

MELECIO V. EMATA, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, HON. DANIEL C. MACARAEG IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH LV, REGIONAL TRIAL COURT OF MANILA AND ...

G.R. No. 72714. June 29, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

On July 18, 1985 the then Intermediate Appellate Court promulgated a decision in AC-G.R. CV No. 02939-R[1] affirming in toto the decision of the Regional Trial Court of Manila, Branch LV, in Civil Case No. 141977,[2] an action for replevin and damages.

The factual antecedents culminating in and constituting the bases of both decisions had their inchoation in petitioner's purchase of a car on installment from Violago Motor Sales Corporation (Violago, for brevity) with a down payment of P14,982.00. Petitioner likewise executed in favor of the seller a promissory note and a chattel mortgage over the car as security for the payment of the note. Said promissory note provides:

"For value received, I/We, jointly and severally promise to pay VIOLAGO MOTOR SALES CORPORATION or order, at its office in the (sic) San Fernando, Pampanga the principal sum of fifty seven thousand two hundred four pesos only (P57,204.00) Philippine currency, which amount includes interest at 12% per annum based on the diminishing balance, the said principal sum, to be payable, without need of notice or demand, in installments of the amounts following and at the dates hereinafter set forth, to wit: P1,589.00 monthly for 36 months due and payable on the 25th day of each month starting SEPTEMBER 25,1978 thru and inclusive of AUGUST 25,1981 xxx, provided that interest at 14% per annum shall be added on each unpaid installment from maturity hereof until fully paid." [3]

Thus, the total amount that the petitioner was supposed to pay was P72,186.00, with P57,204.00 as the balance after deducting the down payment. The total amount payable was P22,246.00 more than the "list cash price" of P49,940.00 for said vehicle.

After the execution of said documents, Violago endorsed the promissory note and assigned the chattel mortgage to Filinvest Credit Corporation (hereafter, Filinvest for short) upon payment by the latter of P34,958.00, the unpaid balance of the list cash price of the car. Three years later, Filinvest assigned to private respondent Servicewide Specialists, Inc. the remaining installment balance due on and corresponding to the period from February 25,1981 to August 25,1981.

Alleging non-payment of five (5) consecutive installments from February 25 to June 25, 1981, private respondent initiated the case in the trial court for a writ of replevin to effect the seizure of the car or, alternatively, for the payment by petitioner of the sum of P1,332.40, with interest thereon of fourteen percent (14%) per annum from

July 10, 1981 until fully paid and, additionally, for attorney's fees and costs of suit.

Herein petitioner, in answer thereto and as summarized by the court a quo, alleged that "the promissory note does not express the true intent and agreement of the parties, the same having been procured through fraud, deceit, trickery and misrepresentation; that the chattel mortgage was intended to secure the payment of P34,958.00 which was the unpaid balance of the purchase price of the Toyota car; that he was made to sign the note and the mortgage in blank; that he has paid, and even overpaid, Filinvest by P9,388.22; that the promissory note by inflating its value and charging more than the prescribed rates in violation of the Financing Company Act (Republic Act No. 5980) violates the Usury Law; that the note and the mortgage are null and void; and that the demand set forth in the complaint has long been extinguished." [4] Furthermore, petitioner claimed that Filinvest, aside from charging usurious interest as earlier stated, violated the provisions of the Truth in Lending Act (Republic Act No. 3765) for failure to provide him a copy of the disclosure statement containing entries required by said law. He consequently set up a counterclaim against Filinvest for various items of damages and attorney's fees all amounting to more than P1,100,000.00. [5]

On November 5, 1981, petitioner filed a "Motion to Implead Filinvest Credit Corporation" on the theory that "for all legal purposes the corporation sought to be impleaded is the real party in interest" because it retained interest over the balance of the petitioner's account in spite of its assignment to private respondent. [6] An opposition thereto was filed by private respondent corporation on January 18, 1982. [7]

Subsequently, in its order of April 26, 1982, the court below held in abeyance the pre-trial hearing of the case since, "(u)pon motion of Atty. Melecio Virgilio Emata," said petitioner was given a "period of fifteen (15) days to file the third-party complaint against the third party defendant (Filinvest)." [8] Petitioner, however, did not file any third-party complaint, hence the trial court set the case for pre-trial on May 3, 1983, it being understood that petitioner was no longer interested in impleading the herein private respondent as a third-party defendant therein.

