

UNIVERSAL MOTORS CORPORATION, PLAINTIFF-APPELLEE, VS. DY HIAN TAT, ET AL., DEFENDANTS, DY HIAN TAT, DEFENDANT-APPELLANT.

G.R. No. L-23788. May 16, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the decision of the Court of First Instance of Manila in an action of replevin, Civil Case No. 55211 of said court, the dispositive part of which reads thus:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered adjudging that the plaintiff has the right of possession of the Mercedes-Benz Diesel Truck in question and confirming its title thereto, and ordering the defendant, Dy Hian Tat, to pay to the plaintiff the sum of P9,305.30 as and for attorney's fees and costs of collection.

"With costs against the defendant.

"SO ORDERED."

In brief, the cause of action alleged in appellee's complaint is to the effect that appellant-defendant had bought a Mercedes-Benz Diesel truck from it on installments and defaulted in the payment thereof, in consequence of which, it was entitled, by virtue of the mortgage contract in its favor, to the possession of the said truck or, in case said truck could not be recovered, to the payment of the amount of P37,221.22, plus attorney's fees in the amount of P9,305.30 and the costs of the suit.

As further prayed for in the complaint, the court a quo issued a writ of replevin and eventually possession of the truck was delivered to appellee by virtue of said writ.

In due time, defendant filed an answer the statement here of the details of which is not indispensable in the determination of this case. Suffice it to say that subsequent to the filing of said answer, the parties submitted the case for decision, and the court a quo decided the same without presentation and reception of any evidence and solely on the basis of the following stipulation of facts:

"COME NOW the parties in the above entitled case, assisted by their respective counsel, and to this Honorable Court respectfully submit the following stipulation of facts:

"1. Defendant Dy Hian Tat admits the material allegations of pars. 5,[1] and 9[2] of the Complaint and the fact that plaintiff is entitled to the possession of the chattel described in par. 2 of the Complaint;

"2. That the following stipulation appears in the chattel Mortgage executed by the defendant in favor of the plaintiff and attached to the Complaint as Annex 'A' of said Complaint:

'14. That in case of non-compliance or violation or default by the mortgagor(s), and foreclosure or any other legal remedy is undertaken by the mortgagee to compel payment of his (their) obligation, the mortgagee shall be entitled to a reasonable compensation in the concept of attorney's fees and costs of collection in the sum equal to twenty-five per cent (25%) of the total amount of the indebtedness then outstanding and unpaid by the mortgagor(s), but in no case less than Fifty Pesos (P50.00) as well as payment of the replevin premium bonds and costs of suit in case of court action, which amounts said mortgagor(s) agree(s) to pay and for such payment a first lien is hereby imposed in favor of the mortgagee upon the property mortgaged.'

"3. Plaintiff admits that the chattel subject of the mortgage was sold by plaintiff to defendant on installment basis;

"4. That the parties submit this case on the question of law of whether or not the plaintiff is entitled to the 25% attorney's fees and costs of collection as above stipulated.

"WHEREFORE, it is respectfully prayed of this Honorable Court that the parties be given twenty (20) days from the submission hereof within which to file their respective memorandum."

Without filing any motion for reconsideration, appellant has come to this Court with a lone assignment of error as follows:

"THE TRIAL COURT ERRED IN ADJUDGING ATTORNEY'S FEES IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT, IT BEING CONTRARY TO THE PROVISIONS OF ARTICLE 1484 OF THE NEW CIVIL CODE OF THE PHILIPPINES AND THE JURISPRUDENCE DECIDED UNDER IT."

Succinctly stated, the whole pose of appellant's case is that under the above-related circumstances of this case the lower court erred in further sentencing him to pay the P9,305.30 of attorney's fees, after the said court had already confirmed the possession and title of the truck in favor of appellee, considering the provisions of Article 1484 of the Civil Code, which provides:

"ART. 1484. Inacontract 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."

