

INDUSTRIAL FINANCE CORPORATION, PETITIONER, VS. CASTOR TOBIAS, RESPONDENT.

G.R. No. L-41555. July 27, 1977

Ponente: MARTIN, J.

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MARTIN, J.:

This is a petition for review of the decision of the Court of Appeals* in CA-G.R. No. 53916, entitled "Industrial Finance Corporation vs. Castor Tobias", affirming that of the Court of First Instance of Manila, with a slight modification.

On June 16, 1968, respondent Castor Tobias bought on installment one (1) Dodge truck from Leelin Motors, Inc. To answer for his obligation he executed a promissory note in favor of the latter, for the sum of P29,070.28 payable in thirty-six (36) equal installments with interest at the rate of 12% per annum payable in the amounts and dates indicated in said promissory note.[1] To secure payment of the promissory note, respondent Tobias executed in favor of Leelin Motors, Inc. a chattel mortgage on the Dodge truck.

On June 19, 1969, Leelin Motors, Inc. indorsed the promissory note and assigned the chattel mortgage to petitioner Industrial Finance Corporation. As a consequence respondent Tobias paid six (6) installments on the promissory note directly to the petitioner Industrial Finance Corporation the last of which was made on February 19, 1970.[2]

On May 14, 1970, the petitioner's counsel wrote to respondent Tobias the following letter:

"x x x

Dear Mr. Tobias:

My client, the INDUSTRIAL FINANCE CORPORATION, has referred to me for appropriate legal action your account with it (LCI-690) which is in arrears in the amount of P4,254.65 and a balance of P25,249.65 as of May 16, 1970. In view of your default in the payment of your installments due pursuant to the Promissory Note and Chattel Mortgage you executed in favor of Leelin Motors, Inc. and assigned to Industrial Finance Corporation, demand is hereby made upon you to pay the amount of P25,249.65 on or before May 24, 1970 or to surrender within the same period the following described personalty:

One (1) Unit 1969 Motor Vehicle Dodge

D-600 FFC 197 "WB"

Engine No. CPC-4007

Serial No. 1589070794

otherwise, the corresponding action will be filed against you plus damages and attorney's fees.

Please consider this a final demand.

Very truly yours,

C.R. SANCHEZ LAW OFFICE

SGD. CATALINO R. SANCHEZ ."[3]

At the time the foregoing letter was written, respondent Tobias was in arrear in the payment of more than two (2) installments.[4]

On May 27, 1970, respondent Tobias wrote petitioner's counsel the following letter:

"Dear Sir:

This is in response to your letter of demand dated May 14, 1970 asking me to surrender Dodge Truck with engine no. CPC-4007 Se-rial No. 1589070794. I am now voluntarily and willingly surrendering said truck due to the ff. reasons:

1. That said truck has been with Leelin Motors ever since the later part of February when it met an accident.
2. That there is too much delay in the repair of said truck because until now the truck is not yet completely finished.
3. That upon seeing said truck, I am not satisfied with the repair of the finished portions.

I am now giving full authority to your client Industrial Finance Corporation to get said truck at Leelin Motors, Inc.

I am hoping that due to the ff. good reasons my name will not be blacklisted in your credit division.

Very truly yours,

Castor Tobias"[5]

Upon learning that the truck met an accident, petitioner decided not to get the truck anymore from Leelin Motors, Inc.

On February 16, 1971, petitioner filed in the Court of First Instance of Manila an action against respondent Tobias to recover the unpaid balance of the promissory note. The lower court dismissed the complaint on the ground that "(I)nasmuch as the defendant voluntarily and willingly surrendered the truck and gave the Industrial Finance Corporation full authority to get said truck from Leelin Motors, Inc. (Exhibit 2) pursuant to the demand to surrender (Exhibit B) the defendant complied with the de-mands of the plaintiff."[6]

On appeal, the Court of Appeals affirmed the decision of the lower court dismissing the complaint of petitioner Industrial Finance Corporation but modifying the same by ordering respondent Tobias to pay the cost of repairs of the damaged truck in the amount of P5,396.78 plus interest.

The main thrust of the petitioner's argument is that the respondent Court of Appeals erred in affirming the dismissal of the complaint of the petitioner in the lower court by not considering his right as an unpaid vendor of the truck in question under Art. 1484 of the New Civil Code.[7] Petitioner claims that under Art. 1484 of the New Civil Code, an unpaid vendor may choose any of the remedies provided therein and that as an unpaid vendor, it has chosen to exact fulfillment of the obligation for failure of the vendee to pay. Respondent Tobias, however, claims that petitioner is estopped to insist on its claim on the balance of the promissory note when it demanded the return or surrender of the truck in its letter of May 14, 1970, to which demand, respondent acceded in his letter dated May 27, 1970.

