

FIRST DIVISION

[G.R. No. 111080., April 05, 2000]

**JOSE S. OROSA AND MARTHA P. OROSA, PETITIONERS, VS. HON.
COURT OF APPEALS, FCP CREDIT CORPORATION,
RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

On December 6, 1984, private respondent FCP Credit Corporation filed a complaint for replevin and damages^[1] in the Regional Trial Court of Manila against petitioner Jose S. Orosa and one John Doe to recover possession of a 1983 Ford Laser 1.5 Sedan with Motor and Serial No. SUNKBT-14584. The complaint alleged that on September 28, 1983, petitioner purchased the subject motor vehicle on installment from Fiesta Motor Sales Corporation. He executed and delivered to Fiesta Motor Sales Corp. a promissory note in the sum of P133,824.00 payable in monthly installments.^[2] To secure payment, petitioner executed a chattel mortgage over the subject motor vehicle in favor of Fiesta Motor Sales Corp. On September 28, 1983, Fiesta Motor Sales assigned the promissory note and chattel mortgage to private respondent FCP Credit Corporation. The complaint further alleged that petitioner failed to pay part of the installment which fell due on July 28, 1984 as well as three (3) consecutive installments which fell due on August 28, September 28, and October 28, 1984. Consequently, private respondent FCP Credit Corporation demanded from petitioner payment of the entire outstanding balance of the obligation amounting to P106,154.48 with accrued interest and to surrender the vehicle which petitioner was allegedly detaining.

After trial, the lower court dismissed private respondent's complaint in a Decision dated March 25, 1988, the decretal portion of which reads:

WHEREFORE, judgment is rendered for the defendant, and against the plaintiff:

- 1) Dismissing the complaint for lack of merit;
- 2) Declaring that the plaintiff was not entitled to the Writ of Replevin, issued on January 7, 1985, and is now liable to the defendant for actual damages under the Replevin bond it filed;
- 3) On defendant's counter-claim, ordering the plaintiff to pay the defendant the sum of P400,000.00 as moral damages, P100,000.00 as exemplary damages, and P50,000.00 as, and for, attorney's fees;
- 4) Ordering the plaintiff to return to the defendant the subject 1983 Ford Laser Sedan, with Motor or Serial No. SUNKBT-14584, or its equivalent, in

kind or value, in cash, as of this date, and to pay the costs.

SO ORDERED.

The trial court ruled that private respondent FCP had no reason to file the present action since petitioner already paid the installments for the months of July to November 1984, which are the sole bases of the complaint. The lower court declared that private respondent was not entitled to the writ of replevin, and was liable to petitioner for actual damages under the replevin bond it filed.^[3]

Ruling on petitioner's counterclaim, the trial court stated that there was no legal or factual basis for the writ of replevin and that its enforcement by the sheriff was *"highly irregular, and unlawful, done, as it was, under shades of extortion, threats and force."*^[4] The trial court ordered private respondent to pay the sum of P400,000.00 as moral damages; P100,000.00 as exemplary damages and P50,000.00 as attorney's fees. Private respondent was also ordered to return to petitioner the 1983 Ford Laser 1.5 Sedan, or its equivalent, in kind or value in cash, as of date of judgment and to pay the costs of the suit.^[5]

On June 7, 1988, a "Supplemental Decision" was rendered by the trial court ordering private respondent's surety, Stronghold Insurance Co., Inc. to jointly and severally [with private respondent] return to petitioner the 1983 Ford Laser 1.5 Sedan or its equivalent in kind or in cash and to pay the damages specified in the main decision to the extent of the value of the replevin bond in the amount of P210,000.00.^[6]

The surety company filed with the Court of Appeals a petition for certiorari to annul the Order of the trial court denying its motion for partial reconsideration, as well as the Supplemental Decision. On the other hand, private respondent appealed the decision of the RTC Manila to the Court of Appeals.

The surety company's petition for certiorari, docketed as CA-G.R. SP No. 14938, was dismissed by the Court of Appeals' First Division which upheld the trial court's order of execution pending appeal.^[7] On November 6, 1989, this Court affirmed the Court of Appeals decision, but deleted the order for the issuance of a writ of execution pending appeal.^[8]

Meanwhile, in private respondent's appeal, the Court of Appeals' Eighth Division partially affirmed the ruling of the trial court, in a Decision dated April 19, 1993, the dispositive portion of which reads:^[9]

WHEREFORE, the Decision of 25 March 1988 of the Regional Trial Court, Branch 3, Manila is hereby AFFIRMED with the following modifications:

- (1) The award of moral damages, exemplary damages and attorney's fees is DELETED;
- (2) The order directing plaintiff-appellant FCP Credit Corporation to return to defendant-appellee Jose S. Orosa the subject 1983 Ford Laser Sedan, with Motor and Serial No. SUNKBT-14584, its equivalent, in kind or value in cash,

- as of 25 March 1988, and to pay the costs is DELETED;
and;
- (3) Plaintiff-appellant FCP Credit Corporation is ordered to pay defendant-appellee Jose S. Orosa the amount equivalent to the value of the fourteen (14) monthly installments made by the latter to the former on the subject motor vehicle, with interest from the time of filing of the complaint or from 6 December 1984.

