

SECOND DIVISION

[G.R. NO. 158635, December 09, 2005]

**MAGNA FINANCIAL SERVICES GROUP, INC., PETITIONER, VS.
ELIAS COLARINA, RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

The undisputed facts of this case show that on 11 June 1997, Elias Colarina bought on installment from Magna Financial Services Group, Inc., one (1) unit of Suzuki Multicab, more particularly described as follows:

MAKE	- SUZUKI MULTICAB
MODEL	- ER HT
ENGINE NO	- 834963
FRAME NO.	- LTO -067886-RO7-C
COLOR	- WHITE ^[1]

After making a down payment, Colarina executed a promissory note for the balance of P229,284.00 payable in thirty-six (36) equal monthly installments at P6,369.00 monthly, beginning 18 July 1997. To secure payment thereof, Colarina executed an integrated promissory note and deed of chattel mortgage over the motor vehicle.

Colarina failed to pay the monthly amortization beginning January 1999, accumulating an unpaid balance of P131,607.00. Despite repeated demands, he failed to make the necessary payment. On 31 October 2000 Magna Financial Services Group, Inc. filed a Complaint for Foreclosure of Chattel Mortgage with Replevin^[2] before the Municipal Trial Court in Cities (MTCC), Branch 2, Legaspi City, docketed as Civil Case No. 4822.^[3] Upon the filing of a Replevin Bond, a Writ of Replevin was issued by the MTCC. On 27 December 2000, summons, together with a copy of the Writ of Replevin, was served on Colarina who voluntarily surrendered physical possession of the vehicle to the Sheriff, Mr. Antonio Lozano. On 02 January 2001, the aforesaid motor vehicle was turned over by the sheriff to Magna Financial Services Group, Inc.^[4] On 12 July 2001, Colarina was declared in default for having filed his answer after more than six (6) months from the service of summons upon him. Thereupon, the trial court rendered judgment based on the facts alleged in the Complaint. In a decision dated 23 July 2001, it held:^[5]

WHEREFORE, judgment is hereby rendered in favor of plaintiff Magna Financial Services Group, Inc. and against the defendant Elias Colarina, ordering the latter:

- a) to pay plaintiff the principal sum of one hundred thirty one thousand six hundred seven (P131,607.00)

pesos plus penalty charges at 4.5% per month computed from January, 1999 until fully paid;

b) to pay plaintiff P10,000.00 for attorney's fees; and

c) to pay the costs.

The foregoing money judgment shall be paid within ninety (90) days from the entry of judgment. In case of default in such payment, the one (1) unit of Suzuki Multicab, subject of the writ of replevin and chattel mortgage, shall be sold at public auction to satisfy the said judgment.^[6]

Colarina appealed to the Regional Trial Court (RTC) of Legazpi City, Branch 4, where the case was docketed as Civil Case No. 10013. During the pendency of his appeal before the RTC, Colarina died and was substituted in the case by his heirs.^[7] In a decision dated 30 January 2002, the RTC affirmed *in toto* the decision of the MTCC.^[8]

Colarina filed a Petition for Review before the Court of Appeals, docketed as CA-G.R. SP No. 69481. On 21 January 2003, the Court of Appeals rendered its decision^[9] holding:

. . . We find merit in petitioners' assertion that the MTC and the RTC erred in ordering the defendant to pay the unpaid balance of the purchase price of the subject vehicle irrespective of the fact that the instant complaint was for the foreclosure of its chattel mortgage. The principal error committed by the said courts was their immediate grant, however erroneous, of relief in favor of the respondent for the payment of the unpaid balance without considering the fact that the very prayer it had sought was inconsistent with its allegation in the complaint.

Verily, it is beyond cavil that the complaint seeks the judicial foreclosure of the chattel mortgage. The fact that the respondent had unconscionably sought the payment of the unpaid balance regardless of its complaint for the foreclosure of the said mortgage is glaring proof that it intentionally devised the same to deprive the defendant of his rights. A judgment in its favor will in effect allow it to retain the possession and ownership of the subject vehicle and at the same time claim against the defendant for the unpaid balance of its purchase price. In such a case, the respondent would luckily have its cake and eat it too. Unfortunately for the defendant, the lower courts had readily, probably unwittingly, made themselves abettors to respondent's devise to the detriment of the defendant.

. . .

