

MANOLO P. CERNA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND CONRAD C. LEVISTE, RESPONDENTS.

G.R. No. L-48359. March 30, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

Before us is a Petition for Review on Certiorari of the decision of the Court of Appeals in CA-G.R. No. SP-07237, dated March 31, 1978.

The facts of this case are as follows:

On or about October 16, 1972, Celerino Delgado (Delgado) and Conrad Leviste (Leviste) entered into a loan agreement which was evidenced by a promissory note worded as follows:

"FOR VALUE RECEIVED, I, CELERINO DELGADO, with postal address at 98 K-11 St., Kamias Rd., Quezon City, promise to pay to the order of CONRAD C. LEVISTE, NINETY (90) DAYS after date, at his office at 215 Buendia Ave., Makati, Rizal, the total sum of SEVENTEEN THOUSAND FIVE HUNDRED (P17,500.00) PESOS, Philippine Currency, without necessity of demand, with interest at the rate of TWELVE (12%) PERCENT per annum;"[1]

On the same date, Delgado executed a chattel mortgage[2] over a Willy's jeep owned by him. And acting as the attorney-in-fact of herein petitioner, Manolo P. Cerna (petitioner), he also mortgaged a 'Taunus' car owned by the latter.

The period lapsed without Delgado paying the loan. This prompted Leviste to file a collection suit docketed as Civil Case No. 17507[3] with the Court of First Instance of Rizal, Branch XXII against Delgado and petitioner as solidary debtors. Herein petitioner filed his first Motion to Dismiss[4] on April 4, 1973. The grounds cited in the Motion were lack of cause of action against petitioner and the death of Delgado. Anent the latter, petitioner claimed that the claim should be filed in the proceedings for the settlement of Delgado's estate as the action did not survive Delgado's death. Moreover, he also stated that since Leviste already opted to collect on the note, he could no longer foreclose the mortgage. This Motion to Dismiss was denied on August 15, 1973 by Judge Nicanor S. Sison. Thereafter, petitioner filed with the Court of Appeals a special civil action for certiorari, mandamus, and prohibition with preliminary injunction docketed as CA-G.R. No. 03088 on the ground that the respondent judge committed grave abuse of discretion in refusing to dismiss the complaint. On June 28, 1976, the Court of Appeals[5] denied the petition because herein petitioner failed to prove the death of Delgado and the consequent settlement proceedings regarding the latter's estate. Neither did petitioner adequately prove his claim that the special power of attorney in favor of Delgado was forged.

On February 18, 1977, petitioner filed his second Motion to Dismiss on the ground that the trial court, now presided by Judge Nelly L. Romero Valdellon, acquired no jurisdiction over deceased defendant, that the claim did not survive, and that there was no cause of action against him. On May 13, 1977, the said judge dismissed the motion in an order hereunder quoted, to wit:

"Considering the second motion to dismiss filed by respondent Manolo Cerna on March 4, 1977, as well as plaintiff's opposition thereto dated May 5, 1977, and finding the grounds alleged therein to be a reiteration of the same grounds raised in the first motion to dismiss dated April 4, 1973, this Court hereby reiterates its resolution found in its order dated August 15, 1973."[6]

Petitioner filed a motion to reconsider the said order but this was denied. Then, on October 17, 1977, he filed another petition for certiorari and prohibition docketed as CA-G.R. No. SP-07237 with the Court of Appeals. This petition was dismissed by the said court in a decision which stated, thus:

"WHEREFORE, the herein petition insofar as it alleges lack of cause of action on the part of the herein petitioner is concerned, is hereby dismissed and/or denied and the writ of preliminary injunction previously issued by this Court is hereby lifted and/or set aside; insofar, however, as the case against the deceased Celerino Delgado is concerned, the petition is granted, that is, the complaint in the lower court against Celerino Delgado should be dismissed. No costs."[7]

Thereafter, the instant petition for review was filed. Petitioner raised the following legal issue:

"X X X NOW, INASMUCH AS THE COMPLAINT IS ONLY FOR COLLECTION OF A SUM OF MONEY BASED ON THE PROMISSORY NOTE, SHOULD NOT THE COMPLAINT BE DISMISSED FOR LACK OF CAUSE OF ACTION AS AGAINST MANOLO P. CERNA WHO IS NOT A DEBTOR UNDER THE PROMISSORY NOTE - CONSIDERING THAT ACCORDING TO SETTLED JURISPRUDENCE THE FILING OF A COLLECTION SUIT IS DEEMED AN ABANDONMENT OF THE SECURITY OF THE CHATTEL MORTGAGE?"[8]

