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THIRD DIVISION

[G.R. NO. 164307, March 05, 2007]

SPOUSES RODELIO AND ALICIA POLTAN, PETITIONERS, VS. BPI FAMILY SAVINGS BANK, INC. AND JOHN DOE, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

In a Complaint docketed as Civil Case No. 94-70655 for replevin and damages filed with the Regional Trial Court (RTC) of Manila, Branch XVIII, by respondent BPI Family Savings Bank, Inc. (BPI) against petitioners Rodelio and Alicia Poltan, BPI alleged that on 11 November 1991, the petitioners obtained a loan evidenced by a promissory note[1] from Mantrade Development Corporation (Mantrade) secured by a chattel mortgage[2] over a 1-unit Nissan Sentra Motor Vehicle, more particularly described as follows:

ONE (1)	N. SENTRA 1400 4-DOOR SED. IX
MODEL:	1991 with Aircon, Stereo & Magwheels
MOTOR NO.:	GA14-440327B
SERIAL NO.:	BCAB13-A37402
COLOR:	PLATINUM GREEN

On 11 November 1991, Mantrade, with notice to the petitioners, assigned to BPI, by way of a Deed of Assignment,[3] all its rights, title and interest to the promissory note and chattel mortgage. The petitioners defaulted in complying with the terms and conditions of the promissory note and chattel mortgage when they failed to pay five consecutive monthly installments which fell due on 15 January 1994 up to 15 May 1994. BPI demanded[4] from the petitioners the whole balance of the promissory note in the amount of P286,540.06, including accrued interest, or to return to BPI the possession of the motor vehicle for the purpose of foreclosure in accordance with the undertaking stated in the chattel mortgage. Petitioners failed and refused to heed said demand. It is specifically provided in the promissory note and chattel mortgage that failure to pay any installment when due shall make the subsequent installments and the entire balance of the obligation due and payable.[5] BPI, in its complaint, further prayed for the award of attorney's fees, liquidated damages and other expenses incurred in connection with the petitioners' failure to pay their balance on the loan.

In their Answer to the Complaint,[6] the petitioners did not deny that they purchased the vehicle from Mantrade on installment and the same loan was subsequently assigned to BPI. They disclosed that BPI required them to obtain a motor vehicle insurance policy from FGU Insurance Corporation (FGU Insurance). They had been religiously paying the monthly installments on the vehicle until it figured in an accident where it became a total wreck. Under the terms of the

insurance policy from FGU Insurance, the vehicle had to be replaced or its value paid to them. Due to the failure and refusal of FGU Insurance to replace the vehicle or pay its value, the petitioners stopped the payment of the monthly installment.

On the date agreed upon by the parties for the pre-trial of the case, the petitioners failed to appear. Upon motion of BPI, the petitioners were declared as in default and BPI was allowed to present its evidence *ex-parte*.[7] The petitioners filed a Motion for Reconsideration[8] which the trial court granted in its Order, dated 27 February 1995.[9] When the pre-trial conference was terminated, the trial court set the case for hearing on the merits.[10] BPI then filed a motion for judgment on the pleadings contending that the answer of the petitioners failed to tender an issue and admitted the material allegations in the Complaint.[11] This was opposed by the petitioners who argued that though they did not specifically deny their outstanding obligation, the amount due was in the form of damages that must be proven by competent and admissible evidence.[12]

In a Decision[13] dated 14 June 1995, the trial court granted the Motion for Judgment on the Pleadings filed by BPI and held:

> WHEREFORE, judgment is hereby rendered ordering the defendants to pay, jointly and severally, the plaintiff the sum of P286,540.06 with penalty charges thereon for late payment at the rate of 36% per annum from May 28, 1994, until fully paid, and attorney's fees in the sum of P10,000.00, plus the costs of this suit.[14]

The petitioners appealed to the Court of Appeals. In a Decision[15] dated 19 May 1997, the Court of Appeals acted favorably on the appeal of the petitioners, set aside the RTC Decision and remanded the case to the trial court for trial on the merits.