On May 2, 1983, petitioner filed an urgent motion to cancel the scheduled pre-trial and the trial court reset the same to June 9, 1983. Another motion for postponement of the scheduled pre-trial filed by petitioner on June 8, 1983 was denied by the lower court, which consequently issued an order declaring petitioner as in default for failure to appear at the pre-trial of June 9, 1983. Respondent corporation was then allowed to present evidence ex parte despite an opposition of petitioner.

However, upon a subsequent motion of petitioner, in its order of August 17, 1983 the trial court not only lifted the default order but also allowed him to cross-examine private respondent's sole witness "as a last opportunity to adduce evidence in support of the material allegations of his answer." The same order declared that the order of April 26, 1982, hereinbefore stated, must be maintained since petitioner had opted not to comply therewith, hence his motion to implead Filinvest was in effect already resolved in said order of April 26, 1982. [9]

At the continuation of the trial on September 1, 1983, the court a quo, in order to simplify the proceedings, allowed both parties to submit their respective lists of payments made by petitioner to respondent corporation, with the court determining the proper application of each payment. The parties then filed their respective memoranda and submitted the case for decision.

On March 6, 1984, judgment was rendered by the trial court as follows:

"WHEREFORE, premises considered, judgment is hereby rendered against the defendant and in favor of the plaintiff, ordering the former to deliver to the latter the Toyota Car herein above described, or to pay the latter the sum of P11,332.40, plus interest thereon at the rate of 14% per annum.

"In either case, the defendant is also ordered to pay the plaintiff the following sums: P2,800.00 as attorney's fees and P424.50 as bonding fees.

"Should the defendant fail to satisfy, or comply with the foregoing, his bondsman or surety, Sanpiro Insurance Corporation, shall be liable therefor in accordance with the counter-bond.

"With costs against the defendant." [10]

Petitioner takes exception to respondent court's affirmance of said decision, hence this petition.

Petitioner raises both procedural and substantive issues. Initially, he complains that the trial court erred in requiring him to file a third-party complaint against Filinvest, instead of impleading the latter either as party plaintiff or defendant. [11] He insists that Filinvest is the real party in interest in the present case and it should be impleaded under Rule 3 of the Rules of Court which provides:

"Sec. 10. Unwilling co-plaintiff. — If the consent of any party who should be joined as plaintiff can not be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint.

"Sec. 11. Misjoinder and non-joinder of parties. — Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately."

which he complements with a provision in Rule 6, to wit:

"Sec. 14. Bringing new parties. — When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants if jurisdiction over them can be obtained."

Concededly, additional parties may be brought in under the abovequoted provisions of the Rules. A third-party complaint, however, is not to be eschewed or disregarded in the procedural scheme since it may, in fact, be the very vehicle for impleading a third person as a party to the case. Thus, for purposes of Section 14 of Rule 6, above quoted, the court may authorize the filing of the proper third-party complaint to implead the other parties not included in the original complaint, in keeping with the injunction that "all pleadings shall be liberally construed so as to do substantial justice." [12]

We reject petitioner's plaint that the order of the court a quo requiring the filing of a third-party complaint is improper. A third-party complaint is "a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief in respect of his opponent's claim." [13] Obviously, a third-party complaint against Filinvest, had petitioner filed the same, would be a claim in respect of the plaintiff's claim since the former arises from the same transaction on which the plaintiff's claim is based, that is, the promissory note which was eventually assigned to private respondent. [14] Although the petitioner did not admit in his answer that any amount is due from the corporation sought to be impleaded, that is not indicative of nor does it support his thesis of the alleged

impropriety of a third-party complaint. Apparently, petitioner failed to take into consideration that the remedy is also applicable where the defendant seeks "any other relief in respect of his opponent's claim," a remedial grant of power broad enough to include the relief he seeks in the case at bar.