In support of his position, appellant cites, in his brief, the following authorities:

"The settled jurisprudence under the aforequoted law is—

'The three remedies under this article, available to the vendor who has sold personal property on the installment plan, are alternative, not cumulative. In other words, if the vendor has elected to avail himself of any of the remedies, he is deemed to have renounced the others.' (Tolentino, Civil Code of the Philippines, Vol. V, 1959 ed. p. 27 citing the case of Pacific Commercial vs. de la Rama, O. G. August 9, 1941, p. 1224)

'In case the vendor elects to foreclose the mortgage, if one has been given on the property, he is not obliged to return to the purchaser the amount of the installment already paid should there be an agreement to that effect, and it is not unconscionable. In all proceedings for the foreclosure of chattel mortgages, executed on the chattels, which have been sold on the installment plan, the mortgagee is limited to the property only included in the mortgage.' (Tolentino, supra citing the cases of Macondray & Co. vs. Tan, 38 O.G. 2606; Macondray & Co. vs. Ruiz, 38 O.G. 2168; Bachrach Motors Co. vs. Millan, 61 Phil. 409; Macondray vs. Benito, et al., 62 Phil. 137; Pacific Commercial vs. de la Rama, O.G. August 9, 1941, p. 1224, Italics supplied.)

'Undoubtedly the principal object of Article 1454-A 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 for a low price and then bringing suit against the mortgagor for the 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 the original indebtedness. Under this amendment the vendor of personal property, the purchase price of which is payable on 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 is 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.

'In other words, under this amendment, in all proceedings for the foreclosure of the mortgage executed on the chattels which have been sold on installment plan, the mortgagee is limited to the property included in the mortgage.' (Bachrach Motors Co. vs. Millan, 61 Phil. 409 [Italics supplied])

and pursues as his main argument that:

"For a proper resolution of the case, the relevant query is: What remedy is elected by the plaintiff in the instant case?

"Defendant respectfully submits that the present case is an election of the third remedy provided in Article 1484 of the new Civil Code of the Philippines, i.e., the judicial foreclosure of the subject chattel mortgage.

'Speaking of foreclosure of a chattel mortgage, former Justice Moran says: "Of course a chattel mortgage may be foreclosed judicially following substantially the same procedure provided in this Rule (Rule 70, Rules of Court) When the mortgagor refuses to surrender possession of the mortgaged chattel an action of judicial foreclosure necessarily arises, or one of replevin to secure possession as a preliminary to the sale contemplated in Section 14 of Act No. 1508." (Moran's Comment, Vol. II, 1947 ed. pp. 250-251) And in a similar case, this Court said, "Where . . . the debtor refuses to yield 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 above quoted." (Bachrach Motors vs. Summer, 42 Phil. 6) Leno vs. Pestolante, et al.(G.R. L-1 1755, April 23, 1958; 103 Phil. 414.'

"This may be clearly gleaned from the allegations of the complaint as well as the prayer and that of the Stipulation of Facts submitted with the trial court. (Record on Appeal, pp. 1-5 and 28-31)

"Thus, when the trial court besides confirming possession and title of the chattel in favor of the plaintiff awarded attorney's fees and costs of collection in an amount equal to 25% of the claims, it in effect rendered judgment against defendant beyond and over that of the chattel of the mortgage in palpable violation of the provisions of Article 1484 of the new Civil Code of the Philippines and the authorities already decided under it." (pp. 11-12, Appellant's Brief.)

We do not agree with the appellant that Article 1484 applies to the case at bar. As aptly held by His Honor, this case is for delivery of personal property under the provisions of Rule 60 of the Rules of Court. Nowhere in the stipulation of facts or even in the pleadings does it appear that appellee has foreclosed its mortgage. Merely because a copy of the mortgage has been attached to the complaint does not make this action one of foreclosure of a chattel mortgage. (Manila Motor Co. vs. Fernandez, 99 Phil. 782.) True, appellee succeeded in recovering the truck in question, precisely by means of the present action of replevin, but surely, this case is far from being the action of foreclosure of chattel mortgage governed by Section 8 of Rule 68.

We are not unmindful of the laudable purposes of Act No. 4122 which became Article 1454-A of the former Civil Code. The same have been well elucidated in many previous cases by this Court. And it is evident to Us that Article 1484 of the new Civil Code is just an amendment of said Article 1454-A, more popularly known as the Recto Law. It would not only be erroneous but highly unjust for Us, however, to apply such provision to the case at bar, which in no way comes within its contemplation. The mere fact that appellee has secured possession of the truck in question does not necessarily mean that it will foreclose its mortgage. Indeed, there is no showing at all that appellee is causing the sale thereof at public auction or in even preparing to do so. It is quite possible that appellee wanted merely to be sure that the truck is not lost or rendered valueless, preparatory to having it levied upon under a writ of attachment, as sanctioned by this Court in the case cited by appellant of Southern Motors,

Inc. vs. Magbanua, 100 Phil. 155:

