

## SECOND DIVISION

**[ G.R. No. 184565, November 20, 2013 ]**

**MANOLITO DE LEON AND LOURDES E. DE LEON, PETITIONERS,  
VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

"[I]n the course of trial in a civil case, once plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's prima facie case, otherwise, a verdict must be returned in favor of plaintiff."<sup>[1]</sup>

This Petition for Review on *Certiorari*<sup>[2]</sup> under Rule 45 of the Rules of Court assails the November 16, 2007 Decision<sup>[3]</sup> and the September 19, 2008 Resolution<sup>[4]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 91217.

#### ***Factual Antecedents***

On June 13, 1995, petitioner-spouses Manolito and Lourdes de Leon executed a Promissory Note<sup>[5]</sup> binding themselves to pay Nissan Gallery Ortigas the amount of P458,784.00 in 36 monthly installments of P12,744.00, with a late payment charge of five percent (5%) per month.<sup>[6]</sup> To secure the obligation under the Promissory Note, petitioner-spouses constituted a Chattel Mortgage<sup>[7]</sup> over a 1995 Nissan Sentra 1300 4-Door LEC with Motor No. GA-13-549457B and Serial No. BBAB-13B69336.<sup>[8]</sup>

On the same day, Nissan Gallery Ortigas, with notice to petitioner-spouses, executed a Deed of Assignment<sup>[9]</sup> of its rights and interests under the Promissory Note with Chattel Mortgage in favor of Citytrust Banking Corporation (Citytrust).<sup>[10]</sup>

On October 4, 1996, Citytrust was merged with and absorbed by respondent Bank of the Philippine Islands (BPI).<sup>[11]</sup>

Petitioner-spouses, however, failed to pay their monthly amortizations from August 10, 1997 to June 10, 1998.<sup>[12]</sup> Thus, respondent BPI, thru counsel, sent them a demand letter<sup>[13]</sup> dated October 16, 1998.

On November 19, 1998, respondent BPI filed before the Metropolitan Trial Court (MeTC) of Manila a Complaint<sup>[14]</sup> for Replevin and Damages, docketed as Civil Case No. 161617 and raffled to Branch 6, against petitioner-spouses.<sup>[15]</sup> The summons, however, remained unserved, prompting the MeTC to dismiss the case without

prejudice.<sup>[16]</sup> Respondent BPI moved for reconsideration on the ground that it was still verifying the exact address of petitioner-spouses.<sup>[17]</sup> On March 21, 2002, the MeTC set aside the dismissal of the case.<sup>[18]</sup> On April 24, 2002, summons was served on petitioner-spouses.<sup>[19]</sup>

Petitioner-spouses, in their Answer,<sup>[20]</sup> averred that the case should be dismissed for failure of respondent BPI to prosecute the case pursuant to Section 3<sup>[21]</sup> of Rule 17 of the Rules of Court;<sup>[22]</sup> that their obligation was extinguished because the mortgaged vehicle was stolen while the insurance policy was still in force;<sup>[23]</sup> that they informed Citytrust of the theft of the mortgaged vehicle through its employee, Meldy Endaya (Endaya);<sup>[24]</sup> and that respondent BPI should have collected the insurance proceeds and applied the same to the remaining obligation.<sup>[25]</sup>

On November 11, 2003, respondent BPI presented its evidence ex parte.<sup>[26]</sup> It offered as evidence the testimony of its Account Consultant, Lilie Coria Ultu (Ultu), who testified on the veracity of the Promissory Note with Chattel Mortgage, the Deed of Assignment, the demand letter dated October 16, 1998, and the Statement of Account<sup>[27]</sup> of petitioner-spouses.<sup>[28]</sup>

For their part, petitioner-spouses offered as evidence the Alarm Sheet issued by the Philippine National Police on December 3, 1997, the Sinumpaang Salaysay executed by Reynaldo Llanos (Llanos), the Subpoena for Llanos, the letter of Citytrust dated July 30, 1996, the letters of respondent BPI dated January 6, 1998 and June 25, 1998, and the testimonies of Ultu and petitioner Manolito.<sup>[29]</sup>

### ***Ruling of the Metropolitan Trial Court***

On November 17, 2004, the MeTC rendered a Decision<sup>[30]</sup> in favor of respondent BPI and declared petitioner-spouses liable to pay their remaining obligation for failure to notify Citytrust or respondent BPI of the alleged theft of the mortgaged vehicle and to submit proof thereof.<sup>[31]</sup> The MeTC considered the testimony of petitioner Manolito dubious and self-serving.<sup>[32]</sup> Pertinent portions of the Decision read:

[Petitioner Manolito] declared on the witness stand that he sent to [Citytrust], through "fax," the papers necessary to formalize his report on the loss of [the] subject motor vehicle, which included the Alarm Sheet (Exhibit "1") and the Sinumpaang Salaysay of one Reynaldo Llanos y Largo (TSN dated August 3, 2004, pp. 17-19).

However, [his claim that] such documents were indeed received by [Citytrust] only remains self-serving and gratuitous. No facsimile report has been presented that such documents were indeed transmitted to Citytrust. No formal letter was made to formalize the report on the loss. For an individual such as [petitioner Manolito], who rather appeared sharp and intelligent enough to know better, an apparent laxity has been displayed on his part. Heedless of the consequences, [petitioner Manolito] simply satisfied himself with making a telephone call, if indeed

one was made, to [a rank and file employee] of Citytrust or [respondent BPI] x x x and did not exercise x x x due diligence to verify any feedback or action on the part of the banking institution.

