

SERVICEWIDE SPECIALISTS, INCORPORATED, PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT, GALICANO SITON AND JUDGE JUSTINIANO DE DUMO, RESPONDENTS.

G.R. No. 74553. June 08, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of a decision of the Intermediate Appellate Court (now Court of Appeals) in AC-G.R. CV No. 03876 affirming in toto the decision of the Regional Trial Court of Manila in Civil Case No. 82-4364 entitled, "Servicewide Specialists, Inc. vs. Galicano Siton and John Doe."

The antecedent facts in this case as found by the lower court are as follows:

The private respondent Galicano Siton purchased from Car Traders Philippines, Inc. a vehicle described as Mitsubishi Celeste two-door with air-conditioning, Engine 2M-62799, Serial No. A73-2652 and paid P25,000.00 as downpayment of the price. The remaining balance of P68,400.00, includes not only the remaining principal obligation but also advance interests and premiums for motor vehicle insurance policies.

On August 14, 1979, Siton executed a promissory note in favor of Car Traders Philippines, Inc. expressly stipulating that the face value of the note which is P68,400.00, shall "be payable, without need of notice of demand, in installments of the amounts following and at the dates hereinafter set forth, to wit: P1,900.00 monthly for 36 months due and payable on the 14th day of each month starting September 14, 1979, thru and inclusive of August 14, 1982" (p. 84, Rollo). There are additional stipulations in the Promissory Note consisting of, among others:

1. Interest at the rate of 14% per annum to be added on each unpaid installment from maturity;
2. If default is made in the payment of any of the installments or interest thereon, the total principal sum then remaining unpaid, together with accrued interest thereon shall at once become due and demandable;
3. In case of default, and attorney's services are availed of, there shall be added a sum equal to 25% of the total sum due thereon to cover attorney's fees, aside from expenses of collection and legal costs. (p. 84, Rollo).

As further security, Siton executed a Chattel Mortgage over the subject motor vehicle in favor of Car Traders Philippines, Inc. (pp. 85-88, Rollo). The Chattel Mortgage Contract provides additional stipulations, such as: a) the waiver by the mortgagor of his rights under Art. 1252 of the Civil Code to designate the application of his payments and authorize the mortgagee or its assigns to apply such payments to either his promissory or note to any of his existing obligations to the mortgagee or its assigns at the latter's discretion; and b) concerning the insurance of the subject motor vehicle, the mortgagor is under obligation to secure the necessary policy in an amount not less than the outstanding balance of the mortgage obligation and that loss thereof shall be made payable to the mortgagee or its assigns as its interest may appear, with the further obligation of the mortgagor to deliver the policy to the mortgagee. The mortgagor further agrees that in default of his effecting or renewing the

insurance and delivering the policy as endorsed to the mortgagee within five (5) days after the execution of the mortgage or the expiry date of the insurance, the mortgagee may, at his option but without any obligation to do so, effect such insurance or obtain such renewal for the account of the mortgagor.

The credit covered by the promissory note and chattel mortgage executed by respondent Galicano Siton was first assigned by Car Traders Philippines, Inc, in favor of Filinvest Credit Corporation. Subsequently, Filinvest Credit Corporation likewise reassigned said credit in favor of petitioner Servicewide Specialists, Inc. and respondent Siton was advised of this second assignment.

Alleging that Siton failed to pay the part of the installment which fell due on November 2, 1981 as well as the subsequent installments which fell due on December 2, 1981 and January 2, 1982, respectively, the petitioner filed this action against Galicano Siton and "John Doe".

The relief sought by the plaintiff is a Writ of Replevin over subject motor vehicle or, in the alternative, for a sum of money of P20,319.42 plus interest thereon at the rate of 14% per annum from January 11, 1982 until fully paid; and in either case, for defendants to pay certain sum of money for attorney's fees, liquidated damages, bonding fees and other expenses incurred in the seizure of the motor vehicle plus costs of suit.

