

GEORGE P. TY, PLAINTIFF-APPELLEE, VS. MARIETTA CORPORAL A.K.A. MARIETTA OCASLA AND CRESENCIO PALIGUTAN, DEFENDANTS-APPELLANTS.

CV No. 78205, July 27, 2010

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Court of Appeals Before Us in a appeal[1] under Rule 41 of the 1997 Revised Rules of Civil Procedure from the Decision[2] dated January 20, 2003 of the Regional Trial Court (RTC) of Quezon City, branch 78, granting the complaint for judicial foreclosure of chattel mortgage in Civil Case No. Q-01-45309.

The Facts:[3]

This case originated from a complaint[4] for judicial foreclosure of chattel mortgage filed before the RTC on October 11, 2001 by herein Plaintiff-Appellant George P. Ty[5] (Ty) against Cresencio Paligutan[6] and Margarita P. Ocasla[7] (hereinafter, Defendants-appellants).

The compliant alleges that on June 26, July 7, and July 31, 2000, the defendants-Appellants obtained loans from Ty in the total amount of five Hundred Sixty-Two Thousand Four Hundred Twenty-Two Pesos (Php562,422.00) for which corresponding promissory notes[8] were duly executed. The loans were secured by chattel mortgages[9] over the following properties of the Defendants-Appellants; three(3) units of crane, five (5) units of ten-wheeler trucks, and two(2) units of six-wheeler trucks. All the chattel mortgages were registered at the Chattel Mortgage Registry of Quezon City.

Upon maturity of the promissory notes, the Defendants-Appellants failed to pay their loan obligation to Ty. Despite demands[10], the Defendants-Appellants continued to default in the payment of their indebtedness. Thus, the filing of the complaint for foreclosure proceedings.

On December 18, 2001, the Defendants-Appellants filed a Motion to Dismiss[11] claiming therein that Ty filed two(2) separate complaints arising from a single transaction; one for collection of sum of money (before Branch 77), and one for foreclosure of the mortgage. Ty could not, therefore, be allowed to split his cause of action and simultaneously avail of two(2) remedies to satisfy the loan of the Defendants-Appellants.

In his opposition[12], Ty explained that the promissory notes, upon which the action for sum of money are based, are different from the promissory notes in the complaint for foreclosure of the mortgage. Further, the action for sum of money was not to collect the deficiency from the foreclosure proceedings but for the purpose of exacting a different monetary obligation covered by another promissory note.

On March 1, 2002, a Resolution[13] was issued by the RTC denying the motion to dismiss on the ground that while the Defendants-Appellants argue that the case for sum of money (before Branch 77) and the case for foreclosure are based on a single transaction, they did not attach a copy of the complaint of the collection case, which was the only way for the RTC to ascertain their allegation.

On September 13, 2002, TY filed an Urgent Omnibus Motion[14] praying that the Defendants-Appellants be declared in default for failure to file a responsive pleading since receipt of the denial of their motion to dismiss;

and, that judgment be rendered on the pleadings.

Considering that they failed to file an answer to the complaint, the Defendants-Appellants were declared in default.

Ty was then directed to present his evidence ex-parte.[15]

On January 20, 2003, the RTC rendered judgment in favor of Ty, the decretal portion of which reads:

FROM THE FOREGOING MELIEU, premises considered judgment is hereby rendered in favor of the plaintiff and against the defendants. For this purpose, the defendants are ordered to pay to plaintiff, within a period of not less than ninety (90) days, nor[sic] more than one hundred twenty (120) days from the entry of judgment, the following, to wit:

- 1) Php 562,422.00 plus interest of 25% per annum beginning April 1, 2011, until the amount is fully paid, plus 20% penalty for non-payment as actual damages;
- 2) 25% of the actual damages as attorney's fees; and

In case of default of such payment, the mortgaged properties above describe shall be sold at public auction to satisfy the judgment.

SO ORDERED.[16]

Aggrieved by the foregoing, the Defendants-appellants filed the instant recourse.

