

FILINVEST CREDIT CORPORATION, PETITIONER, VS. IVAN MENDEZ, RESPONDENT.

G.R. No. 66419. July 31, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review on certiorari the decision of the Intermediate Appellate Court, now Court of Appeals, rendered in AC-G.R. CV No. 63673 affirming in toto the decision of the Court of First Instance of Davao, Branch 6, 16th Judicial District.

The factual background of this case, as summarized in the trial court's decision and adopted by the appellate court, is as follows:

"On August 6, 1974, Ivan Mendez purchased a Ford Cortina from the Davao Motor Sales Company and to secure balance of P49,428.40 plaintiff executed and delivered a promissory note and chattel mortgage in favor of Davao Motor Sales Company.

"On August 11, 1974, Davao Motor Sales Company assigned to Filinvest Credit Corp., its rights, title and interest in the promissory note and chattel mortgage. According to the terms of the promissory note, the monthly installments of P1,373.00 would begin on September 13, 1974, and on or before the 13th day of the month thereafter until August 13, 1977, with interest and such other charges customarily imposed by defendant on transactions of the same nature.

"It appears that Ivan Mendez failed to pay the February 13, March 13, and April 13, 1976 installments due on the promissory note. Thus, defendant financing company sent written demands to Ivan Mendez to update his account.

"On May 3, 1976, Ivan Mendez paid the financing company P2,000.00 through Philippine Veteran's Bank Check No. 58166 which was credited to payments for the following months:

Month

Amount

Feb. 1976

P 200.49

(full payment)

Mar. 1976

1,373.00

(full payment)

Apr. 1976

415.05

(partial pay-ment)

Sub-total -

1,988.54

Interest

11.46

Total - - -

P2,000.00

"On May 6, 1976, the check was returned to the financing corporation on the ground of insufficient funds by the Philippine Veterans Bank.

"On May 10, 1976, defendant financing company filed an action for recovery of personal property and/or sum of money docketed as Civil Case No. 9468 in the Court of First Instance against Ivan Mendez, et al.

"On May 13, 1976 (or May 26, 1976), the check was finally cleared and considered payment for the February, March and April, 1976, installments.

"On May 24, 1976, this Court issued Order of Seizure which states, among others:

""WHEREAS, it is further alleged in the complaint that in viola-tion of their undertakings the defendants defaulted in complying with the terms and conditions of the said promissory note and chattel mortgage (Annexes 'A' and 'B'), by failing to pay part of the installment which fell due on February 13, 1976, as well as the subsequent two (2) consecutive install-ments which fell due on March 12 - April 13, 1976;" (Exh. "B").

"Early in the morning of June 8, 1976, Ivan Mendez used the car to fetch a certain Col. Coronel at the airport who came to the city to speak at a gathering of reserve officers. Ivan Mendez, a Captain in the reserve force, brought Col. Coronel to a hotel thence to an eatery downtown where the conference was being held. After which, Mendez instructed his driver to take the car home to the Central Park Subdivision, Davao City. Shortly before noon, personnel of the financing company and a deputy sheriff arrived at the house of Mendez and seized the car pursuant to the Order dated May 24, 1976. The car was driven back to the eatery where Ivan Mendez was called and he pleaded with the FILINVEST people to release his car in the meantime. Refused, Mendez then went to the office of the financing company and reiterated his plea. He was told by Benjamin Bontia, collection and credit manager of the financing company that he had to pay the whole amount due in order to get back the car. After further negotiations, Bontia relented and permitted Mendez to pay his April, May and June installments plus repossession expenses as a condition to the release of the car.

"On June 11, 1976, Mendez paid P3,000.00, which was credited to the following months: April -- P957.95; May -- P1,373.00; and, June -? P643.67 plus interest of P25.38 (Exh. "6-B"). On June 18, 1976, Mendez paid P1,894.00 as and for repossession expenses (Exh. "C"). After payments of these amounts, the financing company finally released the car to Ivan Mendez.

"On June 21, 1976, the financing company filed a motion in court seeking the dismissal of Civil Case No. 9468 'on the ground that defendants have updated their obligation to the plaintiff', and which was granted by virtue of the Order of this Court dated June 24, 1976." (pp. 105-106, Rollo)

On July 14, 1976, respondent Mendez filed a complaint for Solutio Indebiti and damages against the petitioner before the Court of First Instance of Davao, Branch 6, 16th Judicial District. His amended complaint dated July

28, 1976, alleged, among others, "that the seizure order was illegal, as the unpaid installments for the months of February, March, April, 1976 subject of Civil Case No. 9468 had previously been updated by the clearing of the PVB check, and that petitioner was therefore without any right to claim from him the repossession expenses and, that due to the alleged unjustified repossession of the car and the factual circumstances attendant thereto, he is entitled to moral damages." (p. 24, Rollo)

