

NORTHERN MOTORS, INC., PLAINTIFF-APPELLANT, VS. CASIANO SAPINOSO AND JOHN DOE, DEFENDANTS-APPELLEES.

G.R. No. L-28074. May 29, 1970

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Direct appeal on questions of law from the portion of the judgment of the Court of First Instance of Manila, Branch XXII, in its Civil Case No. 66199, ordering the plaintiff to pay defendant Casiano Sapinoso the sum of P1,250.00.

The facts of this case are as follows:

On June 4, 1965, Casiano Sapinoso purchased from Northern Motors, Inc. an Opel Kadett car for the price of P12,171.00, making a down payment and executing a promissory note for the balance of P10,540.00, payable in installments with interest at 12% per annum, as follows: P361.00 on July 5, 1965, and P351.00 on the 5th day of each month beginning August, 1965, up to and including December, 1967. To secure the payment of the promissory note, Sapinoso executed in favor of Northern Motors, Inc. a chattel mortgage on the car. The mortgage contract provided, among others, that upon default by the mortgagor in the payment of any part of the principal or interest due, the mortgagee may elect any of the following remedies: (a) sale of the car by the mortgagee; (b) cancellation of the contract of sale; (c) extrajudicial foreclosure; (d) judicial foreclosure; (e) ordinary civil action to exact fulfillment of the mortgage contract. It was further stipulated that "[w]hichever remedy is elected by the mortgagee, the mortgagor expressly waives his right to reimbursement by the mortgagee of any and all amounts on the principal and interest already paid by him."

Sapinoso failed to pay the first installment of P361.00 due on July 5, 1965, and the second, third, fourth and fifth installments of P351.00 each due on the 5th day of August, September, October and November, 1965, respectively. Several payments were, however, made by Sapinoso, to wit: P530.52 on November 21, 1965, P480.00 on December 21, 1965, and P400.00 on April 30, 1966. The first and third payments aforesaid were applied to accrued interest up to April 17, 1966, while the second payment was applied partly (P158.10) to interest, and partly (P321.90) to the principal, thereby reducing the balance unpaid to P10,218.10.

The vendee-mortgagor having failed to make further payments, Northern Motors, Inc. filed the present complaint on July 22, 1966, against Sapinoso and a certain person whose name, identity and address were still unknown to the plaintiff, hence denominated in the complaint as "John Doe". In its complaint, Northern Motors, Inc. stated that it was availing itself of the option given it under the mortgage contract of extrajudicially foreclosing the mortgage, and prayed that a writ of replevin be issued upon its filing of a bond for the seizure of the car and for its delivery to it; that after hearing, the plaintiff be adjudged to have the rightful possession and ownership of the car; that in default of delivery, the defendants be ordered to pay the plaintiff the sum of P10,218.10 with interest at 12% per annum from April 18, 1966, until full payment of the said sum, as well as an amount equivalent to 25% of the sum due as and for attorney's fees and expenses of collection, and the costs of

the suit. Plaintiff also prayed for such other remedy as might be deemed just and equitable in the pre-mises.

Subsequent to the commencement of the action, but before the filing of his answer, defendant Sapinoso made two payments on the promissory note, the first on August 22, 1966, for P500.00, and the second on September 27, 1966, for P750.00. In the meantime, on August 9, 1966, upon the plaintiff's filing of a bond, a writ of replevin was issued by the court. On October 20, 1966, copies of the summons, complaint and annexes thereto were served on defendant Sapinoso by the sheriff who executed the sei-zure warrant by seizing the car from defendant Sapinoso on the same date, and turning over its possession to the plaintiff on October 25, 1966.

On November 12, 1966, defendant Sapinoso filed an answer admitting the allegations in the complaint with respect to the sale to him of the car, the terms there-of, the execution of the promissory note and of the chat-tel mortgage contract, and the options open to the plain-tiff under the said contract. He alleged, however, that he had paid the total sum of P4,230.52, leaving a balance of only P5,987.58; that upon demand he immediately surrendered the possession of the car to the plain-tiff's representative; and that the value of the car was only about P5,000.00, and not P10,000.00 as al-legged in the complaint. As special defenses the said defendant alleged that he failed to pay the installments due because the car was defective, and the plaintiff failed to have it fixed although he had repeatedly call-ed the plaintiff's attention thereto, hence, the defendant had to procrastinate in his payments in order to move the plaintiff to repair the car; and that although the car could not be used, he paid P700.00 to the plaintiff upon the latter's assurance that the car would be fixed, but that instead of having the car fix-ed, the plaintiff, in bad faith, filed the present complaint. The defendant prayed that the complaint be dis-missed and that the plaintiff be ordered to return the car to him. He stated in his prayer that ho would be very much willing to pay the car in a compromise agree-ment between him and the plaintiff.

