

PCI LEASING AND FINANCE, INC., (NOW BDO LEASING AND FINANCE, INC.), PLAINTIFF-APPELLANT, VS. SPOUSES LAMBERTO P. CRUZ AND CARMELITA C. CRUZ, AND JOHN DOE DEFENDANTS-APPELLEES.

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

This is an appeal from the Order[1] that granted the Motion to Dismiss of herein defendants-appellees spouses Lamberto P. Cruz and Carmelita C. Cruz, doing business in the name and style of L. Cruz Enterprises, in a Complaint for Replevin with damages filed by herein plaintiff-appellant PCI Leasing and Finance Inc. (now BDO Leasing and Finance, Inc.) against the former. It also questions the subsequent Order[2] that denied the plaintiff-appellant's motion for reconsideration.

In the first assailed order, it was held that:

“WHEREFORE, premises considered, this case is DISMISSED, for extinguishment of obligation and for lack of cause of action.

SO ORDERED.”[3]

Records show that herein defendants-appellees obtained loans from the plaintiff-appellant to which the former executed Promissory Notes on 23 May 1996, 31 May 1996, 06 November 1996, 25 November 1996 and 12 December 1996 for the total amount of P70,922,160.00.[4] To secure the payment of said loans, defendants-appellees executed chattel mortgages in favor of the plaintiff-appellant over various heavy equipment and machinery.

On 31 July 1998, the defendants-appellees' outstanding obligation was P43,606,810.00, exclusive of interest. The defendants-appellees' loan was restructured which amounted to P49,749,005.00, inclusive of interest. In a Memorandum of Agreement,[5] it was stipulated that the restructured loan would be payable in a monthly amortization of P804,497.00 from 30 August 1998 until 30 December 1998 and P1,904,230.00 from 30 January 1999 until 30 December 2000.

The defendants-appellees, however, defaulted in the amortizations on their restructured loan.

On 12 July 2000, the plaintiff-appellant filed a Complaint for Replevin with damages before the Regional Trial Court (RTC) of Dagupan City against the defendants-appellees. It alleged that because the defendants-appellees failed to pay the agreed monthly amortization on due date, it demanded from the latter the payment of the entire balance of their obligation in the amount of P38,171,138.97 excluding interests and penalties or to deliver the mortgaged motor vehicles for the purpose of foreclosure. Since the defendants-appellees refused to comply with its demands, it was constrained to file the complaint below in order to take possession of the mortgaged motor vehicles. In the alternative, it prayed that in the event that manual delivery of said vehicles could not be effected, the defendants-appellees be ordered to pay the outstanding balance of P38,171,138.97 plus interest and penalties at the rate of 5% per month from date of default until fully paid. In addition, they prayed for payment of attorney's

fees, liquidated damages and other expenses that may be incurred in the seizure of the mortgaged properties.

After their Motion to Dismiss[6] was denied,[7] the defendants-appellees filed their Answer with Counterclaim.[8] They asserted that their obligation had already been extinguished because they had voluntarily surrendered the mortgaged vehicles and the real estate mortgages had already been foreclosed by the plaintiff-appellant. They claimed that the filing of the complaint below was intended to harass them because the plaintiff-appellant had earlier filed criminal complaints for violation of Batas Pambansa Blg. 22 against Carmelita Cruz. By way of counterclaim, they prayed for moral damages, attorney's fees and exemplary damages.

To substantiate its complaint, the plaintiff-appellant presented its officer-in-charge, Michael Jun S. Ugto. He testified that the defendants-appellees obtained loans from the plaintiff-appellant in the total amount of P70,922,160.00 to which the defendants-appellees executed promissory notes and chattel mortgages. He added that P49,749,005.00 had not been paid.

After the plaintiff-appellant rested its case, the defendants-appellees moved to dismiss[9] the complaint on the ground that their obligation had already been extinguished because the plaintiff-appellant chose to go after the mortgaged properties. They argued that with the admission of Michael Jun S. Ugto that the mortgaged chattels were already taken by the plaintiff-appellant, the complaint below must fail.

