

**MONTELIBANO ESGUERRA, PETITIONER, VS. HON. COURT OF APPEALS, G.A. MACHINERIES, INC., JOSE TINO AND MANUEL DORE, RESPONDENTS.***G.R. No. L-40062. May 03, 1989*

Ponente: BIDIN, J.

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These are petitions for review on certiorari filed by G.A. Machineries, Inc. in L-40102 entitled G.A. Machineries Inc. v. Montelibano Esguerra et al. and by Montelibano Esguerra in L-40062 entitled Montelibano Esguerra v. Court of Appeals, et al., seeking to reverse and set aside the October 23, 1974 Decision of the Court of Appeals\* in CA-G.R. No. 46900-R "Montelibano Esguerra v. G.A. Machineries Inc., et al.", setting aside the September 23, 1969 Decision of the then Court of First Instance of Cavite; and the January 14, 1975 Resolution of the same appellate Court denying the motions for reconsideration of said decision.

This is a case for the recovery of a Ford-Trader cargo truck, allegedly, unlawfully seized by the agents of G.A. Machineries, Inc. (GAMI for short). This said cargo truck, on October 21, 1964, was sold by GAMI to Hilario Lagmay and Bonifacio Masilungan. Subsequently, the right to the same was bought by Montelibano Esguerra, the latter assuming the unpaid purchase price of P20,454.74. In so doing, Esguerra executed in favor of GAMI a promissory note and a chattel mortgage over the said truck (Partial Stipulation of Facts, par. 4, Record on Appeal, p. 99). On February 20, 1966, Esguerra having defaulted in his obligation and GAMI having granted his request for extension, a new chattel mortgage and a new promissory note were executed (Ibid., pars. 5 and 6, pp. 99-100) to secure the unpaid balance of P16,000.00 plus 1% per month, payable in monthly installments of P1,000.00, the first installment to be due on March 15, 1966 and the succeeding monthly installments on the 15th day of each month. On May 18, 1966, Esguerra had paid GAMI the total sum of P1,297.00 (Ibid., par. 7, p. 100), broken down as follows:

## AMOUNT PAID D A T E

P400.00 ----- March 22, 1966

397.87 ----- April 18, 1966

200.00 ----- May 4, 1966

150.00 ----- May 12, 1966

150.00 ----- May 18, 1966

On June 3, 1966, the said truck was taken by GAMI'S agents while the same was in the possession of Esguerra's driver, Carlito Padua; and the same had remained in the possession of GAMI, notwithstanding demands for its return by Esguerra.

On June 20, 1966, Esguerra filed a complaint with the then Court of First Instance of Cavite, Branch IV, Tagaytay

City, presided by Hon. Jose G. Colayco, to recover said truck and for damages. The said complaint was docketed therein as Civil Case No. TG-64. In the said complaint, Esguerra alleged, among others, that due to his failure to pay the installments due, the agents of GAMI, Jose Tino and Samuel Dore, representing themselves as deputy sheriffs and with use of force, threats and intimidation, seized the cargo truck in question from his driver, Carlito Padua, while unloading gravel and sand in Pasay City; and that despite repeated demands, GAMI refused and failed to return the same.

GAMI, et al. filed their answer with a counterclaim, alleging as affirmative defense that the plaintiff gave his consent to the taking of the truck by the agents of the corporation on condition that he be allowed to recover its possession upon payment of his back accounts (Record on Appeal p. 102). After trial, the lower court, in a Decision dated September 23, 1969, dismissed the complaint as well as the counterclaim as follows:

"Since it is admitted that Esguerra was in arrears in the payment of his account, the G.A. Machineries, Inc. therefore could exercise its option under the contract of mortgage to take possession of the truck without court action as long as the mortgagor agreed (Luna vs. Encarnacion, G.R. L-4637, June 30, 1952). Having chosen this remedy however, the mortgagee has no further action against Esguerra to recover the unpaid balance of the purchase price (Art. 1484, (3), Civil Code of the Phil.).

"WHEREFORE, the complaint as well as the counterclaim are hereby dismissed, without costs." (Rollo, L-40062, pp. 24-31).

On appeal by Esguerra, the Court of Appeals sustained the findings of the trial court that it was not unlawful on the part of GAMI to repossess the cargo truck in question as Esguerra gave his consent to the repossession. However, said appellate court, took exception to GAMI's failure to sell at public auction said truck. It held that while it is true that under the chattel mortgage contract, the mortgagee can take possession of the chattel but such taking did not amount to the foreclosure of the mortgage. Otherwise stated, GAMI should have foreclosed the mortgagee. Thus, in a Decision promulgated on October 23, 1974 (Ibid., pp. 34-45), respondent appellate court set aside the appealed decision and entered another one; the decretal portion of which reads:

"WHEREFORE, the judgment appealed from is hereby set aside, and another entered, sentencing the appellee to pay the appellant the sum of P2,000.00 in concept of attorney's fees and P1,000.00 and P2,000.00 by way of moral and exemplary damages, respectively, with costs against said appellee."

