

NORTHERN MOTORS, INC., PETITIONER, VS. HON. AMEURFINA MELENCIO HERRERA, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BR. XVII, AND RALPH R. TAGUBA, RESPONDENTS.

G.R. No. L-32674. February 22, 1973

Ponente: ANTONIO, J.

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ANTONIO, J.:

Original action for certiorari and mandamus to annul the Orders dated July 1, 1970 and July 28, 1970 of the Court of First Instance of Manila, Branch XVII, in its Civil Case No. 80179, and to command respondent judge to issue a writ of replevin.

On June 25, 1970, petitioner filed a complaint against respondent Ralph Taguba and another person designated as "John Doe," alleging inter alia that on February 13, 1970 Taguba executed in favor of plaintiff a promissory note a copy of which was attached to the complaint as "Annex A", binding himself to pay plaintiff the sum of P18,623.75 in monthly installments as follows: P528.75 on March 15, 1969 and P517.00 every 15th day of the month for 35 months beginning April 15, 1969 until February 15, 1972, with 12% interest per annum on the unpaid installments that as security for the payment of the promissory note, defendant Taguba on the same date executed in favor of plaintiff a chattel mortgage over a 1966 Impala sedan, which deed of mortgage under which it appears in effect that the said car was purchased by defendant Taguba from plaintiff on installment basis – was duly registered in the chattel mortgage registry of Laguna, a copy of which deed was also attached thereto as "Annex B"; that under the terms of the mortgage, upon default in the payment of any installment or interest due, the total principal sum remaining unpaid, with accrued interest, shall at once become due and payable and the mortgaged car shall, on demand, be delivered by the mortgagor to the mortgagee, otherwise the mortgagee is authorized to take possession of the car wherever it may be found and have it brought to Manila at the expense of the mortgagor, and the mortgagee shall have the option of (a) selling the mortgaged property, (b) cancelling the contract of sale with the mortgagor, (c) extrajudicially foreclosing the mortgage, (d) judicially foreclosing the mortgage, or (e) exacting fulfillment of the mortgage obligation by ordinary civil action, the mortgagee to be entitled to attorney's fees equivalent to 25% of the sum due in case attorney's services are availed of, it being agreed upon that any legal action arising from the promissory note may be instituted in the courts of Manila; that defendant Taguba paid only the sum of P964.26 representing the installment due March 15, 1969, and another sum of P35.74 as interest up to June 18, 1969, but failed and refused, in spite of repeated demands, to pay P81.49 of the installment due April 15, 1969, and the 13 installments due May 15, 1969 to May 15, 1970, thereby making the entire unpaid balance of the promissory note in the sum of P17,659.49 due and demandable, with interest thereon from June 19, 1969; that plaintiff has elected to avail itself of the option of extrajudicially foreclosing the mortgage; that the mortgaged vehicle is in the province of Rizal in the possession of defendant Taguba, who has no legal right to the possession thereof, plaintiff having demanded the delivery to it of said vehicle, pursuant to the terms of the chattel mortgage, but defendant Taguba failed and refused to make such delivery; that the value of the car is P18,000.00, and said car has not been taken for a tax assessment or fine pursuant to law, or seized

under an execution or an attachment against plaintiff's property; and plaintiff is ready to give a bond executed in defendants' favor in double the value of the car, for the return thereof to defendants if it be so adjudged, and for payment to them of such sums as they may recover from plaintiff in the action. Plaintiff prayed that upon approval of the bond a writ of replevin be issued for the seizure of the car wherever it may be found and for its delivery to plaintiff, and after hearing, plaintiff be adjudged as having the rightful possession and ownership thereof and that in default of delivery, defendants be sentenced to pay plaintiff the sum of P17,659.49, with interest thereon at the rate of 12% per annum from June 19, 1969, until said principal sum is fully paid, and a sum equivalent to 25% of the amount due as and for attorney's fees and costs of collection, and the costs of suit.

Attached to the complaint is a bond for P36,000.00 and an "Affidavit of Replevin" executed by an officer of plaintiff corporation.

