

SERVICEWIDE SPECIALISTS, INC., PETITIONER, VS. COURT OF APPEALS, SPOUSES EDUARDO AND FELISA TOLOSA, BIÑAN MOTOR SALES CORPORATION, AND EDUARDO GARCIA, RESPONDENTS.*G.R. No. 117728. June 26, 1996*

Ponente: PUNO, J.

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Petitioner Servicewise Specialists, Inc. seeks a review of the Decision of the Court of Appeals in CA-G. R. CV No. 20921[1] modifying the Decision of the Regional Trial Court, Branch LIV, Manila in Civil Case No. 81-604.[2]

The records show that on December 15, 1981, petitioner Servicewise Specialists, Inc. (Servicewise) filed a complaint for replevin and/or sum of money with damages before the then Court of First Instance of Manila, Branch V against private respondents Eduardo and Felisa Tolosa (Tolosa spouses) and one John Doe.[3] Servicewise alleged that on January 15, 1981, the Tolosa spouses purchased from Amante Motor Works one (1) Isuzu passenger-type jeepney with Motor No. C240-317331 and Serial No. CMCI-81063-C for the sum of P48,432.00 to be paid in 24 monthly installments;[4] that the spouses executed a promissory note and drew a deed of chattel mortgage over the vehicle in favor of Amante Motor Works; that on the same day, Amante Motor Works, with notice to the Tolosas, assigned the promissory note and chattel mortgage to Filinvest Finance and Leasing Corporation, that Filinvest Finance and Leasing Corporation also assigned its rights and interest in said promissory note and chattel mortgage to Filinvest Credit Corporation; that Servicewise later acquired the rights and interests of Filinvest Credit Corporation over said note and mortgage; that the Tolosa spouses failed to pay the installments due on the purchase price despite several demands. In its prayer, Servicewise demanded from the spouses and John Doe, the person in possession of the vehicle, the return of the vehicle or the payment of the balance of P34,224.78 and damages.[5]

On January 13, 1982, the trial court issued an order for the seizure of the vehicle subject of the complaint.[6]

The Tolosa spouses filed their Answer on March 22, 1982. They claimed that they purchased one jeepney unit from Biñan Motor Sales Corporation (Biñan Motors), not Amante Motors Works; that in January 1981, they ordered another unit from the same corporation through the proddings of its President and General Manager, Eduardo Garcia; that Garcia informed the spouses that the additional unit shall be "house financed" by Biñan Motors; that Eduardo Tolosa noticed that the vendor indicated in the deed of sale was not Biñan Motors but Amante Motor Works; that Garcia explained to Tolosa that he (Garcia) was to make full payment on the jeepney to Amante Motor Works and that he (Tolosa) was to pay Garcia the monthly installments thereon; that Tolosa never received any notice from Biñan Motors about the jeepney unit he ordered; that on December 17, 1981, Tolosa received a receipt from Filinvest Finance and Leasing Corporation about the payment he allegedly made on a jeepney unit he purchased from Amante Motor Works; that Garcia informed him he was in possession of the jeepney and said that he made the initial payment on the vehicle and that he himself would pay its monthly

amortization; that Garcia prepared and executed a "Deed of Sale with Assumption of Mortgage" where it appears that Tolosa sold and transferred to Garcia the said jeepney.[7]

On June 10, 1982, Servicewide amended its complaint by adding Eduardo Garcia as the defendant in place of John Doe. Servicewide alleged that the Tolosa spouses, without Servicewide's knowledge and consent, executed and delivered to Eduardo Garcia a "Deed of Sale with Assumption of Mortgage" over the jeepney sought to be recovered.[8]

On June 16, 1982, the trial court admitted the amended complaint and ordered the issuance of summons on Garcia as additional defendant.

On October 28, 1982, the Tolosa spouses filed an "Amended Answer with Third-Party Complaint impleading as third-party defendants Biñan Motors and Eduardo Garcia. The trial court ordered service of summons on the third-party defendants.

