARAÇÃO PREQUESTIONAMENTO. OMISSÃO, CONTRADIÇÃO, OBSCURIDADE ou erro material. INEXISTÊNCIA. CORREÇÃO MONETÁRIA. ÍNDICE. DECISÃO EXTRAPETITA. NÃO OCORRÊNCIA. A CORREÇÃO MONETÁRIA é consectário lógico e ex lege da condenação, devendo o julgador agir, nesse seara, até mesmo de ofício. PRECEDENTES STJ. REDISCUSSÃO. IMPOSSIBILIDADE. SUMULA 18 TJCE. RECURSO CONHECIDO E IMPROVIDO. (Embargos de Declaração Nº 0837558-40.2014.8.0001/50000, 4ª Câmara de Direito Privado, TJ- CE, Relator: Des. Durval Aires Filho, Julgado em 25/07/2017) </p> <p class="CorpodoTexto" style="margin-bottom: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: normal;">> &#160; </p> <p>

Processo	0163607-23.2018.8.06.0001
	class="CorpodoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Ao pretender o reexame da controvérsia, trazendo à baila questão de mérito, configura a inadequação da via recursal eleita, a teor do que preceitua a Súmula nº 18 deste Tribunal: </p> <p class="Citae7e3o" style="text-align: justify; padding-left: 150px;"> São indevidos embargos de declaração que têm por única finalidade o reexame da controvérsia jurídica já apreciada. </p> <p class="CorpodoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> ¶ </p> <p class="CorpodoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Ante o exposto, conheço dos aclaratórios para negar-lhes provimento e mantenho, na íntegra, a decisão embargada. </p> <p class="CorpodoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> Ficam desde logo advertidas as partes que a oposição de embargos de declaração, com nítido intuito protelatório, ensejará a aplicação da multa prevista no art. 1.026, §§2º e 3º, do CPC/2015. </p> <p class="CorpodoTexto" style="margin-top: 6.0pt; margin-right: 0cm; margin-bottom: 6.0pt; margin-left: 0cm; text-align: justify; text-justify: inter-ideograph; text-indent: 2.0cm; line-height: 150%;"> É como voto. </p> <p class="MsoNormal" style="margin-top: 1.0pt; margin-right: 0cm; margin-bottom: 1.0pt; margin-left: 0cm; text-align: center;" align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p> <p class="MsoNormal" style="margin-top: 1.0pt; margin-right: 0cm; margin-bottom: 1.0pt; margin-left: 0cm; text-align: center;" align="center"> RELATOR </p> <p>¶</p> <p class="MsoNormal" style="margin-top: 1.0pt; margin-right: 0cm; margin-bottom: 1.0pt; margin-left: 0cm; text-align: center;" align="center"> ¶ </p> </div></div><p>¶</p><p>¶</p>
<p>¶</p><p>¶</p><p style="text-align: center;"> ¶ </p>
Processo	0202132-98.2023.8.06.0001
Número de ordem	247
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Alienação Fiduciária
Polo ativo	BANCO J. SAFRA S.A
Advogado(s) - Polo ativo	BRUNO HENRIQUE DE OLIVEIRA VANDERLEI - (PE21678-A)
Polo passivo	FRANCISCO JOSE ARAUJO DE AZEVEDO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

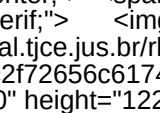
Processo	0202132-98.2023.8.06.0001
Acórdão	 PROCESSO: 0202132-98.2023.8.06.0001 - 160; APELAÇÃO CÍVEL (198) APELANTE: BANCO J. SAFRA S.A APELADO: FRANCISCO JOSE ARAUJO DE AZEVEDO Ementa DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO. AÇÃO DE BUSCA E APREENSÃO. EXTINÇÃO SEM RESOLUÇÃO DE MÉRITO. AUSÊNCIA DE PRESSUPOSTO DE CONSTITUIÇÃO E DESENVOLVIMENTO VÁLIDO DO PROCESSO. FALTA DE CITAÇÃO. DESNECESSIDADE DE INTIMAÇÃO PESSOAL DO AUTOR. RECURSO DESPROVIDO. I. CASO EM EXAME Agravo Interno interposto pelo BANCO J. SAFRA S/A contra acórdão que negara provimento à apelação cível, mantendo a sentença que extinguiu a ação de busca e apreensão, nos termos do art. 485, IV, do CPC, em razão da impossibilidade de citação do réu. O agravante sustenta a necessidade de intimação pessoal da parte autora antes da extinção e a ocorrência de excesso de formalismo. II. QUESTÃO EM DISCUSSÃO Há duas questões em discussão: (i) definir se a extinção do processo por ausência de pressuposto de constituição e desenvolvimento válido (falta de citação) exige a intimação pessoal da parte autora; (ii) estabelecer se a decisão que manteve a extinção sem resolução de mérito deve ser reformada diante da alegação de atuação diligente do autor na busca do endereço do réu. III. RAZÕES DE DECIDIR A ausência de citação válida do réu configura falta de pressuposto de constituição e desenvolvimento válido e regular do processo, autorizando a extinção sem exame de mérito, nos termos do art. 485, IV, do CPC. A jurisprudência do STJ e deste Tribunal é firme no sentido de que, em tais hipóteses, é desnecessária a intimação pessoal do autor, exigida apenas nos casos de abandono da causa (art. 485, III, § 1º, do CPC). A intimação do advogado constituído supre a necessidade de ciência da parte, não havendo irregularidade processual. As alegações do agravante se limitam a rediscutir fundamentos já apreciados e não demonstram error in procedendo ou excesso de formalismo.

Processo	0202132-98.2023.8.06.0001
	none; text-autospace: none;"> O agravante, em suas razões recursais, afirma que não há o que se falar em ausência de pressupostos de constituição e desenvolvimento válido e regular do processo, tendo em vista que a parte Agravante informou na exordial o endereço do contrato, com o intuito de ser realizado o cumprimento da liminar, que é a citação e retomada do bem que se encontra na posse da Agravada. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Aduz que tentou por diversas vezes e sempre atendendo as intimações do juízo, localizar o endereço atualizado do requerido/agravado, mas este age de total má-fé, pois oculta seu paradeiro e permanece inadimplente com a posse do bem dado em garantia, razão da necessidade da atuação do judiciário. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Sustenta que houve o error in procedendo, já que na legislação pertinente, consta a necessidade de proceder a intimação pessoal da parte Agravante para que dê prosseguimento à demanda, uma vez que lhe compete o regular andamento processual, assim como o excesso de formalismo. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Por fim, requer o recebimento do presente Agravo Interno, para fins de que proceda com a reconsideração da decisão ora aqui debatida, conhecendo e dando provimento ao recurso de apelação para que seja dado prosseguimento ao feito nos autos principais para prosseguimento do feito nos termos do Dec. Lei 911/69. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Sem Contrarrazões. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> É o relatório. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: center; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;" align="center"> VOTO &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Conheço do presente recurso, porquanto presentes os pressupostos intrínsecos e extrínsecos de admissibilidade recursal. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> A controvérsia recursal consiste em analisar a possibilidade de reforma da decisão que negou provimento ao recurso de apelação, mantendo a sentença em todos os seus termos, na forma do art. 485, IV, do CPC.</p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Dito isso, cumpre destacar que o recurso não comporta provimento, porquanto as razões expendidas são insuficientes para a reconsideração da decisão impugnada. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Insiste a agravante na tese de que a ação não deveria ter sido extinta, considerando a necessidade de intimação pessoal da parte autora, nos termos do art. 485, III, § 1º, do CPC. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%; mso-layout-grid-align: none; text-autospace: none;"> Sustenta, ainda, que não houve qualquer ausência de pressupostos de constituição e de desenvolvimento válido no processo ora discutido, vez que todos os requisitos para propositura da ação foram respeitados. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> Todavia, tais teses já foram devidamente apreciadas, inclusive, verifica-se que a decisão impugnada está em consonância com o entendimento do Superior Tribunal de Justiça. </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> PROCESSUAL

Processo	0202132-98.2023.8.06.0001
	CIVIL. AGRAVO INTERNO EM AGRAVO EM RECURSO ESPECIAL. FALTA DE CITAÇÃO. EXTINÇÃO DO PROCESSO SEM JULGAMENTO DE MÉRITO. AUSÊNCIA DE PRESSUPOSTO DE CONSTITUIÇÃO E DESENVOLVIMENTO REGULAR E VÁLIDO DO PROCESSO. INTIMAÇÃO DO AUTOR. DESNECESSIDADE. AGRAVO NÃO PROVIDO. 1. A falta de citação do réu configura ausência de pressuposto de validade da relação processual, ensejando sua extinção sem exame de mérito, prescindindo da intimação prévia do autor. Precedentes. 2. Agravo interno a que se nega provimento. (AgInt no AREsp 1409923/DF, Rel. Ministra MARIA ISABEL GALLOTTI, QUARTA TURMA, julgado em 25/06/2019, DJe 01/07/2019) </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> A propósito, vale frisar que esta Corte de Justiça segue o mesmo posicionamento: </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Ementa: PROCESSO CIVIL. AGRAVO INTERNO. PROCESSO. VALIDADE. CITAÇÃO. AUSÊNCIA. PROCESSO. EXTINÇÃO. - Por meio do Agravo Interno de págs. 01/14, a Embraccon Administradora de Consórcios Ltda insurge-se contra a decisão monocrática de págs. 109/115 (autos principais), que negou provimento à Apelação por meio da qual sustentara que os autos revelaram uma situação de abandono de causa, e não a de ausência de pressuposto de constituição e de desenvolvimento válido e regular do processo (fundamento utilizado na sentença de págs. 91/94). Aimpugnação, em síntese, persiste na tese de que houve abandono e, assim, não se observou a prévia intimação pessoal da parte como condição essencial à extinção do processo, sem resolução do mérito. Semcontrarrazões porque a senhora Cristiana Mota dos Santos não foi citada. - Respeitosamente, não há como desconsiderar o que decorre do caput do art. 239 do CPC, a denotar que a citação é indispensável à validade do processo, sendo viável a extinção, sem resolução do mérito, com base art. 485, IV, do CPC, pelo fato de a parte autora não ter se desincumbido do ônus de promovê-la (CPC, art. 240, § 2º). - Agravo Interno conhecido e não provido. (0173043-79.2013.8.06.0001 Classe/Assunto: Agravo / Alienação Fiduciária; Relator(a): VERA LÚCIA CORREIA LIMA; Comarca: Fortaleza; Órgão julgador: 1ª Câmara Direito Privado; Data do julgamento: 05/06/2019; Data de publicação: 05/06/2019; Outros números: 173043792013806000150000) </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> &#160; </p><p class="MsoNormal" style="margin-top: 0cm; margin-right: 0cm; margin-bottom: 0cm; margin-left: 4.0cm; text-align: justify; line-height: normal;"> Ementa: PROCESSO CIVIL. APELAÇÃO. BUSCA E APREENSÃO. ALIENAÇÃO FIDUCIÁRIA. EXTINÇÃO DO FEITO SEM RESOLUÇÃO DE MÉRITO. FALTA DE PRESSUPOSTO DE CONSTITUIÇÃO E DESENVOLVIMENTO VÁLIDO E REGULAR DO PROCESSO. PARTE QUE DEIXOU DE FORNECER ENDEREÇO PARA FINS DE CITAÇÃO. INTIMAÇÃO DO CAUSÍDICO EFETIVADA. INÉRCIA. DESNECESSÁRIA INTIMAÇÃO PESSOAL DA PARTE. PRECEDENTES DO STJ E TJCE. RECURSO CONHECIDO E NÃO PROVIDO. 1 Perfeitamente aplicável ao caso a hipótese de extinção do feito por ausência de pressupostos de constituição e desenvolvimento válido e regular do processo, nos termos do art. 485, IV, do CPC, dada a falta de possibilidade de citação da parte demandada. A citação é pressuposto processual e sua ausência impede o prosseguimento do feito. Autor que não se desincumbiu de seu ônus de promover a citação. 2 - Em se tratando de extinção por ausência de pressupostos processuais, não há que se falar em intimação pessoal da parte, exigência esta necessária somente quando da extinção por abandono da causa (art. 485, III, do CPC), o que não é o caso. 3 Recurso conhecido e improvido. Sentença mantida. (0127327-19.2019.8.06.0001 Classe/Assunto: Apelação Cível / Alienação Fiduciária; Relator(a): MARIA DO LIVRAMENTO ALVES MAGALHÃES; Comarca: Fortaleza; Órgão julgador: 4ª Câmara Direito Privado; Data do julgamento: 14/07/2020; Data de publicação: 14/07/2020) </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; </p><p class="MsoNormal" style="margin-bottom: 0cm; text-align: justify; text-indent: 2.0cm; line-height: 150%;"> &#160; Por fim, diferente do afirmado, o advogado da promovente foi devidamente intimado, sendo a decisão respectiva publicada em nome do causídico devidamente constituído, como se observa às fls. 137/138. </p><p class="MsoNormal" style="margin-bottom: 0cm;

Processo	0050687-43.2020.8.06.0161
Advogado(s) - Polo passivo	Não informado
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	0201323-26.2024.8.06.0114
Número de ordem	250
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Seguro
Polo ativo	JOSE HERCULANO MARCOS
Advogado(s) - Polo ativo	MARIA EUGENIA FILGUEIRAS MILFONT DE ALMEIDA - (CE52483-A) RENATO ALVES DE MELO - (CE29801-A) JHYULLY CAVALCANTE BESERRA LEITE - (CE42362-A) JULIANA RIBEIRO PROCOPIO - (CE52620-A)
Polo passivo	SEBRASEG CLUBE DE BENEFICIOS LTDA
Advogado(s) - Polo passivo	JOSE MIGUEL DA SILVA JUNIOR - (SP237340-A)
Terceiros	Não informado

Processo	0201323-26.2024.8.06.0114
Acórdão	 PROCESSO: 0201323-26.2024.8.06.0114 - APELAÇÃO CÍVEL (198) APELANTE: JOSE HERCULANO MARCOS APELADO: SEBRASEG CLUBE DE BENEFÍCIOS LTDA Ementa: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE RELAÇÃO CONTRATUAL. INDEFERIMENTO DA INICIAL POR AUSÊNCIA DE INTERESSE DE AGIR. SUPOSTO FRACIONAMENTO DE AÇÕES. CONTRATOS DISTINTOS. INTERESSE PROCESSUAL CONFIGURADO. NULIDADE DA SENTENÇA. RECURSO PROVIDO. 1. Apelação cível interposta contra sentença da Vara Única da Comarca de Lavras da Mangabeira que indeferiu a petição inicial, com fundamento no art. 330, III, do CPC e na Recomendação nº 159/2024 do CNJ, ao entender ausente o interesse de agir em razão do ajuizamento de seis ações declaratórias pelo mesmo autor. O apelante sustenta que cada demanda possui objeto distinto, sendo a presente ação voltada a descontos relativos a contrato de seguro supostamente firmado com a SEBRASEG CLUBE DE BENEFÍCIOS LTDA. II. Questão em discussão: 2. Há duas questões em discussão: (i) definir se a omissão do juízo de origem quanto ao pedido de justiça gratuita acarreta o seu deferimento tácito; (ii) estabelecer se o ajuizamento de múltiplas ações declaratórias referentes a contratos diversos configura fracionamento indevido capaz de afastar o interesse de agir. III. Razões de decidir: 3. A ausência de manifestação do magistrado sobre o pedido de gratuidade de justiça implica deferimento tácito do benefício, conforme entendimento consolidado do STF, STJ e desta Corte. 4. O interesse processual decorre do binômio necessidade e adequação, configurado quando a parte busca tutela jurisdicional adequada para afastar descontos que alega indevidos. 5. O ajuizamento de múltiplas ações declaratórias somente configura litigância abusiva quando há identidade objetiva entre pedidos e causas de pedir, hipótese não verificada, pois cada ação discute contrato distinto com fundamento específico. 6. O indeferimento da inicial por ausência de interesse de agir exige exame minucioso de conexão entre as demandas, não bastando a similitude formal de pedidos. 7. A extinção do processo sem resolução do mérito, no caso concreto, viola os princípios da inafastabilidade da jurisdição (CF, art. 5º, XXXV), da boa-fé e da cooperação processual (CPC, art. 6º). IV. Dispositivo 8. Recurso provido. Sentença anulada, com retorno dos autos à origem para regular processamento do feito. Tese de julgamento: 1. A omissão judicial quanto ao pedido de gratuidade de justiça enseja deferimento tácito do benefício. 2. O ajuizamento de ações declaratórias autônomas, referentes a contratos distintos, não caracteriza fracionamento indevido nem afasta o interesse de agir. 3. O interesse processual

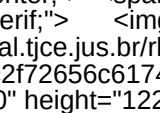
Processo	0201323-26.2024.8.06.0114
	seria contrariar diretamente os precedentes da jurisprudência consolidada do Pretório Excelso, do Colendo Superior Tribunal de Justiça - STJ e de demais tribunais pátrios, in verbis: CONSTITUCIONAL. PROCESSO CIVIL. AGRAVO REGIMENTAL EM AGRAVO DE INSTRUMENTO. BENEFÍCIO JUSTIÇA GRATUITA. DESNECESSIDADE DE COMPROVAÇÃO. PRECEDENTES. AGRAVO IMPROVIDO. I - É pacífico o entendimento da Corte de que para a obtenção de assistência jurídica gratuita, basta a declaração, feita pelo próprio interessado, de que sua situação econômica não lhe permite ir a Juízo sem prejudicar sua manutenção ou de sua família. Precedentes. II - Agravo regimental improvido (STF, AI nº 649.283/SP-AgR, Primeira Turma, Relator o Ministro Ricardo Lewandowski, DJ de 19/9/08).&#160;</p> <p style="text-align: justify; padding-left: 150px;">ALEGAÇÃO DE INCAPACIDADE FINANCEIRA E CONCESSÃO DO BENEFÍCIO DA GRATUIDADE. O acesso ao benefício da gratuidade, com todas as consequências jurídicas dele decorrentes, resulta da simples afirmação, pela parte (pessoa física ou natural), de que não dispõe de capacidade para suportar os encargos financeiros inerentes ao processo judicial, mostrando-se desnecessária a comprovação, pela parte necessitada, da alegada insuficiência de recursos para prover, sem prejuízo próprio ou de sua família, as despesas processuais. Precedentes. Se o órgão judiciário competente deixar de apreciar o pedido de concessão do benefício da gratuidade, reputar-se-á tacitamente deferida tal postulação, eis que incumbe, à parte contrária, o ônus de provar, mediante impugnação fundamentada, que não se configura, concretamente, o estado de incapacidade financeira afirmado pela pessoa que invoca situação de necessidade. Precedentes (STF, RE nº 245.646-AgR/RN, Relator o Ministro Celso de Mello, Segunda Turma, DJe 13/2/09). DIREITO PROCESSUAL CIVIL. EFICÁCIA DA CONCESSÃO DE ASSISTÊNCIA JUDICIÁRIA GRATUITA. Quando a assistência judiciária gratuita for deferida, a eficácia da concessão do benefício prevalecerá, independentemente de renovação de seu pedido, em todas as instâncias e para todos os atos do processo - alcançando, inclusive, as ações incidentais ao processo de conhecimento, os recursos, as rescisórias, assim como o subsequente processo de execução e eventuais embargos à execução -, somente perdendo sua eficácia por expressa revogação pelo Juiz ou Tribunal. Isso porque não há previsão legal que autorize a exigência de renovação do pedido de assistência judiciária gratuita em cada instância e a cada interposição de recurso, mesmo na instância extraordinária. Ao contrário, o art. 9º da Lei 1.060/1950 estabelece expressamente a eficácia da decisão deferitória do benefício em todas as instâncias e graus de jurisdição. Com efeito, a concessão do benefício, por compor a integralidade da tutela jurídica pleiteada, comporta eficácia para todos os atos processuais, em todas as instâncias, alcançando, inclusive, as ações incidentais ao processo de conhecimento, os recursos, as rescisórias, assim como o subsequente processo de execução e eventuais embargos à execução, sendo despendida a constante renovação do pedido a cada instância e para a prática de cada ato processual. Essa é a interpretação mais adequada da legislação, especialmente da Lei 1.060/1950 (arts. 4º, 6º e 9º), e consentânea com os princípios constitucionais da inafastabilidade da tutela jurisdicional e do processo justo, com garantia constitucional de concessão do benefício da assistência judiciária gratuita ao necessitado (art. 5º, XXXV, LIV e LXXIV, da CF). Assim, desde que adequadamente formulado o pedido e uma vez concedida, a assistência judiciária gratuita prevalecerá em todas as instâncias e para todos os atos do processo, nos expressos termos assegurados no art. 9º da Lei 1.060/1950 (reiterado no parágrafo único do art. 13 da Lei 11.636/2007). Contudo, perderá eficácia a concessão do benefício em caso de expressa revogação pelo Juiz ou Tribunal, quando comprovada a mudança da condição econômico financeira do beneficiário. Isso porque a decisão que concede a gratuidade está condicionada à cláusula rebus sic standibus, primando pela precariedade e não gerando preclusão pro judicato. Dessa maneira, a renovação do pedido de gratuidade da justiça somente se torna necessária quando houver anterior indeferimento do pleito ou revogação no curso do processo. Por fim, cabe ressaltar que não se faz necessário, para o processamento de eventual recurso, que o beneficiário faça expressa remissão na petição recursal acerca do anterior deferimento da assistência judiciária gratuita, embora seja evidente a utilidade dessa providência facilitadora. Basta, portanto, que constem dos autos os comprovantes de que já litiga na condição de beneficiário da justiça gratuita. AgRg nos EAREsp 86.915-SP, Rel. Min. Raul Araújo, julgado em 26/2/2015, DJe 4/3/2015.&#160;</p> <p style="text-align: justify; padding-left: 150px;">AGRAVO DE INSTRUMENTO. ASSISTÊNCIA JUDICIÁRIA GRATUITA. CONCESSÃO. LEI Nº 1.060/50. ESPÓLIO. REPRESENTAÇÃO. 1. Para a concessão do benefício da assistência judiciária, desnecessária a declaração de pobreza, assinada pelo requerente e com firma reconhecida, bastando, para tanto, o simples requerimento na petição inicial, nos termos da Lei nº 1.060/50. 2. Passados dois anos do falecimento, não se pode falar em administrador provisório, impondo-se a outorga de procuração por todos os herdeiros, caso ainda não tenha sido aberto inventário. (TRF 3ª Região, 6ª Turma, Juiz Mairan Maia, AG200103000056834/SP, DJU 4/11/2002, p. 716)&#160;</p> <p style="text-align: justify; text-indent: 8%;">Desta Egrégia Corte de Justiça, ademais, extraio os seguintes

Processo	0201323-26.2024.8.06.0114
	julgados: </p><p style="text-align: justify; padding-left: 150px;"> DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO MONITÓRIA. PEDIDO DE JUSTIÇA GRATUITA NÃO ANALISADO PELO JUÍZO SINGULAR. DEFERIMENTO TÁCITO. RECONVENÇÃO APRESENTADA. PEDIDOS NÃO ENFRENTADOS NA SENTENÇA PELO JUÍZO A QUO. ERROR IN PROCEDENDO. JULGAMENTO CITRA PETITA. NULIDADE DA SENTENÇA SUSCITADA DE OFÍCIO. TEORIA DA CAUSA MADURA. ART. 1.013, § 3º, II, DO CPC. INAPLICABILIDADE AO CASO. PRECEDENTES DESTA CÂMARA. SENTENÇA CASSADA. PRELIMINAR SUSCITADA DE OFÍCIO ACOLHIDA. 01. Cabe ao juiz decidir a lide nos limites em que foi proposta, não podendo conceder à parte providência além da requerida na inicial (sentença ultra petita), aquém do pedido (decisão citra petita) e, muito menos, fora do requerido pelas partes (sentença extra petita). 02. Ao exame dos autos, apura-se que a parte requerida, ora apelante, apresentou reconvenção (vide fls. 61/73) formulando pedidos de indenização por danos morais e materiais. 03. É notório que tais pedidos, no entanto, não foram apreciados na sentença, omitindo-se o juízo singular quanto aos fundamentos e pleitos indenizatórios realizados na reconvenção. 04. Dessa forma, incontroverso que o magistrado, ao deixar de apreciar de forma expressa e motivada pedido elencado na reconvenção, incorre em julgamento citra petita, em violação ao princípio da adstrição (art. 492, CPC), devendo a sentença ser cassada. 05. A sentença hostilizada não observa os arts. 141 e 489, II do CPC/15 e a imperiosa necessidade de fundamentação prevista na CF/88, não havendo outra alternativa senão cassá-la. 06. É de rigor registrar a impossibilidade de aplicar a teoria da causa madura (art. 1.013, § 3º, CPC/2015) ao caso, eis que o entendimento majoritário desta Câmara é no sentido de que, embora a regra impositiva do art. 1.013, § 3º, III, do CPC/15 determine o imediato julgamento do processo nos casos de sentença omissa no exame de um dos pedidos, é defeso ao órgão ad quem julgar pretensão não analisada pelo juízo a quo, sob pena de supressão de instância e de afronta ao duplo grau de jurisdição. Precedentes desta 3ª Câmara de Direito Privado. 07. Sentença anulada de ofício, determinando o retorno dos autos à origem, para que seja proferida nova decisão, com o pronunciamento judicial expresso e fundamentado acerca dos pedidos formulados na reconvenção, notadamente quanto aos pedidos indenizatórios, restando prejudicadas as demais teses recursais. ACÓRDÃO Vistos, relatados e discutidos o recurso, acorda a Terceira Câmara de Direito Privado, do Egrégio Tribunal de Justiça do Ceará, por unanimidade, em ACOLHER A PRELIMINAR SUSCITADA DE OFÍCIO POR ESTA RELATORA PARA CASSAR A SENTENÇA, POR VÍCIO CITRA PETITA, determinando o retorno dos autos à origem, para que seja proferida nova decisão, com o pronunciamento judicial expresso e fundamentado acerca dos pedidos formulados na reconvenção, notadamente quanto aos pedidos indenizatórios, restando prejudicadas as demais teses recursais, em conformidade com o voto da Relatora. Presidente do Órgão Julgador CLEIDE ALVES DE AGUIAR Relatora</p><p style="text-align: justify; padding-left: 150px;"> (Apelação Cível - 0127660-10.2015.8.06.0001, Rel. Desembargador(a) CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento: &#160; 17/04/2024, data da publicação: &#160; 17/04/2024)</p><p style="text-align: justify; padding-left: 150px;"> PROCESSO CIVIL. AGRAVO INTERNO. DECISÃO MONOCRÁTICA QUE DESPROVEU EMBARGOS DECLARATÓRIOS. HABILITAÇÃO DA MASSA FALIDA E DETERMINAÇÃO DA SUSPENSÃO DA AÇÃO MONITÓRIA. PRELIMINARMENTE. GRATUIDADE NÃO APRECIADA EM PRIMEIRA INSTÂNCIA. AUSÊNCIA DE MANIFESTAÇÃO ENSEJA O DEFERIMENTO TÁCITO. PRECEDENTES DO SUPERIOR TRIBUNAL DE JUSTIÇA. ANÁLISE EXHAURIENTE DA DEMANDA. HIPÓTESE VERIFICADA NOS TERMOS DO §1º, DO ART. 6º, DA LEI 11.101/2005. RECURSO CONHECIDO E PROVIDO. 1.Trata-se de Agravo Interno interposto por Massa Falida de Oboé Crédito, Financiamento e Investimento S/A, Oboé Tecnologia e Serviços Financeiros S/A, Oboé Distribuidora de Valores Mobiliários S/A, Companhia de Investimento Oboé, Advisor Gestão de Ativos S/A, Oboé Holding Financeira S/A, José Newton Lopes Freitas, Magazines Brasileiros Ltda. e Clarinete Promotora de Vendas e Serviços Ltda., contra decisão monocrática, proferida às fls.14/15 de relatoria do Desembargador Raimundo Nonato Silva Santos, que desproveu os embargos declaratórios que visavam reverter a decisão de suspensão da Ação Monitória. 2. Preliminarmente. A gratuidade processual deve ser concedida aos agravantes, tendo em vista decisão recente do STJ na qual determina que, diante da ausência de indeferimento em decisão fundamentada pelo juízo a quo, o seu deferimento é tácito. 3. Compulsando os autos da Ação Monitória, verifica-se que o agravado interpôs Apelação Cível, questionando a iliquidez da dívida, anatocismo, pela suposta aplicação de juros moratórios e remuneratórios, alegando ainda que os cálculos teriam sido expressos de forma confusa, sem clareza na escolha dos índices. Assim, a despeito da decisão de suspensão exarada, ratificada pela decisão monocrática no julgamento dos aclaratórios, verifico que é desprovida de elementos jurídicos que consubstancie seu fundamento. O questionamento arguido em apelo, demonstra a iliquidez da dívida, ainda que esse recurso venha a ser desprovido, quando do seu julgamento. Assim, a ação monitória deve ter seu prosseguimento, pois enquadra-se na hipótese prevista no §1º, do art. 6º, da Lei

Processo	0201323-26.2024.8.06.0114
	11.101/2005. 4. Inobservar essa premissa seria fomentar a ideia de uma justiça que se nega a prestação jurisdicional, pois estar-se-ia impedindo que os agravantes se habilitem no processo falimentar da agravada. Corrobora-se à isso, o fato da sentença de primeiro grau ter sido favorável aos agravantes. 5. Recurso conhecido e provido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso e dar-lhe provimento, nos termos do voto do Eminentíssimo Relator. Fortaleza, . JOSÉ EVANDRO NOGUEIRA LIMA FILHO Presidente do Órgão Julgador DESEMBARGADOR JOSÉ EVANDRO NOGUEIRA LIMA FILHO Relator (Agravado Interno Cível - 0046872-24.2006.8.06.0001, Rel. Desembargador(a) JOSE EVANDRO NOGUEIRA LIMA FILHO, 4ª Câmara Direito Privado, data do julgamento: 23/04/2024, data da publicação: 23/04/2024) Com efeito, a constatação do silêncio do julgador a quo quanto ao pedido, a meu ver, e conforme jurisprudência consolidada dos Tribunais Superiores, enseja o deferimento implícito do benefício. Deste modo, concedo os benefícios da justiça gratuita a parte apelante. Realizada a análise de admissibilidade, verifico o preenchimento dos pressupostos recursais, tanto os intrínsecos, relacionados ao direito de recorrer, quanto os extrínsecos, concernentes ao seu exercício. Assim, conheço do presente recurso. A controvérsia devolvida a esta instância consiste em aferir a correção da sentença que extinguiu o feito sem resolução de mérito, sob o fundamento da ausência de interesse de agir, por suposto fracionamento de ações declaratórias ajuizadas pelo autor. Analizando detidamente a petição inicial, verifica-se que o autor/apelante ajuizou a presente ação exclusivamente em face da SEBRASEG CLUBE DE BENEFÍCIOS LTDA., objetivando a declaração de inexistência de relação contratual atinente ao "SEBRASEG CLUBE DE BENEFÍCIOS LTDA", diante da ocorrência de descontos mensais no valor de R\$ 59,90 (cinquenta e nove reais e noventa centavos), totalizando o valor de R\$ 284,60 (Duzentos e oitenta e quatro reais e sessenta centavos), os quais alega não decorrerem de contrato previamente firmado. Ocorre que, sem sequer oportunizar o contraditório, o juízo de origem indeferiu a petição inicial, extinguindo o feito sob o fundamento de ausência de interesse de agir, considerando o ajuizamento de outras 05 ações declaratórias, a saber: n. 0201329-33.2024.8.06.0114 (tarifa bancária), n. 0201322-41.2024.8.06.0114 (título de capitalização), n. 0201326-78.2024.8.06.0114 (contrato nº 18245651), n. 0201325-93.2024.8.06.0114 (contrato nº 002879567), n. 0201324-11.2024.8.06.0114 (contribuição CONAFER). Pois bem. Antecipo que é caso de provimento do recurso. Isso porque, nesta demanda — que versa sobre a legalidade da contratação de contrato de seguro — em que pese também ser de natureza declaratória e condenatória, assim como todas as outras ações eventualmente ajuizadas pelo mesmo autor, e guardarem semelhança formal quanto à pretensão de inexistência de relação jurídica e restituição de valores, não se confunde, em absoluto, com as demais ações mencionadas pelo juízo de origem. Com efeito, esta ação discute especificamente descontos oriundos de suposto contrato de seguro firmado com a SEBRASEG CLUBE DE BENEFÍCIOS LTDA., ao passo que as demais demandas tratam de cobranças relativas a tarifa bancária, empréstimo consignado e contribuição sindical, supostamente realizadas por seguradora. É importante destacar que esta 1ª Câmara de Direito Privado tem, de fato, em diversas oportunidades recentes, reconhecido o ajuizamento simultâneo de múltiplas ações declaratórias com pedidos semelhantes como hipótese de indeferimento da petição inicial por ausência de interesse processual, sobretudo em casos de fracionamento de ações envolvendo empréstimos consignados com o mesmo réu. Contudo, esse não é o caso dos autos. A presente demanda não guarda identidade objetiva com as demais ações apontadas, pois se refere a contrato distinto, com parte ré diversa e fundamentos específicos. A alegação de fracionamento de demanda, portanto, não encontra respaldo no conjunto fático-probatório dos autos, tratando-se de relações jurídicas autônomas e independentes. O indeferimento da petição inicial por ausência de interesse de agir, com base em suposta litigância abusiva, exige cautela e exame minucioso de conexão objetiva entre as causas, o que não se observa na hipótese. Além disso, a mera repetição de partes ou do tipo de pedido (ação declaratória

Processo	0201323-26.2024.8.06.0114
	com restituição) não implica, por si só, fracionamento indevido, quando ausente identidade entre os contratos discutidos. Ressalte-se que o interesse processual decorre do binômio necessidade e adequação: necessidade de intervenção jurisdicional para resguardar ou reconhecer o direito alegado, e adequação do meio processual escolhido para alcançar tal finalidade. Ambos os requisitos estão presentes na hipótese dos autos, na medida em que a parte autora busca, por meio de ação declaratória e de repetição de indébito, desconstituir relação jurídica que considera inexistente, com fundamento em descontos indevidos realizados em sua conta bancária, supostamente vinculados a contrato de seguro com instituição distinta das demais ações. Dessa forma, entendo que o autor detém interesse processual, sendo plenamente legítimo o ajuizamento da presente ação em face da &#160; SEBRASEG CLUBE DE BENEFICIOS.&#160; A propósito: APELAÇÃO CÍVEL. EMPRÉSTIMO CONSIGNADO. SENTENÇA EXTINTIVA SEM RESOLUÇÃO DE MÉRITO. IDENTIFICAÇÃO NA ORIGEM DE AJUIZAMENTO DE OUTRAS AÇÕES. CONTRATOS DISCUTIDOS DIVERSOS. PEDIDO E CAUSA DE PEDIR DIVERSOS. INTERESSE DE AGIR. INDEFERIMENTO DA INICIAL. IMPOSSIBILIDADE. PRINCÍPIO DA INAFASTABILIDADE DA TUTELA JURISDICIONAL. AJUIZAMENTO DE MAIS DE UMA DEMANDA PELA MESMA PARTE QUE NÃO JUSTIFICA O INDEFERIMENTO DA EXORDIAL E EXTINÇÃO DO PROCESSO SEM RESOLUÇÃO DO MÉRITO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADÁ. RETORNO DOS AUTOS À ORIGEM PARA REGULAR PROSSEGUIMENTO DO FEITO. 1.Trata-se de Apelação Cível interposta pela parte Autora contra a sentença que indeferiu a petição inicial, julgando extinta a ação sem resolução do mérito, considerando a ausência de interesse processual. 2. O Juízo a quo indeferiu a petição inicial e declarou extinta a presente ação, sem resolução de mérito, por entender que o Recorrente carece de interesse de agir ao veicular outro processo com as mesmas partes e solicitações similares, devendo as causas de pedir serem congregadas em um único feito. 3. Não obstante, é importante ressaltar que não existe a obrigação de que a parte reúna todos os seus pedidos contra a mesma parte em uma única ação. Na realidade, a lei prevê a possibilidade de a parte autora optar por formular, em uma única petição, uma pretensão abrangendo diversos contratos contestados, buscando a declaração de nulidade junto com reparação material e moral, ou por petições múltiplas e independentes, tratando os contratos individualmente. 4. Assim, ainda que possível a distribuição de um processo para cada contrato contra a mesma instituição financeira, nada impede a reunião dos processos pela conexão, nos termos do art. 55, caput, CPC, o qual estabelece: "reputam-se conexas 2 (duas) ou mais ações quando lhes for comum o pedido ou a causa de pedir", acrescentando o § 1º que "os processos de ações conexas serão reunidos para decisão conjunta", salvo se um deles já houver sido sentenciado. 5. Cumpre ressaltar que, ainda que a compreensão fosse pela inexistência de conexão na hipótese sub judice, mesmo assim seria possível o julgamento conjunto dos feitos, por força do previsto no § 3º do mencionado art. 55, quando dispõe que "serão reunidos para julgamento conjunto os processos que possam gerar risco de prolação de decisões conflitantes ou contraditórias caso decididos separadamente, mesmo sem conexão entre eles". 6. Com efeito, o argumento utilizado na sentença acerca da falta de interesse de agir por parte do Recorrente também carece de procedência, conquanto cediço que o interesse processual se manifesta quando o requerente tem uma necessidade genuína de acionar o Poder Judiciário para obter a tutela almejada, e somente será útil se essa tutela proporcionar um resultado proveitoso. No caso em questão, há interesse de agir, uma vez que a ora Apelante busca a declaração de inexigibilidade de um contrato de empréstimo consignado, alegando ter sido contraído com a instituição financeira ora Apelada, em seu nome, mediante fraude. Esta ação se revela como a via processual adequada e eficaz para alcançar tal objetivo. 7. Cumpre destacar, ainda, que a sentença recorrida viola o princípio da cooperação, conforme estabelecido no art. 6º do CPC, além de infringir a garantia constitucional da inafastabilidade da tutela jurisdicional, como previsto no art. 5º, XXXV, da CF, que assegura que "a lei não excluirá da apreciação do Poder Judiciário lesão ou ameaça a direito." Observa-se, portanto, que o Juízo a quo, ao prolatar a sentença, não agiu com acerto, incorrendo em error in procedendo. Diante disso, a anulação da sentença e o retorno dos autos ao Juízo de origem para o regular processamento é medida que se impõe. 8. Recurso CONHECIDO e PROVIDO. Sentença ANULADA. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer e dar provimento ao Recurso, para anular a sentença de origem determinando o prosseguimento do feito, nos termos do voto do Relator. Fortaleza, data e hora indicadas pelo sistema. JOSÉ EVANDRO NOGUEIRA LIMA FILHO Presidente do Órgão Julgador DESEMBARGADOR FRANCISCO JAIME MEDEIROS NETO Relator (Apelação Cível - 0200839-67.2024.8.06.0160, Rel. Desembargador(a) FRANCISCO JAIME MEDEIROS NETO, 4ª Câmara Direito Privado,

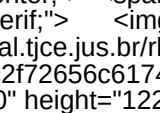
Processo	0201323-26.2024.8.06.0114
	data do julgamento: 04/02/2025, data da publicação: 04/02/2025) CIVIL. APELAÇÃO EM AÇÃO ANULATÓRIA. EMPRÉSTIMO CONSIGNADO. INDEFERIMENTO DA INICIAL SOB O FUNDAMENTO DE MULTIPLICIDADE DE AÇÕES. CAUSA DE PEDIR E PEDIDOS DISTINTOS. INTERESSE PROCESSUAL EVIDENCIADO. RECURSO CONHECIDO E PROVIDO. SENTENÇA ANULADA. RETORNO DOS AUTOS À ORIGEM. 1. Analisando o caso em julgamento, considera-se indevida a fundamentação de ausência de interesse processual (art. 330, III, CPC) em razão da existência de outras ações propostas buscando anular contratos de empréstimo consignado. Isto porque cada contrato implica na existência de um novo desconto, sendo esta a individual causa de pedir de cada demanda, configurando-se a necessidade/utilidade da parte autora em buscar o auxílio do Poder Judiciário. 2. Recurso conhecido e provido. Sentença anulada. Retorno dos autos à origem. ACÓRDÃO Visto, relatado e discutido o Recurso acima indicado, acorda a Segunda Câmara de Direito Privado do Egrégio Tribunal de Justiça do Ceará, por unanimidade, em CONHECER e DAR PROVIMENTO ao recurso, em conformidade com o voto da Relatora. Fortaleza, data e hora da assinatura digital. EVERARDO LUCENA SEGUNDO Desembargador Presidente do Órgão Julgador JANE RUTH MAIA DE QUEIROGA Desembargadora Relatora (Apelação Cível - 0200393-64.2024.8.06.0160, Rel. Desembargador(a) JANE RUTH MAIA DE QUEIROGA, 2ª Câmara Direito Privado, data do julgamento: 14/08/2024, data da publicação: 14/08/2024) Diante disso, a anulação da sentença e o retorno dos autos ao Juízo de origem para o regular processamento é medida que se impõe. Ante a todo o exposto, pelos argumentos fartamente coligidos conheço e dou provimento ao recurso, a fim de decretar a nulidade da sentença recorrida e determinar o retorno dos autos à origem para o regular processamento do feito. É como voto. Sem honorários recursais. Fortaleza – CE, data constante nos autos. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator
Processo	0177677-11.2019.8.06.0001
Número de ordem	251
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Moral
Polo ativo	MARIA ILZANIR FEIJO ALEXANDRE PAIVA
Advogado(s) - Polo ativo	THIAGO CESAR TINOCO OLIVEIRA DE VASCONCELOS - (RN10451-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Terceiros	Não informado

Processo	0177677-11.2019.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0177677-11.2019.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: MARIA ILZANIR FEIJO ALEXANDRE PAIVA APELADO: BANCO DO BRASIL SA Ementa: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. CONTA PASEP. PRESCRIÇÃO. TERMÔ INICIAL. PRINCÍPIO DA ACTIO NATA. TEMA 1150/STJ. SENTENÇA ANULADA. RECURSO PROVIDO. I. CASO EM EXAME 1. Apelação cível interposta por Maria Ilzanir Feijó Alexandre contra sentença da 18ª Vara Cível da Comarca de Fortaleza/CE que julgou improcedente ação de indenização por danos materiais e morais ajuizada em desfavor do Banco do Brasil S/A, sob o fundamento de prescrição da pretensão indenizatória relativa a desfalques em conta vinculada ao PASEP. A apelante sustenta que apenas em 16/08/2019, ao receber os extratos detalhados de sua conta, tomou ciência dos desfalques, ajuizando a ação em 30/09/2019, dentro do prazo prescricional decenal. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em definir se o prazo prescricional para pleitear indenização por desfalques em conta vinculada ao PASEP deve ser contado da data do saque ou do momento em que o titular teve ciência comprovada dos prejuízos, aplicando-se o princípio da actio nata. III. RAZÕES DE DECIDIR 3. O Superior Tribunal de Justiça, no julgamento do Tema Repetitivo nº 1150, fixou a tese de que o Banco do Brasil possui legitimidade passiva ad causam para responder por falhas na administração das contas do PASEP, que o prazo prescricional aplicável é o decenal (art. 205 do CC) e que o termo inicial é a data em que o titular tem ciência comprovada dos desfalques, em observância ao princípio da actio nata. 4. O marco prescricional não pode ser fixado na data do saque, mas sim no momento em que os extratos ou microfilmagens possibilitam a constatação inequívoca da lesão. 5. No caso concreto, a apelante obteve os extratos da conta apenas em 16/08/2019 e ajuizou a demanda em 30/09/2019, dentro do prazo legal, o que afasta a prescrição. 6. A aplicação da teoria da causa madura não se mostra adequada, pois a apuração da existência e extensão dos desfalques demanda dilação probatória, impondo o retorno dos autos ao juízo de origem. IV. DISPOSITIVO E TESE 7. Recurso provido. Sentença anulada, com retorno dos autos à origem para regular instrução e julgamento do mérito. Tese de julgamento: 1. O prazo prescricional para ressarcimento de danos em conta vinculada ao PASEP é decenal, nos termos do art. 205 do Código Civil. 2. O termo inicial da prescrição é a data em que o titular tem ciência comprovada dos desfalques, mediante acesso a extratos, microfilmagens ou documentos equivalentes, em aplicação ao princípio da actio nata. 3. O Banco do Brasil possui legitimidade passiva para responder por falhas na administração das contas do PASEP, inclusive saques indevidos e ausência de aplicação correta de rendimentos.

