

[ G.R. No. 3088. February 06, 1907 ]

**EL BANCO ESPAÑOL-FILIPINO, PLAINTIFF AND APPELLANT, VS. JAMES PETERSON, SHERIFF OF THE CITY OF MANILA, ET AL., DEFENDANTS AND APPELLEES.**

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

**TORRES, J.:**

On the 24th of October, 1905, the Spanish-Filipino Bank, a corporation, through its attorneys, Del-Pan, Ortigas & Fisher, filed a complaint against the sheriff of the city of Manila and the other defendant, Juan Garcia, praying that judgment be rendered against the said sheriff, declaring that the execution levied upon the property referred to in the complaint, to wit, wines, liquors, canned goods, and other similar merchandise, was illegal, and directing the defendants to return the said goods to the plaintiff corporation, and in case that he had disposed of the same, to pay the value thereof, amounting to P30,000, Philippine currency, and further that it be declared that the said plaintiff corporation, under the contract of pledge referred to in the complaint had the right to apply the proceeds of the sale of the said goods to the payment of the debt of P40,000, Philippine currency, for the security of which the said merchandise was pledged, with preference over the claim of the other defendant, Juan Garcia, and that both defendants be held jointly liable to the plaintiff for the sum of P500, Philippine currency, as damages, and the said defendants to pay the costs of the proceedings, and for such other and further relief as the plaintiff might be entitled to under the law. Plaintiff alleges in its complaint that under the contract entered into on the 4th of March, 1905, by and between the Spanish-Filipino Bank and Francisco Reyes, the former loaned to the latter the sum of P141,702, Philippine currency; that on the same date Francisco Reyes was already indebted to the bank in the sum of P84,415.38, Philippine currency, which, added to the amount of the loan, made a total of P226,117.38, Philippine currency, received by the said Reyes as a loan from the plaintiff bank, the entire sum at an annual interest of 8 per cent; that to secure the payment of these two sums and the interest thereon, the debtor, Francisco Reyes, by a public instrument executed before a

notary on the aforesaid date mortgaged in favor of the plaintiff bank several pieces of property belonging to him, and pledged to the said bank part of his personal property, specifying the proportion in which the said real and personal property thus mortgaged and pledged in favor of the plaintiff corporation would be respectively liable for the payment of the debt; that the property pledged by the debtor to the bank included a stock of merchandise, consisting of wines, liquors, canned goods, and other similar articles valued at P90,591.75, Philippine currency, then stored in the warehouses of the debtor, Reyes, No. 12 Plaza Moraga, in the city of Manila, which said goods and merchandise were liable for the payment of the said sum of P90,591.75, Philippine currency; that in the aforesaid deed of pledge it was agreed by and between the bank and the debtor, Reyes, that the goods should be delivered to Ramon Garcia y Planas for safe-keeping, the debtor having actually turned over to the said Garcia y Planas the goods in question by delivering to him the keys of the warehouse in which they were kept; that in a subsequent contract entered into by and between the debtor, Reyes, and the plaintiff bank on the 29th of September, 1905, the said contract executed on the 4th of March was modified so as to provide that the goods then (September 29) in possession of the depositary should only be liable for the sum of P40,000, Philippine currency, the said contract of the 4th of March remaining in all other respects in full force and effect, Luis M.a Sierra having been subsequently appointed by agreement between the bank and the debtor as depositary of the goods thus pledged in substitution for the said Ramon Garcia y Planas.