On January 18, 1983, the sheriff seized the subject vehicle from the possession of one Lourdes Bartina.[9] Three days later, Bartina filed a "Third Party Claim" and "Urgent Motion for Release" alleging ownership of the jeepney. She claimed that she purchased the vehicle from Biñan Motors and regularly paid its subsequent installments to the Commercial Credit Corporation of Las Piñas.[10]

On February 21, 1983, the trial court released the vehicle to Bartina on an indemnity bond of P34,000.00. The court found that the documents supporting Bartina's ownership of the jeepney were in due form and executed prior to the documents of the Tolosa spouses.

On March 2, 1983, Biñan Motors and Eduardo Garcia filed their "Answer to Third-Party Complaint" claiming that the third party plaintiffs (Tolosa spouses) had no cause of action against them as it was Amante Motor Works that invoiced the vehicle; that the Tolosa spouses purchased a jeepney unit from them but their check for downpayment bounced; that they initiated a complaint for violation of the Bouncing Checks Law against Eduardo Tolosa for which an information was filed on December 2, 1982; that if the Tolosa spouses were prejudiced it was because of their unreasonable neglect to make good their initial payment on the vehicle.[11] A reply was filed by the Tolosa spouses.

Despite the court's order of February 21, 1983, the subject jeepney was not released to Bartina. Thus, on June 14, 1984, Bartina filed her "Complaint in Intervention." [12] Third-party defendants Garcia and Biñan Motors filed their "Answer to Complaint in Intervention." They claimed that they acquired the subject vehicle from the Tolosas "in consideration of the value of one Celeste jeepney in the amount of P56,000.00" but that the Tolosas failed to pay the downpayment on the vehicle; that they came to court with clean hands and that they are actually the victims of the Tolosas.[13] Servicewide manifested that it was adopting its complaint in the principal case as its comment or answer to the complaint-in-intervention.[14]

At the pre-trial conference of November 7, 1984, the trial court noted that summons and copy of the amended complaint had not been served on Eduardo Garcia as additional defendant. It deferred the pretrial until such service shall have been effected.[15]

On January 10, 1985, the trial court ordered Servicewide to turn over possession of the subject jeepney to Bartina upon filing of the increased bond of P55,000.00. Pretrial was again scheduled on February 27, 1985 but for one reason or another, was postponed several times until October 7, 1985.

On October 7, 1985, all parties, through their respective counsels, appeared except the Tolosas and their counsel. The trial court declared the Tolosas as in default with respect to the principal complaint and scheduled the

reception of evidence for Servicewide. The Tolosas were likewise declared nonsuited with respect to their third-party complaint against Biñan Motors and Garcia. With regard to the complaint-in-intervention, the trial court scheduled a pretrial conference, thus:

"When this case was called for pretrial, Atty. Ocaya, for plaintiff, Atty. Alfred Juntilla for Intervenor-Tolosas (sic)[16] and Atty. Manuel Ramirez for third-party defendants appeared. However, defendants Eduardo and Felisa Tolosa failed to appear notwithstanding due notice. For failure on the part of defendants to appear notwithstanding due notice, upon motion of the plaintiff, defendants are hereby declared as in default and let the reception of evidence insofar as said defendants are concerned be reset on November 7, 1985 at 8:30 a.m.

"Due to the absence of the defendant third-party plaintiff notwithstanding due notice, upon motion of the Third-party defendant, the third-party complaint in so far as the third-party defendant is concerned is hereby dismissed and likewise, said defendant being third-party plaintiff is declared nonsuited without special pronouncement as to costs.

"In so far as the intervention is concerned which is directed against the Plaintiff and considering that there is an on-going possibility of settlement between the Intervenor and the Plaintiff, the pre-trial in so far as the Intervenor and Plaintiff are concerned is hereby cancelled and reset on November 7, 1985 at 8:30 a.m.

Atty. Ocaya, Atty. A. Juntilla and Atty. Manuel Ramirez are notified of this order in open Court and let a copy of this order be furnished defendants Tolosas.

SO ORDERED.

Manila, October 7, 1985.