Processo	0177677-11.2019.8.06.0001
	1150, passo à apreciação do mérito recursal.&#160;</p><p style="text-align: justify;"> Presentes os pressupostos extrínsecos e intrínsecos de admissibilidade, conheço do presente recurso. Feita a admissibilidade, passo à análise do mérito.</p><p style="text-align: justify;"> Na espécie, a pretensão autoral consiste na condenação do banco apelado ao pagamento de desfalques em conta individual PASEP, bem como de compensação por danos morais.</p><p style="text-align: justify;"> Sobre o tema, a Primeira Seção do c. Superior Tribunal de Justiça, em julgamento submetido ao rito dos recursos repetitivos (Tema 1150), sedimentou as seguintes teses jurídicas:</p><p style="text-align: justify; padding-left: 120px;"> i) o Banco do Brasil possui legitimidade ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa;&#160;</p><p style="text-align: justify; padding-left: 120px;"> ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil; e&#160;</p><p style="text-align: justify; padding-left: 120px;"> iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. (grifou-se)</p><p style="text-align: justify;"> Dessa forma, a contagem do prazo prescricional deve observar a data em que o titular da conta efetivamente tomou ciência dos desfalques, com base na disponibilização de microfilmagens, extratos bancários ou documentos equivalentes nos termos do princípio da actio nata.&#160;</p><p style="text-align: justify;"> No caso em exame, o Juízo de origem considerou que o autor teve ciência dos valores existentes no momento do saque realizado em 24/03/1995, entendendo que, a partir dali, iniciou-se o prazo prescricional.&#160;</p><p style="text-align: justify;"> Contudo, os documentos constantes nos autos demonstram que os extratos detalhados da conta PASEP só foram entregues ao autor em 16/08/2019, momento a partir do qual se tornou possível a verificação dos alegados prejuízos. A ação foi ajuizada em 30/09/2019, ou seja, menos de um mês após a ciência inequívoca do dano.&#160;</p><p style="text-align: justify;"> Nessas condições, não há que se falar em prescrição, pois o ajuizamento da ação se deu dentro do prazo legal de dez anos, a contar da ciência do fato danoso.&#160;</p><p style="text-align: justify;"> Neste mesmo sentido, destaco precedentes recentes deste Egrégio Tribunal de Justiça, para fins de reforço argumentativo:&#160;</p><p style="text-align: justify; padding-left: 120px;"> DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE OBRIGAÇÃO DE FAZER C/C INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. DIFERENÇA DE VALORES NA CONTA VINCULADA AO PASEP. PRELIMINARES DO APELADO: VIOLAÇÃO À DIALETICIDADE, IMPUGNAÇÃO À JUSTIÇA GRATUITA, ILEGITIMIDADE PASSIVA E INCOMPETÊNCIA DO JUÍZO. REJEITADAS. MÉRITO: PRESCRIÇÃO. NÃO OCORRÊNCIA. PRINCÍPIO DA ACTIO NATA. TERMO INICIAL A PARTIR DA CIÊNCIA INEQUÍVOCA SOBRE A OCORRÊNCIA DA IRREGULARIDADE NA CONTA VINCULADA DO PASEP (TEMANº 1.150). DATA DO RECEBIMENTO DO EXTRATO OU DAS MICROFILMAGENS. RECURSO PROVIDO. SENTENÇA ANULADA. I. CASO EM EXAME 1. Recurso de apelação cível interposto contra a sentença proferida às fls. 83/87, que julgou liminarmente improcedente a Ação de Obrigação de Fazer c/c Danos Materiais e Morais, por prescrição, com fulcro no art. 487, inciso II, do CPC. II. QUESTÃO EM DISCUSSÃO 2. Cinge-se a controvérsia recursal em aferir se está configurada a prescrição da ação proposta para discutir a suposta irregularidade na gestão e atualização monetária dos valores depositados em conta vinculada ao PASEP. III. RAZÕES DE DECIDIR 3. Preliminarmente, suscitou o apelado as seguintes questões: violação ao princípio da dialeticidade, impugnação à justiça gratuita, ilegitimidade passiva e incompetência do juízo estadual, as quais não comportam acolhimento. Preliminares rejeitadas. 4. No mérito, a matéria em discussão foi objeto de apreciação pelo c. Superior Tribunal de Justiça, quando afetou ao rito dos recursos repetitivos o Tema nº 1.150, tendo o Tribunal da Cidadania uniformizado a interpretação da legislação infraconstitucional por meio das teses a seguir destacadas: i) o Banco do Brasil possui legitimidade passiva ad causam para figurar no polo passivo de demanda na qual se discute eventual falha na prestação do serviço quanto a conta vinculada ao Pasep, saques indevidos e desfalques, além da ausência de aplicação dos rendimentos estabelecidas pelo Conselho Diretor do referido programa; ii) a pretensão ao ressarcimento dos danos havidos em razão dos desfalques em conta individual vinculada ao Pasep se submete ao prazo prescricional decenal previsto pelo artigo 205 do Código Civil; e iii) o termo inicial para a contagem do prazo prescricional é o dia em que o titular, comprovadamente, toma ciência dos desfalques realizados na conta individual vinculada ao Pasep. 5. Com efeito, a fluência do

Processo	0177677-11.2019.8.06.0001
	prazo prescricional de dez anos para a parte exercer a pretensão condenatória começa a partir da data em que se tem conhecimento da lesão. Sendo assim, de acordo com o princípio da actio nata, o direito de pleitear a indenização surge quando a lesão e suas consequências são constatadas. Com base nisso, o entendimento mais escorreito é no sentido de que o termo inicial da contagem do prazo prescricional da pretensão autoral se dá quando do recebimento do extrato ou das microfilmagens da sua conta. Em exame do caderno processual, tem-se que a autora recebeu os extratos em 26 de dezembro de 2023, cerca de 10 (dez) meses antes do ajuizamento da ação (29.10.2024), de modo que não há falar em prescrição. IV. DISPOSITIVO 6. Recurso provido. Sentença cassada. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação, para lhe dar provimento, nos termos do voto do Desembargador Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador/Relator (Apelação Cível - 0200809-52.2024.8.06.0121, Rel. Desembargador(a) JOSE RICARDO VIDAL PATROCÍNIO, 1ª Câmara Direito Privado, data do julgamento: 09/04/2025, data da publicação: 10/04/2025) [Grifo nosso]&#160;</p><p style="text-align: justify; padding-left: 120px;"> DIREITO CIVIL. APELAÇÃO CÍVEL. INDENIZAÇÃO POR DANOS MATERIAIS E MORAIS. CONTA PASEP. TERMO INICIAL DO PRAZO PRESCRICIONAL. PRINCÍPIO DA ACTIO NATI. TEMA1150/STJ. PRESCRIÇÃO AFASTADA. SENTENÇA ANULADA. RETORNO DOS AUTOS À ORIGEM. 1. Caso em exame: Trata-se Apelação Cível interposta por Francisco Francinédio de Aguiar, objurgando sentença de fls. 200/204, proferida pelo MM. Juiz de Direito da 2ª Vara da Comarca de Camocim, nos autos da Ação de Indenização por Danos Materiais e Morais, movida pelo ora recorrente em desfavor do Banco do Brasil S/A, que extinguiu o processo com resolução de mérito, ante o reconhecimento da prescrição da pretensão autoral. 2. Questão em discussão: Cinge-se a controvérsia recursal em aferir se a pretensão deduzida na exordial encontra-se atingida pela prescrição. 3. Razões de decidir: O STJ, ao julgar o Tema 1150, firmou entendimento de que, em ações que tratem de irregularidades em depósitos bancários efetivados em conta PASEP, o prazo prescricional de 10 anos (art. 205, CC/02) tem como termo inicial o momento em que o titular da conta toma ciência inequívoca da lesão, conforme o princípio da actio nata. Precedentes. 4. Na hipótese, a ciência dos desfalques ocorreu em setembro de 2023, como acesso aos extratos/microfilmes fornecidos pela instituição financeira, o que afasta a prescrição reconhecida na sentença recorrida. 5. Dispositivo e Tese: Apelação conhecida e provida. Sentença anulada, determinando o retorno dos autos ao juízo de origem para o devido processamento e julgamento do mérito. Tese de julgamento: O prazo prescricional decenal para pleitear ressarcimento de danos relacionados ao PASEP inicia-se a partir da ciência inequívoca do titular quanto aos desfalques realizados na conta vinculada, comprovada por acesso a documentos como extratos ou microfilmagens. ACÓRDÃO Vistos, relatados e discutidos o recurso, acorda a Terceira Câmara de Direito Privado do Egrégio Tribunal de Justiça do Ceará, por unanimidade, em CONHECER DA APELAÇÃO, para DAR-LHE PROVIMENTO, nos termos do voto da eminente Relatora. Fortaleza/CE, data e assinatura do sistema. Presidente do Órgão Julgador DESEMBARGADORA CLEIDE ALVES DE AGUIAR Relatora (Apelação Cível - 0200058-75.2024.8.06.0053, Rel. Desembargador(a) CLEIDE ALVES DE AGUIAR, 3ª Câmara Direito Privado, data do julgamento: 12/03/2025, data da publicação: 12/03/2025) [Grifo nosso]&#160;&#160;</p><p style="text-align: justify; padding-left: 120px;"> DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. PRESCRIÇÃO. TERMO INICIAL. PRINCÍPIO DA ACTIO NATI. PRAZO DECENAL. SENTENÇA ANULADA. I. CASO EM EXAME 1. Apelação cível interposta por parte autora contra sentença que julgou improcedente ação ordinária em face do Banco do Brasil S/A, sob o fundamento de prescrição da pretensão autoral, com base na data do saque integral das cotas vinculadas ao PASEP (ano de 2004). 2. A apelante alegou que somente tomou ciência dos desfalques na conta vinculada ao PASEP em 2023, ao acessar os extratos e microfilmagens disponibilizados pela instituição financeira. II. QUESTÃO EM DISCUSSÃO 3. Discute-se se o termo inicial do prazo prescricional para pleitear ressarcimento de danos em conta vinculada ao PASEP deve ser a data do último saque ou o momento em que o titular teve ciência comprovada dos desfalques, aplicando-se o princípio da actio nata. III. RAZÕES DE DECIDIR 4. O Superior Tribunal de Justiça, no julgamento dos Recursos Especiais repetitivos afetados pelo Tema 1150, fixou a tese de que o termo inicial do prazo prescricional para ressarcimento por danos em conta vinculada ao PASEP é a data em que o titular toma ciência comprovada dos desfalques realizados na conta individual. 5. A aplicação do princípio da actio nata implica que o prazo prescricional começa a fluir apenas quando o direito violado e suas consequências tornam-se conhecíveis ao titular. 6. No caso, a ciência dos desfalques em 2023, comprovada por meio de microfilmagens disponibilizadas pela instituição financeira, fixa o termo inicial da prescrição, afastando o marco temporal de 2004 estabelecido na sentença. IV. DISPOSITIVO E TESE 7. Apelação cível conhecida e provida. Sentença anulada. Determinado o retorno dos autos à Vara de Origem para processamento e

Processo	0177677-11.2019.8.06.0001
	julgamento do mérito da causa. Tese de julgamento: "O prazo prescricional para ressarcimento de danos relacionados a desfalques em conta vinculada ao PASEP é decenal, e o termo inicial é a data em que o titular do direito toma ciência comprovada da violação, aplicando-se o princípio da actio nata". ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 3ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, or unanimidade, em conhecer e dar provimento ao recurso de apelação cível, nos termos do voto do Relator. Fortaleza/CE, data e hora da assinatura digital. MARCOS WILLIAM LEITE DE OLIVEIRA Presidente do Órgão Julgador DESEMBARGADOR MARCOS WILLIAM LEITE DE OLIVEIRA Relator (Apelação Cível - 0200057-90.2024.8.06.0053, Rel. Desembargador(a) MARCOS WILLIAM LEITE DE OLIVEIRA, 3ª Câmara Direito Privado, data do julgamento: 05/02/2025, data da publicação: 05/02/2025) [Grifo nosso] APELAÇÃO CÍVEL. PASEP. AÇÃO INDENIZATÓRIA CONTRA O BANCO DO BRASIL POR MÁ GESTÃO DE DEPÓSITOS EM CONTA VINCULADA AO PROGRAMA. COMPETÊNCIA DA JUSTIÇA ESTADUAL. LEGITIMIDADE PASSIVA DO BANCO DO BRASIL. PRESCRIÇÃO DECENAL PREVISTA NO ART. 205 DO CÓDIGO CIVIL. TERMO INICIAL COM BASE NA TEORIA DA ACTIO NATA. CIÊNCIA DO DANO COMO MARCO INICIAL DO PRAZO PRESCRICIONAL. RECENTE JULGAMENTO DO TEMA REPETITIVO N. 1150 DO STJ. TESE FIXADA PELA CORTE SUPERIOR NO SENTIDO DE QUE O BANCO DO BRASIL, NA CONDIÇÃO DE ADMINISTRADOR DO FUNDO PASEP, RESPONDE POR EVENTUAL MÁ GESTÃO DOS VALORES DEPOSITADOS, DEVENDO RESPONDER POR EVENTUAIS SAQUES INDEVIDOS E OMISSÕES QUANTO À CORREÇÃO DE VALORES. O PRAZO PRESCRICIONAL PARA A PRETENSÃO INDENIZATÓRIA POR MÁ GESTÃO DE DEPÓSITOS NO PASEP É DECENAL, CONTADO DO MOMENTO EM QUE A PARTE TOMOU CIÊNCIA DOS DESFALQUES. INEXISTÊNCIA DE PRESCRIÇÃO NO CASO CONCRETO, POIS A AÇÃO FOI AJUIZADA EM 2024, APÓS A PARTE TER CONHECIMENTO DO DANO EM 2023. SENTENÇA ANULADA PARA O RETORNO DOS AUTOS À ORIGEM, VISANDO AO REGULAR PROCESSAMENTO E POSSIBILIDADE DE PRODUÇÃO PROBATÓRIA. RECURSO CONHECIDO E PROVIDO PARA ANULAR A SENTENÇA. I. CASO EM EXAME: Trata-se de apelação interposta contra sentença que reconheceu a prescrição em ação indenizatória, cujo objeto é a má gestão de depósitos no fundo PASEP, administrado pelo banco do brasil. A recorrente alega que a prescrição não se consumou, argumentando que teve ciência dos desfalques apenas recentemente, sendo que os saques foram realizados sem sua autorização. II. QUESTÃO EM DISCUSSÃO: O ponto central da discussão reside na legitimidade passiva do banco do brasil, na prescrição da pretensão indenizatória e na competência da justiça estadual. Analisa-se se o prazo prescricional é decenal e se deve ser contado a partir do momento em que a recorrente obteve ciência do desfalque em sua conta vinculada ao PASEP. III. RAZÕES DE DECIDIR: Aplicando a teoria da actio nata, entendese que o prazo prescricional decenal previsto no art. 205 do código civil inicia-se apenas quando a parte tem conhecimento do dano. Neste caso, a recorrente teve ciência dos desfalques apenas recentemente, em 2023, quando acessou os extratos de sua conta PASEP. Ademais, o Superior Tribunal de Justiça já fixou tese vinculante no sentido de que o banco do brasil é parte legítima para responder por saques indevidos no fundo PASEP, sendo a justiça estadual competente para o julgamento. Assim, não há prescrição a ser reconhecida, e a legitimidade passiva do banco está corretamente configurada. IV. DISPOSITIVO E TESE: Diante das fundamentações supramencionadas, conheço do recurso e dou-lhe provimento, afastando a prescrição e anulando a sentença recorrida, com retorno dos autos ao juízo de origem para regular processamento, incluindo a possibilidade de dilação probatória. Fixa-se a tese de que a pretensão indenizatória relativa à má gestão do PASEP pelo banco do brasil submete-se ao prazo prescricional decenal, contado a partir do conhecimento dos desfalques. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 4ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer e dar provimento ao recurso interposto, desconstituindo a sentença, nos termos do voto do Relator. Fortaleza, data da assinatura eletrônica DESEMBARGADOR FRANCISCO BEZERRA CAVALCANTE Relator (Apelação Cível - 0200068-22.2024.8.06.0053, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento: 19/11/2024, data da publicação: 19/11/2024) [Grifo nosso]&#160;</p><p style="text-align: justify;"> Além disso, não é caso de aplicação da teoria da causa madura, pois a controvérsia fática sobre os alegados desfalques demanda produção de prova técnica e documental, sendo indispensável a reabertura da fase instrutória no juízo de origem.&#160;</p><p style="text-align: justify;"> Diante do exposto, conheço da apelação cível e, no mérito, dou-lhe provimento, a fim de anular a sentença de improcedência e determinar o retorno dos autos ao juízo de origem, para que tenha regular prosseguimento a instrução e julgamento da causa.&#160;</p><p style="text-align: justify;"> É como voto.&#160;</p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA</p><p style="text-align: center;"> Relator</p></p>

Processo	0266846-04.2022.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0266846-04.2022.8.06.0001 - 160; APELAÇÃO CÍVEL (198) APELANTE: SANTOS FUTEBOL CLUBE, CONFEDERACAO BRASILEIRA DE FUTEBOL APELADO: JOAO PAULO VALENTE DA SILVA Ementa: DIREITO CIVIL E EMPRESARIAL. APELAÇÃO CÍVEL. AÇÃO ORDINÁRIA DE ABSTENÇÃO DE USO DE DIREITOS AUTORAIS/MARCA, CONCÓRRENCIA DESLEAL C/C PERDAS E DANOS. VIOLAÇÃO DE PROPRIEDADE INDUSTRIAL. LUCROS CESSANTES. ART. 210, III, DA LEI Nº 9.279/96. APLICAÇÃO DE JUROS E CORREÇÃO MONETÁRIA. DANO MORAL. MAJORAÇÃO INDEFERIDA. RECURSO PARCIALMENTE PROVIDO. I. CASO EM EXAME Apelação Cível interposta por Confederação Brasileira de Futebol – CBF e Santos Futebol Clube contra sentença da 27ª Vara Cível da Comarca de Fortaleza/CE que julgou parcialmente procedente ação ordinária ajuizada contra João Paulo Valente da Silva, condenando-o: (i) a abster-se de fabricar e comercializar produtos contrafeitos com sinais distintivos dos autores; (ii) ao pagamento de indenização por lucros cessantes, a ser liquidada; e (iii) ao pagamento de R\$ 5.000,00 a título de dano moral. Os apelantes pleiteiam: (a) a aplicação do critério do art. 210, III, da Lei nº 9.279/96 para fixação dos lucros cessantes; (b) a incidência de correção monetária e juros moratórios sobre tal indenização; e (c) a majoração da indenização por dano moral para R\$ 20.000,00 para cada autor. II. QUESTÃO EM DISCUSSÃO Há duas questões em discussão: (i) definir se a condenação por lucros cessantes deve observar o critério previsto no art. 210, III, da Lei nº 9.279/96, com incidência de correção monetária e juros moratórios; (ii) estabelecer se o valor de R\$ 5.000,00 fixado a título de dano moral comporta majoração para R\$ 20.000,00 por autor. RAZÕES DE DECIDIR O magistrado de origem já aplicou expressamente o critério do art. 210, III, da Lei nº 9.279/96 — remuneração equivalente à licença que permitiria a exploração legal do bem —, razão pela qual os apelantes carecem de interesse recursal nesse ponto. A sentença foi omissa quanto à atualização monetária e aos juros de mora sobre os danos materiais, devendo incidir correção pelo INPC desde o evento danoso e juros de mora de 1% ao mês a partir da citação, conforme art. 405 do Código Civil. O valor de R\$ 5.000,00 fixado a título de dano moral observa os parâmetros de razoabilidade e proporcionalidade, levando em conta a função compensatória e punitiva da indenização. Não se caracteriza quantia irrisória a justificar a majoração pretendida. A jurisprudência do Superior Tribunal de Justiça apenas admite alteração do quantum indenizatório em hipóteses excepcionais de valores ínfimos ou exorbitantes, o que não se verifica no caso concreto (AgInt no AREsp 1.214.839/SC, STJ).

Processo	0266846-04.2022.8.06.0001
	 IV. DISPOSITIVO E TESE </h3> <p class="western" style="line-height: 100%" align="justify"> Recurso parcialmente </p> <p class="western" style="line-height: 100%" align="justify"> Tese de </p> <p class="western" style="line-height: 100%" align="justify"> O critério do art. 210, III, </p> <p class="western" style="line-height: 100%" align="justify"> A indenização por danos materiais deve ser atualizada pelo INPC desde o </p> <p class="western" style="line-height: 100%" align="justify"> O valor da indenização </p> <hr /> <p class="western" style="line-height: 100%" align="justify"> Dispositivos relevantes citados: Lei nº </p> Jurisprudência relevante citada: STJ, REsp nº 2059265/SP, Rel. Min. Nancy </p> STJ, AgInt no AREsp nº 1.214.839/SC, Rel. Min. Antonio Carlos </p> STJ, EDcl no REsp 845001, Rel. Min. Eliana Calmon; STJ, REsp </p> STJ, REsp 932.334/RS, 3ª Turma, j. 04.08.2009; TJ/RS, </p> AC 70039815683, Rel. Des. Jorge Alberto Schreiner Pestana. </p> ACÓRDÃO: Vistos, relatados e discutidos estes </p> autos, acordam os desembargadores integrantes da 1ª Câmara de Direito Privado do </p> Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do </p> recurso para </p> dar </p> lhe </p> parcial </p> provimento, </p> nos termos voto do Relator. </p> Fortaleza, data da assinatura </p> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
 Presidente do </p> Órgão Julgador </p> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p> Relator </p> Trata-se de Apelação Cível interposta por </p> Confederação Brasileira de Futebol – CBF e Santos Futebol Clube contra a sentença </p> proferida pelo MM. Juiz de Direito da 27ª Vara Cível da Comarca de Fortaleza/CE, que </p> julgou parcialmente procedente a Ação Ordinária de Abstenção do Uso de Direitos </p> Autorais/Marca, Concorrência Desleal c/c Pedido de Perdas e Danos, ajuizada em face de </p> João Paulo Valente da Silva, nos seguintes termos (Id. 24560218): </p> Ante o exposto, JULGO PROCEDENTE, com resolução de mérito, nos termos do </p> art. 487, I, do Código de Processo Civil, o pedido inicial para CONDENAR o réu JOÃO </p> PAULO VALENTE DA SILVA: </p> a) à obrigação de não fazer, qual seja a imediata </p> paralisação da fabricação, comercialização e exposição à venda de produtos contrafeitos

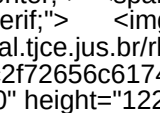
Processo	0266846-04.2022.8.06.0001
	que ostentem os sinais distintivos dos autores, bem como do uso de folhetos promocionais, catálogos ou materiais de propaganda e impressos que os contenham, sem o licenciamento dos autores, CONFIRMANDO, assim, a decisão de fls. 121/126 destes autos, ficando o réu sujeito ao pagamento de multa em caso de descumprimento, conforme lá exposto; b) ao pagamento de indenização por lucros cessantes, a serem apurados mediante liquidação de sentença, forte no art. 210, III, da Lei nº 9.276/96, nos termos da fundamentação supra (item II.3 desta sentença); c) ao pagamento de indenização a título indenização por dano moral no valor de R\$ 5.000,00 (cinco mil reais), acrescida de correção monetária pelo INPC/IBGE e de juros moratórios de 1% (um por cento), ambos a partir desta decisão. Em razão da sucumbência da parte requerida, condeno-a ao pagamento das custas, despesas processuais e honorários advocatícios que fixo em 10% (dez por cento) do valor da condenação (art. 85, § 2º, do Código de Processo Civil). Em relação aos danos patrimoniais, para o arbitramento da indenização material, devem ser aplicadas, por analogia, as diretrizes traçadas pelo “Enunciado VIII do Grupo de Câmaras Reservadas de Direito Empresarial da Egrégia Corte de Justiça do Estado de São Paulo”, mediante o cumprimento do disposto no art. 210, inciso III, da Lei 9.279/96, determinando o pagamento de remuneração que o autor da violação teria pago a cada titular do direito violado pela concessão de uma licença que lhe permitisse legalmente explorar o bem - conforme Jurisprudência do C. STJ - RECURSO ESPECIAL Nº 2059265 - SP (2023/0074857-5) RELATORA: MINISTRA NANCY ANDRIGHI, j.12.04.2023, acrescido de correção monetária pelos índices da tabela prática deste E. Tribunal de Justiça, desde o ajuizamento da ação, acrescido e de juros de mora de 1% ao mês, contados desde a data da citação; 2. Em relação aos danos morais, seja determinada a majoração da condenação para reparação dos prejuízos in re ipsa provocados pela infratora, no patamar de R\$ 20.000,00 PARA CADA VÍTIMA, TOTALIZANDO A IMPORTÂNCIA DE R\$ 40.000,00 (QUARENTA MIL REAIS), conforme Jurisprudência do C. STJ - RECURSO ESPECIAL Nº 2059265 - SP (2023/0074857-5) RELATORA: MINISTRA NANCY ANDRIGHI, j.12.04.2023 E AGRAVO EM RECURSO ESPECIAL Nº 1772195 - SP - 2020/0262188-1 - RELATORA: MINISTRA MARIA ISABEL GALLOTTI, j.25.04.2022, com os acréscimos legais, de sorte a compensar o dano causado à identidade das Apelantes. Sem contrarrazões. Em parecer de Id. 24559676, a Procuradoria Geral de Justiça informou não possuir interesse no feito. É o relatório. Despacho: VOTO Conforme relatado, ratifica-se de Apelação Cível interposta por Confederação Brasileira de Futebol – CBF e Santos Futebol Clube contra a sentença proferida pelo MM. Juiz de Direito da 27ª Vara Cível da Comarca de Fortaleza/CE, que

Processo	0266846-04.2022.8.06.0001
	julgou parcialmente procedente a Ação Ordinária de Abstenção do Uso de Direitos Autorais/Marca, Concorrência Desleal c/c Pedido de Perdas e Danos, ajuizada em face de João Paulo Valente da Silva. Em suas razões recursais, os apelantes requerem a reforma da sentença com relação aos danos materiais e morais. Pois bem. Inicialmente, no que se refere aos danos materiais, os apelantes pugnam que seja determinado o pagamento de remuneração que o autor da violação teria pago a cada titular do direito violado pela concessão de uma licença. que lhe permitisse legalmente explorar o bem." Além disso, requerem sejam aplicados os índices de correção monetária e dos juros de mora. Com efeito, analisando-se a sentença recorrida, verifica-se que o Juízo primevo entendeu cabível a condenação da parte requerida/apelada ao pagamento de lucros cessantes, que deverão ser apurados em sede de liquidação de sentença por arbitramento. Ainda, decidiu que, para a apuração do quantum devido ao autor, considerando o pedido nesse sentido, bem como a disposição legal de que deverá ser observado o critério mais favorável ao prejudicado, deverá, diante das circunstâncias do caso concreto, ser utilizado o critério do inciso III do dispositivo legal retrocitado. Aqui, o magistrado primevo fez referência ao art. 210, inciso III, da Lei 9.279/96 (Lei de Propriedade Industrial), segundo o qual os lucros cessantes serão determinados pela remuneração que o autor da violação teria pago ao titular do direito violado pela concessão de uma licença que lhe permitisse legalmente explorar o bem. exatamente como requerido pelos apelantes, razão pela qual entendo que carece de interesse recursal referido ponto. Por sua vez, em que pese o valor referente aos lucros cessantes deva ser apurado em sede de liquidação de sentença, o pleito de aplicação dos índices de correção monetária e dos juros de mora merece acolhida, pela omissão da sentença. Assim,

Processo	0266846-04.2022.8.06.0001
	size: 12pt;">determino que referido montante (danos materiais) seja devidamente atualizado (INPC) a contar do evento danoso, com a incidência d e juros de mora de 1% ao mês a contar da citação, nos termos do art. 405 do Código Civil.</p> <p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> No que se refere aos danos morais , os apelantes requerem, em suma, a majoração da indenização para o patamar de R\$ 20.000,00 para cada vítima. </p> <p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> A liquidação do valor indenizatório referente ao agravo moral, por sua vez, conforme firme entendimento jurisprudencial pátrio, fundado em consolidado magistério doutrinário, submete-se ao justo e equitativo arbitramento do julgador, haja vista a falta de parâmetros definidos na legislação para tanto, cujo convencimento deve considerar e ponderar a natureza dúplice de que se reveste, a saber: (a) o caráter expiatório – indenizar pecuniariamente o ofendido, proporcionando-lhe meios de amenizar, de arrefecer a dor e o constrangimento havidos em função da agressão sofrida, em um misto de compensação e satisfação – e (b) o punitivo – punir o causador do dano, inibindo-o de reincidir em novas lesões à moral alheia (neste sentido: STJ, EDcl no REsp 845001, Relatora Ministra ELIANA CALMON). </p> <p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> A reparação do dano moral cumpre, portanto, uma função de justiça corretiva ou sinalagmática, por conjugar, de uma só vez, a natureza satisfatória da indenização do dano moral para o lesado, tendo em vista o bem jurídico danificado, sua posição social, a repercussão do agravo em sua vida privada e social, e a natureza penal da reparação para o causador do dano, atendendo a sua situação econômica, a sua intenção de lesar (dolo ou culpa), a sua imputabilidade, etc (MARIA HELENA DINIZ, Indenização por dano moral, Consulex, 1997, n. 3). </p> <p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> Se não for possível, assim, fixar a indenização a partir dos critérios consagrados na jurisprudência, segundo os quais a quantia arbitrada pelo julgador possa ser idônea para, ao mesmo tempo, punir o agente, demovendo-o de reincidir na conduta danosa, e compensar a vítima pelo mal experimentado, sem enriquecê-la, é recomendável ao julgador, data vênua, fixar um valor a princípio expressivo, já que, valendo-se do princípio da razoabilidade, é inevitável concluir que a vocação punitiva da indenização do dano moral tem notória prevalência sobre a lenitiva. </p> <p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> A capacidade econômica das partes também pesa, pois quando é pessoa jurídica com grande poder econômico o valor da indenização deve ser, necessariamente, considerável, a fim de satisfazer a sua função punitiva. </p> <p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> Não bastasse, é de se enfatizar que o valor arbitrado pela parte autora, na exordial, é uma faculdade da parte que constitui mera proposição estimativa e, como tal, não vincula o julgador da causa, não ficando o julgador adstrito ao valor arbitrado pela parte (STJ, REsp 844778, Relatora Ministra NANCY ANDRIGHI), podendo fixá-lo em montante superior ou inferior ao estimado pela parte, não havendo de se falar em julgamento ultra ou infra petita (TJ/RS, AC 70039815683, Relator Desembargador JORGE ALBERTO SCHREINER PESTANA), tanto que, em caso de condenação em valor inferior ao estimado pela parte autora, não há de se falar em sucumbência recíproca (STJ, Súmula n. 326). </p> <p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> No presente caso, vê-se que o apelado foi condenado a pagar a quantia de R\$ 5.000,00 (cinco mil reais), montante que se revela compatível com o dano suportado. </p> <p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> Não há justificativa, portanto, para a intervenção excepcional desta Corte, na modificação do quantum fixado pelo Juízo Singular (STJ, REsp 932.334/RS, 3ª Turma, DJe de 04/08/2009). </p> <p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> Nesse sentido, o STJ: </p>

Processo	0266846-04.2022.8.06.0001
	class="western" style="line-height: 108%; margin-bottom: 0.28cm; margin-left: 4cm;" align="justify"> Somente em hipóteses excepcionais, quando irrisório ou exorbitante o valor da indenização por&#160;danos morais&#160;arbitrado na origem, a jurisprudência desta Corte permite o afastamento do óbice da Súmula n. 7 do STJ para possibilitar sua revisão. No caso, a quantia arbitrada na origem é razoável, não ensejando a intervenção desta Corte. (STJ, AgInt no AREsp 1.214.839/SC, relator Ministro Antonio Carlos Ferreira, Quarta Turma, DJe de 8/3/2019). </p><p class="western" style="line-height: 100%; margin-bottom: 0.28cm; text-indent: 3cm;" align="justify">

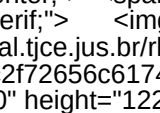
</p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> Diante do exposto, c onheço do recurso para a d a r lhe parcial provimento , reformando-se a sentença unicamente para fixar os índices de correção monetária e dos juros de mora referentes aos danos materiais. </p><p style="text-indent: 2.5cm; margin-bottom: 0cm; line-height: 150%;" align="justify"> É como voto. </p><p style="text-align: center;">&#160;</p><p style="text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA <br style="text-align: center;" /> Relator </p><p>&#160;</p><p>&#160;</p><p>&#160;</p><div> <p>&#160;</p> </div></div><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p></p>
Processo	0009797-45.2000.8.06.0167
Número de ordem	253
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Interpretação / Revisão de Contrato
Polo ativo	FRANCISCO DAS CHAGAS ALVES
Advogado(s) - Polo ativo	FRANCISCO JOSIFRAN MAGALHAES ALVES - (CE27655-A)
Polo passivo	BANCO DO BRASIL SA
Advogado(s) - Polo passivo	NELSON WILIANS FRATONI RODRIGUES - (CE16599-A) NEI CALDERON - (CE33485-A)
Terceiros	Não informado

Processo	0009797-45.2000.8.06.0167
Acórdão	 PROCESSO: 0009797-45.2000.8.06.0167 - 160; APELAÇÃO CÍVEL (198) APELANTE: FRANCISCO DAS CHAGAS ALVES APELADO: BANCO DO BRASIL SA EMENTA: DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO EM APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO. OFENSA AO PRINCÍPIO DA DIALETICIDADE. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA. RECURSO NÃO CONHECIDO. I. CASO EM EXAME 1. Agravo Interno interposto por Banco do Brasil S/A., contra decisão que conheceu da apelação e decretou a nulidade da sentença atacada. II. QUESTÃO EM DISCUSSÃO 2. A questão em discussão consiste em verificar se o recurso interposto atende ao princípio da dialeticidade, com a devida impugnação específica dos fundamentos da decisão recorrida. III. RAZÕES DE DECIDIR 3. O princípio da dialeticidade exige que a parte recorrente impugne de forma clara e específica os fundamentos da decisão recorrida, o que não foi observado pelo agravante, que se limitou a reproduzir os termos das contrarrazões sem confrontar os fundamentos da decisão monocrática. 4. A falta de impugnação específica impossibilita a análise do mérito recursal, conforme previsão do art. 932, III, do CPC, que determina o não conhecimento de recurso inadmissível ou que não tenha impugnado especificamente os fundamentos da decisão. 5. Jurisprudência consolidada do TJCE, STJ e STF reforça a necessidade de observância do princípio da dialeticidade para a admissibilidade dos recursos, sendo aplicáveis as Súmulas 43 do TJCE, 182 do STJ e 283 do STF. IV. DISPOSITIVO E TESE 6. Recurso não conhecido. Tese de julgamento: 1. O agravo Interno que não impugna especificamente os fundamentos da decisão recorrida deve ser considerado inadmissível, em observância ao princípio da dialeticidade, conforme previsto no art. 932, III, do CPC. Dispositivos relevantes citados: CPC, arts. 700, I, e 932, III; RITJCE, art. 76, XIV. Jurisprudência relevante citada: TJCE, Súmula nº 43; STJ, Súmula nº 182; STF, Súmula nº 283. Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em não conhecer do

Processo	0009797-45.2000.8.06.0167
	inadmissível, prejudicado ou que não tenha impugnado especificamente os fundamentos da decisão recorrida (art. 932, III, do CPC), pois, sem saber exatamente a razão do inconformismo do recorrente com a decisão recorrida, tendo em vista que debate matéria estranha àquela, não é possível a Corte de Justiça apreciar o mérito, pois o recurso não têm conteúdo que permita a superação do juízo de admissibilidade caracterizando um obstáculo ao juízo de mérito. Esse é o entendimento do Tribunal da Cidadania e do TJCE: AGRAVO INTERNO. AGRAVO INTERNO. AGRAVO EM RECURSO ESPECIAL. AUSÊNCIA DE IMPUGNAÇÃO A FUNDAMENTO DA DECISÃO AGRAVADA. NÃO CONHECIMENTO. ART. 932, III, DO CÓDIGO DE PROCESSO CIVIL/2015. SÚMULA 182/STJ. APLICAÇÃO POR ANALOGIA. NÃO PROVIMENTO. 1. Nos termos do art. 932, III, do Código de Processo Civil/2015, não se conhece de agravo cujas razões não impugnam especificamente o fundamento da decisão agravada. Aplicação, por analogia, do enunciado n. 182 da Súmula do STJ. 2. Em atenção ao princípio da dialeticidade, cumpre à parte recorrente o ônus de evidenciar, nas razões do agravo em recurso especial, o desacerto da decisão recorrida. 3. Confrontado o agravo com o acórdão recorrido, não se conhece de agravo cujas razões não impugnam especificamente o fundamento da decisão agravada. Aplicação, por analogia, do enunciado n. 182 da Súmula do STJ. 4. Agravo interno a que se nega provimento. (STJ. AgInt no AgInt no AREsp n. 2.376.134/MS. Rel. Min. Maria Isabel Gallotti. Quarta Turma. DJe: 03/07/2024) PROCESSUAL CIVIL. AGRAVO INTERNO NO RECURSO ORDINÁRIO EM MANDADO DE SEGURANÇA. MATÉRIA SUSCITADA SOMENTE NO AGRAVO INTERNO. INOVAÇÃO RECURSAL. INADMISSIBILIDADE. AUSÊNCIA DE IMPUGNAÇÃO ESPECÍFICA AOS FUNDAMENTOS DO ACÓRDÃO RECORRIDO. INOBSERVÂNCIA AO PRINCÍPIO DA DIALETICIDADE. USO DO MANDADO DE SEGURANÇA COMO SUCEDÂNEO RECURSAL. IMPOSSIBILIDADE. 3. Conforme a jurisprudência desta Corte, o recurso ordinário deve observar o princípio da dialeticidade, ou seja, apresentar as razões pelas quais a parte recorrente não se conforma com o acórdão proferido pelo Tribunal de origem, a fim de permitir ao julgador cotejar os fundamentos lançados na decisão judicial com as razões de insurgência. 4. Agravo interno parcialmente conhecido e, nessa extensão, não provido. (STJ. AgInt no RMS n. 71.953/SP. Rel. Min. Nancy Andrighi. Terceira Turma. DJe: 04/04/2024) DIREITO PROCESSUAL CIVIL. AGRAVO INTERNO EM APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO. INEXISTÊNCIA DE IMPUGNAÇÃO ESPECÍFICA AOS FUNDAMENTOS DA DECISÃO. INOBSERVÂNCIA AO PRINCÍPIO DA DIALETICIDADE. INCIDÊNCIA DA SÚMULA Nº 42, DO TJCE. ART. 1.010, II E III CUMULADA COM ART. 932, III, DO CPC. RECURSO NÃO CONHECIDO. 1. Em face do princípio da dialeticidade, os recursos devem evidenciar os motivos de fato e de direito da reforma da decisão recorrida (art. 1.010, II e III, do CPC). Por força desse princípio, a parte recorrente deve impugnar todos os fundamentos suficientes para reformar a decisão recorrida, de maneira a demonstrar que o julgamento proferido merece ser modificado. Portanto, não basta que faça alegações genéricas em sentido contrário às afirmações da decisão recorrida. 2. A impugnação

Processo	0009797-45.2000.8.06.0167
	especifica contra a decisão recorrida constitui exigência recursal, sem a qual a apelação não pode ser conhecida (Súmula nº 42 do TJCE e art. 932, III, do CPC). Nesse contexto, a atuação do órgão recursal encontra-se necessariamente adstrita ao confronto dos fundamentos lançados na decisão recorrida, mediante o cotejo dos motivos de fato e de direito que ensejam o pedido de reforma da decisão, inócurre na peça do recurso em apreciação, de forma que o seu não conhecimento é medida que se impõe, ante a inobservância ao princípio da dialeticidade. 3. Evidenciada a falha da parte agravante que deixou de impugnar, especificamente os fundamentos da decisão recorrida, esta subsiste inatacada e enseja a inadmissão do recurso. 4. Recurso não conhecido. (TJCE. AgInt nº 0201148-64.2022.8.06.0029. Rel. Des. André Luiz de Souza Costa. 4ª Câmara Direito Privado. DJe: 12/03/2024) AGRAVO INTERNO. AGRAVO EM RECURSO ESPECIAL. AUSÊNCIA DE IMPUGNAÇÃO A FUNDAMENTO DA DECISÃO AGRAVADA. NÃO CONHECIMENTO. ART. 932, III, DO CÓDIGO DE PROCESSO CIVIL/2015. SÚMULA 182/STJ. APLICAÇÃO POR ANALOGIA. NÃO PROVIMENTO. 1. Nos termos do art. 932, III, do Código de Processo Civil/2015, não se conhece de agravo cujas razões não impugnam especificamente o fundamento da decisão agravada. Aplicação, por analogia, do enunciado n. 182 da Súmula do STJ. 2. Em atenção ao princípio da dialeticidade, cumpre à parte recorrente o ônus de evidenciar, nas razões do agravo em recurso especial, o desacerto da decisão recorrida. 3. Agravo interno a que se nega provimento. (STJ. AgInt no AgInt no AREsp n. 2.376.134/MS. Rel. Min. Maria Isabel Gallotti. Quarta Turma. DJe: 03/07/2024) Evidenciado o equívoco da parte recorrente ao deixar de impugnar especificamente os fundamentos da decisão recorrida, esta subsiste inatacada, o que enseja a inadmissão do recurso. Em face do exposto, NÃO CONHEÇO do presente recurso por ofensa ao princípio da dialeticidade (arts. 932, III, do CPC; e 76, XIV, do RITJCE). É como voto. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA RELATOR
Processo	0050875-22.2020.8.06.0101
Número de ordem	254
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA

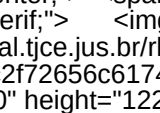
Processo	0050875-22.2020.8.06.0101
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	RAIMUNDA DAVI MOREIRA DE OLIVEIRA
Advogado(s) - Polo ativo	ANDERSON BARROSO DE FARIAS - (CE19623-A)
Polo passivo	BANCO SANTANDER (BRASIL) S.A.
Advogado(s) - Polo passivo	BARBARA RODRIGUES FARIA DA SILVA - (MG151204-A)
Terceiros	Não informado

Processo	0050875-22.2020.8.06.0101
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0050875-22.2020.8.06.0101 - 160; APELAÇÃO CÍVEL (198) APELANTE: RAIMUNDA DAVI MOREIRA DE OLIVEIRA APELADO: BANCO SANTANDER (BRASIL) S.A. EMENTA: APELAÇÃO CÍVEL. AÇÃO DE INDENIZAÇÃO POR DANO MORAL E MATERIAL. SENTENÇA PROCEDENTE. DESCONTOS INDEVIDOS. AUSÊNCIA DE CONTRATO VÁLIDO. FALHA NA PRESTAÇÃO DO SERVIÇO CONFIGURADA. PLEITO DE MAJORAÇÃO PROVIDO. RECURSO CONHECIDO E PROVIDO. 1. A controvérsia recursal consiste em, tão somente, verificar a possibilidade de majoração do quantum indenizatório por danos morais. 2. Feitas essas considerações, cumpre observar que o juízo de primeiro grau arbitrou na sentença a indenização por danos morais o montante de R\$ 1.000,00 (um mil reais). 3. Nesse contexto, vale destacar que da análise probatória, verifica-se ser incontroverso a ocorrência de dano moral, diante da falha na prestação do serviço da demandada, na medida em que o apelado não demonstrou, na condição de fornecedor do serviço adquirido, a regular celebração do contrato impugnado, não se desincumbindo a contento do ônus probante que lhe cabia, sendo imprescindível sua reparação. 4. Logo, quanto à indenização referente aos danos morais, o julgador deve levar em consideração certos critérios para sua fixação, quais sejam: a gravidade do fato e suas consequências para a vítima; a intensidade do dolo ou da culpa do agente; a eventual participação culposa do ofendido; a condição econômica do ofensor e as condições pessoais da vítima (posição política, social e econômica). Neste passo, a fixação do quantum indenizatório deve igualmente ser feita de maneira a evitar o enriquecimento ilícito, no entanto, não pode o valor ser irrisório. 5. Nesse íterim, considero que, in casu, o quantum fixado pelo magistrado a quo deve ser modificado, uma vez que o valor de R\$ 1.000,00 (um mil reais), não está em consonância com os parâmetros médios utilizados pela jurisprudência deste E. Tribunal, em demandas análogas, razão pela qual majoro o montante fixado para o valor de R\$ 2.000,00 (dois mil reais). 6. Recurso conhecido e provido. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação cível, para, no mérito, dar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Relator

Processo	0050875-22.2020.8.06.0101
	&#160; RELATÓRIO Tratam-se os autos de Apelação Cível interposta por RAIMUNDO DAVI MOREIRA DE OLIVEIRA, contra sentença prolatada pelo MM. Juiz de Direito da 1ª Vara Cível da Comarca de Itapipoca (CE), em sede de Indenização por Danos Morais e Materiais, proposta pelo ora apelante, em desfavor do Banco Santander S/A. Consta do dispositivo da sentença que o Magistrado a quo decidiu nos seguintes termos: (...) Ante o exposto, extingo o processo com resolução de mérito, nos termos do Art. 487, inciso I, do CPC, julgando PROCEDENTE a pretensão autoral para: i) reconhecer a nulidade do contrato objeto da lide, devendo a parte Requerida interromper os descontos que se baseiam no referido instrumento; ii) condenar a parte Requerida à restituição dos valores descontados da parte Requerente, sobre quais os incidirão correção monetária pelo INPC e juros de mora de 1% (um por cento) ao mês a partir de cada desconto, autorizada a compensação com os valores eventualmente depositados pelo polo passivo, sobre os quais incidirão correção monetária pelo INPC a partir da data do depósito, sob risco de enriquecimento ilícito da parte Requerente; iii) condenar o polo passivo ao pagamento de indenização por danos morais no importe de R\$ 1.000,00 (um mil reais), com a incidência de juros moratórios de 1% ao mês a partir do primeiro desconto indevido e correção monetária pelo INPC a partir do arbitramento (Súmula 362 do STJ). Diante da sucumbência, condeno o Requerido ao pagamento das custas processuais e ao pagamento de honorários advocatícios em 10% (dez por cento) do valor da condenação, nos termos do Art. 85, §2º, do CPC. Decorrido o prazo legal sem interposição de recurso, certifique-se o trânsito em julgado, arquivando-se os autos, em seguida, com baixa na distribuição. P.R.I. Irresignado, o recorrente interpôs o presente recurso, ID 24673356, requerendo a reforma da decisão recorrida para que seja majorada a indenização por danos morais devida pelo recorrido. Contrarrrazões, ID 24673384. Após, os autos ascenderam para julgamento nesta Corte. Deixo de encaminhar os autos ao Órgão Ministerial porque o interesse público que obriga à intervenção do Parquet deve estar relacionado com o interesse geral da coletividade, vinculado a fins sociais e às exigências do bem comum (ref. STJ, Resp 1199244/2011). Como a hipótese dos autos abrange somente interesse individual disponível, a manifestação meritória do Ministério Público é despicienda e sua dispensa, neste particular, está positivada no inciso VII do art. 932 c/c art. 178 do CPC. É o relatório. VOTO Conheço do presente Recurso Apelatário, visto estarem presentes os pressupostos intrínsecos e extrínsecos de admissibilidade. Com efeito, avançando ao mérito, a controvérsia recursal consiste em, tão somente, verificar a possibilidade de majoração do quantum indenizatório por danos morais. Da majoração do valor da indenização.

