

**SPS. JESUS BOLAÑOS AND NIDA BOLAÑOS AND JOHN DOE,
PETITIONERS, VS. RADIOWEALTH FINANCE COMPANY, INC.,
RESPONDENT.**

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GALAPATE-LAGUILLES, J:

The instant Petition for Review[1] assails the Decision[2] dated December 29, 2010 and the Order[3] dated May 3, 2011 of the Regional Trial Court (RTC), Branch 212 of Mandaluyong City dismissing the appeal filed by the petitioners being a wrong remedy and affirming in toto the Orders of the lower court both denying petitioners' Motion to Dismiss and Quash the Writ of Replevin.

The facts[4] are culled from the records.

Respondent Radiowealth Finance Company, Inc. (RFC) is a domestic finance corporation engaged in the business of lending. In July 2006, petitioners spouses Jesus Bolaños and Nida Bolaños (spouses Bolaños) obtained a cash loan from RFC in the amount of Three Hundred Fifty-Five Thousand Seven Hundred Fifty-Two Pesos (Php 355,752.00) as shown by the promissory note (PN) dated July 27, 2006. In order to secure the payment of said cash loan, spouses Bolaños executed a Chattel Mortgage Contract (CMC) in favor of RFC over their vehicle specifically described as follows:

Unit: Isuzu Bus
Year Model: 2000
Serial/Chassis No.: LTO-0540-2000-129-C
Engine No.: 6BF1-100111
Plate No.: EVH-689

The said CMC was duly notarized and registered with the Registry of Deeds and the Land Transportation Office (LTO) as evidenced by the Certificate of Registration with encumbrance in favor of RFC and the corresponding Official Receipt. However, spouses Bolaños had difficulty in paying the monthly installments prompting them to request for the restructuring of their loan account. The request was granted by RFC. Accordingly, the spouses executed in favor of RFC another PN dated September 25, 2007 in the amount of Two Hundred Fifty Two Thousand Three Hundred Sixty Pesos (Php 252,360.00) which is also secured by the same Chattel Mortgage mentioned above. Both PNs and CMCs stipulate, among others, that the default in payment of any installment, interest and charges due thereon shall make the entire obligation due and demandable, and that RFC shall be entitled to take actual possession and control of the mortgaged vehicle with special power to sell the same in a public auction or private sale, at the option of the mortgagee.

As what happened, spouses Bolaños defaulted in the payment of their loan obligation. Subsequently, RFC made several demands upon them to either pay the entire amount due or to surrender the subject vehicle in favor of RFC for purposes of foreclosure. As of July 9, 2008, spouses Bolaños' outstanding obligation amounted to One Hundred Ninety Three Thousand Six Hundred Seventy Pesos and 39/00 (Php 193,670.39) plus interest and/or charges. On the said date, RFC sent its last demand letter to spouses Bolaños through registered mail, copy of which was personally served to and received by Jesus Bolaños. However, the spouses Bolaños failed to either pay

their monetary obligation or to surrender the mortgaged vehicle for foreclosure proceedings.

On July 23, 2008, RFC filed a Complaint for Sum of Money with prayer for the issuance of a Writ of Replevin which ought to seize the mortgaged vehicle and to deliver the same to RFC for purposes of foreclosure and/or disposal in accordance with law to satisfy spouses Bolaños' obligation. In the alternative, RFC prayed that should it not be possible to return the vehicle, the spouses should be held liable to pay their due and outstanding obligation in the amount of Php 193,670.39. The complaint was raffled to Metropolitan Trial Court (MTC) of Mandaluyong City, Branch 59.

