

RUPERTO G. CRUZ, ET AL., PLAINTIFFS-APPELLEES, VS. FILIPINAS INVESTMENT & FINANCE CORPORATION, DEFENDANT-APPELLANT.

G.R. No. L-24772. May 27, 1968

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

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

Appeal interposed by Filipinas Investment & Finance Corporation from the decision of the Court of First Instance of Rizal (Quezon City) in Civil Case No. Q-7949.

In the action commenced by Ruperto G. Cruz and Felicidad V. Vda. de Reyes in the Court of First Instance of Rizal (Civil Case No. Q-7949), for cancellation of the real estate mortgage constituted on the land of the latter,[1] in favor of defendant Filipinas Investment & Finance Corporation (as assignee of the Far East Motor Corporation), the parties submitted the case for decision on the following stipulation of facts:

"1. Their personal circumstances and legal capacities to sue and be sued;

"2. That on July 15, 1963, plaintiff Ruperto G. Cruz purchased on installments, from the Far East Motor Corporation, one (1) unit of Isuzu Diesel Bus, described in the complaint, for P44,616.24, Philippine Currency, payable in installments of P1,487.20 per month for thirty (30) months, beginning October 22, 1963, with 12% interest per annum, until fully paid. As evidence of said indebtedness, plaintiff Cruz executed and delivered to the Far East Motor Corporation a negotiable promissory in the sum of P44,616.24. x x x;

"3. That to secure the payment of the promissory note, Annex 'A', Cruz executed in favor of the seller, Far East Motor Corporation, a chattel mortgage over the aforesaid motor vehicle. x x x;

"4. That as no down payment was made by Cruz, the seller, Far East Motor Corporation, on the very same date, July 15, 1963, required and Cruz agreed to give, additional security for his obligation besides the chattel mortgage, Annex 'B'; that said additional security was given by plaintiff Felicidad Vda. de Reyes in the form of SECOND MORTGAGE on a parcel of land owned by her, together with the building and improvements thereon, in San Miguel, Bulacan. x x x;

"5. That said land has an area of 68,902 square meters, more or less, and covered by Transfer Certificate of Title No. T-36480 of the Registry of Deeds of Bulacan in the name of plaintiff Mrs. Reyes; and that it was at the time mortgaged to the Development Bank of the Philippines to secure a loan of P2,600.00 obtained by Mrs. Reyes from that bank;

"6. That also on July 15, 1963, the Far East Motor Corporation for value received indorsed the promissory note and assigned all its rights and interest in the Deeds of Chattel Mortgage and in the Deed of Real Estate Mortgage (Annexes 'A', 'B' and 'B-1') to the defendant, Filipinas Investment & Finance Corporation, with due notice of such assignment to the plaintiffs. x x x;

"7. That plaintiff Cruz defaulted in the payment of the promissory note (Annex 'A'); that the only sum ever paid to the defendant was Five Hundred Pesos (P500.00) on October 2, 1963, which was applied as partial

payment of interests on his principal obligation; that, notwithstanding defendant's demands, Cruz made no payment on any of the installments stipulated in the promissory note;

"8. That by reason of Cruz's default, defendant took steps to foreclose the chattel mortgage on the bus; that said vehicle had been damaged in an accident while in the possession of plaintiff Cruz;

"9. That at the foreclosure sale held on January 31, 1964 by the Sheriff of Manila, the defendant was the highest bidder, defendant's bid being for Fifteen Thousand Pesos (P15,000.00). x x x;

"10. That the proceeds of the sale of the bus were not sufficient to cover the expenses of sale, the principal obligation, interests, and attorney's fees, ie., they were not sufficient to discharge fully the indebtedness of plaintiff Cruz to the defendant;

"11. That on February 12, 1964, preparatory to foreclosing its real estate mortgage on Mrs. Reyes' land, defendant paid the mortgage indebtedness of Mrs. Reyes to the Development Bank of the Philippines, in the sum of P2,148.07, the unpaid balance of said obligation. x x x;

