376 Phil. 602

THIRD DIVISION

[G.R. No. 110048, November 19, 1999]

SERVICEWIDE SPECIALISTS, INC. PETITIONER, VS. COURT OF APPEALS, HILDA TEE, & ALBERTO M. VILLAFRANCA, RESPONDENTS.

D E C I S I O N

PURISIMA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Decision of the Court of Appeals[1] in CA-G.R. CV No. 19571, affirming the judgment of the Regional Trial Court of Manila, Branch XX, dismissing Civil Case No. 84-25763 for replevin and damages.

The litigation involves a motor vehicle, a Colt Galant, 4-door Sedan automobile, with Motor No. 2E-08927, Serial No. A112A-5297, Model No. 1976.

The appellate court culled the facts that matter as follows:[2]

> "On May 14, 1976, Leticia L. Laus of Quezon City purchased on credit a Colt Galant xxx from Fortune Motors (Phils.) Corporation. On the same date, she executed a promissory note for the amount of P56,028.00, inclusive of interest at 12% per annum, payable within a period of 48 months starting August, 1976 at a monthly installment of P1,167.25 due and demandable on the 17th day of each month (Exhibit "A", pp. 144, Orig. Records,). It was agreed upon, among others, that in case of default in the payment of any installment the total principal sum, together with the interest, shall become immediately due and payable (Exhibit "A"; p. 144, Orig. Records). As a security for the promissory note, a chattel mortgage was constituted over the said motor vehicle (Exhibit "B", ibid.), with a deed of assignment incorporated therein such that the credit and mortgage rights were assigned by Fortune Motors Corp. in favor of Filinvest Credit Corporation with the consent of the mortgagor-debtor Leticia Laus (Exhibits "B-1" and "B-2"; p. 147, ibid.). The vehicle was then registered in the name of Leticia L. Laus with the chattel mortgage annotated on said certificate. (Exhibit "H"; p. 154, ibid.)
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> On September 25, 1978, Filinvest Credit Corporation in turn assigned the credit in favor of Servicewide Specialists, Inc. (Servicewide, for brevity) transferring unto the latter all its rights under the promissory note and the chattel mortgage (Exhibit "B-3"; p. 149, ibid.) with the corresponding notice of assignment sent to the registered car owner (Exhibit "C"; p. 150, Ibid.).

> On April 18, 1977, Leticia Laus failed to pay the monthly installment for that month. The installments for the succeeding 17 months were not likewise fully paid, hence on September 25, 1978, pursuant to the provisions of the promissory note, Servicewide demanded payment of the entire outstanding balance of P46,775.24 inclusive of interests (Exhibits "D" and "E"; pp. 151-152, ibid.). Despite said formal demand, Leticia Laus failed to pay all the monthly installments due until July 18, 1980.
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> On July 25, 1984, Servicewide sent a statement of account to Leticia Laus and demanded payment of the amount of P86,613.32 representing the outstanding balance plus interests up to July 25, 1985, attorney's fees, liquidated damages, estimated repossession expense, and bonding fee (Exhibit "F"; p. 153, ibid.)
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> As a result of the failure of Leticia Laus to settle her obligation, or at least to surrender possession of the motor vehicle for the purpose of foreclosure, Servicewide instituted a complaint for replevin, impleading Hilda Tee and John Dee in whose custody the vehicle was believed to be at the time of the filing of the suit.

In its complaint, plaintiff alleged that it had superior lien over the mortgaged vehicle; that it is lawfully entitled to the possession of the same together with all its accessories and equipments; (sic) that Hilda Tee was wrongfully detaining the motor vehicle for the purpose of defeating its mortgage lien; and that a sufficient bond had been filed in court. (Complaint with Annexes, pp. 1-13, ibid.). On July 30, 1984, the court approved the replevin bond (p. 20, ibid.)