In its answer to the complaint, the petitioner countered: "that since the PVB check was only cleared subsequent to May 10, 1976, respondent was in default of the February, March and April installments at the time it filed its complaint for the repossession of the car on the aforesaid dated; and, that the subsequent updating of respondent's account did not invalidate the seizure order, as the basis therefor was the failure of respondent to pay the installments when they fell due, and not the failure to pay the February, March and April installments in particular." (pp. 24-25, Rollo)

On December 10, 1977, the trial court rendered its judgment, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of plaintiff Ivan Mendez, and against the defendant Filinvest Credit Corporation:

"1. Ordering the defendant Filinvest Credit Corporation, to return to plaintiff the sum of P1,894.80 representing the repossession expenses paid by Ivan Mendez to the financing company with legal rate of interest from June 17, 1976, the date of payment up to the time the full amount is returned;

"2. Ordering the defendant to pay to plaintiff the sum of P80,000.00, as and for moral damages; and

"3. Ordering the defendant to pay to plaintiff the amount of P80,000.00, as and for attorney's fees.

"The defendant Filinvest Credit Corporation shall pay the costs of suit." (pp. 101-102, Rollo)

The petitioner appealed to the Intermediate Appellate Court which affirmed in toto the decision of the trial court. Its motion for reconsideration having been denied, the petitioner filed the present petition.

The petitioner now comes before this Court with the following assignments of errors:

I

THE TRIAL COURT ERRED IN HOLDING THAT THE SEIZURE OF THE CAR WAS TOTALLY UNJUSTIFIED AND IN ORDERING PETITIONER TO REIMBURSE RESPONDENT THE SUM OF ONE THOUSAND EIGHT HUNDRED NINETY FOUR PESOS & 80/100 (P1,894.80) REPRESENTING THE REPOSSESSION EXPENSES.

II

THE TRIAL COURT ERRED IN AWARDING RESPONDENT MORAL DAMAGES IN THE AMOUNT OF EIGHTY THOUSAND PESOS (P80,000.00)

III

THE TRIAL COURT ERRED IN ORDERING PETITIONER TO PAY RESPONDENT THE SUM OF EIGHT THOUSAND PESOS (P8,000.00) AS AND FOR ATTORNEY'S FEES.

V

THE TRIAL COURT ERRED IN NOT DISMISSING CIVIL CASE NO. 9621 AND IN NOT AWARDING PETITIONER ITS LEGITIMATE COUNTERCLAIM FOR DAMAGES. (p. 28, Rollo)

The arguments of the petitioner are centered on its having a clear cause of action and a right to the corresponding remedy at the time the complaint was filed on May 10, 1976. The respondent had not paid the February, March, and April 1976 installments or more than two installments due on the promissory note.

On the other hand, the respondent claims that the acceleration clause stipulated in the promissory note and in the chattel mortgage cannot justify the action taken by the petitioner because it contravenes the letter and the avowed public policy of the installment sales law, and, therefore, is illegal and unenforceable.

The respondent states that since the petitioner was exacting fulfillment of the obligation it should have desisted from repossessing the car. It cannot exercise its remedies cumulatively. It cannot pretend that it was recovering the car preparatory to cancellation of the sale or foreclosure of the chattel mortgage because it had elected to exact fulfillment of the obligation when it filed Civil Case No. 9468.

The respondent stresses that the PVB check bounced on May 6, 1976, but the petitioner re-deposited it and in due course of business it cleared on May 13, 1976. Thus, as of May 13, 1976, the remaining unpaid installment was only part of the April, 1976 installment, in the amount of P957.95. Having re-deposited the check before May 13, 1976, the petitioner should have waited until the check bounced before filing the complaint.

According to the private respondent, the complaint in Civil Case No. 9468 not only alleged a cause of action for specific performance but also alternatively asked for the issuance of a writ of replevin. The petitioner, therefore, acted cumulatively in pursuing its various remedies which is against the intent and spirit of the installment sales law.

We agree with the petitioner.

The remittance of the PVB check on May 3, 1976 could not have cured the defaults in payment because the check bounced when it was presented for payment. The respondent's account had no funds at the time to back up the check he used as payment.

Article 1249 of the Civil Code provides:

X X X X X X X X

"The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired."

X X X X X X X X

The petitioner stresses that the seizure order was anchored on the respondent's failure to pay installments on time and not on the mere unqualified failure to pay the February, March, and April installments. It states that the making of timely payments was an absolute undertaking in the promissory note and the deed of chattel mortgage. The grievance sought to be vindicated by the replevin suit was the non-compliance with this undertaking.

The records sustain the petitioner's arguments that it had a valid cause of action when the complaint was filed. It filed suit for the total balance of P25,597.56 in accordance with the stipulated acceleration clause in case of default. The consideration for the seizure order prayed for by the petitioner included the non-payment of the remaining total obligation.