The Issues:

In their appeal, the Defendants-Appellants following as errors:

I.

THE TRIAL COURT ERRED IN DENYING THE MOTION TO DISMISS DESPITE APPELLEE'S PATENT LACK OF CAUSE OF ACTION.

II.

THE TRIAL COURT ERRED IN ORDERING THE FORECLOSURE DESPITE THE FACT THAT ITS TERMS HAVE NOT BEEN VIOLATED.[17]

Before this Court, the Defendants-Appellants insist that Ty simultaneously instituted an action for collection of sum of money and for foreclosure of mortgage before two(2) branches of the RTC. Citing jurisprudence, they claim that the institution of one of the remedies effectively bars the institution of the other. Thus, Ty's filing of the remedy of collection to recover on the promissory notes bars his cause of action for foreclosure of the mortgage securing the promissory notes.

The Defendants-Appellants also point that it was Ty who delinquent accounts with them. They allege that Ty entered into a contract[18] with them where they agreed to provide manpower and equipment for the dismantling, selling crafting, and preserving of all the properties located inside the Manila Paper Mills compound in Novaliches, Quezon City, for a fee of Three Million Pesos(Php3,000,000.00). They claim that, despite having fully performed their duties under the said contract, Ty refused to pay them.

As a consequence of the non-payment of Ty and for fear of being sued by their own workers and creditors, the Defendants-Appellants were forced to obtain loans from Ty. The latter asked them to sign promissory notes with unconscionable interest rates. Likewise, Ty demanded that they secure the loans by executing chattel mortgage

over their equipment. They were guaranteed that the payment due them under the contract would be deducted as payment for the loans obtained from Ty.

This Court's Ruling:

The appeal is devoid of merit.

First. In their motion to dismiss, the Defendants-Appellants claim that Ty has no cause of action against them on the ground that he filed two(2) separate complaints arising from a single transaction. Hence, the RTC erred in denying the said motion.

The contention must fail. The Defendants-Appellants fell short of substantiating their postulation. A perusal of the records shows that they did not attach any proof in their motion to dismiss which would confirm that, indeed, Ty initiated separate suits based on a single cause of action. Simply put, no competent evidence, oral or documentary, was presented to establish a fact has the burden of proving it, because mere allegation is not evidence.[19]

The RTC correctly observed, thus:

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Defendants contend that plaintiff has filed two separate complaints arising from a singled transaction, one for collection of money before Branch 77, and the instant foreclosure of mortgage with this Court which remedies cannot be availed of at the same time.

Suffice it say that this Court does not have a judicial knowledge of the case filed with Branch 77. Unfortunately, while[the] defendants argue that the case before the said branch and the instant[case] are based on a single transaction, it[sic] did not attach a copy of the complaint of the collection case, this is important because it is the only way that this court ascertain whether defendants' allegation can be given consideration as to whether both cases are founded on the same transaction, but after a comparison of the Complaint in Branch 77 and the Complaint herein.

*** ** [20]

Second. The Defendants-Appellants contend that, based on their contact with Ty, it is the latter who owes them instead. Hence their refusal to pay the loans covered by the promissory notes is justified and could not be considered as a breach of the loan contract. Since there is no violation of the principal obligation, the mortgage as an accessory contact, cannot be foreclosed.

We do not agree. At the outset, the foregoing was never raised before the trial court. It was only raised o appeal. Settled is the rule that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice.[21] besides, the Defendants-Appellants were given the chance to raise these matters below. However, after the denial of their motion to dismiss, the Defendants-Appellants failed to file their answer to the complaint despite receipt of the resolution denying their motion.

The Defendants-Appellants obtained loans from Ty as evidenced by promissory notes. These promissory notes are the controlling repository of the obligation of the Defendants-Appellants. Under the same, the Defendants-Appellants are obliged to pay Ty the loans in accordance with the agreed schedule. In addition, the Defendants-Appellants secured the promissory notes by constituting chattel mortgages in favor Ty over several motor vehicles.

