

UNIVERSAL MOTORS CORPORATION, PLAINTIFF-APPELLANT, VS. MARIANO D. VELASCO, ET AL., DEFENDANTS-APPELLEES.

G.R. No. L-25140. July 15, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal on a question of law from a decision of the Court of First Instance of Manila. Since the appeal was perfected in 1965 before the enactment of R.A. No. 5440 which took effect on September 7, 1968, a record on appeal was submitted. The plaintiff-appellant filed a brief but defendants-appellees having failed to file their brief within the reglementary period the case was submitted for decision without their brief.

The uncontroverted facts are:

Mariano T. Velasco bought from Universal Motors Corporation a Mercedes-Benz truck on installment basis. To secure the balance of the purchase price of P35,243.68 he executed a promissory note and executed a chattel mortgage over the truck. He defaulted in his payments and as a consequence the vendor asked him to surrender the truck in accordance with the terms and conditions of the chattel mortgage contract. He failed and refused to surrender the truck whereupon the vendor instituted an action in the court a quo to recover the truck preparatory to foreclosure of the chattel mortgage. As an alternative, in case the truck could not be recovered, the plaintiff asked for the payment, among other things, of its value in the sum of P23,763.09 plus legal interest. By virtue of a writ of replevin issued by said court, the seller was able to re-possess the truck.

Going back to the action which was commenced on December 29, 1964, the defendants failed to answer the complaint within the reglementary period and were declared in default. On April 26, 1965, defendant Velasco filed a motion to lift the default order which was granted. He did not, however, file an answer. In lieu thereof the parties, on June 15, 1965, submitted the following:

"STIPULATION OF FACTS

"COME NOW the parties in the above-entitled case, through their respective counsel, and before this Honorable Court respectfully stipulate:

"1. That defendant was, at the time of the filing of the complaint, indebted to plaintiff in the principal sum of P23,763.09, which amount is covered by a promissory note secured by a Chattel Mortgage (Annex 'A' of the complaint) on a motor vehicle described in paragraph 2 of the complaint;

"2. That notwithstanding defendant being in default of this afore-mentioned sum and notwithstanding demands made by plaintiff on December 11, 1964, defendant failed to surrender the chattel described in paragraph 2 of the complaint thereby preventing plaintiff from foreclosing on the same;

"3. That plaintiff is entitled to the possession of the chattel described in paragraph 2 of the complaint and was constrained to institute the present action for recovery of possession as a preliminary step to foreclosure;

"4. That in the service and execution of the writ of seizure issued in this case and in securing the possession of

the vehicle subject of the complaint, plaintiff incurred the following expenses:

"a)

Premium on replevin bond . . .

P 971.47

"b)

Sheriff's expenses

300.00

"c) Costs of suit

132.00

"d)

Mechanic's lien paid by plaintiff in defendant's behalf to G. Cruz Truck Body Builder & Welding Shop
.....

3, 000.00

P4, 403.47

"5. That on May 21, 1965, plaintiff received from the Workmen's Insurance Company, Inc., the sum of P1,870.99 in full settlement of the damage sustained by the truck subject matter hereof when it figured in an accident on December 5, 1964, totally immobilizing the motor vehicle;

"6. That subsequent to said event, defendant failed to deliver the truck in question despite demands made by plaintiff;

"7. That the following stipulation is found in paragraph 14 of the Chattel Mortgage (Annex 'A' of the complaint) the genuineness and due execution of which is hereby admitted by the defendant:

'14. That in case of non-compliance or violation or default by the mortgagor, and foreclosure or any other legal remedy is undertaken by the mortgagee to compel payment of his obligation, the mortgagee shall be entitled to a reasonable compensation in the concept of attorney's fees and costs of collection in a sum equal to twenty five percent (25%) of the total amount of the indebtedness then outstanding and unpaid by the mortgagor, but

in no case less than Fifty Pesos (P50.00), as well as payment of the premium on the replevin bond and costs of suit in case of court action, which amounts said mortgagor agree to pay and for such payment a first lien is hereby imposed in favor of the mortgagee upon the property mortgaged.'

"8. That the following stipulation is also found in paragraph 10 of the Chattel Mortgage (Annex 'A' of the complaint):

'10. The mortgagor further agrees that in case of non-compliance with, or violation of, any of the conditions of this mortgage, and/or in case of default in the payment of the principal sum or any part thereof or interest thereon as and when the same shall become due and payable, the mortgaged property shall be delivered on demand to the mortgagee in Manila, free of all charges, and should the mortgagor fail or refuse to deliver peacefully the said property as above stated, the mortgagee and/or its representative and/or the Sheriff is hereby given full and irrevocable power and authority to take possession of said property, wherever it may be found and have the same brought in the City of Manila, the mortgagor HEREBY RATIFYING AND CONFIRMING all that said mortgagee and/or its representative and/or the Sheriff shall lawfully do or cause to be done under and by virtue of these presents, and the expenses of locating and bringing said mortgaged property to the City of Manila shall be for the account of the mortgagor and shall form part of the sums secured by this mortgage. x x x'

"9. That plaintiff waives the attorney's fees herein stipulated, but not the reasonable amount that may be adjudged by this Honorable Court, the premium of the replevin bond, sheriff's expenses, costs of suit and the mechanic's lien mentioned in paragraph 4 herein.

