# SPOUSES ROMULO DE LA CRUZ AND DELIA DE LA CRUZ, AND DANIEL FAJARDO, PETITIONERS, VS. ASIAN CONSUMER AND INDUSTRIAL FINANCE CORPORATION AND THE HONORABLE COURT OF APPEALS, RESPON...

*G.R. No. 94828. September 18, 1992*

Ponente: BELLOSILLO, J.

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**BELLOSILLO, J.:**

The pivotal point before Us is whether a chattel mortgagee, after opting to foreclose the mortgage but failing afterwards to sell the property at public auction, may still sue to recover the unpaid balance of the purchase price.

On 22 September 1982, the spouses Romulo de la Cruz and Delia de la Cruz, and one Daniel Fajardo, petitioners herein, purchased on installment basis one (1) unit Hino truck from Benter Motor Sales Corporation (BENTER for brevity). To secure payment, they executed in favor of BENTER a chattel mortgage over the vehicle[1] and a promissory note for P282,360.00 payable in thirty (30) monthly installments of P9,412.00.[2] On the same date, BENTER assigned its rights and interest over the vehicle in favor of private respondent Asian Consumer and Industrial Finance Corporation (ASIAN for brevity).[3] Although petitioners initially paid some installments they subsequently defaulted on more than two (2) installments. Thereafter, notwithstanding the demand letter of ASIAN,[4] petitioners failed to settle their obligation.

On 26 September 1984, by virtue of a petition for extrajudicial foreclosure of chattel mortgage, the sheriff attempted to reposses the vehicle but was unsuccesful because of the refusal of the son of petitioner, Rolando de la Cruz, to surrender the same. Hence, the return of the sheriff that the service was not satisfied.

On 10 October 1984, petitioner Romulo de la Cruz brought the vehicle to the office of ASIAN and left it there where it was inventoried and inspected.[5]

On 27 November 1984, ASIAN filed an ordinary action with the court a quo for collection of the balance of P196,152.99 of the purchase price, plus liquidated damages and attorney's fees.[6]

After trial, the court below rendered judgment in favor of ASIAN.

On appeal, the Court of Appeals affirmed the judgment and held that -

> “x x x no extrajudicial foreclosure of chattel mortgage ever transpired in the case at bar. Undoubtedly, plaintiff had first chosen to extrajudically foreclose the mortgage, but this did not materialize through no fault of plaintiff, as defendant refused to surrender the Hino truck. The mere fact that the writ is now in possession of plaintiff and a Technical and Inspection Report was made in connection therewith is not conclusive of the extrajudicial foreclosure, for in this kind of foreclosure, possession of the chattel by the sheriff is necessary, aside from the sale at public auction."
>
> "Though the remedy of foreclosure was first chosen, this remedy however proved ineffectual due to no fault of

> plaintiff. Therefore, plaintiff may exercise other remedies such as exact fulfillment of the obligation and thereafter recover the deficiency. This is the essence of the rule of alternative remedies under Article 1484."

Petitioners take exception. While they do not dispute that where the mortgagee elects the remedy of foreclosure - which, according to them, includes the option to sell in a public or private sale, commences and pursues it, and in consideration of which he also performs everything that is incumbent upon him to do to implement the foreclosure - they nevertheless insist that he should not later be allowed to change course midway in the process, abandon the foreclosure and shift to other remedies such as collection of the balance, especially after having recovered the mortgaged chattel from them and while retaining possession thereof.

We do not agree with petitioners.

It is not disputed that the instant case is covered by the so-called "Recto Law", now Art. 1484 of the New Civil Code, which provides:

> "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 mortgage on 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."