No costs.

SO ORDERED.

Hence, this petition for review, on the following assignments of error:^[10]

- (1) The Hon. Court of Appeals (former Eighth Division) acted without or in excess of jurisdiction when it reversed a final decision dated September 9, 1988, of a co-equal division of the Hon. Court of Appeals (Special First Division) promulgated in CA G.R. No. 14938, and which was sustained by the Hon. Supreme Court in a final decision promulgated in G.R. No. 84979 dated November 6, 1989 which cases have the same causes of action, same set of facts, the same parties and the same relief.
- (2) The Hon. Court of Appeals (former Eighth Division) acted with grave abuse of discretion and authority when it considered causes of actions not allege in the complaint and which were raised for the first time on appeal in deciding this case.
- (3) The Hon. Court of Appeals (former Eighth Division) committed serious error in applying the case of Filinvest Credit Corporation vs. Ivans Mendez, 152 SCRA 598, as basis in deciding this case when said case has a different set of facts from this case.

In its first assignment of error, petitioner alleges that the Eighth Division of the Court of Appeals had no jurisdiction to review the present case since the First Division of the Court of Appeals already passed upon the law and the facts of the same. Petitioner alleges that the present appeal involves the same causes of action, same parties, same facts and same relief involved in the decision rendered by the First Division and affirmed by this Court in G.R. No. 84979.^[11]

Petitioner's argument is untenable. Jurisdiction is simply the power or authority to hear a case. The appellate jurisdiction of the Court of Appeals to review decisions and orders of lower courts is conferred by Batas Pambansa Blg. 129. More importantly, petitioner cannot now assail the Court of Appeals' jurisdiction after having actively participated in the appeal and after praying for affirmative relief.^[12]

Neither can petitioner argue that *res judicata* bars the determination of the present case. The two cases involve different subject matters, parties and seek different reliefs. decision

The petition docketed as CA-G.R. SP No. 14938 was for certiorari with injunction, brought by Stronghold Insurance Company, Inc. alleging that there was grave abuse of discretion when the trial court adjudged it liable for damages without due process, in violation of Rule 60, Section 10 in relation to Rule 57, Section 20, of the Rules of Court. The surety also questioned the propriety of the writ of execution issued by the trial court pending appeal.^[13]

On the other hand, CA-G.R. CV No. 25929 was filed by petitioner Orosa under Rule 45 of the Revised Rules of Court raising alleged errors of law on the part of the trial court. The subject of the appeal was the main decision, while the subject of the petition in CA-G.R. SP No. 14938 was the Supplemental Decision.

We agree with the Court of Appeals that:^[14]

The decisions of the Court of Appeals in CA-G.R. SP No. 14938 and the Supreme Court in G.R. No. 84979 did not pass on the merits of this case. It merely ruled on the issues of whether the surety, Stronghold Insurance Co., Inc., can be held jointly and solidarily liable with plaintiff-appellant and whether execution pending appeal is proper under the facts and circumstances of this case. Consequently, this Court is not marionettally stopped from reviewing the conclusions reached by the court *a quo*. (underscoring ours)

In its second assigned error, petitioner posits that the Court of Appeals committed grave abuse of discretion when it considered causes of actions which were raised for the first time on appeal.^[15]

True, private respondent submitted issues to the Court of Appeals which were not raised in the original complaint. Private respondent belatedly pointed out that:^[16]

1.1. It is pertinent to note that Defendant-Appellee has waived prior notice and demand in order to be rendered in default, as in fact the Promissory Note expressly stipulates that the monthly installments shall be paid on the date they fall due, without need of prior notice or demand.

1.2. Said Promissory Note likewise expressly stipulates that a late payment charge of 2% per month shall be added on each unpaid installment from maturity thereof until fully paid.

1.3. Of equal significance is the Acceleration Clause in the Promissory Note which states that if default be made in the payment of any of the installments or late payment charges thereon when the same became due and payable, the total principal sum then remaining unpaid, together with the agreed late payment charges thereon, shall at once become due and payable.

Private respondent argued that based on the provisions of the Promissory Note itself, petitioner incurred in default since, even though there was actual payment of the installments which fell due on July 28, 1984, as well as the three installments on August 28 to October 28, 1984, *the payments were all late and irregular*.^[17] Private respondent also argued that petitioner assigned the subject car to his daughter without the written consent of the obligee, and hence, violated the terms of the