

RADIOWEALTH, INC., PLAINTIFF AND APPELLANT, VS. JOSE LAVIN, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. L-18563. April 27, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

There being no dispute as to the facts, the Court of Appeals certified this case to us for resolution of the question of law involved therein.

The facts are stated in the resolution of certification.

One 14 March 1958, the plaintiff filed a complaint in the Court of First Instance of Manila to recover from the defendants, jointly and severally, the balance of the purchase price of a certain machinery, the interests there-on; liquidated damages, and attorney's fees.

It appears that on 9 July 1958, at the City of Manila, the defendants bought from the plaintiff a model WD Howard Wet Paddy Rotavator, with its accessories, for P3,300.00, paying a down payment of P1,000.00. As stipulated, the balance, which was secured by a chattel mortgage on the machinery, was payable in 12 Monthly installments, the first payment of P191.67 to commence on 12 August 1956. The defendants also executed a promissory note evidencing the same account. It was, likewise, agreed that the said balance shall bear 8% interest per annum, and if not paid on the due dates, the same shall bear 12 interest per annum, aside from 20% for liquidated damages and another 20% for attorney's fees. The machinery was delivered to the defendants at their residence at Tupac, Narvacan, Ilocos Sur.

The said defendants never paid any of the 12 installments, and all became due and payable.

The defendants were declared in default for their failure to file an answer, and judgment was accordingly rendered against them. However, they filed a petition for relief from judgment, and in the course of the hearing of this petition, it was discovered that-

"long prior to, the filing of the instant complaint on March 14, 1958, plaintiff firm had, on September 30, 1957, notified the Provincial Sheriff of Ilocos Sur including the defendants themselves of the firm's desire to foreclose the chattel mortgage constituted on the rotavator. The record reveals—and on this there appears no dispute either—that in consonance with plaintiff's notification to the sheriff of its desire to foreclose on the chattel the auction sala was scheduled on December 18, 1957; that pursuant to this request for foreclosure, Deputy Sheriff Anicoshe went to Narvacan, Ilocos Sur, where he found defendant Jose Lavin and upon asking the latter for the mortgaged property, the same was pointed to by Lavin; that upon being informed by the deputy sheriff of the foreclosure of the chattel, and of the deputy's intention to seize the same, Lavin offered no objection thereto; that despite such lack of objection of defendant Lavin to the foreclosure, the chattel could not be taken to Manila there being no truck to bring it; that it was understood between the sheriff and Lavin that the former would fetch a truck from Vigan to pick up the chattel from Narvacan to Manila. The record also reveals that upon reaching Vigan on December 17, 1957 (the day prior to the scheduled public, sale) the deputy

sheriff received a letter from plaintiff's counsel including a wire asking him (sheriff) to suspend the auction sale as the defendants-mortgagors had voluntarily agreed to surrender the chattel; that as a result of this communication, the provincial sheriff of Ilocos Sur suspended the foreclosure sale of the chattel which, incidentally, remains in the possession of defendant Lavin."

The petition for relief was granted, and the case was set for hearing on the merits on 2 March 1959. The court-

"considered defendants' petition for relief as their answer to plaintiff's complaint. No further hearing was held, as the record discloses no transcript of notes taken; and the parties having ostensibly rested their case, His Honor rendered on April 8, 1959 the decision which is now the subject of this appeal",

dismissing the case without prejudice to the presentation of the proper action to recover the chattel.

The defendants do not controvert the facts, but state that the plaintiff can no longer sue on the balance of the purchase price because of its previous election of the remedy of foreclosure. The plaintiff, on the other hand, argues that it has not availed of the remedy of foreclosure since the foreclosure was not pushed through to its finality.

As defined by the Court of Appeals, the issue is "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 on the same mortgage and the voluntary acceptance of such step (foreclosure) by defendants-mortgagors".

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-mortgagee 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-mortgagors. The least that could be said is that such desistance of the plaintiff from proceeding with the 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 the unpaid account.

While there are some American authorities holding that the mere initiation of proceedings constitutes a binding choice of remedies that precludes pursuit of alternative courses, others hold that no binding election occurs before a decision on the merits is had (18 Am. Jur. 143), or a detriment to the other party supervenes; and we think the latter to be the better rule, considering that the creditor, in desisting from a foreclosure of the chattel mortgage, and suing instead for the unpaid balance, does not assume really inconsistent positions, and considering further that detriment to the opposing party is a prerequisite to the operation of estoppel.

Premises considered, the decision of the court a quo is hereby set aside, and the case is ordered remanded to the said court for further proceedings in accordance with this opinion. Costs against the appellees.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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