(SGD.) ERNESTO S. TENGCO

(Pairing Judge)"[17]

At the hearing of February 4, 1986 for reception of Servicewide's evidence, the Tolosas again failed to appear despite due notice. Servicewide presented its legal accounts analyst, Ms. Nannette Navea, who testified on the outstanding obligation of the Tolosas and Garcia.[18] It also presented several documents consisting of the promissory note, deed of chattel mortgage, the deed of assignment of the Tolosas' credit by Filinvest Finance and Leasing Corporation, and the notice and demand letter to the Tolosas.[19] Servicewide then submitted the case for decision.

Pretrial for the complaint-in-intervention originally scheduled on November 7, 1985 was postponed several times until March 1, 1988. The Tolosas were notified but again failed to appear on said date. For the second time, the trial court declared them to have waived their right to present evidence as against the complaint and dismissed with prejudice their third-party complaint against Garcia and Biñan Motors. The court also declared them as in default with respect to the complaint-in-intervention of Bartina and scheduled the reception of Bartina's evidence accordingly. The order reads as follows:

"O R D E R

"Considering that counsel for the intervenor arrived in Court although late and pre-trial proceedings were had as between the intervenor and the plaintiff; considering the non-appearance of the defendants Eduardo and Felisa Tolosa, the said two defendants are deemed to have waived their right to present evidence as against the Complaint and also they are deemed to be as in default with respect to the Complaint-in-Intervention of Lourdes Bartina; the Third-Party Complaint against Eduardo Garcia is dismissed with prejudice and with costs against the said defendants; this case is set for trial for the reception of intervenor's evidence on April 27, 1988 and May 5, 1988 at 9: 00 o'clock in the morning.

"Notify Eduardo and Felisa Tolosa at their respective addresses it appearing that their counsel has already withdrawn his appearance.

SO ORDERED.

Given in open Court, March 1, 1988.

(SGD.) MANUEL T. MURO
Judge"[20]

On April 27, 1988, at the hearing for reception of evidence on Bartina's complaint-in-intervention, the Tolosas again did not appear despite due notice. Intervenor Bartina testified that the vehicle subject of the complaint was sold to her by Biñan Motors owned by Eduardo Garcia and that the vehicle was in her possession when it was seized by the sheriff and thereafter turned over to Servicewide.[21] Bartina thereafter identified and offered various documents proving her ownership of the subject vehicle.[22]

On May 23, 1988, Bartina and the defendants-in-intervention Eduardo Garcia and Biñan Motors, with the assistance of their respective counsels, moved to dismiss the complaint-in intervention. They alleged that they had "arrived at an amicable settlement of their claims." [23] The court granted the motion on May 24, 1988.[24]

On August 3, 1988, a decision was rendered by the trial court. It ruled in favor of Servicewide granting it the right to either foreclose the mortgage on the subject vehicle or to demand from defendants, jointly and severally, payment of P34,224.78 plus interest and damages. The court held:

"WHEREFORE, judgment is hereby rendered in the alternative, for the plaintiff to either foreclose the mortgage on the motor vehicle subject matter of this case which is in its possession or to have the defendants jointly and severally pay plaintiff the sum of P34,224.78; plus interest at 24% per annum from December 3, 1981 until fully paid, and in either case, for said defendants to pay plaintiff also jointly and severally the sum of P18,385.68 as attorney's fees, liquidated damages, bonding fees and other expenses incurred as well as the costs of the suit." [25]

Defendant Eduardo Garcia moved for reconsideration and clarification of the decision on the ground that he was not one of the defendants in the principal case. He claimed that the court did not acquire jurisdiction over his person because he was never served nor did he receive summons on the amended complaint naming him as an additional defendant.

