UNION MOTOR CORPORATION, PETITIONER-APPELLANT, VS. THE COURT OF APPEALS, JARDINE-MANILA FINANCE, INC., SPOUSES ALBIATO BERNAL AND MILAGROS BERNAL, RESPONDENTS-APPELLES.

G.R. No. 117187. July 20, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on appeal, by way of a petition for review on certiorari, is the Decision[1] dated March 30, 1994 and Resolution[2] dated September 14, 1994 of the Court of Appeals[3] which affirmed the Decision dated March 6, 1989 of the Regional Trial Court of Makati, Metro Manila, Branch 150, in Civil Case No. 920 as well as its Resolution dated September 14, 1994 which denied the Motion for Reconsideration of the petitioner.

The facts are as follows:

On September 14, 1979, the respondent Bernal spouses purchased from petitioner Union Motor Corporation one Cimarron Jeepney for Thirty Seven Thousand Seven Hundred Fifty Eight Pesos and Sixty Centavos (P37,758.60) to be paid in installments. For this purpose, the respondent spouses executed a promissory note and a deed of chattel mortgage in favor of the petitioner. Meanwhile, the petitioner entered into a contract of assignment of the promissory note and chattel mortgage with Jardine-Manila Finance, Inc. Through Manuel Sosmeña, an agent of the petitioner, the parties agreed that the respondent spouses would pay the amount of the promissory note to Jardine-Manila Finance, Inc., the latter being the assignee of the petitioner. To effectuate the sale as well as the assignment of the promissory note and chattel mortgage, the respondent spouses were required to sign a notice of assignment, a deed of assignment, a sales invoice, a registration certificate, an affidavit, and a disclosure statement. The respondent spouses were obliged to sign all these documents for the reason that, according to Sosmeña, it was a requirement of petitioner Union Motor Corporation and Jardine-Manila Finance, Inc. for the respondent spouses to accomplish all the said documents in order to have their application approved. Upon the respondent spouses' tender of the downpayment worth Ten Thousand Thirty-Seven Pesos (P10,037.00), and the petitioner's acceptance of the same, the latter approved the sale. Although the respondent spouses have not yet physically possessed the vehicle, Sosmeña required them to sign the receipt as a condition for the delivery of the vehicle.

The respondent spouses continued paying the agreed installments even if the subject motor vehicle remained undelivered inasmuch as Jardine-Manila Finance, Inc. promised to deliver the subject jeepney. The respondent spouses have paid a total of Seven Thousand Five Hundred Seven Pesos (P7,507.00) worth of installments before they discontinued paying on account of non-delivery of the subject motor vehicle. According to the respondent spouses, the reason why the vehicle was not delivered was due to the fact that Sosmeña allegedly took the subject motor vehicle in his personal capacity.

On September 11, 1981, Jardine-Manila Finance, Inc., filed a complaint for a sum of money, docketed as Civil

Case No. 42849, against the respondent Bernal spouses before the then Court of First Instance of Manila. This case was later on transferred to the Regional Trial Court of Makati, Branch 150. On November 10, 1981, the complaint was amended to include petitioner Union Motor Corporation as alternative defendant, the reason being that if the respondent spouses' refusal to pay Jardine-Manila Finance, Inc. was due to petitioner's non-delivery of the unit, the latter should pay Jardine-Manila Finance, Inc. what has been advanced to the petitioner. After the petitioner filed its answer, the respondent spouses filed their amended answer with cross-claim against the former and counterclaim against Jardine-Manila Finance, Inc. Following the presentation of evidence of Jardine-Manila Finance, Inc., the respondent spouses presented as witnesses Albiato Bernal and Pacifico Tacub in support of their defense and counterclaim against the plaintiff and cross-claim against the petitioner. The petitioner did not present any evidence inasmuch as the testimony of the witness it presented was ordered stricken off the record for his repeated failure to appear for cross-examination on the scheduled hearings. The trial court deemed the presentation of the said witness as having been waived by the petitioner.