On remand, the schedules of hearing of the case as set by the trial court were postponed for several times. The hearing was finally set on 10 January 2000. Again, petitioners, as well as their counsel, failed to appear despite due notice and without just cause. Thus, BPI was allowed to present its evidence *ex-parte* on 10 January 2000. The trial court then rendered its Decision on 6 April 2000 and held -

> WHEREFORE, judgment is hereby rendered ordering the defendants to pay, jointly and severally, the plaintiff the sum of P286,340.00 with penalty charges thereon for late payment at the rate of 36% per annum from May 20, 1994, until fully paid, and attorney's fees in an amount equivalent to 25% of the sum due, plus the costs of this suit.[16]

Aggrieved by the Decision, petitioners again appealed to the Court of Appeals.[17] In a Decision, dated 30 June 2004, the Court of Appeals denied the appeal and affirmed *in toto* the Decision of the trial court.[18]

Hence, this Petition filed by the petitioners where they raise the following issues:

1. WHETHER OR NOT THE PETITIONERS HAD BEEN UNJUSTLY DEPRIVED BY THE TRIAL COURT *A QUO* AND THE COURT OF APPEALS OF THEIR CONSTITUTIONAL AND STATUTORY RIGHT TO

PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW WHEN THE TRIAL COURT, MOVED BY AN UNFAIR ATTITUDE OF DISCRIMINATION AND UNFAIRNESS, SUDDENLY ALLOWED THE BPI TO PRESENT EVIDENCE EX PARTE ON JANUARY 11, 2000 - THUS, TOTALLY ELIMINATING THE OPPORTUNITY OF THE PETITIONERS POLTAN TO BE HEARD - SIMPLY BECAUSE THEIR FORMER LAWYER ATTY. DOMINGO S. CRUZ, WAS ABSENT DURING THAT PARTICULAR HEARING (JANUARY 10, 2000), DESPITE THE FACT THAT THE TRIAL COURT KNEW FROM THE RECORD THAT ATTY. CRUZ HAD BEEN PRESENT IN THE PAST MANY HEARINGS PRIOR TO JANUARY 10, 2000, WHILE THE COUNSEL FOR RESPONDENT HAD BEEN ABSENT IN FOR MANY HEARINGS PRIOR TO JANUARY 10, 2000;

2. WHETHER OR NOT PETITIONERS POLTAN HAD BEEN DEPRIVED OF THEIR CONSTITUTIONAL AND STATUTORY RIGHT TO PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW AS SHOWN BY THE BIASED PATTERN OF BEHAVIOR OF THE PRESIDING JUDGE OF THE TRIAL COURT SINCE 1995, IN THAT, THE PRESIDING JUDGE IN 1995, WITHOUT ANY VALID BASIS AS SHOWN BY THE (FIRST) 1997 DECISION OF THE COURT OF APPEALS (EXHIBIT "H"), ALLOWED A BASELESS MOTION FOR JUDGMENT ON THE PLEADINGS, THUS, DEPRIVING THE PETITIONERS POLTAN OF THEIR RIGHT TO PRESENT EVIDENCE, FOR THE FIRST TIME; AND IN THAT, THE PRESIDING JUDGE IN 2000, FOR THE SECOND TIME, PRESUMABLY IRKED BY THE 1997 APPELLATE REVERSAL, AGAIN DEPRIVED THE PETITIONERS POLTAN OF THEIR RIGHT TO DUE PROCESS OF LAW BY SUDDENLY ALLOWING THE RESPONDENT TO PRESENT EVIDENCE EX PARTE AND BY ISSUING THE QUESTIONED EX PARTE DECISION, WHICH THE COURT OF APPEALS LATER ERRONEOUSLY AFFIRMED IN ITS QUESTIONED DECISION DATED JUNE 30, 2004;

