ELEVENTH DIVISION

[CA-G.R. CV No. 102750, March 05, 2015]

BPI FAMILY SAVINGS BANK, INC., PLAINTIFF-APPELLEE, VS. GREGORIO D. CANEDA, JR., CHERRY L. CANEDA AND JOHN DOE, DEFENDANTS-APPELLANTS.

DECISION

LIBREA-LEAGOGO, C.C., J.:

Before this Court is an appeal under Rule 41 of the Rules of Court, assailing the Decision[1]dated 10 March 2014 of the Regional Trial Court, National Capital Judicial Region, Branch 1, Manila in the case entitled *"BPI Family Savings Bank, Inc. v. Gregorio D. Caneda, Jr., Cherry L. Caneda and John Doe,"* docketed as *Civil Case No. 10-123066,* which ruled in favor of the plaintiff.

Defendants-appellants filed their Appellants' Brief[2] dated 16 October 2014. Plaintiff-appellee also filed its Appellee's Brief[3] dated 25 November 2014. Per JRD verification[4] dated 13 February 2015, no reply brief has been filed as per docket book entry. Thus the case is submitted for decision.

FACTUAL ANTECEDENTS

A Complaint[5] dated 23 February 2010 for *Replevin* and Damages was filed by plaintiff BPI Family Savings Bank, Inc. ("BPI Family," for brevity) against defendants Gregorio D. Caneda, Jr., ("Gregorio," for brevity), Cherry L. Caneda ("Cherry," for brevity) and John Doe, in the case docketed as *Civil Case No. 10-123066,* before the Regional Trial Court of Manila, and raffled off to Branch 1.

In the said Complaint it was alleged, *inter alia,* that: on 01 August 2006, for value received, defendants executed and delivered to Citimotors, Inc.-Las Pinas, ("Citimotors," for brevity) a Promissory Note with Chattel Mortgage ("PNCM," for brevity) where they jointly and severally obligated themselves to pay the latter, the sum of Php1,081,920.00 payable in monthly installments; said obligation, together with the other obligations defined in the PNCM, are secured by a chattel mortgage on a certain motor vehicle; said motor vehicle is described as a one (1) unit 2006 Mits. Adventure GLS A/T, with Motor No. 4G63AC4084 and Serial No. PAEVB2RX16B00754; said PNCM was registered with the proper Register of Deeds and the Land Transportation Office; on 01 August 2006, Citimotors with notice to defendants, assigned to plaintiff all its rights, title and interest to the aforesaid PNCM, as shown by the Deed of Assignment executed by Citimotors in favor of plaintiff; defendants Gregorio, Cherry and John Doe, defaulted in complying with the terms and conditions of the PNCM by their failure to pay the ten (10) consecutive monthly installments which fell due on 03 May 2009 up to 03 February 2010; plaintiff demanded from said defendants the whole balance of the PNCM in the sum

of Php536,652.11 including accrued late payment charges and interest for the purpose of foreclosure in accordance with the undertaking stated in the PNCM; said defendants failed to comply with plaintiff's demands; it is provided in the PNCM that failure on the part of defendants Gregorio and Cherry to pay any installment when due shall make the subsequent installment and the entire balance of the obligation immediately due and payable; by virtue of the refusal of the defendants to pay the entire balance of the obligation in the amount of Php491,893.23, together with the accrued late payment charges/interest thereon at the rate of 5% per month as of 24 September 2010, plaintiff was constrained to institute the instant action; defendants became liable to the plaintiff for the additional sum of Php225,579.78 representing the amount stipulated in the PNCM as attorney's fees, liquidated damages and other expenses; defendants' obligation is itemized in a statement of account; it is provided in the PNCM that defendants agree that any legal action arising therefrom may be instituted in the courts of the City of Manila, Philippines, and that plaintiff shall be entitled to 24% attorney's fees and 15% liquidated damages computed against the amounts due from defendants; plaintiff is entitled to the possession of the mortgaged motor vehicle and expenses for recovery of possession; defendants are wrongfully detaining the said motor vehicle for the purpose of defeating plaintiff's mortgage lien; said mortgaged motor vehicle has not been taken for any tax assessment or fine pursuant to law or seized under an execution of attachment or otherwise placed under *custodia legis,* or if so seized, the same is exempt from such seizure and that the actual value of the said motor vehicle does not exceed Php492,000.00; plaintiff is willing to file a sufficient bond in an amount double the actual value of the motor vehicle for the return of the same to the defendants if the return thereof be adjudged; it is respectfully prayed that upon approval of the bond, a writ of *replevin* be issued ordering the seizure of the motor vehicle, complete with its accessories and equipment, with the registration certificate thereof; in the event that manual delivery of said motor vehicle cannot be effected, to render judgment in favor of plaintiff and against defendants ordering them to pay plaintiff jointly and severally the sum of Php491,893.23 plus late payment charges/interest at the rate of 5% per month from 24 September 2010 until fully paid; in either case, to order defendants to pay jointly and severally the sum of Php225,579.78 as attorney's fees, liquidated damages, bonding fees, other expenses incurred in the seizure of the motor vehicle; and costs of suit.