The plaintiff-appellant opposed[10] the defendants-appellees' motion to dismiss. It admitted that nine (9) mortgaged chattels were surrendered by the defendants-appellees but the latter refused to execute a Dacion en Pago over said surrendered chattels and so, it filed the complaint below in order for the trial court to confirm their right of possession over said properties. It denied that the defendants-appellees' obligation had already been extinguished because the latter's outstanding obligation was P38,171,138.97, excluding interest and penalties, while the appraised value of the 9 surrendered chattels was only P3,180,000.00 and the foreclosed real estates were sold only for P5,715,000.00, and so, the defendants-appellees were still indebted to more than P13M. They added that there were 57 mortgaged chattels sought to be recovered from the defendants-appellants but only 9 were surrendered.

In their Reply to the Opposition,[11] the defendants-appellees countered that they had offered to surrender all the chattels and that the list submitted by the plaintiff-appellant did not reflect all the surrendered chattels. In fact, some of the chattels had already been released by the plaintiff-appellant. They also denied that they refused to execute Dacion en Pago because they were more than willing to execute the same but the plaintiff-appellant only picked from the surrendered chattels what it wanted to take.

As earlier mentioned, the RTC granted the defendants-appellees' motion to dismiss. The complaint below was consequently dismissed on the grounds of extinguishment of obligation and lack of cause of action.

The plaintiff-appellant moved for a reconsideration[12] and argued that there was no sufficient evidence for the RTC to conclude that the defendants-appellees' obligation had already been extinguished; that the documents annexed to the defendants-appellees' Motion to Dismiss and Reply to the Opposition were not offered in evidence and therefore deserved no probative weight; and that even if the alleged release of chattel mortgages, foreclosure of the real estate mortgages and deeds of dacion be appreciated, the defendants-appellees would still have an unpaid loan of P27,717,138.97.

In the second assailed order, the RTC denied the plaintiff-appellant's motion for reconsideration. It held that there was no need for the defendants-appellees to prove their defense because the plaintiff-appellant failed to substantiate its claims. It added that while a creditor who extrajudicially forecloses real estate mortgage may ask for deficiency judgment, the plaintiff-appellant may not avail of the same because the complaint below was for

replevin and not for deficiency judgment.

Dismayed, the plaintiff-appellant appealed the order of the RTC based on the following assigned errors:

“A. THE REGIONAL TRIAL COURT OF DAGUPAN CITY, BRANCH 40, COMMITTED REVERSIBLE ERROR IN DISMISSING THE CASE ON THE GROUNDS OF EXTINGUISHMENT OF OBLIGATION AND LACK OF CAUSE OF ACTION.

B. THE REGIONAL TRIAL COURT OF DAGUPAN CITY, BRANCH 40, COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE PCILF UTTERLY FAILED TO SHOW AND PROVE THE FACTS UPON WHICH IT BASES ITS CLAIM.

C. THE REGIONAL TRIAL COURT OF DAGUPAN CITY, BRANCH 40, COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE INSTANT CASE IS NOT ONE FOR DEFICIENCY JUDGMENT BUT ONE FOR REPLEVIN WITH DAMAGES WHICH IS NOT THE CORRECT ACTION INDICATED BY THE FACTS AND CIRCUMSTANCES OF THE CASE.”[13]

The plaintiff-appellant reiterates that it was error for the RTC to conclude that the defendants-appellees' obligation had already been extinguished because there was no evidence of payment that had been presented, much less, formally offered. Relying on *Union Refinery Corporation v. Tolentino*,^[14] it posits that when it alleged non-payment of the defendants-appellees' outstanding obligation, the burden to prove payment becomes incumbent upon the defendants-appellees. Furthermore, it contends that the foreclosure of the chattel mortgages as well as the real estate mortgages could not be equated to payment of the defendants-appellees' obligation because the chattels and the real estates are only given as a security and not as a payment of the debt. Finally, it asserts that it was able to prove the allegations in its complaint by testimonial and documentary evidence.

For their part, the defendants-appellees re-assert that their obligation had been paid and extinguished by virtue of their voluntary surrender of the mortgaged chattels and the foreclosure of the real estate mortgages. They also note that the Memorandum of Agreement attached to the complaint below was never presented and offered in evidence. For failure on the part of the plaintiff-appellant to prove its case, the RTC was correct in dismissing the complaint, they add.

We find merit in the instant appeal.

The defendants-appellees' motion to dismiss filed after the plaintiff-appellant had completed the presentation of its evidence is actually a demurrer to evidence governed by Rule 33 of the Rules of Court, Section 1 of which provides:

“Section 1. Demurrer to evidence. – After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.”

