

HENRY T. SOHO, PLAINTIFF-APPELLEE, VS. ROMEO TOQUERO, DEFENDANT, FILINVEST CREDIT CORPORATION, DEFENDANT-APPELLANT.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Questioned in this Appeal[1] filed under Rule 41 of the Rules of Court is the Decision[2] dated October 24, 2008 of the Regional Trial Court of San Fernando City, La Union, Branch 28 (“lower court” for brevity) in Civil Case No. 3307 for “Damages.”[3]

Plaintiff-appellee Henry T. Soho (“plaintiff-appellee” for brevity) filed a Complaint[4] for “Damages” against defendant-appellant Filinvest Credit Corporation (“defendant-appellant FCC” for brevity) and defendant Romeo Toquero (“defendant Toquero” for brevity).

The other salient facts are those as stated in the assailed Decision[5] of the lower court:

“In his complaint, plaintiff (plaintiff appellee here) alleged that he is the absolute owner of a motor vehicle known as Fuso cargo truck bearing plate number NEE 213 (subject vehicle here) having acquired the same from defendant Romeo Toquero (defendant Toquero here) by means of a deed of sale with assumption of mortgage executed on August 31, 1981. The value of said vehicle is P150,000.00. Defendant Toquero purchased the vehicle through the credit facilities of defendant Filinvest Credit Corporation (Filinvest) (defendant-appellant FCC here) in whose favor the corresponding promissory note and other credit papers were assigned and indorsed. The aforementioned deed of sale with assumption of mortgage was duly sanctioned and approved by defendant Filinvest and the plaintiff has been regularly paying the corresponding monthly installment amortizations directly to said defendant corporation. On January 6, 1982, while said cargo truck was in Metro Manila and being unloaded of cement cargo, defendant Romeo Toquero in company and with assistance of two armed civilians as well as in connivance with defendant Filinvest, forcibly seized the cargo truck from the plaintiff's driver under the pretext that the cargo truck was being repossessed by reason to (sic) an alleged foreclosure of the covering chattel mortgage. The two armed civilians aforementioned represented themselves as sheriff and employee of defendant Filinvest. On the same day, defendant Toquero took the cargo truck to the premises of defendant Filinvest in Makati, Metro Manila, with the alleged employee of said defendant issuing a receipt but which was issued to and with the conformity of defendant Toquero who misrepresented himself as the customer and owner. As a consequence of the unjustified acts of said defendants, the plaintiff sustained damages.

Defendant Filinvest Credit Corporation, in its answer, alleged that it had no knowledge of any deed of sale with assumption of mortgage executed by defendant Toquero in favor of the plaintiff, neither had it consented with any arrangement between the plaintiff and defendant Toquero. If any such document exists, it is not binding and has no legal effect to defendant Filinvest for lack of written consent nor conformity. Defendant Filinvest did not connive with defendant Toquero on the alleged forcible seizure of the cargo truck. In fact, said cargo truck was voluntarily surrendered by defendant Toquero, the registered owner, and a receipt was accordingly issued in good faith.

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Defendant Toquero, in his answer, alleged that sometime in July 1981, the plaintiff intimated to said defendant his desire to purchase a cargo truck to be used by plaintiff in his hauling business to be financed by defendant Filinvest Credit Corporation. However, since plaintiff's credit standing was not acceptable by Filinvest, plaintiff requested defendant Toquero to appear as buyer of the vehicle with the condition that plaintiff shall pay the monthly amortization of the unit to defendant Filinvest. Defendant Toquero accommodated the request of the plaintiff and the said cargo truck was purchased and financed by defendant Filinvest under the name of defendant Toquero. On August 31, 1981, upon request of plaintiff due to his desire to transfer the cargo truck to La Union for hauling purposes, defendant Toquero signed a deed of sale with assumption of mortgage in favor of the plaintiff transferring the ownership of said vehicle to the plaintiff. Defendant Toquero signed the aforementioned document and plaintiff and defendant Toquero agreed that plaintiff will secure the approval by defendant Filinvest of the transfer aforesaid and further agreed that plaintiff will have the name of defendant Toquero removed from the records of defendant Filinvest as mortgagor/owner of the cargo truck. The plaintiff failed to make the necessary follow-ups with defendant Filinvest nor made the necessary documents to transfer ownership of said vehicle under his name and defendant Toquero still appear as the registered owner of the vehicle mortgaged to defendant Filinvest. On August 31, 1981, defendant Toquero received letters from defendant Filinvest requesting immediate payment of overdue accounts of the aforesaid cargo truck with the statement that a Court action will be filed against defendant Toquero if no payments on the overdue accounts will be made or the truck will not be surrendered by defendant Toquero. Defendant Toquero immediately, upon receipt of said letters, went to the office of defendant Filinvest to verify and he discovered that the documents of said cargo truck were still under defendant Toquero's name and that the checks issued by plaintiff in payment of [said] cargo truck to defendant Filinvest had bounced. On January 6, 1982, while said cargo truck was within the premises of defendant Toquero's trucking company, an employee of defendant Filinvest accompanied by a sheriff arrived and seized the vehicle. Defendant Toquero signed a seizure papers (sic) because the cargo truck was under his name.”[6] (Emphasis supplied)

