

100 Phil. 155

[ G.R. No. L-8578. October 29, 1956 ]

**SOUTHERN MOTORS, INC, PLAINTIFF AND APPELLANT, VS. EFRAIN MAGBANUA,  
DEFENDANT AND APPELLEE.**

**D E C I S I O N**

**PADILLA, J.:**

On 10 October 1953, Efrain Magbanua bought from the Southern Motors, Inc. a Chevrolet truck for the sum of P6,700, made a down payment of P1,000, and undertook to pay the balance in twelve equal monthly installments of P475 for which the vendee executed a promissory note and as security for the payment thereof mortgage the same truck to the vendor. It was stipulated and should the vendee default in the payment of interest or of any of the installments due and payable, the total principal sum remaining unpaid with accrued interest thereon would immediately become due and payable. The vendee paid the installments for November and December 1953 and part of January 1954, but failed to pay the succeeding installments.

On 31 May 1954 the vendor brought an action against the vendee in the Court of First Instance of Iloilo to collect the sum of P4,690 together with interest at 12 per cent per annum until fully paid, plus 10 per cent of the amount due as attorney's fees and costs of collection, and prayed that an order attaching all the properties of the defendant not exempt from execution to satisfy the plaintiff's demand be issued. The Court issued the writ as prayed for, and on June 1, 1954 the Sheriff attached, seized and took possession of the mortgaged truck which was turned over to the plaintiff for safekeeping, another Chevrolet truck and two parcels of land belonging to the defendant.

On 16 September 1954, upon a stipulation of the facts the terms of which are substantially as stated at the beginning of this opinion, the Court rendered judgment the dispositive part of which is—

Wherefore, judgment is hereby rendered sentencing defendant to pay plaintiff the sum of P4,690 together with interest thereon at the rate of 12, per annum from March 17, 1954 until fully paid plus 10 per cent of the said amount as attorney's fees and costs shall have no right to enforce this judgment against properties of the defendant except the mortgaged truck. The attachment made on properties other than said truck is hereby discharged.

The plaintiff appeals from that part of the judgment denying him the right to enforce judgment against the properties of the defendant except the mortgaged truck and discharging the writ of attachment on the other properties of the defendant.

Article 1484 of the New Civil Code provides:

In contract of sale of personal property the price of which is payable in installment, the vendor may exercise any of the following remedies:

- (1) Exact fulfillment of the obligation, should the vendee fail to pay.
- (2) Cancel the sale, should the vendee's failure to pay cover two or more installments;
- (3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.

The principal part of the plaintiff's prayer reads:

- (a) Upon the court's approval of the herein plaintiff's bond, an order be issued requiring the sheriff or other officer of the province to attach all the properties of herein defendant not exempt from execution or so much thereof as may be sufficient to satisfy plaintiff's demand, unless the defendant makes deposit or gives bond sufficient to satisfy such demand;
- (b) Judgment be rendered ordering the defendant Efrain Magbanua to pay plaintiff company the sum of P4,690 together with its interest at 12 per cent per

annum from March 17, 1954. until fully paid, plus 10 per cent of the total amount due as attorney's fees and costs of collection.

By praying that the defendant be ordered to pay it the sum of P4,690 together with the stipulated interest at 12 per cent per annum from 17 March until fully paid, plus ten per cent of the total amount due as attorney's fees and cost of collection, the plaintiff elected to exact the fulfillment of the obligation and not for close the mortgage of the truck. Otherwise, it would not have gone to court to collect the amount as prayed for in the complaint. Had it elected to foreclose the mortgage on the truck, all that the plaintiff had to do was to cause the truck to be sold at public auction pursuant to section 14 of the Chattel Mortgage Law. The fact that aside from the mortgaged track another Cheverolet truck and two parcels of land belonging to the defendant were attached shows that the plaintiff did not intend to foreclose the mortgage.

As the plaintiff has chosen to exact the fulfillment of the defendant's obligation, the former may enforce execution of the judgment rendered in its favor on the personal and real properties of the latter not exempt from execution sufficient to satisfy the judgment. That part of the judgment depriving the plaintiff of its right to enforce judgment against the properties of the defendant except the mortgaged truck and discharging the writ of attachment on his other properties is erroneous.

The judgment appealed from is modified by striking out the part thereof which is the subject matter of the appeal, with cost against appellee.

*Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.*