

**FILIPINAS INVESTMENT & #038; FINANCE CORPORATION,
PLAINTIFF-APPELLEE, VS. LOURDES V. RIDAD AND LUIS RIDAD,
DEFENDANTS-APPELLANTS.**

G.R. No. L-27645. November 28, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

Appeal by the spouses Lourdes V. Ridad and Luis Ridad from the decision of the Court of First Instance of Manila in civil case 64288, a replevin suit, awarding to the appellee Filipinas Investment and Finance Corporation the amount of P163.65 repre-senting actual expenses and P300 as attorney's fees.

The spouses Ridad bought from the Supreme Sales & Development Corporation, the appellee's assignor-in-interest, a Ford Consul sedan for the total price of P 13,371.40. The sum of P1,160 was paid on delivery, the balance of P12,211.50 being payable in twenty-four equal monthly installments, with interest at 12% per annum, secured by a promissory note and a chattel mortgage on the car executed on March 19, 1964. The spouses thereafter failed to pay five consecutive installments on a remaining balance of P5,274.53. On October 13, 1965 the appellee instituted a replevin suit in the city court of Manila for the seizure of the car (par. 7 of the complaint alleged "unjustifiable failure and refusal of the defendants ... to surrender possession of the ... motor-vehicle for the purpose of foreclosure"), or the recovery of the unpaid balance in case delivery could not be effected. The car was then seized by the sheriff of Manila and possession thereof was awarded to the appellee. During the progress of the case, the appellee instituted extrajudicial foreclosure proceedings, as a result of which, on December 22, 1965, the car was sold at public auction with the appellee as the highest bidder and purchaser.

Meanwhile, in view of the failure of the defendants-spouses to appear at the scheduled hearing of the case, allegedly due to non-receipt of the summons, they were declared in default. The default judgment ordered them to pay to the appellee the sum of P500 as attorney's fees, and P163.65 representing actual expenses relative to the seizure of the car, plus costs.

Their motion to set aside the order of default and the deci-sion having been denied, they appealed to the Court of First Ins-tance of Manila.

When the case was called for pre-trial, the CFI advanced the opinion that there was no need for the parties to adduce evi-dence and that the case could be decided on the basis of the plead-ings submitted by the parties.

The trial court on September 5, 1966, rendered judgment for the appellee, as follows:

"As stated in the pre-trial order of this Court dated May 27, 1966, the only issue remaining to be resolved is whether the plaintiff is entitled to receive P500.00 as attorney's fees and P163.65 for expenses incurred by the plaintiff in the seizure of the car which was the object of the chattel mortgage executed by the defendants in favor of the plaintiff.

"Upon consideration of the circumstances of the case, the court holds that the plaintiff is entitled to recover the

amount of P163.65 which represents the expenses incurred by the plaintiff in the seizure of the car involved in this case.

"Considering that the plaintiff had recovered the car involved in the case while it is still in the low-er court, and considering further that the defendants did not resist the case and the only question said defendants raised before this court is the amount of at-torney's fees, the court in the exercise of its equitable jurisdiction reduces the attorney's fees granted to the plaintiff by the lower court to P300.00."

In this appeal, the appellants contend that the trial court erred: (1) in rendering a decision which does not state the facts and the law on which it is based, (2) in condemning the appellants to pay P300 for attorney's fees and P163.65 for expenses incurred in the seizure of the car which was the object of the chattel mort-gage executed by them in favor of the appellee, and (3) in not dis-missing the appellee's complaint.

1. We uphold the appellee's contention that the disputed decision of the lower court complies substantially with the require-ments of law because it referred to the pre-trial order it issued on May 27, 1966 which contains substantial findings of facts. For although settled is the doctrine that a decree with absolutely no-thing to support it is a nullity, the law, however, merely requires that a decision state the "essential ultimate facts upon which the court's conclusion is drawn." [1] There being an express reference to the pre-trial order, the latter must be considered and taken as forming part of the decision. The claim, therefore, that the judg-ment clearly transgresses the legal precept [2] because it does not state the facts of the case and the law on which it is based and hence, is a nullity, finds no justification here.