On July 1, 1970, an Order was issued by respondent judge denying petitioner's prayer for a writ of replevin because the rules "require that an affidavit be submitted alleging that the plaintiff is the owner of the property claimed, or that he is entitled to its possession"; and therefore the affidavit attached to the complaint is insufficient, for it is clear therefrom that plaintiff "is not the owner of the motor vehicle mortgaged to it; and it is not entitled to its possession merely because the mortgagor has failed to pay the account guaranteed by the mortgage."

A motion for reconsideration was filed by petitioner on July 10, 1970, but the same was, in an Order dated July 28, 1970, likewise denied by respondent judge. It is Her Honor's view that after the mortgagor has breached the chattel mortgage and refused to deliver the mortgaged chattel to a public officer for foreclosure sale, a replevin suit should be instituted by the mortgagee, "but only for the purpose of delivering the chattel to the public officer for foreclosure sale". Respondent judge further stated that there being no allegation that plaintiff mortgagee has asked or directed a public officer to foreclose the mortgage and that the mortgagor had refused to surrender the mortgaged chattel to said public officer, it cannot be held that either the public officer or the mortgagee is entitled to replevin; that the present complaint seeks "that plaintiff be adjudged to have rightful possession" over the chattel without qualification whatsoever which, in the practical sense, can revert ownership in it of the repossessed chattel in contravention of Article 2088 of the Civil Code, and that even if the mortgagee has a right of possession, that right is not unqualified but is subject to the obligation of delivering the possession of the mortgaged chattel to the public officer for foreclosure.

We reverse the challenged orders.

- There can be no question that persons having a special right of property in the goods the recovery of which is sought, such as a chattel mortgagee, may maintain an action for replevin therefor. Where the mortgage authorizes the mortgagee to take possession of the property on default, he may maintain an action to recover possession of the mortgaged chattels from the mortgagor or from any person in whose hands he may find them. This is irrespective of whether the mortgage contemplates a summary sale of the property or foreclosure by court action (*Podrat v. Oberndorff* 207 Cal. 457; 63 A.L.R. 1308). As early as the case of *Bachrach Motor Co. v. Summers* (42 Phil. 6) We explained that when the debtor defaults, and the creditor desires to foreclose the mortgaged chattel, he must necessarily take the mortgaged property in his hands, but when the debtor refuses to yield the possession of the property, the creditor must institute an action, either to effect a judicial foreclosure directly, or to secure possession as a preliminary to the sale contemplated under Section 14 of Act No. 1508. The right of the mortgagee to have possession of the mortgaged chattel after the condition of the mortgage is breached must be therefore deemed to be well settled.

The Rules do not require that in an action for replevin, the plaintiff should allege that the "mortgagee has asked or directed a public officer to foreclose the mortgage and that the mortgagor has refused to surrender the mortgaged

chattel to such public officer".

All what is required by Section 2 of Rule 60 is that upon applying for an order for replevin, the plaintiff must show that he is "the owner of the property claimed, particularly describing it, or is entitled to the possession thereof"; that the property is wrongfully detained by the defendant with an allegation on the cause of detention; that the same has not been taken for any tax assessment or fine levied pursuant to law nor seized under any execution, or an attachment against the property of such plaintiff or if so seized that it is exempt from seizure. The affidavit must also state the actual value of the property. The affidavit of S.M. Laureola, Assistant to the General Manager of Northern Motors, Inc. attached to the complaint, substantially complies with the aforesaid requirements.