3. WHETHER OR NOT THE PETITIONERS POLTAN HAD BEEN DEPRIVED OF THEIR CONSTITUTIONAL AND STATUTORY RIGHT TO PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW, IN THAT THE UNEXPLAINED GROSS NEGLIGENCE OF THEIR FORMER COUNSEL, ATTY. DOMINGO S. CRUZ, TO APPEAR DURING THE HEARING SET ON JANUARY 10, 2000, DESPITE NOTICE, AND WITHOUT OFFERING AN EXPLANATION TO THE TRIAL COURT OR FILING A MOTION FOR RECONSIDERATION OF THE ORDER, DATED JANUARY 10, 2000, HAD UNJUSTIFIABLY RESULTED IN A GRAVE MISCARRIAGE OF JUSTICE TO THE EXTREME PREJUDICE OF THE PETITIONERS POLTAN, WHO ARE NOW EXPOSED TO THE GREAT AND HIGHLY DETRIMENTAL RISK OF PAYING THE RESPONDENT BPI THE HUGE AMOUNT OF ALMOST TWO MILLION PESOS (P2,000,000.00), IF WE CONSIDER THE TOTALITY AND CURRENT STATUS OF THE JUDGMENT AWARD MADE IN FAVOR OF BPI, WITHOUT AFFORDING THE PETITIONERS POLTAN A FAIR CHANCE AND OPPORTUNITY TO BE HEARD;

4. WHETHER OR NOT THE PETITIONERS POLTAN HAD BEEN DEPRIVED OF THEIR CONSTITUTIONAL AND STATUTORY RIGHT TO

PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW WHEN THE TRIAL COURT, AS AFFIRMED BY THE COURT OF APPEALS, ALLOWED ON JANUARY 21, 2000 THE FORMER COUNSEL FOR THE RESPONDENT, I.E., THE LABAGUIS LOYOLA FELIPE ATIENZA SANCHEZ LAW OFFICES, WHICH HAD PREVIOUSLY WITHDRAWN AS COUNSEL FOR RESPONDENT, TO PRESENT EVIDENCE, EX PARTE, AND TO MOVE FOR THE REINSTATEMENT OF THE FIRST QUESTIONED DECISION OF TRIAL COURT (SEE ANNEX J TO J-4 OF THE PETITION) FOR AND IN BEHALF OF THE RESPONDENT BPI;

5. WHETHER OR NOT THE TRIAL COURT HAD THE LAWFUL JURISDICTION AND THE POWER TO HEAR AND DECIDE THE CASE EX PARTE ON THE BASIS OF THE EVIDENCE PRESENTED BY A LAW OFFICE WHICH HAD PREVIOUSLY WITHDRAWN ITS FORMAL APPEARANCE AND THUS HAD LOST ANY LEGAL ROLE, AUTHORITY, STANDING AND RIGHT TO PARTICIPATE IN THE PROCEEDINGS;

6. WHETHER OR NOT THE CONTRACTS PRESENTED IN EVIDENCE, EX PARTE, BY THE RESPONDENT WERE UNJUST AND UNACCEPTABLE CONTRACTS OF ADHESION WHOSE UNCONSCIONABLE TERMS AND CONDITIONS SHOULD BE REJECTED BY THIS HONORABLE COURT, IN THE INTEREST OF EQUITY AND JUSTICE, E.G., THE IMPOSITION OF 36% PENALTY CHARGE PER ANNUM AND 25% ATTORNEY'S FEES, ON THE BASIS ALONE OF A SUDDEN EX PARTE HEARING HELD ON JANUARY 11, 2000;

