



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MANOLITO DE LEON and
LOURDES E. DE LEON,

Petitioners,

G.R. No. 184565

Present:

- versus-

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ*

BANK OF THE PHILIPPINE
ISLANDS,

Respondent.

Promulgated:

NOV 20 2013 *H.M. Cabalag Perfecto*

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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.”¹

This Petition for Review on *Certiorari*² under Rule 45 of the Rules of Court assails the November 16, 2007 Decision³ and the September 19, 2008 Resolution⁴ 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

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¹ *Jison v. Court of Appeals*, 350 Phil. 138, 173 (1998).

² *Rollo*, pp. 11-37.

³ *Id.* at 39-46; penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Apolinario D. Bruselas, Jr.

⁴ *Id.* at 48-51; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Japar B. Dimaampao.

executed a Promissory Note⁵ binding themselves to pay Nissan Gallery Ortigas the amount of ₱458,784.00 in 36 monthly installments of ₱12,744.00, with a late payment charge of five percent (5%) per month.⁶ To secure the obligation under the Promissory Note, petitioner-spouses constituted a Chattel Mortgage⁷ over a 1995 Nissan Sentra 1300 4-Door LEC with Motor No. GA-13-549457B and Serial No. BBAB-13B69336.⁸

On the same day, Nissan Gallery Ortigas, with notice to petitioner-spouses, executed a Deed of Assignment⁹ of its rights and interests under the Promissory Note with Chattel Mortgage in favor of Citytrust Banking Corporation (Citytrust).¹⁰

On October 4, 1996, Citytrust was merged with and absorbed by respondent Bank of the Philippine Islands (BPI).¹¹

Petitioner-spouses, however, failed to pay their monthly amortizations from August 10, 1997 to June 10, 1998.¹² Thus, respondent BPI, thru counsel, sent them a demand letter¹³ dated October 16, 1998.

On November 19, 1998, respondent BPI filed before the Metropolitan Trial Court (MeTC) of Manila a Complaint¹⁴ for Replevin and Damages, docketed as Civil Case No. 161617 and raffled to Branch 6, against petitioner-spouses.¹⁵ The summons, however, remained unserved, prompting the MeTC to dismiss the case without prejudice.¹⁶ Respondent BPI moved for reconsideration on the ground that it was still verifying the exact address of petitioner-spouses.¹⁷ On March 21, 2002, the MeTC set aside the dismissal of the case.¹⁸ On April 24, 2002, summons was served on petitioner-spouses.¹⁹

Petitioner-spouses, in their Answer,²⁰ averred that the case should be dismissed for failure of respondent BPI to prosecute the case pursuant to Section

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CA *rollo*, p. 84.

6 Id.

7 Id. at 85-88.

8 Id. at 85.

9 Id. at 86.

10 Id.

11 *Rollo*, p. 40.

12 Id. at 57.

13 CA *rollo*, p. 90.

14 Id. at 75-83.

15 *Rollo*, pp. 52.

16 Id. at 53.

17 Id.

18 Id.

19 Id.

20 CA *rollo*, pp. 92-99.

³²¹ of Rule 17 of the Rules of Court;²² that their obligation was extinguished because the mortgaged vehicle was stolen while the insurance policy was still in force;²³ that they informed Citytrust of the theft of the mortgaged vehicle through its employee, Meldy Endaya (Endaya);²⁴ and that respondent BPI should have collected the insurance proceeds and applied the same to the remaining obligation.²⁵

On November 11, 2003, respondent BPI presented its evidence *ex parte*.²⁶ 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 Account²⁷ of petitioner-spouses.²⁸

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.²⁹

Ruling of the Metropolitan Trial Court

On November 17, 2004, the MeTC rendered a Decision³⁰ 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.³¹ The MeTC considered the testimony of petitioner Manolito dubious and self-serving.³² 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

²¹ Section 3. Dismissal due to fault of plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court’s own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

²² CA *rollo*, pp. 93-94.

²³ Id. at 94-98.

²⁴ Id. at 96.

²⁵ Id. at 96-98.

²⁶ *Rollo*, p. 55.

²⁷ CA *rollo*, p. 91.

²⁸ *Rollo*, p. 55.

²⁹ Id. at 55-56.

³⁰ Id. at 52-60; penned by Presiding Judge Ma. Theresa Dolores C. Gomez-Estoesta.

³¹ Id. at 58-59.

³² Id.

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.³³

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 ₱130,018.08 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 ₱10,000.00; and
- (iii) Ordering [petitioner-spouses] to jointly and severally pay the costs of suit.

SO ORDERED.³⁴

Ruling of the Regional Trial Court (RTC)

On appeal,³⁵ the RTC, Branch 34, reversed the MeTC Decision. Unlike the

³³ Id. at 58.

³⁴ Id. at 60.

³⁵ Docketed as Civil Case No. 05-111630.

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.³⁶ 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.³⁷ The *fallo* of the RTC Order³⁸ 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.³⁹

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.⁴⁰

Petitioner-spouses moved for reconsideration, which the CA partly granted in its September 19, 2008 Resolution,⁴¹ 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

³⁶ *Rollo*, pp. 65-67.

³⁷ *Id.* at 67-68.

³⁸ *Id.* at 61-68; penned by Judge Romulo A. Lopez.

³⁹ *Id.* at 68.

⁴⁰ *Id.* at 46.

⁴¹ *Id.* at 48-51.

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.⁴²

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.⁴³

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.⁴⁴ They claim that his credibility was never an issue before the MeTC⁴⁵ 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.⁴⁶ 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.⁴⁷ Having done their part, they should be absolved from paying their remaining obligation.⁴⁸ Respondent BPI, on the other hand, should bear the loss for failing to collect the proceeds of the insurance.⁴⁹

⁴² Id. at 50-51.