In this jurisdiction, the three (3) remedies provided for in the "Recto Law" are alternative and not comulative; the exercise of one would preclude the other remedies. Consequently, should the vendee-mortgagor default in the payment of two or more of the agreed installments, the vendor-mortgagee has the option to avail of any of these three (3) remedies: either to exact fulfillment of the obligation, to cancel the sale, or to foreclose the mortgage on the purchased chattel, if one was constituted.[7]

The records show that on 14 September 1984 ASIAN initiated a petition for extrajudicial foreclosure of the chattel mortgage. But the sheriff failed to recover the motor vehicle from petitioners due to the refusal of the son of petitioners Romulo and Delia de la Cruz to surrender it. It was not until 10 October 1984, or almost a month later, that petitioners delivered the unit to ASIAN. The action to recover the balance of the purchase price was instituted on 27 November 1984.

It is thus clear that while ASIAN eventually succeeded in taking possession of the mortgaged vehicle, it did not pursue the foreclosure of the mortgage as shown by the fact that no auction sale of the vehicle was ever conducted. As We ruled in Filinvest Credit Corp. v. Phil. Acetylene Co., Inc.[8] -

> "Under the law, the delivery of possession of the mortgaged property to the mortgagee, the herein appellee, can only operate to extinguish appellant's liability if the appellee had actually caused the foreclosure sale of the mortgaged property when it recovered possession thereof (Northern Motors, Inc. v. Sapinoso, 33 SCRA 356 [1970]; Universal Motors Corp. v. Dy Hian Tat, 28 SCRA 161 [1969]; Manila Motors Co., Inc. v. Fernandez, 99 Phil. 782 [1956]). It is worth noting that it is the fact of foreclosure and actual sale of the mortgaged chattel that bar recovery by the vendor of any balance of the purchaser's outstanding obligation not satisfied by the sale (New Civil Code, par. 3, Article 1484). As held by this Court, if the vendor desisted, on his own initiative, from consummating the auction sale, such desistance was a timely disavowal of the remedy of foreclosure, and the vendor can still sue for specific performance" (Industrial Finance Corp. v. Tobias, 78 SCRA 28 [1977]; Radiowealth, Inc. v. Lavin, L-18563, April 27, 1963, 7 SCRA 804; Pacific Commercial Co. v. dela Rama, 72 Phil. 380 [1941]).

Consequently, in the case before Us, there being no actual foreclosure of the mortgaged property, ASIAN is


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correct in resorting to an ordinary action for collection of the unpaid balance of the purchase price.

We note however that the trial court, as well as the Court of Appeals, failed to consider that the vehicle was already in the possession of ASIAN when it directed petitioners herein to pay P184,466.67 representing the balance of the purchase price of the mortgaged property. Law and equity will not permit ASIAN to have its cake and eat it too, so to speak. By allowing ASIAN to retain possession of the vehicle and then directing petitioners to pay the unpaid balance would certainly result in unjust enrichment of the former. Accordingly, the ownership and possession of the vehicle should be returned to petitioners by ASIAN in the condition that it was when delivered to it, and if this be no longer feasible, to deduct from the adjudged liability of petitioners the amount of P60,000.00, its corresponding appraised value.[9]

WHEREFORE, the assailed decision is AFFIRMED, with the MODIFICATION that the subject vehicle be returned to petitioners or, at their option, they be allowed to deduct P60,000.00 from their adjudged liability. No costs.

**SO ORDERED.**

Griño-Aquino and Medialdea, JJ., concur.
Cruz, J., (Chairman), on leave.

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[1] Exh. “C”.

[2] Exh. “A”.

[3] Exh. “D”.

[4] Exh. “E”.

[5] Annex “4”, Repossession and Mechanical Inspection Report and Receipt.

[6] Record, p. 16.

[7] See Pacific Commercial Co. v. De la Rama, 72 Phil. 380 (1941); Manila Motor, Inc v. Fernandez, 99 Phil. 782 (1956); Radiowealth v. Lavin, L-18563, April 27, 1963, 7 SCRA 804.

[8] G.R. No. 50449, 30 January 1982, 111 SCRA 421.

[9] Appraised value of the truck, Rollo, p. 24.


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