

**LUNETA MOTOR COMPANY, PLAINTIFF AND APPELLANT, VS.
BAGUIO BUS COMPANY, INC., DEFENDANT AND APPELLANT.***G.R. No. L-15157. June 30, 1960*

Ponente: BARRERA, J.

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Defendant Baguio Bus Co., Inc., on 3 different occasions, bought from plaintiff Luneta Motor Company, on installment basis, 6 REO trucks (Exhs. A, D, and G), whereby it paid certain sums as down payments. The unpaid balances were covered by 3 promissory notes (Exhs. C, F, and I) in which defendant bound itself to pay the same in 24 equal monthly installments, with interest thereon at the rate of 12% per annum from date of execution until paid, and in case of default, an additional sum equal to 20% of the amount due shall also be paid as attorney's fees. To guarantee the payment of these 3 notes, defendant mortgaged the same trucks to plaintiff (Exhs. B, E, and H).

Since defendant failed to pay the promissory notes under the terms and conditions therein stipulated, plaintiff filed with the Court of First Instance of Manila, a complaint for the recovery of the balance of said notes, plus 12% interest thereon, 20% thereof for attorney's fees and costs, and/or to recover the trucks. Upon plaintiff's filing a bond, the court issued a writ of replevin and, by virtue thereof, the sheriffs seized the 6 trucks which, after the expiration of 5 days without defendant having filed a counterbond, were turned over to plaintiff.

As there were several parts and accessories found missing on the trucks, plaintiff filed a supplemental complaint which was later amended.

In answer to the complaint, defendant admitted its indebtedness, but claimed that the same had already been paid and, as a counterclaim, it prayed for damages occasioned by plaintiff's failure to supply the necessary spare parts for the trucks to keep them in operation, and for having seized the same. Plaintiff denied the latter claim by stating that it had always available in stock all spare parts for said trucks.

The case was thereafter tried on January 4, 1957 but before defendants counsel had concluded with his cross-examination of plaintiff's first witness, Benedicto T. Sison, he moved for the postponement of the hearing, in view of the possibility of an amicable settlement of the case. On April 6, 1957, the parties submitted the following:

"STIPULATION OF PACTS

* * * * *

"1. On or about March 26, 1954, defendant Baguio Bus Co., Inc. purchased from the plaintiff as per Exhibit A,

One (1) Reo Bus Chassis

Engine No. 255-190159

Serial No. F12OG-511817

One (1) Reo Bus Chassis
Engine No. 255-190718
Serial No. F12OG-511821

"2. To cover part of the price thereof, defendant Bagnio Bus Co., Inc. executed and delivered to the plaintiff a promissory note dated March 26, 1954, for the principal sum of P22,500.00 (Exhibit C) copied in paragraph 8 of the first cause of action of the complaint and secured by a chattel mortgage on the said vehicles (Exhibit B).

"3. On or about July 16, 1954, defendant Baguio Bus Co., Inc. purchased from the plaintiff as per Exhibit G.

One (1) Reo Bus Chassis
Engine No. 255-192053
Serial No. F12OG-512386

One (1) Reo Bus Chassis
Engine No. 255-193558
Serial No. F12OG-512388

"4. To cover part of the price thereof, defendant Baguio Bus Co., Inc. executed and delivered to the plaintiff a promissory note dated July 26, 1954, for the principal sum of P23,000.00 (Exhibit I) copied in paragraph 3 of the second cause of action of the complaint and secured by a chattel mortgage on the said vehicles, (Exhibit H).

"5. On or about July 26, 1954, defendant Baguio Bus Co., Inc. purchased from the plaintiff as per Exhibit D-

One (1) Reo Bus chassis, 206 1/2" W.B.
Engine No. 255-193565
Serial No. F12OG-512392

One (1) Reo Bus Chassis, 206 1/2" W.B.
Engine No. 255-190721
Serial No. F12OG-611824

"6. To cover part of the price thereof, defendant Baguio Bus Co. Inc. executed and. delivered to the plaintiff a promissory note dated July 30, 1954, for the principal sum of P23,000.00. (Exhibit E).

"7. The six Reo trucks which were all new were accordingly delivered to the said defendant as shown by their respective Delivery Receipts attached hereto as Exhibits J, K. and L.

"8. That four (4) of said trucks were provided by the defendant Baguio Bus Company with Steel bus bodies and used by said defendant as passenger buses in its transportation business.

"9. On the promissory note of March 26, 1954, there is a balance due of P12,263.19 as of April 28, 1956; on that of July 26, 1954, there is a balance due and unpaid in the amount of P13,256.03 as of April 10, 1956; and on the promissory note of July 30, 1954, there is a balance due and unpaid in the amount of P11,985.15 as of April 20, 1956, as shown in the Statement attached hereto as Exhibits M, N and O.