⁴³ Id. at 22.

⁴⁴ Id. at 124-128.

⁴⁵ Id. at 132.

⁴⁶ Id. at 131-134.

⁴⁷ Id. at 124-125

⁴⁸ Id. at 125.

⁴⁹ Id.

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.⁵⁰ 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.⁵¹ Unfortunately, they failed to present clear and convincing evidence to prove these allegations.⁵² 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.⁵³ Without the original documents, Citytrust or respondent BPI would not be able to file an insurance claim.⁵⁴

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.⁵⁵ Once the plaintiff has established his case, the burden of evidence shifts to the defendant, who, in turn, has the burden to establish his defense.⁵⁶

In this case, respondent BPI, as plaintiff, had to prove that petitioner-spouses failed to pay their obligations under the Promissory Note. Petitioner-spouses, on the other hand, had to prove their defense that the obligation was extinguished by the loss of the mortgaged vehicle, which was insured.

However, as aptly pointed out by the MeTC, the mere loss of the mortgaged vehicle does not automatically relieve petitioner-spouses of their obligation⁵⁷ as paragraph 7 of the Promissory Note with Chattel Mortgage provides that:

⁵⁰ Id. at 143.
⁵¹ Id. at 143-144.
⁵² Id. at 144.
⁵³ Id.
⁵⁴ Id.
⁵⁵ *Aznar v. Citibank, N.A. (Philippines)*, 548 Phil. 218, 230 (2007).
⁵⁶ *Jison v. Court of Appeals*, supra note 1.
⁵⁷ *Rollo*, pp. 57-58.

7. The said MORTGAGOR covenants and agrees to procure and maintain through the MORTGAGEE, a comprehensive insurance from a duly accredited and responsible insurance company approved by the MORTGAGEE, over the personalty hereinabove mortgaged to be insured against loss or damage by accident, theft, and fire for a period of one (1) year from date hereof and every year thereafter until the mortgage DEBTS are fully paid with an insurance company or companies acceptable to the MORTGAGEE in an amount not less than the outstanding balance of the mortgage DEBTS; that he/it will make all loss, if any, under such policy or policies payable to the MORTGAGEE forthwith. x x x

x x x x

MORTGAGOR shall immediately notify MORTGAGEE in case of los[s], damage or accident suffered by herein personalty mortgaged and submit proof of such los[s], damages or accident. Said los[s], damage or accident for any reason including fortuitous event shall not suspend, abate, or extinguish [petitioner spouses'] obligation under the promissory note or sums due under this contract x x x

In case of loss or damage, the MORTGAGOR hereby irrevocabl[y] appoints the MORTGAGEE as his/its attorney-in-fact with full power and authority to file, follow-up, prosecute, compromise or settle insurance claims; to sign, execute and deliver the corresponding papers, receipts and documents to the insurance company as may be necessary to prove the claim and to collect from the latter the insurance proceeds to the extent of its interest. Said proceeds shall be applied by the MORTGAGEE as payment of MORTGAGOR's outstanding obligation under the Promissory Note and such other sums and charges as may be due hereunder or in other instruments of indebtedness due and owing by the MORTGAGOR to the MORTGAGEE and the excess, if any, shall thereafter be remitted to the MORTGAGOR. MORTGAGEE however shall be liable in the event there is a deficiency.

x x x x⁵⁸

Based on the foregoing, the mortgagor must notify and submit proof of loss to the mortgagee. Otherwise, the mortgagee would not be able to claim the proceeds of the insurance and apply the same to the remaining obligation.

This brings us to the question of whether petitioner-spouses sent notice and proof of loss to Citytrust or respondent BPI.

Testimonial evidence must also be credible, reasonable, and in accord with human experience.

Testimonial evidence, to be believed, must come not only from the mouth

of a credible witness, but must also “be credible, reasonable, and in accord with human experience.”⁵⁹ A credible witness must, therefore, be able to narrate a convincing and logical story.

In this case, petitioner Manolito’s testimony that he sent notice and proof of loss of the mortgaged vehicle to Citytrust through fax lacks credibility especially since he failed to present the facsimile report evidencing the transmittal.⁶⁰ His failure to keep the facsimile report or to ask for a written acknowledgement from Citytrust of its receipt of the transmittal gives us reason to doubt the truthfulness of his testimony. His testimony on the alleged theft is likewise suspect. To begin with, no police report was presented.⁶¹ Also, the insurance policy was renewed even after the mortgaged vehicle was allegedly stolen.⁶² And despite repeated demands from respondent BPI, petitioner-spouses made no effort to communicate with the bank in order to clarify the matter. The absence of any overt act on the part of petitioner-spouses to protect their interest from the time the mortgaged vehicle was stolen up to the time they received the summons defies reason and logic. Their inaction is obviously contrary to human experience. In addition, we cannot help but notice that although the mortgaged vehicle was stolen in November 1997, petitioner-spouses defaulted on their monthly amortizations as early as August 10, 1997. All these taken together cast doubt on the truth and credibility of his testimony.

Thus, we are in full accord with the findings of the MeTC and the CA that petitioner Manolito’s testimony lacks credence as it is dubious and self-serving.⁶³ Failing to prove their defense, petitioner-spouses are liable to pay their remaining obligation.

WHEREFORE, the Petition is hereby **DENIED**. The assailed November 16, 2007 Decision and the September 19, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 91217 are hereby **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

⁵⁹ *People v. Padrones*, 508 Phil. 439, 461 (2005).

⁶⁰ *Rollo*, p. 58.

⁶¹ *Id.*

⁶² *Id.* at 59.


⁶³ *Id.* at 45 and 58.

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

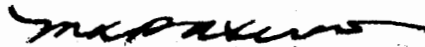
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court’s Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO***Chief Justice*