A demurrer to evidence is defined as an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. It authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part, as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought.^[15] The party demurring challenges the sufficiency of the whole evidence to support the plaintiff's claims. In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to grant the plaintiff's reliefs.^[16]

In granting the defendants-appellees' Motion to Dismiss, the RTC, after it narrated the arguments of both parties,

simply concluded that the defendants-appellees' arguments prevailed over those of the plaintiff-appellant, and we quote:

“After thorough evaluation of the opposing arguments of the defendants and the plaintiff and considering the provisions of Rule 60 (Replevin) of the Rules of Court and Article 1231 (1) and (6) (Extinguishment of Obligation) by payment or performance and by novation), we find that the arguments of the defendants are valid and must prevail over those of the plaintiff.

WHEREFORE, premises considered, this case is DISMISSED for extinguishment of obligation and for lack of cause of action.

SO ORDERED.”[17]

In so ruling, the RTC had considered the pieces of evidence that were attached to the defendants-appellees' Motion to Dismiss and Reply to the Opposition such as Transfer Certificates of Title of the foreclosed properties, Release of Chattel Mortgage and Deed of Dacion. On this score, the grant of the demurrer suffers an infirmity.

Rule 33 of the Rules of Court, as explained in *Casent Realty Development Corp. v. Philbanking Corp.*,[18] prevents the court from considering the defendant's evidence in the resolution of a motion to dismiss based on a demurrer to evidence, thus:

“What should be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief based on the facts and the law. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects such as capacity to sue. However, the plaintiff's evidence should not be the only basis in resolving a demurrer to evidence. The “facts” referred to in Section 8 should include all the means sanctioned by the Rules of Court in ascertaining matters in judicial proceedings. These include judicial admissions, matters of judicial notice, stipulations made during the pre-trial and trial, admissions, and presumptions, the only exclusion being the defendant's evidence.” (emphasis supplied, citation omitted)

The defendants-appellees' evidence should not have been considered. Because the RTC opted to take into account the defendants-appellees' evidence, it should not have resolved the case through the remedy of demurrer but instead, should have allowed the defendants-appellees to formally present their evidence where the plaintiff-appellant could properly raise its objections.

In *Republic of the Philippines v. Tuvera*,[19] the Supreme Court held that there is a violation of the right to due process when the court or the tribunal takes into account the defendant's evidence in resolving a motion to dismiss based on a demurrer to evidence because the plaintiff is deprived of the opportunity to question, examine or refute the evidence attached to the demurrer to evidence. This principle squarely applies to the case of the plaintiff-appellant considering that the documentary evidence of the defendants-appellees were merely attached to their Motion to Dismiss and Reply to the Opposition and were never offered in evidence.

Furthermore, the essential question to be resolved in a demurrer to evidence is whether the plaintiff-appellant has been able to show that it is entitled to its claim, and it is incumbent upon the RTC to make such a determination. We have perused the order of dismissal and we find that it contained no discussion on this matter. As earlier mentioned, the RTC merely narrated the arguments of the parties and abruptly ruled that it accorded more weight to the defendants-appellees' contentions over those of the plaintiff-appellant's without sufficient explanation on how it arrived at a conclusion that the defendants-appellees' obligation had already been extinguished and that the plaintiff-appellant's complaint lacked cause of action.

Even if the pieces of evidence submitted by the defendants-appellees be considered, just the same, the complaint below may not be dismissed on the grounds of extinguishment of obligation and lack of cause of action.

On repeated occasions, the Supreme Court ruled that the debtor has the burden of showing with legal certainty that the obligation has been discharged by payment. To discharge means to extinguish an obligation, and in contract law, discharge occurs either when the parties have performed their obligations in the contract, or when an event, the conduct of the parties, or the operation of law releases the parties from performing. Thus, a party who alleges that an obligation has been extinguished must prove facts or acts giving rise to the extinction.[20]

In this case, the defendants-appellees' main defense is that their obligation had already been extinguished but they, however, failed to prove the same. The documents attached to the defendants-appellees' Motion to Dismiss and Reply to the Opposition are not proofs of payment.