"10. The plaintiff desires to exercise the option to take back all the said trucks and cancel the sales thereof.

"11. In compliance with the writs of seizure issued in this case, the sheriff and special sheriff appointed herein seized the said six Reo trucks and turned them over to the plaintiff after the expiration of the prescribed period of five days within which defendant may file a counterbond as shown by the corresponding returns made by the Sheriff and Special Sheriff appointed by the Court.

"12. That when the said six (6) Reo trucks were delivered to the plaintiff, five (5) of them had bus bodies as they were being used by the defendant Baguio Bus Company as passenger buses while the remaining one had

wooden sidings as it was used as a TH truck, but when they were delivered by the Sheriff to the plaintiff, the following parts were found missing: * * *

"13. The total value of the missing parts amounts to Three Thousand Four Hundred Ninety and 06/100 Pesos (P3,490.06).

* * * * *

"Wherefore, the parties hereby respectfully pray that judgment be rendered on the evidence presented and on the foregoing Stipulation of Facts."

On May 6, 1957, the court rendered a decision the dispositive part of which reads:

"Wherefore, judgment is hereby rendered in favor of the plaintiff, Luneta Motor Company, and against the defendant Baguio Bus Co., Inc., as follows:

"1. Declaring the plaintiff the owner of the six (6) Reo trucks subject of the purchase agreements between the said plaintiff and the defendant and cancelling such purchase agreements; and

"2. Ordering the defendant Baguio Bus Co., Inc., to return to the plaintiff the missing and/or damaged parts specified in the foregoing 'Stipulation of Facts' or, in default thereof, to pay their corresponding prices so stipulated or the total sum of P3,490.06, with interest at the legal rate from January 12, 1957, until fully paid, without special pronouncement as to costs. * * *."

On May 24, 1957, plaintiff filed a motion to amend Paragraph 2 of the above-quoted dispositive part so as to read as follows:

"2. Ordering the defendant Baguio Bus Co., Inc. to return to the plaintiff the missing and/or damaged parts specified in the foregoing 'Stipulation of Facts', or in default thereof, to pay their corresponding prices so stipulated or the total sum of P3,490.06, with interest at the legal rate from January 12, 1957, until fully paid, plus twenty per cent (20%) of P37,504.37, total of the balance at the three (3) promissory notes, or P7,500.87 for attorney's fees, in addition to the costs of the suit."

To this motion, defendant filed his opposition contending, inter alia, that the aforequoted stipulation of facts does not provide for the payment of attorney's fees and costs by defendant. On June 6, 1957, defendant on its part, filed a motion for reconsideration and/or new trial, praying that the decision be reconsidered by eliminating or deleting therefrom paragraph 2 thereof relating to the spare parts and/or their value, which it is adjudged to return and/or pay to plaintiff, which motion was duly opposed by plaintiff.

Resolving said motions, the court, on June 13, 1957, issued an order of this tenor:

"It appearing that the decision in this case was rendered on the basis of the stipulation of facts submitted by the parties, plaintiff's motion to amend said decision and defendant's motion for reconsideration and/or new trial are hereby denied for lack of merit."

From the foregoing decision and order, both parties appealed to the Court of Appeals, but said court, in its resolution of February 13, 1959, certified the case to us on the ground that it involves questions of law.

Plaintiff-appellant claims that the lower court erred in not awarding to it attorney's fees and costs, despite the fact that defendant-appellant admitted liability for the same in its answer to the complaint; that plaintiff-appellant adduced evidence to prove the same; that the stipulation of facts submitted by the parties included defendant-appellant's liability for the same; and that both parties, in said stipulation, prayed for judgment based on the evidence presented and the stipulated facts.

The contention is devoid of merit. It appears that plaintiff-appellant, instead of exacting the fulfillment of defendant-appellant's obligation under the purchase agreements (Exhibits A, D, and G) by demanding the payment of the promissory notes (Exhs. C, F, and I), or foreclosing the chattel mortgages (Exhs. B, E, and H) on the 6 trucks in question, elected to cancel said purchase agreements (Exhs. A, D, and G) and recover the possession of said trucks from defendant-appellant.[1] Having chosen the latter course, it could not legally demand compliance by defendant-appellant of its undertaking to pay attorney's fees and costs in case of default under said promissory notes and chattel mortgages, for plaintiff-appellant has, in effect, waived its rights under said instruments. Furthermore, under the terms of the purchase agreements (Exhs. A, D, and G), defendant-appellant had forfeited all payments (amounting to P44,570.56) it had made to plaintiff-appellant, due to its default in the fulfillment of its obligations thereunder. To require defendant-appellant to pay the attorney's fees and costs in the amount demanded by plaintiff-appellant (P7,500.87 or 20% of the unpaid balance of the promissory notes) would, in our opinion, be highly unconscionable and oppressive.