On March 6, 1989, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered ordering:
>
> - Plaintiff to pay spouses Bernals the sum of P7,507.15 plus legal interest until fully paid;
>
> - Union Motor Corporation to pay defendants spouses Bernals the downpayment in the amount of P10,037.00, plus legal interest until fully paid;
>
> - Union Motor Corporation to pay plaintiff P23,268.29, plus legal interest until fully paid, and attorney's fees equivalent to 20% of the amount due to plaintiff.
>
> Union Motor Corporation shall further pay defendants spouses Bernals the sum of P20,000.00 as moral damages, P10,000.00 as attorney's fees and costs of suit.[4]

The petitioner interposed an appeal before the Court of Appeals while the respondent spouses appealed to hold the petitioner solidarily liable with Jardine-Manila Finance, Inc. The appellate court denied both appeals and affirmed the trial court's decision by holding that:

> Now, as to the appeal of defendant Union Motors, it must be noted that said defendant had failed to adduce evidence in court to support its claim of non-liability. We cannot see how the absence of any evidence in favor of said defendant can result in favorable reliefs to its side on appeal. There is simply no evidence to speak of in appellant Union Motor's favor to cause a reversal of the lower court's decision. In the case of Tongson v. C.A. G.R. No. 77104, Nov. 6, 1992, the Supreme Court reiterated that:
> "As mandated by the Rules of Court, each party must prove his own affirmative allegation, i.e., one who asserts the affirmative of the issue has the burden of presenting at the trial such amount of evidence required by law to obtain a favorable judgment: by preponderance of evidence in civil cases, and by proof beyond reasonable doubt in criminal cases. x x x".

Hence, the instant petition anchored on the following assigned errors:

> I
>
> THE HONORABLE COURT OF APPEALS (SECOND DIVISION) GRAVELY ERRED AND ABUSED ITS DISCRETION IN NOT FINDING THAT THE LOWER COURT A QUO'S DECISION OF MARCH 6, 1989 IS CONTRARY TO LAW AND THE EVIDENCE ON RECORD;
>
> II
>
> THE HONORALBLE COURT OF APPEALS (SECOND DIVISION) GRAVELY ERRED AND ABUSED ITS DISCRETION IN NOT FINDING THAT THE APPEALED DECISION WAS RENDERED IN

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DEPRIVATION AND IN DENIAL OF HEREIN PETITIOENR-APPELLANT'S RIGHT TO DUE PROCESS.

The first issue to be resolved in the instant case is whether there has been a delivery, physical or constructive, of the subject motor vehicle.

On this score, petitioner Union Motor Corporation maintains that the respondent spouses are not entitled to a return of the downpayment for the reason that there was a delivery of the subject motor vehicle. According to the petitioner, the appellate court erred in holding that no delivery was made by relying exclusively on the testimonial evidence of respondent Albiato Bernal without considering the other evidence on record, like the sales invoice and delivery receipt which constitute an admission that there was indeed delivery of the subject motor vehicle. Also, there was a constructive delivery of the vehicle when respondent Albiato Bernal signed the registration certificate of the subject vehicle. Inasmuch as there was already delivery of the subject motor vehicle, ownership has been transferred to the respondent spouses. The Chattel Mortgage Contract signed by the respondent Bernal spouses in favor of the petitioner likewise proves that ownership has already been transferred to them for the reason that, under Article 2085 of the New Civil Code, the mortgagor must be the owner of the property.[5] As owners of the jeepney, the respondent Bernal spouses should bear the loss thereof in accordance with Article 1504 of the New Civil Code which provides that when the ownership of goods is transferred to the buyer, the goods are at the buyer's risk whether actual delivery has been made or not. These, then, are the contentions of the petitioner.

The main allegation of the respondent Bernal spouses, on the other hand, is that they never came into possession of the subject motor vehicle. Thus, it is but appropriate that they be reimbursed by the petitioner of the initial payment which they made. They also claim that Jardine-Manila Finance, Inc., and the petitioner conspired to defraud and deprive them of the subject motor vehicle for which they suffered damages.

We rule in favor of the respondent Bernal spouses.

Undisputed is the fact that the respondent Bernal spouses did not come into possession of the subject Cimarron jeepney that was supposed to be delivered to them by the petitioner. The registration certificate, receipt and sales invoice that the respondent Bernal spouses signed were explained during the hearing without any opposition by the petitioner. According to testimonial evidence adduced by the respondent spouses during the trial of the case, the said documents were signed as a part of the processing and for the approval of their application to buy the subject motor vehicle. Without such signed documents, no sale, much less delivery, of the subject jeepney could be made. The documents were not therefore an acknowledgment by respondent spouses of the physical acquisition of the subject motor vehicle but merely a requirement of petitioner so that the said subject motor vehicle would be delivered to them.