In determining the sufficiency of the application for writ of replevin, the allegations thereof and the recitals of the documents appended thereto and made part thereof should be considered. Thus it is alleged in the complaint that "it is also expressly agreed between the parties that in case of default on the part of defendant, as mortgagor therein, the mortgaged motor vehicle shall be delivered, on demand, to plaintiff, as mortgagee therein, free of all charges, and should the mortgagor not deliver the same as aforesaid, the mortgagee is authorized to take possession of said property wherever it may be found * * *" (par. 4); that defendant Taguba "failed and refused, as he fails and refuses, in spite of repeated demands, to pay the plaintiff P81.49 of the said installment due 15 April 1969 and the thirteen (13) installments due 15 May 1969 thru 15 May 1970, thereby making the balance of said note, the sum of P17,659.49, and interest from 19 June 1969, to become immediately due, payable and defaulted" (par. 6); and that "the mortgaged motor vehicle is now in Rizal in the possession of defendants who have no legal right to the possession thereof-- plaintiff having made demand for the delivery of the said motor vehicle pursuant to the terms of the chattel mortgage, notwithstanding which demand defendants have failed and refused to do so" (par. 7). These allegations of the complaint were by reference made part of J.M. Laureola's affidavit.

We find nothing from the provisions of Section 14 of the Chattel Mortgage Law (Act 1508) that would justify the trial court's insistence, that after default by the mortgagor and before the mortgagee can file an action to recover possession of the mortgaged chattel, the mortgagee must first ask the sheriff to foreclose the mortgage and it is only when the mortgagor refuses to surrender the chattel to the sheriff that the action of replevin can be instituted. We clearly explained in *Bachrach Motor Co. v. Summers* supra, that, while Section 14 of Act 1508 places upon "a public officer" the responsibility of conducting the sale of the mortgaged chattel, there is nothing in said statute which would authorize the officer to seize the mortgaged property; and that for the recovery of possession of said property, where the right is disputed, "the creditor must proceed along the channels by action in court." The basic reason why the creditor should initiate such action is because of the circumstance that the creditor's right of possession of the subject-matter of the chattel mortgage, as a preliminary to an extra-judicial foreclosure proceeding, is conditioned upon the fact of actual default on the part of the principal obligor, and the existence of this fact may naturally be the subject of controversy. In case of such default and the mortgagor refuses upon demand, to surrender possession, of the mortgaged chattel so that it may be sold at public auction pursuant to Section 14 of Act 1508, it would certainly be an exercise in futility for the mortgagee to first request or direct the sheriff to "foreclose the mortgage" or take possession of the property, before filing an action in court to recover its possession. Such a procedure is completely unnecessary not only because the sheriff has no duty or authority in the first instance to seize the mortgaged property, but also because whenever the sheriff proceeds under section 111 of the Chattel Mortgage Law, he becomes pro hac vice the mere agent of the creditor. In any event it is only upon receiving the order of the Court requiring the sheriff to take forthwith such property into his custody, that the duty of said officer to take possession of the mortgaged chattel arises (Section 4, Rule 60, Revised Rules of Court). It was therefore error for the court quo to hold that petitioner has not sufficiently averred its right to the

pos-session of the property sought to be recovered.

- There is also no support for the assertion that the petitioner seeks to appropriate the property given by way of mort-gage or dispose of it in a manner violative of Article 2088 of the new Civil Code.

The essence of pacto comissorio, which is prohibited by Article 2088 of the Civil Code, is that ownership of the secu-rity will pass to the creditor by the mere default of the debtor (Guerrero v. Yñigo et al., 96 Phil. 37, 41-42; Puig v. Sellner, et al., 45 Phil. 286, 287-88). In the present case, the petitioner, exercising one of the options open to it under the terms of the chattel mortgage, elected to extrajudicially foreclose the mortgage, and as a step preliminary to such foreclosure, sought for the possession of the mortgaged car and in the alternative, prayed for the payment by the private respondent of the principal sum of P17,659.49 due to it, plus interest thereon at 12% per annum from June 19, 1969 until fully paid and attorney's fees. No automatic reversion of title on the creditor was ever contemplated, for the exercise of the remedies granted to the creditor by the deed of chattel mortgage of foreclosing the chattel mortgage or exacting the fulfillment of the obligation thru court action is by its very nature anathema to the concept of pacto comissorio.

WHEREFORE, the writs prayed for are granted. The orders complained of are accordingly set aside, and the court, a quo is hereby ordered to issue the writ of replevin prayed for by petitioner. Costs against private respondent.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur. Makalintal, J., took no part.

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