

[With Resolution of January 30, 1962]

G.R. No L-17384. October 31, 1961

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

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

This petition for certiorari brings to this Court for review the decision of the Court of Appeals in its CA-G. R. No. 17031-R, reversing that of the Court of First Instance of Manila and dismissing petitioners' complaint.

The facts are not in dispute. On March 7, 1940, Gaudencio R. Quiambao, deceased husband of petitioner Nestora Rigor Vda. de Quiambao and father of the other petitioners, bought from respondent Manila Motor Company, Inc. one (1) Studebaker car on the installment plan. Upon default in the payment of a number of installments, respondent company sued Gaudencio Quimbao in Civil Case No. 58043 of the Court of First Instance of Manila. On December 4, 1940, judgment was entered in said case, awarding in favor of the plaintiff the sum of P3,054.32, with interest thereon at 12% per annum, and P300.00 attorneys' fees.

On July 14, 1941, the court issued a writ of execution directed to the Provincial Sheriff of Tarlac, who thereupon levied on and attached two parcels of land covered by Transfer Certificate of Title No. 18390 of the Office of the Register of Deeds for Tarlac. On August 27, 1941, Attorney Felix P. David, then counsel for the Manila Motor Company, accompanied by the sheriff, personally apprised Gaudencio Quiambao of the levy. The latter pleaded to have the execution sale suspended and begged for time within which to satisfy the judgment debt, proposing that in the measwhile, he would surrender to the company the Studebaker car. This proposition was accepted; accordingly, Gaudencio Quiambao delivered the car to the company, and Attorney David issued a receipt therefor that reads:

"August 27, 1941

Received from Mr. Gaudencio Quiambao, Studebaker President Sedan License No. 45-368 pending settlement of the judgment in Civil Case No. 58043 CFI Manila rendered in favor of Manila Motor Company.

David and Angeles

By (Sgd.) Felix P. David

Attorneys for Manila Motor Company."

On October 16, 1941, Gaudencio Quiambao remitted to the company, on account of the judgment, the sum of P500.00; he, however, failed to make further payments, thus leaving a balance still unsettled of P1,952.47, with interest thereon at 12 per cent per annum from March 7, 1940.

In the meantime, the Pacific war broke out, and when the Japanese forces occupied the country shortly thereafter, the invaders seized all the assets of the Manila Motor Company, Inc. as enemy property.

After the war, the company filed with the Philippine War Damage Commission, among other things, a claim for its mortgage lien on the car of Gaudencio Quiambao and was awarded the sum of P780.47, P409.75 of which amount had already been paid.

On October 12, 1949, the company addressed a letter to Gaudencio Quiambao asking him to fill a blank form relative to the lost car. Quiambao having since died, his widow, Nestora Rigor Vda. de Quiambao, returned the form with the statement that the questioned car was surrendered to the company for storage. On May 18, 1953, a demand was made on the widow to settle the deceased unpaid accounts, but in view of her refusal, the company urged the Provincial Sheriff of Tarlac to carry out the pre-war writ of execution issued in Civil Case No. 58043. Although the records of that case had been lost during the war, and have not been reconstituted, a copy of said writ of execution kept on file by the provincial sheriff was saved. Accordingly, the latter advertised for sale at public auction the properties levied upon. Notified of the sheriff's action, the heirs of the deceased Quiambao filed this suit to annul and set aside the writ of execution and to recover damages. Judgment was rendered by the Court of First Instance of Manila in favor of plaintiffs-petitioners, but on appeal to the Court of Appeals, the decision was reversed and another entered dismissing the complaint. Hence, this appeal by writ of certiorari.

Briefly, the issues are:

- (a) Did the delivery of the Studebaker car to respondent company produce the effect of rescinding or annulling the contract of sale between the company and the deceased Gaudencio Quiambao and of barring the former from executing its pre-war judgment in Civil case No. 58043?
- (b) Did the payment to respondent company and the latter's acceptance of war damage compensation for the lost car amount to a foreclosure of the mortgage covenanted in its favor? and
- (c) Was the pre-war judgment already prescribed taking into account the moratorium laws?

