

MANILA MOTOR CO., INC., PLAINTIFF AND APPELLEE, VS. ANICETO MARANA, DEFENDANT AND APPELLANT.

G.R. No. 45337. April 10, 1939

Ponente: MORAN, J.

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MORAN, J.:

On October 6, 1933, defendant herein bought by installments from the plaintiff, Manila Motor Co., Inc., a second hand truck and paid therefor the initial sum of P300. A promissory note was executed for P1,629.83 representing the balance of the purchase price, with its corresponding interest, and as security for its payment, a chattel mortgage was executed upon the truck purchased. The mortgage deed carried the following recital:

"That the mortgagor hereby expressly authorizes the mortgagee to become a purchaser of the property herein mortgaged at any sale made thereof, and in case the amount realized at sale is insufficient to cover the debts and penalties from the mortgage, the said mortgagor obligates himself to pay the balance within 24 hours after sale, and a failure to so pay shall give the mortgagee a right of action to recover the same in the courts of the Philippine Islands."

Defendant defaulted in the payment of the installment corresponding to May, 1934, and also the succeeding ones; whereupon, plaintiff foreclosed the chattel mortgage, and at the public auction, the truck was sold for P300. An action was thereafter instituted in the municipal court of Manila for the recovery of the balance of P566.35. Judgment was there rendered for plaintiff which, on appeal to the Court of First Instance, was affirmed.

Defendant appealed to this court, and here reiterates the view that pursuant to the provision of Act No. 4122, plaintiff's foreclosure of the chattel mortgage bars it from any further action for the recovery of the balance. It appears, however, that the mortgage was executed prior to the taking effect of the Act invoked; wherefore, said Act cannot be applied thereto. (*Levy Hermanos vs. Capule*, 35 Off. Gaz., 2413, 2414; *Manila Trading & Supply Co. vs. Puig*, G. R. No. 43784, October 30, 1936.)

Act No. 4122 is a substantive law amending the Civil Code article 3 of which provides that "laws shall have no retroactive effect, unless they so provide."

Judgment is affirmed, with costs against appellant.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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