

BA FINANCE CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS, HON. PRESIDING JUDGE OF REGIONAL TRIAL COURT OF MANILA, BRANCH 43, MANUEL CUADY AND LILIA CUADY, RESPONDENTS.

G.R. No. 82040. August 27, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari which seeks to reverse and set aside (1) the decision of the Court of Appeals dated July 21, 1987 in CA-G.R. No. CV-06522 entitled "B.A. Finance Corporation, Plaintiff-Appellant, vs. Manuel Cudy and Lilia Cudy, Defendants-Appellees," affirming the decision of the Regional Trial Court of Manila, Branch 43, which dismissed the complaint in Civil Case No. 82-10478, and (2) the resolution dated February 9, 1988 denying petitioner's motion for reconsideration.

As gathered from the records, the facts are as follows:

On July 15, 1977, private respondents Manuel Cudy and Lilia Cudy obtained from Supercars, Inc. a credit of P39,574.80, which amount covered the cost of one unit of Ford Escort 1300, four-door sedan. Said obligation was evidenced by a promissory note executed by private respondents in favor of Supercars, Inc., obligating themselves to pay the latter or order the sum of P39,574.80, inclusive of interest at 14% per annum, payable on monthly installments of P1,098.00 starting August 16, 1977, and on the 16[th] day of the next 35 months from September 16, 1977 until full payment thereof. There was also stipulated a penalty of P10.00 for every month of late installment payment. To secure the faithful and prompt compliance of the obligation under the said promissory note, the Cudy spouses constituted a chattel mortgage on the aforementioned motor vehicle. On July 25, 1977, Supercars, Inc. assigned the promissory note, together with the chattel mortgage, to B.A. Finance Corporation. The Cudys paid a total of P36,730.15 to the B.A. Finance Corporation, thus leaving an unpaid balance of P2,344.65 as of July 18, 1980. In addition thereto, the Cudys owe B.A. Finance Corporation P460.00 representing penalties or surcharges for tardy monthly installments (Rollo, pp. 27-29).

Parenthetically, the B.A. Finance Corporation, as the assignee of the mortgage lien, obtained the renewal of the insurance coverage over the aforementioned motor vehicle for the year 1980 with Zenith Insurance Corporation, when the Cudys failed to renew said insurance coverage themselves. Under the terms and conditions of the said insurance coverage, any loss under the policy shall be payable to the B.A. Finance Corporation (Memorandum For Private Respondents, pp. 3--4).

On April 18, 1980, the aforementioned motor vehicle figured in an accident and was badly damaged. The unfortunate happening was reported to the B.A. Finance Corporation and to the insurer, Zenith Insurance Corporation. The Cudys asked the B.A. Finance Corporation to consider the same as a total loss, and to claim from the insurer the face value of the car insurance policy and apply the same to the payment of their remaining account and give them the surplus thereof, if any. But instead of heeding the request of the Cudys, B.A. Finance

Corporation prevailed upon the former to just have the car repaired. Not long thereafter, however, the car bogged down. The Cuadys wrote B.A. Finance Corporation requesting the latter to pursue their prior instruction of enforcing the total loss provision in the insurance coverage. When B.A. Finance Corporation did not respond favorably to their request, the Cuadys stopped paying their monthly installments on the promissory note (*Ibid.*, pp. 4-5).

On June 29, 1982, in view of the failure of the Cuadys to pay the remaining installments on the note, B.A. Finance Corporation sued them in the Regional Trial Court of Manila, Branch 43, for the recovery of the said remaining installments (Memorandum for the Petitioner, p. 1).

