

FIRST DIVISION

[G.R. No. 106418, July 11, 1996]

**DANIEL L. BORDON II AND FRANCISCO L. BORBON,
PETITIONERS, VS. SERVICEWIDE SPECIALISTS, INC. & HON.
COURT OF APPEALS, RESPONDENTS.**

D E C I S I O N

VITUG, J.:

From the decision of the Court of Appeals in CA-G.R. CV No. 30693 which affirmed that of the Regional Trial Court, NCJR, Branch 39, Manila, in Civil Case No. 85-29954, confirming the disputed possession of a motor vehicle in favor of private respondent and ordering the payment to it by petitioners of liquidated damages and attorney's fees, the instant appeal was interposed.

The appellate court adopted the factual findings of the court a quo, to wit:

"The plaintiff's evidence shows among others that on December 7, 1984, defendants Daniel L. Borbon and Francisco Borbon signed a promissory note (Exh. A) which states among others as follows:

"PROMISSORY NOTE

Acct. No. 115008276
Makati, Metro Manila,
Philippines
December 7, 1984

'P122,856.00

'For value received (installment price of the chattel/s purchased), I/We jointly and severally promised to pay Pangasinan Auto Mart, Inc. or order, at its office at NMI Bldg. Buendia Avenue, Makati, MM the sum of One Hundred Twenty Two Thousand Eight Hundred Fifty Six only (P122,856.00), Philippine Currency, to be payable without need of notice or demand, in installments of the amounts following and at the dates hereinafter set forth, to wit: P10,238.00 monthly for Twelve (12) months due and payable on the 7 day of each month starting January, 1985, provided that a late payment charge of 3% per month shall be added on each unpaid installment from due date thereof until fully paid.

`xxx xxx xxx

'It is further agreed that if upon such default, attorney's services are availed of, an additional sum equal to twenty five percent (25%) of the total sum due thereon, which shall not be less than five hundred pesos,

shall be paid to the holder hereof for attorney's fees plus an additional sum equivalent to twenty five percent (25%) of the total sum due which likewise shall not be less than five hundred pesos for liquidated damages, aside from expenses of collection and the legal costs provided for in the Rules of Court.

'It is expressly agreed that all legal actions arising out of this note or in connection with the chattel(s) subject hereof shall only be brought in or submitted to the jurisdiction of the proper court either in the City of Manila or in the province, municipality or city where the branch of the holder hereof is located.

'Acceptance by the holder hereof of payment of any installment or any part thereof after due dated (sic) shall not be considered as extending the time for the payment or any of the installments aforesaid or as a modification of any of the conditions hereof. Nor shall the failure of the holder hereof to exercise any of its right under this note constitute or be deemed as a waiver of such rights.

'Maker:

(S/t) DANIEL L. BORBON, II

Address: 14 Colt St., Rancho Estate I, Concepcion Dos, Marikina, MM

(S/t) FRANCISCO BORBON

Address: 73 Sterling Life Home Pamplona, Las Piñas, MM

"WITNESSES

(illegible).

(illegible).

'PAY TO THE ORDER OF
FILINVEST CREDIT CORPORATION

without recourse, notice, presentment and demand waived

PANGASINAN AUTO MART, INC.

BY:

(S/T) K.N. DULCE
Dealer'

"To secure the Promissory Note, the defendants executed a Chattel Mortgage (Exh. B) on

'One (1) Brand new 1984 Isuzu
KCD 20 Crew Cab (Conv.)
Serial No. KC20D0F 207685

(Exhs. A and B, p. 2 tsn, September 10, 1985)

"The rights of Pangasinan Auto Mart, Inc. was later assigned to Filinvest Credit Corporation on December 10, 1984, with notice to the defendants (Exh. C, p. 10, Record).

"On March 21, 1985, Filinvest Credit Corporation assigned all its rights, interest and title over the Promissory Note and the chattel mortgage to the plaintiff (Exh. D; p. 3, tsn, Sept. 30, 1985).

"The promissory note stipulates that the installment of P10,238.00 monthly should be paid on the 7th day of each month starting January 1985, but the defendants failed to comply with their obligation (p. 3, tsn, Sept. 30, 1985).

"Because the defendants did not pay their monthly installments, Filinvest demanded from the defendants the payment of their installments due on January 29, 1985 by telegram (Exh. E; pp. 3-4, tsn, Sept. 30, 1985).

"After the accounts were assigned to the plaintiff, the plaintiff attempted to collect by sending a demand letter to the defendants for them to pay their entire obligation which, as of March 12, 1985, totaled P185,257.80 (Exh. H; pp. 3-4, tsn, Sept. 30, 1985).

"For their defense, the defendants claim that what they intended to buy from Pangasinan Auto Mart was a jeepney type Isuzu K. C. Cab. The vehicle that they bought was not delivered (pp. 11-12, tsn, Oct. 17, 1985). Instead, through misrepresentation and machination, the Pangasinan Motor, Inc. delivered an Isuzu crew cab, as this is the unit available at their warehouse. Later the representative of Pangasinan Auto Mart, Inc. (assignor) told the defendants that their available stock is an Isuzu Cab but minus the rear body, which the defendants agreed to deliver with the understanding that the Pangasinan Auto Mart, Inc. will refund the defendants the amount of P10,000.00 to have the rear body completed (pp. 12-34, Exhs. 2 to 3-3A).

"Despite Communications with the Pangasinan Auto Mart, Inc., the latter was not able to replace the vehicle until the vehicle delivered was seized by order of this court. The defendants argue that an assignee stands in the place of an assignor which, to the mind of the court, is correct. The assignee exercise all the rights of the assignor (Gonzales vs. Rama Plantation Co., C.V. 08630, Dec. 2, 1986).

"The defendants further claim that they are not in default of their obligation because the Pangasinan Auto Mart was first guilty of not fulfilling its obligation in the contract. The defendants claim that neither party incurs delay if the other does not comply with his obligation. (citing Art. 1169, N.C.C.)"^[1]