

EQUITABLE SAVINGS BANK, PLAINTIFF-APPELLEE, VS. CAROLINE A. REMIGIO, ELIZABETH A. REMIGIO, CHRISTINE DUCOS AND JOHN DOE, DEFENDANTS-APPELLANTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is an Appeal[1] filed under Rule 41 of the Rules of Court. The Appeal assails the Decision[2] dated June 5, 2009 of the Regional Trial Court (“lower court” for brevity) of Pasay City, Branch 112 in Civil Case No. 05-0914 for “RECOVERY OF POSSESSION WITH REPLEVIN WITH ALTERNATIVE PRAYER FOR SUM OF MONEY AND DAMAGES.”[3] The Appeal also questions the lower court’s Order[4] dated September 17, 2009, which denied defendants-appellants’ eventual Motion for Reconsideration.[5]

The salient facts are those as stated in the lower court’s assailed Decision[6] dated January 5, 2009, as follows:

“This is an action for Recovery of Possession with Replevin filed by the plaintiff (plaintiff-appellee Equitable here) against the defendants and a certain John Doe/s (defendants-appellants here) whose real name and address is at present unknown to the plaintiff but is joined as a party defendant as he/she may be the person in whose possession the motor vehicle (subject motor vehicle here) subject of this suit may be found, more particularly described as follows:

UNIT : ISUZU CROSSWIND WAGON XUV

MODEL : 2004

SERIAL No : PABTBR54F32022979

MOTOR No. : BR6393

COLOR : ALPHINE WHITE

Alleged in the Complaint and testified to by the prosecution’s witnesses are the following facts: that herein defendants have jointly obtained [a] loan and executed a Promissory Note on January 21, 2004, together with Chattel Mortgage on March 15, 2004, over the above-described motor vehicle, in the amount of P818,892.00, payable in monthly installment of P22,747.00. The defendant failed to pay several installments thereby making the remaining balance of P477,687.00 [due] and that despite receipt of a Demand Letter, defendants failed to settle the unpaid balance, and (sic) foreclosed the Chattel Mortgage, prompting the plaintiff to file a complaint for the recovery of the motor vehicle pursuant to the mortgage contract, so that the proceed[s] thereof can be applied to defendants’ unpaid balance. Consequently, the subject motor vehicle was seized from defendant, Christine Remigio-Ducos on October 20, 2005.

Moreover, plaintiff alleged that payments of the defendants were debited automatically against their deposit, however starting on January 2005, plaintiff bank could no longer debit the amortization due to insufficiency of fund of defendant’s (sic) account, until May 2005.

On the other hand, defendants raised their defense, that their loan was updated and they never remiss[ed] in the payment of their amortization considering that they have an agreed payment through automatic debit against their savings account, as shown in their passbook xxx. The alleged non-payment of amortization was attributable to the neglect of the plaintiff bank, for failure to effect the auto-debit transaction. Alleged further, that the total amount deducted was already P361,151.24, when it should only deduct P353,344.00 or an excess of P7,807.25 plus numerous penalties for late payments of P27,644.00 xxx which supposedly should not be imposed considering that it is the obligation of plaintiff bank to effect the auto-debit payment. Thus, plaintiff's claim has no basis considering that defendant's non-payment is its own neglect.”[7] (Emphasis supplied)

On October 10, 2005, the lower court issued a Writ of Replevin[8] authorizing the lower court's Sheriff to take[9] the subject vehicle from defendants-appellants Caroline A. Remigio, Elizabeth A. Remigio, Christine Ducos, and John Doe (“defendants-appellants” for brevity). By virtue of the Writ[10], the lower court's Sheriff seized the motor vehicle from defendant-appellant Caroline A. Remigio[11].

On January 5, 2009, the lower court rendered the Decision[12] appealed from, which granted plaintiff-appellee Equitable Savings Bank's (“plaintiff-appellee Equitable” for brevity) Complaint[13] for “RECOVERY OF POSSESSION WITH REPLEVIN WITH ALTERNATIVE PRAYER FOR SUM OF MONEY AND DAMAGES” against defendants-appellants by “confirming [plaintiff-appellee Equitable's] right of possession over the subject motor vehicle.”[14]

After defendants-appellants' Motion for Reconsideration[15] was denied by the lower court in its assailed Order[16] dated September 17, 2009, defendants-appellants filed the Appeal[17] at bench, praying that:

“Premises considered, it is respectfully prayed unto this Honorable Court of Appeals to grant the instant Appeal by:

1. reversing or setting aside the assailed Decision and finding the plaintiff-appellee to have no cause of action against the defendants-appellants;
2. declaring the defendants-appellants to be free from default or delay in the performance of their obligation under the promissory note and chattel mortgage agreements;
3. declaring the defendants-appellants to be entitled to the refund comprising the over-payment and charges for 'late payments';
4. declaring the defendants-appellants entitled to award of damages and attorney's fees; and,
5. condemning the plaintiff-appellee to refund the total amount deducted from the savings account of the defendants representing the monthly amortizations from January 2004 to May 2005.