After the service of summons, Justiniano de Dumo, identifying himself as the "John Doe" in the Complaint, inasmuch as he is in possession of the subject vehicle, filed his Answer with Counterclaim and with Opposition to the prayer for a Writ of Replevin. Said defendant, alleged the fact that he has bought the motor vehicle from Galicano Siton on November 24, 1979; that as such successor, he stepped into the rights and obligations of the seller; that he has religiously paid the installments as stipulated upon in the promissory note. He also manifested that the Answer he has filed in his behalf should likewise serve as a responsive pleading for his co-defendant Galicano Siton.

On January 12, 1984, the Regional Trial Court rendered a decision, the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered as follows:

1. Denying the issuance of a Writ of Replevin in this case;
2. Ordering defendants to pay jointly and severally, the plaintiff, the remaining balance on the motor vehicle reckoned as of January 25, 1982, without additional interest and charges, and the same to be paid by installments, per the terms of the Promissory Note, payable on the 14th day of each month starting the month after this Decision shall have become final, until the full payment of the remaining obligation;
3. The Chattel Mortgage contract is deemed to cover the obligation stated in par. 2 supra, without prejudice to the parties, including defendant de Dumo, to now execute a new promissory note and/or chattel mortgage contract;
4. Ordering defendants to pay, jointly and severally, the sum of another P3,859.90 to the plaintiff by way of refunding the premium payments in the past on insurance policies over subject car;
5. Each party shall bear his own expenses and attorney's fees; and
6. The claim of one party against the other (s) for damages, and vice-versa are hereby denied and dismissed.

There is no pronouncement as to costs.

"SO ORDERED." (pp. 95-96; Rollo)

Not satisfied with the decision of the trial court, the petitioner appealed to the Intermediate Appellate Court.

On April 25, 1986, the respondent Appellate Court rendered judgment affirming in toto the decision of the trial court. The dispositive portion of the judgment states:

"WHEREFORE, the appealed judgment is in full accord with the evidence and the law is hereby therefore affirmed in all its parts. Costs against plaintiff-appellant.

"SO ORDERED." (p. 42, Rollo)

Hence, the instant petition was filed, praying for a reversal of the above-mentioned decision in favor of private respondents, with the petitioner assigning the following errors:

"2.1 The Honorable Respondent, the Intermediate Appellate Court erred and gravely abused its discretion in concluding that there was a valid sale of the mortgaged vehicle between Siton and De Dumo;

"2.2 The Honorable Respondent, the Intermediate Appellate Court erred and gravely abused its discretion in holding that the petitioner (plaintiff) and its predecessors-in-interest are bound by the questionable and invalid unnotarized Deed of Sale between Siton and De Dumo, even as neither petitioner (plaintiff) nor its predecessors-in-interest had knowledge nor had they given their written or verbal consent thereto;

"2.3 The Honorable Respondent, the Intermediate Appellate Court erred and gravely abused its discretion in ruling that the mortgagee (petitioner) has the obligation to make demands to De Dumo for payment on the Promissory Note when De Dumo is not privy thereto;

"2.4 The Honorable Respondent, the Intermediate Appellate Court erred and acted with grave abuse of discretion in refusing to issue the Writ of Replevin despite due compliance by petitioner of the requirements of Rule 60, Sections 1 and 2 of REVISED RULES OF COURT;

"2.5 The Honorable Respondent, the Intermediate Appellate Court acted with grave abuse of discretion in ruling that petitioner (creditor-mortgagee) is obliged to inform respondent De Dumo (not privy to the mortgage) to submit the insurance policy over the mortgaged "res" and to demand the payor-third-party (De Dumo) to redeem his rubber check;" (pp. 4-5, Rollo)

In its first assigned error, petitioner alleges that the sale of the mortgaged vehicle between the mortgagor Siton and De Dumo was void, as the sale is prohibited under the provisions of the Deed of Chattel Mortgage, the Chattel Mortgage Act (Act 1508) and the Revised Penal Code. The Deed of Chattel Mortgage executed by the petitioner and Siton stipulates:

"The Mortgagor shall not sell, mortgage or in any other way, encumber or dispose of the property herein mortgaged without the previous written consent of the Mortgagee" (p. 85, Rollo).