After the termination of the pre-trial conference, the case was set for trial on the merits on April 25, 1984. B.A. Finance Corporation's evidence was presented on even date and the presentation of Cuady's evidence was set on August 15, 1984. On August 7, 1984, Atty. Noel Ebarle, counsel for the petitioner, filed a motion for postponement, the reason being that the 'handling' counsel, Atty. Ferdinand Macibay was temporarily assigned in Cebu City and would not be back until after August 15, 1984. Said motion was, however, denied by the trial court on August 10, 1984. On August 15, 1984, the date of hearing, the trial court allowed private respondents to adduce evidence ex-parte in the form of an affidavit to be sworn to before any authorized officer. B.A. Finance Corporation filed a motion for reconsideration of the order of the trial court denying its motion for postponement. Said motion was granted in an order dated September 26, 1984, thus:

"The Court grants plaintiff's motion for reconsideration dated August 22, 1984, in the sense that plaintiff is allowed to adduce evidence in the form of counter-affidavits of its witnesses, to be sworn to before any person authorized to administer oaths, within ten days from notice hereof." (*Ibid.*, pp. 1-2).

B.A. Finance Corporation, however, never complied with the above-mentioned order, paving the way for the trial court to render its decision on January 18, 1985, the dispositive portion of which reads as follows:

"IN VIEW WHEREOF, the Court DISMISSES the complaint without costs.

SO ORDERED." (Rollo, p. 143)

On appeal, the respondent appellate court[*] affirmed the decision of the trial court. The decretal portion of the said decision reads as follows:

"WHEREFORE, after consultation among the undersigned members of this Division, in compliance with the provision of Section 13, Article VIII of the Constitution; and finding no reversible error in the judgment appealed from, the same is hereby AFFIRMED, without any pronouncement as to costs." (*Ibid.* p. 33)

B.A. Finance Corporation moved for the reconsideration of the above decision, but the motion was denied by the respondent appellate court in a resolution dated February 9, 1988 (*Ibid.*, p. 38).

Hence, this present recourse.

On July 11, 1990, this Court gave due course to the petition and required the parties to submit their respective memoranda. The parties having complied with the submission of their memoranda, the case was submitted for decision.

The real issue to be resolved in the case at bar is whether or not B.A. Finance Corporation has waived its right to collect the unpaid balance of the Cuady spouses on the promissory note for failure of the former to enforce the total loss provision in the insurance coverage of the motor vehicle subject of the chattel mortgage.

It is the contention of B.A. Finance Corporation that even if it failed to enforce the total loss provision in the

insurance policy of the motor vehicle subject of the chattel mortgage, said failure does not operate to extinguish the unpaid balance on the promissory note, considering that the circumstances obtaining in the case at bar do not fall under Article 1231 of the Civil Code relative to the modes of extinguishment of obligations (Memorandum for the Petitioner, p. 11).

On the other hand, the Cuadys insist that owing to its failure to enforce the total loss provision in the insurance policy, B.A. Finance Corporation lost not only its opportunity to collect the insurance proceeds on the mortgaged motor vehicle in its capacity as the assignee of the said insurance proceeds pursuant to the memorandum in the insurance policy which states that the "LOSS: IF ANY, under this policy shall be payable to BA FINANCE CORP., as their respective rights and interest may appear." (Rollo, p. 91) but also the remaining balance on the promissory note (Memorandum for the Respondents, pp. 16-17).

The petition is devoid of merit.

B.A. Finance Corporation was deemed subrogated to the rights and obligations of Supercars, Inc. when the latter assigned the promissory note, together with the chattel mortgage constituted on the motor vehicle in question, in favor of the former. Consequently, B.A. Finance Corporation is bound by the terms and conditions of the chattel mortgage executed between the Cuadys and Supercars, Inc. Under the deed of chattel mortgage, B.A. Finance Corporation was constituted attorney-in-fact with full power and authority to file, follow-up, prosecute, compromise or settle insurance claims; to sign, execute and deliver the corresponding papers, receipts and documents to the Insurance Company as may be necessary to prove the claim, and to collect from the latter the proceeds of insurance to the extent of its interests, in the event that the mortgaged car suffers any loss or damage (Rollo, p. 89). In granting B.A. Finance Corporation the aforementioned powers and prerogatives, the Cuady spouses created in the former's favor an agency. Thus, under Article 1884 of the Civil Code of the Philippines, B.A. Finance Corporation is bound by its acceptance to carry out the agency, and is liable for damages which, through its non-performance, the Cuadys, the principal in the case at bar, may suffer.