Other reliefs that are deemed just and equitable under the circumstances are likewise prayed for.”[18]

Defendants-appellants raised the following assignment of errors:

“Assignment of Errors

- 1.1. The court a quo erred in declaring the defendants[-appellants] in default of their obligation beginning April, 2005 when the evidence shows that there was in fact an over-payment when the plaintiff[-appellee] made several auto-debit transactions against the defendants-appellants' savings account maintained with plaintiff[-appellee] for the payment of monthly amortizations.
- 1.2. The court a quo erred in ignoring defendants-appellants' defense that, assuming defendants-appellants had defaulted in paying the monthly amortization for the months of April, May and June, 2005, the plaintiff-appellee should have effected legal compensation by deducting from defendants[-appellants]' savings

account the corresponding amounts.”[19]

Contrary to defendants-appellants' arguments in their first assigned error, defendants-appellants defaulted in the payment of their obligation.

On this matter, defendants-appellants had argued that:

“6.1. The defendants had fully paid their monthly amortizations and were not in default. This is proved by the following:

6.1.1. It must be emphasized that the parties agreed on an auto-debit payment scheme whereby the Net Monthly Amortization (NMA) of Php 22,084.00 was payable every 21st day of the month. xxx Pursuant thereto, the plaintiff-appellee effected the following auto-debit transactions as reflected in defendants' savings passbooks, the summary of which are as follows:

Date of Deduction

Amount of Deduction

Credit in Defendants'

Saving Account After Deduction

Feb. 2, 2004

22,084.00

3,806.00

March 29, 2004

22,084.00

20,806.00

April 2004

(No deduction made)

57,362.39

May 25, 2004

44,168.00

13,193.00

June 2004

(No deduction made)

26,812.67

July 12, 2004

24,193.73

24,662.94

August 2004

(No deduction made)

46,662.94

Sept. 8, 2004

46,661.00

0.94

Oct. 20, 2004

47,351.67

18,701.00

Nov. 2004

(No deduction made)

62,699.00

Dec. 2004

(No deduction made)

62,758.16

Jan. 7, 2005

48,554.85

14,203.31

Feb. 2005

(No deduction made)

28,155.31

March 2005

(No deduction made)

41,615.24

*April 2005

(No deduction made)

67,600.24

*May 27, 2005

91,988.00

199.24

*June 2005

(No deduction made)

22,323.13

July 2005

(No deduction made)

32,352.44

**August 2005

(No deduction made)

59,416.69

September 2005

(No deduction made)

78,184.64

October 2005

(No deduction made)

70,949.64

November 2005

(No deduction made)

91,949.64

TOTAL

PhP 361,151.25

* Alleged unpaid months.

** Plaintiff filed on August 10, 2005 the Complaint.

6.1.2. Immediately, the Honorable Court will notice that since the beginning of the amortization period (February 2004) to May 2005 (or a total of 16 months), the plaintiff-appellee deducted a total of PhP 361,151.24 when it should have only deducted PhP 353,344.00 (P22,084 x 16 months), or an excess deduction of PhP 7,807.25.

6.1.3. Thus, plaintiff's allegation of non-payment is negated by the several auto-debit transactions it made as reflected in the savings passbooks of herein defendants-appellants. Plaintiff-appellee is even clearly liable for the refund of the excessive deductions it made.”[20] (Emphasis supplied)

Defeating defendants-appellants' allegations however, is that defendants-appellants failed to pay the monthly installment amount of PhP 22,084.00 several times when such amount became due each time on November 21, 2004, January 21, 2005, May 21, 2005, and June 21, 2005. Plaintiff-appellee Equitable could not cause installment payments on such months to be debited from defendants-appellants' savings account because defendants-appellants' balance was insufficient. The balance being insufficient was displayed in the Passbook[21] under the name of defendant-appellant Christine Ducos (“defendant-appellant Ducos” for brevity).[22] The insufficiency of defendants-appellants' balance was even admitted to by defendant-appellant Ducos in her testimony.[23] She had testified as follows:

“ATTY. POLISTICO TO COURT:

[Q :] The passbook will show your Honor for the month of November the balance was not sufficient to pay the amortization, what was the debit of the bank? That is why I am asking you, how much is the outstanding balance on your passbook on November (2004), will you please state?

A : P18,699.00, sir.

ATTY. POLISTICO TO WITNESS:

Q : And you are supposed to pay how much again?