On August 1, 2008, the MTC granted RFC's application for a Writ of Replevin. On September 16, 2008, RFC posted the required replevin bond in the amount of Php 500,000.00. The writ was enforced on October 13, 2008 by the Branch Sheriff of the MTC who seized the subject mortgaged vehicle as evidenced by the Sheriff's Return dated October 20, 2008. Thereafter, spouses Bolanos filed a Motion to Dismiss and Quash the Writ of Replevin on the grounds that: (a) the court has no jurisdiction over the persons of the defendants; (b) there is another pending action between the same parties for the same cause; (c) the claim for demand set forth in the plaintiff's pleading has been paid; and (d) plaintiff is guilty of forum shopping. The said motion was heard on November 25, 2008. On January 20, 2009, the MTC issued an Order[5] denying the said motion stating as follows:

“x x x x

Finding defendants' Motion to Dismiss to be without merit, the court resolves to deny the same.x x x Likewise, the court finds no sufficient ground to quash the writ of replevin issued considering that the replevin is merely an ancillary remedy availed by the plaintiff in the main action for sum of money.x x x

WHEREFORE, premises considered, defendant's motion is hereby denied for lack of merit. Defendant is directed to file a counter bond in an amount double the value of the property stated in the plaintiff's affidavit within five (5) days from receipt of this order.

SO ORDERED.”

On February 4, 2009, spouses Bolaños moved for a reconsideration of the aforementioned Order. On the other hand, RFC filed a Notice of Dismissal on February 5, 2009. Spouses Bolanos opposed the said Notice of Dismissal. On March 10, 2009, the Notice of Dismissal was heard and during the hearing, spouses Bolanos' counsel moved that all pending motions be submitted for resolution. On the said date, the MTC issued an Order directing RFC's counsel to explain and show cause why it resorted to foreclosure without terminating first the main action within ten (10) days from receipt of the order. RFC in compliance with the said Order manifested that it did not intend to undermine the proceedings before the court a quo when it filed the Notice of Dismissal but it only acted with due regard of and pursuant to the provisions of the PNs and CMCs which spouses Bolaños knowingly and voluntarily executed.

On December 16, 2009, the MTC issued an Order[6] denying spouses Bolaños' Motion for Reconsideration and confirmed the dismissal of the complaint pursuant to Section 1, Rule 17 of the Rules of Court.

Feeling aggrieved, spouses Bolaños appealed the case before the court a quo on February 1, 2010. On December 29, 2010, the court a quo rendered its Decision[7], the dispositive portion of which reads:

“WHEREFORE, IN VIEW OF ALL THE FOREGOING, this court holds that the instant Appeal is a wrong choice of remedy and granting for the sake of argument that it is the proper remedy, this court finds that the Metropolitan Trial Court of Mandaluyong City, Branch 59 in Civil Case No. 21579 correctly ruled when it denied Defendants-Appellants Motion to Dismiss and Quash Writ of Replevin in its Order dated January 20, 2009 and when it denied Defendants-Appellants' Motion for Reconsideration and confirmed

Plaintiff-Appellee's Notice of Dismissal in an Order dated December 16, 2009. Both assailed Orders is (sic) hereby AFFIRMED in toto.

SO ORDERED.”

Spouses Bolaños moved for a reconsideration of the foregoing ruling but same was denied by the court a quo in its Order[8] dated May 3, 2011.

Hence, the instant Petition for Review ascribing to the court a quo serious errors of fact and law in affirming in toto the decision of the MTC dismissing the complaint, denying reconsideration thereof and in holding that the appeal is not the proper remedy for the petitioners.[9]

Spouses Bolaños argue, among others, that the court a quo gravely erred in affirming in toto the decision of the MTC as the same should have required them to file their answer and conducted hearing and not to approve the Notice of Dismissal filed by RFC; that they disagree with the court a quo's ruling that appeal is not the proper remedy under the Rules because Section 3 of Rule 17 which provides that “the dismissal of the trial court judge has the effect and consequence of a dismissal on the merits under Section 3, Rule 17 of the Revised Rules of Court since it was without prejudice nor based upon lack of jurisdiction”; that a reading of the order of dismissal of the MTC, the only remedy available to them under the Rules, is an appeal; that the order of the MTC cannot be assailed by certiorari anymore because when the MTC granted respondent's Notice of Dismissal, it put an end or totally terminated the case; and that there are no allegations in RFC's complaint stating that the writ of replevin is preparatory to take over possession of the motor vehicle for extrajudicial foreclosure sale by the sheriff.[10]

