

SPOUSES ALFREDO AND BRIGIDA ROSARIO, PETITIONERS, VS. PCI LEASING AND FINANCE, INC., RESPONDENT.

G.R. No. 139233. November 11, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari[1] of the Decision[2] dated June 30, 1999, of the Court of Appeals (CA) in CA-G.R. SP No. 56081 affirming the decision of the Regional Trial Court (RTC) of Dagupan City, Branch 44, holding the spouses Alfredo and Brigida Rosario, jointly and severally, liable to PCI Leasing and Finance, Inc. (PCI Leasing) for the sum of P338,786.03, with interest, attorney's fees and costs.

The antecedent facts of the case are as follows:

On April 18, 1994, the spouses Rosario purchased an Isuzu Elf Pick-up Utility vehicle from CarMerchants, Inc. The transaction was covered by a Purchase Agreement whereby the spouses undertook to make a downpayment of P190,000.00 of the total purchase price of P380,000.00. The spouses then applied for a loan with PCI Leasing to pay for the balance of P190,000.00.

Upon the approval of their loan application, the spouses Rosario executed a Promissory Note[3] on May 6, 1994, in favor of PCI Leasing covering the amount of the loan plus P84,008.00 as finance charges, in the total amount of P274,008.00. The spouses undertook to pay the loan in monthly installments of P11,417.00, payable on the 29[th] day of each month starting on May 29, 1994 to April 29, 1996, at 22.10% annual interest. The spouses Rosario also agreed that, in case of default, the payment of the outstanding sum with interest shall immediately become due and payable. To secure the payment of the loan, they executed, on the same day, a Chattel Mortgage[4] in favor of PCI Leasing over the Isuzu Elf 4BD1. The motor vehicle was delivered to the spouses and it was registered in their names on May 16, 1994.[5]

Despite demands,[6] the spouses Rosario failed to pay the amortizations on their loan to PCI Leasing which, as of November 29, 1995, amounted to P338,786.03, inclusive of P20,000.00 attorney's fees.[7]

On January 25, 1995, PCI Leasing filed a Complaint[8] against the spouses Rosario in the RTC of Dagupan City for "Sum of Money with Damages with a Prayer for a Writ of Replevin." The case was docketed as CV-95-00408-D.

After PCI Leasing posted the necessary bond for the manual delivery of the motor vehicle,[9] the RTC issued an Order[10] for the issuance of a writ of replevin. On April 21, 1995, the Sheriff[11] seized the motor vehicle. After five (5) days, without the court issuing an order discharging the writ, the Sheriff turned over the possession of the vehicle to PCI Leasing.[12]

In their Answer to the complaint, the spouses Rosario alleged that the chattel mortgage they executed in favor of PCI Leasing covering the motor vehicle was in effect a contract of sale of personal property, payable in installments to be governed by Article 1484[13] of the New Civil Code of the Philippines. They further alleged

that since PCI Leasing opted to foreclose the chattel mortgage, it was estopped from collecting the balance of their account under the promissory note and chattel mortgage.[14] By way of counterclaim, the spouses Rosario claimed P100,000.00 as moral damages and P25,000.00 as attorney's fees, thus:

WHEREFORE, it is respectfully prayed that the Complaint be dismissed, the writ of replevin quashed or dissolved, and the motor vehicle referred to therein returned and restored to the possession of the defendants. It is further prayed that the plaintiff be made to pay the defendants the sum of P100,000.00 as moral damages and P25,000.00 as reimbursable attorney's fees. It is finally prayed that the defendants be granted such other measures of relief as this Honorable Court may deem just and equitable in the premises.[15]

PCI Leasing presented its evidence. When it was time for the spouses Rosario to present their own evidence, they failed to appear despite notice and were consequently declared in default.[16]

The trial court rendered judgment on September 12, 1996 in favor of PCI Leasing. The trial court declared that the spouses Rosario were only able to pay the monthly installments on their loan from May to November 1994, and that, as of November 29, 1995, their account was overdue by P338,786.03, inclusive of attorney's fees and liquidated damages. The trial court did not, however, resolve the issue of whether Article 1484 of the New Civil Code was applicable. The decretal portion of the decision reads:

WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants, sentencing the defendants to pay plaintiff the sum of P338,786.03 with interest as stipulated in the contract plus the sum of 22.10% of the total amounts due for and as attorney's fees, plus costs.