"12. That pursuant to a provision in the real estate mortgage contract, authorizing the mortgagee to foreclose the mortgage judicially or extra-judicially, defendant on February 29, 1964 requested the Provincial Sheriff of Bulacan to take possession of, and sell, the land subject of the Real Estate Mortgage, Annex 'B-1, to satisfy the sum of P43,318.92, the total outstanding obligation of the plaintiffs to the defendant, as itemized in the Statement of Account, which is made a part hereof as Annex 'F'. x x x;

"13. That notices of sale were duly posted and served to the Mortgagor, Mrs. Reyes, pursuant to and in compliance with the requirements of Act 3135. x x x;

"14. That on March 20, 1964, plaintiff Reyes through counsel, wrote a letter to the defendant asking for the cancellation of the real estate mortgage on her land, but defendant did not comply with such demand as it was of the belief that plaintiff's request was without any legal basis;

"15. That at the request of the plaintiffs, the provincial Sheriff of Bulacan held in abeyance the sale of the mortgaged real estate pending the result of this action."

Passing upon the issues which, by agreement of the parties, were limited to -- (1) "Whether defendant, which has already extrajudicially foreclosed the chattel mortgage executed by the buyer, plaintiff Cruz, on the bus sold to him on installments, may also extrajudicially foreclose the real estate mortgage constituted by plaintiff Mrs. Reyes on her own land, as additional security, for the payment of the balance of Cruz' obligation, still remaining unpaid"; and whether or not the contending parties are entitled to attorney's fees -- the court below, in its decision of April 21, 1965, sustained the plaintiffs' stand and declared that the extrajudicial foreclosure of the chattel mortgage on the bus barred further action against the additional security put up by plaintiff Reyes. Consequently, the real estate mortgage constituted on the land of said plaintiff was ordered cancelled and defendant was directed to pay the plaintiffs attorney's fees in the sum of P200.00. Defendant filed the present appeal raising the same questions presented in the lower court.

There is no controversy that, involving as it does a sale of personal property on installments, the pertinent legal provision in this case is Article 1484 of the Civil Code of the Philippines,[2] which reads:

"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:

"(1) Exact fulfillment of the obligation, should the vendee fail to pay;

"(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

"(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 aforequoted provision is clear and simple: should the vendee or purchaser of a personal property default in the pay-ment of two or more of the agreed installments, the vendor or seller has the option to avail of any one of these three remedies - either to exact fulfillment by the purchaser of the obligation, or to cancel the sale, or to foreclose the mortgage on the purchased personal property, if one was constituted. These remedies have been recognized as alternative, not cumulative,[3] that the exercise of one would bar the exercise of the others.[4] It may also be stated that the established rule is to the effect that the foreclosure and actual sale of a mortgaged chattel bars further recovery by the vendor of any balance on the purchaser's outstanding obligation not so satisfied by the sale.[5] And the reason for this doctrine was aptly stated in the case of *Bachrach Motor Co. vs. Milian*, supra, thus:

"Undoubtedly the principal object of the above amendment[6] was to remedy the abuses committed in connection with the foreclosure of chattel mortgages. This amendment prevents mortgagees from seizing the mortgaged property, buying it at foreclosure sale for a low price and then bringing suit against the mortgagor for a deficiency judgment. The almost invariable result of this procedure was that the mortgagor found himself minus the property and still owing practically the full amount of his original indebtedness. Under this amendment the vendor of personal property, the purchase price of which is payable in installments, has the right to cancel the sale or foreclose the mortgage if one has been given on the property. Whichever right the vendor elects he need not return to the purchaser the amount of the installments already paid, 'if there be an agreement to that effect'. Furthermore, if the vendor avails himself of the right to foreclose the mortgage this amendment prohibits him from bringing an action against the purchaser for the unpaid balance."