"By praying that the defendant be ordered to pay it the sum of P4,690.00 together with the stipulated interest at 12 per cent per annum from 17 March until fully paid, plus ten per cent of the total amount due as attorney's fees and cost of collection, the plaintiff elected to exact the fulfillment of the obligation and not foreclose the mortgage of the truck. Otherwise, it would not have gone to court to collect the amount as prayed for in the complaint. Had it elected to foreclose the mortgage on the truck, all that the plaintiff had to do was to cause the truck to be sold at public auction pursuant to Section 14 of the Chattel Mortgage Law. The fact that aside from the mortgaged truck another Chevrolet truck and two parcels of land belonging to the defendant were attached shows that the plaintiff did not intend to foreclose the mortgage.

"As the plaintiff has chosen to exact the fulfillment of the defendant's obligation, the former may enforce execution of the judgment rendered in its favor on the personal and real properties of the latter not exempt from execution sufficient to satisfy the judgment. That part of the judgment depriving the plaintiff of its right to enforce judgment against the properties of the defendant except the mortgaged truck and discharging the writ of attachment on his other properties is erroneous."

The same doctrine was reiterated in *Tajanlangit et al. vs. Southern Motors, Inc., et al.*, 101 Phil. 606, also cited by appellant. There it was held:

"Discussion. Appellants' brief elaborately explains in the nine errors assigned, their original two theories, although their 'settlement' idea appears to be somewhat modified.

"What is being sought in this present action" say appellants "is to prohibit and forbid the appellee Sheriff of Iloilo from attaching and selling at public auction sale the real properties of appellants because that is now forbidden by our law after the chattels that have been purchased and duly mortgaged to the vendor-mortgagee had already been repossessed by the same vendor-mortgagee and later on sold at public auction sale and purchased by the same at such meager sum of P10,000.00."

"Our law" provides,

"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." (New Civil Code.)

"Appellants would invoke the last paragraph. But there has been no foreclosure of the chattel mortgage nor a foreclosure sale. Therefore the prohibition against further collection does not apply.

'At any rate it is the actual sale of the mortgaged chattel in accordance with Section 14 Act No. 1508 that would bar the creditor (who chooses to foreclose) from recovering any unpaid balance. (Pacific Com. Co. vs. De la Rama, 72 Phil. 380; Manila Motor Co. vs. Fernandez, 99 Phil. 782.)'

"It is true that there was a chattel mortgage on the goods sold. But the Southern Motors elected to sue on the note exclusively, i.e. to exact fulfillment of the obligation to pay. It had a right to select among the three remedies established in Article 1484. In choosing to sue on the note, it was not thereby limited to the proceeds of the sale, on execution of the mortgaged good. (Manila Trading & Supply Co. vs. Reyes, 62 Phil. 461; Macondray & Co. vs. Eustaquio, 64 Phil. 446; Manila Motor Co. vs. Fernandez, supra."

An earlier per curiam decision of this Court is even more controlling and practically devastates appellant's posture. In the case of Pacific Commercial Co. vs. Graciano de la Rama, 72 Phil. 380, the defendant who had bought a car from plaintiff on installments failed to pay, by reason of which, plaintiff took steps and actually started to extrajudicially foreclose the chattel mortgage thereon by having the sheriff take possession of the property and proceed to sell the same. The sheriff found the car in a repair shop, so he then and there designated the owner of the shop as his deputy-in-charge thereof; but when the plaintiff came to know that the car was in the shop because it had met an accident, it requested the sheriff to desist from continuing with the foreclosure. Instead, plaintiff brought an action to recover the price, plus interests and costs. The defendant invoked Art. 1454-A of the old Civil Code. The per curiam decision held:

". . . El demandado no discute los hechos probados. Sostiene, sin embargo, que el Juzgado erró al no declarar que la demandante había optado ya por ejecutar la hipoteca del automóvil y por cancelar la venta a plazos y que, consiguientemente, el Juzgado erró al no declarar que la demandante había perdido ya su derecho a reclamar el saldo no pagado del importe del pagare.' El demandado funda su teoría en lo que dispone el Artículo 1454-A del Código Civil, que ha sido introducido por la ley No. 4122, que se lee como sigue:

'ART. 1454-A. En un contrato de venta de cosa mueble pagadera a plazos, la falta de pago de dos o más plazos confiere al vendedor derecho a la resolución de la venta o a la ejecución de la hipoteca, caso de haberse ésta constituido sobre la cosa, sin reembolso al comprador de los plazos ya pagados, si así se hubiere pactado.

