

LUIS RIDAD AND LOURDES RIDAD, PLAINTIFFS-APPELLEES, VS. FILIPINAS INVESTMENT AND FINANCE CORPORATION, JOSE D. SEBASTIAN AND JOSE SAN AGUSTIN, IN HIS CAPACITY AS SHERIFF, DEFENDA...

G.R. No. L-39806. January 27, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appeal from the decision of the Court of First Instance of Rizal, Branch I, in Civil Case No. 9140 for annulment of contract, originally filed with the Court of Appeals but was subsequently certified to this Court pursuant to Section 3 of Rule 50 of the Rules of Court, there being no issue of fact involved in this appeal.

The material facts of the case appearing on record may be stated as follows: On April 14, 1964, plaintiffs purchased from the Supreme Sales and Development Corporation two (2) brand new Ford Consul Sedans complete with accessories, for P26,887 payable in 24 monthly installments. To secure payment thereof, plaintiffs executed on the same date a promissory note covering the purchase price and a deed of chattel mortgage not only on the two vehicles purchased but also on another car (Chevrolet) and plaintiffs' franchise or certificate of public convenience granted by the defunct Public Service Commission for the operation of a taxi fleet. Then, with the conformity of the plaintiffs, the vendor assigned its rights, title and interest to the above-mentioned promissory note and chattel mortgage to defendant Filipinas Investment and Finance Corporation.

Due to the failure of the plaintiffs to pay their monthly installments as per promissory note, the defendant corporation foreclosed the chattel mortgage extrajudicially and at the public auction sale of the two Ford Consul cars, of which the plaintiffs were not notified, the defendant corporation was the highest bidder and purchaser. Another auction sale was held on November 16, 1965, involving the remaining properties subject of the deed of chattel mortgage since plaintiffs' obligation was not fully satisfied by the sale of the aforesaid vehicles, and at the public auction sale, the franchise of plaintiffs to operate five units of taxicab service was sold for P8,000 to the highest bidder, herein defendant corporation, which subsequently sold and conveyed the same to herein defendant Jose D. Sebastian, who then filed with the Public Service Commission an application for approval of said sale in his favor.

On February 21, 1966, plaintiffs filed an action for annulment of contract before the Court of First Instance of Rizal, Branch I, with Filipinas Investment and Finance Corporation, Jose D. Sebastian and Sheriff Jose San Agustin, as party-defendants. By agreement of the parties, the case was submitted for decision in the lower court on the basis of the documentary evidence adduced by the parties during the pre-trial conference. Thereafter, the lower court rendered judgment as follows:

"IN VIEW OF THE ABOVE CONSIDERATIONS, this Court declares the chattel mortgage, Exhibit 'C', to be null and void in so far as the taxicab franchise and the used Chevrolet car of plaintiffs are concerned, and the sale at public auction conducted by the City Sheriff of Manila concerning said taxicab franchise, to be of no

legal effect. The certificate of sale issued by the City Sheriff of Manila in favor of Filipinas Investment and Finance Corporation concerning plaintiffs' taxicab franchise for P8,000 is accordingly cancelled and set aside, and the assignment thereof made by Filipinas Investment in favor of defendant Jose Sebastian is declared void and of no legal effect." (Record on Appeal, p. 128).

From the foregoing judgment, defendants appealed to the Court of Appeals which, as earlier stated, certified the appeal to this Court, appellants imputing to the lower court five alleged errors, as follows:

I

"THE LOWER COURT ERRED IN DECLARING THE CHATTEL MORTGAGE, EXHIBIT 'C', NULL AND VOID.

II

"THE LOWER COURT ERRED IN HOLDING THAT THE SALE AT PUBLIC AUCTION CONDUCTED BY THE CITY SHERIFF OF MANILA CONCERNING THE TAXICAB FRANCHISE IS OF NO LEGAL EFFECT.

III

"THE LOWER COURT ERRED IN SETTING ASIDE THE CERTIFICATE OF SALE ISSUED BY THE CITY SHERIFF OF MANILA IN FAVOR OF FILIPINAS INVESTMENT AND FINANCE CORPORATION COVERING PLAINTIFFS' TAXICAB FRANCHISE.

IV

"THE LOWER COURT ERRED IN DECLARING VOID AND OF NO LEGAL EFFECT THE ASSIGNMENT OF THE TAXICAB FRANCHISE MADE BY FILIPINAS INVESTMENT AND FINANCE CORPORATION IN FAVOR OF DEFENDANT JOSE SEBASTIAN.

V

"THE LOWER COURT (sic) IN NOT DECIDING THE CASE IN FAVOR OF THE DEFENDANTS." (Appellants' Brief, pp. 9 & 10)

From the aforequoted assignment of errors, the decisive issue for consideration is the validity of the chattel mortgage in so far as the franchise and the subsequent sale thereof are concerned.

The resolution of said issue is unquestionably governed by the provisions of Article 1484 of the Civil Code which states:

"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."

