

FILINVEST CREDIT CORPORATION, PETITIONER, VS. HONORABLE BERNARDO LL. SALAS, NICARIO AVISADO AND WARSITO CAPANGPANGAN, RESPONDENTS.

G.R. No. 63326. July 31, 1984

Ponente: PLANA, J.

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PLANA, J.:

In January, 1981, Nicario Avisado bought a Colt Lancer from Wheels Distributors, Inc. payable on monthly installments. The obligation was evidenced by a promissory note secured by a chattel mortgage on the car. The promissory note carries a stipulation on acceleration of maturity for the entire obligation in the event of default in the payment of any installment. Later, the obligation together with the supporting security was transferred by Wheels Distributors, Inc. to Filinvest Credit Corporation (Filinvest) with the consent of Avisado.

For failure of Avisado to pay the installments due on May 1 through October 1, 1981, Filinvest filed on October 12, 1981 against him a replevin/collection suit (Civil Case No. F-21040). But this case was dismissed with prejudice at the instance of Filinvest after the defendant had agreed to update his installment payments.

Later, however, Avisado again defaulted in the payment of subsequent installments, this time, those due on December 1, 1981 and the four succeeding months, which impelled Filinvest to file another replevin/collection suit against Avisado (Civil Case No. R-21996). After commencement of the action, a writ of replevin was issued against a bond duly posted, by virtue of which the car was seized by the sheriff and turned over to Filinvest. Once in possession of the car, Filinvest extra-judicially foreclosed the chattel mortgage thereon. At the foreclosure sale, the car was sold to Filinvest for an amount equal to its claim against the mortgagor. Later, Filinvest re-sold the car to Warsito Capangpangan.

However, upon motion of Avisado, the trial court issued an Order dated September 21, 1982 dismissing the complaint on the ground of *res judicata*. Said the court:

"Admittedly, in Case No. 21040, demanded was payment of P81,819.25 with interest from October 3, 1981, until full payment in case manual delivery of the motor vehicle cannot be effected. Supposedly, this amount represented the entire unpaid balance after alleged default in the payment of the installment which fell due on May 1, 1981, and the succeeding five (5) installments ending October 1, 1981. If at all there was a demand for full payment of the balance, it was precisely because of the stipulation in the promissory note and the chattel mortgage that in case of failure to pay any of the monthly installments, the entire balance shall automatically become due and payable or a system typical of an acceleration clause. This is equally true with respect to the demand in the present case for payment of the entire balance of P64,313.28 with interest computation supposedly at 24% per annum from March 20, 1982, until full payment in case of failure to do manual delivery of the motor vehicle pursuant to an identical acceleration clause as provided for in par. 8 of the complaint. No doubt, the motor vehicles, subject matter of the present case and Case No. 21040, are one and the same.

"It is obvious, the prior dismissal was by virtue of Rule 17, Sec. 1 of the Rules of Court. This Court would like to recall, the formal notice of dismissal with prejudice was at the instance of the plaintiff. Likewise, the Order

of Dismissal was one with prejudice.

"It is a matter of jurisprudence that at anytime before service of the answer, the plaintiff may dismiss its action even without order of the Court by the mere filing of a Notice of Dismissal. The dismissal is supposedly without prejudice but the plaintiff in his motion may make the dismissal without day which is equivalent to a waiver of his cause of action (*Estate of Yangco vs. De Asis*, 22 Phil. 201) or a 'retraxit'. (9 RCL 191-192). The effect of a dismissal without day is an adjudication upon the merits of the case. The implication necessarily is a waiver of the cause of action irrespective of whether or not a default in payment of the monthly installments in Case No. 21040 was for a period entirely different from the period or term being mentioned in the present case. Otherwise stated, differences in installment terms as basis of the action in the prior and the present case is immaterial. This Court cannot accept the pretention that the present case should be given due course notwithstanding prior dismissal with prejudice only because the contract stipulated a schedule of payment by way of installments or a stipulation which supposedly provided performance of several obligations. What the Court cannot take lightly is the observation that in Case No. 21040 the alternative option, in case of failure to return the motor vehicle, was the payment of the entire obligation with interest computation but less prior amortizations. Also in the present case, identical prayer was for payment of the entire unpaid balance with interests but less prior installment payments in case of failure to return the unit.