Plaintiff-appellant is, however, entitled to attorney's fees of a lesser amount, which we fix at P500.00, under the provisions of Article 2208 (2) of the Civil Code, inasmuch as defendant-appellant's default had caused it to litigate and incur expenses, in order to protect its (plaintiff-appellant's) interest, and to costs, by virtue of the provisions of Section 1, Rule 131, of the Rules of Court, as it is the prevailing party in the case.

Defendant-appellant, on its part, claims that the lower court erred in ordering it to return to plaintiff-appellant the missing and/or damaged' spare parts of the trucks in question, as specified in the stipulation of facts, or in default thereof, to pay their corresponding prices as fixed in the stipulation, with legal interest from January 12, 1957, until fully paid.

There is some merit in the contention. True it is, that as plaintiff-appellant has elected to cancel the purchase agreements (Exhs. A, D, and G) and recover the possession of the trucks in question from defendant-appellant, it is legally (Art. 1385, Civil Code) entitled to the return of said trucks including all parts they had at the time of their sale, but we have not overlooked the fact that when said trucks were returned to plaintiff-appellant, 5 of them were already equipped with steel bus bodies, for which defendant-appellant most probably have spent quite a sum. The value of said bus bodies should have, therefore, been compensated with the value of the missing or damaged parts of said trucks (P3,490.06), with the result that defendant-appellant should not have been required by the lower court to return the missing or damaged parts of said trucks, or in default thereof, pay their value with legal interest.

Defendant-appellant next contends that the purchase agreements (Exhs. A, D, and G) were novated by the promissory notes (Exhs. C, F, and I) and by the chattel mortgages (Exhs. B, E, and H) and, consequently, plaintiff-appellant's action should have been based on the latter instruments.

To this contention we can not agree. Novation is never presumed, and in order that an obligation may be extinguished by another which substitutes it, it shall be necessary that it is so declared expressly, or that the old and the new obligations be incompatible in every respect (Art. 1292, Civil Code; *Ramos vs. Gibbon*, 67 Phil., 371; *Garcia vs. Khu Yek Chiong, et al.*, 65 Phil., 466). In the instant case, the parties never agreed to, nor intended, a novation of the purchase agreements (Exhs. A, D, and G). On the contrary, they expressly stipulated that the installment payments on the purchase price of the trucks in question shall be "in accordance with the terms of the seller's usual form of Chattel Mortgage and notes (Exhs. B, E, and H) which the purchaser agrees to execute prior to the delivery of the properties purchased" (See last portion of the first paragraph of the Purchase Agreements Exhs. A, D, and G). Much less do we find any incompatibility between the purchase agreements (Exhs. A, D, and G) and the promissory notes (Exhs. B, E, and H) and the chattel mortgages (Exhs. C, F, and I), in the absence of which, novation does not take place. They are constitutive elements of a single transaction of

sale on installments, with a chattel mortgage—complementary and supplementary to one another—the purchase agreements (Exhs. A, D, and G) evidencing said sale on installment of the 6 trucks in question, the promissory notes (Exhs. B, E, and H) evidencing the unpaid balance of the purchase price of the same and the chattel mortgages (Exhs. C, F, and I), guaranteeing payment of said unpaid balance.

Defendant-appellant, likewise, claims that by requiring it to execute the chattel mortgages on the 6 trucks in question, plaintiff-appellant is deemed to have admitted the transfer of the ownership of the same to defendant-appellant. Conceding this to be true, still the action of plaintiff and the judgment of the trial court find sanction in Article 1484(2) of the Civil Code.

For all the foregoing, the judgment of the lower court is affirmed in so far as it declares plaintiff-appellant the owner of the 6 trucks in question and cancels the purchase agreements (Exhs. A, D, and G), and reversed, in so far as it (1) denies the award of attorney's fees and costs to plaintiff-appellant (which fees we have fixed at P500.00), and (2) orders defendant-appellant to return to plaintiff-appellant the missing and/or damaged parts of said trucks, or pay their value as specified in the Stipulation of Facts, with legal interest until fully paid. Without pronouncement as to costs in this instance. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Gutierrez David, JJ., concur.
Montemayor, J., took no part.

[1] See Art. 1484, Civil Code.

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