7. WHETHER OR NOT THE TERMS AND CONDITIONS OF THE COMPREHENSIVE CAR INSURANCE POLICY ISSUED BY FGU INSURANCE CORP., WHICH IS A SISTER COMPANY OF THE RESPONDENT CORPORATION, SHOULD BE DEEMED AS HAVING AUTOMATICALLY AND IPSO FACTO OPERATED IN FAVOR OF THE RESPONDENT BPI, AS THE ASSURED MORTGAGEE, AT THE TIME OF THE TOTAL-WRECK ACCIDENT INVOLVING THE CAR, ABOUT WHICH THE INSURER AND THE SAID ASSURED RESPONDENT BPI HAD BEEN DULY NOTIFIED; AND IF SO, WHETHER SUCH AUTOMATIC OPERATION SHOULD BE DEEMED AS HAVING RESULTED IN THE EXTINGUISHMENT OF THE OBLIGATION OF THE PETITIONERS TO THE RESPONDENT, AS THE ASSURED MORTGAGEE.[19]

The appeal is not meritorious.

The first three issues may be summed up into whether the allowance of the *ex-parte* presentation of evidence is proper and whether the petitioners were denied due process.

On the issue of validity of presentation of evidence *ex-parte,* be it noted that upon the remand of the case to the trial court by the Court of Appeals, both BPI and the petitioners were duly notified of the scheduled date of the hearing of the case by the trial court. At the hearing scheduled on 10 January 2000 where the petitioners were absent and where BPI was allowed to present evidence *ex-parte*, both parties were given notice that the hearing of the case was scheduled on that date. Specifically, the petitioners were notified through their representative Rizaldy Impi of the

scheduled hearing on 10 January 2000.[20] This notwithstanding, the petitioners failed to appear. Lest it be forgotten, the case was previously decided based on judgment on the pleadings and the same was elevated to the Court of Appeals which resolved to remand the case to the trial court for further hearing. After the remand of the case, the same was initially set for hearing on 25 January 1999.[21] This was postponed upon motion of the counsel of the petitioners[22] who moved that the same be reset to 22 February 1999 which the trial court granted.[23] The petitioners were *again* absent on the latter date and they were notified that the hearing was reset to 19 April 1999.[24] The hearing scheduled on 19 April 1999 was again reset to 17 May 1999 upon their motion.[25] Upon agreement of both parties, the hearing scheduled on 17 May 1999 was reset to 5 July 1999.[26] Similarly, both parties again agreed to reset the scheduled hearing of 5 July 1999 to 23 August 1999.[27] Then again, the 23 August 1999 schedule was reset to 11 October 1999, likewise, upon agreement of both parties.[28] All these negate the claim of denial of due process. The petitioners were given more than ample opportunity to be heard through counsel. The claim of denial of due process is clearly without basis. What the fundamental law prohibits is total absence of opportunity to be heard. When a party has been afforded opportunity to present his side, he cannot feign denial of due process.[29]

Admittedly, there was a hearing conducted without the presence of the petitioners on 10 January 2000, and BPI was allowed to present evidence *ex-parte*. BPI adduced in evidence the following:

> EXHIBIT A & B - Promissory Note and Chattel Mortgage
>
> A-1 - Signature of the defendants;
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> A-3 - Acceleration clause to prove the obligation;
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> A-4 - Stipulation on Attorney's fees;
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> C - Deed of Assignment;
>
> D - Demand Letter;
>
> E - Statement of Account to prove the obligation of the defendants as of the time of the filing of this suit.[30]

Relative to the fourth and fifth issues raised by the petitioners on the matter of whether the counsel of BPI had adequate authority to represent BPI at the time of the *ex-parte* presentation of evidence in view of the earlier withdrawal of the said counsel, while it may be true that the counsel of BPI filed before the trial court a notice of withdrawal of appearance on 27 December 1999,[31] the same was not acted upon by the trial court. Instead, the withdrawal of appearance of BPI's counsel was "approved and noted on 31 January 2000.[32] Therefore, undoubtedly, when the said former counsel of BPI conducted the *ex-parte* presentation of evidence on 11 January 2000, he still had authority to do so.

Anent the sixth issue relating to the contract signed by the petitioners being in the