

SECOND DIVISION

[G.R. No. 158262, July 21, 2008]

**SPS. PEDRO AND FLORENCIA VIOLAGO, PETITIONERS, VS. BA
FINANCE CORPORATION AND AVELINO VIOLAGO,
RESPONDENTS.**

D E C I S I O N

VELASCO JR., J.:

This is a Petition for Review on Certiorari of the August 20, 2002 Decision^[1] and May 15, 2003 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 48489 entitled *BA Finance Corporation, Plaintiff-Appellee v. Sps. Pedro and Florencia Violago, Defendants and Third Party Plaintiffs-Appellants v. Avelino Violago, Third Party Defendant-Appellant*. Petitioners-spouses Pedro and Florencia Violago pray for the reversal of the appellate court's ruling which held them liable to respondent BA Finance Corporation (BA Finance) under a promissory note and a chattel mortgage. Petitioners likewise pray that respondent Avelino Violago be adjudged directly liable to BA Finance.

The Facts

Sometime in 1983, Avelino Violago, President of Violago Motor Sales Corporation (VMSC), offered to sell a car to his cousin, Pedro F. Violago, and the latter's wife, Florencia. Avelino explained that he needed to sell a vehicle to increase the sales quota of VMSC, and that the spouses would just have to pay a down payment of PhP 60,500 while the balance would be financed by respondent BA Finance. The spouses would pay the monthly installments to BA Finance while Avelino would take care of the documentation and approval of financing of the car. Under these terms, the spouses then agreed to purchase a Toyota Cressida Model 1983 from VMSC.^[3]

On August 4, 1983, the spouses and Avelino signed a promissory note under which they bound themselves to pay jointly and severally to the order of VMSC the amount of PhP 209,601 in 36 monthly installments of PhP 5,822.25 a month, the first installment to be due and payable on September 16, 1983. Avelino prepared a Disclosure Statement of Loan/Credit Transportation which showed the net purchase price of the vehicle, down payment, balance, and finance charges. VMSC then issued a sales invoice in favor of the spouses with a detailed description of the Toyota Cressida car. In turn, the spouses executed a chattel mortgage over the car in favor of VMSC as security for the amount of PhP 209,601. VMSC, through Avelino, endorsed the promissory note to BA Finance **without recourse**. After receiving the amount of PhP 209,601, VMSC executed a Deed of Assignment of its rights and interests under the promissory note and chattel mortgage in favor of BA Finance. Meanwhile, the spouses remitted the amount of PhP 60,500 to VMSC through Avelino.^[4]

The sales invoice was filed with the Land Transportation Office (LTO)-Baliwag Branch, which issued Certificate of Registration No. 0137032 in the name of Pedro on August 8, 1983. The spouses were unaware that the same car had already been sold in 1982 to Esmeraldo Violago, another cousin of Avelino, and registered in Esmeraldo's name by the LTO-San Rafael Branch. Despite the spouses' demand for the car and Avelino's repeated assurances, there was no delivery of the vehicle. Since VMSC failed to deliver the car, Pedro did not pay any monthly amortization to BA Finance. [5]

On March 1, 1984, BA Finance filed with the Regional Trial Court (RTC), Branch 116 in Pasay City a complaint for Replevin with Damages against the spouses. The complaint, docketed as Civil Case No. 1628-P, prayed for the delivery of the vehicle in favor of BA Finance or, if delivery cannot be effected, for the payment of PhP 199,049.41 plus penalty at the rate of 3% per month from February 15, 1984 until fully paid. BA Finance also asked for the payment of attorney's fees, liquidated damages, replevin bond premium, expenses in the seizure of the vehicle, and costs of suit. The RTC issued an Order of Replevin on March 28, 1984. The Violago spouses, as defendants *a quo*, were declared in default for failing to file an answer. Eventually, the RTC rendered on December 3, 1984 a decision in favor of BA Finance. A writ of execution was thereafter issued on January 11, 1985, followed by an alias writ of execution. [6]

In the meantime, Esmeraldo conveyed the vehicle to Jose V. Olvido who was then issued Certificate of Registration No. 0014830-4 by the LTO-Cebu City Branch on April 29, 1985. On May 8, 1987, Jose executed a Chattel Mortgage over the vehicle in favor of Generoso Lopez as security for a loan covered by a promissory note in the amount of PhP 260,664. This promissory note was later endorsed to BA Finance, Cebu City branch. [7]

On August 21, 1989, the spouses Violago filed a Motion for Reconsideration and Motion to Quash Writ of Execution on the basis of lack of a valid service of summons on them, among other reasons. The RTC denied the motions; hence, the spouses filed a petition for certiorari under Rule 65 before the CA, docketed as CA G.R. No. 2002-SP. On May 31, 1991, the CA nullified the RTC's order. This CA decision became final and executory.