On the other hand, RFC argues, among others, that the court a quo correctly affirmed the order of dismissal issued by the MTC; that well-settled is the rule that an action may be dismissed by the plaintiffs (respondent in this case) even without the order of the court by filing a notice of dismissal at any time before the service of the answer under Rule 17, Section 1 of the Rules of Court; that when it filed its Notice of Dismissal, no answer or a motion for summary judgment has been filed in court by spouses Bolaños; that contrary to the assertions of spouses Bolaños, at the time it (RFC) filed its Notice of Dismissal on February 5, 2008, there was no pending incident in the case as spouses Bolaños' Motion to Dismiss and Quash the Writ of Replevin were already denied by the MTC on January 20, 2009; and that even if the appeal is the proper remedy, the appeal should still be denied for lack of merit as RFC has only validly exercised its rights as a creditor.[11]

We dismiss the petition.

Section 1 (b), Rule 41 of the Rules of Court provides that “no appeal may be taken from an interlocutory order.” An order denying a motion to dismiss is interlocutory and not appealable. An order denying a motion to dismiss does not finally dispose of the case, and in effect, allows the case to proceed until the final adjudication thereof by the court. As such, it is merely interlocutory in nature and thus, not appealable.[12] The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: does the order or judgment leave something to be done in the trial court with respect to the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final.[13]

The assailed Order dated January 20, 2009 of the MTC which denied spouses Bolaños' Motion to Dismiss and Quash the Writ of Replevin was an interlocutory order, and hence should not have been the subject of an appeal. The court's Order of denial did not finally dispose of the case, as it, in effect, allowed the case to proceed further.

The reason for disallowing an appeal from an interlocutory order is to avoid multiplicity of appeals in a single action, which necessarily suspends the hearing and decision on the merits of the action during the pendency of the appeals. Permitting multiple appeals will necessarily delay the trial on the merits of the case for a considerable length of time, and will compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as there are incidental questions raised by him and as there are interlocutory orders rendered or issued by the lower court. An interlocutory order may be the subject of an appeal, but only after a judgment has been rendered, with the ground for appealing the order being included in the appeal of the judgment itself.[14]

Likewise, the Order[15] dated December 16, 2009 of the MTC confirming the dismissal of the complaint pursuant to Section 1, Rule 17[16] of the Rules of Court is not appealable as it is in the nature of an order dismissing an action without prejudice.[17] Section 1 (g), Rule 41 of the Rules of Court provides that “no appeal may be taken from an order dismissing an action without prejudice.”

Furthermore, the court a quo was correct in affirming in toto the decision of the MTC dismissing the complaint pursuant to Section 1, Rule 17 of the Rules of Court.

Section 1, Rule 17 of the Rules of Court provides:

Section 1. Dismissal upon notice by plaintiff. — A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim. (Emphasis and underscoring supplied)

Under this provision, it is mandatory that the trial court issue an order confirming such dismissal and, unless otherwise stated in the notice, the dismissal is without prejudice and could be accomplished by the plaintiff through a mere notice which is not, unlike a motion, subject to approval by the court. Dismissal is ipso facto upon notice, and without prejudice unless otherwise stated in the notice. The trial court has no choice but to consider the complaint as dismissed, since the plaintiff may opt for such dismissal as a matter of right, regardless of the ground.[18]

In the instant case, when RFC filed its Notice of Dismissal, no answer or a motion for summary judgment has been filed by the spouses Bolaños. What was filed before the court at that time was a Motion to Dismiss and Quash the Writ of Replevin. Furthermore, contrary to the assertions of spouses Bolaños, there was no longer any pending incident on the said case when RFC filed its Notice of Dismissal on February 5, 2008 since the Motion to Dismiss and Quash the Writ of Replevin had already been denied by the MTC in its Order[19] dated January 20, 2009. Thus, the MTC, in the instant case, had no choice but to dismiss the complaint since RFC opted for such dismissal as a matter of right, regardless of the ground.

Also, as pointed out by the court a quo, even if it allowed relaxation of the rules and ignored spouses Bolaños' procedural lapses, the latter's appeal will still fail.