Processo	0050875-22.2020.8.06.0101
	justify;"> Feitas essas considerações, cumpre observar que o juízo de primeiro grau arbitrou na sentença a indenização por danos morais o montante de R\$ 1.000,00 (um mil reais). </p><p style="text-align: justify;"> Nesse contexto, vale destacar que da análise probatória, verifica-se ser incontroverso a ocorrência de dano moral, diante da falha na prestação do serviço da demandada, na medida em que o apelado não demonstrou, na condição de fornecedor do serviço adquirido, a regular celebração do contrato de empréstimo impugnado, não se desincumbindo a contento do ônus probante que lhe cabia, sendo imprescindível sua reparação. </p><p style="text-align: justify;"> Logo, quanto à indenização referente aos danos morais, o julgador deve levar em consideração certos critérios para sua fixação, quais sejam: a gravidade do fato e suas consequências para a vítima; a intensidade do dolo ou da culpa do agente; a eventual participação culposa do ofendido; a condição econômica do ofensor e as condições pessoais da vítima (posição política, social e econômica).&#160; </p><p style="text-align: justify;"> Neste passo, a fixação do quantum indenizatório deve igualmente ser feita de maneira a evitar o enriquecimento ilícito, no entanto, não pode o valor ser irrisório.&#160; </p><p style="text-align: justify;"> Nesse íterim, considero que , in casu, o quantum fixado pelo magistrado a quo deve ser modificado, uma vez que o valor de R\$ 1.000,00 (um mil reais), não está em consonância com os parâmetros médios utilizados pela jurisprudência deste E. Tribunal, em demandas análogas, razão pela qual majoro o montante fixado para o valor de R\$ 2.000,00 (dois mil reais). </p><p style="text-align: justify;"> Nesse sentido, colaciono os precedentes que embasam os argumentos aqui expostos:&#160; </p><p style="text-align: justify; padding-left: 120px;"> DIREITO CIVIL E PROCESSO CIVIL. APELAÇÃO CÍVEL EM AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO EM FOLHA DE PAGAMENTO DE APOSENTADA (ALFABETIZADA). MATÉRIA QUE NÃO SE ENQUADRA NA IRDR Nº 0630366-67.2019.8.06.0000. BENEFICIÁRIA DO INSS. PROCEDÊNCIA NA ORIGEM. LEGITIMIDADE DO DÉBITO NÃO COMPROVADA PELA INSTITUIÇÃO BANCÁRIA. AUSÊNCIA DE COMPROVAÇÃO DO DEPÓSITO DO CRÉDITO NA CONTA DA AUTORA. CONTRATAÇÃO FRAUDULENTA. COBRANÇA INDEVIDA. ATO ILÍCITO CONFIGURADO. RESPONSABILIDADE OBJETIVA DA INSTITUIÇÃO FINANCEIRA. SÚMULA 479 DO STJ. RESTITUIÇÃO A TÍTULO DE REPETIÇÃO DE INDÉBITO NA FORMA SIMPLES. DANO MORAL CARACTERIZADO. MENSURAÇÃO DO DANO. OBSERVÂNCIA AOS PRINCÍPIOS DA RAZOABILIDADE E DA PROPORCIONALIDADE. FIXAÇÃO EM R\$ 5.000,00 (CINCO MIL REAIS). SENTENÇA MANTIDA. RECURSO CONHECIDO E IMPROVIDO 1. Trata-se de Apelação Cível interposta pelo Banco de Crédito e Varejo S/A, em face da sentença do Juízo da 2ª Vara da Comarca de Santa Quitéria/CE que, julgou parcialmente procedente a Ação Declaratória de Nulidade de Relação Contratual c/c Condenação em Danos Morais, determinando a devolução do valor descontado indevidamente, bem como ao pagamento dos danos morais, na importância de R\$ 5.000,00 (cinco mil reais). 2. Não há, nos autos, qualquer documento que comprove o crédito referente ao empréstimo na conta da demandante. Por outro lado, o documento que instrui a exordial demonstra que o banco promovido efetivamente realizou descontos, decorrentes do suposto contrato de empréstimo consignado, na conta-corrente que a autora recebe seu benefício de aposentadoria (fl. 23). 3. A instituição financeira apresentou às fls. 103/110, cópia do contrato de nº 46-762235/10999. Não obstante isso, a instituição financeira deixou de apresentar o TED ou extrato, que comprovasse que o autor efetivamente recebeu os valores contratados, que justificasse os descontos na previdência do mesmo.. 4. Como o banco não se desincumbiu do ônus que lhe competia de comprovar a regularidade da contratação com o depósito do valor contratado na conta da requerente, demonstrando que a demandante teve a exata participação nos termos do contrato, de modo a afastar o vício de consentimento alegado, impõe-se a confirmação da sentença. 5. Configurado o defeito no serviço prestado, não tendo o banco procedido com as cautelas devidas para a contratação com a autora, assumiu o risco e a obrigação do prejuízo. Note-se que a instituição financeira não provou a ocorrência das excludentes de responsabilidade previstas no § 3º do art. 14 do CDC. 6. Entende-se que o dano moral fixado pelo primeiro grau de R\$ 5.000,00 (cinco mil reais), foi razoável e proporcional, punindo a ré pelo ato ilícito praticado e reparando a autora pelo abalo experimentado. Destarte, o quantum deve ser mantido. 7. Recurso Conhecido e improvido. Sentença mantida, em todos os seus termos. (TJCE, Apelação Cível nº0004641-43.2013.8.06.0160, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Privado, Data do julgamento: 30/06/2020, Data da publicação: 30/06/2020) (Destaquei) </p><p>

Processo	0050875-22.2020.8.06.0101
	</p><p>#160;</p> <p>#160;</p><p>#160;</p><p style="text-align: center;"> #160; </p>
Processo	0044833-49.2009.8.06.0001
Número de ordem	255
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	BANCO DO BRASIL SA
Advogado(s) - Polo ativo	NEI CALDERON - (CE33485-A) JORGE CHAVES SOARES NETO - (CE21294-A)
Polo passivo	Luzmar Macedo Fontenelle
Advogado(s) - Polo passivo	FLAVIO JOSE PINHEIRO DE LIMA - (CE14564)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0044833-49.2009.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0044833-49.2009.8.06.0001 - 160; APELAÇÃO CÍVEL (198) APELANTE: BANCO DO BRASIL SA APELADO: LUZMAR MACEDO FONTENELLE EMENTA: CIVIL E PROCESSO CIVIL. AÇÃO DE COBRANÇA. CADERNETA DE POUPANÇA. PLANOS ECONÔMICOS. PLANO VERÃO, COLLOR I E II. PRELIMINAR DE SOBRESTAMENTO DE FEITO, REJEITADA. PRESCRIÇÃO QUINQUENAL. REJEITADA. PRESCRIÇÃO VINTENÁRIA. EXISTÊNCIA DE DIREITO ADQUIRIDO AOS ÍNDICES PREVIAMENTE ESTIPULADOS QUANDO DO INÍCIO DO PERÍODO AQUISITIVO DE SUAS CONTAS. ART. 5º, INC. XXXVI, DA CF/88. CONDENAÇÃO DO BANCO NO PAGAMENTO DAS DIFERENÇAS DE REMUNERAÇÕES RELACIONADAS AOS ÍNDICES DE EXPURGO INFLACIONÁRIOS COM BASE NO ENTENDIMENTO DO STJ. JUROS REMUNERATÓRIOS DEVEM INCIDIR DE FORMA CAPITALIZADA NO PERCENTUAL DE 0,5% AO MÊS, DESDE A DATA EM QUE DEVERIA TER SIDO APLICADO O RESPECTIVO ÍNDICE ATÉ O SEU EFETIVO PAGAMENTO. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA MANTIDA. I – Trata-se de Apelação Cível interposta por Banco do Brasil S.A., em face da sentença prolatada pela MM. Juíza de Direito da 16.ª Vara Cível da Comarca de Fortaleza/CE, que julgou procedente a Ação de Cobrança proposta por LUZMAR MACEDO FONTENELLE em face do apelante, alegando o direito da correção do saldo de expurgos inflacionários referente a plano econômico do Governo Federal. II – A parte recorrente afirma que o presente feito deve ser sobrestado, tendo em vista que o Ministro Relator Dias Toffoli ordenou o sobrestamento de todas as ações que envolvam os denominados Planos Econômicos, até final deslinde pelo STF. Entretanto, conforme pesquisa realizada no sítio eletrônico do Supremo Tribunal Federal, a Ministra Cármen Lúcia, nos autos do RE 626.307/SP, indeferiu o pedido de suspensão nacional dos processos cuja demanda versa sobre os planos econômicos, motivo pelo qual se entende restar revogado o sobrestamento anteriormente deferido pelo Min. Dias Toffoli. III – Prescrição. Os juros remuneratórios, no presente caso, constituem-se no crédito principal e não na obrigação acessória, não se aplicando a regra do art. 178, § 10, III do CC/1916 (correspondente ao art. 206, §3º, do Código Civil de 2002), e sim à regra do art. 177, do CC/1916, que prevê o prazo prescricional de vinte anos para ações pessoais, como na hipótese. O Superior Tribunal de Justiça, sob o rito dos julgamentos de recurso repetitivo, no REsp nº 1.107.201-DF, adotou entendimento de que é vintenária a prescrição para as ações individuais em que se questionam as diferenças de índices de reajustes da remuneração da caderneta de poupança. IV - A relação jurídica estabelecida entre as partes, cujo objeto era o depósito em caderneta de poupança, possuía índices referente aos juros e correção monetária previamente acordados e estabelecidos conforme legislação vigente à época. Logo, o autor tem direito adquirido aos índices previamente estipulados quando do início do período aquisitivo de suas contas, tendo em vista o disposto no art. 5º, inc. XXXVI, da CF/88. V – No tocante aos expurgos de planos econômicos do Governo Federal, em especial o Plano Verão, esse tema já se encontra pacificado perante o Superior Tribunal de Justiça, com o advento do resultado do julgamento do REsp 1.107.201/DF (Temas 298, 299, 300, 301, 302), sob a égide do rito dos recursos repetitivos. Constatase que a

Processo	0044833-49.2009.8.06.0001
	condenação do banco apelante ao pagamento das diferenças de remunerações relacionadas aos índices de expurgo inflacionários incidentes na correção dos saldos existentes em caderneta de poupança da parte recorrida seguiu a orientação da Corte Superior de Justiça. VI - Quanto aos juros remuneratórios, estes devem incidir de forma capitalizada, no percentual de 0,5% ao mês, desde a data em que deveria ter sido aplicado o respectivo índice até o seu efetivo pagamento, haja vista que as poupanças são remuneradas de maneira universal com a aplicação de juros remuneratórios e correção monetária até o encerramento da conta poupança. VII - Recurso conhecido e não provido. Sentença mantida. ACORDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas, a unanimidade, em conhecer do recurso de apelação para, rejeitando a preliminar arguida, no mérito, NEGAR-LHE PROVIMENTO, tudo nos termos do voto do Desembargador Relator. Presidente do Órgão Julgador DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator RELATÓRIO Trata-se de Apelação Cível interposta por Banco do Brasil S.A., em face da sentença prolatada pela MM. Juíza de Direito da 16.ª Vara Cível da Comarca de Fortaleza/CE, que julgou procedente a Ação de Cobrança proposta por LUZMAR MACEDO FONTENELLE em face do apelante, alegando o direito da correção do saldo de expurgos inflacionários referente a plano econômico do Governo Federal. Irresignada com a Decisão, a requerida interpôs recurso de Apelação, ID 24730125, para requerer, preliminarmente, a necessidade de sobrestamento do feito, bem como a sua ilegitimidade passiva. A título de prejudicial de mérito arguiu a aplicação da prescrição quinquenal. Quanto ao mérito, refutou o direito autoral, postulando a improcedência da demanda. Contrarrazões apresentadas, ID 24730173. Os autos seguiram conclusos a esta relatoria. É o que importa relatar. VOTO É consabido que o procedimento recursal exige o preenchimento de pressupostos específicos, necessários para que se possa examinar o mérito do recurso interposto. Portanto, torna-se imperiosa, num primeiro momento, a análise dos pressupostos recursais, em razão de constituírem a matéria preliminar do procedimento recursal, ficando vedado ao Tribunal o conhecimento do mérito no caso de não preenchimento de quaisquer destes pressupostos. Tais pressupostos são classificados como intrínsecos (cabimento, interesse recursal, legitimidade recursal, inexistência de fato extintivo do direito de recorrer) e extrínsecos (regularidade formal, tempestividade e preparo). Os pressupostos intrínsecos estão atrelados ao direito de recorrer, ao passo que os extrínsecos se referem ao exercício desse direito. No presente recurso, as exigências legais foram cumpridas, razão pela qual conheço da insurgência. Consoante relatado acima, trata-se de Apelação Cível interposta por Banco do Brasil S.A., em face da sentença prolatada pela MM. Juíza de Direito da 16.ª Vara Cível da Comarca de Fortaleza/CE, que julgou procedente a Ação de Cobrança proposta por LUZMAR MACEDO FONTENELLE em face do apelante, alegando o direito da correção do saldo de expurgos inflacionários referente a plano econômico do Governo

Processo	0044833-49.2009.8.06.0001
	Federal. Resumidamente, em suas razões de recorrer a parte ré sustenta inicialmente a preliminar de sobrestamento da demanda. No mérito questiona a prescrição dos juros moratórios, inaplicabilidade do CDC, cumprimento de legislação específica da época, aplicação do princípio constitucional da legalidade, do direito adquirido, bem como a forma de apuração das diferenças porventura constatadas. Intimada para apresentar contrarrazões ao recurso, a parte autora; apresentou, ID 24730173. Em que pese os fundamentos contidos neste Apelo, de logo antecipo que razão não assiste o recorrente. Explico. Da preliminar de sobrestamento do feito A priori, a parte recorrente afirma que o presente feito deve ser sobrestado, tendo em vista que o Ministro Relator Dias Toffoli ordenou o sobrestamento de todas as ações que envolvam os denominados Planos Econômicos, até final deslinde pelo STF. Entretanto, conforme pesquisa realizada no sítio eletrônico do Supremo Tribunal Federal, a Ministra Cármen Lúcia, nos autos do RE 626.307/SP, indeferiu o pedido de suspensão nacional dos processos cuja demanda versa sobre os planos econômicos Bresser e Verão, motivo pelo qual se entende restar revogado o sobrestamento anteriormente deferido pelo Min. Dias Toffoli. Além disso, cabe ressaltar que, no final do ano de 2017, o Ministro Dias Toffoli, relator dos Recursos Extraordinários nºs 591797 e 626307, que tratam dos expurgos inflacionários, mais especificamente, sobre os planos econômicos Bresser e Verão, homologou acordo das partes, sobrestando a tramitação por 24 meses para que os interessados manifestassem adesão ao referido acordo. A referida decisão foi prolatada em 18.12.2017. Também acrescento que em decisão recente da lavra do Ministro Gilmar Mendes, datada de 16/04/2021, nos autos dos RE's 631.363 (tema 284) e 632.212 (tema 285) houve ordem de novo sobrestamento, mas apenas para os casos envolvendo os planos Collor I e Collor II, não abarcando as questões tratadas neste apelo. Dessa forma, restou expirado o prazo sem acordo no caso concreto, razão pela qual deve ser rejeitada a respectiva preliminar de sobrestamento ventilada nos autos, sendo então necessário dar andamento regular ao vertente feito. Mérito O apelante afirma, nas razões recursais, que é de cinco anos o prazo para ingressar com a cobrança de juros remuneratórios, nos termos do art. 178, § 10, III do CC/1916. Contudo, esta alegação não merece acolhimento. Os juros remuneratórios, no presente caso, constituem-se no crédito principal e não na obrigação acessória, não se aplicando a regra do art. 178, § 10, III do CC/1916 (correspondente ao art. 206, §3º, do Código Civil de 2002), e sim à regra do art. 177, do CC/1916, que prevê o prazo prescricional de vinte anos para ações pessoais, como na hipótese. O Superior Tribunal de Justiça, sob o rito dos julgamentos de recurso repetitivo, no REsp nº 1.107.201-DF, adotou entendimento de que é vintenária a prescrição para as ações individuais em que se questionam as diferenças de índices de reajustes da remuneração da caderneta de poupança. Veja-se: RECURSOS ESPECIAIS REPETITIVOS. CADERNETAS DE POUPANÇA. PLANOS ECONÔMICOS. EXPURGOS INFLACIONÁRIOS. RECURSOS REPRESENTATIVOS DE MACRO-LIDE MULTITUDINÁRIA EM AÇÕES INDIVIDUAIS MOVIDAS POR POUPADORES. JULGAMENTO NOS TERMOS DO ART. 543-C, DO CÓDIGO DE PROCESSO CIVIL. JULGAMENTO LIMITADO A MATÉRIA INFRACONSTITUCIONAL, INDEPENDENTEMENTE DE JULGAMENTO DE TEMA CONSTITUCIONAL PELO C. STF. PRELIMINAR DE SUSPENSÃO DO JULGAMENTO AFASTADA. CONSOLIDAÇÃO DE ORIENTAÇÃO JURISPRUDENCIAL FIRMADA EM INÚMEROS PRECEDENTES DESTA CORTE. PLANOS ECONÔMICOS BRESSER, VERÃO, COLLOR I E COLLOR II. LEGITIMIDADE PASSIVA AD CAUSAM. PRESCRIÇÃO. ÍNDICES DE CORREÇÃO. (...) 1º) A instituição financeira depositária é parte legítima para figurar no pólo passivo da lide em que se pretende o recebimento das diferenças de correção monetária de valores depositados em cadernetas de poupança, decorrentes de expurgos inflacionários dos Planos Bresser, Verão, Collor I e Collor II; com relação ao Plano Collor I, contudo, aludida instituição financeira depositária somente será parte legítima nas ações em que se buscou a correção monetária dos valores depositados em caderneta de poupança não bloqueados ou anteriores ao bloqueio. 2ª) É vintenária a prescrição nas ações individuais em que são questionados os critérios de remuneração da caderneta de poupança e são postuladas as respectivas diferenças, sendo inaplicável às ações individuais o prazo decadencial quinquenal atinente à Ação Civil Pública. (...) (REsp1107201/DF, Rel. Ministro SIDNEI BÊNEDI, SEGUNDA SEÇÃO, julgado

Processo	0044833-49.2009.8.06.0001
	em08/09/2010, DJe 06/05/2011)</p><p style="text-align: justify;"> Desta forma, é de se rejeitar o argumento da existência de prescrição quanto aos juros remuneratórios.</p><p style="text-align: justify;"> No que tange à alegação de que seria aplicado, ao caso, o prazo prescricional do Código de Defesa do Consumidor, essa também não deve ser acolhida.</p><p style="text-align: justify;"> Com relação ao caso em apreço, o Superior Tribunal de Justiça também já firmou entendimento no sentido de que o artigo 27 do Código de Defesa do Consumidor, que regula o prazo prescricional, aplica-se aos casos de vício ou defeito do produto ou serviço, mas não tem aplicação em ação de cobrança em que o autor busca questionar os lançamentos efetuados em suas contas bancárias.</p><p style="text-align: justify;"> Neste norte, são os arestos a seguir:</p><p style="text-align: justify; padding-left: 120px;"> "AGRAVO REGIMENTAL NO AGRADO DE INSTRUMENTO - BANCÁRIO - AÇÃO DECLARATÓRIA DE ILEGALIDADE DE COBRANÇA DE VALORES - PRESCRIÇÃO VINTENÁRIA - ARTIGO 177 DO CÓDIGO CIVIL - ARTIGOS 26, I, E 27 DO CDC - INAPLICABILIDADE, NA ESPÉCIE - REPETIÇÃO DE INDÉBITO EM DOBRO - MÁ-FÉ RECONHECIDA - ADMISSIBILIDADE - ACÓRDAO RECORRIDO EM HARMONIA COM A JURISPRUDENCIA DESTA CORTE - RECURSO IMPROVIDO." (AgRg no Ag 1320715/PR, Rel. Ministro MASSAMI UYEDA, TERCEIRA TURMA, julgado em 20/11/2012, DJe 04/12/2012).</p><p style="text-align: justify; padding-left: 120px;"> "E M E N T A-apelação cível - ação de Cobrança - Caderneta de Poupança - Expurgos inflacionários - Planos Econômicos - SOBRESTAMENTO DO FEITO - SUSPENSÃO PREVISTA NO CITADO ART. 328 DO RISTF NAO PODE EXCEDER O PRAZO DE UM ANO - Ilegitimidade Passiva afastada - Responsabilidade exclusiva da União rejeitada - Prescrição vintenária - ARTIGOS 26, I, E 27 DO CDC - INAPLICABILIDADE, NA ESPÉCIE - IPC DE JANEIRO e fevereiro DE 1989 (42,72% e 10,14% respectivamente) - Negado Provimento. I Considerando as metas estabelecidas pelo CNJ, o princípio constitucional da razoável duração do processo, e que a decisão de suspensão de julgamento dos recursos que se referem aos expurgos inflacionários do Plano Bresser, Verão, Collor I e II se deu há mais de um ano, o prosseguimento do presente recurso é medida de rigor e de Justiça. A suspensão prevista no citado art. 328 do Regimento Interno do STF não pode exceder o prazo previsto no art. 265, IV, a, § 5s, do Código de Processo Civil. II A União não é responsável pelos atos praticados pelo Banco, até mesmo porque não foi quem aplicou indevidamente os índices de correção monetária sobre os valores depositados em conta-poupança, e nao será quem deve arcar com a eventual devolução das diferenças apuradas. III "É vintenária a prescrição nas ações individuais em que são questionados os critérios de remuneração da caderneta de poupança e são postuladas as respectivas diferenças, sendo inaplicável rs ações individuais o prazo decadencial quinquenal atinente r Ação Civil Pública." (STJ REsp 1107201/DF). IV O Superior Tribunal de Justiça já firmou entendimento no sentido de que o artigo 26 e 27 do Código de Defesa do Consumidor, que regulam os prazos decadenciais e prescricionais, aplicam-se aos casos de vício ou defeito do produto ou serviço, mas não tem aplicação em ação de cobrança ou prestação de contas em que o autor busca revisar ou questionar os lançamentos efetuados em suas contas bancárias. V "Quanto ao Plano Verão (janeiro/1989), é de 42,72%, o percentual estabelecido com base no Índice de Preços ao Consumidor (IPC), índice de correção monetária das cadernetas de poupança com período mensal iniciado até 15 de janeiro de 1989, não se aplicando a Medida Provisória n. 32/89 (Plano Verão), que determinava a atualização pela variação das Letras Financeiras do Tesouro (LFT)." (STJ REsp 1107201/DF). "Há muito, pacificou-se o entendimento de que a alteração do índice do IPC de janeiro de 1989 para 42,72% enseja, necessariamente, a fixação do IPC de fevereiro de 1989 no percentual de 10,14%." (STJ EDcl no AgRg no Agravo de Instrumento nº 473.112-SP). (TJ-MS - AC: 01039442720088120002 MS 0103944-27.2008.8.12.0002, Relator: Des. Josué de Oliveira, Data de Julgamento: 26/03/2013, 4ª Câmara Cível, Data de Publicação: 02/04/2013) - Grifei</p><p style="text-align: justify;"> Assim, nem todos os conflitos de interesse ocorridos no âmbito de relações contratuais regidas pelo Código de Defesa do Consumidor podem ser enquadrados como dizendo respeito a vício ou defeito do produto ou serviço, de modo a ensejar a incidência do prazo de prescrição (art. 27) estabelecido no referido diploma legal, haja vista que, conforme entendimento pacífico do STJ, as ações em que se busca diferença remuneratória dos saldos de poupança, atingidos pelos expurgos inflacionários decorrentes do advento de planos econômicos, prescrevem em 20 (vinte) anos.</p><p style="text-align: justify;"> Superados os temas acima, nota-se que a relação jurídica estabelecida entre as partes, cujo objeto era o depósito em caderneta de poupança, possuía índices referente aos juros e correção monetária previamente acordados e estabelecidos conforme legislação vigente à época. Logo, o autor tem direito adquirido aos índices previamente estipulados quando do início do período aquisitivo de suas contas, tendo em vista o disposto no art. 5º, inc. XXXVI, da CF/88.&#160;</p><p style="text-align: justify;">

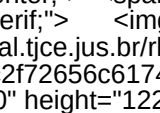
Processo	0044833-49.2009.8.06.0001
	small;">Destarte, eventuais alterações dos critérios de correção da caderneta de poupança não podem ser aplicados de forma retroativa. Deve incidir a remuneração pelo índice devido, aplicando-se, sobre o valor que a esse título for apurado, a correção monetária plena e contínua, desde o momento em que se fez devida até o efetivo pagamento, como meio de preservação do capital originalmente depositado. Sobre o ponto, o Superior Tribunal de Justiça já se pronunciou que&#160; "(...) Iniciada ou renovada a caderneta de poupança, norma posterior que altera o índice de correção incidente sobre tal modalidade de investimento não pode retroagir para alcançá-la. Tendo incidência imediata e dispondo para o futuro, não afeta situações jurídicas já constituídas." (STJ, REsp 22.331-7/RS). No caso, é possível concluir que o apelante admite que, realmente, não aplicou sobre o saldo mantido na conta poupança pelo apelado, pois cumpriu suposta ordem legal emanada do Poder Executivo, que, pretensamente, determinava a aplicação de outro índice para a finalidade perquirida nestes autos. Ademais, extrai-se do caderno processual que a conta poupança do apelado possui abertura anterior às novas regras da Medida Provisória nº 32/89, posteriormente convertida na Lei nº 7.730/1989, que passou a aplicar novos índices de correção da conta poupança, bem como da Lei nº 8.024/1990, pelo que o contrato entre as partes já estava em vigor e, portanto, legítima a pretensão exordial, evidenciando o direito adquirido. Os temas, inclusive, foram objeto de apreciação em reunião conjunta dos Recursos Especiais repetitivos nºs 1.107.201/DF e 1.147.595/RS pelo Superior Tribunal de Justiça, restando firmadas as seguintes teses: (...) 3º, 4º, 5º e 6º Temas: Os índices de correção de valores a que têm direito os depositantes de Cadernetas de Poupança relativamente aos Planos Bresser, Verão, Collor I e Collor II são os seguintes: a) Plano Bresser – Diferença de 26,06% (junho de 1987) Decreto-Lei 2.335/87, 2.336/87 e 2.337/87; b) Plano Verão Diferença de 42,72% (Janeiro de 1989); c) Plano Collor I - (parte atingida) Índice de 84,32% (Março de 1990) MP1688/90, convertida na Lei 8.0244/90; d) Plano Collor II – Diferença de 21,87% (Fevereiro de 1991) MP 294, de 31/1/91, convertida na Lei 8.177/91. Nessa guisa, não há que se falar em inexistência de direito adquirido, ante a superveniência de norma de ordem pública sobre os planos econômicos em discussão. &#160;Já em relação aos planos econômicos, em especial o plano Verão, tratado no vertente apelo, esse tema já se encontra pacificado perante o Superior Tribunal de Justiça, com o advento do resultado do julgamento do REsp 1.107.201/DF (Temas 298, 299, 300, 301, 302), sob a égide do rito dos recursos repetitivos, verbis: (...) No julgamento de Recurso Repetitivo do tipo consolidador de jurisprudência constante de numerosos precedentes estáveis e não de tipo formador de nova jurisprudência, a orientação jurisprudencial já estabilizada assume especial peso na orientação que se firma. III - Seis conclusões, destacadas como julgamentos em Recurso Repetitivo, devem ser proclamadas para definição de controvérsia:&#160; (...)&#160; 3ª) Quanto ao Plano Bresser (junho/1987), é de 26,06%, percentual estabelecido com base no Índice de Preços ao Consumidor (IPC), índice de correção monetária para as cadernetas de poupança iniciadas ou com aniversário na primeira quinzena de junho de 1987, não se aplicando a Resolução BACEN n.º 1.338/87, de 15/06/87, que determinou a atualização dos saldos, no mês de julho de 1987, pelo índice de variação do valor nominal das Obrigações do Tesouro Nacional (OTN).&#160; 4ª) Quanto ao Plano Verão (janeiro/1989), é de 42,72%, percentual estabelecido com base no Índice de Preços ao Consumidor (IPC), índice de correção monetária das cadernetas de poupança com período mensal iniciado até 15 de janeiro de 1989, não se aplicando a Medida Provisória n. 32/89 (Plano Verão), que determinava a atualização pela variação das Letras Financeiras do Tesouro (LFT).&#160; 5ª) Quanto ao Plano Collor I (março/1990), é de 84,32% fixado com base no índice de Preços ao Consumidor (IPC), conforme disposto nos arts. 10 e 17, III, da Lei 7.730/89, o índice a ser aplicado no mês de março de 1990 aos ativos financeiros retidos até o momento do respectivo aniversário da conta; ressalva-se, contudo, que devem ser atualizados pelo BTN Fiscal os valores excedentes ao limite estabelecido em NCz\$ 50.000,00, que constituíram conta individualizada junto ao BACEN, assim como os valores que não foram transferidos para o BACEN, para as cadernetas de poupança que tiveram os períodos aquisitivos iniciados após a vigência da Medida Provisória 168/90 e nos meses subsequentes ao seu advento (abril, maio e junho de 1990). 6ª) Quanto ao Plano Collor II, é de 21,87% o índice de correção monetária a

Processo	0044833-49.2009.8.06.0001
	ser aplicado no mês de março de 1991, nas hipóteses em que já iniciado o período mensal aquisitivo da caderneta de poupança quando do advento do Plano, pois o poupador adquiriu o direito de ter o valor aplicado remunerado de acordo com o disposto na Lei n. 8.088/90, não podendo ser aplicado o novo critério de remuneração previsto na Medida Provisória n. 294, de 31.1.1991, convertida na Lei n. 8.177/91. [...]. (STJ; RESP 1107201/DF, Rel. Ministro SIDNEI BENETI, SEGUNDA SEÇÃO, julgado em 08/09/2010, DJe 06/05/2011). Grifou-se A primeira Seção do Superior Tribunal de Justiça editou uma Tabela Única (construída a partir do compêndio de toda a jurisprudência daquela Corte), cujo conteúdo, o qual ora adoto, indica os percentuais a serem observados em sentenças exaradas em ações como a ora em análise, a propósito: (i) de 14,36 % em fevereiro de 1986 (expurgo inflacionário, em substituição à ORTN do mês); (ii) de 26,06% em junho de 1987 (expurgo inflacionário, em substituição à OTN do mês); (iii) de 42,72% em janeiro de 1989 (expurgo inflacionário, IPC/IBGE em substituição à OTN do mês); (iv) de 10,14% em fevereiro de 1989 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (v) de 84,32% em março de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (vi) de 44,80% em abril de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (vii) de 7,87% em maio de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (viii) de 9,55% em junho de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (ix) de 12,92% em julho de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (x) de 12,03% em agosto de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (xi) de 12,76% em setembro de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (xii) de 14,20% em outubro de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (xiii) de 15,58% em novembro de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (xiv) de 18,30% em dezembro de 1990 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (xv) de 19,91% em janeiro de 1991 (expurgo inflacionário, IPC/IBGE em substituição à BTN do mês); (xvi) de 21,87% em fevereiro de 1991 (expurgo inflacionário, IPC/IBGE em substituição à INPC do mês). (STJ; EREsp913.201/RJ, Relator: Ministro LUIZ FUX, PRIMEIRA SEÇÃO, julgado em 22/10/2008, DJe 10/11/2008). O Tribunal de Justiça do Estado do Ceará, em casos análogos, também vem pautando suas decisões com base nesse mesmo entendimento. Verbis PROCESSUAL CIVIL. RECURSOS APELATÓRIOS. AÇÃO DE COBRANÇA. EXPURGOS INFLACIONÁRIOS. SENTENÇA DE PROCEDÊNCIA. APELAÇÃO DO BANCO REQUERIDO. PRELIMINAR DE PRESCRIÇÃO. DESACOLHIMENTO. MÉRITO. PLANO BRESSER. APLICAÇÃO DO ÍNDICE DE 26,06%, PARA A CORREÇÃO MONETÁRIA, COM BASE NO IPC (ÍNDICE DE PREÇOS AO CONSUMIDOR). PLANO VERÃO. APLICAÇÃO DO ÍNDICE DE 42,72%, PARA A CORREÇÃO MONETÁRIA TAMBÉM PELO IPC. PLANO COLLOR I. APLICAÇÃO DO ÍNDICE DE 84,32%, PARA A CORREÇÃO MONETÁRIA, COM BASE NO IPC (ÍNDICE DE PREÇOS AO CONSUMIDOR). PLANO COLLOR II. APLICAÇÃO DO ÍNDICE DE 21,87% PARA A CORREÇÃO MONETÁRIA, PARA AS SITUAÇÕES EM QUE INICIADO O PERÍODO AQUISITIVO DA CADERNETA DE POUPANÇA. JURISPRUDÊNCIA DO STJ. JULGAMENTO PELA SISTEMÁTICA DOS RECURSOS REPETITIVOS. RESP Nº 1.147.595/RS E RESP Nº 1.107.201/DF. APELAÇÃO CONHECIDA, MAS DESPROVIDA. MAJORAÇÃO DOS HONORÁRIOS RECURSAIS PARA R\$ 1.000,00 (UM MIL REAIS), COM OS CONSEQUÊNCIAS FIXADOS NA SENTENÇA. 1. Recurso apelatório interposto contra sentença de procedência do pedido autoral em ação de cobrança que versa sobre a matéria dos expurgos inflacionários dos Planos Bresser, Verão, Collor I e II. 2. Afasta-se a

Processo	0044833-49.2009.8.06.0001
	preliminar de prescrição alegada pela instituição financeira, visto que o STJ, da mesma forma e no mesmo recurso paradigma acima grafado, consagrou a orientação de que: " é vintenária a prescrição nas ações individuais em que são questionados os critérios de remuneração da caderneta de poupança e são postuladas as respectivas diferença, sendo inaplicável às ações individuais o prazo decadencial quinquenal atinente à Ação Civil Pública. 3. No mérito, em relação aos índices para a correção monetária dos saldos das cadernetas de poupança na implantação dos planos econômicos, mais uma vez o REsp nº 1.147.595/RS fixou entendimento dominante de que, em relação ao Plano Bresser, o índice a ser aplicado é de 26,06%, com base no IPC e o do Plano Verão é de 42,72%, também com base no IPC. Em relação ao Plano Collor I é de 84,32%, o índice a ser aplicado (IPC). E para o Plano Collor II, é de 21,87% para as situações iniciado o período aquisitivo. 4. Apelação conhecida, mas desprovida. Majoração dos honorários recursais para R\$1.000,00 (um mil reais), além dos consectários fixados na sentença . ACÓRDÃO Vistos, relatados e discutidos os presentes autos, em que litigam as partes, acima nominadas, ACORDA, a TURMA JULGADORA DA TERCEIRA CÂMARA DE DIREITO PRIVADO DO TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ, por UNANIMIDADE, em CONHECER DO RECURSO, MAS PARA LHE DESPROVER, tudo nos termos do voto da Relatora, que integra esta decisão.&#160; RELATORA (Relator (a): MARIA VILAUFA FAUSTO LOPES; Comarca: Fortaleza; Órgão julgador: 3ª Vara Cível; Data do julgamento: 09/12/2020; Data de registro: 09/12/2020)</p><p style="text-align: justify; padding-left: 120px;"> CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DE COBRANÇA. PRELIMINAR PARA SOBRESTAR O FEITO. REJEITADA. PRECEDENTES DO STF. EXPURGOS INFLACIONÁRIOS. CADERNETAS DE POUPANÇA. DEMONSTRAÇÃO DE INDÍCIOS MÍNIMOS DA EXISTÊNCIA DA CONTA. PLANOS BRESSER E VERÃO. DIREITO AO PAGAMENTO DAS DIFERENÇAS POSTULADAS. JUROS REMUNERATÓRIOS. TERMO FINAL. DATA DE ENCERRAMENTO. CONTRATO DE DEPÓSITO. INCIDÊNCIA. RECURSO CONHECIDO E IMPROVIDO. 1. O índice aplicável para correção monetária das cadernetas de poupança abertas ou renovadas até o dia 15, nos meses de junho de 1987 e janeiro de 1989, é o IPC, que revelou inflação de 26,06% e 42,72%, respectivamente. 2. PRELIMINAR PARA SOBRESTAR O FEITO. 2.1. O pleito de sobrestamento do processo em razão das decisões do Supremo Tribunal Federal nos RES 591.797 e 626.307 não merece acolhida, em razão das recentes decisões da Ministra Rosa Weber e do Ministro Gilmar Mendes que negaram seguimento ao pleito de suspensão de processo que versava sobre matéria idêntica à discutida nos presentes autos, por entenderem que não mais subsiste a ordem de suspensão processual dos feitos onde se discute os expurgos inflacionários dos planos econômicos Bresser, Verão, Collor I e Collor II. 2.2. Assim, diferentemente do que defende a parte recorrente, inexistente óbice para o julgamento do apelo, mormente se consideradas as decisões proferidas no âmbito do Supremo Tribunal Federal sobre o assunto. Preliminar para sobrestar o feito rejeitada. 3. MÉRITO. 3.1. No mérito, ao se compulsar os autos observa-se que o autor da demanda demonstrou o fato constitutivo de seu direito, pois juntou documentos, fls. 18/21, hábeis a comprovar a existência de conta poupança de sua titularidade e de saldo no período dos Planos Econômicos vindicados, fazendo, assim, jus às diferenças postuladas. 3.2. A pretensão do autor, ora apelado, diz respeito ao Plano Bresser e ao Plano Verão, motivo pelo qual se impõe observar os percentuais fixados pelos Temas nº 301 e nº 302 da Corte Superior, a propósito: Tema nº 301: Quanto ao Plano Bresser (junho/1987), é de 26,06%, percentual estabelecido com base no Índice de Preços ao Consumidor (IPC), índice de correção monetária para as cadernetas de poupança iniciadas ou com aniversário na primeira quinzena de junho de 1987, não se aplicando a Resolução BACEN n.º 1.338/87, de 15/06/87, que determinou a atualização dos saldos, no mês de julho de 1987, pelo índice de variação do valor nominal das Obrigações do Tesouro Nacional (OTN). Tema nº 302: Quanto ao Plano Verão (janeiro/1989), é de 42,72%, percentual estabelecido com base no Índice de Preços ao Consumidor (IPC), índice de correção monetária das cadernetas de poupança com período mensal iniciado até 15 de janeiro de 1989, não se aplicando a Medida Provisória n. 32/89 (Plano Verão), que determinava a atualização pela variação das Letras Financeiras do Tesouro (LFT). 3.3. Nesse sentido, o poupador tem direito ao recebimento da correção monetária, segundo a variação aferida pelo IPC, que em junho de 1987 e em janeiro de 1989 correspondiam, respectivamente, a 26,06% e 42,72%, tal como constou na sentença recorrida. 3.4. Quanto aos juros remuneratórios, deve incidir juros remuneratórios, de forma capitalizada, no percentual de 0,5% ao mês, desde a data em que deveria ter sido aplicado o respectivo índice até o seu efetivo pagamento, haja vista que as poupanças são remuneradas de maneira universal com a aplicação de juros remuneratórios e correção monetária até o encerramento da conta poupança. 3.5. Recurso conhecido e improvido. Vistos, relatados e discutidos os presentes autos de apelação cível nº 0003721-37.2008.8.06.0001, em que figuram as partes acima indicadas, acordam os Desembargadores integrantes da 2ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por votação unânime, em conhecer do recurso, mas para negar-lhe provimento, em conformidade com o voto do eminente relator. Fortaleza, 3 de fevereiro de 2021 FRANCISCO DARIVAL BESERRA PRIMO Presidente do Órgão Julgador

Processo	0044833-49.2009.8.06.0001
	DESEMBARGADOR CARLOS ALBERTO MENDES FORTE Relator (Relator (a): CARLOS ALBERTO MENDES FORTE; Comarca: Fortaleza; Órgão julgador: 3ª Vara Cível; Data do julgamento: 03/02/2021; Data de registro: 04/02/2021) Assim sendo, uma vez que a condenação do banco apelante ao pagamento das diferenças de remunerações relacionadas aos índices de expurgo inflacionários incidentes na correção dos saldos existentes em caderneta de poupança da parte recorrida seguiu a orientação da Corte Superior de Justiça, e os valores deverão ser calculados em sede de liquidação de sentença, inexistente motivo para acolher as razões recursais apresentadas pela Apelante. Quanto aos juros remuneratórios, estes devem incidir de forma capitalizada, no percentual de 0,5% ao mês, desde a data em que deveria ter sido aplicado o respectivo índice até o seu efetivo pagamento, haja vista que as poupanças são remuneradas de maneira universal com a aplicação de juros remuneratórios e correção monetária até o encerramento da conta poupança. Neste sentido, seguem os julgados a seguir transcritos: AGRAVO INTERNO NO RECURSO ESPECIAL. BANCÁRIO. EXPURGOS INFLACIONÁRIOS. CONTA-POUPANÇA. ART.6º, VIII, DO CDC. PREQUESTIONAMENTO. AUSÊNCIA. SÚMULA Nº 282/STF. JUROS REMUNERATÓRIOS. TERMO FINAL. DATA DE ENCERRAMENTO. CONTRATO DE DEPÓSITO.1. Ausente o prequestionamento, até mesmo de modo implícito, de matéria suscitada no recurso especial, incide, por analogia, o disposto na Súmula nº 282/STF.2. Os juros remuneratórios são devidos em virtude da utilização de capital alheio, de forma que, inexistindo quantia depositada, não se justifica a incidência de juros remuneratórios, pois o depositante não estará privado da utilização do dinheiro e o banco depositário não estará fazendo uso do capital de terceiros ou não terá a disponibilidade da pecúnia. Precedentes.3. A incidência dos juros remuneratórios, na espécie, se dá até o encerramento da conta-poupança, quer esta ocorra em razão do saque integral dos valores depositados, quer ocorra a pedido do depositante, com a consequente devolução do numerário depositado.4. Agravo interno não provido.(AgInt no REsp 1545905/RS, Rel. Ministro RICARDO VILLAS BOAS CUEVA, TERCEIRA TURMA, julgado em 10/11/2016,DJe 21/11/2016). CIVIL E PROCESSUAL CIVIL. AÇÃO DE COBRANÇA. CADERNETA DE POUPANÇA. PRELIMINARES DE NÃO CONHECIMENTO DO RECURSO POR INADEQUAÇÃO DO PEDIDO, DE QUITAÇÃO TÁCITA E II. CORREÇÃO. IPC. JUROS REMUNERATÓRIOS. CORREÇÃO MONETÁRIA. JUROS DEMORA. INCIDÊNCIA. SENTENÇA REFORMADA.1 - Descabida a preliminar de não conhecimento do recurso por irregularidade formal em decorrência da inadequação do pedido formulado, tendo em vista que o pedido formulado na Apelação(de reforma da sentença) não está equivocado, uma vez que o Juiz a quo julgou improcedentes os pedidos, extinguindo o Feito com julgamento de mérito (art. 296, I, CPC), ou seja, não há que se falar em cassação da sentença e sim em sua reforma.2 - O STJ firmou entendimento no sentido de que "não se há de falar em quitação tácita do débito relativo à inadequada correção dos depósitos em caderneta de poupança pelo simples fato de que o poupador deixou de manifestar, em momento imediato, sua ressalva, vindo a movimentar posteriormente a conta de poupança." (REsp 146545/SP), e, por conseguinte, não há que se falar em carência de ação, por impossibilidade jurídica do pedido, pois não há a alegada necessidade de formulação de pedido anulatório da suposta quitação havida, para somente então, formular pedido de cobrança dos expurgos.3 - Prescreve em vinte anos o pleito de correção monetária dos depósitos existentes em caderneta de poupança, incluindo os juros remuneratórios, porquanto se agregam ao valor principal. Inteligência do artigo 177 do Código Civil de 1916.Precedentes jurisprudenciais do C. STJ. Prejudicial de mérito afastada.4 - O entendimento sufragado tanto no âmbito das Cortes Superiores de Justiça quanto neste egrégio Tribunal é o de que não incide no cálculo da atualização monetária dos saldos existentes em caderneta de poupança o disposto na MP nº 168/90, convertida na Lei nº 8.024/90, prevalecendo o IPC no percentual de maio/90 - 7,87%, junho/90 - 9,55%, àquelas iniciadas ou renovadas na primeira quinzena do respectivo mês(Plano Collor I).5 - Ainda, nos termos da jurisprudência do e. STJ e desta Corte de Justiça, é devida a correção monetária incidente sobre os saldos em cadernetas de poupança, no percentual de 21,87%(fevereiro de 1991), em decorrência da edição do Plano Collor II (MP nº 294, de 31/01/1991, convertida na Lei nº 8.177/91).àquelas abertas ou renovadas antes de 31/01/1991.6 - Sobre os valores devidos a título de expurgos inflacionários, deve incidir juros remuneratórios, de forma capitalizada, no percentual de 0,5% ao mês, desde a data em que deveria ter sido aplicado o respectivo índice até o seu efetivo pagamento, haja vista que as poupanças são remuneradas de maneira universal com a aplicação de juros remuneratórios e correção monetária.7 - A correção monetária deve incidir a partir do evento, ou seja, a partir do efetivo prejuízo, o que corresponde ao