On January 28, 1992, the spouses filed their Answer before the RTC, alleging the following: they never received the vehicle from VMSC; the vehicle was previously sold to Esmeraldo; BA Finance was not a holder in due course under Section 59 of the *Negotiable Instruments Law* (NIL); and the recourse of BA Finance should be against VMSC. On February 25, 1995, the Violago spouses, with prior leave of court, filed a Third Party Complaint against Avelino praying that he be held liable to them in the event that they be held liable to BA Finance, as well as for damages. VMSC was not impleaded as third party defendant. In his Motion to Dismiss and Answer, Avelino contended that he was not a party to the transaction personally, but VMSC. Avelino's motion was denied and the third party complaint against him was entertained by the trial court. Subsequently, the spouses belabored to prove that they affixed their signatures on the promissory note and chattel mortgage in favor of VMSC in blank. [8]

The RTC rendered a Decision on March 5, 1994, finding for BA Finance but against

the Violago spouses. The RTC, however, declared that they are entitled to be indemnified by Avelino. The dispositive portion of the RTC's decision reads:

WHEREFORE, defendant-[third]-party plaintiffs spouses Pedro F. Violago and Florencia R. Violago are ordered to deliver to plaintiff BA Finance Corporation, at its principal office the BAFC Building, Gamboa St., Legaspi Village, Makati, Metro Manila the Toyota Cressida car, model 1983, bearing Engine No. 21R-02854117, and with Serial No. RX60-804614, covered by the deed of chattel mortgage dated August 4, 1983; or if such delivery cannot be made, to pay, jointly and severally, to the plaintiff the sum of P198,003.06 together with the penalty [thereon] at three percent (3%) a month, from March 1, 1984, until the amount is fully paid.

In either case, the defendant-third-party plaintiffs are required to pay, jointly and severally, to the plaintiff a sum equivalent to twenty-five percent (25%) of P198,003.06 as attorney's fees, and another amount also equivalent to twenty five percent (25%) of the said unpaid balance, as liquidated damages. The defendant-third party-plaintiffs are also required to shoulder the litigation expenses and costs.

As indemnification, third-party defendant Avelino Violago is ordered to deliver to defendants-third-party plaintiffs spouses Pedro F. Violago and Florencia R. Violago the aforescribed motor vehicle; or if such delivery is not possible, to pay to the said spouses the sum of P198,003.06, together with the penalty thereon at three (3%) a month from March 1, 1984, until the amount is entirely paid.

In either case, the third-party defendant should pay to the defendant-third-party plaintiffs spouses a sum equivalent to twenty-five percent (25%) of P198,003.06 as attorney's fees, and another sum equivalent also to twenty-five percent (25%) of the said unpaid balance, as liquidated damages.

Third-party defendant Avelino Violago is further ordered to return to the third-party plaintiffs the sum of P60,500.00 they paid to him as down payment for the car; and to pay them P15,000.00 as moral damages; P10,000.00 as exemplary damages; and reimburse them for all the expenses and costs of the suit.

The counterclaims of the defendants and third-party defendant, for lack of merit, are dismissed.^[9]

The Ruling of the CA

Petitioners-spouses and Avelino appealed to the CA. The spouses argued that the promissory note is a negotiable instrument; hence, the trial court should have applied the NIL and not the Civil Code. The spouses also asserted that since VMSC was not the owner of the vehicle at the time of sale, the sale was null and void for the failure in the "cause or consideration" of the promissory note, which in this case was the sale and delivery of the vehicle. The spouses also alleged that BA Finance was not a holder in due course of the note since it knew, through its Cebu City branch, that the car was never delivered to the spouses.^[10] On the other hand,

Avelino prayed for the dismissal of the complaint against him because he was not a party to the transaction, and for an order to the spouses to pay him moral damages and costs of suit.