Both Esguerra and GAMI, et al. moved for the reconsideration of the decision, but in a Resolution dated January 14, 1975 (Ibid., p. 57), both motions were denied. Hence, the instant petitions.

Acting on GAMI'S petition, docketed as G.R. No. L-40102, the First Division of this Court, in a Resolution dated March 5, 1975, required Esguerra to comment (Ibid., p. 48), while the petition of Esguerra, docketed as G.R. No. L-40062, was denied by the same Division of this Court in a Resolution dated March 7, 1975 (Rollo of G.R. No. L-40062, p. 62).

On April 4, 1975, Esguerra, in compliance with the March 5, 1975 Resolution of the First Division of this Court, filed his comment (Rollo of G.R. No. 40102, pp. 56-59).

On April 18, 1975, Esguerra filed his Motion for Reconsideration of the March 7, 1975 Resolution denying his petition in G.R. No. L-40062, (Rollo, pp. 69-72).

In the Resolution of May 16, 1975, the resolution of March 7, 1975, was reconsidered and both petitions were given due course. (Rollo of G.R. No. L- 40102, p. 75).

Esguerra raised three (3) assignment of errors, to wit:

## I

THE RESPONDENT COURT ERRED IN NOT DECLARING AS ILLEGAL AND UNLAWFUL THE PROVISION OF THE CHATTEL MORTGAGE AUTHORIZING THE RESPONDENT-MORTGAGEE TO REPOSSESS THE CARGO TRUCK IN CASE OF DEFAULT IN THE PAYMENT OF ANY OBLIGATION.

## II

THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN AFTER SETTING ASIDE THE JUDGMENT APPEALED FROM AND AWARDING DAMAGES AND ATTORNEY'S FEES TO PETITIONER, THE SAID RESPONDENT COURT DENIED PETITIONER'S MAIN PRAYER IN HIS COMPLAINT, WHICH IS TO ORDER THE RETURN OF PETITIONER'S CARGO TRUCK AND TO PAY UNEARNED INCOME OF PETITIONER.

## III

THE RESPONDENT COURT FINALLY ERRED WHEN AFTER DECLARING THAT THE TAKING OF APPELLANT'S TRUCK BY THE APPELLEE WITHOUT HAVING PROCEEDED TO SELL IT AT PUBLIC AUCTION BUT APPROPRIATING SAME IN PAYMENT OF APPELLANT'S INDEBTEDNESS AS NOT LAWFUL, SAID RESPONDENT COURT DID NOT ORDER THE RETURN OF SAID TRUCK OR THE SALE THEREOF AT PUBLIC AUCTION.

GAMI, on the other hand, likewise, raised three (3) assignment of errors, to wit:

### "I

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING, THAT PETITIONER, AS AN UNPAID SELLER-MORTGAGEE, WAS LEGALLY OBLIGATED TO FORECLOSE THE MORTGAGE OVER THE CHATTEL IN QUESTION AND TO SELL SAID CHATTEL AT PUBLIC AUCTION, NOTWITHSTANDING THAT PETITIONER, AS SUCH UNPAID SELLER, LEGALLY REPOSSESSED THE CHATTEL IN QUESTION AND THAT RESPONDENT MONTELIBANO ESGUERRA GAVE HIS CONSENT TO PETITIONER'S REPOSSESSION THEREOF.

### II

THE HONORABLE COURT OF APPEALS ERRED IN NOT UPHOLDING THE RIGHT OF HEREIN PETITIONER TO CANCEL A CONTRACT OF SALE UPON NON-PAYMENT OR DEFAULT OF THE BUYER.

### III

THE HONORABLE COURT OF APPEALS ERRED IN AWARDING DAMAGES TO RESPONDENT MONTELIBANO ESGUERRA IN THE FORM OF ATTORNEY'S FEES, MORAL DAMAGES AND EXEMPLARY DAMAGES."

The pivotal issue in this case is whether or not the mortgagee-vendor of personal property sold on installment is legally obligated to foreclose the chattel mortgage and sell the chattel subject thereof at public auction in case the mortgagor-vendee defaults in the payment of the agreed installments.

The Chattel Mortgage Contract provides:

"Should the mortgagor fail to make any of the payments as herein before provided or to pay the interest that may be due as provided herein or should he fail to comply with anyone of the obligations or conditions herein

set forth, then the whole amount remaining unpaid under this mortgage shall automatically become due and demandable, and the mortgage on the property herein described may be foreclosed by the mortgagee either judicially or extrajudicially, at the option of the mortgagee in accordance with law. In case of foreclosure, it is expressly agreed that the sale may be made by the mortgagee itself and the mortgagor expressly consents that the mortgaged property may be taken by the mortgagee outside of the municipality or city where the mortgagee may conveniently sell the same. And in case of sale, the mortgagor further agrees to pay to the mortgagee an additional sum equivalent to twenty five (25%) per centum of the principal and interest due and unpaid, as liquidated damages which this mortgage is given as security and shall become a part thereof, and the mortgagor hereby waives reimbursements of the amounts heretofore paid by him to the mortgagee." (Decision CA-G.R. No. 46900-R) Rollo p. 37)

Esguerra admitted that he is in arrears in the payments of his account. Consequently, the mortgagee, under the above cited provision of the mortgage contract has the option to foreclose the mortgage either judicially or extrajudicially and in case of foreclosure, it was expressly agreed by the parties that the mortgagee may take the property outside the municipality or city where the mortgagee may conveniently sell the same.