With respect to the trial court's ordering the petitioner to reimburse P1,894.80 representing the expenses incurred because of the seizure of the car and as a condition for its release, the petitioner maintains that it had sufficient justification to proceed with Civil Case No. 9468 and to repossess the car. It disclaims any obligation to withdraw the replevin suit upon the clearing of the PVB check, because the fact that it was cleared did not wipe out the bases of the proceedings.

Insofar as the P1,894.80 are concerned, the petitioner is correct that the repossession expenses must be for the account of the respondent whose duty was to immediately surrender the car upon valid demand and thereby prevent the necessity of the petitioner's having to spend in order to repossess it.

The petitioner also questions the award of attorney's fees. It asserts that according to decisions of this Court, an award of attorney's fees is improper on the sole basis of an adverse decision (*Ramos v. Ramos*, 61 SCRA 284), or if one considers the good faith of parties in prosecuting a cause of action though declared to be unfounded (*Salao v. Salao*, 70 SCRA 65), or in the absence of clear proof that an action was intended merely to prejudice the other party (*Mercader v. Manila Polo Club*, L-8373, September 28, 1956). The records sustain the contention that there is no basis for entitlement to attorney's fees.

Concerning the award of moral damages in the amount of P80,000.00, the petitioner argues that moral damages may be recovered if they are the proximate result of a wrongful act or omission. The petitioner points out that it repossessed the car as a matter of right and upon faithful compliance with all the legal requirements. As the exercise of a right within legal bounds is not wrongful, the basic requirement for an award of moral damages is absent. It was the respondent and not the petitioner, who was guilty of a wrongful act. The failure to abide by one's express financial obligations is deplorable. To hold otherwise is to reward contractual breach and penalize one who avails of contractual and legal remedies to correct the prejudice resulting from any such breach. The petitioner argues that the respondent alone must bear the consequences of his wrongful omission.

On the other hand, the private respondent bases his claim to moral damages on the alleged failure of the petitioner to act with caution and to observe honesty and good faith with due regard to the respondent's rights under the installment sales law as well as on the act of the petitioner in deliberately repossessing the car in violation of law.

The award for moral damages has no factual and legal basis.

The respondent claims that it was while he was attending a seminar for home defense in Davao City that the car was repossessed by the petitioner. When he pleaded with the petitioner not to seize the car at that very moment because he was using it for his visitor from Manila, the petitioner chose to brandish the seizure order as its weapon to enforce collection of his whole account. The respondent claims that he was humiliated and embarrassed most especially before his visitor and among those attending the seminar as well as among his friends and business associates. The shock and humiliation he suffered resulted to his hospitalization immediately, thereafter, for about a week.

The testimony, however, of the driver of the respondent shows that the car was seized at the residence of the respondent while the said driver was cleaning the same. It is, therefore, not true that the respondent was humiliated and embarrassed before his visitor and among those attending the seminar.

The rule is settled that moral damages cannot be awarded in the absence of a wrongful act or omission or fraud or bad faith. (*R & B Surety & Insurance Co., v. Intermediate Appellate Court*, 129 SCRA 736; and *Siasat v. Intermediate Appellate Court*, 139 SCRA 238). When the action is filed in good faith there should be no penalty on the right to litigate. (*Espiritu v. Court of Appeals*, 137 SCRA 50). The petitioner may have erred but error alone is not a ground for moral damages.

The petitioner filed an action for recovery of personal property and/or sum of money against the respondent (Civil Case No. 9468) when the latter's PVB check intended for the February, March, and April installments bounced due to insufficiency of funds. By virtue of an order of seizure issued by the court, the car was repossessed. The check was later re-deposited and credited for the months mentioned. When the respondent negotiated with the petitioner for the release of the car, the latter demanded payment of the total outstanding balance on the promissory note. Due to the persistent pleas of the respondent, the petitioner released the car to him upon payment of the installment remaining unpaid for the months of April, May, and June, 1976, in addition to the costs incurred in repossessing the car amounting to P1,894.80. On June 21, 1976, Civil Case No. 9468 was dismissed upon motion of the petitioner. The willingness of the petitioner to allow the respondent to pay only the unpaid installments for April, May, and June instead of the total outstanding balance and to release the car as well as its voluntary motion to dismiss the case indicates lack of fraud or bad faith on the part of the petitioner. The private respondent was not without fault. He was three months behind in his payments and he issued a bouncing check. The dismissal of Civil Case No. 9468 rendered moot and academic the issues of whether or not the acceleration clause in the promissory note is illegal and unenforceable as well as the other issue of whether or not the petitioner acted cumulatively in pursuing its various remedies to effect collection.

WHEREFORE, the petition is hereby GRANTED. The decisions of the trial court and the Intermediate Appellate Court are REVERSED and SET ASIDE. The complaint of the respondent is DISMISSED.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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