After trial, the court a quo, in its decision dated April 4, 1967, held that defendant Sapinoso having failed to pay more than two (2) installments, plaintiff-mortgagee acquired the right to foreclose the chat-tel mortgage, which it could avail of - as it has done in the present case - by filing an action of replevin to secure possession of the mortgaged car as a prelim-inary step to the foreclosure sale contemplated in the Chattel Mortgage Law; and that the foreclosure of the chattel mortgage and the recovery of the unpaid balance of the price are alternative remedies which may not be pursued conjunctively, so that in availing itself of its right to foreclose the chattel mortgage, the plaintiff there-by renounced whatever claim it may have had on the prom-issory note, and, therefore, the plaintiff has no more right to the collection of the attorney's fees stipulat-ed in the promissory note, and should return to defend-ant Sapinoso the sum of P1,250.00 which the plaintiff had received from the latter after having filed the pre-sent case on July 22, 1966, and elected to foreclose the chattel mortgage. The dispositive portion of the de-cision reads:

"WHEREFORE, the Court finds that the plaintiff has the right to the possession of the OPEL KADETT two door sta-tion wagon Model 3464-91.5, with engine No. 10-0354333, and the delivery there-of to the plaintiff is hereby ratified and confirmed but said party is sentenced to pay to the defendant the sum of P1,250, with legal interest on P500 from August 22, 1966 and on P750 from September 27, 1966, until fully paid, without any pronounce-ment as to costs."

In this appeal plaintiff-appellant claims that the court a quo erred in ordering it to reimburse to defendant?appellee Sapinoso the sum of P1,250.00 which the lat-ter had paid. It contends that under Article 1484 of the Civil Code it is the exercise, not the mere election, of the remedy of foreclosure that bars the creditor from recovering the unpaid balance of the debt; that what the said Article 1484 prohibits is "further action" to collect payment of the deficiency after the creditor has foreclosed the mortgage; and that in paying plain-tiff-appellant the sum of P1,250.00 before defendant-ap-pellee Sapinoso filed his answer, and in not filing a counterclaim for the recovery thereof, the said defend-ant-appellee in effect renounced whatever right he might have had to recover the said

amount.

The appeal is meritorious.

In issuing a writ of replevin, and, after trial, in upholding plaintiff-appellant's right to the pos-session of the car, and ratifying and confirming its delivery to the said plaintiff-appellant, the court be-low correctly considered the action as one of replevin to secure possession of the mortgaged vehicle as a pre-liminary step to the foreclosure sale contemplated in Section 14 of Act No. 1508 (Bachrach Motor Co. vs. Summers, 42 Phil. 3; Seño vs. Pestolante, G.R. No. L-11755, April 23, 1958). The said court however erred in con-cluding that the legal effect of the filing of the action was to bar plaintiff-appellant from accepting fur-ther payments on the promissory note. That the ultimate object of the action is the foreclosure of the chattel mortgage, is of no moment, for it is the fact of fore-closure and actual sale of the mortgaged chattel that bar further recovery by the vendor of any balance on the purchaser's outstanding obligation not satisfied by the sale. (Manila Motor Co., Inc. vs. Fernandez, 99 Phil., 782, 786; Bachrach Motor Co. vs. Millan, 61 Phil., 409; Manila Trading & Supply Co. vs. Reyes, 62 Phil., 461, 471; Cruz, et al. vs. Filipinas Investment & Finance Corporation, G.R. No. L-24772, May 27, 1968 [23 SCRA 791, 796].) In any event, what Article 1484(3) prohibits is "further action against the purchaser to recover any unpaid balance of the price;" and although this Court has construed the word "action" in said Article 1484 to mean "any judicial or extrajudicial proceeding by vir-tue of which the vendor may lawfully be enabled to exact recovery of the supposed unsatisfied balance of the pur-chase price from the purchaser or his privy" (Cruz, et al. vs. Filipinas Investment & Finance Corporation, supra), there is no occasion at this stage to apply the restrictive provision of the said article, because there has not yet been a foreclosure sale resulting in a defi-ciency. The payment of the sum of P1,250.00 by defend-ant-appellee Sapinoso was a voluntary act on his part and did not result from a "further action" instituted by plaintiff-appellant. If the mortgage creditor, before the actual foreclosure sale, is not precluded from recover-ing the unpaid balance of the price although he has filed an action of replevin for the purpose of extrajudicial foreclosure, or if a mortgage creditor who has elected to foreclose but who subsequently desists from proceed-ing with the auction sale, without gaining any advantage or benefit, and without causing any disadvantage or harm to the vendee-mortgagor, is not barred from suing on the unpaid account (Radiowealth, Inc. vs. La-vin, et al., G.R. No. L-18563, April 27, 1963, [7 SCRA 804, 807]), there is no reason why a mortgage creditor should be barred from accepting, before a foreclosure sale, payments voluntarily tendered by the debtor-mort-gagor who admits a subsisting indebtedness.

PREMISES CONSIDERED, the judgment appealed from is modified by setting aside the portion thereof which orders plaintiff-appellant to pay defendant-appellee Sapinoso the sum of P1,250.00, with costs in this instance against the said defendant-appellee.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, and Teehankee, JJ., concur.

Barredo, J., in the result.

Castro, J., on official leave.

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