The rule is settled that the chattel mortgagor continues to be the owner of the property, and therefore, has the power to alienate the same; however, he is obliged under pain of penal liability, to secure the written consent of the mortgagee. (Francisco, Vicente, Jr., Revised Rules of Court in the Philippines, (1972), Volume IV-B Part I, p. 525). Thus, the instruments of mortgage are binding, while they subsist, not only upon the parties executing them but also upon those who later, by purchase or otherwise, acquire the properties referred to therein.

The absence of the written consent of the mortgagee to the sale of the mortgaged property in favor of a third person, therefore, affects not the validity of the sale but only the penal liability of the mortgagor under the Revised Penal Code and the binding effect of such sale on the mortgagee under the Deed of chattel Mortgage.

Anent its second, third and fifth assigned errors, petitioner submits that it is not bound by the deed of sale made by Siton in favor of De Dumo, as neither petitioner nor its predecessor has given their written or verbal consent thereto pursuant to the Deed of Chattel Mortgage.

On this matter, the appellate court upheld the findings of the trial court, as follows, to wit:

"The first issue is whether or not the sale and transfer of the motor vehicle, subject matter of the chattel mortgage, made by Siton in favor of Atty. de Dumo is illegal and violative of the Chattel Mortgage Law. The supposition is that if it were illegal, then plaintiff has all the right to file this action and to foreclose on the chattel mortgage. Both defendants testified that, before the projected sale, they went to a certain Atty. Villa of Filinvest Credit Corporation advising the latter of the intended sale and transfer. Defendants were accordingly advised that the verbal information given to the corporation would suffice, and that it would be tedious and impractical to effect a change of transfer of ownership as that would require a new credit investigation as to the capacity and worthiness of Atty. De Dumo, being the new debtor. The further suggestion given by Atty. Villa is that the account should be maintained in the name of Galicano Siton. Plaintiff claims that it and its predecessor had never been notified of the sale, much less were they notified in writing as required by the contract. On this particular issue, it would really appear that, since the transfer, it was Atty. de Dumo who had been paying said account, almost invariably with his personal checks. In fact, one of the checks that supposedly bounced, marked Exhibit J and the relative receipt as Exhibit 16, was Atty. de Dumo's personal check. Note that plaintiff has been accepting such payments by defendant de Dumo. It would appear, therefore, that there was an implied acceptance by the plaintiff and its predecessor of the transfer. Another reasonable conclusion is that, while there was failure on the part of defendants to comply strictly and literally with their contract, there was substantial compliance therewith." (pp. 92-93, Rollo)

We agree with the aforequoted findings and conclusions of the lower court which were affirmed on appeal by the Court of Appeals. The conclusions and findings of facts by the trial court are entitled to great weight and will not be disturbed on appeal unless for strong and cogent reasons because the trial court is in a better position to examine real evidence as well as to observe the demeanor of witnesses while testifying on the case, *Macua vs. Intermediate Appellate Court*, No. L-70810, October 26, 1987, 155 SCRA 29)

There is no dispute that the Deed of Chattel Mortgage executed between Siton and the petitioner requires the written consent of the latter as mortgagee in the sale or transfer of the mortgaged vehicle. We cannot ignore the findings, however, that before the sale, prompt inquiries were made by private respondents with Filinvest Credit Corporation regarding any possible future sale of the mortgaged property; and that it was upon the advice of the company's credit lawyer that such a verbal notice is sufficient and that it would be convenient if the account would remain in the name of the mortgagor Siton.