SO ORDERED.[17]

The spouses Rosario appealed the decision to the CA and ascribed the following errors to the trial court:

- THE LOWER COURT ERRED IN NOT HOLDING AND DECLARING THAT THE PLAINTIFF-APPELLEE WAS IN FACT THE ASSIGNEE OR ONE SUBROGATED TO THE RIGHTS AND OBLIGATIONS OF THE SELLER OF THE MOTOR VEHICLE, CARMERCHANTS, INC.;
- THE LOWER COURT ERRED IN ADJUDGING THE DEFENDANTS-APPELLANTS LIABLE FOR THE UNPAID BALANCE UNDER THE CHATTEL MORTGAGE AS WELL AS FOR DAMAGES, INTEREST AND ATTORNEY'S FEES.[18]

The spouses Rosario averred that, based on the evidence on record, CarMerchants, Inc. had assigned to PCI Leasing its right to collect the balance of the purchase price of the motor vehicle; hence, it was subrogated to the rights of CarMerchants, Inc., subject to the limitations and burdens provided for by law. The spouses Rosario maintained that, by securing a writ of replevin from the RTC, PCI Leasing had opted to foreclose the chattel mortgage under Article 1484 of the New Civil Code; thus, it was barred from suing for the unpaid balance of the purchase price of the vehicle.

On June 30, 1999, the CA rendered judgment dismissing the appeal, declaring that the spouses Rosario failed to prove their claim that PCI Leasing had agreed to be subrogated to the right of CarMerchants, Inc. to collect the unpaid balance of the purchase price of the motor vehicle. The appellate court also ruled that even if Article 1484 of the New Civil Code were to be applied, the chattel mortgage had not been foreclosed; hence, PCI Leasing was not precluded from collecting the balance of the appellants' account. It held that the remedy of the unpaid seller under Article 1484 of the New Civil Code is alternative and not cumulative.[19]

The spouses Rosario, now the petitioners, filed the instant petition, raising the following as errors committed by the CA:

- (1) FOR NOT HOLDING THAT THE RESPONDENT WAS IN FACT AN ASSIGNEE AND

SUBROGATED TO THE RIGHTS AND THE LIMITATIONS THEREOF OF CARMERCHANTS, INC., AS SELLER OF THE MOTOR VEHICLE BY INSTALLMENT;

(2) FOR NOT APPLYING THE PROVISIONS OF ART. 1484 OF THE CIVIL CODE AND THE DECISIONS OF THE SUPREME COURT RELEVANT THERETO IN RESOLVING THE APPEAL BEFORE IT;

(3) FOR AFFIRMING THE DECISION OF THE TRIAL COURT SENTENCING THE PETITIONERS TO PAY THE UNPAID INSTALLMENTS UNDER THE PROMISSORY NOTE AS WELL AS DAMAGES, INTERESTS AND EXCESSIVE ATTORNEY'S FEES DESPITE RESPONDENT'S REPOSSESSION OF THE MOTOR VEHICLE.

The petitioners' arguments are basically a rehash of what they submitted in their appeal before the appellate court. They aver that since respondent PCI Leasing was an assignee of CarMerchants, Inc., it was proscribed from collecting from them the balance of the purchase price of the vehicle after having taken possession of the chattel for purposes of foreclosure. They maintain that the respondent is not entitled to damages and attorney's fees.

The petition is partially granted.

The Court notes that the principal issues raised by the petitioners are factual: (1) whether the respondent, based on the evidence on record, is the assignee of the petitioners' account with CarMerchants, Inc. (as the vendor of the motor vehicle), and (2) whether the respondent is entitled to attorney's fees of 22.10% of the total amount due from the petitioners. It is settled that in a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, only questions of law may be raised.[20] This rule, however, is not without exceptions. Factual issues may be resolved by this Court in cases where (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[21] Upon careful review of the records, the Court finds that the RTC and the CA misappreciated the evidence on record and as such, the ruling in this case needs to be modified.

On the first issue, there is no factual basis for the petitioners' claim that CarMerchants, Inc. had assigned its rights to collect the balance of the purchase price to the respondent. The fact of the matter is that the petitioners admitted in their petition at bench that they were declared in default and failed to prove such claim. The evidence on record clearly shows that the petitioners secured a loan from the respondent to pay the P190,000.00 balance to CarMerchants, Inc., and even executed a promissory note evidencing their loan in favor of the respondent. The petitioners forthwith executed a chattel mortgage in favor of the respondent over the vehicle as security for the payment of their loan and the interests thereon.

It bears stressing that, under Article 1625 of the New Civil Code, an assignment of credit, right or action must appear in a public document to bind third persons. There is no evidence on record to prove that Car Merchants, Inc. executed such a deed, assigning its right to collect the balance of the purchase price of the vehicle from the petitioners; hence, Article 1484 of the New Civil Code does not apply in this case.