Under the above-quoted article of the Civil Code, the vendor of personal property the purchase price of which is payable in installments, has the right, should the vendee default in the payment of two or more of the agreed installments, 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.[1] Whichever right the vendor elects, he cannot avail of the other, these remedies being alternative, not cumulative.[2] Furthermore, if the vendor avails himself of the right to foreclose his mortgage, the law prohibits him from further bringing an action against the vendee for the purpose of recovering whatever balance of the debt secured not satisfied by the foreclosure sale.[3] The precise purpose of the law is to prevent mortgagees from seizing the mortgaged property, buying it at foreclosure sale for a low price and then bringing suit against the mortgagor for deficiency judgment, otherwise, the mortgagor-buyer would find himself without the property and still owing practically the full amount of his original indebtedness.[4]

In the instant case, defendant corporation elected to foreclose its mortgage upon default by the plaintiffs in the payment of the agreed installments. Having chosen to foreclose the chattel mortgage, and bought the purchased vehicles at the public auction as the highest bidder, it submitted itself to the consequences of the law as specifically mentioned, by which it is deemed to have renounced any and all rights which it might otherwise have under the promissory note and the chattel mortgage as well as the payment of the unpaid balance.

Consequently, the lower court rightly declared the nullity of the chattel mortgage in question in so far as the taxicab franchise and the used Chevrolet car of plaintiffs are concerned, under the authority of the ruling in the case of *Levy Hermanos, Inc. v. Pacific Commercial Co., et al.*, 71 Phil 587, the facts of which are similar to those in the case at bar. There, we have the same situation wherein the vendees offered as security for the payment of the purchase price not only the motor vehicles which were bought on installment, but also a residential lot and a house of strong materials. This Court sustained the pronouncement made by the lower court on the nullity of the mortgage in so far as it included the house and lot of the vendees, holding that under the law, should the vendor choose to foreclose the mortgage, he has to content himself with the proceeds of the sale at the public auction of the chattels which were sold on installment and mortgaged to him, and having chosen the remedy of foreclosure, he cannot nor should he be allowed to insist on the sale of the house and lot of the vendees, for to do so would be equivalent to obtaining a writ of execution against them concerning other properties which are separate and distinct from those which were sold on installment. This would indeed be contrary to public policy and the very spirit and purpose of the law, limiting the vendor's right to foreclose the chattel mortgage only on the thing sold.

In the case of *Cruz v. Filipinas Investment & Finance Corporation*, 23 SCRA 791, this Court rule that the vendor of personal property sold on the installment basis is precluded, after foreclosing the chattel mortgage on the thing sold, from having a recourse against the additional security put up by a third party to guarantee the purchaser's performance of his obligation on the theory that to sustain the same would overlook the fact that if the guarantor should be compelled to pay the balance of the purchase price, said guarantor will in turn be entitled to recover what he has paid from the debtor-vendee, and ultimately it will be the latter 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, thereby indirectly subverting the protection given the latter. Consequently, the additional mortgage was ordered cancelled. Said ruling was reiterated in the case of *Pascual v. Universal Motors Corporation*, 61 SCRA 121. If the vendor under such circumstance is prohibited from having a recourse against the additional security for reasons therein stated, there is no ground why such vendor should not likewise be precluded from further extrajudicially foreclosing the additional security put up by the vendees themselves, as in the instant case, it being tantamount to a further action[5] that would violate Article 1484 of the Civil Code, for there is actually no difference between an additional security put up by the vendee himself and such security put up by a third party insofar as how the burden would ultimately fall on the vendee himself is concerned.

Reliance on the ruling in *Southern Motors, Inc. v. Moscoso*, 2 SCRA 168, that in sales on installments, where 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, does not fortify the stand of the appellants for that case is entirely different from the case at bar. In that case, the vendor has availed of the first remedy provided by Article 1484 of the Civil Code, i.e., to exact fulfillment of the obligation; whereas in the present case, the remedy availed of was foreclosure of the chattel mortgage.

The foregoing disposition renders superfluous a determination of the other issue raised by the parties as to the validity of the auction sale, in so far as the franchise of plaintiffs is concerned, which sale had been admittedly held without any notice to the plaintiffs.

IN VIEW HEREOF, the judgment appealed from is hereby affirmed, with costs against the appellants.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

[1] Luneta Motor Co. v. Dimagiba, 3 SCRA 884; Radiowealth, Inc. v. Lavin, 7 SCRA 804; Industrial Finance Corporation v. Tobias, 78 SCRA 28.

[2] Industrial Finance Corp. v. Tobias, Ibid; Cruz v. Filipinas Investment & Finance Corporation, 23 SCRA 791.

[3] Luneta Motor Co. v. Dimagiba, Supra; Northern Motors, Inc. v. Sapinoso, 33 SCRA 356.

[4] Bachrach Motor Co. v. Millan, 61 Phil 409; Macondray & Co. v. Benito, 62 Phil. 137; Zayas v. Luneta Motor Co., L-30583, October 23, 1982.

[5] cf. Cruz v. Filipinas Investment & Finance Corporation, Supra.

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