

FILINVEST CREDIT CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, JOSE SY BANG AND ILUMINADA TAN-SY BANG, RESPONDENTS.

G.R. No. 82508. September 29, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a petition for review on certiorari of the decision[1] dated March 17, 1988, of the Court of Appeals which affirmed with modification the decision[2] of the Regional Trial Court of Quezon, Branch LIX, Lucena City.

The controversy stemmed from the following facts:

The private respondents, the spouses Jose Sy Bang and Iluminada Tan, were engaged in the sale of gravel produced from crushed rocks and used for construction purposes. In order to increase their production, they engaged the services of Mr. Ruben Mercurio, the proprietor of Gemini Motor Sales in Lucena City, to look for a rock crusher which they could buy. Mr. Mercurio referred the private respondents to the Rizal Consolidated Corporation which then had for sale one such machinery described as:

ONE UNIT LIPPMAN PORTABLE CRUSHING PLANT

(RECONDITIONED) [sic]

JAW CRUSHER - 10x16

DOUBLE ROLL CRUSHER 16x16

3 UNITS PRODUCT CONVEYOR

75 HP ELECTRIC MOTOR

8 PCS. BRAND NEW TIRES

CHASSIS NO. 19696

GOOD RUNNING CONDITION[3]

Oscar Sy Bang a brother of private respondent Jose SY Bang, went to inspect the machine at the Rizal Consolidated's plant site. Apparently satisfied with the machine, the private respondents signified their intent to purchase the same. They were however confronted with a problem -- the rock crusher carried a cash price tag of P550,000.00. Bent on acquiring the machinery, the private respondents applied for financial assistance from the petitioner, Filinvest Credit Corporation. The petitioner agreed to extend to the private respondents financial aid on the following conditions: that the machinery be purchased in the petitioner's name; that it be leased (with option to purchase upon the termination of the lease period) to the private respondents; and that the private respondents execute a real estate mortgage in favor of the petitioner as security for the amount advanced by the latter.

Accordingly, on May 18, 1981, a contract of lease of machinery (with option to purchase) was entered into by the parties whereby the private respondents agreed to lease from the petitioner the rock crusher for two years starting from July 5, 1981 payable as follows:

P10,000.00 - first 3 months

23,000.00 - next 6 months

24,800.00 - next 15 months[4]

The contract likewise stipulated that at the end of the two-year period, the machine would be owned by the private respondents. Thus, the private respondents issued in favor of the petitioner a check for P150,550.00, as initial rental (or guaranty deposit), and twenty-four (24) postdated checks corresponding to the 24 monthly rentals. In addition, to guarantee their compliance with the lease contract, the private respondents executed a real estate mortgage over two parcels of land in favor of the petitioner. The rock crusher was delivered to the private respondents on June 9, 1981.

Three months from the date of delivery, or on September 7, 1981, however, the private respondents, claiming that they had only tested the machine that month, sent a letter-complaint to the petitioner, alleging that contrary to the 20 to 40 tons per hour capacity of the machine as stated in the lease contract, the machine could only process 5 tons of rocks and stones per hour. They then demanded that the petitioner make good the stipulation in the lease contract. They followed that up with similar written complaints to the petitioner, but the latter did not, however, act on them. Subsequently, the private respondents stopped payment on the remaining checks they had issued to the petitioner.[5]

As a consequence of the non-payment by the private respondents of the rentals on the rock crusher as they fell due despite the repeated written demands, the petitioner extrajudicially foreclosed the real estate mortgage.[6] On April 18, 1983, the private respondents received a Sheriff's Notice of Auction Sale informing them that their mortgaged properties were going to be sold at a public auction on May 25, 1983 at 10:00 o'clock in the morning at the Office of the Provincial Sheriff in Lucena City to satisfy their indebtedness to the petitioner.[7] To thwart the impending auction of their properties, the private respondents filed before the Regional Trial Court of Quezon, on May 4, 1983,[8] a complaint against the petitioner, for the rescission of the contract of lease, annulment of the real estate mortgage, and for injunction and damages, with prayer for the issuance of a writ of preliminary injunction.[9] On May 23, 1983, three days before the scheduled auction sale, the trial court issued a temporary restraining order commanding the Provincial Sheriff of Quezon, and the petitioner, to refrain and desist from proceeding with the public auction.[10] Two years later, on September 4, 1985, the trial court rendered a decision in favor of the private respondents, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

1. making the injunction permanent;
2. rescinding the contract of lease of the machinery and equipment and ordering the plaintiffs to return to the defendant corporation the machinery subject of the lease contract, and the defendant corporation to return to plaintiffs the sum of P470,950.00 it received from the latter as guaranty deposit and rentals with legal interest thereon until the amount is fully restituted;
3. annulling the real estate mortgage constituted over the properties of the plaintiffs covered by Transfer Certificate of Title Nos. T-32480 and T-5779 of the Registry of Deeds of Lucena City;
4. ordering the defendant corporation to pay plaintiffs P30,000.00 as attorney's fees and the costs of the suit.