2. The appellants theorize that the action of the appellee is for the payment of the unpaid balance of the purchase price with a prayer for replevin. When, therefore, the appellee seized the car, extrajudicially foreclosed the mortgage, had the vehicle sold, and bought the same at public auction as the highest bidder, it thereby renounced any and all rights which it might have under the promissory note as well as the payment of the unpaid balance, and, consequently, what it would otherwise be entitled under and by vir-tue of the present action, including attorney's fees and costs of suit, pursuant to article 1484 of the new Civil Code.

On the other hand, the appellee maintains that it is entitled to an award of attorney's fees and actual expenses and costs of suit by virtue of the unjustifiable failure and refusal of the appel-lants to comply with their obligations (one of which is the surren-der of the chattel to the mortgagee upon the latter's demand), con-tending that what is prohibited in art. 1484, par. 3 of the new Ci-vil Code relied upon by the appellants is the recovery of the unpaid balance of the purchase price by means of an action other than a suit for replevin; that *Luneta Motor Co. vs. Salvador, et al.* (L-13373, July 26, 1960) is inapplicable to the present case because the remedy sought in that case was in the conjunctive and not in the alternative, such that, necessarily, when the appellee therein foreclosed the mortgage on the motor vehicle during the progress of the action, the other action for a sum of money had to be dis-missed since the same could not prosper as it would constitute a separate action for the recovery of the unpaid balance contempla-ted in article 1484; and that in the present case, however, the court awarded attorney's fees, costs of suit, and expenses incur-red in relation to the seizure of the motor vehicle by virtue of the writ of replevin in the same action because the appellee was com-pelled to institute the same on account of the appellants' unjusti-fiable failure and refusal to comply with the former's demands.

The appellee further argues that the award of attorney's fees and the costs of suit together with expenses incurred, was stipulated both in the promissory note and chattel mortgage con-tract; that even in the absence of such stipulation, the award of attorney's fees is discretionary on the part of the court pursuant to par. 2, art. 2208, new Civil Code; and that the said award could likewise be made by the lower court on the basis of the ge-neral prayer in the complaint for the award of whatever relief that the lower court may deem just and equitable in the premises.

It is true that the present action is one for replevin, but because it culminated in the foreclosure of the chattel mortgage and the sale of the car at public auction, it is our view that the provisions of art. 1484 of the Civil Code (Recto Law) must govern the resolution of the issue here presented.

This article recites that

"In a contract of sale of personal property the price of which is payable in installments, 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."

This article was reproduced from the old art. 1454-A, which in turn was inserted by Act 4122 (Recto Law). "Three remedies are available to the vendor who has sold personal property on the installment plan: (1) He may elect to exact the fulfillment of the obligation. (Bachrach Motor Co. vs. Milian, 61 Phil. 409) (2) If the vendee shall have failed to pay two or more installments, the vendor may cancel the sale. (3) If the vendee shall have failed to pay two or more installments, the vendor may foreclose the mortgage, if one has been given on the property. The basis of the first option is the Civil Code. The basis of the last two options is Act 4122 (inserted in the Spanish Civil Code as art. 1454-A and now reproduced in arts. 1484 and 1485), amendatory of the Civil Code. And the proviso to the right to foreclose is that if the vendor has chosen this remedy, he shall have no further action against the purchaser for the recovery of any unpaid balance owing by the same. In other words, as we see it, the Act does no more than qualify the remedy." [3]

The legal issue which is the core of the controversy in the case at bar was resolved in *Macondray & Co. vs. Eustaquio*, [4] as follows:

"The plaintiff brought the action against the defendant to obtain the possession of an automobile mortgaged by the latter, and to recover the balance owing upon a note executed by him, the interest thereon, attorney's fees, expenses of collection, and the costs. The defendant was duly summoned, but he failed to appear or file his answer, wherefore, he was declared in default and the appealed judgment was rendered accordingly.