On October 24, 2008, the lower court rendered the Decision[7] appealed from, which ordered defendant-appellant FCC and defendant Toquero to return the subject vehicle and to pay Damages, all to plaintiff-appellee. The dispositive portion of the Decision decreed:

“WHEREFORE, judgment is hereby rendered ordering the defendants, Filinvest Credit Corporation and Romeo Toquero:

1. to return to the plaintiff at his residence, Lingsat, San Fernando, La Union, the motor vehicle, Fuso cargo truck bearing plate number NEE 213, in the same condition as it was taken by them, or, in the alternative, to indemnify the plaintiff, jointly and severally, the value of said vehicle in the amount of P150,000.00;
2. to pay the plaintiff the amount of P10,000.00, as attorney's fees; and
3. to pay the costs of this suit.

SO ORDERED.”[8]

Because of this, defendant-appellant FCC filed the instant Appeal praying that:

“WHEREFORE, APPELLANT FILINVEST CREDIT CORPORATION most respectfully prays to the Honorable Court to set aside and reverse the appealed Decision of the Regional Trial Court and to render another dismissing the plaintiff's complaint and granting the prayers of the defendant appellant in its counterclaim and granting other just and equitable relief and remedies.”[9]

The Appeal raised this sole assignment of error:

“The Regional Trial Court erred in ordering defendants Filinvest Credit Corporation and Romeo Toquero to

return to the plaintiff at his residence, Lingsant, San Fernando, La Union, the motor vehicle, Fuso Cargo Truck bearing plate number NEE 213, in the same condition as itg (sic) was taken by them, or in the alternative, to indemnify the plaintiff jointly and severally, the value of said vehicle in the amount of P150,000.00, to pay the plaintiff amount of P10,000.00, as attorney's fees, and to pay the cost s (sic) of this suit and in NOT dismissing the complaint.”[10] (Emphasis was made in the original)

At the outset, the Appeal is dismissible because of defendant-appellant FCC's failure to include a Subject Index in its Appellant's Brief.[11] Such Subject Index is required under Section 13 (a), Rule 44 of the Rules of Court, to wit:

“SEC. 13. Contents of appellant's brief.- The appellant's brief shall contain, the order herein indicated, the following:

(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;” (Emphasis was made in the original)

The absence of a Subject Index is fatal to the instant Appeal, considering that it is one of the grounds for the dismissal of an Appeal pursuant to Section 1 (f), Rule 50 of the Rules of Court, to wit:

“SEC. 1. Grounds for dismissal of Appeal.- An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds: (Emphasis was made in the original)

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44;” (Emphasis Supplied)

That defendant-appellant FCC's failure to include a Subject Index in its Appellant's Brief[12] warrants the dismissal of its Appeal was as similarly declared by the Supreme Court in *Adelia C. Mendoza* and as Attorney-in-Fact of *Alice Malleta vs. United Coconut Planters Bank, Inc.*, G.R. No. 165575, February 2, 2011, as follows:

“In this case, the Appellants’ Brief of petitioners did not have a subject index. The importance of a subject index should not be underestimated. *De Liano v. Court of Appeals* declared that the subject index functions like a table of contents, facilitating the review of appeals by providing ready reference. It held that:

[t]he first requirement of an appellant’s brief is a subject index. The index is intended to facilitate the review of appeals by providing ready reference, functioning much like a table of contents. xxx The subject index makes readily available at one’s fingertips the subject of the contents of the brief so that the need to thumb through the brief page after page to locate a party’s arguments, or a particular citation, or whatever else needs to be found and considered, is obviated.