'El vendedor, sin embargo, que hubiere optado por la ejecución de la hipoteca no podrá repetir contra el comprador para el cobro de cualquier saldo que hubiese resultado contra éste, siendo nulo todo pacto en contrario.

'Igual regla regirá en los casos de arrendamientos de cosa mueble con opción de compra, cuando el arrendador hubiere optado por quitar al arrendatario el disfrute de dicha cosa mueble.'

"De este artículo se infiere que el vendedor, después que el comprador haya dejado de pagar dos o mas plazos y en el caso de que hubiera otorgado hipoteca de la cosa vendida, puede optar: (1) por resolver la venta recobrando la cosa vendida, en cuyo caso el comprador no tendrá derecho al reembolso de los plazos pagados, si así se hubiese estipulado; (2) o por ejecutar la hipoteca en las formas autorizadas por la Ley de Hipoteca de Bienes Muebles, en cuyo caso el vendedor no tendrá derecho a repetir contra el comprador por el cobro de cualquier saldo que hubiese resultado en contra de éste, siendo nulo todo pacto en contrario; y (3) o por cobrar simplemente el resto de la deuda. Los remedios que confiere el artículo son alternativos y no acumulativos, de modo que si se opta por uno de ellos se entiende que se ha renunciado a los demás.

"El demandado pretende que por haberse incautado el Sheriff del automóvil siguiendo instrucciones de la demandante y encomendando su custodia a un depositario, la demandante optó ya por ejecutar la hipoteca y, consiguientemente, perdió su derecho a cobrar el saldo deudor del importe del pagaré. Opinamos, y así declaramos, que la teoría es insostenible. Cuando la ley alude a la ejecución de la hipoteca, como remedio que produce la renuncia a los demás', quiere decir la ejecución de la hipoteca con todas sus incidencias y tramiten hasta su terminación, incluyendo, naturalmente, la venta en pública subasta de la cosa pignorada. En el presente caso el último trámite, que traspasa a un tercero el título de la cosa hipotecada, no se ha verificado ni cumplido aún porque el Sheriff levantó el depósito del automóvil y no lo vendió en subasta pública conforme lo requiere el artículo 14 de la Ley No. 1508. Por esta razón el error que el demandado atribuye a la sentencia recurrida no existe." [Underscoring by this Court.]

This doctrine was reiterated in *Manila Motor Co. vs. Fernandez*, *supra*, this wise:

"The lower court likewise committed a mistake in assuming that the suit in 1940 was one of foreclosure. The allegations with reference to said suit and the corresponding judgment of 1941 do not contain any suggestion in support of the assumption. Upon the other hand, in appellee's motion to dismiss, it was stated that the car in question was commandeered from him by the Japanese occupation forces, thereby indicating that, even during the war period, the property was in appellee's possession and had not been sold at public auction. 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.)" [Underscoring by this Court.]

We hold, therefore, that the lower court did not err in declaring, in effect, that Article 1484 of the Civil Code does not apply to this case because this is an action of replevin under Rule 6Q 3id not a foreclosure of mortgage under Rule 68.

Appellant raises for the first time in this appeal the issue that appellee did not present any evidence to prove that it actually incurred expenses by way of attorney's fees. Apart from the fact that it is too late in the day for appellant to bring up this point, it appears that what has been awarded to appellee is in the nature of liquidated damages. (Art. 2226, Civil Code) As there is no claim that they are iniquitous or unconscionable, (Art. 2227 Id.) the law does not require any proof thereof. (Civil Code of the Phil. Annotated by Paras, Vol. V., p. 754, citing *Lambert*

vs. Fox, 26 Phil. 588.)

Judgment affirmed, with costs against appellant.

Reyes, J.B.L.. (Acting C.J.), Dizon, Zaldivar, Sanchez and Capistrano, JJ., concur.

Makalintal and Fernando, JJ., in the result.

Teehankee, J., did not take part.

Concepción, C.J., and Ruiz Castro, J., are on official leave.

[1]"That plaintiff is now entitled to take possession of the aforementioned property which is in possession of either defendant." (Par. 5 of Complaint)

[2]"That, repeated demands had been made by the plaintiff, but defendant, Dy Hian Tat, refused and failed, and still refuse and fail to settle his obligation to the plaintiff." (Par. 9 of the Complaint)

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