In an order dated September 9, 1988, the trial court denied the motion for reconsideration. It however amended the dispositive portion of the decision to include Eduardo Garcia as one of the defendants liable to Servicewide, to wit:

"Re 'Motion for Reconsideration and Clarification' dated August 20, 1988:

1. The dispositive portion of the Decision controls over the narration of facts and discussion, hence all defendants are liable as per such dispositive portion;
2. The tenth line on page 2 of the Decision is hereby corrected to include Eduardo Garcia, the omission of his name being thru inadvertence." [26]

Eduardo Garcia appealed to the Court of Appeals.[27] In a decision dated October 27, 1994, the appellate court found that no summons on the amended complaint had been served on Garcia however, since Garcia filed several pleadings as a third-party defendant in the trial court, he was deemed to have submitted himself to its jurisdiction. Nonetheless, it found no sufficient evidence to hold Garcia solidarily liable with the Tolosa spouses on the principal complaint. The Court of Appeals therefore modified the trial court's decision and relieved Garcia from

liability.

Hence, this petition.

Before us, petitioner submits that:

- "1. IT IS A SERIOUS ERROR FOR THE PUBLIC RESPONDENT COURT OF APPEALS TO DWELL ON QUESTIONS NOT RAISED AS AN ERROR ON APPEAL BY THE APPELLANT;
 2. THE HONORABLE COURT OF APPEALS PALPABLY ERRED IN HOLDING THAT THERE IS NO EVIDENCE ADDUCED TO HOLD EDUARDO GARCIA LIABLE IN THIS CASE;
 3. THE HONORABLE COURT OF APPEALS PALPABLY ERRED IN DISREGARDING THE EVIDENCE ADDUCED BY INTERVENOR LOURDES BARTINA IN DECIDING THE INSTANT CASE."
- [28]

It is petitioner's claim that in releasing Eduardo Garcia from liability, the appellate court decided an issue that was never raised by Garcia himself. On appeal, Garcia only contended that the trial court erred "in finding him one of the defendants referred to in the dispositive portion of the decision" because he was not a defendant in the principal complaint, jurisdiction not having been acquired over him.[29] According to petitioner, the appellate court should have confined itself to the sole issue of jurisdiction over Garcia's person and should not have determined his liability.[30]

We reject petitioner's submission.

An appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. This is especially so if the court finds that their consideration is necessary in arriving at a just decision of the case before it. We have consistently held that an unassigned error closely related to an error properly assigned or upon which a determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as an error.[31]

In ruling on the liability of Garcia, the respondent appellate court can hardly be said to have treated an issue unrelated to those litigated before the trial court. On the basis of the records, the appellate court found that Eduardo Garcia had submitted himself voluntarily to the jurisdiction of the trial court. To avoid dispensing piecemeal justice, it proceeded to determine whether Garcia was indeed liable on the obligation. The procedure followed by respondent court is in accord with the desideratum that calls for a complete adjudication of a case to speed up the dispensation of justice.

We come now to the main issue of whether there is sufficient evidence on record to hold Garcia, together with the Tolosa spouses, solidarily liable to petitioner for the return of the subject motor vehicle or payment of its equivalent value in money.

Petitioner insists that there is enough evidence to prove Garcia's liability, viz.: (1) the pleadings filed by Garcia and Biñan Motors, specifically, the "Answer" to the complaint and the "Answer to Complaint in Intervention" where Garcia admitted selling the mortgaged vehicle to the Tolosas which also show that he sold the same vehicle to Bartina during the effectivity of the mortgage; (2) the testimony of Lourdes Bartina where she declared that the same mortgaged vehicle was indeed sold to her by Garcia and Biñan Motors; (3) Garcia's subsequent compromise with Bartina which proves his liability for the obligation.

We do not agree.

Garcia and Biñan Motors did not file an "Answer" to the complaint. The records of the case do not show that both or either of them were served any summons on the amended complaint. This is precisely why Garcia raised the

issue of lack of jurisdiction. Garcia and Biñan Motors however filed an "Answer to Third Party Complaint" and "Answer to Complaint in Intervention."

It must be stressed that the third-party complaint filed by the Tolosas was dismissed twice by the trial court - first at the pretrial of October 7, 1985 for the principal complaint and second at the pretrial of March 1, 1988 for the complaint-in-intervention. The second dismissal was with prejudice. The complaint-in-intervention was, upon motion of the parties-in-intervention, also dismissed by the trial court on May 24, 1988.