Anent the first issue, petitioners, citing the case of *H.E. Heacock Company vs. Buntal Manufacturing Company, et al.*, 66 Phil. 245-246, maintain that the "taking of the automobile by respondent company from Gaudencio Quiambao *** amounted to a waiver of said company's right to execute its judgment in Civil Case No. 58043 and clearly constituted a cancellation or rescission of the sale," which, under the first paragraph of Article 1454-A of the old Civil Code,[1] then applicable, bars any further claim for unpaid installments. There is no merit in this claim. Unlike the situation that arose in the *H. E. Heacock Company* case wherein the vendor demanded the return of the thing sold, and thereby indicated an unequivocal desire on its part to rescind its contract with the vendee, here it was the buyer (deceased Gaudencio Quiambao) who offered indeed pleaded, to surrender his car only in order that he might be given more time within which to satisfy the judgment debt, and suspend the impending execution sale of the properties levied upon. The very receipt issued then by the company, and accepted without objection by the deceased (Gaudencio Quiambao), indicated that the car was received "pending settlement of the judgment in Civil Case No. 58043." Other circumstances that militate against petitioners' theory of rescission or annulment of the contract of sale and waiver of the judgment debt and, conversely, strengthen the proposition that the delivery of the car to respondent company was merely to postpone the satisfaction of the judgment amount, are that the deceased still paid the further sum of P500.00 on account of his indebtedness about two months after the car was surrendered, and that despite respondent company's acceptance of the car, the company made repeated demands against the petitioners to settle the deceased's unpaid accounts.

Since respondent company did not receive the car for the purpose of appropriating the same, but merely as

security for the ultimate satisfaction of its judgment credit, the situation under consideration could not have amounted to a foreclosure of the chattel mortgage as petitioners imply.

Petitioners next argue that "the payment of war damage compensation to respondent company * * * produced the same and equal legal effect as formal foreclosure," and in view of the second paragraph of Article 1454 [2] of the Spanish Civil Code, the latter is now precluded from claiming unpaid installments. We do not agree. Having been the party who was last in possession of the lost car, the company was well within its rights, or better still, under obligation, to protect the interest of the car owner, as well as its own, by claiming, as it did, the corresponding war damage compensation for the car. Such action of the company can not reasonably be construed as a constriction of its rights under the pre-war judgment.

Furthermore, in *Manila Motor Company, Inc., vs. Fernandez*, 97 Phil., 782; 52 Off. Gaz., [16] 6883, 6885, we held:

* * * At any rate, it is the actual sale of the mortgaged chattel in accordance with section 14 of Act No. 1508 that would bar the creditor (who chooses to foreclose) from recovering any unpaid balance (*Pacific Commercial Company vs. De la Rama*, 72 Phil., 380)."

But perhaps the best reason why respondent company may not be construed as having rescinded or cancelled the contract of sale nor foreclosed the mortgage on the automobile in question is precisely because it brought suit for specific performance, and won, in the pre-war Civil Case No. 58043.

There is likewise no merit in the contention that the pre-war judgment had already prescribed. Said judgment was entered on December 4, 1940, and on July 14, 1941, a writ of execution was issued. Respondent company took no further step to enforce the judgment until May 19, 1954, on which date, respondent scheduled two (2) parcels of land owned by the petitioners for sale at public auction pursuant to the writ of July 14, 1941. From the entry of the judgment to May 19, 1954, a period of 13 years, 5 months and 15 days had elapsed. From this term we must deduct the period covered by the debt moratorium under Executive Order No. 32 (which applied to all debts payable within the Philippines), from the time the order took effect on March 10, 1945, until it was partially lifted by Republic Act No. 342 on July 26, 1948.

