

SECOND DIVISION

[G.R. No. 148980, September 21, 2007]

**PCI LEASING & FINANCE, INC., PETITIONER, VS. SPOUSES
GEORGE M. DAI AND DIVINA DAI, RESPONDENTS.**

DECISION

CARPIO MORALES, J.:

Respondents, spouses George and Divina Dai, obtained a loan on June 16, 1994 from petitioner, PCI Leasing and Finance, Inc., evidenced by a promissory note^[1] for the sum of ₱3,352,892 payable in monthly installments of ₱152,265 starting on July 16, 1994. The proceeds of the loan partly financed the purchase by respondents of a vessel-fishing boat which was named "F/B Sea Doll." To secure the payment of the loan, respondents executed a chattel mortgage^[2] over the vessel in favor of petitioner.

Both the promissory note and the chattel mortgage provided that, in case of failure to pay the installments or interest due thereon, the entire amount remaining unpaid shall immediately become due and payable.^[3]

Respondents failed to pay the second and third installments which fell due on August 16, 1994 and September 16, 1994, respectively, prompting petitioner to file on October 27, 1994 before the Regional Trial Court (RTC) of Cebu City a complaint for replevin and damages, docketed as **Civil Case No. CEB-16691**, praying that the trial court:

- a. . . . issue a writ of replevin ordering the seizure of the vessel xxx complete with all its accessories and equipments [*sic*], together with the registration certificate and direct the delivery thereof to plaintiff in accordance with law and after due hearing, declare that plaintiff is entitled to the possession of the vessel and confirm its seizure and delivery to plaintiff;
- b. **In the event that manual delivery of the said vessel cannot be effected**, . . . render judgment in favor of plaintiff and against defendants ordering them to pay the plaintiff, the sum of ₱3,502,095.00 plus interest and penalty thereon from October 12, 1994 until fully paid as provided in the Promissory Note [;]
- c. In either case, . . . order defendants to pay jointly and severally the sum of ₱1,225,733.25 as attorney's fees and liquidated damages, plus bonding fees and other expenses incurred in the seizure of the said vessel which will be proved during the trial.^[4] (Emphasis and underscoring supplied)

In their Answer, respondents claimed that, *inter alia*, the possession of the vessel including its registration certificate had been surrendered to petitioner before the filing of the complaint. Respondents thus prayed for the award of damages and attorney's fees by way of Counterclaim.

Following the filing by respondents of their Answer, petitioner foreclosed the chattel mortgage and bought the vessel at the public auction conducted on January 13, 1995 for P2,000,000.^[5] A Certificate of Sale of the vessel in favor of petitioner was subsequently issued on January 16, 1995.

More than eight months later or on September 29, 1995, the Pre-trial of the case was conducted during which the following were defined as issues:

1. Whether or not [petitioner] is entitled to recover damages from the [respondents]; and
2. Whether or not [respondents] are entitled to recover damages in accordance with their counterclaim.^[6]

By Decision^[7] of February 3, 1997, Branch 58 of the Cebu RTC resolved both issues in the negative in this wise:

The evidence further shows that defendants were not able to pay off their obligation to plaintiff due to the fact that their fishing area in Batanes and their boat were badly damaged. Defendants in fact informed plaintiff of their predicament by sending plaintiff a copy of a letter explaining such predicament (Exh. "2"). There was no bad faith on defendants' part when they failed to comply with their obligation.

The Court is convinced that plaintiff is **not entitled** to recover from defendants **attorney's fees** and **liquidated damages** in the sum of P1,225,733.25. "In determining whether a penalty clause is 'iniquitous and unconscionable,' a court may very well take into account the actual damages sustained by a creditor who has been compelled to sue the defaulting debtor x x x." (Pacific Mills, Inc. vs. Court of Appeals, G.R. No. 87182, February 17, 1992, 206 SCRA 317, 327) No substantial damage having been sustained by plaintiff as it already had in its possession the certificate of registration of the vessel and had in fact foreclosed the mortgage on said vessel, its claim for attorney's fees and liquidated damages must fail.

On the second issue –

Defendants have not presented sufficient and convincing evidence to support their claim for moral and exemplary damages and attorney's fees. Hence, said claim is hereby denied for lack of merit.^[8] (Emphasis and underscoring supplied)

Accordingly, the trial court dismissed the parties' respective claims for damages and attorney's fees. No appeal having been taken from the trial court's decision, it became final and executory.