We have ruled that the issuance of a sales invoice does not prove transfer of ownership of the thing sold to the buyer; an invoice is nothing more than a detailed statement of the nature, quantity and cost of the thing sold and has been considered not a bill of sale.[6]

The registration certificate signed by the respondent spouses does not conclusively prove that constructive delivery was made nor that ownership has been transferred to the respondent spouses. Like the receipt and the invoice, the signing of the said documents was qualified by the fact that it was a requirement of petitioner for the sale and financing contract to be approved. In all forms of delivery, it is necessary that the act of delivery, whether constructive or actual, should be coupled with the intention of delivering the thing. The act, without the intention, is insufficient.[7] The critical factor in the different modes of effecting delivery which gives legal effect to the act, is the actual intention of the vendor to deliver, and its acceptance by the vendee. Without that intention, there is no tradition.[8] Enlightening is Addison v. Felix and Tioco[9] wherein we ruled that:

> The Code imposes upon the vendor the obligation to deliver the thing sold. The thing is considered to be delivered when it is placed "in the hands and possession of the vendee." (Civil Code, Art. 1462). It is true that the same article declares that the execution of a public instrument is equivalent to the delivery of the thing which is the object of the contract, but, in order that this symbolic delivery may produce the effect of tradition, it is necessary that the vendor shall have had control over the thing sold that, at the moment of the sale, its material delivery could have been made. It is not enough to confer upon the purchaser the ownership and the right of possession. The thing sold must be placed in his control. When there is no impediment whatever to prevent the thing sold passing into the tenancy of the purchaser by the sole will of the vendor, symbolic delivery through the execution of a public instrument is sufficient. But if, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy of the thing and make use of it himself or through another in his name, because such tenancy and enjoyment are opposed by the interposition of another will, then fiction yields to reality-the delivery has not been effected. (Italics supplied)

The act of signing the registration certificate was not intended to transfer the ownership of the subject motor vehicle to respondent Bernal spouses inasmuch as the petitioner still needed the same for the approval of the financing contract with Jardine-Manila Finance, Inc. The record shows that the registration certificate was submitted to Jardine-Manila Finance, Inc., which took possession thereof until Sosmeña requested the latter to hand over the said document to him. The fact that the registration certificate was still kept by Jardine-Manila Finance, Inc. and its unhesitating move to give the same to Sosmeña just goes to show that the respondent spouses still had no complete control over the subject motor vehicle as they did not even possess the said certificate of registration nor was their consent sought when Jardine-Manila Finance, Inc. handed over the said document to Sosmeña.

Inasmuch as there was neither physical nor constructive delivery of a determinate thing, (in this case, the subject motor vehicle) the thing sold remained at the seller's risk.[10] The petitioner should therefore bear the loss of the subject motor vehicle after Sosmeña allegedly stole the same.

Petitioner's reliance on the Chattel Mortgage Contract executed by the respondent spouses does not help its assertion that ownership has been transferred to the latter since there was neither delivery nor transfer of possession of the subject motor vehicle to respondent spouses. Consequently, the said accessory contract of chattel mortgage has no legal effect whatsoever inasmuch as the respondent spouses are not the absolute owners thereof, ownership of the mortgagor being an essential requirement of a valid mortgage contract. The Carlos case[11] cited by the petitioner is not applicable to the case at bar for the reason that in the said case, apart from the fact that it has a different issue, the buyer took possession of the personal property and was able to sell the same to a third party. In the instant case, however, the respondent spouses never acquired possession of the subject motor vehicle. The manifestations of ownership are control and enjoyment over the thing owned. The respondent spouses never became the actual owners of the subject motor vehicle inasmuch as they never had dominion over the same.

The petitioner also disputes the finding of the appellate court that there was no delivery. It did not consider, according to the petitioner, the fact that the circumstance of non-delivery was not shown and that the respondent spouses never made any demand for the possession of the vehicle. Contrary to the petitioner's allegation, the respondent spouses presented sufficient evidence to prove that Sosmeña took delivery and possession of that subject motor vehicle in his personal capacity as shown by a document[12] on which he (Sosmeña) personally acknowledged receipt of the registration certificate from Jardine-Manila Finance, Inc. Also, respondent Albiato Bernal testified to the effect that they went several times to the office of the petitioner to demand the delivery of the subject motor vehicle. The petitioner failed to refute that testimonial evidence considering that it waived its right to present evidence.

Anent the second issue, the petitioner claims that the trial court committed a violation of due process when it ordered the striking off of the testimony of the petitioner's witness as well as the declaration that petitioner has abandoned its right to present evidence. According to the petitioner, the delays in the hearing of the case were neither unjust nor deliberate. It just so happened that from August 5, 1986 up to June 1987, the designated counsel for the petitioner was either appointed to the government or was short of time to go over the records of the case inasmuch as he was a new substitute counsel. During the last time the petitioner's counsel moved for the postponement of the case, witness Ambrosio Balones was not available due to gastro-enteritis as shown by a medical certificate.