Deducting the period during which Executive Order No. 32 was in force, which is 3 years, 4 months and 16 days, from 13 years, 5 months and 15 days, the period covered from the entry of the pre-war judgment to the time respondent company attempted to sell the levied properties at auction, there is still left a period of 10 years and 29 days. But as held in *Talens vs. Chuakay & Co.*, G. R. No. L-10127, June 30, 1958, this Court may take judicial notice of the fact that regular courts in Luzon were closed for months during the early part of the Japanese occupation until they were reconstituted by order of the Chairman of the Executive Commission on January 30, 1942 [3]. This interruption in the functions of the courts has also been held to interrupt the running of the prescriptive period (see also *Palma vs. Celda*, 81 Phil. 416). That being the case, respondent company could not be barred by prescription from proceeding with the execution sale pursuant to the levy and writ of execution issued under the pre-war judgment, considering that even the minimum period of from December 8, 1941, the outbreak of the Pacific war, to January 30, 1942 is already a term of one (1) month and 23 days.

Petitioners raised the issue whether or not the pre-war writ of execution and levy may still be enforced by sale of the levied property after the lapse of the five-year period within which a judgment may be executed by motion. On this point, this Court has held:

"We are of the opinion that a valid execution issued and levy made within the period provided by law may be enforced by a sale thereafter. * * * The sale of the property by the sheriff and the application of the proceeds are simply the carrying out of the writ of execution and levy which when issued were valid. This rests upon the

principle that the levy is the essential act by which the property is set apart for the satisfaction of the judgment and taken into custody of the law, and that after it has been taken from the defendant, his interest is limited to its application to the judgment, irrespective of the time when it may be sold (*Southern Cal. L. Co. vs. Hotel Co.*, 94 Cal. 217, 222)." (*Government of P. I. vs. Echaus*, 71 Phil. 318)

The case of *Ansaldo vs. Fidelity and Surety Company of the Philippine Islands*, (88 Phil., 547), invoked by the petitioners, is not in point, for there the judgment creditor attempted to carry out the writ of execution 10 years after the entry of judgment. As correctly observed by the appellate court below, both cited cases—

"* * * affirm the fundamental principles that a valid judgment may be enforced by motion within five years after its entry, and by action after the lapse of said period but before the same shall have been barred by any statute of limitations, and that a valid execution issued and Levy made within the five-year period after entry of the judgment may be enforced by sale of the property levied upon thereafter, provided the sale is made within ten years after the entry of the judgment."

The petitioners should, however, be credited the amount of P409.75 which the respondent Manila Motor Company actually received from the Philippine War Damage Commission on account of the car of Gaudencio Quiambao that had been seized from it by the enemy occupant during the war. This should reduce the principal amount still due the respondent from the petitioners to the sum of P1,542.72.

In view of all the foregoing, the judgment of the Court of Appeals appealed from is affirmed, with costs against petitioners.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, Dizon and De Leon, JJ., concur.

[1] The provision reads:

"In a contract for the sale of personal property payable in installments, failure to pay two or more installments shall confer upon the vendor the right to cancel the sale or foreclose the mortgage if one has been given on the property, without reimbursement to the purchaser of the installments already paid, if there be an agreement to this effect."

[2] The paragraph reads:

"However, if the vendor has chosen to foreclose the mortgage he shall have no further action against the purchaser for the recovery of any unpaid balance owing by the same, and any agreement to the contrary shall be null and void."

[3] In *Alcantara vs. Chico*, 49 Off. Gaz., 150, the Court of Appeals estimated that in Bulacan, courts were not opened for nearly five (5) months. Judgment of October 31, 1961, reaffirmed.

