

SOUTHERN MOTORS, INC., PLAINTIFF AND APPELLEE, VS. ANGEL MOSCOSO, DEFENDANT AND APPELLANT.

G.R. No. L-14475. May 30, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

The case was submitted on agreed statement of facts.

On June 6, 1957, plaintiff-appellee, Southern Motors, Inc. sold to defendant-appellant Angel Moscoso one Chevrolet truck, on installment basis, for P6,445.00. Upon making a down payment, the defendant executed a promissory note for the sum of P4,915.00, representing the unpaid balance of the purchase price (Annex A, complaint), to secure the payment of which, a chattel mortgage was constituted on the truck in favor of the plaintiff (Annex B). Of said account of P4,915.00, the defendant had paid a total of P550.00, which P110.00 was applied to the interest up to August 15, 1957, and P400.00 to the principal, thus leaving an unpaid balance of P4,475.00. The defendant failed to pay 3 installments on the balance of the purchase price.

On November 4, 1957, the plaintiff filed a complaint against the defendant, to recover the unpaid balance of the promissory note. Upon plaintiff's petition, embodied in the complaint, a writ of attachment was issued by the lower court on the properties of the defendant. Pursuant thereto, the said Chevrolet truck, and a house and lot belonging to defendant, were attached by the Sheriff of San Jose, Antique, where defendant was residing on November 25, 1957, and said truck was brought to the plaintiff's compound in Iloilo City, for safe keeping.

After attachment and before the trial of the case on the merits, acting upon the plaintiff's motion dated December 23, 1957, for the immediate sale of the mortgaged truck, the Provincial Sheriff of Iloilo on January 2, 1958, sold the said truck at public auction in which plaintiff itself was the only bidder for P1,000.00. The case had not been set for hearing then.

The trial court on March 27, 1958, condemned the defendant to pay the plaintiff the amount of P4,475.00 with interest at the rate of 12% per annum from August 16, 1957, until fully paid, plus 10% thereof as attorney's fees and costs, against which defendant interposed the present appeal, contending that the trial court erred—

- (1) In not finding that the attachment caused to be levied on the truck and its immediate sale at public auction, was tantamount to the foreclosure of the chattel mortgage on said truck; and
- (2) In rendering judgment in favor of the plaintiff-appellee.

Both parties agreed that the case is governed by Article 1484 of the new Civil Code, which 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."

While the appellee claims that in filing the complaint, demanding payment of the unpaid balance of the purchase price, it has availed of the first remedy provided in said article i.e. to exact fulfillment of the obligation (specific performance); fee appellant, on the other hand, contends that appellee had availed itself of the third remedy viz, the foreclosure of the chattel mortgage on the truck.

The appellant argues that considering the history of the law, the circumstances leading to its enactment, the evil that the law was intended to correct and the remedy: afforded (Art. 1454-A of the old Civ. Code; Act No. 4122; *Bachrach Motor Co. vs. Reyes*, 62 Phil. 461, 466-469); that the appellee did not content itself by waiting for the judgment on the complaint and then execute the judgment which might be rendered in its favor, against the properties of the appellant; that the appellee obtained a preliminary attachment on the subject of the chattel mortgage itself and caused said truck to be sold at public auction, in which he was the bidder for P1,000.00; the result of which, was similar to what would have happened, had it foreclosed the mortgage pursuant to the provisions of sec. 14 of Act No. 1508 (Chattel Mortgage Law); the said appellee had availed itself of the third remedy aforequoted. In other words, appellant submits that the matter should be looked at, not by the allegations in the complaint, but by the very effect and result of the procedural steps taken and that Appellee tried to camouflage its acts by filing a complaint purportedly to exact the fulfillment of an obligation, in an attempt to circumvent the provisions of article 1484 of the new Civil Code, Appellant concludes that under his theory, a deficiency judgment would be without legal basis.

We do not share the views of the appellant on this matter. Manifestly, the appellee had chosen the first remedy. The complaint is an ordinary civil action for recovery of the remaining unpaid balance due on the promissory note. The plaintiff had not adopted the procedure or methods outlined by sec. 14 of the Chattel Mortgage Law but those prescribed for ordinary civil actions, under the Rules of Court. Had appellee elected the foreclosure, it would not have instituted this case, in court; it would not have caused the chattel to be attached under rule 59, and had it sold at public auction, in the manner prescribed by Rule 39. That the herein appellee did not intend to foreclose the mortgaged truck, is further evinced by the fact that it had also attached the house and lot of the appellant at San Jose, Antique. In the case of *Southern Motors, Inc. vs. Magbanua*, 100 Phil., 155; 52 Off. Gaz., [17] 7252, we held:

"By praying that the defendant be ordered to pay it the sum of P4,690.00 together with the stipulated interest at 14% per annum from 17 March 1954 until fully paid, plus 10% 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 to foreclose the mortgage on 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 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 property of the latter not exempt from execution sufficient to satisfy the judgment. That part of the judgment against the properties of the defendant except the mortgaged truck and discharging the writ of attachment on his other properties is erroneous."

We perceive nothing unlawful or irregular in appellee's act of attaching the mortgaged truck itself. Since herein appellee has chosen to exact the fulfillment of the appellant's obligation, It may enforce execution of the judgment that may be favorably rendered hereon, on all personal and real properties of the latter not exempt from execution

sufficient to satisfy such judgment. It should be noted that a house and lot at San Jose, Antique were also attached. No one can successfully contest that the attachment was merely an incident to an ordinary civil action. (Sections 1 & 11, Rule 59; sec. 16 Rule 39.) The mortgage creditor may recover judgment on the mortgage debt and cause an execution on the mortgaged property and may cause an attachment to be issued and levied on such property, upon beginning his civil action (*Tizon vs. Valdez*, 48 Phil., 910-911).

In view hereof, the judgment appealed from hereby is affirmed, with costs against the defendant-appellant.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Dizon, De Leon, and Natividad, JJ., concur.

CONCURRING OPINION

REYES, J. B. L., J.:

I fully concur in the opinion, and would only add that appellant's argument ignores a substantial difference between the effect of foreclosing the chattel mortgage and attaching the mortgaged chattel. The variance lies in the ability of the debtor to retain possession of the property attached by giving a counterbond and thereby discharging the attachment. This remedy the debtor does not have in the event of foreclosure.

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