A : P22,084.00, sir.

xxx

Q : You were not able to pay your November 2004 installment [o]n its due date on November 21, 2004 because you have not enough sufficient funds, is that correct?

A : Yes, sir.

xxx

Q : For January installment, how much was the remaining balance on January 11, 2005?

A : P6,157.31, sir.

Q : Do you have P6,000.00 plus or more [i]n the bank and you are supposed to pay your monthly installment, did you have enough funds for the bank debited your installment payments?

A : No, sir.

Q : You were not able to pay your January 2005 (sic) on its due date on January 21, 2005 because you have not enough balance in your bank account account (sic)?

A : Yes, sir.

xxx

Q : You will agree with me that your balance based on your passbook for the month of May was P199.00?

A : That is according to the passbook, sir.

Q : And you will agree with me, correct?

A : Yes, sir.

Q : For the month of May, did you pay your installment payment for this amount of P22,084.00?

A : No more, sir because on May 27, they got the payments for the months of January to April, sir.

xxx

Q : For the month of June 20, 2005, one day before your due date, will you please tell us how much was your outstanding balance of your passbook?

A : P18,390.00, sir.

Q : For the month of June, you were not able to pay your June 21[st] installment for the amount of P22,000.00 because your balance was not sufficient, correct?

xxx

A : On March 29, your Honor, it was debited of P22,084.00, that is why that is not the exact date that it was debited. You are asking me if I have sufficient funds on the 21[st]?

Q : Yes.

A : We don't have balance, sir.”[24] (Emphasis supplied)

Moreover, defendants-appellants failed to sufficiently show that plaintiff-appellee Equitable was obligated to collect monthly amortizations from defendants-appellants through “automatic debit.”

The insufficiency of defendants-appellants' balance in their account also rendered unmeritorious

defendants-appellants' arguments in their second assigned error in that plaintiff-appellee Equitable should have caused legal compensation to the balance of defendants-appellants to cover the monthly installments for the months of April, May, and June 2005.

Besides, legal compensation could not be applied here, considering that defendants-appellants denied their indebtedness to plaintiff-appellee Equitable by insisting that they had not defaulted in the payment of their obligations to plaintiff-appellee Equitable. The rule is settled that no legal compensation can be made when a party, such as defendants-appellants here, disputes any legal obligation he had with another, such as with plaintiff-appellee Equitable here. This rule is pursuant to the pronouncement of the Supreme Court in *Premiere Development Bank v. Flores, et al.*, G.R. No. 175339, December 16, 2008, to wit:

“A distinction must be made between a debt and a mere claim. A debt is an amount actually ascertained. It is a claim which has been formally passed upon by the courts or quasi-judicial bodies to which it can in law be submitted and has been declared to be a debt. A claim, on the other hand, is a debt in embryo. It is mere evidence of a debt and must pass thru the process prescribed by law before it develops into what is properly called a debt. Absent, however, any such categorical admission by an obligor or final adjudication, no legal compensation or off-set can take place. Unless admitted by a debtor himself, the conclusion that he is in truth indebted to another cannot be definitely and finally pronounced, no matter how convinced he may be from the examination of the pertinent records of the validity of that conclusion the indebtedness must be one that is admitted by the alleged debtor or pronounced by final judgment of a competent court.” (Emphasis supplied)

Considering that defendants-appellants defaulted on their obligation by their failure to timely pay the monthly installments, then the entire obligation of defendants-appellants became immediately due and demandable. This was pursuant to the Acceleration Clause under the Promissory Note^[25] dated January 21, 2004 that defendants-appellants signed in favor of plaintiff-appellee Equitable. The Acceleration Clause provided:

“In case of my/our failure to pay any installment or other sum which I/We are obliged to pay under this Note and/or any other obligation which I/We or any of us may now or in the future owe to the holder of this Note or to any other party whether as principal or guarantor, or violate the terms and conditions of the mortgage contract if one was executed and secure this Note, or in the event of bankruptcy, insolvency, receivership, levy on execution, garnishment or attachment, or in case of conviction for a criminal offense by final judgment by final judgement (sic) carrying with it the penalty of civil interdiction affecting all or any one of us, or in any of the cases covered by Article 1198 of the New Civil Code of the Philippines, then the remaining balance unpaid under this Note shall immediately become due and payable at the option of the holder without the necessity of notice or demand which I/We hereby waived.”^[26] (Emphasis supplied)

Such an Acceleration Clause^[27] in the Promissory Note^[28] is valid and binding between the parties. This was as had been declared by the Supreme Court in *Premiere Development Bank v. Central Surety and Insurance Company, Inc.*, G.R. No. 176246, February 13, 2009, to wit:

