

INDUSTRIAL FINANCE CORPORATION, PETITIONER, VS. HON. PEDRO A. RAMIREZ, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND CONSUELO ALCOBA, RESPONDENTS.

G.R. No. L-43821. May 26, 1977

Ponente: AQUINO, J.

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AQUINO, J.:

On December 4, 1970 Arnaldo Dizon sold to Consuelo Alcoba his 1966 model Chevrolet car for P13,157.89, payable in eighteen monthly installments, which were secured by a chattel mortgage on the car.

On that same date, Dizon assigned for ten thousand pesos to Industrial Finance Corporation all his rights and interests in the chattel mortgage. Consuelo Alcoba defaulted in the payment of the first four installments. Because of that default and by virtue of the acceleration clause in the promissory note forming part of the mortgage, the whole obligation became due and demandable.

As of February 27, 1972 Consuelo Alcoba owed Industrial Finance Corporation the sum of P7,678.05 computed as follows (Exh. D):

Principal obligation

P 13,157.89

Add: Interest on overdue

installments

285.47

Premium on car insurance

656.40

Total amount due

P 14, 099.76

Deduct payments:

March 1, 1971 -

P 731.06

March 29, 1971 -

730.99

July 1, 1971 -

716.39

Insurance proceeds,

1-12-72 -

4,023.51

Interests -

219.76

6,421.71

Balance still due - -

P 7,678.05

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On November 20, 1971, or less than a year after Industrial Finance Corporation had discounted Consuelo Alcoba's promissory note to Dizon, the corporation sued her in the Court of First Instance of Manila (Civil Case No. 85583). The complaint, a printed form used by the corporation in collection cases, is denominated "replevin with damages".

It is necessary to scrutinize the allegations of the complaint because of the controversy between the parties as to whether, by means of that complaint, Industrial Finance Corporation sought to foreclose the chattel mortgage as contemplated in article 1484 of the Civil Code, formerly Act No. 4122, otherwise known as the Recto Installment

Sales Law.

In its complaint Industrial Finance Corporation prayed for alternative reliefs. The main objective of its complaint was recovery of the mortgaged car by means of a writ of replevin. It submitted a redelivery bond. Undoubtedly, the mortgagee-assignee wanted to foreclose extrajudicially the chattel mortgage but, before it could do so, the sheriff had to seize the car by means of the provisional remedy of an order for the delivery of personal property.

Industrial Finance Corporation prayed that, if the car could not be recovered by means of replevin, then Consuelo Alcoba should be ordered to pay the corporation the sum of P11,083.38, plus twelve percent interest per annum, damages, and attorney's fees in the sum of P2,770.85. There was no prayer for the foreclosure of the mortgage, a relief that should be invoked if the complaint had been filed under section 8, Rule 68 of the Rules of Court.

Consuelo Alcoba in her answer merely pleaded that Industrial Finance Corporation "waived the recovery" of the car by accepting the sum of P4,228.67. She did not state what that amount represented. It was the amount paid on January 12, 1972 by the Malayan Insurance Co., Inc., as insurer of the mortgaged car, to Industrial Finance Corporation. As indicated in the computation set forth above, the corporation applied that amount to the partial payment of Consuelo Alcoba's obligation. The record does not show why the insurance company paid that amount to Industrial Finance Corporation.

Consuelo Alcoba's lawyer, after making reference to the corporation's acceptance of the sum of P4,228.67, incoherently pleaded that the corporation chose to "pursue the remaining balance of the loan extrajudicially".

The lower court issued the writ of replevin. But the sheriff was not able to seize the mortgaged car. Consequently, there was no extrajudicial foreclosure of the mortgage since, for that purpose, possession of the car by the sheriff is necessary (*Bachrach Motor Co. vs. Summers*, 42 Phil. 3).

Consuelo Alcoba did not appear at the pre-trial. She was declared in default. On the basis of the corporation's evidence, the trial court rendered judgment, ordering her to pay the corporation the sum of P7,678.05, plus twelve percent interest per annum from the filing of the complaint. No attorney's fees were awarded by the trial court maybe because the corporation paid only ten thousand pesos for a note valued at P13,157.89.