There is no doubt that Ty has the right to foreclose the chattel mortgage in the instant case. The fact that the Defendants-Appellants failed to settle their obligations under the promissory notes makes this recourse available to him. In case of non-payment of debt secured by mortgage, it is within the right of a mortgage to foreclose the

mortgage and have the encumbered property sold to satisfy the outstanding indebtedness of the mortgage.[22]

Pointing the blame now on Ty for their inability to pay their obligation smacks of a dilatory tactic to evade, or at the very least, prolong the payment of a just obligation. This case has been pending for almost nine(9) years to the detriment of Ty who is simply collecting an outstanding loan obligation.

Moreover, Long-standing is the rule that conclusions and findings of fact arrived at by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons. These factual findings are conclusive not only on the parties but on this Court as well.[23]

At bench, we find that the decision of the RTC is substantially supported by the evidence on record. We quote the findings of the RTC:

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Culled from the evidence (both testimonial and documentary) presented by the plaintiff, the defendants obligated themselves to pay the principals obligation of Php562, 422.00, with corresponding interest, to plaintiff. They also executed several chattel mortgages involving the above-described properties. Considering that these obligations remained unpaid despite demand made to the defendants, it is just right that they have to answer for these.

*** ** [24]

Outlined in *Jison v. Court of Appeals*[25] is the quantum of evidence required in order to sufficiently assert one's claim in civil, thus:

The foregoing discussion, however, must be situated within the general rules on evidence, in light of the burden of proof in civil cases, i.e., preponderance of evidence, and the shifting of the burden of evidence in such cases. Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiffs prima facie case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendants's. The concept of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.

(Emphasis supplied)

Stated otherwise, in civil cases, the burden of proof is on the plaintiff to establish his case through a preponderance of evidence. If he claims a right granted or created by law, he must prove his claim by competent evidence.

Given the existence of facts clearly militating against the Defendants-Appellants' claim, Ty had shown sufficient proof that the Defendants-Appellants are liable on the obligation.

All told, we find reversible error in the RTC decision.

Wherefore, the appeal is denied. The assailed decision stands. Costs against the Defendants-Appellants.

SO ORDERED.

Tolentino and Ayson, JJ., concur.

Appeal denied.

[1] Raffled to the ponente on April 19, 2010 pursuant to the Court's zero backlog project.

[2] Records, pp. 122-124.

[3] As culled from the records.

[4] Records, pp. 1-5.

[5] Of legal age, Filipino, with mailing address at No. 391 Quirino Highway, Sangandaan, Novaliches, Quezon City; Complaint, p. 1; Id., p. 1.

[6] Of legal age, Filipino, married, and with address at No. 107 Mindanao Ave., Quezon City; Ibid.

[7] Also known as Marieta Corporal; Of legal age, Filipino, married, and with address at 618 Congressional Rd., Quezon City; Ibid.

[8] Payable on July 25, 28, August 26, and August 31, 2000; Records, pp. 10, 15, 20, 23.

[9] Id., pp. 6-9, 11-14, 16-19, 21-22.

[10] See demand letter; Records, p. 38.

[11] Id., pp. 40-49.

[12] Id., pp. 50-52.

[13] Id., p. 55.

[14] Records, pp. 61-62.

[15] See Resolution dated November 4, 2002; Id., p. 66.

[16] See Decision, p. 124; Supra, Note 2.

[17] See Appellants' Brief, p. 1; Rollo, p. 23.

[18] Rollo, pp. 32-33.

[19] See Cortes, et al. v. Court of Appeal, et al., G.R No. 121772 January 13, 2003.

[20] Supra, Note 11. Emphasis and bracketed insertions Ours.

[21] Supra, Note 19.

[22] See State Investment House v. Court of Appeals, G.R. No. 99380, November 13, 1992.

[22] See Prudential Life, v. Lim, G.R. No. 136371, November 11, 2005.

[24] Supra, Note 2 at p. 124.

[25] G. R. No. 124853, February 24, 1998.

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