

**FILIPINAS INVESTMENT & FINANCE CORPORATION,
PLAINTIFF-APPELLANT, VS. JULIAN R. VITUG, JR. AND SUPREME
SALES & DEVELOPMENT CORPORATION,
DEFENDANTS-APPELLEES.**

G.R. No. L-25951. June 30, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from an order of dismissal by the Court of First Instance of Manila, in its Civil Case No. 60915, entitled *Filipinas Investment & Finance Corporation vs. Julian R. Vitug, Jr. and Supreme Sales & Development Corporation*, of the amended complaint of July 16, 1965 of plaintiff-appellant *Filipinas Investment & Finance Corporation* whereby it sought to recover from defendant-appellee *Supreme Sales & Development Corporation* the deficiency that resulted after it had foreclosed the chattel mortgage on and sold at public auction, the car of the other defendant, *Julian Vitug, Jr.* who had failed to pay to appellee installments due on the promissory note representing the purchase price of said car which he had bought from the same, appellant being the assignee of appellee of its rights in the said promissory note.

The material allegations in appellant's amended complaint are:

The defendant, *Julian R. Vitug, Jr.*, executed and delivered to appellee a promissory note in the amount of P14,605.00 payable in monthly installments according to a schedule of payments; the payment of the aforesaid amount which was the purchase price of a motor vehicle, a 4-door Consul sedan, bought by said defendant from appellee, was secured by a chattel mortgage over such automobile; on the same day, appellee negotiated the above-mentioned promissory note in favor of appellant *Filipinas Investment & Finance Corporation*, assigning thereto all its rights, title and interests to the same, the assignment including the right of recourse against appellee; defendant *Vitug* defaulted in the payment of part of the installment which fell due on January 6, 1965, as well as the subsequent three consecutive monthly installments which he was supposed to have paid on February 6, March 6 and April 6, 1965; there being a provision in the aforesaid promissory note and chattel mortgage that failure to pay the installments due would result in the entire obligation becoming due and demandable, appellant demanded from appellee the payment of such outstanding balance; in turn, appellee "authorized (appellant) to take such action as may be necessary to enable (it) to take possession of the x x x motor vehicle." Pursuant to such authority, appellant secured possession of the mortgaged vehicle by means of a writ of replevin duly obtained from the court, preparatory to the foreclosure of the mortgage, but said writ became unnecessary because upon learning of the same, defendant *Vitug* voluntarily surrendered the car to appellant; thereafter, the said car was sold at public auction, but the proceeds still left a deficiency of P8,349.35, plus interest of 12% per annum from April 21, 1965; and appellant, the above foreclosure and sale notwithstanding, would hold appellee liable for the payment of such outstanding balance, plus attorney's fees and costs.

On August 4, 1965, appellee filed an urgent motion to dismiss on the ground, inter alia that under Article 1484 of

the Civil Code of the Philippines, which particular provision is otherwise known as the Recto Law, appellant has no cause of action against appellee. Said provision is as follows:

"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."

In its order of August 30, 1965, subject of this appeal, the lower court found the aforesaid ground to be meritorious and, as already stated, the amended complaint was dismissed as to appellee Supreme Sales & Development Corporation. According to the order of dismissal:

"It is undisputed in the instant case that the amount of P14,605.00 mentioned as consideration in both the promissory note and the chattel mortgage in the instant case represents the selling price of one(1) automobile New Ford Consul 315 4-door Sedan, payable in the installments mentioned in said documents. Under pars. 5 and 9 of the amended complaint, the writ of replevin was obtained in the instant case for purposes of foreclosure of mortgage. In applying for a writ of replevin, the plaintiff thereby made his choice, namely, to foreclose the mortgage covering said automobile; and having accepted said automobile from defendant Julian R. Vitug, Jr., what remains is for the plaintiff to sell said automobile through either a judicial or an extrajudicial foreclosure of said mortgage, without benefit of a deficiency judgment or deficiency collection x x should the proceeds of the foreclosure sale be less than the balance of the installment sale price of said automobile due and collectible."

On September 23, 1965, appellant filed a motion for reconsideration but this was denied on October 26, 1965, hence, this appeal.

The principal error assigned by appellant has reference to the applicability of Art. 1484 of the Civil Code, as amended, to the facts of this case. Appellant maintains that:

"II

THE TRIAL COURT ERRED IN HOLDING THAT ARTICLE 1484 OF THE CIVIL CODE OF THE PHILIPPINES IS APPLICABLE TO THE TRANSACTION BETWEEN PLAINTIFF-APPELLANT AND DEFENDANT-APPELLEE."

Under the facts alleged in the amended complaint which are deemed admitted by the motion to dismiss,[1] this assignment of error must be sustained.

The specific allegations in the amended complaint which have material bearing to the issue herein are:

"4. On November 4, 1964, defendant Supreme Sales & Development Corporation, with notice to defendant Julian R. Vitug, Jr. negotiated in favor of (endorsed and delivered to) plaintiff the above-mentioned promissory note, Annex "A", on a with-recourse basis whereby in case of the failure and/or refusal of the maker thereof, defendant Julian R. Vitug, Jr. to pay the obligation under the said promissory note, plaintiff shall have the right of recourse against the said defendant corporation.