A dismissal or discontinuance of an action operates to annul orders, rulings or judgments previously made in the case.[32] It also annuls all proceedings had in connection therewith and renders all pleadings ineffective.[33] A dismissal or nonsuit leaves the situation as though no suit had ever been brought. Further proceedings in the action are arrested and what has been done therein is also annulled, so that the action is as if it had never been.[34] It carries down with it previous proceeding and orders in the action, and all pleadings of both parties, and all issues with respect to the plaintiff's claim.[35]

The records do not show that petitioner adopted the "Answer to Third Party Complaint" and the "Answer to Complaint in Intervention" filed by Biñan Motors and Garcia, and the testimony of Bartina as part of its evidence in the trial court. It cannot rely on them on appeal for evidence not formally offered before the trial court cannot be considered.[36] To consider them at this stage will deny the other parties their right to rebut them.

Assuming arguendo that the said pleadings of Garcia and Biñan Motors and the evidence of Bartina can be considered in favor of petitioner, still, they do not sufficiently prove Garcia's liability on the matter.

For one, the motor vehicle described in the "Answer to Third-Party Complaint" has different motor and serial numbers from the vehicle subject of the complaint. The subject vehicle is a galvanized silver jeepney with Motor No. C240-317331 and Serial No. CMCI-81063-C while the vehicle in said pleading is a red stainless jeepney with Motor No. C-221-443144 and Serial No. CMCI-81795-C.[37] What Garcia and Biñan Motors admittedly sold to the Tolosas was not the subject vehicle.

In the "Answer to the Complaint in Intervention," Garcia and Biñan Motors admitted that they acquired from the Tolosas the "vehicle subject of the complaint in consideration of one Celeste jeepney valued at P56,000.00." The vehicle subject of the complaint was the one found in the possession of Bartina. Under the two pleadings, however, what Garcia and Biñan Motors sold to the Tolosa spouses was a different vehicle from the one they acquired from said spouses and which they allegedly sold to Bartina. A double sale of the same jeepney could not rise because there appears to be two different jeepneys in the pleadings.

Even in the "Deed of Sale with Assumption of Mortgage" where the Tolosa spouses allegedly sold to Garcia the jeepney subject of the complaint the vehicle described therein had different motor and chassis number. The deed reveals that what the Tolosas sold to Garcia was a red jeepney with Motor No. C240-32833 and Chassis No. CMCI-82062-C.[38]

The documentary evidence of Bartina merely shows that the jeepney subject of the complaint was indeed sold to her by Biñan Motors represented by Juliet Garcia, Eduardo Garcia's daughter. There is nothing to show that Eduardo Garcia sold to Bartina the same vehicle that he previously sold to the Tolosas.

We also hold that the compromise between Bartina and Garcia and Biñan Motors cannot be taken as an admission of Garcia's liability. In civil cases, an offer of compromise is not an admission of any liability.[39] With more reason, a compromise agreement should not be treated as an admission of liability on the part of the parties vis-a-vis a third person. The compromise settlement of a claim or cause of action is not an admission that the claim is valid, but merely admits that there is a dispute, and that an amount is paid to be rid of the

controversy,[40] nor is a compromise with one person an admission of any liability to someone else.[41] The policy of the law should be, and is, to encourage compromises.[42] When they are made, the rights of third parties are not in any way affected thereby.[43]

On the whole, petitioner's evidence consists of the promissory note, the deed of chattel mortgage and the deed of assignment and the notice and demand letter. The promissory note in favor of Amante Motor Works was signed by the Tolosa spouses.[44] This same promissory note provides that any payment thereon shall be made "to the order of Filinvest Finance and Leasing Corporation." [45] Both spouses also signed as mortgagors the deed of chattel mortgage of the said jeepney in favor of Amante Motor Works. Amante Motor Works assigned in the same deed all its rights over the chattel mortgage to Filinvest Finance and Leasing Corporation.[46] Filinvest Finance and Leasing Corporation likewise assigned its rights and interest over the promissory note and deed of chattel mortgage to Filinvest Credit Corporation which in turn assigned it to petitioner.[47] The Tolosa spouses defaulted on the obligation and refused to pay the installments due despite notice to them. By no stretch of logic can they prove Garcia's solidary liability.