In holding petitioner liable, the Court of Appeals held that petitioner and Delgado were solidary debtors. Thus, it held:

"But the herein petitioner pleads that the complaint states no cause of action against the defendant Manolo P. Cerna on the following grounds: 1) that the petitioner did not sign as joint obligator in the promissory note signed by the deceased Celerino Delgado hence, even if the allegations of the complaint are hypothetically admitted there is no cause of action against the herein petitioner because having proceeded against the promissory note he is deemed to have abandoned the foreclosure of the chattel mortgage contract. This contention deserves scant consideration. The chattel mortgage contract, prima facie shows that it created the joint and solidary obligation of petitioner and Celerino Delgado against private respondent."[9] (Underscoring Ours)

We do not agree. Only Delgado signed the promissory note and accordingly, he was the only one bound by the contract of loan. Nowhere did it appear in the promissory note that petitioner was a co-debtor. The law is clear that "(c)ontracts take effect only between the parties x x x."[10]

But by some stretch of the imagination, petitioner was held solidarily liable for the debt allegedly because he was a co-mortgagor of the principal debtor, Delgado. This ignores the basic precept that "(t)here is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity."[11]

We have already stated that the contract of loan, as evidenced by the promissory note, was signed by Delgado only. Petitioner had no part in the said contract. Thus, nowhere could it be seen from the agreement that petitioner was solidarily bound with Delgado for the payment of the loan.

There is also no legal provision nor jurisprudence in our jurisdiction which makes a third person who secures the fulfillment of another's obligation by mortgaging his own property to be solidarily bound with the principal obligor. A chattel mortgage may be "an accessory contract"[12] to a contract of loan, but that fact alone does not

make a third-party mortgagor solidarily bound with the principal debtor in fulfilling the principal obligation that is, to pay the loan. The signatory to the principal contract - loan - remains to be primarily bound. It is only upon the default of the latter that the creditor may have recourse on the mortgagors by foreclosing the mortgaged properties in lieu of an action for the recovery of the amount of the loan. And the liability of the third-party mortgagors extends only to the property mortgaged. Should there be any deficiency, the creditor has recourse on the principal debtor.

In this case, however, the mortgage contract was also signed only by Delgado as mortgagor. It is true that the contract stated the following:

"That this CHATTEL MORTGAGE, made and entered into this 16th day of October, 1972 at Makati, Rizal, by and between:

CELERINO DELGADO, x x x as Attorney-in-Fact of Manolo P. Cerna x x x by virtue of a Special Power of Attorney executed by said Manolo P. Cerna in my favor under date of October 10, 1972 and acknowledged before Orlando J. Coruna x x x herein referred to as the MORTGAGOR; - and -

CONRAD C. LEVISTE x x x hereinafter referred to as the MORTGAGEE."[13]

But this alone does not make petitioner a co-mortgagor especially so since only Delgado signed the chattel mortgage as mortgagor. The Special Power of Attorney did not make petitioner a mortgagor. All it did was to authorize Delgado to mortgage certain properties belonging to petitioner. And this is in compliance with the requirement in Article 2085 of the Civil Code which states that:

"Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

x x x x x

(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose." (Underscoring Ours.)

In effect, petitioner lent his car to Delgado so that the latter may mortgage the same to secure his debt. Thus, from the contract itself, it was clear that only Delgado was the mortgagor regardless of the fact that he used properties belonging to a third person to secure his debt.

Granting, however, that petitioner was obligated under the mortgage contract to answer for Delgado's indebtedness, under the circumstances, petitioner could not be held liable because the complaint was for recovery of a sum of money, and not for the foreclosure of the security. We agree with petitioner that the filing of collection suit barred the foreclosure of the mortgage. Thus:

"A mortgagee who files a suit for collection abandons the remedy of foreclosure of the chattel mortgage constituted over the personal property as security for the debt or value of the promissory note which he seeks to recover in the said collection suit."[14]

The reason for this rule is that:

"x x x when, however, the mortgage elects to file a suit for collection, not foreclosure, thereby abandoning the chattel mortgage as basis for relief, he clearly manifests his lack of desire and interest to go after the mortgaged property as security for the promissory note x x x."[15]

