

**BPI FAMILY BANK, SAN FERNANDO BRANCH, PAMPANGA,
PLAINTIFF-APPELLEE, VS. VIRGILIO G. ARCEBIDO AND SUZETTE L.
ARCEBIDO, DEFENDANT-APPELLANTS,**

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

On Appeal before this Court is the Decision[1] dated 31 October 2000 of the Regional Trial Court, Third Judicial Region, San Fernando, Pampanga, Branch 45, in Civil Case No. 10970 for Sum of Money, the dispositive portion of which reads:

“WHEREFORE, in view of the foregoing, the instant complaint is hereby GRANTED and defendant Spouses Virgilio Chito and Suzette Arcebido are ORDERED to pay complainant BPI the following amounts:

- P273,420.00, which is the unpaid balance on the Promissory Note;

- 25% per annum of the unpaid balance on the Promissory Note, from the date of the filing of the complaint on 18 Nov(ember) 1996 until fully paid; and

- P50,000.00 in attorney's fees.

The third party complaint is DISMISSED.

Costs against defendants.

SO ORDERED.”[2]

The pertinent facts of the case are as follows:

On 21 December 1995, Virgilio Chito Arcebido (“Arcebido”) purchased a Mitsubishi 4-door Sedan Lancer GLXI 1993 model, with Plate No. TJA 723 from Paquito Chu (“Chu”) for the amount of P350,000.00.[3] Arcebido paid 30% of the purchase price or a total amount of P105,000.00.[4] To pay the balance of the said purchase price, Arcebido obtained a loan from BPI Family Bank (“BPI”), San Fernando Branch, Pampanga in the amount of P328,104.00 payable in 24 monthly installments or a monthly amortization of P13,671.00 evidenced by a Promissory Note dated 29 December 1995 and secured by a chattel mortgage over the car.[5] Arcebido paid the first four (4) monthly installments.[6] However, on 12 May 1996, while the subject car was being driven by Charlie Lague (“Lague”), Arcebido's brother-in-law, along the streets of L & S Subdivision, Brgy. Sto. Domingo Angeles City, operatives of the Public Assistance and Reaction Against Crime (PARAC II), led by S/Supt. Bartolome Baluyot (“Baluyot”) flagged down the subject car and thereafter impounded the same for allegedly bearing an improvised plate number[7] in violation of Section 12, Republic Act No. 6539, otherwise known as the Anti-Carnapping Act. A macro-etching examination of the subject car revealed that its chassis and engine numbers were allegedly tampered.[8] The subject car was brought to the impounding area at 21 Jersey St. Project

8, Quezon City. Thereafter, PARAC II filed a complaint against Arcebido and Lague for violation of RA No. 6539 before the Department of Justice but the latter recommended the dismissal thereof.[9] Likewise, on 20 March 1997, the Angeles City Prosecutor's Office found no evidence of tampering over the subject car.[10]

Due to the impounding of the subject car, Arcebido deferred the payment of the monthly installment effective May 1996.[11] On 18 November 1996, BPI filed a Complaint[12] against Arcebido and his wife Suzette for the unpaid balance of the loan which allegedly amounted to P280,677.66 inclusive of interest.

In their Answer[13], spouses Arcebido admitted their indebtedness to BPI but interposed the defense that they never reneged on their obligation. Due to the extraordinary circumstances surrounding the confiscation of their vehicle, they temporarily stopped the payment of the monthly installment.

On 10 July 1997, spouses Arcebido filed a Third-Party Complaint[14] against Chu and Baluyot alleging, among others, that Chu should be held liable on the ground that he acted in bad faith in selling the subject car without revealing to them his source and the previous owner. Likewise, Baluyot should also be held liable for his unjustified act of confiscating and impounding the subject car despite valid documents. Spouses Arcebido prayed that they be reimbursed or indemnified for whatever amount BPI may require them to pay in the event that they will be held liable for their loan obligation.

After trial on the merits, the court a quo rendered the assailed Decision dated 31 October 2000.

Aggrieved, spouses Arcebido (now appellants) interposed the present appeal ascribing to the court a quo the following errors:

I

THE LOWER COURT ERRED IN NOT HOLDING THAT THE ACTION FILED BY THE PLAINTIFF IS PREMATURE, AND CONSEQUENTLY ERRED IN NOT DECLARING A MORATORIUM AS TO THE PAYMENT OF THE MONTHLY AMORTIZATION OF THE LOAN;

II

THE LOWER COURT ERRED IN DISMISSING THE THIRD-PARTY COMPLAINT FOR HAVING NO CONNECTION WITH PLAINTIFF'S CLAIM;

III

THAT, CONSEQUENTLY, THE LOWER COURT ERRED IN NOT ORDERING THE THIRD-PARTY DEFENDANTS TO PAY ALL THE OBLIGATIONS OF THE DEFENDANTS AND THIRD PARTY PLAINTIFFS IN RESPECT TO ANY AMOUNT OWING TO THE PLAINTIFFS, AND PAY THIRD-PARTY PLAINTIFF MORAL, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

The Appeal is devoid of merit.