On the 19th of October, 1905, in an action brought in the Court of First Instance of the city of Manila by Juan Garcia y Planas against Francisco Reyes and Ramon Agtarat, judgment was rendered against the last-mentioned two for the sum of P15,000, Philippine currency, to be paid by them severally or jointly, upon which judgment execution was issued against the property of the defendants, Reyes and Agtarap. On the aforesaid 19th day of October, for the purpose of levying upon the property of the defendants, the sheriff at the request of Garcia, the plaintiff in that case, entered the warehouse where the goods pledged to the plaintiff bank were stored under the custody of the depositary, Sierra, and levied upon them as per list attached to the complaint marked "Exhibit A." The sheriff seized the goods which had been pledged to the bank, depriving the latter of the possession of the same, to which said possession the bank was entitled under and by virtue of the contract executed on the 4th of March, 1905. Without the authority of the bank, Reyes could not dispose of the said goods. The value of the goods seized by the sheriff was P30,000, Philippine currency, the said sheriff having refused, and still refusing, to return the same to the bank, notwithstanding repeated demands made upon him to this effect, and it being alleged in the

complaint that unless prohibited by the court the sheriff would proceed to sell the said goods at public auction and apply the proceeds to the satisfaction of the judgment rendered in favor of Juan Garcia y Planas, while the debtor Reyes had not paid to the bank the P40,000, Philippine currency, to secure the payment of which the goods mentioned in Exhibit A had been pledged to the bank, that is, to secure the payment of a sum in excess of the actual value of the goods in the hands of the sheriff.

The defendant sheriff, James J. Peterson, and Juan Garcia, his codefendant, through their attorneys, Hartigan, Marple, Rohde & Gutierrez, answering the complaint, stated that they admitted the allegations contained in paragraphs 1, 2, 3, 4, 5, 12, and 17 of the complaint, but denied the allegations contained in paragraphs 6, 7, 8, 9, 10, 11, 14, 16, and 18. They further denied the allegations contained in paragraph 12, with the exception that the defendant sheriff levied upon the goods mentioned in Exhibit A attached to the complaint for the purpose of satisfying the judgment referred to therein; and also the allegations contained in paragraph 13 of the complaint, with the exception that the sheriff seized the property mentioned in Exhibit A under the execution referred to therein; and finally defendants denied the allegations contained in paragraph 15 of the complaint, with the exception of the allegation that the value of the property seized is P30,000. They accordingly asked that the action be dismissed and that it be adjudged that the plaintiff had no interest whatever in the property described in the complaint, and that the plaintiff be taxed with the costs of these proceedings.

The testimony introduced by the parties having been received, and the exhibits having been attached to the record, the court below entered judgment on the 4th of January, 1906, dismissing plaintiff's action and directing that the defendant recover from the Spanish-Filipino Bank the costs of this action, for which execution was duly issued. To this judgment counsel for plaintiff excepted and announced his intention of prosecuting a bill of exceptions, and further made a motion for a new trial on the ground that the judgment of the court below was contrary to law and that the findings of fact were plainly and manifestly contrary to the weight of the evidence.

The decision of this case depends mainly upon the question as to whether the contract of pledge entered into by and between the Spanish-Filipino Bank and Francisco Reyes to secure a loan made by the former to the latter was valid, all the requisites prescribed by the Civil Code having been complied with.

If so, the bank's claim had preference over the claim of a third person not secured, as was

the bank's, by a pledge, with reference to the property pledged to the extent of its value, and therefore such property could not have been legally levied upon by the sheriff at the request of the defendant, Juan Garcia. (Arts. 1921, 1922, Civil Code.)

The contract in question complies with all the requisites provided in article 1857 of the Civil Code, such as that the property was pledged to secure a debt, the date of the execution, the terms of the pledge, and the property pledged, all of which appears in a public document, and the property pledged was placed in the hands of a third person by common consent of the debtor and creditor, under the supervision of an agent of the bank. (Arts. 1863, 1865, 1866, 1869, 1871, Civil Code.) The defect alleged to exist in the said contract is that the debtor, Reyes, continued in possession of the property pledged; that he never parted with the said property, and that neither the creditor nor the depositary appointed by common consent of the parties were ever in possession of the property pledged, and for this reason, and upon the further ground that the contract was fraudulent, the court below dismissed the complaint with the costs against the plaintiff.

In the motion for a new trial it was alleged by the plaintiff that the judgment of the court below was contrary to law, and that the findings of fact contained therein were plainly and manifestly against the weight of the evidence. If plaintiff's contention is correct, then the judgment of the court below should be reversed.