First, the defendants-appellees' restructured loan was secured by chattel and real estate mortgages. The plaintiff-appellant may therefore opt to foreclose both mortgage securities for the satisfaction of the defendants-appellees' outstanding obligation. Thus, the foreclosure of the real estate mortgages does not automatically bar the plaintiff-appellant from foreclosing the chattel mortgages because as alleged by the plaintiff-appellant, which was not refuted by the defendants-appellees, the amount realized from the auction sale of the foreclosed real estates was insufficient to cover the unpaid loan of the defendants-appellees. In fact, a mortgage creditor may still recover any deficiency after foreclosure by instituting an independent civil action for that purpose.

Second, the release of chattel mortgage and the execution of deed of dacion pertained only to some chattels and they extinguished only a portion of the defendants-appellees' obligation. The deed of dacion even provides that the defendants-appellees are released and discharged from their obligation up to the extent of the dacion price. Based on the four deeds of dacion, the total dacion price was only P2,814,000.00[21] while the unpaid principal as of 01 October 1999 was still P38,182,817.64.[22]

Third, granting, for the sake of argument, that the defendants-appellees had voluntarily surrendered the mortgaged chattels, this does not necessarily mean that their unpaid loan had already been extinguished. Under the law, the delivery of possession of the mortgaged property to the mortgagee, can only operate to extinguish the mortgagor's liability if the mortgagee had actually caused the foreclosure sale of the mortgaged property when it recovered possession thereof.[23] Here, there had been no showing that actual foreclosure of the alleged, surrendered chattels had been pursued, commenced or concluded by the plaintiff-appellant.

The RTC therefore erred in concluding that the defendants-appellees' loan had already been extinguished.

It may not also be said that the plaintiff-appellant's complaint lacks cause of action.

Cause of action is defined as the act or omission by which a party violates a right of another. The existence of a cause of action is determined by the allegations in the complaint. A complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for. Accordingly, if the allegations furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed, regardless of the defenses that may be averred by the defendants.[24]

We have perused the complaint below and we are convinced that the plaintiff-appellant has a valid cause of action against the defendants-appellees. As stated in the complaint, the plaintiff-appellant alleged that the defendants-appellees obtained loans on several dates, secured by chattel mortgages; that said loans were restructured and continued to be secured by the chattel mortgages; that the defendants-appellees still had the outstanding obligation of P38,171,138.97 excluding interest and penalties; and thus, it prayed that a writ of replevin be issued or in the alternative, the defendants-appellees be ordered to pay their outstanding obligation plus interest and penalties. The foregoing allegations, if admitted to be true, would consequently warrant the

reliefs sought for in the said complaint. It was therefore error on the part of the RTC to have dismissed the complaint on the ground of lack of cause of action.

The general rule is that upon the dismissal of the demurrer in the appellate court, the defendant loses the right to present his evidence and the appellate court shall then proceed to render judgment on the merits on the basis of the plaintiff's evidence.[25] Thus, it becomes our duty to rule on the merits of the complaint based on the evidence presented by the plaintiff-appellant, and without need to consider whatever evidence the defendants-appellees have, they having waived their right to present evidence in their behalf.

We note that the complaint below is one for replevin with damages. Replevin is both a form of principal remedy and of provisional relief. It may refer either to the action itself, i.e., to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and to hold it pendente lite. The action is primarily possessory in nature and generally determines nothing more than the right of possession.[26]

There is no issue that the defendants-appellees had executed promissory notes in favor of the plaintiff-appellant secured by chattel mortgages over several bulldozers, payloaders, dump trucks, and other machinery; that the loans were later on restructured; and that the restructured loan of P49,749,005.00 was payable in monthly amortization of P809,497.00 from 30 August 1998 to 30 December 1998 and P1,904,230.00 from 30 January 1999 to 30 December 2000. As stipulated in their Memorandum of Agreement dated 30 September 1998, the restructured loan should continue to be secured by the chattel mortgages. Based on the Statement of Account dated 12 July 2005 (Exhibit "K"), the defendants-appellees still had an outstanding obligation of P34,864,520.00.