"A dismissal necessarily should be given due course. To be precise, Rule 17, Sec. 1 of the Rules of Court does not establish any qualification. A dismissal with prejudice would amount to an absolute waiver of the cause of action." (Petition, Annex "E.")

Twenty days after receipt (September 28, 1982) of the order of dismissal, Filinvest filed (October 18, 1982) a motion for reconsideration on the ground that the dismissal with prejudice of the first case did not bar the filing of the second because they had different causes of action; while Avisado filed an ex-parte motion for the return of the re-possessed vehicle on the ground that the (second) replevin/collection case, having been ordered dismissed, "it necessarily follows that the car which is the subject matter (thereof)... should be returned to defendant." (Petition, Annex "G".)

On January 3, 1983, the court issued an order denying the motion for reconsideration and at the same time directing the return to Avisado of the vehicle without waiting for the order of dismissal (on which the return order was based) to become final. A copy of the said order was served on Filinvest on February 1, 1983.

Meanwhile, i.e., on January 5, 1983, Avisado filed an ex-parte motion praying that a writ of execution be issued directing Filinvest or any person in possession of the motor vehicle in question to de-liver the same to Avisado. On January 11, 1983, the court ordered the counsel of Filinvest to comment on the said motion within 20 days "from today".

On February 7, 1983 (six days following notice to Filinvest of denial of its motion for reconsideration), after noting that no opposition to the motion for execution had been filed, the Court ordered the issuance of a writ of execution, without waiting for the order dismissing the case to become final. Note that the notice of denial of the motion for reconsideration was received by Filinvest only on February 1, 1983; and from the date Filinvest received a copy of the order dismissing the case up to the date it filed the motion for reconsideration, there was a spread of only 20 days.

It appears that petitioner was never served with a copy either of Avisado's ex-parte motion for execution or the court's order of January 11, 1983 directing it to comment thereon.

Accordingly, a writ of execution was issued on February 9, 1983; and the vehicle was on the same date seized from Warsito Capangpangan and delivered to Avisado.

Filinvest has therefore filed the instant petition assailing the dismissal by the court a quo of C.C. R-21996 on the ground of res judicata, the precipitate return of the car in question to Avisado and the premature grant of a writ of execution before finality of the order dismissing the case.

Required to comment on the petition, private respondent Warsito Capangpangan did so. On the other hand, private respondent Avisado asked for an extension of ten days from April 4, 1983 within which to file his comment, which was granted; but his comment never came.

Private respondent Avisado having failed to controvert the allegations of the petition which appears to be fully supported by the documents annexed thereto, the Court resolved to give due course to the petition and deem it submitted for decision.

We hold that the court a quo erred in dismissing C.C. R-21996. Since the first case instituted by Filinvest against Avisado (C.C. R-21040) was for nonpayment of installments different from those on which the second suit (C.C. R-21996) was based, the dismissal of the former with prejudice would not bar the filing of the latter, nor serve as basis for its dismissal. The causes of action being different, there could be no res judicata.

For having thus dismissed C.C. R-21996, and for having granted the writ of execution with undue haste before finality of the order dismissing the case and in prematurely ordering the return to the mortgagor of the re-possessioned vehicle, the court a quo committed grave abuse of discretion.

WHEREFORE, the assailed order of dismissal dated September 21, 1982 of the court a quo, its order dated January 3, 1983 directing the return of the vehicle in question to the mortgagor, and the order dated February 7, 1983 for the issuance of a writ of execution and the writ of execution issued in pursuance thereof, are set aside. Accordingly, the disputed vehicle shall be restored to the possession of Warsito Capangpangan, without prejudice to the outcome of C.C. R-21996. Costs against private respondent Nicario Avisado. SO ORDERED.

Teehankee, (Chairman), Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

Melencio-Herrera, J., on leave.

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