From the evidence introduced at the trial, both oral and documentary, it appears that a third person, appointed by the common consent of the debtor and creditor, was in possession of the goods pledged in favor of the bank under the direct supervision of an agent of the bank expressly appointed for this purpose, and it has not been shown that the said Reyes continued in the possession of the goods after they had been pledged to the plaintiff bank.

Exhibit C and the testimony of Francisco Reyes, Luis M.a Sierra, and Mariano Rodriguez corroborate the existence and authenticity of the contract of pledge recorded in a public instrument and conclusively and satisfactorily show that the debtor, after the pledge of the property, parted with the possession of the same, and that it was delivered to a third person designated by common consent of the parties. For the purpose of giving this possession greater effect, the pledgee appointed a person to examine daily the property in the warehouse where the same was kept.

The witness Matias Garcia also testified as to the status of these goods, and informed Juan

Garcia of such status before the same were levied upon.

The sheriff's testimony supports the allegation that the depositary, Sierra, was present at the place where the goods were kept, as well as the representative of the bank, Rodriguez, when he, the sheriff, went there for the purpose of levying upon the said property. He further testified that Rodriguez, the representative of the bank, then protested and notified him that the property in question was pledged to the Spanish-Filipino Bank.

The contract in question was, therefore, a perfect contract of pledge under articles 1857 and 1863 of the Civil Code, it having been conclusively shown that the pledgee took charge and possession of the goods pledged through a depositary and a special agent appointed by it, each of whom had a duplicate key to the warehouse wherein the said goods were stored, and that the pledgee, itself, received and collected the proceeds of the goods as they were sold.

The fact that the said goods continued in the warehouse which was formerly rented by the pledgor, Reyes, does not affect the validity and legality of the pledge, it having been demonstrated that after the pledge had been agreed upon, and after the depositary appointed with the common consent of the parties had taken possession of the said property, the owner, the pledgor, could no longer dispose of the same, the pledgee being the only one authorized to do so through the depositary and special agent who represented it, the symbolical transfer of the goods by means of the delivery of the keys to the warehouse where the goods were stored being sufficient to show that the depositary appointed by the common consent of the parties was legally placed in possession of the goods. (Articles 438, 1463, Civil Code.)

The fact that the debtor, Reyes, procured purchasers and made arrangements for the sale of the goods pledged and that the bills for the goods thus sold were signed by him does not affect the validity of the contract, for the pledgor, Reyes, continued to be the owner of the goods, (art. 1869, Civil Code), he being the one principally interested in the sale of the property on the best possible terms.

As to the reservation stipulated in paragraph 13 of the contract executed on the 4th of March, 1905, it could not affect the contract in question for the reason that that reservation referred to the rent from the property mortgaged to the bank and the dividends from the shares of stock also pledged to the bank, and not to the merchandise so pledged, and such reservation could not have rendered the contract of pledge null.

If the case is to be decided in accordance with the facts alleged and established, the defendant not having introduced any evidence to show that the said contract of pledge was fraudulent as to other creditors, there was no legal ground upon which the court below could have held that the contract evidenced by the instrument in question was entered into to defraud other creditors of the pledgor.

For the reasons hereinbefore set out, and the judgment of the court below being contrary to the evidence, the said judgment is hereby reversed, and it is hereby adjudged that the plaintiff corporation, under and by virtue of the contract of pledge in question, had a preferential right over that of the defendant, Juan Garcia, to the goods pledged or the value thereof, the value to be applied to the payment of the debt of P40,000, Philippine currency, for the security of which the said property was pledged, and the defendants are accordingly hereby ordered to return to the plaintiff corporation the property improperly levied upon, or to pay its value, amounting to P30,000, Philippine currency, without special provision as to costs. After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter the case be remanded to the court below for execution. So ordered.

*Arellano, C. J., Mapa, Carson, and Willard, JJ., concur.*

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