"On the same date, said defendant corporation, with notice to defendant Julian R. Vitug, Jr., assigned to plaintiff its rights, title, and interests to the aforesaid promissory note and chattel mortgage, Annexes "A" and "B" hereof, as shown by the Deed of Assignment executed by defendant Supreme Sales & Development Corporation in favor of plaintiffs, a copy of which is hereto attached as Annex "C" and made an integral part hereof, which assignment is also subject to the right of recourse above-mentioned;

"13. The defendant corporation is liable to plaintiff for the entire balance of the obligation covered by the promissory note, Annex "A", and secured by the chattel mortgage, Annex "B", as a general endorser of the promissory note, Annex "A", and assignor of the chattel mortgage on a with-recourse basis. But should plaintiff be able to sell the above-described motor vehicle, then the said defendant corporation is liable to the plaintiff for the payment of the balance of the obligation after applying thereto the proceeds of the sale of the said vehicle." (Record on Appeal, pp. 12 and 15.)

Thus it can be seen that the assignment made by appellee to appellant of the promissory note and mortgage of defendant Vitug was on a with-recourse basis. In other words, there was a definite and clear agreement between appellant and appellee that should appellant fail to secure full recovery from defendant Vitug, the right was reserved to appellant to seek recourse for the deficiency against appellee. Accordingly, the question for resolution by the Court now is whether or not this provision regarding recourse contained in the agreement between appellant and appellee violates the Recto Law which declares null and void any agreement in contravention thereof. We do not believe that it does.

As pointed out in appellant's brief, the transaction between appellant and appellee was purely an ordinary discounting transaction whereby the promissory note executed by defendant Vitug was negotiated by appellee in favor of appellant for a valuable consideration at a certain discount, accompanied by an assignment also of the chattel mortgage executed by said defendant to secure the payment of his promissory note and with the express stipulation that should there be any deficiency, recourse could be had against appellee. Stated otherwise, the remedy presently being sought is not against the buyer of the car or the defendant Vitug but against the seller, independent of whether or not such seller may have a right of recovery against the buyer, which, in this case, he does not have under the Recto Law. It is clear to Us, on the other hand, that under said law, what Congress seeks to protect are only the buyers on installment who more often than not have been victimized by sellers who, before the enactment of this law, succeeded in unjustly enriching themselves at the expense of the buyers because aside from recovering the goods sold, upon default of the buyer in the payment of two installments, still retained for themselves all amounts already paid, in addition, furthermore, to other damages, such as attorney's fees, and costs. Surely, Congress could not have intended to impair and much less do away with the right of the seller to make commercial use of his credit against the buyer, provided said buyer is not burdened beyond what this law allows.

We are not unmindful that in the case of Cruz, et al. vs. the same Filipinas Investment & Finance Corporation, L-24772, May 27, 1968, 23 SCRA 791, this Court broadened the scope of the Recto Law beyond its letter and held that within its spirit, a seller of goods on installment does not have any right of action against a third party who, in addition to the buyer's mortgage of the goods sold, furnishes additional security for the payment of said installments or the purchase price of said goods. In that case, it was held:

"It is here agreed that plaintiff Cruz failed to pay several installments as provided in the contract; that there was extrajudicial foreclosure of the chattel mortgage on the said motor vehicle; and that defendant-appellant itself bought it at the public auction duly held thereafter, for a sum less than the purchaser's outstanding obligation. Defendant-appellant, however, sought to collect the supposed deficiency by going against the real estate mortgage which was admittedly constituted on the land of plaintiff Reyes as additional security to guarantee the performance of Cruz' obligation, claiming that what is being withheld from the vendor, by the proviso of Article 1484 of the Civil Code, is only the right to recover "against the purchaser", and not a recourse to the additional security put up, not by the purchaser himself, but by a third person.

"There is no merit in this contention. To sustain appellant's argument is to overlook the fact that if the guarantor should be compelled to pay the balance of the purchase price, the guarantor will in turn be entitled to recover what she has paid from the debtor vendee (Art. 2066, Civil Code); so that ultimately, it will be the vendee 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. Thus, the protection given by Article 1484 would be indirectly subverted, and public policy over-turned."

As can be seen, that case of Cruz was entirely different from this one at bar. In that case, herein appellant Filipinas Investment & Finance Corporation was trying to recover from the guarantor of the buyer, whereas in the present case, it is precisely stipulated in effect, that the Filipinas Investment & Finance Corporation had a right of recourse against the seller should the buyer fail to pay the assigned credit in full.

It is the contention of appellee that since what were assigned to appellant were only whatever rights it had against the buyer, it should follow that inasmuch as appellee has no right to recover from the defendant beyond the proceeds of the foreclosure sale, the appellant, as assignee, should also have no right to recover any deficiency. We do not view the matter that way. The very fact that the assignee was given the stipulated right of recourse against the assignor negates the idea that the parties contemplated to limit the recovery of the assignee to only the proceeds of the mortgage sale.

ACCORDINGLY, the order of dismissal of the lower court is reversed and this case is ordered remanded to the lower court for further proceedings, with costs against appellee Supreme Sales & Development Corporation.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Ruiz Castro, Capistrano, and Teehankee, JJ., concur.

Dizon and Fernando, JJ., did not take part.

[1] Evidence seems to have been presented by appellee and admitted by the trial court in connection with the motion to dismiss. While it is obvious that said evidence is relevant, the same cannot be taken into account, since the motion to dismiss is based on the ground that the amended complaint states no cause of action and, therefore, all material facts alleged in the complaint must be deemed admitted for purposes of said motion.

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