Appellants maintain that the action filed by BPI (now appellee) is premature.

We disagree.

The right of appellee to collect the unpaid loan balance of appellants is in accordance with paragraph 6 of the Promissory Note[15] dated 29 December 1995 which specifically provides that failure on the part of the borrower to pay any installment when due shall make the subsequent installments and the entire balance of the obligation immediately due and demandable, thus:

“In case of my/our failure to pay when due and payable, any sum which I/We” are obliged to pay under this

note and/or any other obligation which I/We or any of us may now or in the future owe to the holder of this note or to any other party whether as principal or guarantor, or in the event of bankruptcy, insolvency, receivership, levy on execution, garnishment or attachment, or in the case of conviction for a criminal offense by final judgment carrying with it the penalty of civil interdiction affecting all or any one of us, or in any of the cases covered by Article 1198 of the Civil Code of the Philippines, then the entire sum outstanding under this note shall immediately become due and payable without the necessity of notice or demand which I/We hereby waive.” (Emphasis supplied)

Under Article 1953[16] of the Civil Code, appellants' obligation is to pay a generic thing—money representing the loan with interest. The chattel mortgage on the car simply stood as security for the fulfillment of their obligation, and therefore, the confiscation or impounding of the said car by PNP officials neither extinguished their obligation to pay nor authorized them to defer their monthly payments. It bears stressing that their loan obligation could still be paid from sources other than the said mortgaged car.

As aptly held by the court a quo:

“Thus, the fact that the subject car was confiscated by police authorities does not justify defendant Arcebido's withholding of the installment payments of the loan. Whatever cause of action Arcebido may have against Chu, the seller of the car or against Baluyot, the police official responsible for the vehicle's questionable impounding, does not justify his refusal to pay his valid and subsisting obligation to BPI as the latter is not a party to the sale of the car. The fact that Arcebido did not receive the proceeds of the loan as the same was delivered by BPI to Chu is of no moment. The fact remains that Arcebido as borrower in the loan contract with BPI, had absolute power to dispose of the proceeds of the loan. The delivery of the proceeds to Chu was nothing but the implementation of Arcebido's intent to use the said proceeds to pay for his obligation in a separate contract of sale. BPI's delivery to Chu did not bind the former to the contract of sale as it was merely accommodating its client's request.

Second, Since by his own admission, Arcebido failed to pay his loan except for the first four (4) amortizations, he is therefore liable to pay the balance thereof in the amount of P273,420.00.”[17] (Emphasis supplied)

We sustain the foregoing disquisition. It is a hornbook doctrine that findings of fact of trial courts are entitled to great weight on appeal and should not be disturbed except for strong and valid reasons because the trial court is in a better position to examine the demeanor of the witnesses while testifying. It is not the function of this Court to analyze and weigh evidence by the parties all over again.[18]

Anent the propriety of the award of attorney's fees in the reduced amount of P50,000.00 and penalty equivalent to 25% per annum of the total amount due, the court a quo committed no error in awarding the same.

Attorney's fees may be recovered should there be an express stipulation to that effect.[19] In the case at bench, the parties agreed on attorney's fees in case of default of payment. Paragraph 7 of the Promissory Note dated 29 December 1995, reads:

It is further agreed that if upon such default, attorney's services are availed of, an additional sum equal to twenty five percent (25%) of the total sum due thereon, which shall not be less than One Thousand Pesos shall be paid to the holder hereof for attorney's fees plus an additional sum equivalent to twenty five per cent (25%) of the total sum due which likewise shall not be less than One Thousand Pesos for liquidated damages, aside from expenses of collection and the legal costs provided for in the Rules of Court.

Likewise, the parties stipulated on the payment of penal-ty or late charges, viz:

“Likewise, I/We hereby jointly and severally promise to pay a late payment charge on any overdue sum under this note at the rate of thirty six percent (36%) per annum.”

We hold and so rule that the foregoing stipulation is valid as it is not contrary to law, morals, public order or public policy. Consequently, the same is binding upon appellants pursuant to Article 1306[20] in relation to Article 1226[21] of the Civil Code.

With respect to the second and third assigned errors, appellants aver that the court a quo erred in dismissing their third-party complaint against Chu and Baluyot. Appellants insist that the said third-party complaint has reasonable connection with appellee's claim.