"The plaintiff sold the defendant a De Soto car, Sedan, for the price of which, P595, he executed in its favor the note of May 22, 1934. Under this note, the defendant undertook to pay the car in twelve monthly installments, with 12 per cent interest per annum, and likewise agreed that, should he fail to pay any monthly installment together with interest, the remaining installments would become due and payable, and the defendant shall pay 20 per cent upon the principal owing as attorney's fees, expenses of collection which the plaintiff might incur, and the costs. To guarantee the performance of his obligations under the note, the defendant on the same date mortgaged the purchased car in favor of the plaintiff, and bound himself under the same conditions stipulated in the note relative to the monthly installments, interest, attorney's fees, expenses of collection, and costs. The mortgage deed was registered on June 11, 1934, in the office of the register of deeds of the Province of Rizal. On the 22d of the same month, the defendant paid P43.75 upon the first installment, and thereafter failed to pay any of the remaining installments. In accordance with the terms of the mortgage, the plaintiff called upon the sheriff to take possession of the car, but the defendant refused to yield possession thereof, whereupon, the plaintiff brought the replevin sought and thereby succeeded in getting possession of the car. The car was sold at public auction to the plaintiff for P250, the latter incurring legal expenses in the amount of P10.68. According to the liquidation filed by the plaintiff, the defendant was still indebted in the amount of P342.20, interest at 12 per cent from November 20, 1934, P110.25 as attorney's

fees, and the costs.

* * *

"In its last assignment of error plaintiff contends that even granting that Act No. 4122 is valid, the court should have ordered the defendant to pay at least the stipulated interest, attorney's fees and the costs. This question involves the interpretation of the pertinent portion of the law, reading: 'How-ever, if the vendor has chosen to foreclose the mort-gage he shall have no further action against the pur-chaser for the recovery of any unpaid balance owing by the same, and any agreement to the contrary shall be null and void.' This paragraph, as its language shows, refers to the mortgage contract executed by the parties, whereby the purchaser mortgages the chattel sold to him on the installment basis in order to guarantee the payment of its price, and the words 'any unpaid balance' should be interpreted as having reference to the deficiency judgment to which the mortgagee may be entitled where, after the mort-gaged chattel is sold at public auction, the proceeds obtained therefrom are insufficient to cover the full amount of the secured obligations which, in the case at bar as shown by the note and by the mort-gage deed, include interest on the principal, at-torney's fees, expenses of collection, and the costs. The fundamental rule which should govern the interpretation of laws is to ascertain the inten-tion and meaning of the Legislature and to give effect thereto. (Sec. 288, Code of Civil Procedure; U. S. vs. Toribio, 15 Phil. 85; U. S. vs. Navarro, 19 Phil. 134; De Jesus vs. City of Manila, 29 Phil. 73; Borromeo vs. Mariano, 41 Phil. 322; People vs. Concepcion, 44 Phil. 126.) Were it the inten-tion of the Legislature to limit its meaning to the unpaid balance of the principal, it would have so stated. We hold, therefore, that the assignment of error is untenable." (emphasis supplied)

In other words, under this amendment as above interpre-ted, in all proceedings for the foreclosure of a chattel mortgage, executed on chattels which have been sold on the installment plan, the mortgagee is limited to the property mortgaged[5] and is not entitled to attorney's fees and costs of suit.

In a subsequent case[6] where the vendor in a sale of perso-nal property in installments, upon failure of the vendee to pay his obligations, the vendor commenced, through court action, to re-cover the unpaid balance of the purchase price, but later, during the progress of the action, foreclosed the chattel mortgage constituted on the property, attorney's fees and costs of suit were denied to the vendor. There the Supreme Court held:

"Paragraph 3 of the above-quoted provision (article 1484, new Civil Code) is clear that foreclo-sure of the chattel mortgage and recovery of the un-paid balance of the price are alternative remedies and may not be pursued conjunctively. It appearing, in the case at bar that the vendor had already fore-closed the chattel mortgage constituted on the property and had taken possession thereof, the lower court acted rightly in dismissing the complaint filed for the purpose of recovering the unpaid balance of the purchase price. By seizing the truck and foreclosing the mortgage at the progress of the suit, the plaintiff renounced whatever claim it may have had under the promissory note, and consequently, he has no more cause of action against the promissor and the guarantor. And he has no more right either to the costs and the attorney's fees that would go with the suit."