RFC's cause of action is based on the PN and CMC voluntarily executed by spouses Bolaños when the latter obtained a loan from RFC on July 27, 2006. Since the spouses Bolaños defaulted in their obligations and refused to pay, RFC instituted the instant case to recover the said loan and pursuant to the relevant provisions embodied in the said PN and CMC, upon seizure of the mortgaged vehicle by virtue of the writ of replevin issued by the MTC, instituted the extrajudicial foreclosure of mortgage before the RTC-Office of the Clerk of Court (OCC) of Mandaluyong City.[20]

Paragraph 4 of the PN provides that:

“It is hereby agreed that if default be made in the payment of any of the installments or late payment charges thereon as and when the same becomes due and payable as specified above, the total principal sum then remaining unpaid, together with the agreed late payment charges thereon, shall at once become due and payable without the need of notice and demand.”

The CMC has the following provisions, to wit:

“Par. 3. In case the MORTGAGORS fail to pay any of the installment payment as and when the same falls due as herein above-provided, xxx the MORTGAGEE shall have the right, at its option to declare the entire amount of all the obligations due and payable, and may file an ordinary civil action for the collection of said indebtedness xxx”.

Likewise,

8. xxx In any case of default on the part of the MORTGAGORS, the latter shall on demand of the MORTGAGEE, deliver said property to said MORTGAGEE in the same condition as when received (ordinary wear and tear excepted) xxx, or at the option of the MORTGAGEE, take immediate possession of the property mortgaged, by way of replevin, preparatory to extra-judicial foreclosure, and for this purpose, the MORTGAGEE is hereby authorized to take possession of the property aforesaid whenever it may be found, and have the same brought to xxx or in any city or municipality where the MORTGAGEE may have a branch office xxx. PROVIDED however that the MORTGAGEE may have the option of selling the said property at any place where the same may be found xxx.”[21]

From the foregoing, it is clear that RFC has every right to execute the provisions embodied in the said PN and CMC and spouses Bolaños are bound by the stipulations stated therein. The rule is settled that a contract constitutes the law between the parties who are bound by its stipulations which, when couched in clear and plain language, should be applied according to their literal tenor.[22] For as long as they are not contrary to law, morals, good customs, public order, or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient.[23] Courts cannot supply material stipulations, read into the contract words it does not contain or, for that matter, read into it any other intention that would contradict its plain import. Neither can they rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.[24]

In sum, We find the assailed Decision and Order issued by the court a quo to be in accord with the established facts, applicable law and prevailing jurisprudence.

WHEREFORE, premises considered, the instant Petition is DISMISSED. The assailed Decision dated December 29, 2010 and Order dated May 3, 2011 of the RTC, Branch 212 of Mandaluyong City are hereby AFFIRMED.

SO ORDERED.

Librea-Leagogo, C.C., Chairperson and Lazaro-Javier, A.C., J.J., concur.

[1] Rollo, pp. 12-29.

[2] Id., pp. 33-40.

[3] Id., pp. 47-48.

- [4] See RTC Decision dated December 29, 2010, *Id.*, pp. 33-36.
- [5] *Id.*, p. 49.
- [6] *Id.*, pp. 50-51.
- [7] *Id.*, pp. 33-40.
- [8] *Id.*, pp. 47-48.
- [9] *Id.*, p. 20.
- [10] *Id.*, pp. 26-29.
- [11] *Id.*, pp. 129-136.
- [12] *Rayos, et al. v. The City of Manila*, G.R. No. 196063, December 14, 2011.
- [13] *Pahila-Garrido v. Tortogo, et al.*, GR No. 156358, August 17, 2011.
- [14] *Id.*
- [15] *Supra* note at 6.
- [16] Dismissal upon notice by plaintiff. — A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.
- [17] See *Rubio, Jr. v. Paras*, G. R. No. 156047, April 12, 2005.
- [18] *Dael v. Sps. Beltran*, G.R. No. 156470, April 30, 2008.
- [19] *Supra* note at 5.
- [20] See RTC Decision dated December 29, 2010, *Rollo*, pp. 38-39.
- [21] *Id.*
- [22] See *Spouses Cabahug v. National Power Corporation*, G.R. No. 186069, January 30, 2013.
- [23] *Philippine Charter Insurance Corporation v. Petroleum Distributors and Service Corporation*, G.R. No. 180898, April 18, 2012.
- [24] *Supra* note at 22.

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