Summons was issued dated 02 March 2010[6] and per Sheriff's Return[7] dated 31 January 2011, the original of the summons was returned to the trial court as it was unserved for the reason that the defendants were always out of town. Alias Summons[8] dated 07 March 2011 was served as per Server's Return[9] dated 06 January 2012.

A Motion to Declare Defendants in Default and to Allow Plaintiff to Present Evidence *Ex Parte*[10] dated 23 February 2012 was filed by plaintiff as the reglementary period within which defendants should have filed their answer has expired. In an Order[11] dated 07 March 2012, the same was granted by the trial court.

Trial ensued.

Plaintiff's witness Lilie C. Ultu (“Ultu,” for brevity) executed a Judicial Affidavit[12] and testified in court.[13]

A Manifestation with Vigorous Opposition to Plaintiff's Motion to Declare Defendants in Default[14] dated 26 April 2012 was filed by defendants, which was received by the trial court on 16 May 2012.

In an Order[15] dated 24 July 2012, defendant Gregorio appeared before the trial court, explained himself and in conformity with plaintiff's counsel, agreed to settle whatever obligation he has with plaintiff. Upon the prayer of both counsel to suspend proceedings, the trial court ordered the suspension of proceedings for three months.

An Urgent Motion for Additional Time to Submit Compromise Agreement[16] dated 22 October 2012 was filed by defendant Gregorio for himself and for the other defendant.

In an Order[17] dated 28 May 2013, it was stated therein that: there is an Urgent Motion for Additional Time to Submit Compromise Agreement filed by defendants, but plaintiff's counsel manifested that they have yet to receive a copy of the Compromise Agreement; the records show that on 07 March 2012, plaintiff's Motion to Declare Defendants in Default was already granted and the same should stay; and plaintiff was ordered to continue the presentation of its evidence *ex parte* on 25 June 2013.

Plaintiff filed its Formal Offer of Evidence[18] dated 02 July 2013, offering Exhibits "A" to "G", and in an Order[19] dated 04 July 2013, plaintiff's Exhibits "A" to "G" were admitted. A Memorandum[20] dated 26 November 2013 was filed by plaintiff.

On 10 March 2014, the trial court rendered the assailed Decision,[21] the dispositive portion of which reads:

> *"WHEREFORE, in view of the foregoing considered, judgment is hereby rendered in favor of plaintiff and against defendants Caneda, ordering them to pay the plaintiff jointly and severally the sum of P491,893.23 with penalty charges thereon for late payment at a reduced rate of 12% per annum from September (sic) May 3, 2009, until fully paid, and attorney's fees in the amount of P50,000.00, plus the costs of this suit.*
>
> *SO ORDERED."*[22]

A Notice of Appeal[23] was filed by defendants on 02 June 2014, which was given due course in the Order[24] dated 04 June 2014.

RULING

Defendants-appellants assign the following errors, *viz*:

"*-I-*

> *THE COURT OF ORIGIN GRIEVOUSLY ERRED WHEN IT RENDERED THE ASSAILED DECISION DATED MARCH 10, 2014 IN FAVOR OF THE*

APPELLEE WITHOUT GIVING THE APPELLANTS THEIR DAY IN COURT.

-II-

THE COURT OF ORIGIN GRIEVOUSLY ERRED WHEN IT CONDUCTED AN EX-PARTE HEARING PRIOR TO THE RENDITION OF THE ASSAILED DECISION.