SO ORDERED.[11]

Dissatisfied with the trial court's decision, the petitioner elevated the case to the respondent Court of Appeals.

On March 17, 1988, the appellate court, finding no error in the appealed judgment, affirmed the same in toto.[12] Hence, this petition.

Before us, the petitioner reasserts that the private respondents' cause of action is not against it (the petitioner), but against either the Rizal Consolidated Corporation, the original owner-seller or the subject rock crusher, or Gemini Motors Sales which served as a conduit-facilitator of the purchase of the said machine. The petitioner argues that it is a financing institution engaged in quasi-banking activities, primarily the lending of money to entrepreneurs such as the private respondents and the general public, but certainly not the leasing or selling of heavy machineries like the subject rock crusher. The petitioner denies being the seller of the rock crusher and only admits having financed its acquisition by the private respondents. Further, the petitioner absolves itself or any liability arising out of the lease contract it signed with the private respondents due to the waiver of warranty made by the latter. The petitioner likewise maintains that the private respondents being presumed to be knowledgeable about machineries, should be held responsible for the detection of defects in the machine they had acquired, and on account of that, they are estopped from claiming any breach of warranty. Finally, the petitioner interposed the defense of prescription, invoking Article 1571 of the Civil Code, which provides:

Art. 1571. Actions arising from the provisions of the preceding ten articles shall be barred after six months, from the delivery of the thing sold.

We find the petitioner's first contention untenable. While it is accepted that the petitioner is a financing institution, it is not, however, immune from any recourse by the private respondents. Notwithstanding the testimony of private respondent Jose Sy Bang that he did not purchase the rock crusher from the petitioner, the fact that the rock crusher was purchased from Rizal Consolidated Corporation in the name and with the funds of the petitioner proves beyond doubt that the ownership thereof was effectively transferred to it. It is precisely this ownership which enabled the petitioner to enter into the "Contract of Lease of Machinery and Equipment" with the private respondents.

Be that as it may, the real intention of the parties should prevail. The nomenclature of the agreement cannot change its true essence, i.e., a sale on installments. It is basic that a contract is what the law defines it and the parties intend it to be, not what it is called by the parties.[13] It is apparent here that the intent of the parties to the subject contract is for the so-called rentals to be the installment payments. Upon the completion of the payments, then the rock crusher, subject matter of the contract, would become the property of the private respondents. This form of agreement has been criticized as a lease only in name. Thus in *Vda. de Jose v. Barrueco*,[14] we stated:

Sellers desirous of making conditional sales of their goods, but who do not wish openly to make a bargain in that form, for one reason or another, have frequently resorted to the device of making contracts in the form of leases either with options to the buyer to purchase for a small consideration at the end of term, provided the so-called rent has been duly paid, or with stipulations that if the rent throughout the term is paid, title shall thereupon vest in the lessee. It is obvious that such transactions are leases only in name. The so-called rent must necessarily be regarded as payment of the price in installments since the due payment of the agreed amount results, by the terms of bargain, in the transfer of title to the lessee.[15]

The importance of the criticism is heightened in the light of Article 1484 of the new Civil Code which provides for the remedies of an unpaid seller of movables in installment basis.

Article 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

- (1) Exact fulfillment of the obligation, should the vendee fail to pay;
- (2) Cancel the sale, should the vendee's failure to pay cover two or more installments;
- (3) Foreclose the chattel mort-gage or the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.

Under the aforequoted provision, the seller of movables in installments, in case the buyer fails to pay two or more installments, may elect to pursue either of the following remedies: (1) exact fulfillment by the purchaser of the obligation; (2) cancel the sale; or (3) foreclose the mortgage on the purchased property if one was constituted thereon. It is now settled that the said remedies are alternative and not cumulative and therefore, the exercise of one bars the exercise of the others.

Indubitably, the device--contract of lease with option to buy--is at times resorted to as a means to circumvent Article 1484, particularly paragraph (3) thereof. Through the set-up, the vendor, by retaining ownership over the property in the guise or being the lessor, retains, likewise, the right to repossess the same, without going through the process of foreclosure, in the event the vendee-lessee defaults in the payment of the installments. There arises therefore no need to constitute a chattel mortgage over the movable sold. More important, the vendor, after repossessing the property and, in effect, canceling the contract of sale, gets to keep all the installments-cum-rentals already paid. It is thus for these reasons that Article 1485 of the new Civil Code provides that:

Article 1485. The preceding article shall be applied to contracts purporting to be leases of personal property with option to buy, when the lessor has deprived the lessee of possession or enjoyment of the thing. (Emphasis ours.)