“*Mendoza v. Court of Appeals* forecloses any doubt that an acceleration clause is valid and produces legal effects. In fact, in *Selegna Management and Development Corporation v. United Coconut Planters Bank*, we held that:

Considering that the contract is the law between the parties, respondent is justified in invoking the acceleration clause declaring the entire obligation immediately due and payable. That clause obliged petitioners to pay the entire loan on January 29, 1999, the date fixed by respondent.” (Emphasis supplied; italics was made in the original)

Defendants-appellants could not also properly argue that there was an overpayment to plaintiff-appellee Equitable. This is because the deduction made by plaintiff-appellee Equitable from the account of defendants-appellants amounting to Three Hundred Sixty One Thousand One Hundred Fifty One Pesos and

Twenty-Four Centavos (P361,151.24) was insufficient to cover the latter's entire obligation with plaintiff-appellee Equitable amounting to Four Hundred Seventy Seven Thousand Six Hundred Eighty Seven Pesos (P477,687.00)[29].

As a result of all these, plaintiff-appellee Equitable was entitled to a Writ of Replevin in order to possess the mortgaged motor vehicle before such motor vehicle could be subjected to extrajudicial foreclosure proceedings. That this is the result had been as similarly declared by the Supreme Court in *Filinvest Credit Corporation v. Court of Appeals*, G.R. No. 115902, September 27, 1995, as follows:

“Replevin is, of course, the appropriate action to recover possession preliminary to the extrajudicial foreclosure of a chattel mortgage. Filinvest did in fact institute such an action and obtained a writ of replevin.
xxx

xxx It is not only the owner who can institute a replevin suit. A person 'entitled to the possession' of the property also can, as provided in the same paragraph cited by the trial court, which reads:

Sec. 2. Affidavit and bond. — Upon applying for such order the plaintiff must show...

(a) That the plaintiff is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof; xxx

Upon the default by the mortgagor in his obligations, Filinvest, as a mortgagee, had the right to the possession of the property mortgaged preparatory to its sale in a public auction.” (Emphasis supplied)

Given all these, no cogent reason was therefore shown to justify any deviation from the following findings of the lower court, which findings were shown to be supported by the facts and the law:

“After a careful consideration and submission of the parties. It appearing that the defendants have religiously paid their amortizations until April 2005 [November 2004][30] when they defaulted in the payment of their obligation, which was admitted and never disputed about it, this court has no recourse except to grant the appropriate relief prayed for. Defendants stand firm in their contentions, that they have fully satisfied their obligation, considering that the subject vehicle was already seized plus their payments made and penalties incurred making to the extent of over-payment.

Prescinding from the above, this court holds that the plaintiff is entitled to the possession of the subject motor vehicle. Said property, prior to its seizure by virtue of the Writ of Replevin issued in this case, had not been taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under custody legis.”[31] (Emphasis supplied)

Indeed, the factual findings of the lower court are entitled to great weight and respect on appeal, and are in fact accorded finality considering that, as was in the case at bench, they are supported by substantial evidence on the record.[32]

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

GIVEN ALL THESE, the Appeal is DENIED. The Decision of the lower court is AFFIRMED.

SO ORDERED.

Dicdican, and Paredes, JJ., concur.

- [1] Rollo, pp. 10-34.
- [2] Rollo, pp. 35-36.
- [3] Records, pp. 3-10.
- [4] Rollo, p. 45.
- [5] Rollo, pp. 37-43.
- [6] Rollo, pp. 35-36.
- [7] Rollo, pp. 35-36.
- [8] Records, p. 97.
- [9] Records, p. 97.
- [10] Records, p. 97.
- [11] Records, p. 286.
- [12] Rollo, pp. 35-36.
- [13] Records, pp. 3-10.
- [14] Rollo, p. 36.
- [15] Rollo, pp. 37-44.
- [16] Rollo, p. 45.
- [17] Rollo, pp. 10-34.
- [18] Rollo, pp. 33-34.
- [19] Rollo, pp. 13-14.
- [20] Rollo, pp. 21-23.
- [21] Records, pp. 120-127; 284.
- [22] Records, p. 284.
- [23] Records, pp. 510; 514; 532-533; 535-537.
- [24] TSN, April 22, 2008, pp. 509-537.
- [25] Records, pp. 11-12.
- [26] Also, paragraph 9 of the Additional Terms and Conditions of the Chattel Mortgage Contract.
- [27] Also, paragraph 9 of the Additional Terms and Conditions of the Chattel Mortgage Contract.
- [28] Records, pp. 11-12.
- [29] Rollo, p. 35.
- [30] As clarified in the Order dated September 17, 2009, Rollo, p. 45
- [31] Rollo, p. 36.

[32] Spouses Patricio and Myrna Bernales v. Heirs of Julian Sambaan, G.R. No. 163271, January 15, 2010.

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