

## **SECOND DIVISION**

**[ G.R. No. 120528, January 29, 2001 ]**

**ATTY. DIONISIO CALIBO, JR., PETITIONER, VS. COURT OF APPEALS AND DR. PABLO U. ABELLA, RESPONDENTS.**

### **D E C I S I O N**

**QUISUMBING, J.:**

Before us is the petition for review on certiorari by petitioner Dionisio Calibo, Jr., assailing the decision of the Court of Appeals in CA-G.R. CV No. 39705, which affirmed the decision of the Regional Trial Court of Cebu, Branch 11, declaring private respondent as the lawful possessor of a tractor subject of a replevin suit and ordering petitioner to pay private respondent actual damages and attorney's fees.

The facts of the case, as summarized by respondent court, are undisputed.

"...on January 25, 1979, plaintiff-appellee [herein petitioner] Pablo U. Abella purchased an MF 210 agricultural tractor with Serial No. 00105 and Engine No. P126M00199 (Exhibit A; Record, p.5) which he used in his farm in Dagohoy, Bohol.

Sometime in October or November 1985, Pablo Abella's son, Mike Abella rented for residential purposes the house of defendant-appellant Dionisio R. Calibo, Jr., in Tagbilaran City.

In October 1986, Pablo Abella pulled out his aforementioned tractor from his farm in Dagohoy, Bohol, and left it in the safekeeping of his son, Mike Abella, in Tagbilaran City. Mike kept the tractor in the garage of the house he was leasing from Calibo.

Since he started renting Calibo's house, Mike had been religiously paying the monthly rentals therefor, but beginning November of 1986, he stopped doing so. The following month, Calibo learned that Mike had never paid the charges for electric and water consumption in the leased premises which the latter was duty-bound to shoulder. Thus, Calibo confronted Mike about his rental arrears and the unpaid electric and water bills. During this confrontation, Mike informed Calibo that he (Mike) would be staying in the leased property only until the end of December 1986. Mike also assured Calibo that he would be settling his account with the latter, offering the tractor as security. Mike even asked Calibo to help him find a buyer for the tractor so he could sooner pay his outstanding obligation.

In January 1987 when a new tenant moved into the house formerly leased to Mike, Calibo had the tractor moved to the garage of his father's house, also in Tagbilaran City.

Apprehensive over Mike's unsettled account, Calibo visited him in his Cebu City address in January, February and March, 1987 and tried to collect payment. On all three occasions, Calibo was unable to talk to Mike as the latter was reportedly out of town. On his third trip to Cebu City, Calibo left word with the occupants of the Abella residence thereat that there was a prospective buyer for the tractor. The following week, Mike saw Calibo in Tagbilaran City to inquire about the possible tractor buyer. The sale, however, did not push through as the buyer did not come back anymore. When again confronted with his outstanding obligation, Mike reassured Calibo that the tractor would stand as a guarantee for its payment. That was the last time Calibo saw or heard from Mike.

After a long while, or on November 22, 1988, Mike's father, Pablo Abella, came to Tagbilaran City to claim and take possession of the tractor. Calibo, however, informed Pablo that Mike left the tractor with him as security for the payment of Mike's obligation to him. Pablo offered to write Mike a check for P2,000.00 in payment of Mike's unpaid lease rentals, in addition to issuing postdated checks to cover the unpaid electric and water bills the correctness of which Pablo said he still had to verify with Mike. Calibo told Pablo that he would accept the P2,000.00-check only if the latter would execute a promissory note in his favor to cover the amount of the unpaid electric and water bills. Pablo was not amenable to this proposal. The two of them having failed to come to an agreement, Pablo left and went back to Cebu City, unsuccessful in his attempt to take possession of the tractor."<sup>[1]</sup>

On November 25, 1988, private respondent instituted an action for replevin, claiming ownership of the tractor and seeking to recover possession thereof from petitioner. As adverted to above, the trial court ruled in favor of private respondent; so did the Court of Appeals when petitioner appealed.

The Court of Appeals sustained the ruling of the trial court that Mike Abella could not have validly pledged the subject tractor to petitioner since he was not the owner thereof, nor was he authorized by its owner to pledge the tractor. Respondent court also rejected petitioner's contention that, if not a pledge, then a deposit was created. The Court of Appeals said that under the Civil Code, the primary purpose of a deposit is only safekeeping and not, as in this case, securing payment of a debt.

The Court of Appeals reduced the amount of actual damages payable to private respondent, deducting therefrom the cost of transporting the tractor from Tagbilaran, Bohol, to Cebu City.

Hence, this petition.

Essentially, petitioner claims that the tractor in question was validly pledged to him by private respondent's son Mike Abella to answer for the latter's monetary obligations to petitioner. In the alternative, petitioner asserts that the tractor was left with him, in the concept of an innkeeper, on deposit and that he may validly hold on thereto until Mike Abella pays his obligations.

Petitioner maintains that even if Mike Abella were not the owner of the tractor, a