Processo	0044833-49.2009.8.06.0001
	momento em que foram creditados os rendimentos da conta-poupança em percentuais aquém dos efetivamente devidos.8 - A incidência dos juros de mora decorre de imperativo legal, razão pela qual não cumprida pontualmente a obrigação, a parte sucumbente deve arcar com juros moratórios no percentual de 1% (um por cento) ao mês, a partir da citação válida, nos termos dos artigos 219 do CPC e 405 do CC/2002.9 - Havendo sucumbência parcial, as partes devem arcar com os honorários advocatícios de seus causídicos (art. 21 do CPC),bem como ratear as custas. Apelação Cível parcialmente provida. (Acórdão 686260, 20090110061819APC, Relator: ANGELO CANDUCCI PASSARELI, , Revisor: JOÃO EGMONT, 5ª Turma Cível, data de julgamento: 20/6/2013, publicado no DJE:28/6/2013. Pág.: 132) Ante o exposto, voto pelo conhecimento do recurso de apelação, para, rejeitando a preliminar arguida, no mérito NEGAR-LHE PROVIMENTO de modo a manter inalterada a sentença recorrida. Nos termos do disposto no art. 85, §11º, do CPC, majoro os honorários sucumbenciais em 2% (dois por cento). É como voto. Carlos Augusto Gomes Correia Desembargador Relator &#160; &#160;
Processo	3000660-34.2024.8.06.0300
Número de ordem	256
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Contratos Bancários
Polo ativo	ANTONIO OSMIR DIMAS DA SILVA
Advogado(s) - Polo ativo	MARIA ALINE TEIXEIRA DUARTE - (CE42289-A)
Polo passivo	UNASPUB - UNIAO NACIONAL DE AUXILIO AOS SERVIDORES PUBLICOS
Advogado(s) - Polo passivo	ANDERSON DE ALMEIDA FREITAS - (DF22748-A)
Terceiros	Não informado

Processo	3000660-34.2024.8.06.0300
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 3000660-34.2024.8.06.0300 - 160; APELAÇÃO CÍVEL (198) APELANTE: ANTONIO OSMIR DIMAS DA SILVA APELADO: UNASPUB - UNIAO NACIONAL DE AUXILIO AOS SERVIDORES PUBLICOS EMENTA: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO ANULATÓRIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS E MATERIAIS. DESCONTOS INDEVIDOS. CONTRATAÇÃO NÃO COMPROVADA. NULIDADE DO NEGÓCIO JURÍDICO. REPETIÇÃO DE INDÉBITO EM DOBRO. DANO MORAL CONFIGURADO. QUANTUM INDENIZATÓRIO FIXADO EM R\$ 3.000,00. PEDIDO DE MAJORAÇÃO. VALOR MANTIDO POR ATENDER AOS PRINCÍPIOS DA RAZOABILIDADE E PROPORCIONALIDADE. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Apelação Cível interposta por Antonio Osmir Dimas da Silva contra sentença da Vara Única da Comarca de Jucás/CE, que, em Ação Anulatória de Débito c/c Indenização por Danos Morais e Materiais ajuizada contra a UNASPUB – União Nacional de Auxílio aos Servidores Públicos, julgou parcialmente procedente o pedido para: (i) declarar a nulidade do contrato impugnado e reconhecer a inexistência dos descontos realizados; (ii) condenar a ré à restituição em dobro dos valores descontados, acrescidos de juros e correção; (iii) fixar indenização por danos morais em R\$ 3.000,00; e (iv) condenar a ré em custas e honorários advocatícios. O autor apelou pleiteando a majoração do valor arbitrado a título de danos morais. II. QUESTÃO EM DISCUSSÃO 1. A questão em discussão consiste em verificar se o valor da indenização fixado em R\$ 3.000,00 a título de danos morais deve ser majorado em razão da prática de descontos indevidos decorrentes de contrato inexistente. III. RAZÕES DE DECIDIR 1. O dano moral restou configurado diante da falha na prestação de serviço da ré, que não comprovou a celebração válida do contrato, descumprindo o ônus probatório que lhe incumbia. 2. A indenização por danos morais deve ser fixada considerando a gravidade do fato, a extensão das consequências, a condição econômica das partes e os princípios da razoabilidade e proporcionalidade. 3. O valor fixado em R\$ 3.000,00 mostra-se adequado ao caso concreto, atendendo aos parâmetros médios da jurisprudência do TJCE em situações análogas, de modo a reparar o abalo sofrido sem ensejar enriquecimento ilícito do autor. 4. Precedentes do TJCE confirmam a fixação de valores na faixa de R\$ 3.000,00 a R\$ 5.000,00 em casos de descontos indevidos por ausência de contrato válido, sendo o quantum arbitrado compatível com tais balizas (TJCE, Apelação Cível nº 0004641-43.2013.8.06.0160, Rel. Des. Maria Vilauba Fausto Lopes, 3ª Câmara Direito Privado, j. 30.06.2020; TJCE, Agravo Interno Cível nº 0009308-07.2018.8.06.0028, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara Direito Privado, j. 18.05.2022). IV. DISPOSITIVO E TESE 7. Recurso desprovido. Tese de julgamento: 1. O fornecedor que efetua descontos sem comprovar a regularidade da contratação responde objetivamente por danos materiais e morais. 2. A fixação do valor da indenização por danos morais deve observar os princípios da razoabilidade e proporcionalidade, evitando-se tanto a fixação irrisória quanto o enriquecimento ilícito. 3. O valor de R\$ 3.000,00 mostra-se adequado e proporcional em casos de descontos indevidos decorrentes de inexistência contratual. Dispositivos relevantes citados: CF/1988, art. 5º, V e X; CC, arts. 186, 368, 398 e 927; CDC, art. 14; CPC/2015, arts. 373, 487, I, e 85, § 2º. Jurisprudência relevante citada: STJ, EREsp 1.413.542, EAREsp 676.608, EAREsp 664.888 e EAREsp 600.663, Corte Especial, j. 30.03.2021; TJCE, Apelação Cível nº 0004641-43.2013.8.06.0160, Rel.

Processo	3000660-34.2024.8.06.0300
	Des. Maria Vilauba Fausto Lopes, 3ª Câmara Direito Privado, j. 30.06.2020; TJCE, Agravo Interno Cível nº 0009308-07.2018.8.06.0028, Rel. Des. Emanuel Leite Albuquerque, 1ª Câmara Direito Privado, j. 18.05.2022. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer do recurso de apelação cível, para no mérito negar-lhe provimento, nos termos do voto do Relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Relator DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relatório Trata-se de Apelação Cível interposta por ANTONIO OSMIR DIMAS DA SILVA, contra sentença prolatada pelo MM. Juiz de Direito da Vara Única da Comarca de Jucás(CE), em sede de Ação Anulatória de Débito c/c Indenização por Danos Morais e Materiais, proposta pelo ora apelante, em desfavor do UNASPUB - UNIAO NACIONAL DE AUXILIO AOS SERVIDORES PUBLICOS . Consta do dispositivo da sentença que o Magistrado a quo decidiu nos seguintes termos: (...) Isso posto, JULGO PARCIALMENTE PROCEDENTE a pretensão formulada na inicial, extinguindo o processo com resolução de mérito nos moldes do art. 487, I, do CPC, para: a) Declarar a nulidade do negócio objeto desta demanda, reconhecendo a inexistência/nulidade das deduções intituladas como “CONTRIB. UNASPUB SAC 08005040128”. b) Condenar a parte requerida a devolver à parte autora, ante a nulidade contratual, o valor das parcelas descontadas, acrescidas de juros de 1% ao mês, a contar do dia em que cada desconto foi efetuado (art. 398 do Código Civil e súmula 54 do STJ) e correção monetária pelo INPC a partir da mesma data (Súmula nº 43 do STJ), sendo a restituição na forma dobrada, tendo em vista que as quantias foram descontadas após a publicação do acórdão do STJ no julgamento do EREsp 1.413.542, EAREsp 676.608, EAREsp 664.888 e EAREsp 600.663 (30/03/2021). c) Condenar a parte promovida ao pagamento de R\$ 3.000,00 (três mil reais) à parte autora a título de indenização por danos morais, com correção monetária (INPC) contada da data desta sentença (Súmula 362, STJ) e juros de mora de 1% a partir do evento danoso (súmula 54, STJ). Fica autorizada, desde logo, a compensação entre os créditos devidos entre as partes no tocante aos valores que são objeto desta demanda, com correção monetária pelo INPC, nos moldes do art. 368 e seguintes do Código Civil. Condeno a parte ré ao pagamento das custas processuais e ao pagamento de honorários advocatícios que fixo em 10% do valor da condenação, nos termos do art. 85, §2º, do CPC. Publique-se. Registre-se. Intime-se. Transitada em julgado, intime-se a parte autora, por seu causídico, para dar início ao cumprimento de sentença, sob pena de arquivamento do feito. Irresignado, o apelante interpôs recurso de apelação, ID 24792080, requerendo a reforma da decisão recorrida para majorar o valor arbitrado a título de danos morais. Sem contrarrazões, ID 24792084. Após, os autos ascenderam para julgamento nesta Corte. É o relatório. VOTO Conheço do presente Recurso Apelatório, visto estarem presentes os pressupostos intrínsecos e extrínsecos de admissibilidade. Com efeito, a controvérsia recursal consiste em, tão somente, verificar a possibilidade de majoração do valor arbitrado a título de danos morais. Da majoração do valor da indenização. Feitas essas considerações, cumpre observar que o juízo de primeiro grau arbitrou na sentença a

Processo	3000660-34.2024.8.06.0300
	indenização por danos morais o montante de R\$ 3.000,00 (três mil reais). Nesse contexto, vale destacar que da análise probatória, verifica-se ser incontroverso a ocorrência de dano moral, diante da falha na prestação do serviço da demandada, na medida em que o apelado não demonstrou, na condição de fornecedor do serviço adquirido, a regular celebração do contrato de empréstimo impugnado, não se desincumbindo a contento do ônus probante que lhe cabia, sendo imprescindível sua reparação. Logo, quanto à indenização referente aos danos morais, o julgador deve levar em consideração certos critérios para sua fixação, quais sejam: a gravidade do fato e suas consequências para a vítima; a intensidade do dolo ou da culpa do agente; a eventual participação culposa do ofendido; a condição econômica do ofensor e as condições pessoais da vítima (posição política, social e econômica). Neste passo, a fixação do quantum indenizatório deve igualmente ser feita de maneira a evitar o enriquecimento ilícito, no entanto, não pode o valor ser irrisório. Nesse íterim, considero que, in casu, o quantum fixado pelo magistrado a quo não deve ser modificado, uma vez que o valor de R\$ 3.000,00 (três mil reais), está em consonância com os parâmetros médios utilizados pela jurisprudência deste E. Tribunal, em demandas análogas, razão pela qual mantenho o montante fixado de R\$ 3.000,00 (três mil) reais. Nesse sentido, colaciono os precedentes que embasam os argumentos aqui expostos: DIREITO CIVIL E PROCESSO CIVIL. APELAÇÃO CÍVEL EM AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE DÉBITO C/C INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO EM FOLHA DE PAGAMENTO DE APOSENTADA (ALFABETIZADA). MATÉRIA QUE NÃO SE ENQUADRA NA IRDR Nº 0630366-67.2019.8.06.0000. BENEFICIÁRIA DO INSS. PROCEDÊNCIA NA ORIGEM. LEGITIMIDADE DO DÉBITO NÃO COMPROVADA PELA INSTITUIÇÃO BANCÁRIA. AUSÊNCIA DE COMPROVAÇÃO DO DEPÓSITO DO CRÉDITO NA CONTA DA AUTORA. CONTRATAÇÃO FRAUDULENTA. COBRANÇA INDEVIDA. ATO ILÍCITO CONFIGURADO. RESPONSABILIDADE OBJETIVA DA INSTITUIÇÃO FINANCEIRA. SÚMULA 479 DO STJ. RESTITUIÇÃO A TÍTULO DE REPETIÇÃO DE INDÉBITO NA FORMA SIMPLES. DANO MORAL CARACTERIZADO. MENSURAÇÃO DO DANO. OBSERVÂNCIA AOS PRINCÍPIOS DA RAZOABILIDADE E DA PRÓPORCIONALIDADE. FIXAÇÃO EM R\$ 5.000,00 (CINCO MIL REAIS). SENTENÇA MANTIDA. RECURSO CONHECIDO E IMPROVIDO 1. Trata-se de Apelação Cível interposta pelo Banco de Crédito e Varejo S/A, em face da sentença do Juízo da 2ª Vara da Comarca de Santa Quitéria/CE que, julgou parcialmente procedente a Ação Declaratória de Nulidade de Relação Contratual c/c Condenação em Danos Morais, determinando a devolução do valor descontado indevidamente, bem como ao pagamento dos danos morais, na importância de R\$ 5.000,00 (cinco mil reais). 2. Não há, nos autos, qualquer documento que comprove o crédito referente ao empréstimo na conta da demandante. Por outro lado, o documento que instrui a exordial demonstra que o banco promovido efetivamente realizou descontos, decorrentes do suposto contrato de empréstimo consignado, na conta-corrente que a autora recebe seu benefício de aposentadoria (fl. 23). 3. A instituição financeira apresentou às fls. 103/110, cópia do contrato de nº 46-762235/10999. Não obstante isso, a instituição financeira deixou de apresentar o TED ou extrato, que comprovasse que o autor efetivamente recebeu os valores contratados, que justificasse os descontos na previdência do mesmo.. 4. Como o banco não se desincumbiu do ônus que lhe competia de comprovar a regularidade da contratação com o depósito do valor contratado na conta da requerente, demonstrando que a demandante teve a exata participação nos termos do contrato, de modo a afastar o vício de consentimento alegado, impõe-se a confirmação da sentença. 5. Configurado o defeito no serviço prestado, não tendo o banco procedido com as cautelas devidas para a contratação com a autora, assumiu o risco e a obrigação do prejuízo. Note-se que a instituição financeira não provou a ocorrência das excludentes de responsabilidade previstas no § 3º do art. 14 do CDC. 6. Entende-se que o dano moral fixado pelo primeiro grau de R\$ 5.000,00 (cinco mil reais), foi razoável e proporcional, punindo a ré pelo ato ilícito praticado e reparando a autora pelo abalo experimentado. Destarte, o quantum deve ser mantido. 7. Recurso Conhecido e improvido. Sentença mantida, em todos os seus termos. (TJCE, Apelação Cível nº0004641-43.2013.8.06.0160, Rel. Desembargador(a) MARIA VILAUBA FAUSTO LOPES, 3ª Câmara Direito Privado, Data do julgamento: 30/06/2020, Data da publicação: 30/06/2020) (Destaquei) PROCESSO CIVIL. AGRAVO INTERNO EM APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE NULIDADE DE RELAÇÃO CONTRATUAL C/C REPETIÇÃO DO INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. DESCONTO BENEFÍCIO PREVIDENCIÁRIO. AUSÊNCIA DE COMPROVAÇÃO DO DEPÓSITO DO CRÉDITO NA CONTA DA AUTORA. DESCONTOS INDEVIDOS. FALHA NA PRESTAÇÃO DO SERVIÇO. DANOS MORAIS E MATERIAIS CONFIGURADOS.

Processo	3000660-34.2024.8.06.0300
	AGRAVO INTERNO CONHECIDO E DESPROVIDO. DECISÃO MANTIDA. 1. Reclama o agravante da decisão monocrática desta relatoria que deu provimento ao apelo interposto pela agravada, reformando a sentença objurgada, no sentido de majorar o valor da condenação em danos morais para o valor de R\$ 3.000,00 (três mil reais). 2. A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte Ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito do autor. 3. No caso, o banco/agravante não trouxe aos autos, perante o juízo de origem e no momento devido, o contrato combatido, bem como deixou de demonstrar o depósito do valor supostamente contratado na conta corrente da autora, deixando de comprovar, assim, que agiu com cautela por ocasião da celebração do negócio jurídico (ônus que lhe competia, segundo a regra do art. 373, inc. II, do CPC). 4. A despeito da apresentação, na fase recursal, do contrato supostamente assinado pela parte autora/agravada, entendendo que o banco/recorrente não conseguiu provar o depósito da quantia solicitada no contrato em questão (R\$ 1.756,54), quedando-se, portanto, inerte quanto a comprovação do cumprimento do contrato. É que, o mero contrato assinado supostamente pela recorrida, sem o devido depósito do valor acertado, não justifica os descontos no benefício do aposentado. 5. Assim, demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, o qual enseja pronta reparação dos danos causados, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. 6. Dano moral - Sobre o dano moral, enxergo que é evidente a perturbação sofrida pela recorrida ao ver os descontos no seu benefício previdenciário, uma vez que não houve autorização da prática deste ato e tampouco, conforme os elementos existentes nestes autos, prova de que houve a correta celebração do instrumento contratual com o banco/recorrente. 7. Fixação – Fatores - Para quantificar a indenização por danos morais deve se levar em conta, dentre outros fatores, a extensão do dano, as condições socioeconômicas dos envolvidos e o sofrimento da vítima. Nessa ordem de ideias, atento ao cotejo desses fatores: "nível econômico da autora da ação, sofrimento da vítima e o porte econômico da entidade bancária", considero consentâneo o valor arbitrado de R\$ 3.000,00 (três mil reais), frente ao quadro fático delineado nos autos, razão pela qual deve ser mantido. 8. Recurso conhecido e desprovido. Decisão mantida. A C Ó R D Á O Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do presente recurso, mas para negar-lhe provimento, nos termos do voto do Relator, parte integrante desta decisão. Fortaleza, 18 de maio de 2022. HERÁCLITO VIEIRA DE SOUSA NETO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator. (Agravado Interno Cível - 0009308-07.2018.8.06.0028, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento: 18/05/2022, data da publicação: 19/05/2022) Diante do exposto, CONHEÇO do recurso de apelação interposto para NEGAR-LHE PROVIMENTO, mantendo inalterado o valor arbitrado a título de danos morais. É como voto. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA
Processo	3004390-80.2024.8.06.0000
Número de ordem	257
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	AGRAVO DE INSTRUMENTO
Assunto principal	Penhora / Depósito/ Avaliação
Polo ativo	ERNAN HENRIQUE DE SOUZA CAVALCANTE
Advogado(s) - Polo ativo	FRANCISCO AIRTON DA SILVA JUNIOR - (SP467131-A)
Polo passivo	JOAO EDUARDO ARRAES DE ALENCAR
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

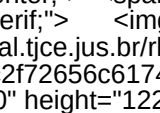
Processo	3004390-80.2024.8.06.0000
Acordão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 3004390-80.2024.8.06.0000 - AGRADO DE INSTRUMENTO (202) AGRAVANTE: ERNAN HENRIQUE DE SOUZA CAVALCANTE AGRAVADO: JOAO EDUARDO ARRAES DE ALENCAR Ementa: DIREITO PROCESSUAL CIVIL. AGRADO DE INSTRUMENTO. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. ARRESTO ON-LINE. TENTATIVA DE CITAÇÃO FRUSTRADA. DESNECESSIDADE DE ESGOTAMENTO DAS DILIGÊNCIAS. POSSIBILIDADE. RECURSO PROVIDO. I. CASO EM EXAME Agravado de instrumento interposto contra decisão que indeferiu o pedido de arresto eletrônico nas contas bancárias do executado em execução de título extrajudicial oriundo de contrato de locação residencial. O juízo de origem entendeu necessária a demonstração do esgotamento das tentativas de localização do devedor para autorizar o arresto. O agravante sustenta que, frustrada a citação no endereço constante do título e por oficial de justiça, já é cabível a medida. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em definir se o arresto on-line pode ser deferido após a primeira tentativa frustrada de citação ou se depende do esgotamento das diligências de localização do executado. III. RAZÕES DE DECIDIR O art. 830 do CPC permite o arresto de bens quando o oficial de justiça não localiza o executado, sem condicionar a medida ao esgotamento de tentativas de citação. A aplicação analógica do art. 854 do CPC legitima a modalidade on-line do arresto, viabilizando o bloqueio eletrônico de ativos financeiros.

Processo	3004390-80.2024.8.06.0000
	 </p><p class="western" style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; text-indent: 2cm;" align="justify"> O pleito de efeito suspensivo foi indeferido, conforme decisão desta Relatoria de ID. 15397622 </p><p class="western" style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; text-indent: 2cm;" align="justify"> Sem contrarrazões. </p><p class="western" style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; text-indent: 2cm;" align="justify"> Deixo de submeter os autos ao Ministério Público por entender que não há interesse justificador da sua intervenção. </p><p class="western" style="text-indent: 2cm; line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> Adotando o Pacto Nacional do Judiciário pela Linguagem Simples do CNJ, passo a proferir meu voto. </p><p class="western" style="text-indent: 2cm; line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="justify"> É o que importa relatar. </p><p class="western" style="line-height: 115%; margin-bottom: 0cm; text-indent: 3cm;" align="justify">
 </p><p class="western" style="line-height: 115%; margin-bottom: 0cm;" align="center"> VOTO </p><p style="text-indent: 3cm; margin-bottom: 0cm; line-height: 115%;" align="justify">
 </p><p style="text-indent: 2cm; margin-bottom: 0cm; line-height: 115%;" align="justify"> Atendidos os pressupostos recursais intrínsecos (cabimento, interesse, legitimidade e inexistência de fato extintivo do direito de recorrer) e os pressupostos recursais extrínsecos (regularidade formal, tempestividade, preparo e capacidade processual do recorrente), o recurso deve ser admitido, o que impõe o seu conhecimento e a sua apreciação. </p><p style="text-indent: 2cm; margin-bottom: 0cm; line-height: 115%;" align="justify"> A controvérsia recursal cinge-se em analisar se, após tentativa frustrada de citação, deve o pedido de arresto on-line ser concedido ou se seu deferimento está condicionado ao esgotamento das tentativas de atos citatórios. </p><p style="text-indent: 2cm; margin-bottom: 0cm; line-height: 115%;" align="justify"> Sobre o tema, é sabido que o arresto executivo, também denominado de prévio ou pré-penhora, é uma medida que tem por finalidade garantir a futura penhora e evitar maiores prejuízos ao credor, mediante o bloqueio dos bens do executado. Confira-se a disposição legal: </p><p style="text-indent: 2cm; margin-bottom: 0cm; line-height: 115%;" align="justify">
 </p><p style="margin-bottom: 0cm; line-height: 115%; padding-left: 180px;" align="justify"> Art. 830. Se o oficial de justiça não encontrar o executado, arrestar-lhe-á tantos

Processo	3004390-80.2024.8.06.0000
	bens quantos bastem para garantir a execução. § 1º Nos 10 (dez) dias seguintes à efetivação do arresto, o oficial de justiça procurará o executado 2 (duas) vezes em dias distintos e, havendo suspeita de ocultação, realizará a citação com hora certa, certificando pormenorizadamente o ocorrido. § 2º Incumbe ao exequente requerer a citação por edital, uma vez frustradas a pessoal e a com hora certa. § 3º Aperfeiçoada a citação e transcorrido o prazo de pagamento, o arresto converter-se-á em penhora, independentemente de termo. Com efeito, o diploma preceitua que, frustrada a citação, ainda que pautada em uma única tentativa, é autorizado o arresto de bens pelo oficial de justiça responsável por localizar o executado. Outrossim, ainda que o dispositivo não mencione expressamente a modalidade <i>on-line</i>, a adoção da medida é plenamente cabível, por aplicação analógica do art. 854 do Código de Processo Civil, como se vê: Art. 854. Para possibilitar a penhora de dinheiro em depósito ou em aplicação financeira, o juiz, a requerimento do exequente, sem dar ciência prévia do ato ao executado, determinará às instituições financeiras, por meio de sistema eletrônico gerido pela autoridade supervisora do sistema financeiro nacional, que torne indisponíveis ativos financeiros existentes em nome do executado, limitando-se a indisponibilidade ao valor indicado na execução. Acrésciente-se que não há qualquer exigência legal para que seja o arresto prévio condicionado ao esgotamento dos meios extrajudiciais à localização do executado, principalmente quando a não localização do devedor decorre do fato dele não ser localizado no endereço fornecido para a celebração do negócio, não tendo comunicado o credor acerca da alteração de seu endereço ou mesmo em endereços constantes de órgãos oficiais. Não obstante exista divergência jurisprudencial a

Processo	3004390-80.2024.8.06.0000
	respeito do tema, a Terceira Turma do Superior Tribunal de Justiça alinhou o entendimento de que é possível o arresto on-line antes da citação, fazendo-se desnecessário o esgotamento dos meios de localização do devedor, vejamos: EMENTA: PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. CÉDULA DE CRÉDITO BANCÁRIO. DECISÃO QUE DEFERIU ARRESTO ON-LINE EM CONTA. PREQUESTIONAMENTO. AUSÊNCIA. SÚMULA 211/STJ. ARRESTO EXECUTIVO ELETRÔNICO. TENTATIVA DE LOCALIZAÇÃO DO EXECUTADO FRUSTRADA. ADMISSIBILIDADE. EXAURIMENTO DAS TENTATIVAS DE CITAÇÃO. PRESCINDIBILIDADE. HARMONIA ENTRE O ACÓRDÃO RECORRIDO E A JURISPRUDÊNCIA DO STJ. 1. Execução de título extrajudicial fundada em cédula de crédito bancário, no bojo da qual foi proferida decisão deferindo arresto on-line em conta. 2. A ausência de decisão acerca dos dispositivos legais indicados como violados, não obstante a interposição de embargos de declaração, impede o conhecimento do recurso especial. 3. Frustrada a tentativa de localização do devedor para citação, é possível o arresto de seus bens na modalidade on-line, com base na aplicação analógica do art. 854 do CPC/15, sendo prescindível que haja o exaurimento das tentativas. Precedentes. 4. Agravo interno no agravo emrecurso especial não provido. (STJ, AgInt no AREsp 1956886 / RJ, Rel. Ministra NANCY ANDRIGHI, TERCEIRA TURMA, Data de Julgamento: 02/05/2022, Data de Publicação: DJe 04/05/2022). Este, inclusive, é o entendimento deste egrégio Tribunal de Justiça: Este, inclusive, é o entendimento deste egrégio Tribunal de Justiça: AGRAVO DE INSTRUMENTO. PEDIDO DE ARRESTO ON-LINE. TENTATIVA DE CITAÇÃO FRUSTRADA. DESNECESSIDADE DE ESGOTAMENTO DOS MEIOS DE LOCALIZAÇÃO DO DEVEDOR. PRECEDENTES DO COLENDO SUPERIOR TRIBUNAL DE JUSTIÇA E DESTA CORTE. RECURSO CONHECIDO E PROVIDO. 1. A controvérsia recursal cinge-se em analisar se, após tentativa frustrada de citação, deve o pedido de arresto on-line ser concedido ou se seu deferimento está condicionado ao esgotamento das tentativas de atos citatórios. 2. Sobre o tema, é sabido que o arresto executivo, também denominado de prévio ou pré-penhora, é uma medida que tem por finalidade garantir a futura penhora e evitar maiores prejuízos ao credor, mediante o bloqueio dos bens do executado. 3. Com efeito, o diploma preceitua que, frustrada a citação, ainda que pautada em uma única tentativa, é autorizado o arresto on-line de bens pelo oficial de justiça responsável por localizar o executado. 4. Outrossim, ainda que o dispositivo não mencione expressamente a modalidade ¿on-line¿, a adoção da medida é plenamente cabível, por aplicação analógica do art. 854 do Código de Processo Civil. 5. Acrescente-se que não há qualquer exigência legal para que seja o arresto prévio condicionado ao esgotamento dos meios extrajudiciais à localização do executado, principalmente quando a não localização do devedor decorre do fato dele não ser localizado no endereço fornecido para a celebração do negócio, não tendo comunicado o credor acerca da alteração de seu endereço ou mesmo em endereços constantes de órgãos oficiais. 6. Não obstante exista divergência jurisprudencial a respeito do tema, a Terceira Turma do Superior Tribunal de Justiça alinhou o entendimento de que é possível o arresto on-line antes da citação, fazendo-se desnecessário o esgotamento dos meios de localização do devedor. 7. Portanto, ante a desnecessidade de que o arresto esteja condicionado ao esgotamento dos meios extrajudiciais à localização do executado, entendendo pela reforma da decisão objurgada. 8. Recurso conhecido e provido. (Agravo de Instrumento - 0631425-56.2020.8.06.0000, Rel. Desembargador(a) PAULO DE TARSO PIRES NOGUEIRA, 3ª Câmara Direito Privado, data do julgamento: 18/12/2024, data da publicação: 18/12/2024)

Processo	3004390-80.2024.8.06.0000
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Processo	0200330-30.2024.8.06.0066
Número de ordem	258
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Indenização por Dano Material
Polo ativo	BANCO BRADESCO S/A
Advogado(s) - Polo ativo	FRANCISCO SAMPAIO DE MENEZES JUNIOR - (CE9075-A)
Polo passivo	ANA NUNES PEREIRA
Advogado(s) - Polo passivo	LUCAS FREITAS VIANA DINIZ - (CE27345-A)
Terceiros	Não informado

Processo	0200330-30.2024.8.06.0066
Acórdão	 PROCESSO: 0200330-30.2024.8.06.0066 - APELAÇÃO CÍVEL (198) APELANTE: BANCO BRADESCO S/A APELADO: ANA NUNES PEREIRA EMENTA: DIREITO DO CONSUMIDOR E PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE INEXISTÊNCIA DE RELAÇÃO JURÍDICA C/C REPETIÇÃO DE INDÉBITO E INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO NÃO COMPROVADO. DESCONTOS INDEVIDOS EM BENEFÍCIO PREVIDENCIÁRIO. RESPONSABILIDADE OBJETIVA DA INSTITUIÇÃO FINANCEIRA. INVERSÃO DO ÔNUS DA PROVA. SÚMULA 479/STJ. RESTITUIÇÃO EM DOBRO DOS VALORES INDEVIDAMENTE DESCONTADOS. DANO MORAL CONFIGURADO. INDENIZAÇÃO MANTIDA. RECURSO DESPROVIDO. I. CASO EM EXAME 1. Recurso de apelação interposto por Banco Bradesco S/A contra sentença que, nos autos de ação declaratória de inexistência de relação jurídica c/c indenização por danos morais e materiais e repetição de indébito ajuizada por beneficiária previdenciária, declarou a nulidade de contrato de empréstimo consignado não comprovado, condenando o banco ao pagamento de R\$ 5.000,00 por danos morais e à restituição dos valores descontados. II. QUESTÃO EM DISCUSSÃO 2. Há três questões em discussão: (i) definir se o contrato de empréstimo consignado impugnado foi validamente celebrado; (ii) estabelecer se há responsabilidade objetiva da instituição financeira pelos descontos indevidos; (iii) determinar a forma de restituição dos valores e a adequação do quantum indenizatório fixado a título de danos morais. RAZÕES DE DECIDIR 3. A relação jurídica entre consumidor e instituição financeira enquadra-se como relação de consumo, atraindo a incidência do Código de Defesa do Consumidor (arts. 2º e 3º, CDC). 4. A responsabilidade das instituições financeiras é objetiva, respondendo pelos danos decorrentes de fraudes e delitos praticados no âmbito de operações bancárias, conforme Súmula 479 do STJ. 5. O Código de Defesa do Consumidor autoriza a inversão do ônus da prova (art. 6º, VIII), cabendo ao banco apresentar os documentos comprobatórios da contratação, o que não ocorreu. 6. Ausente comprovação do contrato e do depósito do valor do suposto empréstimo, resta configurada falha na prestação do serviço e inexistência da relação jurídica alegada. 7. A jurisprudência reconhece que descontos indevidos em benefício previdenciário configuram ilícito civil e ensejam reparação por dano moral in re ipsa, prescindindo de prova do prejuízo. 8. O quantum de R\$ 5.000,00 fixado a título de danos morais mostra-se razoável e proporcional, atendendo aos critérios de compensação da vítima e prevenção da conduta ilícita. 9. A restituição dos valores deve observar a orientação firmada pelo STJ no EAREsp 676.608/RS, sendo devida em dobro para os descontos posteriores a 30/03/2021, independentemente de má-fé do fornecedor. DISPOSITIVO E TESE 10. Recurso desprovido. Tese de julgamento: A instituição financeira responde objetivamente pelos descontos indevidos em benefício previdenciário, oriundos de contrato de empréstimo não comprovado. 2. Na relação de consumo, incide a inversão do ônus da prova, cabendo ao banco demonstrar a existência do contrato. 3. A ausência de comprovação do contrato e da disponibilização dos valores caracteriza falha na prestação do serviço e enseja indenização por danos morais. 4. O quantum indenizatório deve observar os princípios da razoabilidade e proporcionalidade, sendo cabível o valor de R\$ 5.000,00 em casos

Processo	0200330-30.2024.8.06.0066
	análogos. 5. A restituição do indébito deve ocorrer em dobro para os descontos posteriores a 30/03/2021, conforme modulação fixada no EAREsp 676.608/RS. Dispositivos relevantes citados: CF/1988, art. 5º, V e X; CDC, arts. 2º, 3º, 6º, VIII, 14 e 42, parágrafo único; CPC/2015, art. 373, I e II; CC, arts. 186 e 927. Jurisprudência relevante citada: STJ, Súmula 479; STJ, Súmula 54; STJ, Súmula 362; STJ, Súmula 43; STJ, EAREsp 676.608/RS, Corte Especial, Rel. Min. Og Fernandes, j. 21.10.2020; TJCE, Apelação Cível nº 0050650-64.2021.8.06.0166, Rel. Des. Carlos Augusto Gomes Correia, j. 16.10.2024; TJCE, Apelação Cível nº 0000677-92.2018.8.06.0216, Rel. Des. Emanuel Leite Albuquerque, j. 16.10.2024; TJCE, Apelação Cível nº 0200044-82.2022.8.06.0111, Rel. Des. Emanuel Leite Albuquerque, j. 15.03.2023; TJCE, Apelação Cível nº 0000125-43.2018.8.06.0147, Rel. Des. Heráclito Vieira de Sousa Neto, j. 15.12.2021. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, conhecer do recurso para NEGAR-LHE PROVIMENTO, nos termos do relatório e do voto do relator. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador Relator RELATÓRIO Trata-se de recurso de apelação interposto por BANCO BRADESCO S/A, contra decisão proferida pelo Juízo da Vara Única da Comarca de Cedro, nos da ação declaratória de inexistência de relação jurídica c/c por danos morais e materiais, repetição de indébito ajuizada por ANA NUNES PEREIRA, contra BANCO BRADESCO S/A. A parte autora afirma que percebeu deduções indevidas em seu benefício, que consiste em um salário mínimo e ao procurar o INSS para saber do que se tratava, foi dito que as deduções diziam respeito a um empréstimo tipo consignado, no qual afirma desconhecer e não ter sequer solicitado. Em sentença de ID 24848569, o feito foi julgado procedente ao declarar a inexistência do referido contrato, condenando o promovido ao pagamento de R\$ 5.000,00 (cinco mil reais) em favor da parte autora, a título de indenização por danos morais. Irresignado, BANCO BRADESCO S/A., interpôs o presente recurso de apelação, ID 24848572, em que requer a reforma da decisão ao aduzir que o contrato é legítimo, razão pela qual, o pleito autoral deve ser improvido. Contrarrazões, ID 24848577, em que o apelado se manifestou pela manutenção da decisão. É o relatório. VOTO Presentes os pressupostos de admissibilidade recursal, conheço da apelação interposta. Inicialmente importa esclarecer que a situação ora apresentada, refere-se a uma relação consumerista a ser regida pelo Código de defesa do consumidor, tendo em vista os três elementos fundamentais presentes: consumidor, fornecedor e produto/serviço.

Processo	0200330-30.2024.8.06.0066
	São estes elementos essenciais que fazem nascer uma relação de consumo (consumidor / fornecedor e produtos ou serviços), a qual é pressuposto para a aplicação do CDC, independentemente da espécie contratual pactuada pelas partes, em conformidade com arts. 3º e 2º, ambos do Código de Defesa do Consumidor. Art. 2º Consumidor é toda pessoa física ou jurídica que adquire ou utiliza produto ou serviço como destinatário final. Parágrafo único. Equipara-se a consumidor a coletividade de pessoas, ainda que indetermináveis, que haja intervindo nas relações de consumo. Art. 3º Fornecedor é toda pessoa física ou jurídica, pública ou privada, nacional ou estrangeira, bem como os entes despersonalizados, que desenvolvem atividade de produção, montagem, criação, construção, transformação, importação, exportação, distribuição ou comercialização de produtos ou prestação de serviços. Dessa forma, diante de uma relação de consumo, a responsabilidade objetiva passa a ser a regra, de modo que não se exige a comprovação de culpa do fornecedor que, independentemente desta, responderá pelos danos ocorridos, desde que presente o nexo causal. Nesse sentido, dispõe a súmula 479 do STJ: Súmula 479 - As instituições financeiras respondem objetivamente pelos danos gerados por fortuito interno relativo a fraudes e delitos praticados por terceiros no âmbito de operações bancárias. Ressalte-se que a responsabilidade discutida ao caso em análise não se restringe meramente a relação consumerista caracterizada, mas também em virtude da notória influência em sociedade capitalista das instituições financeiras. Explico: Em face de evidente dimensão de poder, visando o princípio de proteção das vítimas de atos ilícitos, o direito nacional vem delineando os contornos da responsabilidade civil das instituições financeiras, com ênfase para a responsabilidade civil dos bancos. Tal responsabilidade firmou-se, de início, no elemento subjetivo da conduta, a culpabilidade. Acerca desse assunto, a doutrina se manifestava: Partindo do conceito básico de culpa, enunciado de maneira muito positiva, o banco responde para com seus clientes, por qualquer ato culposos na execução dos números contratos ligados à atividade bancária". (PEREIRA, Caio Mário da Silva. Responsabilidade civil, 2 ed. Rio de Janeiro: Forense, 1991, p. 189.) Considerando a presente relação de consumo, é cediço em doutrina que o ônus da prova refere-se a responsabilidade de comprovar o direito ao qual se pleiteia em juízo, pois não há direito sem evidência de sua existência. A relevância desse instrumento processual, refere-se ao fato de que o não atendimento ao ônus de provar, poderá acarretar posição de desvantagem para obtenção do ganho de causa. O nosso CPC traz em seu bojo a repartição do ônus da prova, nos seguintes termos: Art. 333. O ônus da prova incumbe: I - Ao autor, quanto ao fato constitutivo do seu direito; II - Ao réu, quanto à existência de fato impeditivo, modificativo ou extintivo do direito do autor. Ocorre que, o Código do Consumidor, trouxe novas determinações específicas acerca da posição dos fornecedores frente aos consumidores ao integrarem a relação jurídica, principalmente no que concerne a matéria probatória.