We are not persuaded.

Section 11, Rule 6 of the 1997 Rules of Civil Procedure provides:

“Sec. 11. Third (fourth, etc.)-party complaint. - A third (fourth, etc.)-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.)-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.”

For a third-party complaint to prosper, the Supreme Court laid down the following tests: (1) whether it arises out of the same transaction on which the plaintiff's claim is based; or whether the third-party claim, although arising out of another or different contract or transaction, is connected with the plaintiff's claim; (2) whether the third-party defendant would be liable to the plaintiff or to the defendant for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction; and (3) whether the third-party defendant may assert any defenses which the third-party plaintiff has or may have to the plaintiff's claim.[22] There must be a causal connection between the claim of the plaintiff in his complaint and a claim for contribution, indemnity or other relief of the defendant against the third-party defendant.[23] The test to determine whether the claim for indemnity in a third-party complaint is, whether it arises out of the same transaction on which the plaintiff's claim is based, or the third-party plaintiff's claim, although arising out of another or different contract or transaction, is connected with the plaintiff's claim.[24]

In the case at bench, the first element is wanting. A perusal of the records reveals that there is no causal connection between the claim of appellee for the unpaid loan balance against appellants, and appellants' claim of bad faith and unjustified act against Chu and Baluyot. Moreover, the transaction between appellants and appellee is entirely distinct and separate from that between appellants and Chu and Baluyot. On this score, We quote with approval the following court a quo's disquisition:

“In the instant case, Arcebido's third party complaint has arose (sic) from a different transaction, the contract of sale while BPI's claim against Arcebido is based on their contract of loan. To determine whether Arcebido's third party complaint is related to BPI's claim the second test must be used, i.e.(,) it must be determined whether Chu or Baluyot may be held liable for BPI's claim for payment of the loan. Obviously, neither Chu nor Baluyot is liable to pay the loan as neither is a party to the loan contract. Chu, as seller of the car may be held liable for any of the warranties or obligations of the seller to the buyer on account of his contract of sale with Arcebido but he is definitely not under any obligation to pay the amount of the loan. Chu neither contracted nor received the loan. What he received was the purchase price for the car paid by Arcebido, which amount in turn was loaned by Arcebido from BPI. Baluyot, on the other hand, maybe liable for a crime or a tort against Arcebido for wrongfully impounding the latter's car despite the absence of evidence of tampering, as found by the PNP Traffic Management, the DOJ and the Angeles City Prosecutor's Office, but he is not liable for Arcebido's loan.

Thus, although Arcebido was wronged, this court cannot entertain said claim being not related to BPI's claim against Arcebido. x x x.” (Emphasis ours)

In fine, We find no plausible reason to depart from the court a quo's decision dismissing appellants' third-party complaint.

WHEREFORE, the Appeal is hereby DENIED. The assailed Decision dated 31 October 2000 is AFFIRMED.

SO ORDERED.

Buzon, and Maambong, JJ., concur.

[1] Original Record, Vol. II, pp. 557-562.

[2] Original Record, Vol II, p. 562.

[3] Exh. "2", Folder of Exhibits; TSN 1 February 200, p. 7.

[4] TSN, 9 May 2000, p. 6.

[5] TSN, 7 January 1999, p. 7; 6 April 1999, pp. 5 & 8; 9 May 2000, pp. 7 & 8.; Exhs. "A" & "B" Folder of Exhibits.

[6] Exhs. "5" to "5-D" inclusive, Folder of Exhibits.

[7] TSN, 1 February 2000, pp. 14 & 15..

[8] See Answer , Original Record, Vol. I, p. 92.

[9] Exh. "14", Folder of Exhibits.

[10] Original Record, Vol. I, pp. 153-159.

[11] TSN, 1 February 2000, pp. 12 & 14.

[12] Original Record, Vol. I, pp. 1-6.

[13] Id., pp. 47-50.

[14] Id., pp. 61-63.

[15] Exhibit "A".

[16] "A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality."

[17] Decision dated 31 October 2000, p. 3; Original Record, Vol. II, p. 559.

[18] Local Superior of the Servants of Charity (Guanellians), Inc. v. Jody King Construction & Development Corporation, 472 SCRA 445, 451 (2005).

[19] Art. 2208 In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, x x x.

[20] "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

[21] "In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interest in case of non compliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid

if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.”

[22] Asian Construction and Development Corporation v. Court of Appeals, 458 SCRA 750, 759-760 (2005) citing Capayas v. Court of First Instance of Albay, 77 Phil. 181.

[23] Ibid.

[24] Id., pp. 760-761.

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