Consuelo Alcoba did not appeal. That judgment became final and executory. On September 27, 1973, or long after the judgment had become final, she paid Industrial Finance Corporation the sum of P2,000. The lower court issued writs of execution. The writs were returned unsatisfied.

A second alias writ of execution was issued. The sheriff was able to levy upon the mortgaged car which was then in the possession of the Aco Motor Service of Dagupan City. At the execution sale held on April 25, 1974 Industrial Finance Corporation bought the mortgaged car for P4,000 (Exh. 3-A, p. 72, Expediente).

However, in order to take possession of the car, the corporation had to pay P4,250 to the Aco Motor Service to satisfy its lien for the repair and storage of the car.

The corporation contended that, because of that payment, it sustained a loss of P250 in the execution sale. It asked for a third alias writ of execution in order to satisfy the balance of Consuelo Alcoba's obligation which, together with the 12% interest, it computed at P11,300.92 as of September 26, 1975.

Consuelo Alcoba opposed the motion for a third alias writ of execution. The lower court in its order of March 2, 1976 denied the motion for a third alias writ of execution. It treated the execution sale as a "virtual foreclosure of the chattel mortgage" which, although not beneficial to the mortgagee, Industrial Finance Corporation, barred it from recovering the deficiency under article 1484.

That order of denial is assailed by the corporation in the instant certiorari case. The lower court relied on *Filipinas*

Investment & Finance Corporation vs. Ridad, L-27645, November 28, 1969, 30 SCRA 564. In the Ridad case, the mortgagee of a car, the price of which was payable in installments, filed a replevin suit against the mortgagor with an alternative prayer for the recovery of the unpaid price in case the car could not be seized. The car was actually seized. The mortgage was extrajudicially foreclosed. The trial court rendered judgment against the mortgagor only for P300 as attorney's fees and P163.65 as expenses of foreclosure. There was no judgment for the balance of the mortgage debt.

The mortgagors in the Ridad case appealed to this Court. They contested the correctness of the judgment for P463.65 as attorney's fees and expenses for foreclosure.

This Court held that the mortgagors should pay the mortgagee attorney's fees and expenses of foreclosure because while the mortgagors should be protected against the rapacity of the mortgagees, the law should not be construed as depriving the mortgagee of "protection against perverse mortgagors" (Castro, J., in Ridad case).

It is obvious that the facts of the Ridad case are materially different from the facts of the instant case. Here, there was no extrajudicial foreclosure of the mortgage. Consuelo Alcoba, the mortgagee, acted perversely in not surrendering the mortgaged car to the corporation and in preventing extrajudicial foreclosure. Had she complied with the writ of replevin, then the corporation could have foreclosed the mortgage and, in that event, she would not be liable for any deficiency.

But she violated the mortgage by removing the car from her residence at 3 Gladiola Street, Roxas District, Quezon City. She did not comply with the stipulation that, upon her default, the car should be delivered, on demand, to the mortgagee in Manila.

The corporation's action was for specific performance or fulfillment of the obligation and not for judicial foreclosure. Consuelo Alcoba's payment of P2,000 on account of the money judgment against her signified that she acquiesced in the action for specific performance. She cannot now be heard to say that the judgment resulting from that action could not be enforced because the mortgagees had opted for foreclosure of the mortgage. The Civil Code 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. (1454-A-a)."

According to article 1484, it is only when there has been a foreclosure that the mortgagor is not liable for any deficiency.

In this case, there was no foreclosure. The mortgagee evidently chose the remedy of specific performance. It levied upon the car by virtue of an execution and not as an incident of a foreclosure proceeding. It is entitled to an alias writ of execution for the portion of the judgment that has not been satisfied.

The rule is that in installment sales, if the action instituted is for specific performance and the mortgaged property is subsequently attached and sold, the sale thereof does not amount to a foreclosure of the mortgage. Hence, the seller-creditor is entitled to a deficiency judgment (*Southern Motors, Inc. vs. Moscoso*), 112 Phil. 94).

WHEREFORE, the trial court's order denying the motion for a third alias writ of execution is reversed and set aside. Costs against respondent Consuelo Alcoba.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Martin, JJ., concur.
Concepcion, Jr., J., on leave.

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