Processo	0200330-30.2024.8.06.0066
	align: justify;"> Neste sentido, facultou ao magistrado a determinação da inversão do ônus da prova em favor do consumidor, excepcionando aquela regra geral trazida no art. 333 do CPC.&#160;&#160; </p><p style="text-align: justify;"> Cumprido, neste momento, transcrever o quanto prescreve o CDC em seu Art 6º, VIII:&#160;&#160;</p><p style="text-align: justify; padding-left: 120px;"> Art. 6º São direitos básicos do consumidor:&#160;&#160; </p><p style="text-align: justify; padding-left: 120px;"> (...) </p><p style="text-align: justify; padding-left: 120px;"> VIII- A facilitação da defesa de seus direitos, inclusive com a inversão do ônus da prova, a seu favor, no processo civil, quando, a critério do juiz, for verossímil a alegação ou quando for ele hipossuficiente, segundo as regras ordinárias de experiência".</p><p style="text-align: justify;"> Logo a inversão do ônus da prova mostra-se plenamente cabível ao litígio, considerando ainda que a instituição bancária é detentora de toda a documentação necessária que venha a demonstrar a relação contratual firmada entre as partes.&#160;&#160;</p><p style="text-align: justify;"> In casu, verifica-se que o apelante relata que a apelada firmou junto ao banco contrato de empréstimo consignado e teve o valor devidamente creditado em sua conta bancária. </p><p style="text-align: justify;"> Ocorre que, o banco réu não apresentou o contrato referente a suposta negociação, ou qualquer outro meio que possa atestar que o autor acordou com referida negociação. </p><p style="text-align: justify;"> Dessa forma, não há como reconhecer o contrato pactuado como legítimo, posto que, ausentes os pressupostos de validade, quanto a anuência do autor, bem como sua plena ciência para com suposto refinanciamento, referente a contrato anterior o qual também não fora anexado aos autos prova de sua existência.&#160;&#160; </p><p style="text-align: justify;"> Nesse sentido, acompanhe-se o entendimento desta Câmara de Direito Privado:&#160;&#160; </p><p style="text-align: justify; padding-left: 120px;"> APELAÇÕES CÍVEIS. AÇÃO DECLARATÓRIA DE NULIDADE DE EMPRÉSTIMO C/C REPETIÇÃO DE INDEBITO E INDENIZAÇÃO POR DANOS MORAIS. SENTENÇA PARCIALMENTE PROCEDENTE. CONTRATO DE EMPRÉSTIMO CONSIGNADO. DESCONTOS INDEVIDOS. AUSÊNCIA DE CONTRATO VÁLIDO. FALHA NA PRESTAÇÃO DO SERVIÇO CONFIGURADA. PLEITO DE MAJORAÇÃO/REDUÇÃO NÃO PROVIDOS. SENTENÇA MANTIDA. RECURSOS CONHECIDOS E NÃO PROVIDOS. 1. A controvérsia recursal consiste em, tão somente, verificar a possibilidade de majoração ou redução do quantum indenizatório arbitrados por danos morais. 2. Cumpre observar que o juízo de primeiro grau arbitrou na sentença a indenização por danos morais o montante de R\$ 3.000,00 (três mil reais). 3. Nesse contexto, vale destacar que da análise probatória, verifica-se ser incontroverso a ocorrência de dano moral, diante da falha na prestação do serviço da demandada, na medida em que o apelado não demonstrou, na condição de fornecedor do serviço adquirido, a regular celebração do contrato de empréstimo impugnado, não se desincumbindo a contento do ônus probante que lhe cabia, sendo imprescindível sua reparação. 4. Logo, quanto à indenização referente aos danos morais, o julgador deve levar em consideração certos critérios para sua fixação, quais sejam: a gravidade do fato e suas consequências para a vítima; a intensidade do dolo ou da culpa do agente; a eventual participação culposa do ofendido; a condição econômica do ofensor e as condições pessoais da vítima (posição política, social e econômica). Neste passo, a fixação do quantum indenizatório deve igualmente ser feita de maneira a evitar o enriquecimento ilícito, no entanto, não pode o valor ser irrisório. 5. Nesse ínterim, considero que, in casu, o quantum fixado pelo magistrado a quo deve ser mantido, uma vez que o valor de R\$ 3.000,00 (três mil reais), está em consonância com os parâmetros médios utilizados pela jurisprudência deste E. Tribunal, em demandas análogas, razão pela qual mantenho o montante fixado de R\$ 3.000,00 (três mil) reais. 6. Recursos conhecidos e não providos. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer dos recursos de apelações cíveis, para, no mérito, negar-lhes provimento, nos termos do voto do Relator. Fortaleza, data assinatura eletrônica. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA</p><p style="text-align: justify; padding-left: 120px;"> <span style="font-family: arial, helvetica, sans-

Processo	0200330-30.2024.8.06.0066
	serif;">(Apelação Cível - 0050650-64.2021.8.06.0166, Rel. Desembargador(a) CARLOS AUGUSTO GOMES CORREIA, 1ª Câmara Direito Privado, data do julgamento:&#160; 16/10/2024, data da publicação:&#160; 16/10/2024) (G.N). </p><p style="text-align: justify; padding-left: 120px;"> PROCESSO CIVIL. APELAÇÃO CIVIL. AÇÃO REPARAÇÃO DANOS MORAIS. INSCRIÇÃO INDEVIDA NOS ÓRGÃOS DE PROTEÇÃO AO CRÉDITO. ATO ILÍCITO. AUSÊNCIA DE COMPROVAÇÃO PELO BANCO/APELANTE DA RELAÇÃO JURÍDICA QUESTIONADA. FALHA NA PRESTAÇÃO DE SERVIÇO. SÚMULA 479. STJ. DANO MORAL IN RE IPSA. QUANTUM INDENIZATÓRIO. MANUTENÇÃO. VALOR ARBITRADO QUE ATENDE AOS PRINCÍPIOS DA RAZOABILIDADE E PROPORCIONALIDADE. MULTA DIÁRIA PROPORCIONAL. RECURSO CONHECIDO E DESPROVIDO. SENTENÇA CONFIRMADA. 1. O magistrado de primeiro grau julgou parcialmente procedente os pedidos feitos em exordial, declarando a inexigibilidade do débito inscrito pela instituição financeira/promovida, referente ao contrato 051704803000050FI, determinando a exclusão do nome do autor das plataformas de cadastros de proteção ao crédito, e ainda, condenando o banco ao pagamento da quantia de R\$ 3.000,00 (três mil reais), a título de danos morais. 2. A controvérsia consiste em saber se o banco/apelante procedeu indevidamente a inscrição do nome do autor/apelado nos órgãos de restrição de crédito. 3. A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte Ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito do autor. 4. No caso, a entidade bancária não logrou êxito em eximir-se de sua responsabilidade, tendo em vista que, limita-se a argumentar que a dívida reclamada, que originou a negativação do nome do consumidor nos cadastros de proteção ao crédito, é oriunda da inadimplência do autor/apelado que utilizou limite de crédito automático disponibilizado pelo banco/recorrente. Todavia, não trouxe aos autos qualquer documento, assinado pelo requerente/apelado, referente abertura de conta ou contratação de serviço de cartão de crédito, ou qualquer outra prova que mostre a relação jurídica entre as partes, que pudessem justificar a negativação realizada. 5. Cumpre indicar que a melhor jurisprudência se manifesta pela ilegalidade da cobrança de débito quando for constituído sem a devida comprovação nos autos de qualquer documento comprobatório que denote a origem da dívida e a titularidade do consumidor, capazes de gerar a inscrição indevida pelo inadimplemento. 6. Assim, demonstrada a falha na prestação dos serviços, configurado está o ilícito civil, o qual enseja pronta reparação dos danos causados, nos termos do art. 14 do Código de Defesa do Consumidor e arts. 186 e 927 do Código Civil Brasileiro. 7. Na verdade, há de se reconhecer que a conduta do banco/apelante é tipificadora de dano moral, pois conforme já pacificou o Eg. Superior Tribunal de Justiça (STJ), a inscrição indevida nos cadastros de inadimplentes configura dano moral in re ipsa, isto é, o dano é presumido, prescinde de prova. 8. Fixação 2 Fatores - Para quantificar a indenização por danos morais deve se levar em conta, dentre outros fatores, a extensão do dano, as condições socioeconômicas dos envolvidos e o sofrimento da vítima. Nessa ordem de ideias, atento ao cotejo desses fatores, considero adequado o quantum fixado pelo douto magistrado singular no valor de R\$ 3.000,00 (três mil reais), frente ao quadro fático delineado nos autos, na medida em que dentro da margem fixada por este sodalício. 9. Recurso conhecido e desprovido. Sentença confirmada. A C Ó R D Ã O Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer do recurso, mas para negar-lhe provimento, nos termos do voto do eminente Relator, parte integrante desta decisão. Fortaleza, 16 de outubro de 2024. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator&#160; </p><p style="text-align: justify; padding-left: 120px;"> (Apelação Cível - 0000677-92.2018.8.06.0216, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160; 16/10/2024, data da publicação:&#160; 16/10/2024) (G.N). </p><p style="text-align: justify; padding-left: 120px;"> Acerca dos danos morais, são cabíveis em pleito indenizatório em favor do apelado, posto que, há a clara aflição gerada ao autor ao deparar-se com descontos desconhecidos realizados sem seu consentimento.&#160;</p><p style="text-align: justify;"> Contudo, o referido quantum indenizatório deve ser fixados com equidade e moderação, não podendo ser tão baixo a ponto de fazer com que o ofensor deixe de perceber a reação do ordenamento jurídico à lesão praticada, nem tão elevado a ponto de servir como fonte de enriquecimento sem causa por parte do lesado.&#160;&#160; </p><p style="text-align: justify;"> Sobre a

Processo	0200330-30.2024.8.06.0066
	questão, vide o magistério de MARIA HELENA DINIZ: &#160; &#160; </p><p style="text-align: justify; padding-left: 120px;"> (...) o juiz determina, por equidade, levando em conta as circunstâncias de cada caso, o 'quantum' da indenização devida, que deverá corresponder à lesão e não ser equivalente, por ser impossível, tal equivalência. A reparação pecuniária do dano moral é um misto de pena e satisfação compensatória. Não se pode negar sua função: penal, constituindo uma sanção imposta ao ofensor; e compensatória, sendo uma satisfação que atenua a ofensa causada, proporcionando uma vantagem ao ofendido, que poderá, com a soma de dinheiro recebida, procurar atender a necessidades materiais ou ideais que repute convenientes, diminuindo, assim, seu sofrimento. (A Responsabilidade Civil por Dano Moral, in Revista Literária de Direito, ano II, nº 9, jan./fev. de 1996, p. 9).&#160; &#160;</p><p style="text-align: justify;"> Levando-se em conta tudo o que consta nos autos, notadamente os danos causados ao apelado/autor, atendendo aos princípios da razoabilidade e da proporcionalidade, mostra-se adequado o valor estabelecido pelo magistrado, referente a quantia de R\$ 5.000,00 (cinco mil reais), pois se encontra em consonância com o quantum fixado por esta Câmara de Direito Privado conforme os precedentes citados anteriormente. </p><p style="text-align: justify;"> Dito isto, não há como prosperar o pedido de redução ou o pedido de majoração&#160; do valor da indenização arbitrado a título de danos morais, tendo em vista que o valor arbitrado é razoável para a situação fática apresentada, devendo os juros de mora incidirem a partir do evento danoso, nos termos da Súmula 54 do STJ e correção monetária a partir do arbitramento, de acordo com o entendimento sumulado 362 do STJ, por ser uma relação extracontratual, não cabendo qualquer alteração na sentença combatida. </p><p style="text-align: justify;"> Nesse sentido:&#160; </p><p style="text-align: justify; padding-left: 120px;"> PROCESSO CIVIL. RECURSOS DE APELAÇÃO EM AÇÃO DECLARATÓRIA C/C INDENIZAÇÃO POR DANOS MORAIS. EMPRÉSTIMO CONSIGNADO. DESCONTOS INDEVIDOS NO BENEFÍCIO PREVIDENCIÁRIO. AUSÊNCIA DO CONTRATO E DA COMPROVAÇÃO DO DEPÓSITO DO CRÉDITO NA CONTA DA AUTORA. FALHA NA PRESTAÇÃO DE SERVIÇO. DANO MATERIAL CONFIGURADO. REPETIÇÃO EM DOBRO. ENTENDIMENTO FIRMADO PELO STJ. DANOS MORAIS CARACTERIZADOS. MAJORAÇÃO DO QUANTUM INDENIZATÓRIO. POSSIBILIDADE. RECURSO DA AUTORA CONHECIDO E PARCIALMENTE PROVIDO. RECURSO DO BANCO/PROMOVIDO CONHECIDO E NEGADO PROVIMENTO. SENTENÇA REFORMADA. 1. Depreende-se da leitura dos fólios processuais que a autora busca através da presente ação declarar inexistente o negócio jurídico objeto do contrato de empréstimo consignado citado na exordial (nº 816921359), reaver, em dobro, os valores cobrados indevidamente, e ainda, a condenação do requerido ao pagamento de danos morais. 2. A dialética jurídica acarreta a incidência do disposto no artigo 373 do Código de Processo Civil, que bem distribui o ônus probatório. Conforme dispõe o artigo 373, inciso I e II, do CPC, cabe à parte autora a devida comprovação do fato constitutivo do direito invocado e a parte Ré, provar a existência de fatos impeditivos, modificativos ou extintivos do direito da autora. 3. No presente caso, é forçoso reconhecer que houve falha na prestação do serviço, causando danos de ordem moral e material à parte autora/apelada, visto que o banco/recorrente não conseguiu provar a regularidade do contrato, pois não procedeu sequer a juntada do citado instrumento contratual (ônus que lhe competia, segundo a regra do art. 373, inc. II, do CPC), não conseguindo demonstrar que agiu com cautela por ocasião da celebração do apontado negócio jurídico. 4. Também não conseguiu provar que os valores supostamente contratados foram depositados em conta de titularidade da autora/recorrida, porquanto, não consta nos autos comprovante da disponibilização do numerário contratado. 5. Assim, quando demonstrada a falha na prestação dos serviços pelo banco, configurado está o ilícito civil, conferindo daí ao lesado a devida reparação dos danos sofridos. 6. Repetição do indébito em dobro - Considerando que o primeiro desconto indevido ocorreu em julho de 2021 (fls. 16), ou seja, posterior à publicação do acórdão de 30 de março de 2021, todos os valores descontados indevidamente do benefício previdenciário da autora/recorrida devem ser restituídas em dobro, como bem decidiu o magistrado singular. 7. Dano Moral - Sobre o dano moral, enxergo que é evidente a perturbação sofrida pela autora, em decorrência do ocorrido, ao ver os descontos em seu benefício previdenciário, uma vez que não houve autorização da prática deste ato, conforme os elementos existentes nestes autos. 8. Fixação - Considero afixado o quantum fixado pelo douto magistrado singular no valor de R\$ 3.000,00 (três mil reais), o que me leva a aumentar para a quantia de R\$ 5.000,00 (cinco mil reais), frente ao quadro fático delineado nos autos. 9. Recurso da autora conhecido e parcialmente provido. Recurso do banco/promovido conhecido e negado provimento. Sentença reformada. A C Ó R D Ã O Acordam os Desembargadores integrantes da

Processo	0200330-30.2024.8.06.0066
	Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em conhecer de ambos os recursos, para dar parcial provimento ao recurso da autora e negar provimento ao recurso do banco/promovido, nos termos do voto do eminente Relator, parte integrante desta decisão. Fortaleza, 15 de março de 2023. FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador Exmo. Sr. EMANUEL LEITE ALBUQUERQUE Relator (TJ-CE - AC: 02000448220228060111 Jijoca de Jericoacoara, Relator: EMANUEL LEITE ALBUQUERQUE, Data de Julgamento: 15/03/2023, 1ª Câmara Direito Privado, Data de Publicação: 16/03/2023) (G.N.) DA REPETIÇÃO DE INDÉBITO Considerado que o Juiz Singular determinou o cancelamento do Contrato acima descrito, em virtude de o apelante; Banco Bradesco Financiamentos S/A não ter logrado êxito em comprovar a sua realização sem a ocorrência de fraude; cabível a restituição dos valores cobrados indevidamente. Acerca da restituição do indébito, o parágrafo único do art. 42 do CDC dispõe: Art. 42. (...) Parágrafo único. O consumidor cobrado em quantia indevida tem direito à repetição do indébito, por valor igual ao dobro do que pagou em excesso, acrescido de correção monetária e juros legais, salvo hipótese de engano justificável. Outrora, assentou-se o entendimento de que a repetição do indébito prevista no art. 42, parágrafo único, do CDC somente é devida quando comprovada a má-fé do fornecedor; em não comprovada a má-fé, é devida a restituição simples. Entretanto, o atual posicionamento do Superior Tribunal de Justiça, fixado no recuso repetitivo paradigma (EAREsp 676608/RS) é no sentido de que a restituição em dobro independe da natureza volitiva do fornecedor, ou seja, prescinde da comprovação da má-fé quando a cobrança indevida decorrer de serviços não contratados. Todavia, impende registrar que o entendimento supra foi publicado com modulação dos efeitos. Na decisão paradigma, o Tribunal da Cidadania entendeu que, para demandas que não decorram da prestação de serviços públicos, o acórdão terá eficácia apenas prospectiva, ou seja, a tese fixada somente será aplicável a valores pagos após a sua publicação, ou seja, 30/03/2021. A propósito, confira-se: “Primeira tese: A restituição em dobro do indébito (parágrafo único do artigo 42 do CDC) independe da natureza do elemento volitivo do fornecedor que realizou a cobrança indevida, revelando-se cabível quando a referida cobrança consubstanciar conduta contrária à boa-fé objetiva. (...) Modulação dos efeitos: Modulam-se os efeitos da presente decisão – somente com relação à primeira tese – para que o entendimento aqui fixado quanto à restituição em dobro do indébito seja aplicado apenas a partir da publicação do presente acórdão. A modulação incide unicamente em relação às cobranças indevidas em contratos de consumo que não envolvam prestação de serviços públicos pelo Estado ou por concessionárias, as quais apenas serão atingidas pelo novo entendimento quando pagas após a data da publicação do acórdão.” (STJ. Corte Especial. EAREsp 676608/RS, Rel. Min. Og Fernandes, julgado em 21/10/2020) (Grifei) Nesta oportunidade, colaciono decisões que tratam do tema: RESPONSABILIDADE CIVIL. CÓDIGO DE DEFESA DO CONSUMIDOR. APELAÇÃO CÍVEL. AÇÃO DECLARATÓRIA DE NULIDADE DE RELAÇÃO CONTRATUAL. PRELIMINAR DE ILEGITIMIDADE PASSIVA REJEITADA. INVERSÃO DO ÔNUS DA PROVA (ART. 6º, VIII, CDC). APLICABILIDADE. INSTRUMENTO CONTRATUAL NÃO ANEXADO AOS AUTOS PELA RÉ. AUSÊNCIA DE COMPROVAÇÃO DA REGULARIDADE DO PACTO. OCORRÊNCIA. RESTITUIÇÃO DOS VALORES DESCONTADOS NA FORMA SIMPLES E EM DOBRO A DEPENDER DA DATA DE REALIZAÇÃO DOS DESCONTOS, SEGUNDO O C. STJ NO EAREsp 676.608/RS. CONFIGURAÇÃO DE DANOS MORAIS. MAJORAÇÃO DO QUANTUM INDENIZATÓRIO. POSSIBILIDADE. APELAÇÃO DO RÉU CONHECIDA E IMPROVIDA. RECURSO DA AUTORA CONHECIDO E PARCIALMENTE PROVIDO. SENTENÇA REFORMADA. 1. (...). 4. Nesse contexto, tendo em vista a não apresentação do contrato

Processo	0200330-30.2024.8.06.0066
	pelo réu, configurou-se a irregularidade do negócio e a falha na prestação do serviço, assim, a responsabilidade civil e o dever de indenizar recai sobre a instituição financeira promovida. 5. A título de danos materiais, tendo em vista comprovada a supressão indevida de valores do benefício previdenciário da demandante, resta configurado o prejuízo financeiro e o dever de ressarcimento, para a qual deve-se observar o que fora decidido pelo c. STJ nos embargos de divergência em agravo em recurso especial (EAREsp 676.608/RS), segundo à modulação dos efeitos do julgado, no sentido de que a restituição em dobro do indébito seja aplicada apenas às cobranças eventualmente realizadas partir da publicação daquele acórdão, ou seja 30/03/2021. 6. A quantia de R\$ 1.000,00 (hum mil reais) fixada em primeiro grau merece ser ajustada aos parâmetros aplicados nos julgados deste Tribunal, uma vez que usualmente tem-se como proporcional e razoável o valor de R\$ 5.000,00 (cinco mil reais) para reparar os danos sofridos e de acordo com o porte econômico do ofensor. 8. Apelação do réu conhecida e improvida. Recurso da autora conhecido e parcialmente provido. Sentença reformada. Indenização por dano moral majorada para R\$ 5.000,00 (cinco mil reais) e restituição de indébito em dobro, todavia, apenas quanto aos descontos porventura realizados após 30/03/2021. (TJ-CE - AC: 0000125-43.2018.8.06.0147, Relator: HERACLITO VIEIRA DE SOUSA NETO, Data de Julgamento: 15/12/2021, 1ª Câmara Direito Privado, Data de Publicação: 15/12/2021) (Grifei). Dessa forma, amparada no entendimento esposado pelo STJ e na modulação dos efeitos fixada no acórdão paradigma, mantenho a sentença de origem neste ponto, devendo os juros de mora incidir desde o evento danoso, nos termos da Súmula 54 do STJ e a correção monetária desde o efetivo prejuízo, de acordo com a Súmula 43 do STJ; não tendo a sentença que ser reparada em nenhum aspecto referente à indenização por danos materiais, observando-se a prescrição parcial das parcelas, como dito na sentença. Ante o exposto, conheço do presente recurso de apelação, para NEGAR-LHE PROVIMENTO, mantendo-se a decisão recorrida. Em decorrência da sucumbência recursal, majoro os honorários advocatícios devidos pela instituição financeira/recorrente de 10% (dez por cento) para 12% (doze por cento), nos termos do artigo 85, § 11, do Código de Processo Civil/2015. É como voto. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator
Processo	0200128-36.2024.8.06.0104
Número de ordem	259
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA

Processo	0200128-36.2024.8.06.0104
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Sustação/Alteração de Leilão
Polo ativo	MARIA LUCICLE MARQUES
Advogado(s) - Polo ativo	FELIPE MONTEIRO ANDRADE ARAUJO - (CE35708-A)
Polo passivo	BANCO DO NORDESTE DO BRASIL SA
Advogado(s) - Polo passivo	ROMULO SILVA LINHARES - (CE15147-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0200128-36.2024.8.06.0104
Acórdão	 PROCESSO: 0200128-36.2024.8.06.0104 - 160; APELAÇÃO CÍVEL (198) APELANTE: MARIA LUCICLE MARQUES APELADO: BANCO DO NORDESTE DO BRASIL SA Ementa DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AUSÊNCIA DE FUNDAMENTAÇÃO RECURSAL. VIOLAÇÃO AO PRINCÍPIO DA DIALETICIDADE. INOBSERVÂNCIA DO ART. 1.010 DO CPC. RECURSO NÃO CONHECIDO. I. CASO EM EXAME Apelação cível interposta contra sentença que extinguiu sem resolução de mérito a presente demanda, sem que a parte recorrente tenha apresentado fundamentos capazes de impugnar especificamente os argumentos utilizados pelo juízo de origem. O recurso limitou-se à reprodução integral dos argumentos expostos na sua exordial, sem estabelecer correlação crítica com a decisão recorrida. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em verificar se o recurso preenche os requisitos de admissibilidade, especialmente quanto à necessidade de fundamentação e impugnação específica dos fundamentos da sentença, conforme os arts. 1.010, II e III, e 932, III, do CPC. III. RAZÕES DE DECIDIR O art. 1.010 do CPC exige que a apelação exponha os fatos, o direito e as razões do pedido de nova decisão, impondo ao recorrente o ônus de demonstrar o desacerto da sentença, sob pena de violação ao princípio da dialeticidade recursal. A ausência de impugnação específica aos fundamentos da sentença, com simples repetição das razões já apresentadas na contestação, não atende à exigência de motivação recursal, o que impossibilita o conhecimento do recurso. O Superior Tribunal de Justiça reconhece que a mera reprodução de argumentos anteriores não implica, por si só, inadmissibilidade do recurso; contudo, é indispensável que as razões recursais tenham aptidão para infirmar os fundamentos da sentença, o que não ocorreu na hipótese analisada (STJ, AgInt no AgInt no AREsp 2132111/SC). A jurisprudência do TJCE também é firme no sentido de que recursos que não enfrentam os fundamentos da decisão combatida devem ser reputados inadmissíveis, em razão da ofensa à dialeticidade recursal. IV. DISPOSITIVO E TESE Recurso não conhecido. Tese de julgamento

Processo	0200128-36.2024.8.06.0104
	 </p> <p style="line-height: 150%;" align="justify"> O recurso de apelação deve ser conhecido apenas quando demonstrar de forma clara e específica os fundamentos de fato e de direito pelos quais se busca a reforma da sentença. </p> <p style="line-height: 150%;" align="justify"> A simples repetição de argumentos da fase de conhecimento, sem impugnação aos fundamentos da sentença, viola o princípio da dialeticidade e enseja o não conhecimento do recurso. </p> <p style="line-height: 150%;" align="justify"> O não atendimento aos requisitos do art. 1.010, II e III, do CPC, compromete a regularidade formal do recurso e obsta sua admissibilidade. </p><p style="line-height: 150%;" align="justify"> Dispositivos relevantes citados : CPC, arts. 1.010, II e III; 932, III; 85, § 11. </p><p style="line-height: 150%;" align="justify"> Jurisprudência relevante citada : STJ, AgInt no AREsp 2132111/SC, Rel. Min. Nancy Andrighi, Terceira Turma, j. 12.12.2022, DJe 14.12.2022; TJCE, ApCiv 0006455-69.2011.8.06.0028, Rel. Des. Francisco Mauro Liberato, j. 08.11.2023; TJCE, ApCiv 0050379-38.2020.8.06.0086, Rel. Des. Emanuel Leite Albuquerque, j. 25.10.2023. </p><p style="line-height: 150%; margin-top: 0.42cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="justify"> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por uma de suas turmas e por unanimidade, em NÃO CONHECER do recurso interposto , nos termos do relatório e voto do Relator.</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm; text-indent: 8%;" align="justify"> Fortaleza, data conforme assinatura digital. </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> DESEMBARGADOR JOS É RICARDO VIDAL PATROCÍNIO</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Presidente do Órgão Julgador </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center">&#160;</p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="center"> Relator </p><p style="line-height: 150%; margin-top: 0.07cm; margin-bottom: 0cm;" align="justify">&#160;</p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm;" align="center"> RELATÓRIO </p><p style="line-height: 150%; margin-top: 0.21cm; margin-bottom: 0.21cm; text-indent: 8%;" align="justify"> Trata-se de Recurso de Apelação interposto por Sol Confecções, em face de sentença prolatada pelo Juízo da Vara Única da Comarca de Itarema , que extinguiu sem resolução de mérito a presente ação declaratória de nulidade de leilão, ajuizada pelo apelante em face

Processo	0200128-36.2024.8.06.0104
	3.75cm; margin-bottom: 0cm;" align="justify"> I – os nomes e a qualificação das partes; </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> II – a exposição do fato e do direito; </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> III – as razões do pedido de reforma ou de decretação de nulidade; </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> IV – o pedido de nova decisão. </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> § 1º O apelado será intimado para apresentar contrarrazões no prazo de 15 (quinze) dias. </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> § 2º Se o apelado interpuser apelação adesiva, o juiz intimará o apelante para apresentar contrarrazões. </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> § 3º Após as formalidades previstas nos §§ 1º e 2º, os autos serão remetidos ao tribunal pelo juiz, independentemente de juízo de admissibilidade. </p><p style="line-height: 150%; margin-bottom: 0cm; text-indent: 8%;" align="justify"> Já o artigo 932, III, do CPC estabelece que: </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> Art. 932. Incumbe ao relator: </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> [...] </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> III – não conhecer de recurso inadmissível, prejudicado ou que não tenha impugnado especificamente os fundamentos da decisão recorrida. </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm; text-indent: 8%;" align="justify"> Quanto aos pressupostos recursais, a lei impõe ao recorrente a observância de requisitos próprios e específicos, segundo os quais o recurso deve vir revestido. É imprescindível que o recorrente demonstre as razões fundantes destes que impõem a reforma da decisão contra a qual se insurge, explanando de forma incontroversa o motivo pelo qual o decisor recorrido necessita de reforma. </p><p style="line-height: 150%; margin-bottom: 0cm; text-indent: 8%;" align="justify"> Acerca do referido princípio transcreve-se trecho da doutrina de Fredie Didier Jr., o qual ensina, in verbis: </p><p style="line-height: 150%; margin-left: 3.75cm; margin-bottom: 0cm;" align="justify"> Para que o recurso seja conhecido, é necessário também que preencha determinados requisitos formais que a lei exige; que observa a forma segundo a qual o recurso deve revestir-se". Assim, deve o recorrente, por exemplo, sob pena de inadmissibilidade de seu recurso: a) apresentar as suas razões, impugnando especificamente as razões da decisão recorrida; [...]” (Curso de Direito Processual Civil, vol. 3 – 7ª edição. Editora JusPodivm, Salvador/BA. p. 60/61) </p><p style="line-height: 150%; margin-bottom: 0cm; text-indent: 8%;" align="justify"> No caso em tela, o recurso de apelação apresentado não fundamentou as razões de fato e de direito as quais justificavam a sua interposição. Na verdade, o recorrente não traça qualquer argumentação apta a contrapor-se às teses ventiladas na sentença, a fim de viabilizar o conhecimento do recurso, para posterior manutenção ou reforma do decisor, limitando-se em transcrever ipsis litteris os argumentados apresentados em sua exordial (ID. 17952589), sem expor quais as razões recursais que atacam o fundamento da sentença de primeiro grau que extinguiu sem resolução de mérito a procedente a demanda, vez que, cabe ao apelante a demonstração, no seu arrazoadado, do argumento jurídico com o qual tenta infirmar a ratio decidendi que alicerçou o veredicto fustigado, o que não ocorreu na espécie. </p><p style="line-height: 150%; margin-bottom: 0cm; text-indent: 8%;" align="justify"> Outrossim, o apelo carece de regularidade formal pela ausência de razões que demonstrem fundamentos pelos quais o veredicto necessita ser reformado, o que obstaculiza o seu conhecimento. </p><p style="line-height: 150%; margin-bottom: 0cm; text-indent: 8%;" align="justify"> A recorrente, interpõe o seu recurso apelatório, submetendo a matéria a este Segundo Grau, sem apontar na sentença as premissas levadas em consideração pelo julgador de Primeiro Grau, entendidas pelo apelante como equivocadas, bem como a necessidade de reforma da sentença

Processo	0200128-36.2024.8.06.0104
	combatida. Nesse contexto, a mera alegação genérica de que a sentença merece ser reformada, sem ao menos fazer um contraponto com aquilo que o juízo decidiu na origem (causa de recorrer), violando o princípio da dialeticidade. Daí se infere que a parte recorrente, repita-se, não combateu a contento referida sentença, como lhe era exigido. Dessa forma, constatando-se que as razões do apelo não enfrentaram os fundamentos que lastrearam a decisão hostilizada, em total ausência de dialeticidade com a sentença, o recurso não apresenta condições de prosseguimento. A jurisprudência do STJ privilegia a instrumentalidade das formas, adotando a orientação de que a mera circunstância de terem sido reiteradas, na apelação, as razões anteriormente apresentadas na inicial ou na contestação, não é suficiente para o não conhecimento do recurso, porquanto a repetição dos argumentos não implica, por si só, ofensa ao princípio da dialeticidade. Todavia, é essencial que as razões recursais sejam capazes de infirmar os fundamentos da sentença, o que não ocorreu na hipótese. Confira-se: PROCESSUAL CIVIL. AGRAVO INTERNO NO AGRAVO INTERNO NO AGRAVO EM RECURSO ESPECIAL. PRINCÍPIO DA DIALETICIDADE. PRINCÍPIO DISPOSITIVO. INSTRUMENTALIDADE DAS FORMAS. HARMONIZAÇÃO. ARTS. 1.010 E 1.013 DO CPC/2015. REPETIÇÃO DAS RAZÕES DOS EMBARGOS DE DECLARAÇÃO OPOSTOS À SENTENÇA NA APELAÇÃO. POSSIBILIDADE. EFETIVA DEMONSTRAÇÃO DE QUE AS RAZÕES IMPUGNAM OS FUNDAMENTOS DA SENTENÇA E DO PROPÓSITO DE OBTER NOVO JULGAMENTO. NECESSIDADE. HIPÓTESE DOS AUTOS. OCORRÊNCIA. DECISÃO MANTIDA. 1. Cumprimento de sentença de honorários advocatícios. 2. O principal efeito dos recursos é o devolutivo, já que destinado a impedir o trânsito em julgado da sentença, permitindo o reexame, a nova apreciação, da matéria já decidida pelo Judiciário por outro órgão funcionalmente superior. 3. A jurisprudência do STJ privilegia a instrumentalidade das formas, adotando a orientação de que a mera circunstância de terem sido reiteradas, na apelação, as razões anteriormente apresentadas na inicial ou na contestação, não é suficiente para o não conhecimento do recurso, porquanto a repetição dos argumentos não implica, por si só, ofensa ao princípio da dialeticidade. Todavia, é essencial que as razões recursais sejam capazes de infirmar os fundamentos da sentença. 4. Hipótese em que, não obstante a reprodução parcial dos embargos de declaração opostos à sentença na apelação, a parte recorrente apresentou no recurso as razões pelas quais entendeu estarem equivocados os fundamentos adotados pela sentença, não havendo, assim, violação ao princípio da dialeticidade a justificar o não conhecimento da apelação. 5. Agravo interno não provido. (STJ - AgInt no AgInt no AREsp: 2132111 SC 2022/0154033-0, Relator: Ministra NANCY ANDRIGHI, Data de Julgamento: 12/12/2022, T3 - TERCEIRA TURMA, Data de Publicação: DJe 14/12/2022) Nesse sentido, confira-se julgados deste e. Tribunal: APELAÇÃO CÍVEL. AÇÃO DE CONSIGNAÇÃO EM PAGAMENTO C/C REVISÃO CONTRATUAL. EXTINÇÃO DO FEITO COM BASE NOS ARTS. 373 E 487, I, AMBOS DO CÓDIGO DE PROCESSO CIVIL. RAZÕES DISSOCIADAS DOS FUNDAMENTOS DA SENTENÇA. DESATENDIMENTO AO DISPOSTO NO ART. 1.010, II E III, DO CPC. VIOLAÇÃO AO PRINCÍPIO DA DIALETICIDADE. RECURSO NÃO CONHECIDO. 1. A sentença fundamentou a extinção do feito com base nos arts. 373 e 487, I, ambos do Código de Processo Civil, tendo em vista que a autora não faz prova dos fatos alegados na inicial. Não apresenta provas que embasem seus argumentos que limitam-se(sic) a ser apenas afirmações. Todavia, como se infere das razões postas no apelo, a recorrente se restringe a alegar que a fundamentação da decisão, portanto, não é uma faculdade, uma vez que inerente e indispensável ao pleno exercício do contraditório e da ampla defesa, razão pela qual o art. 489 do CPC corrobora o entendimento, expondo taxativamente a fundamentação como requisito essencial da sentença. [?] Por que razão que a decisão não fundamentada configura nulidade, nos termos do art. 1.013, § 3.º, inc IV do CPC, amplamente reforçado pela doutrina. 2. No termos do art. 1.010, II e III, do Código de Processo Civil, a apelação obrigatoriamente apresentar a exposição do fato e do direito e as razões do pedido de reforma da decisão recorrida, sendo esta norma a positivação do denominado princípio da dialeticidade, pelo qual cumpre ao recorrente demonstrar o desacerto da decisão recorrida e impugnar, especificamente, seus

Processo	0200128-36.2024.8.06.0104
	fundamentos. 3. A ausência de impugnação específica dos fundamentos constantes na decisão combatida, acarreta o não conhecimento da pretensão recursal. 4. Recurso não conhecido. Sentença mantida. A C O R D A a Primeira Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, não conhecer do presente recurso por afronta ao princípio da dialeticidade recursal, nos termos do voto do eminente Relator. Fortaleza, data e hora indicadas no sistema. DESEMBARGADOR FRANCISCO MAURO FERREIRA LIBERATO Presidente do Órgão Julgador/Relator. (Apelação Cível&#160;- 0006455-69.2011.8.06.0028, Rel. Desembargador(a) FRANCISCO MAURO FERREIRA LIBERATO, 1ª Câmara Direito Privado, data do julgamento:&#160;08/11/2023, data da publicação:&#160;08/11/2023). APELAÇÃO CÍVEL. SENTENÇA. EXTINÇÃO POR INÉRCIA DA PARTE EM CUMPRIR A DETERMINAÇÃO DE EMENDÀ À INICIAL. RECURSO DE APELAÇÃO QUE NÃO ATACA OS FUNDAMENTOS DA SENTENÇA. MANIFESTA OFENSA AO PRINCÍPIO DA DIALETICIDADE. RECURSO NÃO CONHECIDO. 1. O apelante absteve-se de impugnar especificamente os fundamentos da sentença vergastada prolatada pelo juízo singular, que extinguiu a ação sem resolução do mérito sob o fundamento de que o ora recorrente, apesar de devidamente intimado, não procedeu a emenda da inicial determinada em decisão interlocutória pretérita. 2. O apelante tece suas razões recursais nos aspectos meritórios da ação, sem destinar uma linha sequer de seu recurso, ao fundamento da sentença que conduziu à extinção do efeito. Por certo, deveria ter a Recorrente rebatido com argumentação farta a decisão do juízo a quo, levantando, em suas razões recursais, questões jurídicas capazes de alterar o resultado do julgamento da demanda, ou seja, motivos suficientes a afastar a decidida extinção da ação. 3. Por tais razões, não visualizo das argumentações lançadas, efetivas razões fáticas e jurídicas idôneas à impugnação específica dos fundamentos da decisão ora atacada, tampouco capazes de evidenciar a alegada necessidade de reforma da decisão. 4. RECURSO DE APELAÇÃO NÃO CONHECIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos da APELAÇÃO CÍVEL nº 0050379-38.2020.8.06.0086, em que é apelante MARIA MEIRE DE SOUZA ALENCAR e apelado BANCO HONDA S/A, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em não conhecer do recurso, nos termos do voto do Relator. Fortaleza, 25 de outubro de 2023. EMANUEL LEITE ALBUQUERQUE Relator. (Apelação Cível&#160;- 0050379-38.2020.8.06.0086, Rel. Desembargador(a) EMANUEL LEITE ALBUQUERQUE, 1ª Câmara Direito Privado, data do julgamento:&#160;25/10/2023, data da publicação:&#160;25/10/2023). PROCESSO CIVIL. RECURSO DE APELAÇÃO. AUSÊNCIA DOS FUNDAMENTOS FÁTICOS E JURÍDICOS. NÃO ATAQUE ESPECÍFICO À SENTENÇA. AFRONTA AO PRINCÍPIO DA DIALETICIDADE. PRESSUPOSTOS INTRÍNSECOS. REGULARIDADE FORMAL. AUSÊNCIA. NECESSIDADE DE ARGUMENTOS QUE COMPORTAM AS RAZÕES. SÚMULA 43 DOTJCE. APLICAÇÃO. CAUSA DE PEDIR RECURSAL. RECURSO NÃO CONHECIDO. I - Trata-se de recurso de apelação cível interposto por THIAGO DANTAS SILVA, contra sentença proferida pelo juízo da 1ª Vara Cível da Comarca de Eusébio, que em sede de ação de busca e apreensão movida por BANCO ITAUCARD S/A, às fls. 131/149. II - Verifica-se que o recurso de apelação apresentado não fundamentou as razões de fato e de direito as quais justificavam sua interposição, bem como a necessidade de reforma da decisão. Eis que o conhecimento do referido recurso encontra óbice na disposição contida no artigo 1.010, inciso II, do NCPD, haja vista que não se incumbiu de impugnar especificamente os fundamentos da decisão recorrida. III - Há de ressaltar que o Tribunal de Justiça do Estado do Ceará editou súmula no sentido de que não se conhece de recurso quando não é feita a exposição do direito e das razões do pedido de nova decisão (súmula de nº 43). IV - Não há nenhum vício de ordem pública na decisão de primeiro grau, eis que se encontra devidamente fundamentada, conforme expressa o artigo 93, inciso IX, da Constituição Federal. V - Não há se falar em decisão surpresa, à vista do entendimento assente de que os preceitos do aludido princípio, imortalizados nos arts. 9º e 10 do CPC, não se aplicam aos requisitos de admissibilidade dos recursos. Precedentes. VI - Ainda que assim não fosse, fazendo uma leitura atenta da documentação suscitada pelas partes e pelo juízo de primeiro grau, chega-se à mesma conclusão posta na decisão objurgada. Inexistem provas que convalidem os argumentos propostos pela parte ré, que fulminem o objetivo de buscar e apreender o bem em disputa. Em verdade, todo o caderno processual resulta na tese de serem, as razões propostas pela parte autora, como as viáveis para o acolhimento da inicial, pois alinhadas aos entendimentos sedimentados no âmbito da Corte Superior. Se conhecido, portanto, o presente recurso, a ele não se daria acolhimento, por falta de provas do direito do autor, contrariando, pois, o comando do art. 373, I, do Código de Ritos. VII - Recurso de

Processo	0200128-36.2024.8.06.0104
	Apelação não conhecido por ausência dos fundamentos fáticos e jurídicos, em conformidade com os artigos 932, III, e 1.010, inciso II, do NCPC, mantendo-se o disposto na sentença à sua íntegra. ACÓRDÃO Vistos, relatados e discutidos os presentes autos, em que figuram as partes acima referidas. Acordam os Senhores Desembargadores integrantes da 4ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará em NÃO CONHECER do recurso de apelação interposto, mantendo-se o disposto na sentença, tudo nos termos do voto do Desembargador Relator, observadas as disposições de ofício. Fortaleza/CE, 5 de dezembro de 2023. DESEMBARGADOR FRANCISCO BEZERRA CAVALCANTE Relator (Apelação Cível - 0050492-88.2021.8.06.0075, Rel. Desembargador(a) FRANCISCO BEZERRA CAVALCANTE, 4ª Câmara Direito Privado, data do julgamento: 05/12/2023, data da publicação: 05/12/2023) PROCESSUAL CIVIL. APELAÇÃO CÍVEL. INOCORRÊNCIA DE CERCEAMENTO AO DIREITO DE DEFESA. PRECLUSÃO CONSUMATIVA PRO JUDICATO EM MATÉRIA DE ORDEM PÚBLICA. OFENSA À DIALETICIDADE RECURSAL. APELO NÃO CONHECIDO. -No caso, a Ação de Cobrança proposta fora extinta sem julgamento do mérito, tenho decidido o Juízo de Origem pela ilegitimidade ativa por meio de Ação de Oposição apensada aos autos principais. Todavia, nas razões de Apelação, nada, nenhuma linha sequer, fora dedicada pela Recorrente a falar a respeito, num contexto de ausência absoluta de diálogo entre Impugnação e ato impugnado. -Na espécie, o contraditório para confrontar a arguição de ilegitimidade fora efetivamente oportunizado. Contudo, restou a parte silente e revel, operando-se, para si, a preclusão. E neste cenário, não há se cogitar de cerceamento ao direito de defesa. - Neste caso, em que a parte deixou de apresentar a devida impugnação, operou-se a preclusão consumativa para o Juízo ad quem, uma vez que o doutíssimo Juízo sentenciante debruçou-se sobre a questão da legitimidade. De acordo com a Jurisprudência do STJ, as matérias de ordem pública podem ser apreciadas a qualquer tempo nas instâncias ordinárias. Todavia, existindo decisão anterior, opera-se a preclusão consumativa se não houver impugnação no momento processual oportuno. Impossibilidade no caso concreto de reexame, de ofício, da questão da legitimidade, porque decidida na Instância de Origem e não refutada. -A Recorrente também não impugnou a sentença de forma específica. Não disse no que a conclusão sobre a sua revelia estaria incorreta, nem porque o entendimento sobre a "ausência da sua condição de herdeira da sucessão patrimonial" estaria equivocado. Nestes casos, há ofensa ao primado da dialeticidade (inteligência do inciso III do Art. 932 do CPC). ACÓRDÃO: Vistos etc., acorda, em Turma, por unanimidade de votos, a 3ª Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, na conformidade da ata dos julgamentos, em não conhecer do Recurso, nos termos do Voto da Relatora. Fortaleza, data e hora da assinatura digital. LIRA RAMOS DE OLIVEIRA Presidente do Órgão Julgador DESEMBARGADORA JANE RUTHMAIA DE QUEIROGA Relatora (Apelação Cível - 0008537-70.2018.8.06.0176, Rel. Desembargador(a) JANE RUTH MAIA DE QUEIROGA, 3ª Câmara Direito Privado, data do julgamento: 08/06/2022, data da publicação: 08/06/2022) Diante do exposto, não conheço do recurso/apelatório interposto majoro a verba honorária para 15% (quinze por cento) sobre o valor da condenação, com base no § 11 do art. 85 do CPC. É como voto. Fortaleza, da a da assinatura eletrônica. DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA Relator

Processo	0050600-90.2014.8.06.0034
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Perdas e Danos
Polo ativo	MICHELLE SOUZA ASSUNCAO
Advogado(s) - Polo ativo	ANTONIO JORGE COUTINHO - (CE9974-A) JOSE TANILSON SA FILHO - (CE24423-A)
Polo passivo	AYMORE CREDITO, FINANCIAMENTO E INVESTIMENTO S.A.
Advogado(s) - Polo passivo	ROSEANY ARAUJO VIANA ALVES - (CE10952-A) MARIA SOCORRO ARAUJO SANTIAGO - (CE1870-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA

Processo	0050600-90.2014.8.06.0034
	none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 1. Apelação cível interposta por Michelle Souza Assunção contra sentença da 1ª Vara Cível da Comarca de Aquiraz, que julgou improcedente ação de indenização por danos materiais e morais ajuizada em face de Aymoré Crédito e Financiamento S.A. A autora sustenta a ocorrência de venda indevida do veículo objeto de busca e apreensão e pleiteia restituição de valores pagos no financiamento, bem como reparação por danos morais. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 18.7333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: #0f4761; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> II. QUESTÃO EM DISCUSSÃO &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 2. Há duas questões em discussão: (i) definir se cabe indenização por danos materiais, diante da resolução contratual e de depósitos realizados pela autora; (ii) estabelecer se a alienação indevida do veículo configura ato ilícito apto a ensejar indenização por danos morais. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 18.7333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: #0f4761; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun

Processo	0050600-90.2014.8.06.0034
	SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; color: windowtext; line-height: 27px; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">III. RAZÕES DE DECIDIR &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 3. Os danos materiais não podem ser novamente fixados, pois a matéria já foi objeto de decisão transitada em julgado no processo nº 0016474-82.2012.8.06.0034, em que determinada a conversão em perdas e danos, configurando-se a existência de coisa julgada. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 4. A alienação do veículo pela instituição financeira, antes do trânsito em julgado da ação de busca e apreensão posteriormente julgada improcedente, configura ato ilícito, por impedir a restituição do bem à consumidora. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 5. O dano moral resta caracterizado <span class="NormalTextRun SCXW93232728

Processo	0050600-90.2014.8.06.0034
	BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">in re ipsa , diante da privação injusta do veículo e da frustração das legítimas expectativas da apelante, atingindo direitos da personalidade. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 6. O nexó causal está presente, pois o prejuízo moral decorre diretamente da conduta ilícita da instituição financeira ao alienar o bem indevidamente. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 7. O quantum indenizatório deve observar razoabilidade e proporcionalidade, fixando-se em R\$ 3.000,00, suficiente para compensar o abalo sofrido e desestimular novas práticas lesivas. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-

Processo	0050600-90.2014.8.06.0034
	highlight-color: transparent; margin: 18.7333px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: #0f4761; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> IV. DISPOSITIVO E TESE &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 8. Recurso conhecido e parcialmente provido. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Tese de julgamento : &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 1. A condenação em indenização por danos materiais é incabível quando a matéria já foi

Processo	0050600-90.2014.8.06.0034
	decidida em outra demanda com coisa julgada formada. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 2. A venda antecipada e irregular de veículo objeto de busca e apreensão posteriormente julgada improcedente configura ato ilícito. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 3. O dano moral decorrente da alienação indevida do veículo presume-se in re ipsa , sendo devida indenização ao consumidor lesado. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> 4. O