RESOLUTION

January 30, 1962

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

Petitioners moved for the reconsideration of our decision dated October 31, 1961, affirming that of the Court of Appeals, on the following grounds:

(1) That the Moratorium Law is inapplicable in this case because the respondent Manila Motor Co., Inc. tried to

enforce its pre-war judgment against the deceased Gaudencio Quiambao only after said law had been declared void by this Court;

(2) That the act of the respondent company in accepting the return of the car in question from the deceased Quiambao before the war operated either as a foreclosure of respondent's chattel mortgage thereon or a rescission of the contract of sale between the parties; and

(3) That it would be highly inequitable, and an unjust enrichment on the part of the respondent at petitioners' expense, to make the latter pay an amount close to P30,000 or P40,000 for an original unpaid indebtedness of P1,542.72, in view of the mounting compounded interest provided for in the chattel mortgage contract Exhibit "C".

As to the first argument, we have already ruled in many cases that since in *Rutter vs. Esteban* (93 Phil., 68; 49 Off. Gaz., 1807) we did not declare the Moratorium law void ab initio, but only held that its continued operation and enforcement had already become unreasonable and oppressive said law did suspend the running of the statute of limitations, and no action could be taken to collect monetary obligations falling within the purview of the law during the period that it was still in effect (*Santos Vda. de Montilla vs. Pacific Commercial Co.*, 98 Phil., 133; *Liboro vs. Finance & Mining Investments Co.*, 102 Phil., 489, *Manila Motor Co. vs. Flores*, 99 Phil., 738; 52 Off. Gaz., No. 13, 5804; *Pacific Commercial vs. Aquino*, 100 Phil., 961; 53 Off. Gaz., No. 13, 4067, among others). Consequently, whether or not the creditor actually brought his action to court before or after the law had been voided, still the period for the enforcement of his credit was tolled by the moratorium law.

As to the second contention, the same had already been: rejected by us in our main decision, wherein we held that the surrender of the car in question by the deceased Quiambao to the respondent company before the war did; not operate either as a foreclosure of the chattel mortgage thereon or as a rescission of the contract of sale between the parties, because said return was only by way of deposit or "for storage", pending settlement of the judgment in Civil Case No. 58043".

On the equity side, however, we believe that, in view of the circumstances, we are justified in applying herein the doctrine of this Court in the case of *Warner, Barnes & Co. vs. Yasay*, 108 Phil, 1005; 60 Off. Gaz., (32) 4782.

"Considering, however, that no bad faith is imputed to the debtors; that payment could not be made during the war year even if the debtor had so desired, because the creditor was a British company and an enemy via a vis the belligerent occupant of the Islands at the time; that the creditor was indirectly benefited by the debtor's inaction thereby avoiding payment in military script; and that both under Article 1172 of the new Civil Code and Article 11703 of the old Code, the Court have power to regulate moderate the liability arising from negligence of a debtor, we think it equitable to reduce the interest by eliminating that which accrued during the war years, as well as to limit the attorney's fees to 10% of the total amount of the judgment, this case presenting no unusual difficulty." (Italics supplied), especially as Respondent company itself has manifested in its answer to the motion of reconsideration that they are willing to reach a suitable agreement with petitioners whereby they may "reduce the obligation of the petitioners within reason", and that said company is Willing to "treat them with sympathy and consideration in the eventual liquidation of the petitioners' indebtedness".

We should further make it clear¹ that respondent actually has no more right to enforce the provisions of the chattel mortgage Exhibit "C", as to compound interest because the final judgment in Civil Case No. 58043 did not provide for such compound interest but only for simple interest of 12% per annum. Consequently, the unpaid obligation of petitioners under the judgment (that superseded the original obligation), exclusive of attorney's fees and costs, amounts only to the outstanding principal obligation before the war of P1,542.72, plus simple interest of 12 per cent per annum until payment, but deducting the interests that fell due during the war years, under the doctrine in the *Warner, Barnes & Co. vs. Yasay*, supra.

Clarified as above indicated, the judgment of this Court of October 31, 1961 is reaffirmed.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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