WHEREFORE, finding error in the assailed decision, the instant petition is hereby GRANTED and the assailed decision is hereby REVERSED AND SET ASIDE. Let the records be remanded to the court of origin. Accordingly, the foreclosure of the chattel mortgage over the subject vehicle as prayed for by the respondent in its complaint without any right to seek the payment of the unpaid balance of the purchase price or any

deficiency judgment against the petitioners pursuant to Article 1484 of the Civil Code of the Philippines, is hereby ORDERED.^[10]

A Motion for Reconsideration dated 11 February 2003^[11] filed by Magna Financial Services Group, Inc., was denied by the Court of Appeals in a resolution dated 22 May 2003.^[12] Hence, this Petition for Review on *Certiorari* based on the sole issue:

WHAT IS THE TRUE NATURE OF A FORECLOSURE OF CHATTEL MORTGAGE, EXTRAJUDICIAL OR JUDICIAL, AS AN EXERCISE OF THE 3RD OPTION UNDER ARTICLE 1484, PARAGRAPH 3 OF THE CIVIL CODE.

In its Memorandum, petitioner assails the decision of the Court of Appeals and asserts that a mortgage is only an accessory obligation, the principal one being the undertaking to pay the amounts scheduled in the promissory note. To secure the payment of the note, a chattel mortgage is constituted on the thing sold. It argues that an action for foreclosure of mortgage is actually in the nature of an action for sum of money instituted to enforce the payment of the promissory note, with execution of the security. In case of an extrajudicial foreclosure of chattel mortgage, the petition must state the amount due on the obligation and the sheriff, after the sale, shall apply the proceeds to the unpaid debt. This, according to petitioner, is the true nature of a foreclosure proceeding as provided under Rule 68, Section 2 of the Rules of Court.^[13]

On the other hand, respondent countered that the Court of Appeals correctly set aside the trial court's decision due to the inconsistency of the remedies or reliefs sought by the petitioner in its Complaint where it prayed for the custody of the chattel mortgage and at the same time asked for the payment of the unpaid balance on the motor vehicle.^[14]

Article 1484 of the Civil Code explicitly 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 or 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.

Our Supreme Court in *Bachrach Motor Co., Inc. v. Millan*^[15] held: "Undoubtedly the principal object of the above amendment (referring to Act 4122 amending Art. 1454, Civil Code of 1889) was to remedy the abuses committed in connection with the foreclosure of chattel mortgages. This amendment prevents mortgagees from seizing the mortgaged property, buying it at foreclosure sale for a low price and then bringing the suit against the mortgagor for a deficiency judgment. The almost

invariable result of this procedure was that the mortgagor found himself minus the property and still owing practically the full amount of his original indebtedness."

In its Complaint, Magna Financial Services Group, Inc. made the following prayer:

WHEREFORE, it is respectfully prayed that judgment render ordering defendant:

1. To pay the principal sum of P131,607.00 with penalty charges at 4.5% per month from January 1999 until paid plus liquidated damages.
2. Ordering defendant to reimburse the plaintiff for attorney's fee at 25% of the amount due plus expenses of litigation at not less than P10,000.00.
3. Ordering defendant to surrender to the plaintiff the possession of the Multicab described in paragraph 2 of the complaint.
4. Plaintiff prays for other reliefs just and equitable in the premises.

It is further prayed that *pendent lite*, an Order of Replevin issue commanding the Provincial Sheriff at Legazpi City or any of his deputies to take such multicab into his custody and, after judgment, upon default in the payment of the amount adjudged due to the plaintiff, to sell said chattel at public auction in accordance with the chattel mortgage law.^[16]

In its Memorandum before us, petitioner resolutely declared that it has opted for the remedy provided under Article 1484(3) of the Civil Code,^[17] that is, to *foreclose* the chattel mortgage.

It is, however, unmistakable from the Complaint that petitioner preferred to avail itself of the first and third remedies under Article 1484, at the same time suing for replevin. For this reason, the Court of Appeals justifiably set aside the decision of the RTC. Perusing the Complaint, the petitioner, under its prayer number 1, sought for the payment of the unpaid amortizations which is a remedy that is provided under Article 1484(1) of the Civil Code, allowing an unpaid vendee to exact fulfillment of the obligation. At the same time, petitioner prayed that Colarina be ordered to surrender possession of the vehicle so that it may ultimately be sold at public auction, which remedy is contained under Article 1484(3). Such a scheme is not only irregular but is a flagrant circumvention of the prohibition of the law. By praying for the foreclosure of the chattel, Magna Financial Services Group, Inc. renounced whatever claim it may have under the promissory note.^[18]

Article 1484, paragraph 3, provides that if the vendor has availed himself of the right to foreclose the chattel mortgage, "he shall have no further action against the purchaser to recover any unpaid balance of the purchase price. Any agreement to the contrary shall be void." In other words, in all proceedings for the foreclosure of chattel mortgages executed on chattels which have been sold on the installment plan, the mortgagee is limited to the property included in the mortgage.^[19]

Contrary to petitioner's claim, a contract of chattel mortgage, which is the