Worse, [petitioners] x x x failed to prove that they indeed submitted proof of the loss or theft of the motor vehicle. [Petitioner-spouses] merely [presented] an Alarm Sheet and the Sinumpaang Salaysay of one Reynaldo Llanos y Largo. But a formal police report on the matter is evidently missing. It behooved [petitioner-spouses] to establish the alleged theft of the motor vehicle by submitting a police action on the matter, but this, they did not do.

Haplessly, therefore, the required notice and proof of such loss have not been satisfied.<sup>[33]</sup>

Thus, the MeTC disposed of the case in this wise:

WHEREFORE, judgment is hereby rendered in favor of [respondent BPI] and against [petitioner-spouses] Lourdes E. De Leon and Jose Manolito De Leon, as follows:

(i) Ordering [petitioner-spouses] to jointly and severally pay the sum of P130,018.08 plus 5% interest per month as late payment charges from date of default on August 10, 1997, until fully paid;

(ii) Ordering [petitioner-spouses] to jointly and severally pay attorney's fees fixed in the reasonable sum of P10,000.00; and

(iii) Ordering [petitioner-spouses] to jointly and severally pay the costs of suit.

SO ORDERED.<sup>[34]</sup>

### ***Ruling of the Regional Trial Court (RTC)***

On appeal,<sup>[35]</sup> the RTC, Branch 34, reversed the MeTC Decision. Unlike the

MeTC, the RTC gave credence to the testimony of petitioner Manolito that he informed Citytrust of the theft of the mortgaged vehicle by sending through fax all the necessary documents.<sup>[36]</sup> According to the RTC, since there was sufficient notice of the theft, respondent BPI should have collected the proceeds of the insurance policy and applied the same to the remaining obligation of petitioner-spouses.<sup>[37]</sup>

The *fallo* of the RTC Order<sup>[38]</sup> dated July 18, 2005 reads:

WHEREFORE, premised from the above considerations and findings, the decision appealed from is hereby reversed and set aside.

The Complaint and the counterclaim are hereby DISMISSED for lack of merit.

SO ORDERED.<sup>[39]</sup>

### ***Ruling of the Court of Appeals***

Aggrieved, respondent BPI elevated the case to the CA via a Petition for Review under Rule 42 of the Rules of Court.

On November 16, 2007, the CA reversed and set aside the RTC Order and reinstated the MeTC Decision, thus:

WHEREFORE, the instant petition for review is GRANTED. The Order issued by the Regional Trial Court of Manila (Branch 34), dated July 18, 2005, in Civil Case No. 05-111630, is REVERSED and SET ASIDE and the Decision of the Metropolitan Trial Court of Manila (Branch 6) is REINSTATED. No pronouncement as to costs.

SO ORDERED.<sup>[40]</sup>

Petitioner-spouses moved for reconsideration, which the CA partly granted in its September 19, 2008 Resolution,<sup>[41]</sup> the dispositive portion of which reads:

WHEREFORE, the foregoing premises considered, our decision of 16 November 2007 is deemed amended only to the extent herein discussed and the dispositive portion of said decision should now read as follows:

“WHEREFORE, the instant petition for review is GRANTED. The Order issued by the Regional Trial Court of

Manila (Branch 34), dated July 18, 2005, in Civil Case No. 05-111630, is REVERSED and SET ASIDE and the Decision of the Metropolitan Trial Court of Manila (Branch 6) is REINSTATED with the [lone] modification that the therein ordered payment of 5% interest per month as late payment charges, is reduced to 1% interest per month from date of default on August 10, 1997 until fully paid.

No pronouncement as to costs.”

IT IS SO ORDERED.<sup>[42]</sup>

## Issue

Hence, this recourse by petitioner-spouses arguing that:

THE REVERSAL BY THE [CA] OF THE DECISION OF THE [RTC] OF MANILA (BRANCH 34) THAT THE PETITIONERS HAVE SATISFIED THE REQUIRED NOTICE OF LOSS TO [CITYTRUST] IS CONTRARY TO LAW AND THE DECISIONS OF THIS HONORABLE COURT.<sup>[43]</sup>

Ultimately, the issue boils down to the credibility of petitioner Manolito's testimony.

### ***Petitioner-spouses' Arguments***

Petitioner-spouses contend that the CA erred in not giving weight and credence to the testimony of petitioner Manolito.<sup>[44]</sup> They claim that his credibility was never an issue before the MeTC<sup>[45]</sup> and that his testimony, that he sent notice and proof of loss to Citytrust through fax, need not be supported by the facsimile report since it was not controverted by respondent BPI.<sup>[46]</sup> Hence, they insist that his testimony together with the documents presented is sufficient to prove that Citytrust received notice and proof of loss of the mortgaged vehicle.<sup>[47]</sup> Having done their part, they should be absolved from paying their remaining obligation.<sup>[48]</sup> Respondent BPI, on the other hand, should bear the loss for failing to collect the proceeds of the insurance.<sup>[49]</sup>

### ***Respondent BPI's Arguments***

Respondent BPI counter-argues that the burden of proving the existence of an alleged fact rests on the party asserting it.<sup>[50]</sup> In this case, the burden of proving that the mortgaged vehicle was stolen and that Citytrust received notice and proof of loss of the mortgaged vehicle rests on petitioner-spouses.<sup>[51]</sup> Unfortunately, they failed to present clear and convincing evidence to prove these allegations.<sup>[52]</sup> In any case, even if they were able to prove by clear and convincing evidence that notice and proof of loss of the mortgaged vehicle was indeed faxed to Citytrust, this would not absolve them from liability because the original documents were not delivered to Citytrust or respondent BPI.<sup>[53]</sup> Without the original documents, Citytrust or respondent BPI would not be able to file an insurance claim.<sup>[54]</sup>

## Our Ruling

The Petition is bereft of merit.

### ***The party who alleges a fact has the burden of proving it.***

Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.<sup>[55]</sup> Once the plaintiff has established his case, the