

**LUNETA MOTOR COMPANY, PLAINTIFF AND APPELLANT, VS.
MAXIMINO SALVADOR, ANGEL DIMAGIBA AND JOHN DOE,
DEFENDANTS. ANGEL DIMAGIBA, DEFENDANT AND APPELLEE.**

G.R. No. 13373. July 26, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from an order of dismissal.

On May 11, 1955, the Luneta Motor Company sold a Reo Truck, for P16,995.00, on installment basis, to Maximino Salvador. Five days later, after having made a down payment of P1,001.00, the purchaser, jointly and severally with one Angel Dimagiba, executed in favor of the seller a promissory for P15,984.00 to cover the balance of the purchase price, payable in eighteen (18) monthly installments, with interest at the rate of 12% per annum. On the same day, the purchaser also executed in favor of the seller a chattel mortgage on the property to secure payment of the said balance.

For alleged failure on the part of the purchaser to pay the installments, the Luneta Motor Company, on September 9, 1955, filed with the Court of First Instance of Manila a complaint against the vendee Maximino Salvador, Angel Dimagiba and John Doe, praying for the seizure of the truck, for the confirmation of the company's possession and ownership thereto, and that defendants be ordered to pay the unpaid balance of the purchase price, plus interests, attorney's fees and costs.

Only the defendant Dimagiba answered the complaint. And so upon plaintiff's motion, the defendant Maximino Salvador was declared in default.

By virtue of a writ of seizure, the truck subject of the action was, on behalf of the plaintiff, seized on December 19, 1955. But upon payment by the defendant Salvador of a substantial amount and a promise on his part to settle the balance of the obligation, the truck was released. Later, however, as no further payments were made, the plaintiff petitioned for the issuance of an alias writ of seizure, which was accordingly issued on February 1, 1956. The writ was returned uncomplished with, because, according to the sheriff's return, the truck could not be located.

By virtue of another court order, a special sheriff was appointed again for the seizure of the property in question, and on January 2, 1957, the said sheriff made his return on that second alias writ of seizure, stating that on December 24, 1956, he took possession of the property from defendant Maximino Salvador, and the latter having failed to file a counterbond, the seized property was turned over to the plaintiff.

On May 10, 1957, the plaintiff sold the truck at public auction and itself bought the truck. As a consequence, the defendant Dimagiba on November 20, 1957 filed a motion to dismiss the complaint on the ground that the plaintiff has no more case against him, the said plaintiff having already foreclosed the chattel mortgage upon the property. The plaintiff opposed the motion and the defendant Dimagiba filed a reply. Sustaining Dimagiba, the court dismissed the complaint.

Motion for reconsideration of the order of dismissal having been denied, the plaintiff interposed this appeal raising only questions of law.

Here is a situation where the vendor in a sale of personal property in installments, upon failure of the vendee to pay his obligations, had commenced, through court action, to recover the unpaid balance of the purchase price; but later, at the progress of the said action, foreclosed the chattel mortgage constituted on the property. The question that arises is whether the complaint may be dismissed upon the foreclosure of the mortgage.

Section 1484 of the New Civil Code provides:

"In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

"(1) Exact fulfillment of the obligation, should the vendee fail to pay;

"(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

"(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void."

Paragraph 3 of the above-quoted provision is clear that foreclosure of the chattel mortgage and recovery of the unpaid balance of the price are alternative remedies and may not be pursued conjunctively. It appearing in the case at bar that the vendor had already foreclosed the chattel mortgage constituted on the property and had taken possession thereof, the lower court acted rightly in dismissing the complaint filed for the purpose of recovering the unpaid balance of the purchase price. By seizing the truck and foreclosing the mortgage at the progress, of the suit, the plaintiff renounced whatever claim it may have had under the promissory note, and consequently, it has no more cause of action against the promisor and, the guarantor. And it has no more right either to the costs and attorney's fees that would go with the suit.

Plaintiff-appellant's principal theory in maintaining that the action must continue is that the foreclosure of the chattel mortgage must be established in court and its possession and ownership of the truck must be judicially confirmed. We do not think there would still be necessity for the lower court to pass upon the fact of foreclosure for this had not been denied by the plaintiff-appellant. As a matter of fact, the latter has admitted in his brief that it had sold the truck at public auction. And it appearing that the plaintiff itself bought the truck at the auction sale, its right to the possession and ownership of the said property is beyond question.

To further bolster its claim for further proceedings in the court below, the plaintiff-appellant makes mention of a supplemental complaint filed to recover indemnity for the value of some parts of the truck which are alleged to be missing. This Court, however, has no proper basis upon which to delve into that point for nowhere in the record, except, of course, in plaintiff-appellant's brief and in its opposition to the motion to dismiss filed with the lower court, does it appear that there has ever been a supplemental complaint filed against the defendants.

There being no valid grounds to reopen the dismissed action, the order of dismissal is hereby affirmed. Costs against the plaintiff-appellant.

Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Barrera, JJ., concur.

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