IN VIEW WHEREOF, the petition is denied and the Decision dated October 27, 1994 of the Court of Appeals in CA-G.R. CV No. 20921 is affirmed.

SO ORDERED.

Regalado (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

[1] Penned by Justice Ramon A. Barcelona and concurred in by Justices Arturo B. Buena and Eugenio B. Labitoria.

[2] Judge Manuel T. Muro.

[3] Civil Case No. 81-604.

[4] Complaint, p. 2, Records, p. 2.

[5] Records, pp. 1-5.

[6] Records, p. 20

[7] Records, pp. 28-32.

[8] Records, pp. 49-55.

[9] Records, p. 113.

[10] Records, pp. 84-92.

[11] Records, pp. 133-135.

[12] Records, pp. 208-212.

[13] Records, pp. 239-241.

[14] Records, pp. 224-225.

[15] Records, p. 260.

[16] It should be Bartina.

[17] Records, p. 330.

- [18] TSN of February 4, 1986, pp. 2-8.
- [19] Exhibits "A" to "E," Records, pp. 357-366.
- [20] Records, p. 507.
- [21] TSN of April 27, 1988, pp. 7-46
- [22] Exhibits "A" to "I-3," Records, pp. 509-510.
- [23] Records, p. 520.
- [24] Records, p. 529.
- [25] Records, pp. 536-537.
- [26] Records, p. 547.
- [27] CA-G.R. CV No. 20921.
- [28] Petition, p. 3; Rollo, p. 11.
- [29] Decision of the Court of Appeals, p. 10; Rollo, p. 32
- [30] Memorandum of Petitioner, p. 8, Rollo, p. 102.
- [31] Espina v. Court of Appeals, 215 SCRA 484 [1992]; Hydro Resources Contractors Corporation v. Court of Appeals, 204 SCRA 309 [1991]; Ortigas, Jr. v. Lufthansa German Airlines, 64 SCRA 610 [1975]. See also Revised Rules of Court, Rule 51, Sec. 7.
- [32] Marr v. A.B. Dick & Co., 197 F 2d 498, 97 L Ed 680 [1952]; Bryan v. Smith, 174 F 2d 212, 11 ALR 2d 1402 [1949]; Hileman Coal Co. v. Phoenix Coal Co., 6 Pa D & C 633 [1925].
- [33] Mahon v. Remington, 256 App. Div. 889, 9 N.Y.S. 2d 47 [1939]; Union Trust Co. of Rochester v. Kaplan, 249 App. Div. 280, 292 N.Y.S. 152 [1936]; Johnson v. Meyer, 28 N.Y. 701, 198 N.E. 565 [1935].
- [34] Loeb v. Willis, 100 N.Y. 231, 3 N.E. 177 [1885].
- [35] 27 C.J.S. Dismissal and Nonsuit, Sec. 39; Bryan v. Smith, *supra*; see also 11 ALR 2d 1407, Sec. 3.
- [36] Rule 132 (C), Section 34 of the Revised Rules on Evidence; People v. Peralta, 237 SCRA 218 [1994]; Vda. de Alvarez v. Court of Appeals, 231 SCRA 309 [1994]
- [37] Records, p. 133.
- [38] Records, pp. 31-32.
- [39] Revised Rules on Evidence, Rule 130, Section 27.
- [40] 15A C.J.S. Compromise and Settlement, Sec. 22.
- [41] Avery v. Howell, 172 P 995, 103 Kan. 31 [1918]; Hayes v. Coleman, 61 N.W. 2d 634, 338 Mich. 371 [1953]; Smith v. Williamson, 256 P. 2d 174, 181, 208 Okl. 323 [1953].
- [42] Civil Code of the Philippines, Article 2029.
- [43] Avery v. Howell, *supra*.
- [44] Exhibit "A-1"; Records, p. 357.

[45] Exhibit "A-4", Records, p. 357.

[46] Exhibit "B", Records, p. 359.

[47] Exhibits "B-2", and "D", Records, pp. 360, 361.

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