Processo	0050600-90.2014.8.06.0034
	valor da indenização por dano moral deve ser fixado de forma proporcional, para compensar o abalo e cumprir função pedagógica, sem gerar enriquecimento ilícito. &#160; <div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; &#160; </p><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 16px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Jurisprudência relevante citada TJCE, Apelação Cível nº 0081437-77.2007.8.06.0001, Rel. Des. Heraclito Vieira de Sousa Neto, 1ª Câmara Direito Privado, j. 03.03.2021; TJCE, Apelação Cível nº 0050110-78.2020.8.06.0092, Rel. Des. Everardo Lucena Segundo, 2ª Câmara Direito Privado, j. 01.03.2023; TJCE, Apelação Cível nº 0050232-46.2021.8.06.0031, Rel. Des. Maria de Fátima de Melo Loureiro, 2ª Câmara Direito Privado, j. 17.04.2024. &#160; </p><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; <span class="EOP SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px;

Processo	0050600-90.2014.8.06.0034
	ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;" lang="PT-BR" xml:lang="PT-BR"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Presidente do Órgão Julgador &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;">

Processo	0050600-90.2014.8.06.0034
	BR">Relator &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 10.6667px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext;"> &#160; &#160; &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> RELATÓRIO &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Trata-se de r e curso de a pela ção

Processo	0050600-90.2014.8.06.0034
	in terposto por &#160; Michelle Souza Assunção &#160;contra a sentença proferida pelo Juízo da 1ª Vara Cível da Comarca de Aquiraz , que julgou im p rocedente a Ação de Indenização por Dano Material e Moral movida em desfavor de Aymoré Crédito e Financiamento S.A. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Consta da sentença &#160; </p></div>

Processo	0050600-90.2014.8.06.0034
	padding: 0px; user-select: text;">de ID 21420834 que o Magistrado a quo decidiu nos seguintes termos: &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> (…) &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Ante o exposto, JULGO IMPROCEDENTES os pedidos veiculados por Michelle Souza Assunção e extingo o feito, com resolução do mérito, nos termos do artigo 487, I, do Código de Processo Civil. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> Sucumbente, responsabilizo a parte autora pelo pagamento das custas, cuja exigibilidade fica suspensa em razão da gratuidade que lhe é deferida nesta oportunidade, pois, como se observa, ela declarou na inicial não ter condições a tanto (art. 99, par. 3º, do CPC). &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;">

Processo	0050600-90.2014.8.06.0034
	size: small;"> (...) &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;"> &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Irresignad a com a sentença, a parte autor a interp ôs apelação , por meio da qua l roga pelo provimento de seu recurso. Em sua peça recursal de ID 21420689 a a apelante <span class="NormalTextRun SCXW93232728 BCX0" style="-

Processo	0050600-90.2014.8.06.0034
	webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">alega que estão presentes os requisitos ensejadores para configuração de danos morais, já que a apelada vendeu indevidamente o veículo objeto da ação de busca e apreensão em alienação fiduciária, bem como tal tópico (dano s morais não foi objeto d e outro processo. Quanto aos danos materiais, sustenta ter agido de boa-fé ao ajuizar a ação em 2014, pois à época não estava definido o destino das parcelas do financiamento, em razão de resolução contratual unilateral promovida pela ré. Defende que, diante do prejuízo sofrido e do enriquecimento sem causa da promovida, faz jus à restituição das quantias depositadas em juízo e das parcelas adimplidas. Ressalta que não busca a indenização pelo bem em si, já convertida em perdas e danos em ação de busca e apreensão, mas apenas a devolução dos valores pagos no financiamento, cuja retenção considera ilícita ou, subsidiariamente, abusiva. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Devidamente intimada, a parte apelada não apresentou contrarrazões conforme certidão de ID 21419939. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Audiência de conciliação restou prejudicada, uma vez que as partes não compareceram, conforme

Processo	0050600-90.2014.8.06.0034
	termo de ID 21419922. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Manifetação do Ministério Público de segundo grau de ID 21419929 , que se absteve de adentrar no mérito recursal. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É o relatório. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> VOTO &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian:

Processo	0050600-90.2014.8.06.0034
	normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 27px;" lang="PT-BR" xml:lang="PT-BR">Inicialmente, pontuo que o juízo a quo concedeu os benefícios da gratuidade judiciária à recorrente, motivo pelo qual mantenho a sua concessão e a dispense de comprovar o recolhimento do preparo, nos termos do art. 99, §7º, do CPC/2015. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Em sede juízo de admissibilidade conheço do recurso, pois presentes os requisitos intrínsecos e extrínsecos exigidos.&#160; &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No tocante ao mérito, trata-se de demanda que visa à reparação por danos material e moral decorrentes d a venda indevida de um veículo que foi objeto de uma ação de busca e apreensão em alienação fiduciária. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> No que concerne aos danos materiais <span class="NormalTextRun SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-

Processo	0050600-90.2014.8.06.0034
	tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text;">, oportuno destacar que deve ser mantida a sentença. Explico . &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> No que tange ao pleito de indenização por danos materiais, não assiste razão à parte autora. Isso porque tais danos já se encontram objeto de discussão em outra demanda judicial, na qual inclusive restou determinada a conversão em perdas e danos, diante da impossibilidade de restituição do veículo. Com efeito, ao ser determinada tal conversão, a questão relativa aos danos materiais alegados nestes autos foi devidamente analisada e fixada no processo nº 0016474-82.2012.8.06.0034, observadas as diretrizes estabelecidas pela 2ª Instância quando do julgamento do agravo de instrumento nº 0629912-24.2018.8.06.0000. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Dessa forma, mostra-se incabível nova fixação de indenização por danos materiais no presente feito, sob pena de enriquecimento ilícito e afronta à coisa julgada, uma vez que a matéria já se encontra pacificada e delimitada em ação própria. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="TextRun SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px; font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">Quanto aos danos morais <span

Processo	0050600-90.2014.8.06.0034
	user-select: text; line-height: 27px;">&#160; Evidencia-se, assim, falha na prestação do serviço, cuja responsabilidade não pode ser atribuída à apelante. O ilícito mostra-se manifesto, notadamente porque a instituição financeira, de forma precipitada, promoveu a alienação do bem objeto da demanda, a qual, ao final, restou julgada improcedente diante da prova inequívoca da inexistência de inadimplemento contratual. A apelante, portanto, teria o direito de reaver o veículo, o que foi obstado pela conduta abusiva da instituição financeira. A venda prematura e irregular do bem, antes mesmo do trânsito em julgado da decisão, impossibilitou o retorno ao status quo ante, configurando, de modo inequívoco, a prática do ato ilícito. No tocante ao dano moral, este restou evidenciado pela privação do recorrido quanto à utilização de seu bem, circunstância que repercute no âmbito psíquico e atinge diretamente os direitos da personalidade. Nessa hipótese, o dano moral configura-se

Processo	0050600-90.2014.8.06.0034
	text;">in re ipsa , ou seja, presume-se da simples constatação da ofensa, tornando-se desnecessária a produção de prova específica de sua ocorrência. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px; "> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px; lang="PT-BR" xml:lang="PT-BR"> &#160; Comprovada a alienação indevida do veículo, torna-se dispensável a demonstração do efetivo prejuízo moral, porquanto este decorre da própria gravidade da conduta perpetrada, não se tratando de mero aborrecimento cotidiano. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px; "> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px; lang="PT-BR" xml:lang="PT-BR"> &#160; Por derradeiro, resta também demonstrado o nexo causal, uma vez que o dano suportado pelo recorrido decorreu diretamente da conduta ilícita da instituição financeira apelada, consubstanciada na alienação indevida do bem. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px; "> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px; lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal;

Processo	0050600-90.2014.8.06.0034
	font-variant-emoji: normal; line-height: 27px;" lang="PT-BR" xml:lang="PT-BR">Nesse sentido, veja-se precedentes desta Corte de Justiça: &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> DIREITO CIVIL E CONSUMERISTA. APELAÇÃO CÍVEL. AÇÃO INDENIZATÓRIA. AJUIZAMENTO DE AÇÃO DE BUSCA E APREENSÃO PELA INSTITUIÇÃO FINANCEIRA MESMO APÓS CIÊNCIA ACERCA DO DEFERIMENTO DE LIMINAR NOS AUTOS DE DEMANDA REVISIONAL GARANTINDO A PERMANÊNCIA DO VEÍCULO COM A CONSUMIDORA. BEM APREENDIDO INDEVIDAMENTE. CONDUTA IRREGULAR DO BANCO. DANOS MORAIS CARACTERIZADOS. DANOS MATERIAIS NÃO COMPROVADOS. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 1. Trata-se de Apelação interposta em face de sentença que julgou improcedente o pedido autoral formulado na Ação de Indenização por Danos Morais e Materiais, proposta em decorrência de suposta busca e apreensão indevida de seu veículo. 2. DA JUSTIÇA GRATUITA. A declaração de insuficiência de recursos prestada pela pessoa natural possui presunção relativa de veracidade, só podendo ser desconstituída caso existam elementos nos autos que indiquem a ausência de hipossuficiência econômica do litigante. 3. Na hipótese em exame, deve ser mantida a gratuidade judiciária concedida, pois a apelante é pessoa natural e a parte adversa não apresentou comprovação de que aquela possui condições econômicas de litigar sem o deferimento do benefício em comento. 4. DO MÉRITO. É incontroverso que a instituição financeira ajuizou Ação de Busca e Apreensão de veículo objeto de alienação fiduciária mesmo após ter ciência do deferimento de liminar nos autos de Ação Revisional garantindo a permanência do veículo na posse do devedor. 5. Na ocasião, o banco logrou êxito no deferimento de liminar para reaver o bem, o qual fora retirado da consumidora e devolvido apenas em 21 de dezembro de 2007, após o juízo constatar que esse provimento jurisdicional entrava em conflito com o anterior. 6. Estão presentes todas as condições necessárias para responsabilização da empresa demandada, quais sejam: a) o ato ilícito, consistente na negligência da demandada no ato de ajuizamento de Ação de Busca e Apreensão com pedido liminar em relação a automóvel cuja permanência com a consumidora havia sido garantida por ordem judicial em outro processo; b) o dano moral, referente à frustração das legítimas expectativas da apelante, haja vista a injusta apreensão do veículo adquirido para execução das atividades cotidianas e a privação de seu uso por alguns meses; c) o nexo de causalidade, pois, inexistindo o ato ilícito da apelada, não haveria o dano. 7. Em relação ao montante indenizatório, a quantia de R\$ 7.000,00 (sete mil reais) é razoável, sendo necessária e suficiente para reparar os danos morais ocasionados à recorrente. 8. No tocante ao dano material, no entanto, consistente no prejuízo financeiro ocasionado,

Processo	0050600-90.2014.8.06.0034
	não há comprovação robusta da sua ocorrência e do respectivo valor, motivo pelo qual não merece acolhimento. 9. Recurso conhecido e parcialmente provido. Decisão reformada. ACÓRDÃO Acordam os Desembargadores integrantes da Primeira Câmara de Direito Privado do Egrégio Tribunal de Justiça do Estado do Ceará, nos autos do processo nº 0081437-77.2007.8.06. 0001, por unanimidade, por uma de suas Turmas, em conhecer do recurso para dar-lhe parcial provimento, tudo de conformidade com o voto do e. Relator. Fortaleza, 03 de março de 2021. (Apelação Cível - 0081437-77.2007.8.06.0001, Rel. Desembargador(a) HERACLITO VIEIRA DE SOUSA NETO, 1ª Câmara Direito Privado, data do julgamento:&#160; 03/03/2021, data da publicação:&#160; 03/03/2021) (G.N) &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kertering: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kertering: none; background-color: transparent; color: windowtext; text-align: justify;"> APELAÇÃO CÍVEL. DIREITO PROCESSUAL CIVIL. BUSCA E APREENSÃO EM ALIENAÇÃO FIDUCIÁRIA. RECONVENÇÃO. SENTENÇA IMPROCEDENTE PARA PEDIDO DE BUSCA E APREENSÃO, PROCEDENTE PARA RECONVENÇÃO. DANOS MORAIS CONFIGURADOS. QUANTUM INDENIZATÓRIO MINORADO. SENTENÇA PARCIALMENTE REFORMADA. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. 1. Inicialmente, cuida-se de AÇÃO DE AÇÃO BUSCA E APREENSÃO ajuizada por AYMORÉ CRÉDITO, FINANCIAMENTO E INVESTIMENTO S/A em face de FLAVIANO SAMPAIO COSTA e RECONVENÇÃO. 2. O cerne da lide reside na análise se ação deveria ter sido julgada procedente, visto que nesses autos, o requerido não comprova pagamento da parcela alvo. Verifica-se que requerido ajuizou ação de busca e apreensão em razão do inadimplemento de uma única parcela e continuou recebendo as prestações seguintes, não bloqueando o recebimento das contraprestações. 3. Nessa perspectiva, busca o autor, ora Apelante, a reforma da sentença que julgou improcedente o pleito de busca e apreensão, não consolidando, consequentemente, a propriedade e a posse plena e exclusiva do veículo automotor em favor do credor fiduciário, bem como considere improcedente o pleito reconvenicional apresentado pelo devedor fiduciante. 4. No caso concreto, a parte autora, ora apelante, promoveu a venda do veículo em leilão, em virtude do não pagamento da parcela alvo, e ainda, da ausência da realização do depósito no valor integral da dívida. Verifica-se que a parte ré, ora apelada, efetuou o pagamento das parcelas subsequentes, e a apelante recebeu os pagamentos posteriores a parcela em mora. Logo, a mora não demostrou-se configurada. <span class="TextRun

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	SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 16px; font-weight: bold;" lang="PT-BR" xml:lang="PT-BR">5. Nesse sentido, constata-se que houve dano moral, e que este deve ser ponderado, no caso em tela, de forma razoável, entendendo que o fato do veículo ter sido leilado, sobressai por incontestado o abalo causado a si. Assim, configurando a circunstância delimitadora de ilícito civil a ensejar a reparação pelos danos morais imputados à recorrente. 6. Atento às peculiaridades do caso concreto, quanto à quantificação do dano moral, há de se pontuar que, ao tempo que sirva de lição pedagógica, para evitar que o ilícito se repita, bem como para prestar à vítima uma satisfação abalos suportados, também deve ser arbitrado de modo a evitar enriquecimento sem causa. Assim, tem-se que o valor de condenação por danos morais em R\$ 8.000,00 (oito mil reais) não apresenta-se de todo modo razoável. 7. Contudo, cotejando-se os elementos probantes trazidos ao feito, observa-se a necessidade de manutenção da sentença no que toca a improcedência do pedido de busca e apreensão, e, considerando o histórico de arbitramento efetuado pelos tribunais pátrios em situações de envergadura similar, devendo ser minorado o valor de condenação por danos morais para montante de R\$ 5.000,00 (cinco mil reais). 8. RECURSO CONHECIDO E PARCIALMENTE PROVIDO. ACÓRDÃO: Vistos, relatados e discutidos estes autos em que são partes as acima indicadas, acordam os desembargadores integrantes da Segunda Câmara de Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade de votos, em dar parcial provimento ao recurso, nos termos do relatório e voto Relator que passa a fazer parte integrante do presente acórdão. Fortaleza, data e hora da assinatura digital. Desembargador Everardo Lucena Segundo Relator (assinado digitalmente) (Apelação Cível - 0050110-78.2020.8.06.0092, Rel. Desembargador(a) EVERARDO LUCENA SEGUNDO, 2ª Câmara Direito Privado, data do julgamento: 01/03/2023, data da publicação: 01/03/2023). (G . N &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> <span class="TextRun SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-numeric: normal; font-variant-east-asian:

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	normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 16px;" lang="PT-BR" xml:lang="PT-BR"> APELAÇÕES CIVEIS. REPARAÇÃO CÍVEL. AÇÃO DE RESTITUIÇÃO DE BEM MÓVEL C/C DANOS MORAIS E MATERIAIS. VEÍCULO APREENDIDO EM AÇÃO DE BUSCA E APREENSÃO. AUSÊNCIA DE CONSTITUIÇÃO EM MORA DO DEVEDOR. AÇÃO EXTINTA SEM RESOLUÇÃO DO MÉRITO. BEM VENDIDO EXTRAJUDICIALMENTE INDEVIDAMENTE. IMPOSSIBILIDADE DE DEVOLUÇÃO DO BEM. CONVERSÃO DA OBRIGAÇÃO EM PERDAS E DANOS. RESTITUIÇÃO QUE DEVE OBSERVAR O VALOR MÉDIO DE MERCADO DO VEÍCULO À ÉPOCA DA BUSCA E APREENSÃO. UTILIZAÇÃO DA TABELA FIPE. DANO MORAL IN RE IPSA. QUANTUM INDENIZATÓRIO RAZOÁVEL E PROPORCIONAL. RECURSO DA PARTE AUTORA CONHECIDO E PROVIDO. RECURSO DA PARTE RÉ CONHECIDO E DESPROVIDO. SENTENÇA REFORMADA EM PARTE. Trata-se na origem de ação visando a restituição de bem móvel, cumulada com danos morais, ocasião em que a parte autora alegou que teve seu veículo indevidamente apreendido nos autos da ação de busca e apreensão (Processo n. 0000221-81.2019.8.06.0031), que foi posteriormente julgada extinta por ausência de comprovação da mora, ensejando a devolução do bem e a condenação da instituição financeira em danos morais. 2. Em sede de sentença, o d. Julgador de origem rejeitou o pleito de devolução do veículo, tendo em vista que este já havia sido vendido anteriormente, bem como rejeitou o pedido de danos materiais, condenando a parte requerida em danos morais, no importe de R\$ 2.000,00 (dois mil reais). Ambas as partes irredutíveis, apresentaram apelações, aduzindo a parte autora a necessidade de conversão da obrigação de fazer (devolução do veículo) em perdas e danos, enquanto a parte requerida alegou inexistir qualquer ato ilícito ensejador de reparação. 3. Observa-se que na Ação de Busca e Apreensão anteriormente ajuizada pela parte ora demanda, foi descaracterizado a mora, sendo a ação julgada extinta sem julgamento do mérito. Nesse ínterim, o credor, após aprender o veículo, efetuou sua venda extrajudicialmente, a terceiro de boa-fé, o que torna prejudicado o pedido de devolução. Contudo, é sabido que, embora a venda extrajudicial seja considerada uma prerrogativa do credor conforme estabelecido no Decreto-Lei nº 911/69, este assume os riscos decorrentes de suas ações. Isso significa que, caso a liminar seja posteriormente revogada, como foi, ou os pedidos sejam considerados improcedentes, o credor estará sujeito a tais consequências. 4. Nessa linha, é perfeitamente possível a conversão da obrigação de fazer em perdas e danos, conforme expressamente previsto no art. 499 do CPC e 248 do Código Civil. Portanto, ao contrário do entendimento exposto em sentença, cabe à instituição financeira indenizar a parte autora com o valor correspondente ao preço médio de um veículo do mesmo modelo e ano do apreendido indevidamente, levando-se em conta o valor da Tabela FIPE vigente à época da busca e apreensão. 5. Quanto ao alegado danos morais, este restou configurado, notadamente diante do abuso de direito perpetrado pela instituição financeira ré que promoveu a venda do veículo em leilão extrajudicial, quando tinha obrigação de promover a respectiva devolução do bem, tendo em vista a não constituição em mora do devedor. Destaque-se que, no presente caso, o dano moral não carece de comprovação, pois é considerado in re ipsa , ou seja, decorrente do próprio fato. <span class="TextRun SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; font-variant-

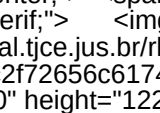
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	numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 16px;" lang="PT-BR" xml:lang="PT-BR"> 6. Dessarte, o quantum indenizatório arbitrado em primeiro grau, deve estar regrado dentro dos parâmetros dos princípios da proporcionalidade e razoabilidade, sob pena de deferir enriquecimento indevido a uma das partes da lide. Nessa perspectiva, apresenta-se justa e razoável a verba indenizatória fixada em R\$ 2.000,00 (dois mil reais), pois mostra-se hábil a compensar os danos experimentado pela parte autora que se viu privado, sem respaldo jurídico, da utilização do meio de transporte por si adquirido. 7. Apelação do autor conhecida e provida. Apelação da requerida conhecida e não provida. ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 2ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, em conhecer do recurso da parte autora e dar provimento e conhece e negar provimento ao recurso da parte ré, nos termos do voto da relatora. (Apelação Cível - 0050232-46.2021.8.06.0031, Rel. Desembargador(a) MARIA DE FÁTIMA DE MELO LOUREIRO, 2ª Câmara Direito Privado, data do julgamento: 17/04/2024, data da publicação: 17/04/2024) (G.N) &#160; </div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px 0px 0px 151px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: justify;" lang="PT-BR" xml:lang="PT-BR"> &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-ker-ning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> Restando inconteste o dano moral, passa-se à fixação do quantum indenizatório devido. Esse montante deve ser fixado com base na razoabilidade e na proporcionalidade, a fim de evitar o enriquecimento ilícito d a apela nte , mas sem deixar de punir o apela </p></div>

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	padding: 0px; user-select: text;">do pelo cometimento do ato ilegal. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> É certo que não existem critérios predefinidos para arbitrar o valor a título de dano moral, de modo que incumbe ao juízo, no momento de quantificá-lo, atentar-se aos princípios da razoabilidade e da proporcionalidade, por meio, por exemplo, da análise dos seguintes fatores: as condições econômicas das partes, o nível de culpa do ofensor e a extensão do dano sofrido pela vítima. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Nesse contexto, levando-se em conta tudo o que consta nos autos, notadamente os danos causados à autora, atendendo aos princípios da razoabilidade e da proporcionalidade, entendo que o valor fixado de R\$ 3.000,00 (três mil reais), a título de danos morais, é adequado para compensar o ilícito praticado e para exercer salutar efeito pedagógico, de forma a prevenir condutas negligentes semelhantes por parte do banco apelado em relação a consumidores atuais e futuros. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> Ante o exposto, conheço do recurso apelatório, para

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	font-weight: bold; font-variant-ligatures: none !important;" lang="PT-BR" xml:lang="PT-BR">conceder-lhe parcial provimento , reformando a sentença recorrida >para condenar o apelado ao pagamento, à apelante, do valor de R\$ 3.000,00 (três mil reais) a título de indenização por danos morais > com correção monetária pelo IPCA a partir do arbitramento (conforme Súmula n. 362/STJ) e juros de mora a partir >&#160;da citação > >no importe de 1% ao mês até o dia anterior ao da vigência da Lei nº 14.905/2024 e, após essa data, pela Taxa SELIC, descontado o valor do IPCA/IBGE, desconsiderando-se eventuais juros negativos (art. 406 do CC), mantendo inalterado os demais termos da sentença vergastada.&#160; >&#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> > >Diante da alteração do julgamento, reconheço a sucumbência recíproca, motivo pelo qual condeno ambas as partes ao pagamento das custas processuais e dos honorários advocatícios, os quais fixo em 10% (dez por cento) sobre o valor da condenação, devendo cada litigante arcar com 50% (cinquenta por cento) do montante total. Mantém-se a suspensão da exigibilidade das despesas processuais e do pagamento dos honorários pela parte a >pelante >, pois beneficiária da gratuidade da justiça. >&#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;" lang="PT-BR" xml:lang="PT-BR"> > >&#160; </p></div>

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	style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; line-height: 27px;">&#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> E como voto. &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: justify; text-indent: 75px;"> &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA &#160; </p></div><div class="OutlineElement Ltr SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 0px; padding: 0px; user-select: text; clear: both; cursor: text; overflow: visible; position: relative; direction: ltr; font-size: 12px;"> <p class="Paragraph SCXW93232728 BCX0" style="-webkit-user-drag: none; -webkit-tap-highlight-color: transparent; margin: 8px 0px; padding: 0px; user-select: text; overflow-wrap: break-word; white-space-collapse: preserve; vertical-align: baseline; font-kerning: none; background-color: transparent; color: windowtext; text-align: center;"> Relato &#160; </p></div></div><p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0158148-50.2012.8.06.0001
Número de ordem	263
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA

Processo	0158148-50.2012.8.06.0001
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Direito de Imagem
Polo ativo	GOOGLE BRASIL INTERNET LTDA. FACEBOOK SERVICOS ONLINE DO BRASIL LTDA.
Advogado(s) - Polo ativo	FABIO RIVELLI - (CE30773-A)
Polo passivo	MARCEL FORTALEZA RESTAURANTE LTDA
Advogado(s) - Polo passivo	ROMULO DA SILVA BEZERRA - (CE15306-A)
Terceiros	Não informado

Processo	0158148-50.2012.8.06.0001
Acórdão	 ESTADO DO CEARÁ PODER JUDICIÁRIO TRIBUNAL DE JUSTIÇA PRIMEIRA CÂMARA DE DIREITO PRIVADO DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA PROCESSO: 0158148-50.2012.8.06.0001 - APELAÇÃO CÍVEL (198) APELANTE: GOOGLE BRASIL INTERNET LTDA., FACEBOOK SERVICOS ONLINE DO BRASIL LTDA. APELADO: MARCEL FORTALEZA RESTAURANTE LTDA. Ementa: DIREITO CIVIL E PROCESSUAL CIVIL. APELAÇÕES CÍVEIS. PLATAFORMAS DIGITAIS. RESPONSABILIDADE DE PROVEDORES POR CONTEÚDO OFENSIVO INSERIDO POR TERCEIROS. FATOS PRETÉRITOS AO MARCO CIVIL DA INTERNET. RELAÇÃO DE CONSUMO CONFIGURADA. DANO MORAL DE PESSOA JURÍDICA NÃO DEMONSTRADO. ASTREINTES AFASTADAS POR AUSÊNCIA DE INTIMAÇÃO PESSOAL (SÚMULA 410/STJ). RECURSO PARCIALMENTE PROVIDO. I. CASO EM EXAME 1. Apelações interpostas por Google Brasil Internet Ltda. e Facebook Serviços Online do Brasil Ltda. contra sentença que, em demanda proposta por pessoa jurídica, julgou procedentes os pedidos para condenar as rés a remover conteúdo ofensivo de suas plataformas, ao pagamento de danos morais no valor de R\$ 10.000,00 cada, e, especificamente em relação à Google, ao pagamento de multa cominatória de R\$ 20.000,00 por descumprimento de ordem judicial. II. QUESTÃO EM DISCUSSÃO 2. Há cinco questões em discussão: (i) definir se o Marco Civil da Internet se aplica retroativamente a fatos ocorridos em 2012; (ii) estabelecer se há relação de consumo nos serviços de internet; (iii) determinar se houve responsabilidade civil das apelantes pela manutenção do conteúdo ofensivo; (iv) verificar a existência de dano moral indenizável à pessoa jurídica e (v) a validade da multa cominatória (astreintes) aplicada à Google. III. RAZÕES DE DECIDIR 3. O Marco Civil da Internet (Lei nº 12.965/2014) não se aplica a fatos pretéritos, prevalecendo o princípio <i>tempus regit actum</i>, de modo que a responsabilidade deve ser analisada à luz do regime jurídico anterior. 4. Mesmo em serviços gratuitos, configura-se relação de consumo, uma vez que provedores de internet obtêm remuneração indireta por meio da exploração de dados e publicidade, atraindo a incidência do CDC (art. 3º, § 2º, Lei nº 8.078/1990). 5. O provedor de conteúdo não responde objetivamente pelo material inserido por terceiros, mas, uma vez notificado sobre conteúdo ilícito, deve removê-lo em prazo razoável, sob pena de responsabilidade solidária pelos danos decorrentes de sua omissão. 6. Embora as publicações apresentem conteúdo potencialmente ofensivo, a pessoa jurídica não goza da presunção de dano moral <i>in re ipsa</i>, sendo necessária comprovação de abalo à honra objetiva, o que não ocorreu nos autos. 7. A cobrança de astreintes exige prévia intimação pessoal da parte devedora, conforme Súmula 410/STJ, não suprida pela intimação apenas do advogado, razão pela qual é indevida a multa aplicada à Google. IV. DISPOSITIVO E TESE 8. Recursos conhecidos e parcialmente providos. Tese de julgamento: "1. O Marco Civil da Internet não retroage para alcançar fatos anteriores à sua vigência. 2. Os serviços de internet caracterizam relação de consumo, ainda que seja gratuito. 3. O provedor de conteúdo responde solidariamente pelos danos se, após notificação inequívoca, mantiver conteúdo ofensivo postado por terceiros. 4. A pessoa jurídica deve comprovar objetivamente o dano moral decorrente de ofensas à sua reputação, não se admitindo presunção <i>in re ipsa</i>. 5. A cobrança de astreintes depende de intimação pessoal da parte devedora, não suprida pela ciência do advogado." Dispositivos relevantes citados: CF/1988, art. 5º, IV e X; CC/2002, art. 927; CDC, arts. 2º, 3º, § 2º, e 14; CPC/2015, arts. 1.010 e 513, § 2º; Lei nº 12.965/2014 (MCI), art. 19. Jurisprudência

Processo	0158148-50.2012.8.06.0001
	relevante citada: STJ, AgRg no AREsp 712.456/RJ, Rel. Min. João Otávio de Noronha, Terceira Turma, j. 17.03.2016; STJ, REsp 1.591.179/CE, Rel. Min. Ricardo Villas Bôas Cueva, Terceira Turma, j. 21.02.2017; STJ, REsp 1.308.830/RS, Rel. Min. Nancy Andrighi, Terceira Turma, j. 08.05.2012, DJe 19.06.2012; STJ, AgRg nos EDcl no REsp 1.284.096/MG, Rel. Min. Sidnei Beneti, Terceira Turma, j. 10.12.2013; STJ, REsp 1.338.214/MT, Rel. Min. Nancy Andrighi, Terceira Turma, j. 21.11.2013; STJ, EREsp 1.360.577/MG, Rel. Min. Luis Felipe Salomão, Corte Especial, j. 19.12.2018; Súmula 227/STJ; Súmula 410/STJ.</p> <p class="MsoNormal" style="margin-top: 12pt;">&#160;</p> ACÓRDÃO: Vistos, relatados e discutidos estes autos, acorda a 1ª Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, por unanimidade, em conhecer dos recursos para, no mérito, dar-lhes parcial provimento, nos termos do voto do Relator.</p> <p class="MsoNormal" style="margin-top: 12pt;">&#160;</p> <p class="MsoNormal" style="margin-top: 12pt; text-align: center;">Fortaleza, data da assinatura digital.</p> <p class="MsoNormal" style="text-align: center;">&#160;</p> <p class="MsoNormal" style="text-align: center;">DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO
Presidente do Órgão Julgador
&#160;</p> <p class="MsoNormal" style="text-align: center;">&#160;DESEMBARGADOR CARLOS AUGUSTO GOMES CORREIA
Relator</p> <hr /> <p>&#160;</p> <p class="MsoNormal">&#160;</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-align: center; line-height: 115%;">&#160;RELATÓRIO</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Trata-se de recurso de apelação cível interposto por Google Brasil Internet Ltda. e Facebook Serviços Online do Brasil Ltda. contra sentença (id. 21503552) proferida pelo juízo da 26ª Vara Cível da Comarca de Fortaleza, que julgou procedentes os pedidos formulados na ação de indenização por danos morais c.c. pedido de tutela de urgência ajuizada por Marcel Fortaleza Restaurante Ltda., nos seguintes termos:</p> <p class="MsoNormal" style="margin: 0cm 0cm 8pt 4cm; line-height: 115%;">[...] Diante do exposto, JULGO PROCEDENTES OS PEDIDOS AUTORAIS, confirmando parcialmente a tutela de urgência anteriormente concedida, para condenar o réu GOOGLE BRASIL INTERNET LTDA ao pagamento de multa cominatória devida, por descumprimento de decisão judicial, no valor de R\$ 20.000,00 (vinte mil reais,) a ser corrigida monetariamente pelo INPC, a partir do arbitramento, bem como para condenar os réus ao pagamento da quantia de R\$ 10.000,00 (dez mil reais), cada, a título de reparação pelos danos morais reconhecidos, corrigida monetariamente tal quantia pelo índice INPC, a contar da data da sentença e juros de mora simples de 1% (um por cento) ao mês, fixados a partir da data da citação, restando extinto o presente feito com resolução de mérito, nos termos do artigo 487, I do CPC.</p> <p class="MsoNormal" style="margin: 0cm 0cm 8pt 4cm; line-height: 115%;">Condeno os réus ao pagamento das custas processuais e honorários advocatícios, estes fixados em 10% (dez por cento) sobre o valor da condenação, nos termos do artigo 85, 2o., do CPC. &#160;[...]</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Apelação cível (id. 21504720) interposta pela Google Brasil Internet Ltda. objetivando a reforma da sentença para que seja afastada a condenação em danos morais e multa cominatória, alegando ausência de ilicitude no conteúdo impugnado, necessidade de aplicação do Marco Civil da Internet, ausência de responsabilidade civil e desproporcionalidade da multa fixada.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Apelação cível (id. 21503571) interposta pela Facebook Serviços Online do Brasil Ltda., objetivando a reforma da sentença para que seja afastada a condenação em danos morais, sustentando a aplicação do regime de responsabilidade previsto no Marco Civil da Internet e a ausência de descumprimento de ordem judicial.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Contrarrrazões (id. 21503751) apresentadas pela parte autora objetivando o acolhimento de preliminar de inovação recursal e violação ao princípio da dialeticidade. No mérito, a manutenção da sentença recorrida e o desprovimento dos recursos.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Parecer do Ministério Público (id. 21502530) opinando pela desnecessidade de intervenção ministerial por se tratar de interesse individual patrimonial disponível, manifestando-se pelo conhecimento dos recursos sem adentrar no mérito.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">É o que importa relatar.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-align: center; line-height: 115%;">VOTO</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Conforme recomendações do Conselho Nacional de Justiça (CNJ) <a id=" _ednref1" name=" _ednref1" href="https://tjce365-my.sharepoint.com/personal/9579_tjce_jus_br/Documents/2.%20Gest%C3%A3o%20de%2

Processo	0158148-50.2012.8.06.0001
	0processos/1.%20Ac%C3%B3rd%C3%A3os/10437%20-%20Direito%20de%20imagem/0158148-50.2012.8.06.0001.docx#_edn1"> <sup><!--[if !supportFootnotes]--> </sup> [i]<!--[endif]--> , passo a proferir o meu voto em linguagem simples.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Antes de apreciar o mérito recursal, verifico que a parte autora, em suas contrarrazões, suscitou duas preliminares do recurso: violação à dialeticidade e inovação recursal.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Quanto à preliminar de ausência de impugnação específica, ensina Alexandre Freitas Câmara (in Manual de direito processual civil [e-book]. 2. ed.&#160; Barueri/SP: Atlas, 2023, pág. 990) sobre o ônus da dialeticidade recursal que "deve ser entendido como a exigência de que o recurso 'dialogue' com a decisão recorrida, impugnando-a de modo específico".</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">A propósito, dispõe o Código de Processo Civil (CPC/2015) que:</p> <p class="MsoNormal" style="margin-left: 4cm; line-height: 115%;">Art. 1.010. A apelação, interposta por petição dirigida ao juízo de primeiro grau, conterá:</p> <p class="MsoNormal" style="margin-left: 4cm; line-height: 115%;">I - os nomes e a qualificação das partes;</p> <p class="MsoNormal" style="margin-left: 4cm; line-height: 115%;">II - a exposição do fato e do direito;</p> <p class="MsoNormal" style="margin-left: 4cm; line-height: 115%;">III - as razões do pedido de reforma ou de decretação de nulidade;</p> <p class="MsoNormal" style="margin-left: 4cm; line-height: 115%;">IV - o pedido de nova decisão. [destacou-se]</p> <p class="MsoNormal" style="margin: 12pt 0cm 8pt; text-indent: 2cm; line-height: 115%;">Logo, é ônus da parte que pretende a modificação da decisão recorrida apontar o equívoco praticado pelo julgador, mediante a insurgência direcionada aos seus fundamentos, sob pena de ausência de conhecimento do recurso por irregularidade formal.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Portanto, considerando o entendimento sumulado por este Tribunal no enunciado 43, de que apenas "[n]ão se conhece de recurso quando não é feita a exposição do direito e das razões do pedido de nova decisão", por não restarem prejudicados o exercício do contraditório pela parte adversa e o adequado exame da matéria por este órgão revisor, rejeito a preliminar de violação ao princípio da dialeticidade recursal suscitada pela parte recorrida.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Quanto à suposta inovação recursal, a parte autora sustenta que essa matéria de defesa não foi apresentada pelas apelantes em suas contestações, surgindo apenas na fase recursal. Entretanto, também merece ser rejeitada.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Isso, porque o próprio juízo a quo enfrentou especificamente essa questão, afastando a aplicação do Marco Civil da Internet, motivo pelo qual entendo que as apelantes exercem regularmente seu direito de impugnar os fundamentos da sentença recorrida, não introduzindo matéria nova no processo, mas sim atacando especificamente o posicionamento adotado na origem sobre tema expressamente enfrentado.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Dito isso, após verificar que os recursos cumprem todos os requisitos legais <sup><!--[if !supportFootnotes]--> </sup> [ii]<!--[endif]--> , como terem sido apresentados no prazo correto, por quem tem direito e com as taxas pagas (id. 21504709 e 21503559), conheço dos recursos e adianto que as apelações interpostas merecem parcial provimento.&#160;Explico.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Da análise dos autos, verifico que a demanda trata de fato ocorrido em março de 2012, decorrente da veiculação de conteúdo ofensivo nas plataformas digitais das apelantes: no Facebook foi criado perfil "Ricardo Pinho" utilizando indevidamente o logotipo da empresa (autora), e no Google foi criado blog "Restaurante Marcel Fortaleza".</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Os conteúdos publicados incluíam acusações de que o restaurante (parte autora) servia como local de encontro para troca de subornos entre políticos, oferecimento de comida fora do prazo de validade, presença de baratas e roedores, além de críticas aos preços praticados (cf. ata notarial – id. 21504733 a 21504739).</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">A parte autora apesar de notificar extrajudicialmente as recorrentes, para remover o conteúdo ofensivo, não obteve êxito, recebendo resposta da Google, em 20 de abril de 2012, informando que decidiu não tomar providências com base nas suas políticas sobre remoção de conteúdo (id 21504793). O Facebook foi comunicado mediante denúncia, mas somente removeu o conteúdo após determinação judicial (id. 21504794 e 21504718).</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-

Processo	0158148-50.2012.8.06.0001
	height: 115%;">Observo que o juízo a quo, na sentença recorrida , julgou procedentes os pedidos do autor, confirmando a tutela de urgência para remoção do conteúdo, condenando o Google ao pagamento de R\$ 20.000,00 a título de multa cominatória por descumprimento de ordem judicial, e ambos os réus (Google e Facebook) ao pagamento de R\$ 10.000,00 cada, por danos morais, além de custas e honorários advocatícios.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Feita a introdução acima, verifico que as empresas recorrentes apelaram sustentando: (i) a aplicabilidade do Marco Civil da Internet (Lei 12.965/2014); (ii) inaplicabilidade do Código de Defesa do Consumidor (CDC); (iii) ausência de responsabilidade civil por conteúdo de terceiros; (iv) ausência de danos morais para pessoa jurídica e necessidade de comprovação fática e, subsidiariamente, (v) minoração do valor da indenização por danos morais.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">A empresa Google apresentou ainda questões específicas quanto: (i) ausência de conteúdo ilícito na publicação impugnada; (ii) não incidência das astreintes por ausência de intimação pessoal e (iii) necessidade de revogação ou readequação da multa por desproporcionalidade.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Já a empresa Facebook apresentou questões específicas quanto: (i) a não caracterização de ato ilícito ou conduta omissiva/negligente; (ii) a culpa exclusiva de terceiro como excludente de responsabilidade e (iii) impossibilidade de condenação ao ônus sucumbencial.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Delimitada a matéria devolvida, passo a analisar o mérito recursal.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-align: center; line-height: 115%; align="center"> DA INAPLICABILIDADE DO MARCO CIVIL DA INTERNET A&#160;FATOS PRETÉRITOS </p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">As empresas recorrentes argumentam que o Marco Civil da Internet (MCI - Lei nº. 12.965/2014), promulgado em 2014 e vigente antes da prolação da sentença, deve ser aplicado ao caso, ainda que os fatos tenham ocorrido anteriormente, conforme entendimento consolidado do Superior Tribunal de Justiça (STJ). A respeito, cito trecho que aponta o precedente (id. 21504720):</p> <p class="MsoNormal" style="margin: 0cm 0cm 8pt 4cm; line-height: 115%;">[...] Nesta linha, o Superior Tribunal de Justiça, em julgado nos autos do REsp 1.452.683/MG, em brilhante decisão monocrática proferida pelo Douto Ministro Ricardo Villas Bôas Cueva em 25/04/2016, ratificou a imediata aplicabilidade do MCI a fatos ocorridos antes de sua vigência. [...]</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Em relação ao julgado apontado, é certo que o trecho mencionado afirma que “a Segunda Seção expurgou qualquer dúvida que pudesse existir quanto à matéria quando do julgamento do REsp nº 1.512.674/MG, oportunidade em que, além de reafirmar a conclusão pela imprescindibilidade de indicação da URL para hipóteses como a vertente, consagrou textualmente a aplicabilidade do Marco Civil da Internet aos processos que versam sobre fatos anteriores à sua vigência”.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">Entretanto, entendo ter havido equívoco no trecho final, uma vez que no julgamento do REsp nº 1.512.674/MG o tribunal optou por não fazer referência a essa legislação, mantendo o foco na legislação específica de direitos autorais e nos precedentes jurisprudenciais sobre responsabilidade de provedores de internet.</p> <p class="MsoNormal" style="margin: 12pt 0cm 8pt; text-indent: 2cm; line-height: 115%;">Na verdade, existe entendimento diverso que estabelece que “[c]om relação a fatos pretéritos à edição da Lei n. 12.965/2014, comprovado nos autos que houve prévia comunicação aos provedores de internet, ainda que não por meio de ordem judicial específica, acerca de conteúdo violador de direito postado por terceiro e, desidiosamente, nada foi feito, são eles responsáveis civilmente pelos danos daí advindos”&#160;(STJ - AgRg no AREsp n. 712.456/RJ, relator Ministro João Otávio de Noronha, Terceira Turma, julgado em 17/3/2016, DJe de 28/3/2016).</p> <p class="MsoNormal" style="margin: 12pt 0cm 8pt; text-indent: 2cm; line-height: 115%;">Ademais, no julgamento do REsp 1.591.179/CE, relatado pelo ministro Villas Bôas Cueva (mesmo relator do precedente citado pela recorrente), a Terceira Turma, com base em precedentes do STJ, estabeleceu que “para fatos anteriores à publicação do Marco Civil da Internet, basta a ciência inequívoca do conteúdo ofensivo pelo provedor, sem sua retirada em prazo razoável, para que este se torne responsável e, (b) após a entrada em vigor da Lei n. 12.965/2014, o termo inicial da responsabilidade solidária do provedor é o momento da notificação judicial que ordena a retirada do conteúdo da internet”.</p> <p class="MsoNormal" style="margin: 12pt 0cm 8pt; text-indent: 2cm; line-height: 115%;">Assim, não há que se falar em retroatividade da lei para aplicação ao presente caso em atenção ao princípio tempus regit actum.</p> <p class="MsoNormal" style="margin-bottom: 8pt; text-align: center; line-height: 115%; align="center"> DA APLICABILIDADE DO CÓDIGO DE DEFESA DO CONSUMIDOR (CDC) </p> <p class="MsoNormal" style="margin-bottom: 8pt; text-indent: 2cm; line-height: 115%;">