Hence, Leviste, having chosen to file the collection suit, could not now run after petitioner for the satisfaction of the debt. This is even more true in this case because of the death of the principal debtor, Delgado. Leviste was pursuing a money claim against a deceased person. Section 7, Rule 86 of the Rules of Court provides:

"Sec. 7. Mortgage debt due from estate. -- A creditor holding a claim against the deceased secured by mortgage or other collateral security, may abandon the security and prosecute his claim in the manner provided in this rule, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by action in court, making the executor or administrator a party defendant, and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property pledged, in the foreclosure or other proceeding to realize upon the security, he may claim his deficiency judgment in the manner provided in the preceding section; or he may rely upon his mortgage or other security alone, and foreclose the same at any time within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; x x x."

The above-quoted provision is substantially similar to Section 708 of the Code of Civil Procedure which states:

"Sec. 708. A creditor holding a claim against the deceased, secured by mortgage or other collateral security, may abandon the security and prosecute his claim before the committee, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant; x x x."

The Supreme Court, in the case of *Osorio vs. San Agustin*,^[16] has made the following interpretation of the said provision, to wit:

"It is clear by the provisions of said quoted section that a person holding a mortgage against the estate of a deceased person may abandon such security and prosecute his claim before the committee, and share in the distribution of the general assets of the estate. It provides also that he may, at his own election, foreclose the mortgage and realize upon his security. But the law does not provide that he may have both remedies. If he elects one he must abandon the other. If he fails in one he fails utterly."

But while there is merit in the substantial allegations of this petition, We are constrained to deny the petition on procedural grounds. The facts of this case reveal that the decision under review is the decision in the second certiorari and prohibition case lodged by petitioner against the judge trying the civil case. It appeared that after the denial of the first motion to dismiss, petitioner filed CA-G.R. No. 03088 wherein petitioner alleged grave abuse of discretion on the part of Judge Sison. The first petition was denied by the Court of Appeals. The decision became final. The second motion to dismiss, based on the same grounds, was thereafter filed. It was likewise denied and another petition for certiorari and prohibition was again instituted. The decision in the latter case is now under review.

We agree with the contention of private respondent, that the action has been barred by the principle of *res judicata*.

It appears in this case that the second motion was filed to circumvent the effects of the finality of the decision of the Court of Appeals in CA-G.R. No. 03088. Petitioner intended the second motion and the subsequent proceedings as remedies for his lapsed appeal. We cannot sanction such behavior. It delayed the proceedings in this case and unduly burdened the courts. Petitioner should have allowed the trial of the case to go on where his defenses could still be presented and heard.

WHEREFORE, in view of the foregoing, the Petition is hereby DISMISSED. With costs.
SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] Annex "A" of Annex "A" of Petition; Rollo, p. 25.

[2] Annex "B" of Annex "B" of Petition; Rollo, pp. 26-27.

[3] Annex "A" of Petition; Rollo, pp. 18-24.

[4] Rollo, pp. 93-99.

[5] CA G.R. No. 03088, June 28, 1976, penned by Justice Godofredo P. Ramos, and concurred in by Justices Lourdes P. San Diego and Mama D. Busran; Annex "8", Comment; Rollo, pp. 125-130.

[6] Quoted in the Petition, p. 4; Rollo, p. 6.

[7] CA G.R. No. SP-07237, March 31, 1978, penned by Justice Ramon G. Gaviola, Jr., and concurred in by Justices B.S. dela Fuente and Hugo E. Gutierrez, Jr.; Annex "D", Petition; Rollo, p. 53.

[8] Petition, p. 2; Rollo, p. 4.

[9] Supra, note, 7 at p. 51.

[10] CIVIL CODE, Art. 1311.

[11] Ibid., Art. 1207.

[12] Banco de Oro vs. Bayuga, 93 SCRA 443 (1979).

[13] Supra, note 2 at p. 26.

[14] 2 AGBAYANI, COMMERCIAL LAWS OF THE PHILIPPINES 766 (1986 ed.); citing People vs. Mata, C.A.-00440-C.R. December 25, 1961, (1 C.A. Rep., 2nd series, pp. 958-960).

[15] Ibid, p. 765.

[16] 25 Phil. 404, 408 (1913).

[*] Penned by Justice Ramon G. Gaviola, Jr. with Justices B.S. de la Fuente and Hugo E. Gutierrez, Jr., concurring.

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