Petitioner cannot rely on the provisions of Section 10, Rule 3 which envisages a party who should be joined as a plaintiff but who does not assent to such joinder. Obviously and necessarily, such unwilling party must be a real party in interest. In the case at bar, Filinvest's position and the evidence thereon was that it was not a real party in interest, as it was no longer entitled to the avails of the suit by reason of the anterior assignment it made in favor of private respondent. Hence, at the very least, its capacity was in issue and it would be a case of procedural *petitio principii* for the trial court to have categorized it as an unwilling co-plaintiff, with the procedural consequences thereof, although such operative issue was still unresolved. Furthermore, the option lies with the plaintiff on whether or not to join an additional party in his complaint. The original plaintiff cannot be compelled, on the mere representations of the defendant, to implead anyone, especially if it does not appear that such joinder is proper or is necessary for the complete and expeditious adjudication of the case.

Nor can the general rule in Section 11, Rule 3, on the power to order the addition or dropping of a party at any stage of action, be of solace to the petitioner. This is a power addressed to the sound discretion of the court to be exercised on such terms as are just, and by this is meant that it must be just to all the other parties.[15] Obviously, given the facts of this case, the trial court wisely exercised its discretion in refusing to give in to the unjustified importunings of petitioner.

Petitioner should be reminded that the courts, as the arbiters of the rights of the parties, stand in a better position and are clothed with ample authority to rule on the procedural measures that are proper in cases before them. If a party believes that the order of the court is not in accordance with law, he is not without other alternative remedial avenues. If, on the other hand, the order does not suffer from any legal infirmities, the same is binding on the parties and to this they must submit with grace. We cannot but be displeased with petitioner's unseemly motivation and stance when he "adopted an attitude of inaction and completely ignored" the order of the trial court requiring the filing of a third-party complaint, especially in view of the factual finding that it was he who manifested on April 26, 1982 that he would file said third party complaint.[16]

Apart from all these considerations, the inclusion of Filinvest would at any rate have been a useless recourse in the light of the fact that the arguments on which this petition is moored are bereft of merit.

On the issue of usury, the present rule that usury at present is legally non-existent[17] would not apply to the instant case. The present controversy arose before the adoption on December 3, 1982 of Resolution No. 224 by the Central Bank Monetary Board on which the existing rule is based.

Nevertheless, the records of this case reveal that the Usury Law, Act No. 2655, is not applicable thereto. The amount added to the cash price of the car is what is commonly known as the "time price differential" and not interest within the meaning of the Usury Law. The law is applicable only in case of a loan or forbearance of money, goods or credit which is not the case here. The transaction involved here being admittedly a conditional sale based on an installment plan and not a loan, it has been held that the alleged increase in the price of the article sold cannot be considered a mere pretext to cover a usurious loan. "The increase in price, when the sale is on credit serves not only to cover the expenses generally entailed by such transactions on credit, but also to encourage cash sales, so useful to commerce. It is up to the purchaser to decide which price he prefers in making the purchase x x x if on the contrary, he prefers to buy on credit, he cannot complain of the increase of the price demanded by the vendor."[18]

Neither is the Usury Law applicable to the assignment of indebtedness to Filinvest and to private respondent. The

Financing Company Act provides for the rate of the purchase discount that may be availed of by a financing company. The purchase discount is defined as the "difference between the value of the receivable purchased or credit assigned, and the net amount paid by the finance company for such purchase or assignment, exclusive of fees, service charges, interest and other charges incident to the extension of the credit." [19] Under Section 5 of the same Act, it is provided that:

"In case of assignment of credit or the buying of installment papers, accounts receivable and the evidences of indebtedness by financing companies, the purchase discount, exclusive of interest and other charges, shall be limited to fourteen per cent (14%), or such percentage as may be prescribed by the Monetary Board of the value of the credit assigned or the value of the installment papers, accounts receivable and other evidences of indebtedness purchased based on a period of twelve months or less, and to one and one-sixth per cent (1-1/6%), or such percentage as may be prescribed by the Monetary Board, for each additional month or fraction thereof in excess of twelve months, regardless of the terms and conditions of the assignment or purchase."