Even the personal checks of de Dumo were accepted by petitioner as payment of some of the installments under the promissory note (p. 92, Rollo). If it is true that petitioner has not acquiesced in the sale, then, it should have inquired as to why de Dumo's checks were being used to pay Siton's obligations.

Based on the foregoing circumstances, the petitioner is bound by its predecessor company's representations. This is based on the doctrine of estoppel, through which, "an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon" (Art. 1431, Civil Code). Like the related principles of *volenti non fit injuria* (consent to injury), waiver and acquiescence, estoppel finds its origin generally in the equitable notion that one may not change his position, and profit from his own wrongdoing when he has caused another to rely on his former representations (*Sy vs. Central Bank*, No. L-41480, April 30, 1976, 70 SCRA 570).

Further, it is worthy to note that despite the arguments of petitioner that it is not bound by the sale of the vehicle to de Dumo, and that the latter is a stranger to the transaction between Filinvest and Siton, nevertheless, it admitted de Dumo's obligation as purchaser of the property when it named the latter as one of the defendants in the lower court. Petitioner even manifested in its prayer in the appellant's brief and in the petition before Us, that de Dumo be ordered to pay petitioner, jointly and severally with Siton the unpaid balance on the promissory note

(pp. 32 and 72, Rollo).

In the fourth assigned error by petitioner, the latter claims that the appellate court gravely erred in upholding the trial court's refusal to issue the Writ of Replevin despite compliance with the requirements of the Rules. This contention is devoid of merit.

Article 1484 of the New Civil Code prescribes three remedies which a vendor may pursue in a contract of sale of personal property the price of which is payable in installments, to wit: 1) to exact fulfillment of the obligation; 2) cancel the sale; and 3) foreclose the mortgage on the thing sold. These remedies are alternative and the vendor cannot avail of them at the same time.

It is clear from the prayer of petitioner in its brief on appeal to the appellate court that it had chosen the remedy of fulfillment when it asked the appellate court to order private respondents to pay the remaining unpaid sums under the promissory note (p. 31, Rollo). By having done so, it has deemed waived the third remedy of foreclosure, and it cannot therefore ask at the same time for a Writ of Replevin as preparatory remedy to foreclosure of mortgage. In a similar case, where the vendor filed an action containing three remedies: to collect the purchase price; to seize the property purchased by suing for replevin and to foreclose the mortgage executed thereon, We held that such a scheme is not only irregular but is a flagrant circumvention of the prohibition of the law (*Luneta Motor Company vs. Dimagiba*, No. L-17061, December 30, 1961, 3 SCRA 884).

Finally, the petitioner argues that the judgment of the appellate court was not in accordance with its own findings and those of the trial court showing private respondents' default in the payment of three monthly installments as a result of the dishonor of three checks issued as payments; and that as a consequence thereof, the full amount of the unpaid balance under the promissory note became due and demandable pursuant to the terms of the promissory note.

This contention is impressed with merit. The findings of the trial court on this issue, which were affirmed by the appellate court, state, as follows:

"The second point of issue is whether or not defendants were in arrears when the complaint was filed on January 25, 1982. Plaintiff claims that there were three payments by checks made by defendants, which are ineffective (Art. 1249, Civil Code) as said checks bounced for insufficient funding. x x x. The debtor/obligor is allegedly obliged, as per the Chattel Mortgage Contract, to have the motor vehicle insured and, failing which, the creditor may insure the same for the account of the debtor. Such payments, therefore, together with the value of the three checks that had been dishonored, are the reasons for defendants' delinquency. On defendant's part, more particularly Atty. de Dumo's, they submit that there was no delinquency as, in fact, defendants have receipts to evidence payment for the months of November 1981 (Exhibit 18 dated November 3, 1981), December 1981 (Exhibit 17 dated December 2, 1981), and January, 1982 (Exhibit 30, dated January 5, 1982).