On August 1, 1984, Alberto Villafranca filed a third party claim contending that he is the absolute owner of the subject motor vehicle duly evidenced by the Bureau of Land Transportation's Certificate of Registration issued in his name on June 22, 1984; that he acquired the said mother vehicle from a certain Remedios D. Yang under a Deed of Sale dated May 16, 1984; that he acquired the same free from all lien and emcumbrances; and that on July 30, 1984, the said automobile was taken from his residence by Deputy Sheriff Bernardo Bernabe pursuant to the seizure order issued by the court a quo.

Upon motion of the plaintiff below, Alberto Villafranca was substituted as defendant. Summons was served upon him. (pp. 55-56, ibid).

On March 20, 1985, Alberto Villafranca moved for the dismissal of the complaint on the ground that there is another action pending between the same parties before the Regional Trial Court of Makati, Branch 140, docketed as Civil Case No. 8310, involving the seizure of subject motor vehicle and the indemnity bond posted by Servicewide (Motion to Dismiss with Annexes; pp. 57-110, ibid.) On March 28, 1985, the court granted the aforesaid motion (p. 122, ibid.), but subsequently the order of dismissal was reconsidered and set aside (pp. 135-136, ibid.). For failure to file his Answer as required by the court a quo, Alberto Villafranca was declared in default and plaintiff's evidence was received ex parte.

On December 27, 1985, the lower court rendered a decision dismissing the

complaint for insufficiency of evidence. Its motion for reconsideration of said decision having been denied, xxx."

In its appeal to the Court of Appeals, petitioner theorized that a suit for replevin aimed at the foreclosure of a chattel is an action *quasi in rem*, and does not require the inclusion of the principal obligor in the Complaint. However, the appellate court affirmed the decision of the lower Court; ratiocinating, thus:

> "A cursory reading, however, of the Promissory Note dated May 14, 1976 in favor of Fortune Motors (Phils.) Corp. in the sum of P56,028.00 (Annex "A" of Complaint, p. 7, Original Records) and the Chattel Mortgage of the same date (Annex "B" of Complaint; pp. 8-9, ibid.) will disclose that the maker and mortgagor respectively are one and the same person: Leticia Laus. In fact, plaintiff-appellant admits in paragraphs (sic) nos. 2 and 3 of its Complaint that the aforesaid public documents (Annexes "A" and "B" thereof) were executed by Leticia Laus, who, for reasons not explained, was never impleaded. In the case under consideration, plaintiff-appellant's main case is for judicial foreclosure of the chattel mortgage against Hilda Tee and John Doe who was later substituted by appellee Alberto Villafranca. But as there is no privity of contract, not even a causal link, between plaintiff-appellant Servicewide Specialists, Inc. and defendant-appellee Alberto Villafranca, the court a quo committed no reversible error when it dismissed the case for insufficiency of evidence against Hilda Tee and Alberto Villafranca since the evidence adduced pointed to Leticia Laus as the party liable for the obligation sued upon (p. 2, RTC Decision)."[3]

Petitioner presented a Motion for Reconsideration but in its Resolution[4] of May 10, 1993, the Court of Appeals denied the same, taking notice of another case "pending between the same parties xxx relating to the very chattel mortgage of the motor vehicle in litigation."

Hence, the present petition for review on *certiorari* under Rule 45. Essentially, the sole issue here is: Whether or not a case for replevin may be pursued against the defendant, Alberto Villafranca, without impleading the absconding debtor-mortgagor?

Rule 60 of the Revised Rules of Court requires that an applicant for replevin must show that he "is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof."[5] Where the right of the plaintiff to the possession of the specified property is so conceded or evident, the action need only be maintained against him who so possesses the property. *In rem action est per quam rem nostram quae ab alio possidetur petimus, et semper adversus eum est qui rem possidet.*[6]

Citing **Northern Motors, Inc. vs. Herrera**,[7] the Court said in the case of **BA Finance** (which is of similar import with the present case):