-III-

THE COURT OF ORIGIN ERRED WHEN IT COMPLETELY IGNORED AND CAPRICIOUSLY OPTED NOT TO PASS UPON THE ARGUMENTS AND EXPLANATION RAISED IN APPELLANTS' MANIFESTATION WITH VIGOROUS OPPOSITION TO PLAINTIFF'S MOTION TO DECLARE DEFENDANTS IN DEFAULT." [25]

Defendants-appellants contend, *inter alia,* that: the trial court erred when it ordered that the reception of plaintiff-appellee's evidence be conducted *ex parte* and thereafter submitted for decision; in the Order dated 07 March 2012, they were declared in default despite their opposition to plaintiff-appellee's motion to declare them in default; it is aggravated by the trial court's failure to consider and pass upon their explanation embodied in their Manifestation with Vigorous Opposition to the Motion to Declare them in Default; what is equally capricious is the trial court's actuation in taking as gospel truth the Server's Return particularly the statement that they were allegedly served with summons together with a copy of the Complaint; the Server's Return dated 06 January 2012 is inaccurate; it is incorrect to state that a certain Ronaldo Tanalgo is their caretaker; they do not know a certain Tanalgo and neither is there any caretaker of the three adjoining lots owned by their family; it is inaccurate to state in the return that defendant-appellant Cherry allegedly instructed the process server to serve the summons to the caretaker considering the fact that they never met nor did Cherry personally talk to the process server; there is no legal and factual bases to favorably consider plaintiff-appellee's motion to declare them in default; the process server ought to know that substituted service is justified only when personal service is impracticable or cannot be made within a reasonable time; assuming *arguendo* that service of the summons was made to Tanalgo, still such service is a defective service since the process server was actually talking to defendant-appellant Cherry as attested to in the Server's Return; their vigorous opposition to plaintiff-appellee's motion for default cannot be construed as an indication of any waiver to present evidence on their behalf; the abuse of authority in declaring them in default is grave abuse of judicial discretion which is tantamount to lack of jurisdiction, and there cannot be any final judgment on the merits; it has been held that where there is absence of defective service of summons, the court never acquires jurisdiction over their persons; and the assailed Decision should be set aside.

Plaintiff-appellee ripostes, *inter alia,* that: it has the legal right to demand for the balance of the defendants-appellants' obligation which ultimately became due and demandable after the latter defaulted in the payment thereof as stated in the PNCM; it being the rightful possessor of the subject vehicle, it had the right to collect from defendants-appellants the payment of their obligation; in the instant case, as long as it had a legal right to recover possession of the motor vehicle, the remedy of *replevin* would apply; evidence of non- payment of the loan for four (4) months was

properly presented by plaintiff-appellee, together with the oral and written demand; the total obligation of defendants-appellants was shown by the Statement of Account; their claim that they substantially paid their obligation with the bank is of no moment, for they failed to show proof of substantial payment; the only issue raised in the Appellants' Brief is the death of one of the defendants-appellants which was not however proved; the loan documents best answer the right of plaintiff-appellee to collect from defendants-appellants; with their failure to prove full payment of the loan obligation, it was validly decided that plaintiff-appellee has a valid cause of action to collect from them; defendants-appellants voluntarily appeared and offered settlement, hence, there was a valid service of summons and jurisdiction was obtained by the court; with their admission that they indeed appeared in court and requested for time to settle, the jurisdiction was already obtained by the trial court which even gave defendants-appellants more than a year to negotiate and settle with the bank but to no avail; and the appeal of defendants-appellants must be denied for utter lack of merit.

The appeal is bereft of merit.

Burden of proof is 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. It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence. Generally, the party who denies has no burden to prove. In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side. xxx By preponderance of evidence xxx is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. xxx (T)he plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's.[26]

In this case, defendants-appellants Gregorio and Cherry entered into a transaction with Citimotors as evinced by the PNCM[27] (Exh. "B"), and acknowledged before the Notary Public on 01 August 2006. In the said document executed by defendants-appellants, it is provided that the latter as mortgagors, jointly and severally promise to pay Citimotors as the mortgagee, it being understood that any reference to the mortgagee shall likewise refer to plaintiff-appelleee BPI Family as assignee, the amount of One Million Eighty One Thousand Nine Hundred Twenty Pesos (Php1,081,920.00), in monthly installments of Php18,032.00 payable in sixty (60) months. The said obligation is secured by a 2006 Mitsubishi Adventure GLS Sport Gas A/T under Motor No. 4G63AC4084, under Serial No. PAEVB2RX16B00754.[28] Defendants-appellants also executed BPI Family Auto Loan Application[29] dated 27 July 2006 (Exh. "F").

In the Judicial Affidavit[30] (Exh. "A") of plaintiff-appellee's witness Ultu, she stated that: she is an employee and an Account Servicing Officer of plaintiff-appellee bank; she is in charge of attending to the proper application of payments made by their clients to their respective accounts, and she analyzes delinquent accounts, with access to the records of delinquent clients; in the performance of her duties as an Account Service Officer, she came across the account of defendants-appellants;