"On cross-examination, Atty. de Dumo admitted that really one of his checks (Exhibit J) was dishonored. There is no evidence one way [or] the other whether said check was replaced subsequently with a good one. Likewise, there is no clarification in the record as to whether the two other dishonored checks had been replaced. As to the insurance policies, defendants claimed on the witness stand that they were the ones who had the vehicle insured, for, otherwise, defendant de Dumo could not have registered the motor vehicle for the years 1980 up to 1982. Defendants further contend that they complied with their undertaking by notifying verbally the creditor of that fact. There is no denying the fact however, that the insurance policies obtained were not endorsed, much less surrendered, to the plaintiff; in fact such policies were not shown in court to evidence the proper indorsement of the policies in favor of the creditor." (pp. 93-94, Rollo) (Emphasis ours)

It is evident from the foregoing findings that the checks issued by the defendants as payment for the installments for November and December, 1981 and January, 1982 were dishonored and were not shown to have been

replaced. 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. (Art. 1249, Civil Code). When the existence of the debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor. (Chua Chienco vs. Vargas, 11 Phil. 219). In the absence of any showing that the aforestated checks were replaced and subsequently cashed, We can only infer that the monthly installments for November, 1981, December, 1981 and January, 1982 have not been paid.

In view of the above, it is not correct for the appellate court to ignore the evidence on record showing the default of private respondents in their obligations. The fact that Siton and de Dumo were not advised or notified of their failure to comply with their obligations under the note and under the Deed of Chattel Mortgage is of no importance. Article 1169 of the Civil Code provides:

"Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

"However, the demand by the creditor shall not be necessary in order that delay may exist:

1. When the obligation or the law expressly so declares;

"x x x."

The promissory note executed by Siton in favor of Car Traders Philippines, Inc. expressly stipulates that the unpaid balance shall be payable, without need of notice or demand, in fixed monthly installments; and that if default be made in the payment of any of the installments or interest thereon as and when the same becomes due and payable as specified above, the total principal sum then remaining unpaid, together with accrued interest thereon, shall at once become due and payable (p. 84, Rollo). The parties are bound by this agreement.

In view of the foregoing, We find it correct to hold both the respondents Galicano Siton and Justiniano de Dumo liable for their obligations to petitioner herein. In the case at bar, the purchase of the car by respondent de Dumo from respondent Siton does not necessarily imply the extinguishment of the liability of the latter. Since it was neither established nor shown that Siton was released from responsibility under the promissory note, the same does not constitute novation by substitution of debtors under Article 1293 of the Civil Code. Likewise, the fact that petitioner company accepts payments from a third person like respondent de Dumo, who has assumed the obligation, will result merely to the addition of debtors and not novation. Hence, the creditor may therefore enforce the obligation against both debtors. (Straight vs. Hashell, 49 Phil. 614; Mata vs. Serra, 47 Phil. 464; McCullough vs. Veloso, 46 Phil. 1; Pacific Commercial vs. Sotto, 34 Phil. 237). If there is no agreement as to solidarity, the first and new debtors are considered obligated jointly. (Lopez vs. Court of Appeals, et al., No. L-33157, June 29, 1982, 114 SCRA 671; Dungo vs. Lopena, et al., L-18377, December 29, 1962, 6 SCRA 1007).

ACCORDINGLY, the petition is GRANTED and the assailed decision of the Court of Appeals dated April 25, 1986 is hereby REVERSED and SET ASIDE, and a new one entered, ordering the private respondents Galicano Siton and Justiniano de Dumo, jointly to pay to petitioner Servicewide Specialists, Incorporated, the total sum of the remaining unpaid balance on the promissory note with interest thereon at fourteen percent per annum from January 25, 1982 until fully paid, as well as stipulated attorney's fees and liquidated damages; and to reimburse to petitioner the sum of P3,859.90 for the premium payments on the insurance policies over the subject vehicle. Costs against private respondents.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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