Both the trial court and the Court of Appeals found that there was no forcible taking of the cargo truck. Esguerra consented to the repossession of the truck or at least did not make any objection thereto. He simply requested that he be given a chance to settle the account, which was evidently granted as on the following day, June 14, 1966, appellant sent his wife with P500.00 with which to partially settle his account (Rollo p. 40). Under the circumstances, both courts concluded that it was not unlawful on the part of the appellee to repossess the cargo truck in question.

It is well settled that these findings are binding on the Supreme Court (*Rizal Cement Co. Inc. v. Villareal*, 135 SCRA 575[1985]; *Collector of Customs Manila v. Intermediate Appellate Court*, 137 SCRA 3[1985]), as it is not the function of this Court to analyze or weigh evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court (*Baniqued v. Court of Appeals*, 127 SCRA 636 [1984]).

However, the respondent appellate court did not err in holding that while the mortgagee can take possession of the chattel, such taking did not amount to the foreclosure of the mortgage. Otherwise stated, the taking of Esguerra's truck without proceeding to the sale of the same at public auction, but instead, appropriating the same in payment of Esguerra's indebtedness, is not lawful.

As clearly stated in the chattel mortgage contract, the express purpose of the taking of the mortgaged property is to sell the same and/or foreclose the mortgage constituted thereon either judicially or extrajudicially and thereby, liquidate the indebtedness in accordance with law.

More than that, even if such automatic appropriation of the cargo truck in question can be inferred from or be contemplated under the aforesaid mortgage contract, such stipulation would be *pactum commissorium* which is expressly prohibited by Article 2088 of the Civil Code and therefore, null and void (*Tan Chun Tic v. West Coast Life*, 54 Phil., 361 [1933]; *Reyes v. Nebrija*, 98 Phil. 639 [1955]; *Ranjo v. Salmon*, 15 Phil. 436 [1910]; Paras, 'Civil Code of the Philippines', pp. 814-815; Vol. V, Seventh Edition).

Having opted to foreclose the chattel mortgage, respondent GAMI can no longer cancel the sale. The three remedies of the vendor in case the vendee defaults, in a contract of sale of personal property the price of which is payable in installment under Article 1484 of the Civil Code, are alternative and cannot be exercised simultaneously or cumulatively by the vendor-creditor. In *Cruz vs. Filipinas Investment and Finance Corporation* (23 SCRA 791, [1968]), the Supreme Court construing Article 1484 of the Civil Code, held:

"Should the vendee or purchaser of a personal property default in the payment of two or more of the agreed installments, the vendor or seller has the option to avail of any one of these three remedies - either to exact fulfillment by the purchaser of the obligation, or to cancel the sale, or to foreclose the mortgage on the purchased personal property, if one was constituted. These remedies have been recognized as alternative, not cumulative, that the exercise of one would bar the exercise of the others. It may also be stated that the established rule is to the effect that the foreclosure and actual sale of a mortgaged chattel bars further recovery by the vendor of any balance on the purchaser's outstanding obligation not so satisfied by the sale."

It will be observed, however, that the award of exemplary damages is apparently unwarranted, there being no showing that the mortgagee acted in a wanton, fraudulent, reckless or oppressive manner (*Dee Hua Liong Electrical Equipment Corp. v. Reyes*, 145 SCRA 714 [1986]). The trial court did not find blatant fault on the part of the mortgagee for not immediately proceeding with the foreclosure of the mortgage, especially so where the filing of the instant case has put a legal obstacle to it. On the otherhand, the appellate court is of the view and rightly so that the mortgagee should have immediately foreclosed the mortgage and offered the truck for sale at public auction as provided under the chattel mortgage contract.

It will be recalled, that under the chattel mortgage contract, the mortgagee is expressly authorized to sell the mortgaged property and the mortgagee had already commenced foreclosure of the chattel mortgage (par. 13, amended answer) but the sale presumably could not be immediately made because of the request of the mortgagor himself to give him a chance to settle his account.

WHEREFORE, the decision of the Court of Appeals is hereby Affirmed with the modification that the award of exemplary damages is deleted. Respondent GAMI is hereby ordered to foreclose the chattel mortgage by selling the subject cargo truck at public auction and liquidate the indebtedness in accordance with law.

**SO ORDERED.**

Fernan, C.J., Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

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\* Penned by Associate Justice Hermogenes Concepcion Jr., and concurred in by Associate Justices Efren I. Plana and Sixto A. Domondon.

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