

NORKIS DISTRIBUTORS, INC., PETITIONER, VS. THE COURT OF APPEALS & ALBERTO NEPALES, RESPONDENTS.*G.R. No. 91029. February 07, 1991*

Ponente: GRINO-AQUINO, J.

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Subject of this petition for review is the decision of the Court of Appeals (Seventeenth Division) in CA-G.R. No. 09149, affirming with modification the judgment of the Regional Trial Court, Sixth (6th) Judicial Region, Branch LVI, Himamaylan, Negros Occidental, in Civil Case No. 1272, which was private respondent Alberto Nepales' action for specific performance of a contract of sale with damages against petitioner Norkis Distributors, Inc.

The facts borne out by the record are as follows:

Petitioner Norkis Distributors, Inc. (Norkis for brevity), is the distributor of Yamaha motorcycles in Negros Occidental with office in Bacolod City with Avelino Labajo as its Branch Manager. On September 20, 1979, private respondent Alberto Nepales bought from the Norkis-Bacolod branch a brand new Yamaha Wonderbike motorcycle Model YL2DX with Engine No. L2-329401K. Frame No. NL2-0329401, Color Maroon, then displayed in Norkis showroom. The price of P7,500.00 was payable by means of a Letter of Guaranty from the Development Bank of the Philippines (DBP), Kabankalan Branch, which Norkis' Branch Manager Labajo agreed to accept. Hence, credit was extended to Nepales for the price of the motorcycle payable by DBP upon release of his motorcycle loan. As security for the loan, Nepales would execute a chattel mortgage on the motorcycle in favor of DBP Branch Manager Labajo issued Norkis Sales Invoice No. 0120 (Exh. 1) showing that the contract of sale of the motorcycle had been perfected. Nepales signed the sales invoice to signify his conformity with the terms of the sale. In the meantime, however, the motorcycle remained in Norkis' possession.

On November 6, 1979, the motorcycle was registered in the Land Transportation Commission in the name of Alberto Nepales. A registration certificate (Exh. 2) in his name was issued by the Land Transportation Commission on November 6, 1979 (Exh. 2-b). The registration fees were paid by him, evidenced by an official receipt, Exhibit 3.

On January 22, 1980, the motorcycle was delivered to a certain Julian Nepales who was allegedly the agent of Alberto Nepales but the latter denies it (p. 15, t.s.n., August 2, 1984). The record shows that Alberto and Julian Nepales presented the unit to DBP's Appraiser-Investigator Ernesto Arriesta at the DBP offices in Kabankalan, Negros Occidental Branch (p. 12, Rollo). The motorcycle met an accident on February 3, 1980 at Binalbagan, Negros Occidental. An investigation, conducted by the DBP revealed that the unit was being driven by a certain Zacarias Payba at the time of the accident (p. 33, Rollo). The unit was a total wreck (p. 36, t.s.n., August 2, 1984; p. 13, Rollo), was returned and stored inside Norkis' warehouse.

On March 20, 1980, DBP released the proceeds of private respondent's motorcycle loan to Norkis in the total sum of P7,500. As the price of the motorcycle later increased to P7,828 in March, 1980. Nepales paid the difference of P328 (p. 13, Rollo) and demanded the delivery of the motorcycle. When Norkis could not deliver, he filed an

action for specific performance with damages against Norkis in the Regional Trial Court of Himamaylan, Negros Occidental, Sixth (6th) Judicial Region, Branch LVI, where it was docketed as Civil Case No. 1272. He alleged that Norkis failed to deliver the motorcycle which he purchased, thereby causing him damages.

Norkis answered that the motorcycle had already been delivered to private respondent before the accident, hence, the risk of loss or damage had to be borne by him as owner of the unit.

After trial on the merits, the lower court rendered a decision dated August 27, 1985 ruling in favor of private respondent (p. 28, Rollo) thus:

"WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants. The defendants are ordered to pay solidarily to the plaintiff the present value of the motorcycle which was totally destroyed, plus interest equivalent to what the Kabankalan Sub-Branch of the Development Bank of the Philippines will have to charge the plaintiff, on his account, plus P50.00 per day from February 3, 1980 until full payment of the said present value of the motorcycle plus P1,000.00 as exemplary damages, and costs of the litigation. In lieu of paying the present value of the motorcycle, the defendants can deliver to the plaintiff a brand-new motorcycle of the same brand, kind, and quality as the one which was totally destroyed in their possession last February 3, 1980." (pp. 28-29. Rollo.)

On appeal, the Court of Appeals affirmed the appealed judgment on August 21, 1989, but deleted the award or damages "in the amount of Fifty (P50.00) Pesos a day from February 3, 1980 until payment of the present value of the damaged vehicle" (p. 35, Rollo). The Court of Appeals denied Norkis motion for reconsideration. Hence, this Petition for Review.

The principal issue in this case is who should bear the loss of the motorcycle. The answer to this question would depend on whether there had already been a transfer of ownership of the motorcycle to private respondent at the time it was destroyed.