Unquestionably, the Cuadys suffered pecuniary loss in the form of salvage value of the motor vehicle in question, not to mention the amount equivalent to the unpaid balance on the promissory note, when B.A. Finance Corporation steadfastly refused and refrained from proceeding against the insurer for the payment of a clearly valid insurance claim, and continued to ignore the yearning of the Cuadys to enforce the total loss provision in the insurance policy, despite the undeniable fact that Rea Auto Center, the auto repair shop chosen by the insurer itself to repair the aforementioned motor vehicle, misrepaired and rendered it completely useless and unserviceable (Ibid., p. 31).

Accordingly, there is no reason to depart from the ruling set down by the respondent appellate court. In this connection, the Court of Appeals said:

"x x x Under the established facts and circumstances, it is unjust, unfair inequitable to require the chattel mortgagors, appellees herein, to still pay the unpaid balance of their mortgage debt on the said car, the non-payment of which account was due to the stubborn refusal and failure of appellant mortgagee to avail of the insurance money which became due and demandable after the insured motor vehicle was badly damaged in a vehicular accident covered by the insurance risk. x x x." (Ibid.).

On the allegation that the respondent court's findings that B.A. Finance Corporation failed to claim for the damage to the car was not supported by evidence, the records show that instead of acting on the instruction of the Cuadys to enforce the total loss provision in the insurance policy, the petitioner insisted on just having the motor vehicle repaired, to which private respondents reluctantly acceded. As heretofore mentioned, the repair shop chosen was not able to restore the aforementioned motor vehicle to its condition prior to the accident. Thus, the said vehicle

bogged down shortly thereafter. The subsequent request of the Cuadys for the B.A. Finance Corporation to file a claim for total loss with the insurer fell on deaf ears, prompting the Cuadys to stop paying the remaining balance on the promissory note (Memorandum for the Respondents, pp. 4-5).

Moreover, B.A. Finance Corporation would have this Court review and reverse the factual findings of the respondent appellate court. This, of course, the Court cannot and will not generally do. It is axiomatic that the judgment of the Court of Appeals is conclusive as to the facts and may not ordinarily be reviewed by the Supreme Court. The doctrine is, to be sure, subject to certain specific exceptions none of which, however, obtains in the instant case (*Luzon Brokerage Corporation v. Court of Appeals*, 176 SCRA 483 [1989]).

Finally, B.A. Finance Corporation contends that respondent trial court committed grave abuses of discretion in two instances: First, when it denied the petitioner's motion for reconsideration praying that the counsel be allowed to cross-examine the affiant, and; second, when it seriously considered the evidence adduced ex-parte by the Cuadys, and heavily relied thereon, when in truth and in fact, the same was not formally admitted as part of the evidence for the private respondents (Memorandum for the Petitioner, p. 10). This Court does not have to unduly dwell on this issue which was only raised by B.A. Finance Corporation for the first time on appeal. A review of the records of the case shows that B.A. Finance Corporation failed to directly raise or ventilate in the trial court nor in the respondent appellate court the validity of the evidence adduced ex-parte by private respondents. It was only when the petitioner filed the instant petition with this Court that it later raised the aforementioned issue. As ruled by this Court in a long line of cases, issues not raised and/or ventilated in the trial court, let alone in the Court of Appeals, cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process (*Galicía v. Polo*, 179 SCRA 375 [1989]; *Ramos v. Intermediate Appellate Court*, 175 SCRA 70 [1989]; *Dulos Realty & Development Corporation v. Court of Appeals*, 157 SCRA 425 [1988]; *Dihiansan, et al. v. Court of Appeals, et al.*, 153 SCRA 712 [1987]; *De la Santa v. Court of Appeals, et al.*, 140 SCRA 44 [1985]).

PREMISES CONSIDERED, the instant petition is DENIED, and the decision appealed from is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

[*] Decision penned by Justice Fidel P. Purisima and concurred in by Justices Emeterio C. Cui and Jesus M. Elbinias.

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