43 Phil. 410

[G. R. No. 17551. May 31, 1922]

THE BACHRACH MOTOR CO., INC., PLAINTIFF AND APPELLEE, VS. TEOFILO MENDOZA, DEFENDANT AND APPELLANT.

D E C I S I O N

OSTRAND, J.:

This action was brought to recover the sum of P6,328.90 the balance alleged to be due on the purchase price of an auto-truck sold by the plaintiff to the defendant on August 5, 1919. The defendant in his answer alleges as a special defense that the plaintiff, in the beginning of the month of October of the same year, illegally deprived him of the possession of the truck and sets up a counterclaim for the sum of P14,350 by way of damages. The trial court rendered a judgment in favor of the plaintiff for the sum of P5,032 with the costs and with interest at the rate of 8 per cent per annum on the sum of P5,950 from October 15, 1919, to December 15 of the same year, and on the sum of P4,963 from the latter date until paid. From this judgment the defendant appealed.

As a matter of law, there is no merit whatever in the appeal. It appears from the evidence. that the defendant paid P2,000 in cash for the truck and executed a series of promissory notes for the balance of the purchase price, said balance amounting to P6,300. The notes were for P350 each, the first note becoming due on September 15, 1919, and the others falling due successively in their serial order on the 15th of each succeeding month. The notes were secured by a chattel mortgage upon the truck and the mortgage contained clauses to the effect that default in payment of any of the notes would render all of them immediately due and payable, and that any payment made by the defendant to the plaintiff might be applied by the latter towards the payment of any debt for the moment due the plaintiff from the defendant, whether included in the mortgage or not.

On October 5 of the same year, the defendant brought the truck to plaintiff’s repair shop for some minor repairs. The repairs were completed the following day, but the plaintiff refused

to return the truck to the defendant until the amounts then unpaid on the note which fell due on September 15 were paid. The defendant in his brief argues vigorously that an amount equal to the amount of the note had at that time in reality been paid, but that plaintiff had applied part of it to the repair account of the truck and had not credited it to the note. An analysis of the evidence as a whole shows, however, that the defendant is basing his argument on an evident error in the transcript of the testimony and that in reality only P50 had been paid on the September note prior to October 6. In any event, the point is unimportant; the defendant admits that on the 6th of October there was some money due the plaintiff and whether this money was due upon the note in question or for repairs to the truck seems immaterial ; the plaintiff would, in either case, have the right of the retention of the truck until the amount due was paid or tendered him. (Articles 1600 and 1866, Civil Code.)

The truck remained in the possession of the plaintiff until October 15 when the defendant completed the payment of the note payable on September 15, but as the second note of the series then also had become due the plaintiff continued to retain the truck and on October 25 the chattel mortgage was foreclosed for default in the payment of said second note. At the foreclosure sale the truck was bought in by the plaintiff for P1,000.

The defendant's defense rests wholly upon the theory that the plaintiff retained the possession of the truck illegally between the dates of October 6 and October 15, 1919, and that he, the defendant, therefore was under no obligation to pay the note due on the last named date. It appearing that the plaintiff's retention of the possession of the truck was authorized by law, the defendant's position is, of course, untenable.

The judgment appealed from is therefore affirmed with costs against the appellant So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, and *Romualdez, JJ.,* concur.

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