Unfortunately, even with the foregoing findings, we however fail to find any reason to hold the petitioner liable for the rock crusher's failure to produce in accordance with its described capacity. According to the petitioner, it was the private respondents who chose, inspected, and tested the subject machinery. It was only after they had inspected and tested the machine, and found it to their satisfaction, that the private respondents sought financial aid from the petitioner. These allegations of the petitioner had never been rebutted by the private respondents. In fact, they were even admitted by the private respondents in the contract they signed. Thus:

LESSEE'S SELECTION, INSPECTION AND VERIFICATION. -

The LESSEE hereby confirms and acknowledges that he has independently inspected and verified the leased property and has selected and received the same from the Dealer of his own choosing in good order and excellent running and operating condition and on the basis of such verification, etc. the LESSEE has agreed to enter into this Contract."[16]

Moreover, considering that between the parties, it is the private respondents, by reason of their business, who are presumed to be more knowledgeable, if not experts, on the machinery subject of the contract, they should not therefore be heard now to complain of any alleged deficiency of the said machinery. It is their failure or neglect to exercise the caution and prudence of an expert, or, at least, of a prudent man, in the selection, testing, and inspection of the rock crusher that gave rise to their difficulty and to this conflict. A well-established principle in law is that between two parties, he, who by his negligence caused the loss, shall bear the same.

At any rate, even if the private respondents could not be adjudged as negligent, they still are precluded from imputing any liability on the petitioner. One of the stipulations in the contract they entered into with the petitioner is an express waiver of warranties in favor of the latter. By so signing the agreement, the private respondents

absolved the petitioner from any liability arising from any defect or deficiency of the machinery they bought. The stipulation on the machine's production capacity being "typewritten" and that of the waiver being "printed" does not militate against the latter's effectivity. As such, whether "a capacity of 20 to 40 tons per hour" is condition or a description is of no moment. What stands is that the private respondents had expressly exempted the petitioner from any warranty whatsoever. Their Contract Of Lease Of Machinery And Equipment states:

WARRANTY - LESSEE absolutely releases the lessor from any liability whatsoever as to any and all matters in relation to warranty in accordance with the provisions hereinafter stipulated.[17]

Taking into account that due to the nature of its business and its mode of providing financial assistance to clients, the petitioner deals in goods over which it has no sufficient know-how or expertise, and the selection of a particular item is left to the client concerned, the latter, therefore, shoulders the responsibility of protecting himself against product defects. This is where the waiver of warranties is of paramount importance. Common sense dictates that a buyer inspects a product before purchasing it (under the principle of caveat emptor or "buyer beware") and does not return it for defects discovered later on, particularly if the return of the product is not covered by or stipulated in a contract or warranty. In the case at bar, to declare the waiver as non-effective, as the lower courts did, would impair the obligation of contracts. Certainly, the waiver in question could not be considered a mere surplusage in the contract between the parties. Moreover, nowhere is it shown in the records of the case that the private respondent has argued for its nullity or illegality. In any event, we find no ambiguity in the language of the waiver or the release of warranty. There is therefore no room for any interpretation as to its effect or applicability vis-a-vis the deficient output of the rock crusher. Suffice it to say that the private respondents have validly excused the petitioner from any warranty on the rock crusher. Hence, they should bear the loss for any defect found therein.

WHEREFORE, the Petition is GRANTED; the Decision of the Court of Appeals dated March 17, 1988 is hereby REVERSED AND SET ASIDE, and another one rendered DISMISSING the complaint. Costs against the private respondents.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Regalado, JJ., concur.

Padilla, J., no part, former counsel of petitioner – corporation.

* Impleaded as party respondent per Resolution of the Court dated July 18, 1988, Rollo, 158.

[1] Herrera, Manuel C., J., ponente, Melo, Jose A.R. and Imperial, Jorge S., JJ., concurring.

[2] Promulgated on September 4, 1985.

[3] Rollo, 10.

[4] Id., 39.

[5] Id., 120.

[6] Id.

[7] Id., 41.

[8] Id., 12.

[9] Id., 38-44.

[10] Id., 67.

[11] Id., 64-71.

[12] Id., 73-80.

[13] Novesteras vs. Court of Appeals, No. L-36654, March 31, 1987, 149 SCRA 47.

[14] 67 Phil. 191, 195 (1939).

[15] Id., 195.

[16] Rollo, 46, 28.

[17] Rollo, 45, 27-28.

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