"10. That plaintiff admits that it is not entitled to deficiency judgment on the principal sum of P23,763.09 once it has foreclosed on the mortgage, but only to a reasonable amount of attorney's fees and those amounts mentioned in paragraph 4 herein, less the amount of P1,870.99 paid by the insurance company."

Acting on the stipulation, the court a quo rendered a decision part of which reads as follows:

"The only issue is whether the plaintiff is entitled to recover the expenses mentioned in paragraph 4 and attorney's fees. It undoubtedly has a right to repayment for the premium on the replevin bond it filed, the sheriff's fees, costs of this suit, and a reasonable sum as attorney's fees. These are expenses rendered necessary by the defendant's refusal to surrender voluntarily possession of the vehicle, in violation of his agreement with the plaintiff. But the mechanic's lien which the plaintiff satisfied is not recoverable in this action. Nothing is said about it in the complaint and it is not one of the reliefs sought therein.

"It must be understood, however, that all sums adjudged in the plaintiff's favor may be enforced only against the proceeds of the vehicle mortgaged in accordance with the settled rule that in all proceedings for foreclosure of mortgages executed on chattels which have been sold on the installment plan, the mortgagee is limited to the property included in the mortgage. *Macondray & Co. vs. Tan*, 38. O.G. 2606; *Macondray & Co. vs. Ruiz*, 38, O.G. 2168; and *Bachrach Motor Co. vs. Milan*, 61 Phil. 409.

"WHEREFORE, judgment is hereby rendered declaring that the plaintiff is entitled to the possession of the vehicle described in the complaint and ordering the defendant Mariano Velasco to pay the plaintiff P1,403.47 as well as the additional sum of P500.00 as attorney's fees to be satisfied out of the proceeds of the sale vehicle."

The plaintiff filed a motion requesting that the Court "reconsider its decision dated June 28, 1965, by requiring the defendant to pay plaintiff directly the sums of P1,403.47 and P500.00 instead of ordering the satisfaction of the same from the proceeds of the auction sale." When the motion was denied, the plaintiff appealed as aforesaid assigning only one error, namely: "The lower court erred in ordering that the sums adjudged in favor of the plaintiff are to be satisfied only from the proceeds of the auction sale of the mortgaged vehicle subject matter of

the litigation."

In stipulating that the sums adjudged - P971.41, premium on replevin bond; P300.00, sheriff's expenses; P132.00, costs of the suit (total P1,403.47); and P500.00, attorney's fees - the lower court relied on the provisions of Art. 1484 of the Civil Code which insofar as relevant reads as follows:

"Art. 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies.

xxx xxx xxx

(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void."

The third paragraph of Art. 1484 is inapplicable to the case at bar. First, as the plaintiff has correctly pointed out, the action instituted in the court a quo was not for foreclosure of the chattel mortgage but for replevin; and second, the amounts adjudged in favor of the plaintiff were not part of the "unpaid balance of the purchase price" or in the concept of a deficiency judgment but were for expenses of the suit.

WHEREFORE, the judgment appealed from is modified by ordering the defendant-appellee Mariano D. Velasco to pay the amounts adjudged in favor of the plaintiff-appellant instead of having the same satisfied out of the proceeds of the auction sale on the mortgaged motor vehicle. Costs against the defendant-appellee.

SO ORDERED.

Concepcion, Jr., (Chairman), and De Castro, JJ., concur.

Barredo, J., I concur. I just want to make it clear that I consider an action for recovery of possession with replevin as a provisional remedy preparatory to foreclosure (extrajudicial) is not an action for collection much less for foreclosure. This point might be material in other cases.

Aquino, J., see concurring opinion.

CONCURRING OPINION AQUINO, J.:

I concur. The action filed by the mortgagee was a collection suit with replevin as a provisional remedy. The action was not for judicial foreclosure of the mortgage. Re-possession of the truck by means of replevin was a preliminary step to extrajudicial foreclosure.

The extrajudicial foreclosure would be conducted in accordance with section 14 of Act No. 1508 which indicates how the proceeds of the sale should be disposed of.

The expenses of the foreclosure proceeding would be deducted from the proceeds of the sale. Those expenses are distinct from the bond premium, etc. and attorney's fees totalling P1,903.47 adjudged in the replevin suit which should be paid directly by Mariano D. Velasco, the mortgagee.

But, of course, as stipulated in paragraphs 10 and 14 of deed of chattel mortgage, they could also be deducted from the proceeds of the extrajudicial sale in case Velasco failed to pay the same as adjudged herein.

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