It is here agreed that plaintiff Cruz failed to pay several installments as provided in the contract; that there was extrajudicial foreclosure of the chattel mortgage on the said motor vehicle; and that defendant-appellant itself bought it at the public auction duly held thereafter, for a sum less than the purchaser's outstanding obligation. Defendant-appellant, however, sought to collect the supposed deficiency by going against the real estate mortgage which was admittedly constituted on the land of plaintiff Reyes as additional security to guarantee the performance of Cruz' obligation, claiming that what is being withheld from the vendor, by the proviso of Article 1484 of the Civil Code, is only the right to recover "against the purchaser", and not a recourse to the additional security put up, not by the purchaser himself, but by a third person.

There is no merit in this contention. To sustain appellant's argument is to overlook the fact that if the guarantor should be compelled to pay the balance of the purchase price, the guarantor will in turn be entitled to recover what she has paid from the debtor vendee (Art. 2066, Civil Code); so that ultimately, it will be the vendee who will be made to bear the payment of the balance of the price, despite the earlier foreclosure of the chattel mortgage given by him. Thus, the protection given by Article 1484 would be indirectly subverted, and public policy overturned.

Neither is there validity to appellant's allegation that, since the law speaks of "action", the restriction should be confined only to the bringing of judicial suits or proceedings in court.

The word "action" is without a definite or exclusive meaning. It has been invariably defined as -

"x x x the legal demand of one's right, or rights; the lawful demand of one's rights in the form given by law; a demand of a right in a court of justice; the lawful demand of one's right in a court of justice; the legal and formal demand of one's rights from another person or party, made and insisted on in a court of justice; a claim made before a tribunal; an assertion in a court of justice of a right given by law; a demand or legal proceeding in a court of justice to secure one's rights; the prosecution of some demand in a court of justice; the means by

which men litigate with each other; the means that the law has provided to put the cause of action into effect; x x x." (Gutierrez Hermanos vs. De la Riva, 46 Phil. 827, 834-835).

Considering the purpose for which the prohibition contained in Article 1484 was intended, the word "action" used therein may be construed as referring to any judicial or extrajudicial proceeding by virtue of which the vendor may lawfully be enabled to exact recovery of the supposed unsatisfied balance of the purchase price from the purchaser or his privy. Certainly, an extrajudicial foreclosure of a real estate mortgage is one such proceeding.

The provision of law and jurisprudence on the matter being explicit so that this litigation could have been avoided, the award by the lower court of attorney's fees to the plaintiffs in the sum of P200.00 is reasonable and in order.

However, we find merit in appellant's complaint against the trial court's failure to order the reimbursement by appellee Vda. de Reyes of the amount which the former paid to the Development Bank of the Philippines, for the release of the first mortgage on the land of said appellee. To the extent that she was benefited by such payment, plaintiff-appellee Vda. de Reyes should have been required to reimburse the appellant.

WHEREFORE, the decision appealed from is modified, by ordering plaintiff-appellee Felicidad Vda. de Reyes to reimburse to defendant-appellant Filipinas Investment & Finance Corporation the sum of P2,148.07, with legal interest thereon from the finality of this decision until it is fully paid. In all other respects, the judgment of the court below is affirmed, with costs against the defendant-appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] Situated in San Miguel, Bulacan, and covered by Transfer Certificate of Title No. T-36480 of the Registry of Deeds of Bulacan.

[2] Art. 1454-A, Civil Code of 1889.

[3] Radiowealth, Inc. vs. Lavin et al., L-18563, April 27, 1963.

[4] Pacific Commercial Co. vs. De la Rama, 72 Phil. 380, 384.

[5] Manila Motor Co., Inc. vs. Fernandez, 52 O. G. No. 16, p. 6883, 99 Phil. 782, 786; Bachrach Motor Co. vs. Millan, 61 Phil. 409; Manila Trading & Supply Co. vs. Reyes, 62 Phil. 461, 471.

[6] Act 4122 amended Art. 1454 of the Civil Code of 1889, which amendment was incorporated in Art. 1484 of the new Civil Code.

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