The petitioner avers that the amount of P22,246.00, or forty-four and five-hundredths percent (44.05%), added to the list cash price is way above the purchase discount prescribed by Republic Act No. 5980, as well as Central Bank Circular No. 586 providing for nineteen percent (19%) per annum as the effective rate of yield from purchase of receivables. [20] We do not have to unnecessarily clutter this decision with unduly involved or extensively complex computations to demonstrate the incorrectness of petitioner's position. The finding of the trial court, that the stipulated interest in the promissory note is well within the allowable rate, is adequately supported by the evidence of record. Although, forty-four and five-hundredths percent (44.05%) was added to the list cash price of the car, the same was actually spread over a three-year period of amortization. Thus, whether it be fourteen percent (14%) plus one and one-sixth percent (1-1/6%) under Republic Act No. 5980 or nineteen percent (19%) under Circular No. 586, it is clear that the yield or purchase discount, as the case may be, is within the limits prescribed by law.

No violation of the Truth in Lending Act, Republic Act No. 3765, was established either. The disclosure statement furnished to petitioner shows on its face that it contains all the data required by law and that it was signed by the seller on July 31, 1978 before the assignment of the indebtedness to private respondent. We agree with private respondent that the petitioner, a practicing lawyer for more than twenty years, would not be so gullible or negligent as to sign documents in blank knowing fully well the legal implications and consequences of such action. [21] Of course, petitioner does not deny that Filinvest had nothing to do with the disclosure statement since it is the Viologo Motor Sales Corporation which is obligated to furnish, as in fact it did furnish, petitioner a copy of said statement. [22]

Regarding the computations of the petitioner based on the formula provided by Circular No. 158 of the Central Bank implementing the Truth in Lending Act, [23] petitioner should not confuse "time price differential" with the "simple annual rate" determined by the formula. "Simple annual rate" is the uniform percentage which represents the ratio, on an annual basis, between the finance charges and the amount to be financed. It is not the measure of the total amount that is allowed to be added to the cash price.

IN VIEW OF THE FOREGOING, no reversible error having been committed by respondent court, its assailed decision is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera (Chairperson), Paras, and Sarmiento, JJ., concur.

Padilla, J., took no part, former counsel for Filinvest.

[1] Ma. Rosario Quetulio-Losa, J., ponente, Ramon G. Gaviola, Jr., Eduardo guioa, and Leonor Ines Luciano, JJ., concurring; First Civil Cases Division.

[2] Servicer Specialists, Inc. vs. Melecio Virgitio Emala and John Doe; penned by Judge Daniel C. Macaraeg.

[3] Original Record, 7.

[4] Ibid., 397.

[5] Ibid., 64-68.

[6] Ibid., 85-89.

[7] Ibid., 110-113.

[8] Ibid., 125.

[9] Ibid., 293. 10 Ibid., 404.

[11] Rollo, 42.

[12] See Sec. 15, Rule 6, Rules of Court; Rubio vs. Mariano, et al., 49 SCRA 319, 336(1973).

[13] Sec. 12, Rule 6, Rules of Court.

[14] See Capayas vs. Court of First Instance of Albay, et al., 77 Phil. 181 (1946).

[15] Um Tanhu, et al. vs. Ramolete, et al., 66 SCRA 425 (1975).

[16] Rollo, 72.

[17] Ham Law vs. Olympic Sawmill Co., et al., 129 SCRA 439 (1984).

[18] Manila Trading & Supply Co. vs. Tamaraw Plantation Co., 47 Phil 513 (1925); Sun Bros. Appliances. Inc. vs. Caluntad, 16 SCRA 895 (1966).

[19] Sec. 3, Republic Act No. 5980.

[20] 74 O.G. No. 3, 582.

[21] Rollo, 251.

[22] Original Record, 213.

[23] 59 O.G. No. 40, 6837,

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