Processo	0158148-50.2012.8.06.0001
	style="margin-bottom: 12pt; text-indent: 2cm;">As recorrentes alegam que não há relação de consumo entre as empresas e o autor/apelado, devendo a relação jurídica ser regulada pelo Código Civil.</p> <p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 2cm;">Entretanto, conforme entendimento do Superior Tribunal de Justiça, há inegável relação de consumo nos serviços de internet, ainda que prestados gratuitamente, pois o termo mediante remuneração, contido no art. 3º, § 2º, do CDC, deve ser interpretado de forma ampla, de modo a incluir o ganho indireto do fornecedor (STJ - REsp: 1308830 RS 2011/0257434-5, Relator.: Ministra NANCY ANDRIGHI, Data de Julgamento: 08/05/2012, T3 - TERCEIRA TURMA, Data de Publicação: DJe 19/06/2012 RDDP vol. 114 p. 134).</p> <p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 2cm;">Logo, a gratuidade aparente não descaracteriza a relação consumerista, pois há remuneração indireta através da exploração de dados dos usuários e publicidade.</p> <p class="MsoNormal" style="margin-bottom: 12pt; text-indent: 2cm;">Portanto, a exploração comercial da internet sujeita as relações de consumo daí advindas ao CDC (Lei nº 8.078/90); apesar disso, esclareço que no que tange à fiscalização (prévia) do conteúdo das informações postadas por cada usuário, não se trata de atividade intrínseca ao serviço prestado, de modo que não se pode reputar defeituoso, nos termos do art. 14 do CDC, o site que não examina e filtra o material nele inserido.</p> <p class="MsoNormal" style="margin-bottom: 12pt; text-align: center;">DO ATO ILÍCITO E DA RESPONSABILIDADE CIVIL</p> <p class="MsoNormal" style="margin: 12pt 0cm; text-indent: 2cm;">As empresas apelantes sustentam, ainda, que, de acordo com o art. 19 do Marco Civil da Internet, provedores de aplicações de internet só podem ser responsabilizados civilmente por danos decorrentes de conteúdo gerado por terceiros se, após ordem judicial específica, não tomarem as providências para tornar o conteúdo indisponível.</p> <p class="MsoNormal" style="margin: 12pt 0cm; text-indent: 2cm;">Como já fundamentado acima, com relação a fatos pretéritos à edição da Lei n. 12.965/2014 (já que esta não se aplica), uma vez comprovado que houve prévia comunicação aos provedores de internet (ainda que não por meio de ordem judicial específica), acerca de conteúdo violador de direito postado por terceiro e, desidiosamente, nada foi feito, são eles responsáveis civilmente pelos danos daí advindos.</p> <p class="MsoNormal" style="margin-top: 12pt; text-indent: 2cm;">Assim, quando o provedor de busca é informado da URL específica de uma página que contenha conteúdo supostamente ofensivo, ele tem o dever de removê-la dos resultados de pesquisa.</p> <p class="MsoNormal" style="margin: 12pt 0cm; text-indent: 2cm;">Isso, porque é certo que o provedor de conteúdo de internet não responde objetivamente pelo conteúdo inserido pelo usuário em sítio eletrônico, por não se tratar de risco inerente à sua atividade, mas [e]stá obrigado, no entanto, a retirar imediatamente o conteúdo moralmente ofensivo, sob pena de responder solidariamente com o autor direto do dano (STJ - AgRg nos EDcl no REsp: 1284096 MG 2011/0224060-7, Relator.: Ministro SIDNEI BENETI, Data de Julgamento: 10/12/2013, T3 - TERCEIRA TURMA, Data de Publicação: DJe 19/12/2013) . Também cito nesse sentido:</p> <p class="MsoNormal" style="margin: 0cm 12pt 4cm;">CIVIL E CONSUMIDOR. INTERNET. RELAÇÃO DE CONSUMO. INCIDÊNCIA DO CDC . PROVEDOR DE CONTEÚDO. FISCALIZAÇÃO PRÉVIA DO CONTEÚDO POSTADO NO SITE PELOS USUÁRIOS. DESNECESSIDADE. MENSAGEM DE CUNHO OFENSIVO . DANO MORAL. RISCO INERENTE AO NEGÓCIO. INEXISTÊNCIA. CIÊNCIA DA EXISTÊNCIA DE CONTEÚDO ILÍCITO . RETIRADA DO AR EM 24 HORAS. DEVER. SUBMISSÃO DO LITÍGIO DIRETAMENTE AO PODER JUDICIÁRIO. CONSEQUÊNCIAS . DISPOSITIVOS LEGAIS ANALISADOS: ARTS. 14 DO CDC E 927 DO CC/02. 1. Ação ajuizada em 26 .02.2008. Recurso especial concluso ao gabinete da Relatora em 14.08 .2012. 2. Recurso especial em que se discute os limites da responsabilidade de provedor de rede social de relacionamento via Internet pelo conteúdo das informações veiculadas no respectivo site. 3 . A exploração comercial da internet sujeita as relações de consumo daí advindas à Lei nº 8.078/90. 4. A fiscalização prévia, pelo provedor de conteúdo, do teor das informações postadas na web por cada usuário não é atividade intrínseca ao serviço prestado, de modo que não se pode reputar defeituoso, nos termos do art . 14 do CDC, o site que não examina e filtra os dados e imagens nele inseridos. 5. O dano moral decorrente de mensagens com conteúdo ofensivo inseridas no site pelo usuário não constitui risco inerente à atividade dos provedores de conteúdo, de modo que não se lhes aplica a responsabilidade objetiva prevista no art. 927, parágrafo único, do CC/02 . 6. Ao ser comunicado de que determinada postagem possui conteúdo potencialmente ilícito ou ofensivo, "deve o provedor removê-la preventivamente no prazo de 24 horas, até que tenha tempo hábil para apreciar a veracidade das alegações do denunciante, de modo a que, confirmando-as, exclua definitivamente o vídeo ou, tendo-as por infundadas, restabeleça o seu livre acesso, sob pena de responder solidariamente com o autor direto do dano em virtude da omissão praticada. 7. Embora o provedor esteja obrigado a remover conteúdo potencialmente ofensivo assim que tomar conhecimento do fato (mesmo que por via extrajudicial), ao optar por submeter a controvérsia diretamente ao Poder Judiciário, a

Processo	0158148-50.2012.8.06.0001
	parte induz a judicialização do litígio, sujeitando-o, a partir daí, ao que for deliberado pela autoridade competente. A partir do momento em que o conflito se torna judicial, deve a parte agir de acordo com as determinações que estiverem vigentes no processo, ainda que, posteriormente, haja decisão em sentido contrário, implicando a adoção de comportamento diverso. Do contrário, surgiria para as partes uma situação de absoluta insegurança jurídica, uma incerteza sobre como se conduzir na pendência de trânsito em julgado na ação. 8. Recurso especial provido. (STJ - REsp: 1338214 MT 2012/0039646-0, Relator.: Ministra NANCY ANDRIGHI, Data de Julgamento: 21/11/2013, T3 - TERCEIRA TURMA, Data de Publicação: DJe 02/12/2013) Logo, a responsabilidade não é por fato de terceiro, mas por omissão após notificação/ciência do conteúdo ofensivo (responsabilidade solidária). No caso dos autos, o ato ilícito é evidente, uma vez que restou comprovado que a empresa Google foi formalmente notificada (id. 215047930) em 17 de abril de 2012, sobre o conteúdo ofensivo, respondendo expressamente em 20 de abril de 2012 que "decidiu não tomar providências com base em nossas políticas sobre remoção de conteúdo". Tal conduta configura serviço defeituoso por não oferecer a segurança legitimamente esperada. Quanto ao Facebook, embora comunicado através de denúncia sobre o conteúdo ofensivo, somente removeu o material após determinação judicial (id. 21504794 e 21504718). Quanto ao nexo causal está configurado entre a conduta omissiva das apelantes (manutenção do conteúdo após notificação) e o dano sofrido pelo apelado. A alegação de "culpa exclusiva de terceiro" não prospera, pois a responsabilidade não decorre da criação do conteúdo, mas da manutenção indevida após ciência da ofensa. DO CONTEUDO OFENSIVO E DO DANO MORAL As apelantes argumentam que, em se tratando de pessoa jurídica, o dano moral não se presume (<i>in re ipsa</i>) e exige comprovação fática de abalo à honra objetiva (bom nome, reputação, crédito), a qual não foi demonstrada nos autos. Ademais, a Google defende que a única postagem no blog "Restaurante Marcel Fortaleza" era uma crítica de consumidor sobre um estabelecimento aberto ao público e informações de interesse público (rotina, público, preços), estando amparada pelos direitos de liberdade de expressão, manifestação do pensamento e direito à informação, sem cunho ofensivo. Entendo que os argumentos merecem parcial acolhimento. Explico. É certo que a natureza das publicações revelou potencial lesivo evidente, uma vez que o conteúdo impugnado continha acusações graves de corrupção ("local de encontro para políticos trocarem subornos"), condições sanitárias inadequadas ("presença de baratas e roedores") e oferecimento de "comida fora do prazo de validade" (cf. ata notarial – id. 21504733 a 21504739). Entretanto, não são suficientes para caracterizar o dano moral à parte autora, que é pessoa jurídica. Isso, porque, nos termos do enunciado da súmula 227/STJ, "a pessoa jurídica pode sofrer dano moral". No entanto, diferentemente do dano moral experimentado por pessoa física, os danos morais sofridos pela pessoa jurídica devem ser comprovados de forma objetiva, posto que a elas não se aplicam questões de cunho existencial. Sobre o tema, transcrevo o seguinte trecho do julgamento do Resp nº 1.637.629 – PE, de relatoria da Ministra Nancy Andrighi: Há, contudo, diferenças significativas quando se trata de danos morais (ou extrapatrimoniais) sofridos por pessoa jurídica. Nesse caso, não se está a tutelar um direito da personalidade típico, considerando que as pessoas jurídicas não sofrem questões existenciais. Cuida-se, em realidade, de proteger a honra objetiva da pessoa jurídica, sendo os danos causados em violação ao bom nome, à fama, à reputação. Tais elementos integram o "patrimônio moral" da pessoa jurídica e, diferentemente das pessoas naturais, têm uma repercussão no patrimônio propriamente dito, embora de difícil avaliação na maioria das circunstâncias. No caso dos autos, a empresa apelada/autora em momento algum demonstrou efetivamente como o a publicação ofensiva teria repercutido negativamente em sua reputação comercial ou abalado sua credibilidade no mercado. Não há nos autos qualquer prova de prejuízo à imagem da pessoa jurídica, perda de clientela, diminuição no volume de negócios ou outro indicador objetivo que evidencie dano à sua honra objetiva. Portanto, diferentemente do que fundamentou o juízo <i>a quo</i>, os danos morais não são presumidos, motivo pelo qual entendo que a sentença recorrida merece reforma para afastar os danos morais fixados.

Processo	0158148-50.2012.8.06.0001
	!supportFootnotes]--> [ii] <!--[endif]--> Por ser o juízo de admissibilidade prévio à análise do mérito recursal, necessário se faz verificar se a sua análise foi positiva, isto é, se estavam presentes os pressupostos intrínsecos – atinentes à existência do direito de recorrer (cabimento, interesse, legitimidade e inexistência de fato impeditivos do direito de recorrer) – e extrínsecos – atinentes ao seu exercício (tempestividade, regularidade formal e recolhimento do preparo). Somente no caso de ser negativo, né que a análise do mérito estaria impedida e o recurso não seria conhecido.</p> </div></div> <p>&#160;</p></div>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0714761-53.2000.8.06.0001
Número de ordem	264
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Interpretação / Revisão de Contrato
Polo ativo	BANCO ITAUCARD S.A. BB Administradora de Cartoes de Credito S/A
Advogado(s) - Polo ativo	PAULO EDUARDO PRADO - (CE24314-A) ROBERTO DOREA PESSOA - (BA12407-A)
Polo passivo	BANCO DO BRASIL SA EMILIO ELISEU CESAR CABRAL
Advogado(s) - Polo passivo	WILSON SALES BELCHIOR - (CE17314-A)
Terceiros	Não informado

Processo	0714761-53.2000.8.06.0001
Acordão	<p style="text-align: center;"> &#160; <img style="text-align: center;" src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAS0AAABICAYAAAFmoXjAAAACXBIWXMAAA7DAAAOwwHHb6hkAAArhUIEQVR4nO2dB7hdVZXH1yWBIMrwcCgJBngClkQwD0ILQQhFRrEMYxeUXkRRQYrjH0EFFCRir0b0QFRqsQABAw1hBQSQhOCI CSKpZIASUhyZ/3OXjvv5Obe+0695b2zvm/zyL3nnrPPOXv/9yr/tfZAKaSQQnKXIQd8e4D+VW/bRtreo21TbUO1rW2fbWCHzre2VNsmMbXO0zdI2V9vimXf/bGVDO96CMrDZHSikd9EBX+KvDthyje831D+f1baTtrUa2LUkwj08qe1GvZ+ZUX9kz2BHcfe5SYzrva3tYW236PUWxeloGrH+/ou2rbXtrG0PbduLAYze17ra1qlzCp4TwPWWtm5tL2I7Qs87Tv9O0Pai3s+yOtcHEL9o1y+lvJ08hffDPd2m9/NGIB8UoNWiooOod8Nq/AFto7UN0M/Oq5zotoKfrO0/xa3a7SBoCzto30+sN/EqhMI+pbZdElzvGG0der2LagF/FmJA9S5tO2g7UNsB4oAKklq7mHCuda3x+/dq21vb8dpe1XanXu9Hej+qzqRjPf1zjrbPJbhuM+Qobd/QdkWUgwwQahGxAc9g21zb7tr207abti3scyZ3sCJV/HSQuMHcLoCFMJF2FWcuzYv4m05xAJBEBtn1eMaZg5a9O7S/j2g71K7VkfV1TJizjlnjtdI2I7VdVjsHcRLNrB8BC3iHumRWG1epiWtk/anuftr207S9Os0LDGIBxOBOJGjDxebsMzrBwF3H6zbFpzJwBKX+/hhhYvVvbp7Qdq2241Df5shSeRy0Qb9cxEuK0Ggg2CBn1cfftgJ8D8wGtqlOc/6OQNhF9I7xHFpnTtO0pjQOrsLSyryo3KUArZ9HBzYoHIG2jbZQ4s6+Lr6S9TLpCZNXCW6JzqrbDJD8zsJAAuOBWDMJmH45JTD1ACrB6vziHaprVMTcnciG9iy1AH9J2ljgNuc+aYK0sBWHLJGYubCZOizrAGg7TdTMT4PaHvp7W9kMG5Ckkg+n4x/4jGnSHuvRbSJCIaK6GYmUD0Cx4MkRr8G/ip0LDS+jfQqLq1PaPtIW1jt2u7ZWU5y0kgei7Jrp1grbvSw8JtJAmSQFaMUQHLz4oIntEbfYRRzXg/4kgpTUVoDQASp013SuOEPmsttLfnTzxAdrW9g+o+2dT e5OIVKAVI0Jcac6xXGm0Kbgk8ClekfK0wNEC8RpU4+K06YALiDiY/lkQRYSTczk/5oUgNV SUoBWhZgTHc1pO3Ga1GhxDOeNZU3uVfXZlk6bmqtj9oe0fYpBysKbaq1xMbB4dq+JwVgtZT0e9AybQpnOWHS EeKAAqQ4X9X6KU+PtkTyK9rUg+LMvie0zYqRvtKbrND2ekbnaqSQB5jVM8hUbEwQ9f2hFPy5RkmkvEOkX4KWha5xqG4rjhhlPl9kXLhTaZ8JCa4ktz6m7e/axovTphbG1aZmj9kh6GdJyu8rAagleXDjQ6ZNrjMyOJF4kxY/G1KRKX45wDltL44gJkByTGb7q1XS4OuFpRyPOD1jAk5+uw4LwpbtHh/wFxn/nAeyGPETfEIKn+Xt/MqV+M08XSMEWF8fO ctjFRf9BvQMuc6lPFgRO+KcAKExDwSsOd4gWTP0ceGLmB92mbpm22gtTbcU40a8yO9GMdfY+blVxKyGhxWh9pPpgoZO2vBlr4vvTe7tL/nSluJSjqvaBdf6cz2ZQnH6GhHu/WRxo4p+L6odjkr7SiiXOd5JPT85h9PzfCg1M1Wca4B39qK218RVO1hhxzEvYfYoQeYRbiavg0SWO74f2N1vbnTn0kcXnQm1/kPxAMSw8E+5tTqf9FnmHuf6gEUBF74QeKlgTjR03KnlosbaJRYu csaHKpFcR3os8Z8kh7qRClvrrq8P8/STOlwhLm4mq1MnagKgTf5XrUWVuf0eV9xzeJMN D+R68/JeHvW0pszkB1f0GyTZHh/Tyv7f/afisuKvxxmhLEyl9Nt5W065enSnT5wQz76lUF9 6fat6iJ7A2XPgVaoRpGpMygoaBRdcmaAJBEFoobeKyQaFOTtP1Tog2+1WTmb4brc1+JY3 9YuSwfKpUCrY/BiHnXyHfCSro4xe8xTdvRn1ZL0FShN6T1ZYyFteogcebPDB0rK3o5vqrY woQ2+4C1vASwiuxfaa0PWiz2QcAEOfDa0CbwxuDtU6zWqJNUauliQcHOGMFVvr8uAPv leuH0493SqnccqX93LUt535KUdlHtagsplIMtlbbgfVqc2yALwR90i7Yzt2TRFKyalC1PtWk70LL BxUTHWYozBVDhf/B1p5IKLwtCpMJ5zmUBFjoL2t7K6429dL1w9HsNtHobqc/3LvkWbQikj 6KtNSJQriX/J2U8miWgMaEUx4fq3jpi9poi0hbQFaobpTTPR4tjomFNoWGMix6yGVAKFh gBI4ScgkhFbm/rn9TuVpFzGNMVpqmBaBky7xFeP0oBpITmLLYQf1fbBDE7HlneKtj9ISGsp JCQtCVoh7hS+KLQoffPk98GdeleKU3ttCmACoDD7JokjfC6Nq03Nuk6LVXmwdnaHclnU5 AtMC2gUWaT1FNI4YfGjJHPaUkEEZygbfGsbmYntJyODWhYd6RAX0vV1p9CmAK40gwln MaBEpG+suArkfFML4obcn792J9/HrUvUKi+nNIUKIm9oU1IUcykiOUI0Li3FAX4e/qvbCsDK V5oKWlbuAwlfarnnTqGpYGYIdaJXq5AAtmwneixt6lrRmgfykHJmVIJ3IRg8qHxEZ0k/FxoU2 0uFsj5d0nOVUMYU/CartTtTyTjhVSUxokWqFywwwAV5MlPikubGSrpBk2Y4InJd4ckrJDWz DU7B0nSJSkN1ZG4S8kN6N2sz80oqRuWYgXPXqCZ7JHyHPDjfqFjLQ19pJCikjtohcNw+ pGk8Lsg5Wetu4UXBI4MET47hdXKSERwfpPq0fwHlj0DVOtbw/V8QDSZvCmqgnmLcECf HCVKTyFpBfe8+Ypfs9YgzD6RDbdabr4FKKWVwmpO3ZRwgZ7hRmXxblhtEyYGBPFwdS 99v/z4mrkk+/akSwP12JfL1SUGoGs4/99NLSJrIqRzVi3gJU3CcT4tWND5m2tJkd62timj8LaZ oyQ/hLr+1DZiHdzGd9Ng+36j1AlqhTSqZ9JhSfs++tHWNyGyjTcGbutf+8u834mpTt165y9ol 9qYrsbKW0aQ8bwodRTN5U9wHZgX3c7BgBTJ1jO0Ldr00KktT/ZrY0H0KHyHtHELW2D6i mAB/UbbAzqv8zZ3WYTJXb0/jhsnMWgZdwqiJJs37GMNIE5Td8rn9MFCZ/KiaRD1ey0u6k+ 7cldU3KAccknKkFABKSJEAGmztSmSUvGDkLPnQeoZBdR5gw99oiVXtz4qaP5bpfg9k+7 WulnxbSBbWmuEsBP3x8RVQokksUHLsuABgM+ly++DmZ4mFQUOnyHOJ4U2xQSmtEvs nL6pV+zqo5GeNzVSGcCbpc200zFt54qjWhDRBKgAZiKaywYfOqXQppojm1hLKr6gYyHJB SUCWIM+oKWABWmSSo5HSfLiaOEKCUxek47hm5obl98y5fLdLP09vFWpJLvrzAeo4E2h 4jaTNwUIkb4RNVkm2L8Xb/alAqRaAiOpCErYxbOzqgv/Vli+bkjg5ZrpWAAW9Zfik3DFRLQp oiCxdamJl2+u6dMvEdNvuEGUpH+qPhpE6TTCuRCvzEFVSDQHfK9Fgz98uTEVIUQTYQJ RiHBBRn0tRanaak2LLZxih8WkoHE0bQAHyMkGmCFCZ63iyN4JqqQ8PhluxtvSrZQkw+/2 UGqVUFGbTzVzSrsjC0uOZnG3NbTH2VscNilVzpnRRPDH4VcYLc7uhzLCrsa3pTI3lasJC3G ahe7ZYgOSxksk0LJJBmmyo85hYecy2hS+G3L8YhM8J1w6cm2rN7Wt1ZsK86aaGekjmm 1KQqwoTkCzAu2PGxiWm2KCYrTd4eN+yX6CIAR3eT54+xNmxtXiJcBwaPCOMUZeN/dmf SIKFgSVdPCPzS84jNfAwNilpTABWaRuBcjrMlQKnb9kpONNIQKn/q5m9hGKRn1P43NIK97/5 ksp06bbZ2+/9BJiVbZUFVvUgZQLgCoUfb/m0rzmfd9XkprBUP/3SiOWSLyWja9KSSORAUt AArHMpoG2hQRE0DKb4G1MK6a/MjFI4ONTxWohukP9ym5pFWK90GjaFakj/v0/jd8Ur5Ca eB/2+rwIYINASPcMknrQSk0KYg36Jdpd1DsZDYEGyxNMEaxkpfozq0hUQFLfgop2m7QJzJ F3sLrlcu3INHsvBvauuSIFSLKuOfgoXe7HpTpAMBSgDxffyXIO5+3xET0ph8Pn2pU5zW6Hl i+KnwVzUzaFBIOfByPckrzPstKns0QSKBlm4Rz1mLLA9ctCeRmcGqTe0oZaGMC7wueFM dKOhNquzK6kiYGjMPugWmLefbnG2PnJB45QXVVIV30iU9IEUNsKK+VotJeUXwqjPvAFNF vHlfSIMI09zDcRfuGWgXCLbKcjtEareCW8qTWg5jbCksmHq8wqR40tOm8KR/rL++63tj5yQ hV/K75BCHpvPCsg6r5N+FuZIVlIOEG/S0EcY6xti05l+LYzpWLSRVBNr3lV7+XpTtk1XKNNH

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	RJgMprY0/b/99jZGwWa9rginukj+tLddDlmaGdXmXXJ/l8J7vXQISnelqm5s6W1XKy6h4P2P02h34Qzs60OkVefVXU4tyYAI0yAwAEGMpU4USTY7IA1q9YnhkM6ZPETTCAEzDDkV6NpgBY4R8KaxhkTzDLKU/MRGWS/qR8dhBMQ9MgnQYwQztnop8IPakg9Oub9hnMesw0tBQmuS81wzIJDcFvRt4cwMTiSMrl4+HOhe7nNHF5ccusrwAhAlbZCziTd9gtzjoAyM+vEnTgc8CH4nmYOnPt/snLY1zg9ztQr8eNAlIiANAvRQHvWS+0en7Tn+0txwOe1Np7ZZHs+M62vLBQkR0+zMdKv5f8BQahnWDpaDIsAAAAASUVORK5CYII=" alt=""/> </p><p align="left">&#160;</p><p style="text-align: center;"> PODER JUDICIÁRIO </p><p style="text-align: center;"> TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ </p><p style="text-align: center;"> GABINETE DO DES. EMANUEL LEITE ALBUQUERQUE </p><p align="left"> &#160; </p><p align="left"> APELAÇÃO CÍVEL Nº 0714761-53.2000.8.06.0001 </p><p align="justify"> Apelantes: BB ADMINISTRADORA DE CARTÕES DE CRÉDITO S/A e BANCO ITAUCARD S/A</p><p align="left"> Apelado: EMÍLIO ELISEU CESAR CABRAL </p><p align="justify"> &#160; </p><p align="justify">&#160;</p><p align="justify"> EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. AÇÃO REVISIONAL DE CONTRATO BANCÁRIO. DEPÓSITO JUDICIAL DO VALOR DA CONDENÇÃO. CONCORDÂNCIA DO AUTOR. HOMOLOGAÇÃO DO PAGAMENTO. EXTINÇÃO DO PROCESSO. RECURSOS PREJUDICADOS.&#160;</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> I. CASO EM EXAME&#160; </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; 1. Apelações interpostas por BB Administradora de Cartões de Crédito S/A e Banco Itaucard S/A contra sentença da 30ª Vara Cível de Fortaleza que julgou parcialmente procedente ação revisional ajuizada por Emílio Eliseu Cesar Cabral. Durante a tramitação recursal, o Banco Itaucard S/A realizou depósito judicial do valor da condenação, com posterior concordância do autor, que requereu a extinção do feito.</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> II. QUESTÃO EM DISCUSSÃO </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; 2. A questão em discussão consiste em definir se o depósito judicial do valor da condenação, aceito pelo autor, autoriza a extinção do processo e prejudica a análise dos recursos de apelação.</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> III. RAZÕES DE DECIDIR </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; 3. O pagamento da obrigação, realizado por depósito judicial, constitui causa de extinção do processo quando aceito pela parte credora.</p><p align="justify"> &#160; 4. A homologação judicial do pagamento extingue a demanda, pois há reconhecimento de satisfação do direito postulado.</p><p align="justify"> &#160; 5. A superveniência da extinção do feito torna prejudicado o exame de mérito dos recursos interpostos, por perda superveniente do objeto.</p><h3> IV. DISPOSITIVO É TESE </h3><p> &#160; 6. Recursos prejudicados.</p><p align="justify"> Tese de julgamento:</p><p> <p align="justify"> O depósito judicial do valor da condenação,

Processo	0714761-53.2000.8.06.0001
	aceito pelo autor, extingue o processo por reconhecimento da satisfação da obrigação. A extinção do feito por pagamento homologado prejudica a análise do mérito dos recursos pendentes. &#160; A CÓRDÃO Vistos relatados e discutidos os autos da APELAÇÃO CÍVEL nº 0714761-53.2000.8.06.0001, em que são apelantes BB ADMINISTRADORA DE CARTÕES DE CRÉDITO S/A e BANCO ITAUCARD S/A e apelado EMÍLIO ELISEU CESAR CABRAL, acorda o colegiado da 1ª Câmara de Direito Privado do TJCE, por unanimidade de votos, em julgar PREJUDICADOS ao recursos, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. &#160; &#160; JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador &#160; &#160; &#160; EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator &#160; &#160; &#160; R E L A T Ó R I O Reposam nos autos recursos de apelação interpostos por BB ADMINISTRADORA DE CARTÕES DE CRÉDITO S/A e BANCO ITAUCARD S/A em face de sentença proferida pelo juízo da 30ª Vara Cível desta Comarca de Fortaleza, que julgou parcialmente procedente a ação revisional que foi ajuizada por EMÍLIO ELISEU CESAR CABRAL. Conforme ID 22481266, o apelante BANCO ITAUCARD S/A compareceu aos autos e ofertou depósito judicial do “cumprimento de pagamento da condenação”, oportunidade em que requereu a intimação do autor para que se manifestasse, no prazo legal, tendo o autor, por meio de seu advogado legalmente constituído comparecido aos fólios digitais (ID 24896729), ocasião em que manifestou a sua concordância com o depósito realizado e com a consequente extinção do feito. Em assim sendo, homologo o pagamento realizado em juízo, e aceito pelo autor, e declaro extinto o processo, sem resolução do mérito, nos termos do artigo 487, III, do CPC, restando prejudicada a análise de mérito dos recursos de apelação. É como VOTO. Fortaleza, 10 de setembro de 2025. EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator &#160; &#160;

Processo	0484739-44.2010.8.06.0001
Número de ordem	265
Órgão julgador	1º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	EMANUEL LEITE ALBUQUERQUE
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Direitos e Títulos de Crédito
Polo ativo	BANCO SANTANDER (BRASIL) S.A.
Advogado(s) - Polo ativo	DAVID SOMBRA PEIXOTO - (CE16477-A)
Polo passivo	NEW AGE TRANSPORTES RODOVIARIOS LTDA
Advogado(s) - Polo passivo	Não informado
Terceiros	ILDO PICCOLI Curadoria Especial de Ausentes da Defensoria Publica

Processo	0484739-44.2010.8.06.0001
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	02h34Qzs60OkVefVXU4tyYAI0yAwAEGMpU4USTY7IA1q9YnhkM6ZPETTCAEzDDkV6Np gBY4R8KaxhkTzDLKU/MRGWS/qR8dhBMQ9MgnQYwQztnop8IPakg9Oub9hnMesw0tBQm uS81wzIJDCfVrT4cwMTiSMrI4+HOhe7nNHF5ccusrwAhAlbZCziTd9gtzjoAyM+vEnTgc8CH 4nmY0nPt/snLY1zg9ztQr8eNAlIANA vRQHvWS+0en7Tn+0txwOe1Np7ZZHs+M62vLBQkR 0+zMdKv5f8BQahnWDpaDisAAAAASUVORK5CYII=" alt=""/> /></p><p align="left">&#160;</p><p style="text-align: center;"> PODER JUDICIÁRIO </p><p style="text-align: center;"> TRIBUNAL DE JUSTIÇA DO ESTADO DO CEARÁ </p><p style="text-align: center;"> GABINETE DO DES. EMANUEL LEITE ALBUQUERQUE </p><p style="text-align: center;"> &#160; </p><p align="left"> APELAÇÃO CÍVEL Nº 0484739-44.2010.8.06.0001 </p><p align="left"> Apelante: BANCO SANTANDER (BRASIL) S/A </p><p align="left"> Apelada: NEW AGE TRANSPORTES RODOVIÁRIOS LTDA </p><p align="center"> &#160; &#160;</p><p align="justify"> EMENTA: DIREITO PROCESSUAL CIVIL. APELAÇÃO CÍVEL. EXECUÇÃO DE TÍTULO EXTRAJUDICIAL. RECONHECIMENTO DA PRESCRIÇÃO PELO JUÍZO DE ORIGEM. SOB O FUNDAMENTO DE AUSÊNCIA DE CITAÇÃO VÁLIDA. CITAÇÃO QUE OCORREU PELA VIA EDITALÍCIA, APÓS DEFERIMENTO DO PRÓPRIO JUIZ. INOCORRÊNCIA DE DESÍDIA DO EXEQUENTE APTA A CONFIRMAR O DECRETO SENTENCIAL DE PRESCRIÇÃO. ADEMAIS, PENDENTE ANÁLISE DO PLEITO DE NULIDADE DA CITAÇÃO POR EDITAL FORMULADO PELA CURADORIA DE AUSENTES. SENTENÇA CASSADA. RECURSO PROVIDO. </p><p align="justify"> &#160; <strong style="font- size: 1.17em;"> I. CASO EM EXAME </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; 1. Apelação cível interposta por BANCO SANTANDER (BRASIL) S/A contra sentença do Núcleo de Justiça 4.0 – Execuções de Título Extrajudicial que reconheceu a prescrição da pretensão executiva e extinguiu o feito com resolução do mérito, nos termos do art. 487, II, do CPC. O banco sustenta ausência de inércia, cumprimento de todas as determinações judiciais e diligências efetivas para localização do devedor, requerendo a continuidade da execução.</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> II. QUESTÃO EM DISCUSSÃO </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; 2. Há duas questões em discussão: (i) definir se a ausência de citação válida do executado, mesmo após diversas diligências, implica prescrição da pretensão executiva; (ii) estabelecer se houve demora atribuível ao exequente a amparar a incidência, ou não, da Súmula 106 do STJ.</p><p align="justify"> &#160; <strong style="font-size: 1.17em;"> III. RAZÕES DE DECIDIR </p><p align="justify"> <strong style="font-size: 1.17em;"> &#160; 3. O despacho que ordena a citação interrompe a prescrição com efeitos retroativos à data da propositura da ação, desde que o exequente adote as providências necessárias para viabilizar a citação.</p><p align="justify"> &#160; 4. O banco exequente demonstrou atuação diligente durante toda a tramitação, com repetidos pedidos de diligências, conversões processuais, consultas em sistemas eletrônicos e requerimento de citação por edital, não configurando desídia.</p><p align="justify"> &#160; 5. Constatada a efetivação de citação editalícia e pendência de análise sobre a alegada nulidade, mostra-se precipitado extinguir a execução sem exame dessa questão,

Processo	0484739-44.2010.8.06.0001
	impondo-se o retorno dos autos para regular processamento. IV. DISPOSITIVO E TESE Recurso provido. Sentença cassada para determinar o retorno dos autos à origem, com prosseguimento da execução e análise do pedido de nulidade da citação por edital. Tese de julgamento: O despacho que ordena a citação interrompe a prescrição com efeitos retroativos à data da propositura da ação, desde que o credor atue diligentemente. O reconhecimento da prescrição demanda a caracterização de inércia do credor, o que não se verifica quando este cumpre todas as determinações judiciais e promove diligências sucessivas para localização do devedor. &#160; A CÓRDÃO Vistos relatados e discutidos os autos da APELAÇÃO CÍVEL nº 0484739-44.2010.8.06.0001, em que é apelante BANCO SANTANDER (BRASIL) S/A e apelada NEW AGE TRANSPORTES RODOVIÁRIOS LTDA, acorda o colegiado da 1ª Câmara de Direito Privado do TJCE, por unanimidade de votos, em conhecer e dar PROVIMENTO ao recurso, nos termos do voto do Relator. Fortaleza, 10 de setembro de 2025. &#160; JOSÉ RICARDO VIDAL PATROCÍNIO Presidente do Órgão Julgador &#160; EDUARDO DE CASTRO NETO Juiz de Direito, convocado Relator &#160;&#160; &#160; &#160;&#160;&#160; Tratam-se de recurso de apelação interposto por BANCO SANTANDER (BRASIL) S/A em face de sentença proferida pelo juízo do Núcleo de Justiça 4.0 – Execuções de Título Extrajudicial, que extinguiu a ação de execução que o banco apelante ajuizou em desfavor de NEW AGE TRANSPORTES RODOVIÁRIOS LTDA – ME, o que fez com base nos fundamentos a seguir transcritos, in verbis: Versam os autos acerca de ação de busca e apreensão convertida em execução na qual, até o presente momento, não houve a citação do executado. &#160; Instado a se manifestar acerca da prescrição, o exequente, em petição de ID. 131509506, sustentou a inocorrência. &#160; É o sucinto relatório. DECIDO. &#160; Observo que o título executivo tinha como data de vencimento 16/07/2010, inobstante a ação ter sido&#160;ajuizada em 29/11/2010.

Processo	0484739-44.2010.8.06.0001
	style="font-size: medium;"> Nesse sentido, após o despacho que determinou a citação, decorreram mais de 14 (quatorze) anos sem que a parte exequente lograsse êxito na localização do executado para fins de promover a sua citação, a compreender está evidenciada a prescrição da demanda.</p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> Ressalta-se que a pretensão executiva para haver pagamento de contrato de alienação fiduciária, como no presente caso, sujeita-se ao prazo prescricional de 05 (cinco) anos, estabelecido no art. 206, § 5º, I do Código Civil (...)</p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> Logo, ainda que ajuizada a ação de execução antes do decurso do prazo prescricional, não ocorrendo citação válida do executado não há se falar em causa interruptiva da prescrição pelas sucessivas tentativas infrutíferas de citar o executado. </p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> Outrossim, é pacífico o entendimento do Superior Tribunal de Justiça de que: "A citação válida retroage à data da propositura da ação para efeitos de interrupção da prescrição, conforme o art. 219, §1º, do CPC/1973 (correspondente ao art. 240, § 1º, do CPC/2015). Por outro lado, o § 4º do aludido dispositivo prevê que, se a citação não for efetivada nos prazos legais, haver-se-á por não interrompida a prescrição, salvo nos casos em que o atraso não puder ser imputado ao autor da ação (Súmula 106/STJ)." (AgInt no AREsp 1300199/PR, Rel. Ministro MARCO AURÉLIO BELLIZZE, TERCEIRA TURMA, julgado em 29/3/2021, DJe 6/4/2021). </p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> Desse modo, ausente a citação válida, não se cogita de interrupção da prescrição, notadamente quando a falta do ato processual não pode ser atribuída ao mecanismo da Justiça, conforme se verifica in casu. </p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> Com efeito, o instituto da prescrição tem por finalidade limitar o exercício de determinado direito no tempo. Em atenção aos princípios da pacificação social bem como da segurança jurídica, não seria crível que determinada pessoa, titular de certo direito, pudesse exercê-lo indefinidamente, a qualquer momento. </p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> Destarte, embora o exequente tenha envidado esforços para promover a citação do executado, a atuação desta não foi suficiente para promover a citação válida do devedor antes que a pretensão exequenda fosse alcançada pela prescrição. (...) </p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> Cumpre assinalar que a ausência de citação implicou a não interrupção do prazo prescricional, logo, decorrido extenso prazo de tramitação, ainda não se logrou a citação do demandado, muito embora não se possa imputar inércia do credor, nem do Poder Judiciário, o que não afasta do reconhecimento do advento da prescrição. (...)</p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> Outrossim, não se cogita de violação aos princípios da não surpresa, cooperação, devido processo legal e do contraditório, porquanto ao exequente restou facultado indicar causa interruptiva da prescrição. </p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> DISPOSITIVO </p><p style="padding-left: 180px;" align="justify">&#160;</p><p style="padding-left: 180px;" align="justify"> Diante do exposto, de ofício, reconheço a prescrição do título objeto da presente execução, pelo que JULGO EXTINTO o presente feito com resolução do mérito, reconhecendo a PRESCRIÇÃO, com fulcro no art. 487, II do CPC." </p><p style="padding-left: 180px;" align="justify"> Nada obstante, sustenta o banco apelante que "não há que se falar na falta de esforços do exequente em prosseguir o feito, uma vez que sempre cumprira com os atos ordinatórios, pagando, inclusive, todas as custas dos múltiplos pedidos de citação, a fim de dar prosseguimento no feito, assim, pelo excesso das tentativas supramencionadas, não há que se falar em desídia" e que "urge asseverar que a demora/ausência na realização da citação não se deu por desídia/inércia do banco, vez que, muito ao contrário do que argumenta a fundamentação da sentença, não se vê configurado a inércia do banco exequente e a fundamentação de que a falta de citação do

Processo	0484739-44.2010.8.06.0001
	requerido decorria de motivos atribuídos somente a parte autora, que supostamente não diligenciou para a constituição válida da relação processual, e extremamente desarrazoada e inverídica." &#160; Sustenta, ainda, que "é possível verificar que o Banco sempre demonstrou interesse no prosseguimento do feito, bem como, na efetivação da tutela jurisdicional ora perseguida, requisitando pesquisas administrativas para constrição de bens aos sistemas SISBAJUD, INFOJUD, SIEL e RENAJUD." &#160; Requeru o provimento do recurso para o fim de reformar a sentença e determinar a continuidade do processo de execução. &#160; Contrarrazões ofertadas ao ID 26768701. &#160; É o relatório adotado. &#160; V O T O Conheço do recurso, posto vislumbro presentes os requisitos de admissibilidade previstos no CPC. &#160; Na hipótese, reclama a parte apelante que a sentença, erroneamente, decretou a prescrição da pretensão de execução do crédito que faz jus, decorrente de contrato de financiamento celebrado com o apelado. &#160; Pois bem. Comezinho que o despacho ordenatório da citação ostenta o condão de interromper o prazo prescricional, inclusive com efeitos retroativos à data de ajuizamento da ação, mas, com a condição de que o credor adote as providências necessárias à perfectibilização do ato de citação da parte devedora, sendo certo que, uma vez que decorra o prazo prescricional sem que a citação se efetive por fatos imputáveis ao Poder Judiciário, a parte não deve ser penalizada, quando, então, o processo terá seu regular seguimento. &#160; A este respeito, inclusive, existe Súmula do STJ: &#160; Súmula nº 106 do STJ: Proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da Justiça, não justifica o acolhimento da arguição de prescrição ou decadência. &#160; A interrupção do prazo prescricional também é prevista no CPC, senão vejamos: &#160; Art. 240. A citação válida, ainda quando ordenada por juízo incompetente, induz litispendência, torna litigiosa a coisa e constitui em mora o devedor, ressalvado o disposto nos arts. 397 e 398 da Lei no 10.406, de 10 de janeiro de 2002 (Código Civil). &#160; § 1º A interrupção da prescrição, operada pelo despacho que ordena a citação, ainda que proferido por juízo incompetente, retroagirá à data de propositura da ação. &#160; § 2º Incumbe ao autor adotar, no prazo de 10 (dez) dias, as providências necessárias para viabilizar a citação, sob pena de não se aplicar o disposto no § 1º. &#160; § 3º A parte não será prejudicada pela demora imputável exclusivamente ao serviço judiciário. &#160; § 4º O efeito retroativo a que se refere o § 1º aplica-se à decadência e aos demais prazos extintivos previstos em lei. &#160; &#160; Cabe então, verificar se houve – ou não – desídia da apelante em providenciar a citação da parte demandada e, por outro lado, se ocorreu demora imputável ao Judiciário ao ponto de justificar a não ocorrência do prazo prescricional.