The claim of respondent cannot be sustained. Art. 1484 is clear that "should the vendee or purchaser of a personal property be in default in the payment of two or more of the agreed installments, the vendor or seller has the option to either exact fulfillment by the purchaser of the obligation, or to cancel the sale, or to foreclose the mortgage on the purchased personal property, if one was constituted.[8] Since the case involves the sale of personal property on installments Art. 1484 of the Civil Code should apply. The remedies provided for in Art. 1484 are considered alternative, not cumulative[9] such that the exercise of one would bar the exercise by the others.[10] Here, petitioner has not cancelled the sale, nor has it exercised the remedy of foreclosure. Foreclosure, judicial or extrajudicial, presupposes something more than a mere demand to surrender possession of the object of the mortgage.[11] Since the petitioner has not availed itself of the remedy of cancelling the sale of the truck in question or of foreclosing the chattel mortgage on said truck, petitioner is still free to avail of the remedy of exacting fulfillment of the obligation of respondent Tobias, the vendee of the truck in question. In *Radiowealth Inc. vs. Lavin*,[12] the facts of which are similar to the present case, the issue was "whether the plaintiff is precluded to press for collection of an account secured by a chattel mortgage, after it shall have informed the defendants of its intention to foreclose said mortgage, and the voluntary acceptance of such step (foreclosure) by defendant mortgagor," the Supreme Court ruled in favor of the plaintiff mortgagee. Said the Court:

"The contract being a sale of machinery payable in installments, the applicable provision of law is Article 1484 of the Civil Code, which gives the vendor the option to exercise any one of the alternative remedies therein mentioned: exact fulfillment of the obligation, cancel the sale, or foreclose the chattel mortgage. But the vendor-mortgagor in the present case desisted, on its own initiative, from consummating the auction sale, without gaining any advantage or benefit, and without causing any disadvantage or harm to the vendees-mortgagees. The least that could be said is that such desistance of the plaintiff from proceeding with auction sale was a timely disavowal that cancelled and rendered useless its previous choice to foreclose; its acts, being extrajudicial, brought no trouble upon any court, and were harmless to the defendants. For this reason, the plaintiff can not be considered as having "exercised" (the Code uses the word "exercise") the remedy of foreclosure because of its incomplete implementation, and, therefore, the plaintiff is not barred from suing on unpaid account."

In effect this ruling answers the issue of estoppel raised by respondent Tobias. Besides, to hold the petitioner raised in estoppel, it must be shown that when it gave the respondent the choice of either paying the balance of the purchase price or of surrendering the truck, it had already knowledge of the accident and the consequent damage to the truck. In the present case petitioner claims it had no knowledge of the accident[13] when it gave the respondent the choice of either paying the balance of the promissory note or of surrendering the truck. It is hard to believe that petitioner would make such offer to respondent either to pay the balance on the promissory note or to surrender the truck in question if it knew that the truck has had an accident. The more plausible thing it would have asked the respondent is to ask for the balance on the promissory note. Besides the allegation of petitioner that it had no knowledge of the accident is a negative allegation and needs no evidence to support it, not being an essential part of the statement of the right on which the cause of action is founded.[14] It is therefore the respondent Tobias who has the burden of disproving the claim of petitioner that he has no knowledge of the accident when it made the offer to respondent either to pay the balance on the promissory note or to surrender the truck. Respondent failed in this.

It is claimed by respondent Tobias that he has surrendered the truck to petitioner in his letter dated May 27, 1970. But the alleged surrender was ineffectual as far as the petitioner is concerned because petitioner could not take possession of the truck in question as it was in the custody of Leelin Motors, Inc. which had a mechanic's lien over it. Even respondent Tobias cannot expect petitioner to accept the term of surrender because aside from the fact that the truck being surrendered met an accident petitioner was not satisfied with the repair of the finished portion of the truck in question. Petitioner therefore was justified in refusing to accept such surrender and in

bringing suit to recover the balance of the purchase price.

IN VIEW OF THE FOREGOING, the judgment of the respondent Court of Appeals and of the lower court are hereby set aside and a new one rendered ordering respondent Tobias to pay petitioner the balance of the purchase price of the truck in question in the amount of P27,210.77 plus legal rate of interest from the time of the filing of the complaint. Costs against the respondent.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Guerrero, JJ., concur.
Fernandez, J., no part.

* Ninth Division, composed of Justices Fernandez, Plana and Escolin.

[1] Record on Appeal, pp. 5-6.

[2] Record on Appeal, p. 38; Respondent's Brief, p. 3, par. 4.

[3] Petitioner's Brief, pp. 11-12.

[4] Petitioner's Reply Brief, pp. 2-3.

[5] Petitioner's Brief, pp. 12-13.

[6] Record on Appeal, p. 68.

[7] Article 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any one 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.

[8] Cruz vs. Filipinas Investment and Finance Co., 23 SCRA 791.

[9] Radiowealth, Inc. vs. Lavin 117 Phil. 805; Cruz vs. Filipinas Investment and Finance Co., supra.

[10] Pacific Commercial Co. vs. De la Rama, 72 Phil. 380.

[11] See Rule 68, Revised Rules of Court and Sec. 14, Act 1508 (The Chattel Mortgage Law); Manila Motor Co. vs. Fernandez, 99 Phil. 782.

[12] supra.

[13] Petition, p. 4.

[14] Sec. 1, Rule 131.

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