

LEVY HERMANOS, INC., PLAINTIFF AND APPELLANT, VS. LAZARO BLAS GERVACIO, DEFENDANT AND APPELLEE.

G.R. No. 46306. October 27, 1939

Ponente: MORAN, J.

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MORAN, J.:

On February 24, 1938, plaintiff filed a complaint in the Court of First Instance of Manila, which substantially recites the following facts:

On March 15, 1937, plaintiff Levy Hermanos, Inc., sold to defendant Lazaro Bias Gervacio, a Packard car. Defendant, after making the initial payment, executed a promissory note for the balance of P2,400, payable on or before June 15, 1937, with interest at 12 per cent per annum, and to secure the payment of the note, he mortgaged the car to the plaintiff. Defendant failed to pay the note at its maturity; wherefore, plaintiff foreclosed the mortgage and the car was sold at public auction, at which plaintiff was the highest bidder for P800. The present action is for the collection of the balance of P1,600 and interest.

Defendant admitted the allegations of the complaint, and with this admission, the parties submitted the case for decision. The lower court applied the provisions of Act No. 4122, inserted as articles 1454-A of the Civil Code, and rendered judgment in favor of the defendant. Plaintiff appealed.

Article 1454-A of the Civil Code reads as follows:

"In a contract for the sale of personal property payable in installments, failure to pay two or more installments shall confer upon the vendor the right to cancel the sale or foreclose the mortgage if one has been given on the property, without reimbursement to the purchaser of the installments already paid, if there be an agreement to this effect.

"However, if the vendor has chosen to foreclose the mortgage he shall have no further action against the purchaser for the recovery of any unpaid balance owing by the same, and any agreement to the contrary shall be null and void."

In *Macondray & Co. vs. De Santos* (33 Off. Gaz., 2170), we held that "in order to apply the provisions of article 1454-A of the Civil Code it must appear that there was a contract for the sale of personal property payable in installments and that there has been a failure to pay two or more installments." The contract, in the instant case, while a sale of personal property, is not, however, one on installments, but on straight term, in which the balance, after payment of the initial sum, should be paid in its totality at the time specified in the promissory note. The transaction is not, therefore, the one contemplated in Act No. 4122 and accordingly the mortgagee is not bound by the prohibition therein contained as to its right to the recovery of the unpaid balance.

Undoubtedly, the law is aimed at those sales where the price is payable in several installments, for, generally, it is in these cases that partial payments consist in relatively small amounts, constituting thus a great temptation for improvident purchasers to buy beyond their means. There is no such temptation where the price is to be paid in cash, or, as in the instant case, partly in cash and partly in one term, for, in the latter case, the partial payments are

not so small as to place purchasers off their guard and delude them to a miscalculation of their ability to pay. Theoretically, perhaps, there is no difference between paying the price in two installments and paying the same partly in cash and partly in one installment, in so far as the size of each partial payment is concerned; but in actual practice the difference exists, for, according to the regular course of business, in contracts providing for payment of the price in two installments, there is generally a provision for initial payment. But all these considerations are immaterial, the language of the law being so clear as to require no construction at all.

The suggestion that the cash payment made in this case should be considered as an installment in order to bring the contract sued upon under the operation of the law, is completely untenable. A cash payment cannot be considered as a payment by installment, and even if it can be so considered, still the law does not apply, for it requires non-payment of two or more installments in order that its provisions may be invoked. Here, only one installment was unpaid.

Judgment is reversed, and defendant-appellee is hereby sentenced to pay plaintiff-appellant the sum of P1,600 with interest at the rate of 12 per cent per annum from June 15, 1937, and the sum of P52.08 with interest at the rate of 6 per cent from the date of the filing of the complaint, with costs in both instances against the appellee.

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

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