The appellate court ruled that the promissory note was a negotiable instrument and that BA Finance was a holder in due course, applying Secs. 8, 24, and 52 of the NIL. The CA faulted petitioners for failing to implead VMSC, the seller of the vehicle and creditor in the promissory note, as a party in their Third Party Complaint. Citing *Salas v. Court of Appeals*,^[11] the appellate court reasoned that since VMSC is an indispensable party, any judgment will not bind it or be enforced against it. The absence of VMSC rendered the proceedings in the RTC and the judgment in the Third Party Complaint "null and void, not only as to the absent party but also to the present parties, namely the Defendants-Appellants (petitioners herein) and the Third-Party-Defendant-Appellant (Avelino Violago)." The CA set aside the trial court's order holding Avelino liable for damages to the spouses without prejudice to the action of the spouses against VMSC and Avelino in a separate action.^[12]

The dispositive portion of the August 20, 2002 CA Decision reads:

IN THE LIGHT OF ALL THE FOREGOING, the appeal of the Plaintiffs-Appellants is **DISMISSED**. The appeal of the Third-Party-Defendant-Appellant is **GRANTED**. The Decision of the Court a quo is **AFFIRMED**, with the modification that the Third-Party Complaint against the Third-Party-Defendant-appellant is **DISMISSED**, without prejudice. The counterclaims of the Third-Party Defendant Appellant against the Defendants-Appellants are **DISMISSED**, also without prejudice.^[13]

The spouses Violago sought but were denied reconsideration by the CA per its Resolution of May 15, 2003.

The Issues

Petitioners raise the following issues:

WHETHER OR NOT THE HOLDER OF AN INVALID NEGOTIABLE PROMISSORY NOTE MAY BE CONSIDERED A HOLDER IN DUE COURSE

WHETHER OR NOT A CHATTEL MORTGAGE SHOULD BE CONSIDERED VALID DESPITE VITIATION OF CONSENT OF, AND THE FRAUD COMMITTED ON, THE MORTGAGORS BY AVELINO, AND THE CLEAR ABSENCE OF OBJECT CERTAIN

WHETHER OR NOT THE VEIL OF CORPORATE ENTITY MAY BE INVOKED AND SUSTAINED DESPITE THE FRAUD AND DECEPTION OF AVELINO

The Court's Ruling

The ruling of the appellate court is set aside insofar as it dismissed, without prejudice, the third party complaint of petitioners against Avelino thereby effectively absolving Avelino from any liability under the third party complaint.

In addressing the threshold issue of whether BA Finance is a holder in due course of

the promissory note, we must determine whether the note is a negotiable instrument and, hence, covered by the NIL. In their appeal to the CA, petitioners argued that the promissory note is a negotiable instrument and that the provisions of the NIL, not the Civil Code, should be applied. In the present petition, however, petitioners claim that Article 1318 of the Civil Code^[14] should be applied since their consent was vitiated by fraud, and, thus, the promissory note does not carry any legal effect despite its negotiation. Either way, the petitioners' arguments deserve no merit.

The promissory note is clearly negotiable. The appellate court was correct in finding all the requisites of a negotiable instrument present. The NIL provides:

Section 1. Form of Negotiable Instruments. - An instrument to be negotiable must conform to the following requirements:

- (a) It must be in writing and signed by the maker or drawer;
- (b) Must contain an unconditional promise or order to pay a sum certain in money;
- (c) Must be payable on demand, or at a fixed or determinable future time;
- (d) Must be payable to order or to bearer; and
- (e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

The promissory note signed by petitioners reads:

209,601.00 Makati, Metro Manila, Philippines, August 4, 1983

For value received, I/we, jointly and severally, promise to pay to the order of VIOLAGO MOTOR SALES CORPORATION, its office, the principal sum of TWO HUNDRED NINE THOUSAND SIX HUNDRED ONE ONLY Pesos (P209,601.00), Philippines Currency, with interest at the rate stipulated herein below, in installments as follows:

Thirty Six (36) successive monthly installments of P5,822.25, the first installment to be paid on 9-16-83, and the succeeding monthly installments on the 16th day of each and every succeeding month thereafter until the account is fully paid, provided that the penalty charge of three (3%) per cent per month or a fraction thereof shall be added on each unpaid installment from maturity thereof until fully paid.

x x x x

Notice of demand, presentment, dishonor and protest are hereby waived.

(Sgd.)
PEDRO F. VIOLAGO

(Sgd.)
FLORENCIA R. VIOLAGO