Well-settled is the rule that "factual findings of the Court of Appeals are conclusive on the parties and not reviewable by the Supreme Court - and they carry even more weight when the Court of Appeals affirms the factual findings of the trial court."[13] In the present case, the trial court found that after the direct testimony of petitioner's witness, Ambrosio Balones, the continuation of the cross-examination was postponed and re-scheduled for four (4) times from November 21, 1986 up to June 19, 1987, all at the instance of petitioner Union Motor Corporation. For three (3) times, the witness did not appear whenever the case was called for hearing. On June 19, 1987, when asked by the trial court why the witness was not present, the petitioner's counsel could not give any good reason for his absence. Neither did the petitioner offer to present any other witness to testify on that day. The appellate court assented to these findings by quoting the decision of the trial court, to wit:

> Defendant Union Motors Corporation has no evidence as the testimony of its only witness, Ambrosio Balones, was orderd stricken off the record in the hearing of June 19, 1987, for his continuous failure to appear on scheduled hearings. The Court further considered said defendant to have waived further presentation of evidence.[14]

The petitioner attempts to shift the blame on the respondents for the failure of its witness, Balones, to finish his testimony. It was at the instance of Atty. Tacub, counsel for the respondents, that the testimony of petitioner's witness, Balones, was discontinued after Atty. Tacub asked for a recess and later on for the postponement of the cross-examination of the said witness. The petitioner had the duty to produce its witness when he was called to finish his testimony. To place the blame on the respondent spouses is to put a premium on the negligence of the petitioner to require its own witness to testify on cross-examination. By presenting witness Balones on direct-examination, the petitioner had the corresponding duty to make him available for cross-examination in accordance with fair play and due process. The respondents should not be prejudiced by the repeated failure of the petitioner to present its said witness for cross-examination. Hence, the trial court ordered that the unfinished testimony of said witness be stricken off the record.

However, we cannot affirm that part of the ruling of the courts a quo awarding moral damages to the respondents. For moral damages to be awarded in cases of breach of contract, the plaintiff must prove bad faith or fraudulent act on the part of the defendant.[15] In the instant case, the allegations about connivance and fraudulent schemes by the petitioner and Manuel Sosmeña were merely general allegations and without any specific evidence to sustain the said claims. In fact, Exhibit "1" which bears the name and signature of Sosmeña as the person who received the registration certificate militates against the respondent spouses' claim that the petitioner connived with its agent to deprive them of the possession of the subject motor vehicle. The said document shows that Sosmeña acted only in his personal and private capacity, thereby effectively excluding any alleged participation of the petitioner in depriving them of the possession of the subject motor vehicle. The petitioner should not be held liable for the acts of its agent which were done by the latter in his personal capacity.

However, we affirm the award of attorney's fees. When a party is compelled to litigate with third persons or to incur expenses to protect his interest, attorney's fees should be awarded.[16] In the present case, the respondent

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spouses were forced to implead the petitioner Union Motor Corporation on account of the collection suit filed against them by Jardine-Manila Finance, Inc., a case which was eventually won by the respondent spouses.

WHEREFORE, the appealed Decision dated March 30, 1994 of the Court of Appeals is hereby AFFIRMED with the MODIFICATION that the award of moral damages is deleted. With costs against the petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and Buena, JJ., concur.
Quisumbing, J., on official business.

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[1] Penned by Associate Justice Lourdes K. Tayao-Jaguros and concurred in by Presiding Justice Vicente V. Mendoza (now Associate Justice of the Supreme Court) and Associate Justice Jesus M. Elbinias, in CA-G.R. CV No. 21691; Rollo, pp. 25-34.

[2] Rollo, p. 36.

[3] Special Former Second Division.

[4] Rollo, pp. 25-26.

[5] Land Settlement and Development Corporation v. Carlos, 22 SCRA 202, 203, 205, 206 (1968).

[6] P.T. Cerna Corporation v. Court of Appeals, 221 SCRA 19 (1993); Norkis Distributors, Inc. v. Court of Appeals, 193 SCRA 694 (1991).

[7] Norkis Distributors, Inc. v. Court of Appeals, 193 SCRA 694, 698 (1991).

[8] Id., p. 699, citing Abuan v. Garcia, 14 SCRA 759 (1965).

[9] 38 Phil. 404, 408 (1918).

[10] Article 1496, New Civil Code.

[11] Supra, Note No. 5.

[12] Exhibit "1".

[13] Borromeo v. Sun, 317 SCRA 176, 182 (1999).

[14] CA Decision, p. 8; Rollo, p. 32.

[15] Article 2220, New Civil Code.

[16] Article 2208(2), New Civil Code.

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