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Some may argue that adherence to these formal requirements serves but a meaningless purpose, that these may be ignored with little risk in the smug certainty that liberality in the application of procedural rules can always be relied upon to remedy the infirmities. This misses the point. We are not martinets; in appropriate instances, we are prepared to listen to reason, and to give relief as the circumstances may warrant. However, when the error relates to something so elementary as to be inexcusable, our discretion becomes nothing more than an exercise in frustration. It comes as an unpleasant shock to us that the contents of an appellant’s brief should still be raised as an issue now. There is nothing arcane or novel about the provisions of Section 13, Rule 44. The rule governing the contents of appellants’ briefs has existed since the old Rules of Court, which took effect on July 1, 1940, as well as the Revised Rules of Court, which took effect on January 1, 1964, until they were superseded by the present 1997 Rules of Civil Procedure. The provisions were substantially preserved,

with few revisions.

In fine, the Court upholds the Resolutions of the Court of Appeals dismissing the appeal of petitioners on the ground that their Appellants' Brief does not comply with the requirements provided in Section 13, Rule 44 of the 1997 Rules of Civil Procedure, as the dismissal is supported by Section 1 (f), Rule 50 of the 1997 Rules of Civil Procedure and jurisprudence." (Emphasis Supplied)

Besides, even if defendant-appellant FCC could be considered to have complied with the requirement of a Subject Index, still, contrary to defendant-appellant FCC's sole assignment of error, the lower court properly held defendant-appellant FCC solidarily liable with defendant Toquero to pay Damages to plaintiff-appellee.

Defendant-appellant FCC had argued that:

"Clearly, at the time of the recovery of the vehicle by defendant Romeo Toquero and of his voluntary surrender to Filinvest Credit Corporation, there was an outstanding obligation in favor of defendant Filinvest Credit Corporation[.]

In ordering the defendant Filinvest Credit Corporation to return the vehicle or to pay its value for P150,000.00, the Regional Trial Court was making the plaintiff Henry T. Soho unjustly enriched at the expense of the defendant Filinvest. Filinvest would lose its credit and demandable obligation and at the same time would be bound to return the vehicle or pay its value. Thus[,] Henry T. Soho would have the vehicle or its value and the same time escape his liability, which was the outstanding obligation payable to Filinvest Credit Corporation. Obviously, he would be unjustly enriched at the expense of Filinvest, a lawful creditor.

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Who among the parties was the one at fault? The plaintiff himself. Firstly, in conniving with the defendant Romeo Toquero to execute the sale over the vehicle without the knowledge and consent of defendant Filinvest, he already committed fraud and criminal offense. Their act violated the Chattel Mortgage provision of the Revised Penal Code. Therefore, in going to the Honorable Court, he had an unclean hand. He wanted to seek damages out of an act criminally punishable. Should he be rewarded for his unlawful act? Plaintiff Henry Soho was not a lawful owner of the property because the sale between him and Romeo Toquero was criminally punishable. The sale was therefore void ab initio. Plaintiff was therefore not a lawful owner and possessor over the vehicle with respect to third persons, including defendant Filinvest Credit Corporation. For all legal purposes with respect to third persons, the defendant Romeo Toquero was the lawful owner and possessor of the vehicle.

Romeo Toquero from whom plaintiff acquired his rights, had agreed that in case of his default, that the corporation may at any time take possession over the vehicle. He was the registered owner, and therefore such ownership was binding to the whole world. He among others was the one who took possession over the vehicle which he had legally owned and he had voluntarily surrendered it to the defendant Filinvest Credit Corporation.

There was no force or intimidation actually exerted or imposed upon the plaintiff. Therefore, there was no legal injury committed against the plaintiff.

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The facts did not show that in the exercise of its rights, the defendant corporation did not act in an orderly manner, and that created a breach of peace, subjecting itself to an action to trespass. There was and is nothing in the records to show that Filinvest created any breach of peace or committed any trespass. The defendant corporation therefore did not commit any legal wrong."[13] (Emphasis supplied)

Defeating defendant-appellant FCC's arguments however, is that defendant-appellant FCC, as the mortgagee,

could not immediately take possession of the subject vehicle. Defendant-appellant FCC should have first filed a civil action to recover possession of the mortgaged vehicle, or filed an action to obtain judicial foreclosure of the Chattel Mortgage. This was as also found by the lower court, to wit:

“It is ruled that if a mortgagee cannot obtain possession of the mortgaged property for the non-payment of the monthly installments of the unit, a civil action be filed either to recover possession as a preliminary step or to bring judicial foreclosure. In a case *Bachrach Motor Co. vs. Summers*, 42 Phil 3, the Supreme Court ruled: Where, however, [the] debtor refuses to yield up the property, the creditor must institute an action, either to effect a judicial foreclosure directly, [or] to secure possession as a preliminary to the sale contemplated in the provision above quoted. He cannot lawfully take the property by force against the will of the debtor. Upon this point the American authorities are even more harmonious that they are upon the point that the creditor is entitled to possession. As was said many years ago by the writer of this opinion in a monographic article contributed to an encyclopedic legal treatise, 'if possession cannot be peaceably obtained, the mortgagee must bring an action.' xxx In the Article of Chattel Mortgages, in *Corpus Juris*, we find the following statement of the law on the same point: 'The only restriction on the mode by which the mortgagee shall secure possession of the mortgaged property after breach of condition is that he must act in an orderly manner and without creating a breach of the peace, subjecting himself to an action to trespass.[']

Defendant Filinvest, as a mortgagee, upon default by the mortgagor of his obligation, have the right to take possession of the mortgaged property. The cargo truck was in the possession of the plaintiff. To secure possession of the cargo truck, defendant Filinvest must bring a civil action. In this case, no civil action was filed.”[14] (Emphasis supplied)

That before a mortgagee, such as defendant-appellant FCC, could take possession of a mortgaged vehicle, he should first file an action to recover possession of such vehicle, or should file an action to obtain judicial foreclosure, is pursuant to the following ruling of the Supreme Court in *Uypitching, et al. v. Quiamco*, G.R. No. 146322, December 6, 2006:

“True, a mortgagee may take steps to recover the mortgaged property to enable it to enforce or protect its foreclosure right thereon. There is, however, a well-defined procedure for the recovery of possession of mortgaged property: if a mortgagee is unable to obtain possession of a mortgaged property for its sale on foreclosure, he must bring a civil action either to recover such possession as a preliminary step to the sale, or to obtain judicial foreclosure.

Petitioner corporation failed to bring the proper civil action necessary to acquire legal possession of the motorcycle. Instead, petitioner Uypitching descended on respondent's establishment with his policemen and ordered the seizure of the motorcycle without a search warrant or court order. Worse, in the course of the illegal seizure of the motorcycle, petitioner Uypitching even mouthed a slanderous statement.

No doubt, petitioner corporation, acting through its co-petitioner Uypitching, blatantly disregarded the lawful procedure for the enforcement of its right, to the prejudice of respondent. Petitioners' acts violated the law as well as public morals, and transgressed the proper norms of human relations.” (Emphasis supplied; italics was made in the original)

Defendant-appellant FCC could not also properly argue that plaintiff-appellee committed fraud and violated the Chattel Mortgage by alleging that the latter connived with defendant Toquero because defendant Toquero supposedly assigned his rights over the subject vehicle to plaintiff-appellee without defendant-appellant FCC's consent. This is because defendant-appellant FCC failed to present any evidence that would substantiate its allegation of fraud.[15]

Considering all these, then, defendant Toquero and defendant-appellant FCC were considered to have acted in bad faith[16] in immediately taking possession of the subject vehicle from plaintiff-appellee. This was as similarly

found by the lower court, to wit:

“Defendant Filinvest, for seizing the cargo truck with the assistance of a sheriff and defendant Toquero's signing the seizure papers, committed bad faith in violation of Article 19 of the Civil Code which provides:

Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

In common usage, good faith is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation. It consists of the honest intention to abstain from taking an unconscionable and unscrupulous advantage of another.”[17] (Emphasis supplied)

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.

WHEREFORE, the Appeal is DENIED.

SO ORDERED.

Dicdican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 18-22.

[2] Records, pp. 319-326.

[3] Records, pp. 1-4.

[4] Records, pp. 1-4.

[5] Records, pp. 319-326.

[6] Records, pp. 319-322.

[7] Records, pp. 319-326.

[8] Records, pp. 325-326.

[9] Rollo, p. 22.

[10] Rollo, p. 20.

[11] Rollo, pp. 18-22.

[12] Rollo, pp. 18-22.

[13] Rollo, pp. 20-21.

[14] Records, pp. 324-325.

[15] Department of Public Works and Highways v. Quiwa, et al., G.R. No. 183444, February 8, 2012.

[16] “Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with furtive design or ill will.” (Regala v. Carin, G.R. No. 188715, April 6,

2011)

[17] Records, p. 325.

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