Norkis' theory' is that:

"x x x. After the contract of sale has been perfected (Art. 1475) and even before delivery, that is even before the ownership is transferred to the vendee, the risk of loss is shifted from the vendor to the vendee. Under Art. 1262, the obligation of the vendor to deliver a determinate thing becomes extinguished if the thing is lost by fortuitous event (Art. 1174), that is, without the fault or fraud of the vendor and before he has incurred in delay (Art. 1165, par. 3). If the thing sold is generic the loss or destruction does not extinguish the obligation (Art. 1263). A thing is determinate when it is particularly designated or physically segregated from all others of the same class (Art. 1460). Thus, the vendor becomes released from his obligation to deliver the determinate thing sold while the vendee's obligation to pay the price subsists. If the vendee had paid the price in advance the vendor may retain the same. The legal effect, therefore, is that the vendee assumes the risk of loss by fortuitous event (Art. 1262) after the perfection of the contract to the time of delivery." (Civil Code of the Philippines, Ambrosio Padilla, Vol. 5, 1987 Ed., p. 87.)

Norkis concedes that there was no "actual" delivery of the vehicle. However, it insists that there was constructive delivery of the unit upon: (1) the issuance of the Sales Invoice No. 0120 (Exh. 1) in the name of the private respondent and the affixing of his signature thereon: (2) the registration of the vehicle on November 6, 1979 with the Land Transportation Commission in private respondent's name (Exh. 2): and (3) the issuance of official receipt (Exh. 3) for payment of registration fees (p. 33, Rollo).

That argument is not well taken. As pointed out by the private respondent, the issuance of a sales invoice does not prove transfer of ownership of the thing sold to the buyer. An invoice is nothing more than a detailed statement of the nature, quantity and cost of the thing sold and has been considered not bill of sale (Am. Jur. 2nd Ed., Vol. 67, p. 378).

In all forms of delivery, it is necessary that the act of delivery, whether constructive or actual, be coupled with the intention of delivering the thing. The act without the intention, is insufficient (De Leon Comments and Cases on Sale, 1978 Ed., citing Manresa, p. 94).

When the motorcycle was registered by Norkis in the name of private respondent. Norkis did not intend yet to transfer the title or ownership to Nepales, but only to facilitate the execution of a chattel mortgage in favor of the DBP for the release of the buyer's motorcycle loan. The Letter of Guarantee (Exh. 5) issued by the DBP, reveals that the execution in its favor of a chattel mortgage over the purchased vehicle is a pre-requisite for the approval of the buyer's loan. If Norkis would not accede to that arrangement, DBP would not approve private respondent's loan application and, consequently, there would be no sale.

In other words, the critical factor in the different modes of effecting delivery, which gives legal effect to the act, is the actual intention of the vendor to deliver, and its acceptance by the vendee. Without that intention, there is no tradition (Abuan vs. Garcia, 14 SCRA 759).

In the case of Addison vs. Felix and Tioco (38 Phil. 404, 408), this Court held:

"The Code imposes upon the vendor the obligation to deliver the thing sold. The thing is considered to be delivered when it is 'placed in the hands and possession of the vendee.' (Civil Code, Art. 1462). It is true that the same article declares that the execution of a public instrument is equivalent to the delivery of the thing which is the object of the contract, but, in order that this symbolic delivery may produce the effect of tradition, it is necessary that the vendor shall have had such control over the thing sold that, at the moment of the sale, its material delivery could have been made. It is not enough to confer upon the purchaser the ownership and the right of possession. The thing sold must be placed in his control. When there is no impediment whatever to prevent the thing sold passing into the tenancy of the purchaser by the sole will of the vendor, symbolic delivery through the execution of a public instrument is sufficient. But if, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy of the thing and make use of it himself or through another in his name, because such tenancy and enjoyment are opposed by the interposition of another will, then fiction yields to reality the - delivery has not been effected." (Underlining supplied.)

The Court of Appeals correctly ruled that the purpose of the execution of the sales invoice dated September 20, 1979 (Exh. B) and the registration of the vehicle in the name of plaintiff-appellee (private respondent) with the Land Registration Commission (Exhibit C) was not to transfer to Nepales the ownership and dominion over the motorcycle, but only to comply with the requirements of the Development Bank of the Philippines for processing private respondent's motorcycle loan. On March 20, 1980, before private respondent's loan was released and before he even paid Norkis, the motorcycle had already figured in an accident while driven by one Zacarias Payba. Payba was not shown by Norkis to be a representative or relative of private respondent. The latter's supposed relative, who allegedly took possession of the vehicle from Norkis did not explain how Payba got hold of the vehicle on February 3, 1980. Norkis' claim that Julian Nepales was acting as Alberto's agents when he allegedly took delivery of the motorcycle (p. 20, Appellants' Brief), is controverted by the latter. Alberto denied having authorized Julian Nepales to get the motorcycle from Norkis Distributors or to enter into any transaction with Norkis relative to said motorcycle, (p. 5, t.s.n., February 6, 1985). These circumstances more than amply rebut the disputable presumption of delivery upon which Norkis anchors its defense to Nepales' action (pp. 33-34, Rollo).

Article 1496 of the Civil Code which provides that in the absence of an express assumption of risk by the buyer, the things sold remain at seller's risk until the ownership thereof is transferred to the buyer," is applicable to this case, for there was neither an actual nor constructive delivery of the thing sold, hence, the risk of loss should be borne by the seller, Norkis, which was still the owner and possessor of the motorcycle when it was wrecked. This

is in accordance with the well-known doctrine of *res perit domino*.

WHEREFORE, finding no reversible error in the decision of the Court of Appeals in CA-G.R. No. 09149, we deny the petition for review and hereby affirm the appealed decision, with costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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