Processo	0484739-44.2010.8.06.0001
	style="font-size: medium;"/> Na espécie, originariamente trata-se de uma ação de busca e apreensão ajuizada em novembro de 2010. </p><p align="justify">&#160;</p><p align="justify"> Da análise processual, vê-se que a exequente sempre atendeu a todos os comandos judiciais sempre que instada a fazê-lo, conforme pode se vê das seguintes movimentações processuais: </p><p align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 1) Após frustrado o cumprimento do mandado de busca e apreensão e citação exorou pela suspensão do prazo de noventa dias colimando localizar o devedor (ID 26768533);</p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 2) Petição informando a localização do devedor requerendo a expedição de novo mandado de busca e apreensão e citação (ID 26768537);</p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 3) Pedido de conversão da ação de busca e apreensão em depósito e de expedição de ofícios a diversos órgãos públicos (ID 26768548);</p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 4) Pedido de nova expedição de mandado, com a respectiva indicação de endereço (ID 26768557); </p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 5) Pedido de conversão da ação de busca e apreensão em execução (ID 26768572) deferido pelo juízo (ID 26768575); </p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 6) Indicação de novo endereço do devedor e pleito de nova diligência (ID 26768579);</p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 7) Novo pedido de expedição de mandado de citação, com a indicação do respectivo endereço (ID 26768589); </p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 8) Pedido de arresto de bens (ID 26768597); </p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 9) Renovação do pleito de citação da executada (ID 26768607); </p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 10) Pedidos de citação por meio eletrônico, bem como de busca nos sistemas postos à disposição do Poder Judiciário (IDs 26768623 e 26768643);</p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 11) Pedido de citação por edital (ID 26768661)deferido pelo juízo conforme ID 26768662; Comprovação da citação editalícia conforme ID 26768670; </p><p style="padding-left: 120px;" align="justify">&#160;</p><p style="padding-left: 120px;" align="justify"> 12) Manifestação da Curadoria de Ausentes protestando pela nulidade da citação por edital (ID 26768675); Manifestação do Exequente no ID 26768681.</p><p align="justify">&#160;</p><p align="justify"> Ora, da narrativa dos atos processuais acima descritas, é de se notar, sem nuvidosidade, que o apelante/exequente atendeu a todas as determinações do juízo, seja antes ou após a conversão da ação em execução. </p><p align="justify">&#160;</p><p align="justify"> E mais: a citação por edital, deferida pelo juízo, efetivou-se conforme comprovado nos autos, tendo a Curadoria de Ausentes protestado por sua nulidade (da citação por edital), seguida de manifestação do exequente, não tendo o juízo primevo sequer se manifestado a respeito, vindo a extinguir o feito de modo açodado. </p><p align="justify">&#160;</p><p align="justify"> Portanto, não se vislumbra, da análise do trâmite processual, que o apelante/exequente tenha demonstrado desídia, ao revés, atendeu a todos os comandos judiciais quando devidamente intimado, não havendo, portanto, conduta capaz de motivar o decreto prescricional levado a feito pela sentença, carecendo o feito, inclusive, da análise do pedido de nulidade da citação por edital. </p><p align="justify">&#160;</p><p align="justify">&#160;</p></td></tr>

Processo	0484739-44.2010.8.06.0001
	align="justify"> Neste sentido, anoto os seguintes precedentes, verbis:</p><p align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> PROCESSUAL CIVIL. AGRAVO INTERNO. CITAÇÃO. DEMORA. MECANISMOS DA JUSTIÇA. PRESCRIÇÃO. NÃO OCORRÊNCIA. MATÉRIA FÁTICA. SÚMULA 7/STJ. 1. "Proposta a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da justiça, não justifica o acolhimento da arguição de prescrição ou decadência" (Súmula 106/STJ). 2. Hipótese em que as instâncias de origem, soberanas no exame das provas dos autos, delinearão que a demora na citação decorreu dos mecanismos inerentes do Poder Judiciário e, principalmente, da conduta do próprio réu que contribuiu para dificultar a tramitação do processo. 3. Não cabe, em recurso especial, reexaminar matéria fático-probatória e a interpretação de cláusulas contratuais (Súmulas 5 e 7/STJ). 4. Agravo interno a que se nega provimento. (STJ - AgInt no AREsp: 929024 RJ 2016/0145306-0, Relator: Ministra MARIA ISABEL GALLOTTI, Data de Julgamento: 23/08/2021, T4 - QUARTA TURMA, Data de Publicação: DJe 25/08/2021) </p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify"> TRIBUTÁRIO E PROCESSUAL CIVIL. EXECUÇÃO FISCAL. EXCEÇÃO DE PRÉ-EXECUTIVIDADE. AUSÊNCIA DE OMISSÃO, ART. 535, II, DO CPC DE 1973. INOCORRÊNCIA DE PRESCRIÇÃO INTERCORRENTE. DEMORA NO ANDAMENTO PROCESSUAL CAUSADA PELO PODER JUDICIÁRIO. SÚMULA 106 DO STJ. 1. Não se configura a ofensa ao art. 535 do Código de Processo Civil, uma vez que o Tribunal a quo julgou integralmente a lide e solucionou a controvérsia, tal como lhe foi apresentada. 2. A inércia foi causada pelos mecanismos inerentes da justiça, portanto o credor não pode ser responsabilizado pelas suas consequências. 3. O STJ, no julgamento do REsp 1.222.444/RS, julgado no rito dos Recursos Repetitivos, art. 543-C do CPC, pacificou a orientação de que "A configuração da prescrição intercorrente não se faz apenas com a aferição do decurso do lapso quinquenal após a data da citação. Antes, também deve ficar caracterizada a inércia da Fazenda exequente". 4. É firme o entendimento do STJ de que somente a inércia injustificada do credor caracteriza a prescrição intercorrente na execução, o que não se verifica no caso concreto, já que a demora no andamento do feito se deu por motivos inerentes ao próprio mecanismo judiciário (Súmula 106/STJ). 5. Recurso Especial não provido. (STJ - REsp: 1697890 RJ 2017/0207378-8, Relator: Ministro HERMAN BENJAMIN, Data de Julgamento: 21/11/2017, T2 - SEGUNDA TURMA, Data de Publicação: DJe 19/12/2017) </p><p style="padding-left: 210px;" align="justify">&#160;</p><p style="padding-left: 210px;" align="justify">APELAÇÃO CÍVEL. EMBARGOS A EXECUÇÃO. CÉDULA DE CRÉDITO BANCÁRIO. PRESCRIÇÃO. MOROSIDADE JUDICIAL. AUSÊNCIA DE ILEGALIDADE. LIQUIDEZ, CERTEZA E EXIGIBILIDADE DO TÍTULO. RECURSO CONHECIDO E IMPROVIDO. 1. O presente recurso aborda a tese de ocorrência da prescrição no processo executório em primeira instância proposto aos 12 de março de 2012 para cobrar o saldo devedor de cédula de crédito bancário. 2. Como é cediço, o despacho que ordena a citação tem o condão de interromper o prazo prescricional, com efeitos retroativos à data de ajuizamento da ação, desde que o credor tome as providências necessárias à viabilização do ato citatório. Caso o prazo prescricional decorra sem que a citação se efetive por fatos imputáveis ao Poder Judiciário, não se penaliza a parte, e deve o feito prosseguir. 3. Embora o despacho ordinatório da citação tenha sido determinado aos 24 de maio de 2012, <strong style="font-family: verdana, geneva; font-size: medium;">a ausência da citação do réu não se deu em razão da ineficiência da parte apelada, mas sim da morosidade judicial, conforme se verifica nos despachos de fls. 27, 36, 44 do processo executório, já que a citação ocorreu 7 (sete) anos após a realização do primeiro despacho. <strong style="font-family: verdana, geneva; font-size: medium;">Assim, a parte apelada não pode ser prejudicada pela demora imputável exclusivamente ao serviço judiciário. 4. No que se destina à prática da capitalização de juros, observa-se da cédula de crédito bancário acostada ao processo executório, a contratação dos juros capitalizados, eis que com a mera multiplicação dos juros mensais (2,00%) por seu duodécuplo vislumbra-se não ser equivalente aos juros anuais constantes no pacto (26,82), caracterizando, portanto, a legalidade da cobrança de juros capitalizados na espécie. 5. Em relação a suposta cobrança cumulada de comissão de permanência com juros moratórios e multa moratória não restou evidenciado que existe tal cobrança no contrato. 6. Em relação ao IOF, a Corte Cidadã já se posicionou no sentido de ser legal a cobrança do referido imposto nos contratos de financiamento bancário. 7. Dessa maneira, estando a ação executiva lastreada em cédula de crédito bancário, a qual tem natureza de título executivo extrajudicial, sem indícios de ilegalidade e acompanhada de demonstrativo de débito, não há que se falar em procedência dos embargos à execução, em respeito ao art. 28 da Lei nº 10.931/04 8. Recurso improvido. (Apelação

Processo	0484739-44.2010.8.06.0001
	Cível - 0115799-85.2019.8.06.0001, Rel. Desembargador(a) CARLOS ALBERTO MENDES FORTE, 2ª Câmara Direito Privado, data do julgamento: 09/11/2022, data da publicação: 10/11/2022) &#160; APELAÇÃO CÍVEL. EXECUÇÃO FISCAL. PRESCRIÇÃO INTERCORRENTE. DEMORA IMPUTADA AOS SERVIÇOS JUDICIAIS E NÃO AO EXEQUENTE. PRESCRIÇÃO INTERCORRENTE NÃO VERIFICADA. APELAÇÃO CONHECIDA E PROVIDA. 1. O cerne da questão ora em discussão cinge-se na análise da prescrição ou não do direito de o ente público estadual efetuar a cobrança de crédito tributário relativo ao ICMS. 2. A jurisprudência do STJ, em julgados recentes, entende configurar a hipótese do art. 40, § 4º da dita Lei, quando o exequente deixar transcorrer o prazo prescricional sem prestar impulso ao andamento processual, desde que seja oportunizada manifestação à Fazenda Pública. 3. Neste azo, intentada a ação no prazo fixado para o seu exercício, a demora na citação, por motivos inerentes ao mecanismo da justiça, não justifica o acolhimento da arguição de prescrição ou decadência. Precedentes. 4. Na hipótese dos autos, percebe-se que a execução ficou parada por culpa exclusiva do serviço judiciário entre novembro de 2007 e março de 2014, sem que houvesse intimação do exequente para manifestação a respeito do retorno da carta de citação do ora executado, não podendo a edukudade, desta feita, cumprir a diligência para dar prosseguimento ao feito. Assim, o ente público não poderá sofrerá os efeitos de uma inércia que sequer deu causa. 5. Apelação conhecida e provida, anulando a sentença e determinando o retorno dos autos à instância a quo para regular processamento. (Apelação Cível - 0000257-21.2005.8.06.0062, Rel. Desembargador(a) PAULO FRANCISCO BANHOS PONTE, 1ª Câmara Direito Público, data do julgamento: 09/08/2021, data da publicação: 10/08/2021) &#160; &#160; O Provimento do apelo é, por conseguinte, medida de justiça. &#160; Ante ao exposto, conheço e dou provimento ao recurso para cassar a sentença extintiva e determinar o retorno dos autos à origem para o regular processamento, mormente com a apreciação do pedido de nulidade de citação por edital formulado pela Curadoria de Ausentes. &#160; É como VOTO. &#160; Fortaleza, 10 de setembro de 2025. &#160; ="" >eduardo="" <span="" castro="" de="" neto<="" span="" span><="" style="font-family: verdana, geneva;"> ="" >juiz="" <span="" convocado<="" de="" direito,="" span="" span><="" style="font-family: verdana, geneva;"> ="" >relator<="" <span="" span="" span><="" style="font-family: verdana, geneva;"> ="" &#160;<="" strong="" style="font-size: medium;">
Processo	0204899-17.2020.8.06.0001
Número de ordem	266
Órgão julgador	2º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	ANTONIO ABELARDO BENEVIDES MORAES
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Perdas e Danos
Polo ativo	EDIFICIO BOSSA NOVA
Advogado(s) - Polo ativo	AFRANIO MELO JUNIOR - (CE7367-A) ROSA DO SOCORRO DA CONCEICAO MOREIRA - (CE12296-A)
Polo passivo	TECINNOVE ENGENHARIA LTDA
Advogado(s) - Polo passivo	YURI KUBRUSLY DE MIRANDA SA - (CE38343-A)
Terceiros	Não informado
Voto proferido pelo relator	Não informado
Processo	0201464-77.2024.8.06.0071
Número de ordem	267

Processo	0201464-77.2024.8.06.0071
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Inclusão Indevida em Cadastro de Inadimplentes
Polo ativo	JOSE EDERSON FIUZA DE MELO
Advogado(s) - Polo ativo	JENIFER TAIS OVIEDO GIACOMINI - (MG224534-A)
Polo passivo	ATLANTICO FUNDO DE INVESTIMENTO EM DIREITOS CREDITORIOS NAO PADRONIZADOS
Advogado(s) - Polo passivo	PETERSON DOS SANTOS - (SP336353-A) CAUE TAUAN DE SOUZA YAEGASHI - (SP357590-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	0052017-20.2021.8.06.0071
Número de ordem	268
Órgão julgador	4º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	CARLOS AUGUSTO GOMES CORREIA
Classe judicial	APELAÇÃO CÍVEL
Assunto principal	Reconhecimento / Dissolução
Polo ativo	FRANCISCA FERNANDES DE OLIVEIRA
Advogado(s) - Polo ativo	DANIEL DE BRITO SOUSA - (CE29056-A) CICERO LUIZ BEZERRA FRANCA - (CE14005-A) EMANUELLE MARIA BENTO CALIXTO - (CE50907-A) CAMILA PEREIRA DE LUCENA - (CE23358-A) ARIANDNE ALENCAR BRITO SANTOS - (CE39759-A)
Polo passivo	VITOR DE OLIVEIRA LIMA Vinicius de Oliveira Lima ANA CRISTINA MEDEIROS LIMA Priscila Tasia de Lima
Advogado(s) - Polo passivo	CICERO LUIZ BEZERRA FRANCA - (CE14005-A) ADYLA MARIA FRANCA ANGELO - (CE38890-A)
Terceiros	PROCURADORIA GERAL DE JUSTICA
Voto proferido pelo relator	Não informado

Processo	3008281-75.2025.8.06.0000
Número de ordem	269
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	CONFLITO DE COMPETÊNCIA CÍVEL
Assunto principal	Conflito de Competência
Polo ativo	JUIZO DE DIREITO DA 2 VARA CIVEL DA COMARCA DE EUSEBIO
Advogado(s) - Polo ativo	Não informado
Polo passivo	JUÍZO DE DIREITO DA 1ª VARA CÍVEL DA COMARCA DE EUSÉBIO
Advogado(s) - Polo passivo	Não informado
Terceiros	Não informado

Processo	3008281-75.2025.8.06.0000
Acordão	<p style="text-align: center;"> <img src="data:image/png;base64,iVBORw0KGgoAAAANSUHEUgAAAEwAAABnCAYAAACq/KTeAAAAAXNSR0IArs4c6QAAAAARnQU1BAACxjwv8YQUAAAAJcEhZcwAAAFxEAABcRAco m8z8AAEulSURBVHhe7b11YFbH1vZnCdCqRfquMfdiOGQhLi7IEmlu5OEKIEEd3cpbqXU KFqhLVRwCrRAcenvXbPvpHJOj7ynz3mf749vOHP2fd/ZMnPNtda61uzZu434D8svvzzhCY +lwuPHj7hz5xY//XiFy5fO8enxE5w4+hE/Xr+m7Xvk44/wHmdL4FgjwsbpEzHeCO8R/Rhq2Z +6OXXcf/CQH69dlcZnBKIBDkxPdWV64nBqEkaRKN/LijO083zx5ecE+41hhFUPor2siHQzJ Xi0CT6jrYmfHmVDacfdRw/5+puvOXRoL998+QK/XjnNzRuXuH3vZx7/8ognT6TNWtt/qf+nei DIF93mX5X/GLAnT57w8OEDPjv2CUvnVIFZGEfyBBcifO0ZZtWXccMsSY6dxiZVK1g+v5Kk MHvemT+RXQuj2L1kljOzXUiNHEWo1xhKc7PZvmoBaSFOrcwLYPeichbP9efdBeHMz/Mg O96LbRsWkhTtj88IM0oSPNng2bzI7F4ayc1EYq2tjiPYdxsHdW6mpKMLTzRkHq4H4jbNgop8 TOVOCqa0qYM3KhVy9elnX/8UWNon7f//q4A1XOqnaz8yLSeFaA8rFhT5sH5mklARS3q4N RnR40iK8MTJtC9eToMoix/GvgVRHFwUwflY9haF0jRRFS/S1JC3Uim3wos7LGsHdRJO +tiOLQ0hA+XhbJ9roQimKdyYhyJk1AT/a3Zl62DwcXT5Bz+XFWqT875oYTPXYwrlb98R5u QmrMeCb727C8KoJ35k1kZVUQNbnjGWHXj/fe3aW1/bei+qJA+/cQ+48Zpsr1H36gRsyOt2 LA0tj2L8wgPeWR7F0qjtJ9pQnjqaucUBLK8MYdtcYdb8SLbNCmbzjCDWVgWyssKP5eXe LCoZz4JiN+YVujEn35XZ+fl5byyL8kYJw8YwX863aJoPS8u8WVHhzbpfniOP7bPDmDXvG D2Cmu3zolgRWUQswu8mBrvREWKE7sWhHBgUbC0K4iDK2MJcTfh0LvbdY3/Az4KsHqm /YvylwC7c/sWs6cXkd1pFAfXJLJzXhCbavxYVR7AUmFcXZYllamjKE0cRsEkW/Im2AhTLE gJtyQlyJop/mbEehsxyUufGM8hRHnoEempr9Uo+R7jMZgJUId6D9HqJF894gP0SQ0zFhab kxlpS26MPYWTHAQkR8qShlOb6cHCqf7CqgA2zvBlx2wx7SWR7Fk8mXDxe4c/3K9r/B/w+ X8EmCp7d23Ce4wp6dEOZESYkRpsQEgqKSkCxiR3AcCtP5Hu/YlyH0CMdDrGT59ovyHE BRmSGGLGIGBL4oMsiQ0yJS7EiPgWQ6nmTAm3YrL6LchMQDljzt+cWH8rrcb5WzDBx5g YXyMivfSi8BhChLSAPi6PyR5GYuYwJAWbkRxoSEaIKQUTncRtmJGXFsmPI89r7RYXXF/ Uh3/TgUn5y4DdvPEj6QnRGPd/njAPQ5JCpbHsySkC2uQAlYECdv8hRnyPc7PjDa3PWG PprF+RtJxY+ICjQQs+Sw1IciYxGATiaJ6Pdv2FEYJcEEWJAYYCYXsNtf1j/U3lWDIXoBnB4wc J+AbEBuuuNdIXzissnCIDEuMr1w0wiD7ECvdhA7DQf5M9OzZrbf5FHP7/8yipzq8urMr3335 NQX4qoYGj8B0jrHldSLJ0PFWZTQV+bGOIKe4CGDmuNm8TcmUMSwp9RSf5M6a6gA2 1UawcWYom6RumTWBqhQ3iscOYM30aLbMiZS/B0hA8WdNjT/LKwJZXBREvKlBeAmoYa 6DmZYyVsxxJPkxtmSHWUgQUcAaEORuhJ+XDcGBw1m+uJafB93Q2qvarQtcDdt/v/whila Kz2myrUfr7N27VImSONKpoyWDkawebY449kxbKidQGnyOLImjSElBRJgXaUT3GSwGBJ ofih/FB7ckPMYQszoUC+x3qa4W37NlkhdU5K6fMqJVNRElHNWfSLBjNHFfEufSVS+IKbN5 6UmLEc3LdTa68Sq3+1/M8AJuXDA7vJnOTNkoplts6LIV2iU260tWgxZ3HI5hSkRNPjledFP OoLMIEES2pUIDlj3nsgCX7i0CUlplSrfV0wGdiXgW++zhg7iXCJAYS76ZMsTEzyNSAnzlyJ7 gNJKizBY5wdr77UiaKMaiLHDqE43pkiGYAJ4weyoNCdd+ZGkhbpyNzqYp48fqrh6F8sfwOw MUdVVJo0b3oRrrY9xcRMyIsyJUukQUmck6bBliV6Ts2i4u1uHXAbYUBZhg81mePYWCda qTaQjeJ70sRXTc8Lxc6wNy906sgLHTrxnNP4y/pTXGyK3OKPMUXhrJhRgiLSgNjiRpbKJ cTfd56jox4f8lTh1CV7kpV6jgKJz0lw63F35kROU7kjN8ovvj0uNbWv1r+EmANLuGLZ49QlBb GnllgEYuRbJgeKk44iHXSuQUlwhBJtqvzYxlhq0L9GJEcw0SJ5X9XajNGsvMLA9ivlwoSPb DsP9bvNilC92fe56XOnfC3rQfpekBJldZy34uzMgYQ22uu4hcExljXHFxNcYviUj8IZGAGsSa yIBWi2hdWyORVa6/ec4EUilR10849cBboju/On5DwH74wU3rJ5HkKs+cyRfq0sbTpGYYl60u ThqK6b4GuNi/SY1BVECWjTpMW6EjDaQPNKJsgQxQVHy6WGOEgwciQkcSf+3X+X5Z56 h2/Mv8pwwzdKgP6WZkUwJsZeoKLmnmO7MDDeiRM9ISL/PS+G6flR+IzqL6DrkSNyJkdIA hJxyxKHMzNTkvylaoTHBfPdt2e09qrW/6eQY/PVAlE/FcTpr6yNtqSV6z9coixrokQwSoS bFIYMJ4EL2PRUiMI8Y1ivWisrEhrEgJmPMPWJIfYUpHswsqyQJaW+IsgNSlrZiQThXWOZg N59dnOPNOhE107Pk3nNm3o/2Y3onxHskQcLthQTIS8CWvET1anukumYMMkyQCifUT8S nRcWhnMtgUxLJNtZrQt0zPGskAcf0XiKNFruxzckrarpOqj9W2ATn1w7+J4D9nWP0JdULv z8v+HZtlCHFhw+wkFpf5MavQn9BxAKKEEZPSPQQ4qek+ICX7MjXJ6lkfwoSAsiXmjPFj7jw caRM9GVSqBeBnuPEL3ng7+1NgK8vQT5Svbyl8PMiOsAl5Am+JEWnJ1/OkZsQSH5iCE Wis4qTQpmWGCwD4UepgFSU5iJplQUJkkUsiCi9UnxeWfwY+dsklr+6UN/y34olI22e7N8p/ wllwgUmGocHmH8hJL179geMnTrJ/3z42bVpNcmwUle7OlGgiKur1li85gLS4UHLT4ygtzGR 6eRFL5tWxfuVydmezwt79nP4/Y84fuw4X5z6jO+/O82Fc99y+eJZrsu5f7r+Iz/duM7Nmz9x6 +ZNbvX0ixvXb0pHr/DDhQtcOv8tZ05/xpddfsrJk8f4+KMPeG//PnZv2cSG5QtZOGsaVWW5F OUkkiNgFqYFS4QOolCCjr/3WGqmV7Br5zvs27dXu/5PktoJ3+rrvy7/0oc9eaz4Cme+Ocp8h QuZPWsOc2tnM72ymnK5+ly6KtauWczB/Zs5emQv33zzOdevX+fnu7e4//iONNoN5bFKBY8 ePeb+vQfcvNOPGzdvsYZwjcti1hcvX+D7i+f49t3fHfDn98LW7M3x79nu+P3eec+PfcUHY cenyRa4KsD/evMGtO3e5ff8BD2Q8/9BdafLDB0+4desW5y58x4nPjvLuoQOs27iWOhm8yp pqKqurqa2bJbWWDRvWCSiOZ9BJpX9kT//Kh2kH/sL1a9cpmTqVmuoq9u/ezbdfsvVN+e3R Y+XHdPslfNy9d4erwpBvv7/Ap5+d4P0PD7Bz3zZWb13LrNXzmTqvkqzaEpKrs4krT2FiSQI RhbEE50/ALZsaD3HuHplReKRF4J4aLjUMz/qlvDKkZobjmxNBkDj58IJYYoqTiJ2WRkpfDt k1RZTMrWTuuOws2bGgnQd38Ngxj/ji6y+4eOU8d29LwvTgQX1bn/D44QPxvdf57MTNgtj ycy7OYePGjfl3+atlJFX/UfmXDFoxmFvBs13NdH68fkUu95Drt6/zxfdf8u7H77L6nbXMXDGB wjnlJJTnEpw1mfEJwThP8sQychwGks/1DRpKd38LungZ0N5zEK28+tLcqwfnvXvS3Kc3Ta Q+JbWRbx+e8utHE/9BNPGT6j9Aan8a+/aVKvv596apXy+a+spx3r1o6dmbtuN700lSoeck2r

Processo	3008281-75.2025.8.06.0000
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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> PROCESSO:&#160;3008281-75.2025.8.06.0000 - &#160;CONFLITO DE COMPETÊNCIA CÍVEL (221)</p><p> SUSCITANTE: JUIZO DE DIREITO DA 2ª VARA CÍVEL DA COMARCA DE EUSÉBIO</p><p> SUSCITADO: JUÍZO DE DIREITO DA 1ª VARA CÍVEL DA COMARCA DE EUSÉBIO</p><p>
 </p><p align="center">
 </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm" align="justify"><strong style="font-size: 14pt;"> Ementa : Direitoprocessual civil. Conflito negativo de competência. Juízo de direito da 2ª vara cível da comarca de eusébio (suscitante) e juízo de direito da 1ª vara cível da comarca de eusébio (suscitado). Ação de despejo por falta de pagamento cumulad

Processo	3008281-75.2025.8.06.0000
	style="font-family: Georgia, serif;"> 3. A análise dos autos evidencia que não há conexão material relevante entre as demandas, pois, na ação de despejo, que tramita perante o Juízo suscitado, discute-se a inadimplência contratual e a retomada do imóvel, enquanto a ação de exigir contas, que tramita no Juízo suscitante, visa obter informações detalhadas sobre os aluguéis cobrados, envolvendo vários locatários, sem impacto sobre a rescisão contratual. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> 4. A eventual prestação de contas não altera a mora do locatário, tampouco suspende ou impede a execução das cláusulas contratuais de locação. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> 5. O reconhecimento da obrigação de prestar contas não interfere no direito do locador de buscar a desocupação do imóvel, nem na análise da legalidade do despejo. </p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> 6. Não se vislumbra a existência de conexão entre as referidas demandas. Ademais, por se tratar de ações com regras procedimentais distintas, não há a possibilidade de serem prolatadas decisões conflitantes ou contraditórias entre si, desconstituindo, assim, a possibilidade de haver conexão ou continência entre elas. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm" align="justify"> IV. Dispositivo </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> 7. Conflito negativo de competência que se julga procedente, declarando competente o Juízo de Direito da 1ª Vara Cível da Comarca de Eusébio para processar e julgar a ação de Despejo por falta de pagamento de aluguéis cumulado com cobrança (Proc. nº 0200779-58.2024.8.06.0075).</p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify">

<p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> ACÓRDÃO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify"> >Vistos, relatados e discutidos estes autos, acordam os membros da Primeira Câmara Direito Privado do Tribunal de Justiça do Estado do Ceará, à unanimidade de votos, para julgar PROCEDENTE o presente Conflito Negativo de Competência, para declarar competente o Juízo Suscitado >(Juízo da 1ª Vara Cível da Comarca de Eusébio), para processar e julgar a >ação de Despejo por falta de pagamento de aluguéis cumulado com cobrança (Proc. nº 0200779-58.2024.8.06.0075). Fortaleza, data da assinatura digital. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="center"> Presidente/Relator </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm;" align="justify">

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Processo	3008281-75.2025.8.06.0000
	 VOTO </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Inicialmente, o conflito de competência satisfaz aos requisitos previstos no art. 953 do CPC, devendo, portanto, ser admitido. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Trata-se de Conflito Negativo de Competência suscitado pelo Juízo de Direito da 2ª Vara Cível da Comarca de Eusébio, contra decisão proferida pelo Juízo da 1ª Vara da mesma Comarca, que declinou de sua competência, por entender que a ação de Despejo por falta de pagamento cumulado com cobrança (Proc. nº 0200779-58.2024.8.06.0075), objeto do presente conflito, deve ser processada perante o juízo onde tramita a ação de exigir contas (Proc. nº 0200082-71.2023.8.06.0075). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Na referida ação de exigir contas, o Espólio-autor narra que, após o falecimento do Sr. Walter Max Voigtlander, tomou conhecimento de que o suplicado daquela ação, Sr. Antônio Dyogo Schefe sem qualquer delegação de poderes de administração de locação das salas comerciais e dos apartamentos do imóvel, passou utilizar a pessoa jurídica Euro Imoveis – Administração de Condomínios Ltda., para firmar contratos de locação, como se proprietário do imóvel fosse, não estando prestando contas com o inventariante a respeito dos valores recebidos a título de aluguéis, os quais, inclusive, estão sendo depositados diretamente na conta bancária do demandado. O promovido da Ação de Despejo, Elizes Barber Shop, é locatário das salas 05, sala 07, sala 08, sala 16 e sala 19, do Empreendimento Euro Center Eusébio, situado na Praça 23 de junho, nº 32, Centro, Eusébio/CE. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Muito bem. Sem delongas, já adianto que deve ser declarado competente o juízo suscitado. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Cinge-se a controvérsia em definir a competência para processar e julgar a ação de Ação de Despejo por falta de pagamento cumulado com cobrança, manejada pelo Espólio de Walter Max Voigtlander, em desfavor de Elizes Barber Shop, que gerou o presente incidente. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Inicialmente, no que se refere à conexão ou continência entre duas ou mais causas, disciplinam os arts. 55, 56 e 286 do Código de Processo Civil: </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Art. 55. Reputam-se conexas 2 (duas) ou mais ações quando lhes for comum o pedido ou a causa de pedir. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> § 1º Os processos de ações conexas serão reunidos para decisão conjunta, salvo se um deles já houver sido sentenciado. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> § 2º Aplica-se o disposto no caput : </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> I - a execução de título extrajudicial e a ação de conhecimento relativa ao mesmo ato jurídico; </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> II - às execuções fundadas no mesmo título executivo. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> § 3º Serão reunidos para julgamento conjunto os processos que possam gerar risco de prolação de decisões conflitantes ou contraditórias caso decididos separadamente, mesmo sem conexão entre eles. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Art. 56. Dá-se a continência entre 2 (duas) ou mais ações quando houver

Processo	3008281-75.2025.8.06.0000
	identidade quanto às partes e à causa de pedir, mas o pedido de uma, por ser mais amplo, abrange o das demais. Art. 286. Serão distribuídas por dependência as causas de qualquer natureza. I - quando se relacionarem, por conexão ou continência, com outra já ajuizada; II - quando, tendo sido extinto o processo sem resolução de mérito, for reiterado o pedido, ainda que em litisconsórcio com outros autores ou que sejam parcialmente alterados os réus da demanda; III - quando houver ajuizamento de ações nos termos do art. 55, § 3º, ao juízo prevento. Parágrafo único. Havendo intervenção de terceiro, reconvenção ou outra hipótese de ampliação objetiva do processo, o juiz, de ofício, mandará proceder à respectiva anotação pelo distribuidor. Entretanto, no caso em tela, com a devida vênia ao entendimento do douto juízo suscitado, entendo que não há que se falar em conexão ou reunião de processos por risco de decisões conflitantes. A análise dos autos evidencia que não há conexão material relevante entre as demandas, pois, na ação de despejo, que tramita perante o Juízo suscitado, discute-se a inadimplência contratual e a retomada do imóvel, enquanto a ação de exigir contas, que tramita no Juízo suscitante, visa obter informações detalhadas sobre os aluguéis cobrados, envolvendo vários locatários, sem impacto sobre a rescisão contratual. Com efeito, a eventual prestação de contas não altera a mora do locatário, tampouco suspende ou impede a execução das cláusulas contratuais de locação. Outrossim, o reconhecimento da obrigação de prestar contas não interfere no direito do locador de buscar a desocupação do imóvel, nem na análise da legalidade do despejo. Sendo assim, não se vislumbra a existência de conexão entre as referidas demandas. Ademais, por se tratar de ações com regras procedimentais distintas, não há a possibilidade de serem prolatadas decisões conflitantes ou contraditórias entre si, desconstituindo, assim, a possibilidade de haver conexão ou continência entre elas. Neste sentido, cito decisões jurisprudenciais: CONFLITO NEGATIVO DE COMPETÊNCIA. AÇÃO DE COBRANÇA. DECLINAÇÃO DE OFÍCIO. RISCO DE DECISÕES CONFLITANTES. INOCORRÊNCIA. Tratando-se de ação de cobrança com pedidos e causas de pedir diversas da ação de inventário, não há risco de decisões conflitantes, conforme o disposto no art. 55 do Código de Processo Civil. CONFLITO NEGATIVO DE COMPETÊNCIA JULGADO PROCEDENTE, EM DECISÃO MONOCRÁTICA. (TJ-RS - CC: 51437592420238217000 DOM PEDRITO, Relator.: Eduardo João Lima Costa, Data de Julgamento: 11/07/2023, Vigésima Quinta Câmara Cível, Data de Publicação: 12/07/2023).

Processo	3008281-75.2025.8.06.0000
	transparent;" align="justify"> EMENTA: EMBARGOS À EXECUÇÃO. TÍTULO EXECUTIVO EXTRAJUDICIAL. ALEGADA CONEXÃO COM AÇÃO DE INVENTÁRIO. IDENTIDADE DE PEDIDOS OU DE CAUSAS DE PEDIR NÃO EVIDENCIADA. RISCO DE DECISÕES CONTRADITÓRIAS. INEXISTÊNCIA. CONEXÃO AFASTADA. I - Segundo o art. 55 do CPC, configura-se a conexão entre ações quando houver identidade de pedido ou de causa de pedir, justificando-se a reunião dos processos, ainda, quando existir risco de decisões conflitantes. II - Apesar da possível relação de um dos bens arrolados em inventário judicial com a dívida discutida em embargos à execução, não se evidencia a hipótese de conexão entre as demandas, já que não lhes são comuns o pedido ou a causa de pedir, ademais de não se vislumbrar risco de decisões contraditórias ou conflitantes. </p><p class="western" style="line-height: 200%; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> (TJ-MG - AI: 04973909620228130000, Relator.: Des.(a) Vicente de Oliveira Silva, Data de Julgamento: 14/12/2022, 20a CÂMARA CÍVEL, Data de Publicação: 15/12/2022). </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Assim, não se verifica risco de decisões conflitantes ou contraditórias, requisito essencial para a reunião dos processos nos termos do art. 55, § 3º, do CPC. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Diante do exposto, julgo PROCEDENTE o presente Conflito Negativo de Competência , para declarar competente o Juízo Suscitado (Juízo de Direito da 1ª Vara Cível da Comarca de Eusébio), para processar e julgar a ação de Despejo por falta de pagamento de aluguéis cumulado com cobrança (Proc. nº 0200779-58.2024.8.06.0075) </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É o voto. </p><p class="western" style="line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Fortaleza, data da assinatura digital. </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="center"> DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="center"> Relator </p><p style="text-align: center;"> </p>

<p>&#160;</p><p>&#160;</p><p style="text-align: center;"> &#160; </p>
Processo	0000251-05.2025.8.06.0000
Número de ordem	270
Órgão julgador	3º Gabinete da 1ª Câmara de Direito Privado
Órgão julgador colegiado	1ª Câmara de Direito Privado
Relator	JOSE RICARDO VIDAL PATROCINIO
Classe judicial	CONFLITO DE COMPETÊNCIA CÍVEL
Assunto principal	Inventário e Partilha
Polo ativo	Juiz de Direito da 1 Vara Cível da Comarca de Caninde
Advogado(s) - Polo ativo	Não informado
Polo passivo	Juiz de Direito da 2 Vara Cível da Comarca de Caninde V. R. P. V.
Advogado(s) - Polo passivo	Não informado

Processo	0000251-05.2025.8.06.0000
Terceiros	FRANCISCA ADRIELLY ALVES PEREIRA PROCURADORIA GERAL DE JUSTICA

Processo	0000251-05.2025.8.06.0000
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 <strong style="font-size: medium;">PODER JUDICIÁRIO
 <strong style="font-size: medium;">TRIBUNAL DE JUSTIÇA
 <strong style="font-size: medium;">GABINETE DO DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO </p><p style="text-align: center;">
 </p><p> #160;PROCESSO:&#160;0000251-05.2025.8.06.0000 - &#160;CONFLITO DE COMPETÊNCIA CÍVEL (221)</p><p> SUSCITANTE: JUIZ DE DIREITO DA 1ª VARA CÍVEL DA COMARCA DE CANINDÉ</p><p> SUSCITADO: JUIZ DE DIREITO DA 2ª VARA CÍVEL DA COMARCA DE CANINDÉ</p><p>
 </p><p align="center">
 </p><p class="western" style="line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify;"> Ementa D ireito processual civ il. Conflito negativo de competência. Inventário. Declínio da competência pelo Juízo suscitado em favor do Juízo suscitante em razão da suposta prevenção gerada pela distribuição anterior de um pedido de alvará. Inventário que contém pedido e procedimento distinto daquele previsto pela lei 6.858/1980 para o alvará. A ação anterior – que tramitou perante o Juízo suscitante e objetivava o levantamento do saldo bancário do falecido – foi extint font-size: medium; font-variant-caps: small-caps;">a &#160;sem resolução de mérito. Feito arquivado. Ausência de conexão, continência, risco de decisões conflitantes ou qualquer outra causa que justifique o declínio de competência. Precedentes. Conflito de competência procedente. Competência do Juízo suscitado (2ª Vara Cível da Comarca de Canindé).</p><p class="western" style="font-variant-numeric: normal; font-variant-east-asian: normal; font-variant-caps: small-caps; font-variant-alternates: normal; font-variant-position: normal; font-variant-emoji: normal; letter-spacing: 0.1pt; line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify;"> I. Caso em exame </p><p class="western" style="letter-spacing: 0.1pt; line-height: 200%; margin-top: 0.5cm; margin-bottom: 0.5cm; text-align: justify;"> 1.&#160;Trata-se de Conflito Negativo de Competência,

Processo	0000251-05.2025.8.06.0000
	suscitado pelo Juízo de Direito da 1ª Vara Cível da Comarca de Canindé, em face do Juízo de Direito da 2ª Vara Cível da mesma Comarca, visando solucionar a divergência no que se refere à competência para processar e julgar a Ação de Inventário – Processo nº 0200818-18.2024.8.06.0055. II. Questão em discussão 2. Tem-se que Juízo suscitado declinou de sua competência para processar e julgar a ação de Inventário, considerando que o falecido não deixou nenhum outro bem além de um saldo em conta bancária, a ação teria as mesmas partes, pedido e causa de pedir de uma ação de alvará que tramitou anteriormente perante o Juízo suscitante. III. Razões de decidir 3. Como é cediço, no processo de inventário o pedido é de partilha de bens, segundo as regras do Direito das Sucessões, conforme previsão contida no Código Civil e procedimento próprio previsto no Código de Processo Civil. Já na ação de alvará o pedido é de levantamento de dinheiro, com regras próprias para distribuição dos valores, conforme previsão contida na Lei 6858/80. 4. No caso em tela, a ação de alvará anteriormente proposta perante o Juízo suscitado sequer se prestava aos fins a que se destinava, pois o saldo em conta bancária do de cujus ultrapassava aquele que poderia vir a ser levantado através de alvará judicial, razão pela qual o processo foi extinto sem resolução de mérito. 5. Pertinente ressaltar, o processo de inventário possui procedimento próprio previsto no Código de Processo Civil. Já o pedido de Alvará busca o levantamento de valores referentes ao FGTS, PIS-PASEP e depósitos em conta-corrente/poupança em valores inferiores a 500 OTN's, com regras próprias para distribuição, conforme previsão contida na Lei 6858/80. 6. Rememore-se que, conforme preceitua o CPC, na ação de inventário, a Fazenda Pública deverá ser intimada para se manifestar, bem como se serão citados, por edital, os interessados incertos e desconhecidos, podendo, por isso, eventuais credores se habilitarem e haver o surgimento de outros herdeiros. 7. Resta, pois, incontroverso ser o alvará judicial e o inventário processos com procedimentos e pedidos distintos, portanto, não há como ser reconhecida a ocorrência de conexão, prevenção ou continência, inexistindo a possibilidade de serem prolatadas decisões contraditórias. IV. Dispositivo Negativo de Competência que se julga procedente, declarando competente o Juízo Suscitado (Juízo da 2ª Vara Cível da Comarca de Canindé), para processar e julgar a ação de Inventário nº 0200818-18.2024.8.06.0055. ACÓR

Processo	0000251-05.2025.8.06.0000
	redistribuído a este relator, nos termos do Assento Regimental nº 23/2025 (id. 26146341). Parecer da Procuradoria-Geral de Justiça, opinando pela procedência do conflito (id. 22215486). Sem necessidade de informações das autoridades judiciárias em conflito, vez que já se manifestaram nos autos. Feito que independe de pauta (art. 282, § 5º, do RITJCE). Inclua-se na próxima sessão desimpedida. VOTO Inicialmente, o conflito de competência satisfaz aos requisitos previstos no art. 953 do CPC, devendo, portanto, ser admitido. Assiste razão ao Juízo suscitante. Trata-se de conflito negativo de competência em ação de inventário, na qual o Juízo suscitado declinou de sua competência considerando que – como o falecido não deixou nenhum outro bem além de um saldo em conta bancária – a ação teria as mesmas partes, pedido e causa de pedir de uma ação de alvará que tramitou anteriormente perante o Juízo suscitante. Como é cediço, no processo de inventário o pedido é de partilha de bens, segundo as regras do Direito das Sucessões, conforme previsão contida no Código Civil e procedimento próprio previsto no Código de Processo Civil. Já na ação de alvará o pedido é de levantamento de dinheiro, com regras próprias para distribuição dos valores, conforme previsão contida na Lei 6858/80. No caso em tela, a ação de alvará anteriormente proposta perante o Juízo suscitado sequer se prestava aos fins a que se destinava, pois o saldo em conta bancária do de cujus ultrapassava aquele que poderia vir a ser levantado através de alvará judicial, razão pela qual o processo foi extinto sem resolução de mérito. Pertinente ressaltar, o processo de inventário possui procedimento próprio previsto no Código de Processo Civil. Já o pedido de Alvará busca o levantamento de valores referentes ao FGTS, PIS-PASEP e depósitos em conta-corrente/poupança em valores inferiores a 500 OTN's, com regras próprias para distribuição, conforme previsão contida na Lei 6858/80, com amparo no disposto no art. 666 do CPC ("A

Processo	0000251-05.2025.8.06.0000
	Independerá de inventário ou de arrolamento o pagamento dos valores previstos na https://www.planalto.gov.br/ccivil_03/LEIS/L6858.htm Lei nº 6.858, de 24 de novembro de 1980 Rememore-se que, conforme preceitua o CPC, na ação de inventário, a Fazenda Pública deverá ser intimada para se manifestar, bem como se serão citados, por edital, os interessados incertos e desconhecidos, podendo, por isso, eventuais credores se habilitarem e o surgimento de outros herdeiros. Vejamos o que dispõe o art. 626, caput, e §1º do CPC, verbis: Art. 626. Feitas as primeiras declarações, o juiz mandará citar, para os termos do inventário e da partilha, o cônjuge, o companheiro, os herdeiros e os legatários e intimar a Fazenda Pública o Ministério Público, se houver herdeiro incapaz ou ausente, e o testamenteiro, se houver testamento. § 1º O cônjuge ou o companheiro, os herdeiros e os legatários serão citados pelo correio, observado o disposto no https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm#art247 art. 247 sendo, ainda, publicado edital, nos termos do inciso III do art. 259

Processo	0000251-05.2025.8.06.0000
	Georgia, serif;"> . </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> [...]. </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> &#160; Art. 259. Serão publicados editais: </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> I - na ação de usucapião de imóvel; </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> II - na ação de recuperação ou substituição de título ao portador; </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> III - </p><p class="western" style="line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> em qualquer ação em que seja necessária, por determinação legal, a provocação, para participação no processo, de interessados incertos ou desconhecidos. </p><p class="western" style="font-weight: normal; line-height: 200%; orphans: 2; widows: 2; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> [Grifei] </p><p class="western" style="font-style: normal; line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Resta, pois, incontroverso ser o alvará judicial e o inventário processos com procedimentos e pedidos distintos, portanto, não há como ser reconhecida a ocorrência de conexão, prevenção ou continência, inexistindo a possibilidade de serem prolatadas decisões contraditórias. </p><p class="western" style="font-style: normal; line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> É patente, portanto, que em se tratando de processos com procedimentos e pedidos distintos, não há como ser reconhecida a ocorrência de conexão ou continência, inexistindo a possibilidade de serem prolatadas decisões contraditórias porque a ação de alvará já se encontra arquivada. </p><p class="western" style="font-style: normal; line-height: 200%; text-indent: 2.5cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Sobre o tema, merecem transcrição os seguintes julgados pátrios: </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> DIREITO PROCESSUAL CIVIL. CONFLITO NEGATIVO DE COMPETÊNCIA. INVENTÁRIO E ALVARÁ JUDICIAL. INEXISTÊNCIA DE CONEXÃO OU CONTINÊNCIA. PROCESSO DE ALVARÁ JÁ ARQUIVADO. INAPLICABILIDADE DA PREVENÇÃO. COMPETÊNCIA FIXADA NO JUÍZO SUSCITADO DA 1ª VARA DE SUCESSÕES DA COMARCA DE FORTALEZA. </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> I. CASO EM EXAME </p><p style="line-height: 200%; orphans: 0; widows: 0; margin-left: 4cm; margin-top: 0.5cm; margin-bottom: 0.5cm; background: transparent;" align="justify"> Conflito Negativo de Competência instaurado entre os Juízos da 1ª e 4ª

Processo	0000251-05.2025.8.06.0000
	Varas de Sucessões da Comarca de Fortaleza, decorrente da Ação de Inventário ajuizada por Francisca Leni Pinheiro Valério, em razão do falecimento de Manuel Valério Gadelha da Silva. O Juízo da 1ª Vara declinou da competência para a 4ª Vara, sob o argumento de continência com uma Ação de Alvará Judicial para levantamento de valores, que tramitava nesta última. Por sua vez, o Juízo da 4ª Vara recusou a competência, alegando que o alvará judicial se tratava de pedido de jurisdição voluntária, já arquivado, e sem relação com o inventário. II. QUESTÃO EM DISCUSSÃO A questão em discussão consiste em determinar se há continência ou conexão entre a Ação de Inventário e a Ação de Alvará Judicial, de modo a justificar a prevenção da 4ª Vara de Sucessões, ou se a competência deve ser fixada na 1ª Vara de Sucessões, onde foi inicialmente distribuída a ação. III. RAZÕES DE DECIDIR O artigo 55 do CPC estabelece que há conexão entre ações quando possuem pedido ou causa de pedir comuns, o que não se verifica no caso concreto, pois o alvará judicial limitava-se ao levantamento de valores específicos, enquanto o inventário trata da partilha de bens do falecido, abrangendo móveis e imóveis. O artigo 56 do CPC dispõe que a continência exige que uma das ações tenha objeto mais abrangente que a outra, o que também não ocorre, pois o alvará judicial já atingiu seu objetivo e foi arquivado, afastando qualquer prevenção. A Súmula 235 do STJ dispõe que "a conexão não determina a reunião dos processos, se um deles já foi julgado", reforçando que o arquivamento definitivo do alvará impede a prevenção da 4ª Vara. O artigo 59 do CPC determina que a competência se fixa pela distribuição da petição inicial, salvo hipóteses específicas de modificação previstas na legislação, inexistentes no caso. Precedentes jurisprudenciais confirmam que, inexistindo conexão, continência ou risco de decisões conflitantes, não há motivo para deslocamento da competência. V. DISPOSITIVO E TESE Conflito Negativo de Competência conhecido. Competência fixada na 1ª Vara de Sucessões da Comarca de Fortaleza. EMENTA

Processo	0000251-05.2025.8.06.0000
	Câmara Direito Privado, Data de Publicação: 13/11/2024). Conflito negativo de competência. Inventário. Declínio da competência pelo Juízo suscitado em favor do Juízo suscitante em razão da suposta prevenção gerada pela distribuição anterior de um requerimento de alvará. Inventário que contém pedido e procedimento distinto daquele previsto pela Lei 6858/80 para o alvará. A ação anterior - que tramitou perante o Juízo suscitante e objetivava o levantamento do saldo bancário do falecido - já foi julgada improcedente, tendo o processo sido extinto com resolução de mérito por sentença transitada em julgado. Ausência de conexão, continência, risco de decisões conflitantes ou qualquer outra causa que justifique o declínio de competência. Precedentes. Conflito acolhido para fixar a competência do Juízo suscitado. (TJRJ, Conflito de Competência, 0089861- 94.2020.8.19.0000, Rel: MARCO ANTONIO IBRAHIM, Julgamento: 05/05/2021, 4a C.C.) Assim resta evidente a competência do Juízo suscitado (Juízo da 2ª Vara Cível da Comarca de Canindé), para o processamento e julgamento da Ação de Inventário nº 0200818-18.2024.8.06.0055, ante a inexistência de qualquer vínculo de conexão ou prevenção com a demanda anterior. Diante do exposto, julgo PROCEDENTE o presente Conflito Negativo de Competência para processar e julgar a ação de Inventário dos bens deixados por José Tupinambá Vital (Processo nº 0200818-18.2024.8.06.0055). É o voto. Fortaleza, data da assinatura digital. DESEMBARGADOR JOSÉ RICARDO VIDAL PATROCÍNIO Relator &#160;