This might be considered a reiteration of the ruling in Macondray.

A scrutiny of the doctrine enunciated in the above-cited ca-ses will reveal that its ultimate and salutary purpose is to prevent the vendor from circumventing the Recto Law. Congress sought to protect the buyers on installment who more often than not have been victimized by sellers who, before the enactment of this law, succeeded in unjustly enriching themselves at the expense of the buyers, because aside from recovering the goods sold, upon de-fault of the buyer in the payment of two installments, still retain-ed for themselves all amounts already paid, and, in addition, were adjudged entitled to damages, such as attorney's fees, expenses a litigation and costs. Congress could not have intended to impair, much less do away with, the right of the seller to make commer-cial use of his credit against the buyer the buyer is not burdened beyond what this law allows.[7]

It would appear from the emphasis and precision of the language employed in the decisions already adverted to that in no instance whatsoever may the mortgagee recover from the mortgagor any amount or sum after the foreclosure of the mortgage, for, as we understand it, the philosophy of the Recto Law is that the underprivileged mortgagors must be afforded full protection against the rapacity of the mortgagees.

But while we unconditionally concur in, and give our approval to, the basic philosophy of the Recto Law, we view with no small amount of circumspection the implication, necessarily drawn from the above discussion, that the mortgagee is not entitled to protection against perverse mortgagors. Where the mortgagor plainly refuses to deliver the chattel subject of the mortgage upon his failure to pay two or more installments, or if he conceals the chattel to place it beyond the reach of the mortgagee, what then is the mortgagee expected to do? It is part of conventional wisdom and the rule of law that no man can take the law into his own hands; so it is not to be supposed that the Legislature intended that the mortgagee should wrest or seize the chattel forcibly from the control and possession of the mortgagor, even to the extent of using violence which is unwarranted in law. Since the mortgagee would enforce his rights through the means and within the limits delineated by law, the next step in such situations being the filing of an action for replevin to the end that he may recover immediate possession of the chattel and, thereafter, enforce his rights in accordance with the contractual relationship between him and the mortgagor as embodied in their agreement, then it logically follows as a matter of common sense, that the necessary expenses incurred in the prosecution by the mortgagee of the action for replevin so that he can regain possession of the chattel, should be borne by the mortgagor. Recoverable expenses would, in our view, include expenses properly incurred in effecting seizure of the chattel and reasonable attorney's fees in prosecuting the action for replevin. And we declare that in this case before us, the amounts awarded by the court a quo to the mortgagee (appellee) are reasonable.

To the extent that our pronouncement here conflicts with the ruling announced and followed in the cases hereinbefore discussed, the latter must be considered pro tanto qualified.

ACCORDINGLY, the judgment a quo is affirmed. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Teehankee, and Barredo, JJ., concur.

[1] *Air France vs. Carrascoso, et al.*, L-21438, Sept. 28, 1966.

[2] Sec. 1, Rule 36, new Rules of Court.

[3] *Macondray & Co. vs. Eustaquio*, 64 Phil. 454; *Manila Trading & Supply Co. vs. Reyes*, 62 Phil. 461; Padilla, *Civil Code Annotated*, Vol. II, pp. 617-618, 1950 ed.

[4] See note 3.

[5] *Bachrach Motor Co. vs. Milian*, 61 Phil. 409.

[6] *Luneta Motor Co. vs. Salvador, et al.*, L -13373, July 26, 1960.

[7] *Filipinas Investment & Finance Corporation vs. Vitug, Jr., et al.*, L-25951, June 30, 1969.

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