Even a cursory reading of the respondent's complaint in the RTC will readily show that the respondent did not allege that it was the assignee of CarMerchants, Inc. insofar as the right to collect the balance of the purchase

price of the vehicle from the petitioners was concerned. Neither did the respondent adduce any evidence that it was such assignee. The respondent sued the petitioners for sum of money with prayer for a writ of replevin based on the promissory note and the chattel mortgage executed by the petitioners in its favor.

Even assuming that the respondent is the assignee of CarMerchants, Inc. and that Article 1484 of the New Civil Code is applicable, it is not proscribed from suing the petitioners for their unpaid balance. The fact of the matter is that the respondent did not foreclose the chattel mortgage, but opted to sue the petitioners for the balance of their account under the promissory note, with a plea for a writ of replevin. By securing a writ of replevin, the respondent did not thereby foreclose the chattel mortgage. As correctly ruled by the CA:

We rule: if there has been no foreclosure of the chattel mortgage or a foreclosure sale, then the prohibition against further collection of the balance of the price does not apply. Where the remedy is not foreclosure of the chattel mortgage, but specific performance of the obligation to do payment, then the levy on the property is indeed not a foreclosure of the mortgage but is instead a levy on execution (*Tanjanlangit, et al. v. Southern Motors, Inc.*, L-10789, May 28, 1957; *Southern Motors v. Moscoso*, 2 SCRA 168).

A creditor is not obliged to foreclose a chattel mortgage even if there is one; precisely the law says that any of the remedies "may" be exercised by the seller. He may still sue for fulfillment or for cancellation of the obligation, if he does not want to foreclose (*Bachrach Motor Co. v. Millan*, 61 Phil. 409). As a matter of fact, he may avail himself of remedy no. 1 (specific performance) and may still ask that a real estate mortgage be executed to secure the payment of the obligation, in which case, and in the event of foreclosure, there can still be recovery of the deficiency (*Manila Trading v. Jalandoni* [CA]O.G., August 31, 1941, p. 1698).

In the case before Us, that there was foreclosure of the chattel mortgage has not been established; as a matter of fact, this is not obvious either in the evidence having been presented to the court. What is only apparent was the execution of the promissory note and the chattel mortgage.[22]

Anent the award of 22.10% of the total amount due as attorney's fees, this Court finds the same to be without basis. The trial court awarded the same without stating the reason therefor.[23] Moreover, as gleaned from the Statement of Account[24] issued by the respondent, the P338,786.03 sought to be collected from the petitioners already includes the legal expenses and attorney's fees of the respondent. Thus, the award of attorney's fees should be deleted.

IN LIGHT OF ALL THE FOREGOING, the petition is hereby PARTIALLY GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 56081 is AFFIRMED WITH MODIFICATION, in that the award of 22.10% of the total amount due for and as attorney's fees is DELETED. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Transferred to the Second Division on October 5, 2005.

[2] Penned by Associate Justice Bernardo Ll. Salas (retired), with Associate Justices Cancio C. Garcia (now an Associate Justice of the Supreme Court) and Candido V. Rivera (retired) concurring; Rollo, pp. 26-34.

[3] Exhibit "A."

[4] Exhibit "B."

[5] Exhibit "C."

[6] Exhibits "D," "E" & "F."

[7] Exhibit "G."

[8] Records, pp. 1-4.

[9] Id. at 13.

[10] Id. at 21.

[11] Sheriff IV Marcelino G. Bonuan.

[12] Records, p. 23.

[13] Art. 1484 reads:

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.

[14] Records, pp. 33-37.

[15] Id at 36-37.

[16] Id. at 107.

[17] Id. at 116.

[18] CA Rollo, p. 38.

[19] Rollo, p. 33.

[20] Section 1, Rule 45 of the 1997 Rules of Civil Procedure.

[21] Sarmiento v. Court of Appeals, G.R. No. 110871, 2 July 1998, 291 SCRA 656.

[22] Rollo, pp. 32-33.

[23] In Del Rosario vs. Court of Appeals, G.R. No. 118325, 29 January 1997, 267 SCRA 158, the Court held:

... [L]ike the adjudication of actual or compensatory damages, the award of attorney's fees must be deleted. The matter was dealt with only in the dispositive portion of the Trial Court's decision. Since the judgment does not say why attorney's fees are awarded, there is no basis for such award, which should consequently be removed. So did this Court rule, for instance, in *Scott Consultants and Resource Development Corp., Inc. vs. Court of Appeals, et al.*:

It is settled that the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees.

[24] Exhibit "G."

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