More than a year and a half following the promulgation by the trial court of its decision in Civil Case No. CEB-16691 or on August 26, 1998, petitioner filed a complaint^[9] for deficiency judgment and/or collection of sum of money before the Cebu RTC where it was docketed as **Civil Case No. CEB-22585**. In its complaint, petitioner alleged, *inter alia*, as follows:

x x x x

10. Subsequent to the aforesaid sale the outstanding obligation of defendants to the plaintiff, inclusive of interest, and net of its P2,000,000.00, representing the proceeds of the aforesaid sale of the mortgaged property is Philippine Pesos: Nine Hundred Sixty-One Thousand (~~P961,000.00~~) as of January 16, 1995 exclusive of cost of suit and collection expenses;
11. Payment of the aforesaid outstanding obligation representing the deficiency claims of the plaintiff arising from the said promissory note (Annex "A") is now long overdue but defendants failed and refused and still fail and refuse to pay the same despite demand from plaintiff;
12. It is expressly stipulated in the promissory note (Annex "A") that in case the same is referred to an attorney-at-law for collection defendants shall pay attorney's fees in a sum equivalent to ten percent (10%) of the amount due and twenty-five percent (25%) of the total amount due as liquidated damages aside from expenses of collection an[d] costs of suit which amount is equivalent to P336,350.00[.]

x x x x^[10] (Underscoring supplied)

Petitioner thus prayed that the court render judgment in its favor and against respondents, ordering them to pay.

1. The amount of P961,000.00 representing the outstanding obligation of the defendants to the plaintiff exclusive of interest, and net of the proceeds of the aforesaid sale of the mortgaged property plus interest from January 16, 1995;
2. The amount of P336,350.00 as attorney's fees and liquidated damages;
3. The costs of suit and collection expenses.

x x x x^[11] (Underscoring supplied)

In their Answer^[12] to the complaint in Civil Case No. CEB-22585, respondents pleaded bar by prior judgment^[13] and Article 1484 of the Civil Code^[14] which provides:

Art. 1484. 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. (Underscoring supplied)

By Decision of November 22, 1999, Branch 58 of the Cebu RTC, the same branch and presided by the same judge which decided Civil Case No. CEB-16691, dismissed Civil Case No. CEB-22585 in this wise:

It is . . . apparent that plaintiff's present action for deficiency judgment is barred by the prior judgment in CEB-16691. The parties and the cause of action in CEB-16691 and the instant case are the same. Plaintiff's prayer in CEB-16691 is in the alternative. Having availed of foreclosure of the chattel mortgage, plaintiff cannot anymore come to court again and avail of its second alternative prayer. The instant case should, therefore, be dismissed. (Section 1(f), Rule 16, 1997 Rules of Civil Procedure).

Parenthetically, let it be noted [that] in CEB-16691, plaintiff had foreclosed the mortgage and a certificate of sale was issued in its favor even before the pre-trial conference therein was conducted. **Plaintiff did not make any move to amend the pre-trial order** which limited the issues to be resolved therein to the damages claimed by the parties.

[15] (Emphasis and underscoring supplied)

On appeal, the Court of Appeals, by Decision^[16] dated March 12, 2001, brushed aside respondents' invocation of Article 1484 of the Civil Code on the ground that the same applies only to a case of sale of [personal] property payable in installments which is secured by a chattel mortgage between the vendor and the vendee over the thing sold,^[17] citing *Bicol Savings & Loan Association v. Guinhawa*.
[18]

The appellate court nevertheless affirmed the decision of the trial court on the ground of *res judicata*. Thus it held:

. . . [I]t is clear that appellant's present claim for deficiency judgment is among those matters which could have been adjudged in CEB-16691. While that earlier case is for replevin and damages, the appellant during the pendency of that case had extrajudicially foreclosed the chattel mortgage and the Certificate of Sale had been issued to it by the Provincial Sheriff as the highest bidder. Appellant after realizing the amount of ₱2,000,000.00 from the proceeds of the foreclosure sale, could have prayed for a deficiency judgment in the same action as in fact it pursued its claim for attorney's fees and liquidated damages therein, which claim was however, dismissed by the trial court. Appellant, however, did not press any demand for such deficiency judgment in said