Jurisprudence dictates that a mortgage creditor may, in the recovery of a debt secured by a chattel or real estate mortgage, institute against the mortgage debtor either a personal action for payment of debt or an action to foreclose the mortgage. In this case, the plaintiff-appellant opted to pursue the remedy of foreclosure of the chattel mortgages using the writ of replevin as a tool to get hold of the mortgaged properties. Because the defendants-appellees defaulted in paying their restructured loan secured by chattel mortgages, the issuance of a writ of replevin, after the plaintiff-appellant had posted the required bond, becomes in order.

Finally, under the Chattel Mortgage, it is provided that in case of default, the defendants-appellees shall be liable for liquidated damages in the amount equivalent to "twenty-five (25%) percent of the principal due and unpaid," and in case the plaintiff-appellant be compelled to institute action for manual delivery for the purpose of recovering possession of the mortgaged properties, the defendants-appellees shall pay the plaintiff, in addition to the attorney's fees and liquidated damages, "all expenses and costs incurred in relation therewith, including the expenses for the payment of the premium of the bond to obtain the writ of seizure." There being proof that the defendants-appellees defaulted on their loan obligation and the plaintiff-appellant was compelled to initiate the complaint below, the former are therefore liable for liquidated damages, attorney's fees, and replevin bond premium and other expenses incurred in the seizure of the mortgaged properties.

WHEREFORE, the assailed Orders of the RTC are REVERSED and SET ASIDE. A new judgment is hereby rendered granting the issuance of a writ of replevin against the properties subject of the subsisting Chattel Mortgage.

The defendants-appellees are ordered to pay the plaintiff-appellant the following:

- a. P50,000.00 as attorney's fees;
- b. P100,000.00 as liquidated damages; and

c. P50,000.00 as replevin bond premium and other costs incurred in the seizure of the mortgaged properties.

IT IS SO ORDERED.

Bueser and [*] Reyes Carpio, JJ., concur.

[*] Actg. Third Member per Office Order No. 81-15-ABR dated 16 March 2015.

[1] Issued by Judge Robert O. Rudio of the Regional Trial Court, Dagupan City, Branch 40, on 19 February 2009; Records, pp. 230-236.

[2] Also issued by Judge Robert O. Rudio of the Regional Trial Court, Dagupan City, Branch 40, on 01 July 2009; Records, pp.265-270.

[3] Records, p. 236.

[4] Including interest and penalties.

[5] Annex “B” of the complaint, Records, pp. 21-24.

[6] Records, pp. 35-36.

[7] In an Order dated 05 December 2002 issued by Judge Emma M. Torio of the Regional Trial Court of Dagupan City, Branch 40, Records, p. 53.

[8] Records, pp. 56-58.

[9] Records, pp. 182-185.

[10] Records, pp. 203-204.

[11] Records, pp. 213-214.

[12] Records, pp. 238-243.

[13] Rollo, pp. 21-22.

[14] G.R. No. 155653, 30 September 2005.

[15] Oropesa v. Oropesa, G.R. No. 184528, 25 April 2012.

[16] Gonzales v. Bugaay, G.R. No. 173008, 22 February 2012.

[17] Records, p. 236.

[18] G.R. No. 150731, 14 September 2007 cited in GMA Network, Inc. v. Central CATC, Inc., G.R. No. 176694, 18 July 2014.

[19] G.R. No. 148246, 16 February 2007.

[20] G&M (Phil.), Inc. v. Batomalaque, G.R. No. 151849, 23 June 2005.

[21]

Annex “H”

P336,000.00

Annex “I”

378,000.00

Annex “J”

210,000.00

Annex “K”

1,890,000.00

Total

P2,814,000.00

[22] Annex “I,” Record, p. 224.

[23] Magna Financial Services Group, Inc. v. Colarina, G.R. No. 158635, 09 December 2005, citing De la Cruz v. Asian Consumer and Industrial Finance Corporation, G.R. No. 94828, 18 September 1992, 214 SCRA 103 citing Northern Motors, Inc. v. Sapinoso, 33 SCRA 356 (1970); Universal Motors Corp., v. Dy Hian Tat, 28 SCRA 161 (1969); Manila Motors Co., Inc. v. Fernandez, 99 Phil. 782 (1956).

[24] Heirs of Magdaleno Ypon v. Riccaforte, G.R. No. 198680, 08 July 2013.

[25] Republic of the Philippines v. Tuvera, G.R. No. 148246, 16 February 2007.

[26] Rivera v. Vargas, G.R. No. 165895, 05 June 2009.

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