82 Phil. 705

[G.R. No. 17825. June 16, 1922]

IN THE MATTER OF THE INVOLUNTARY INSOLVENCY OF U. DE POLI. FELISA ROMAN, CLAIMANT AND APPELLEE, VS. ASIA BANKING CORPORATION, CLAIMANT AND APPELLANT.

D E C I S I O N

OSTRAND, J.:

This is an appeal from an order entered by the Court of First Instance of Manila in civil cause No. 19240, the insolvency of Umberto de Poli, arid declaring the lien claimed by the appellee Felisa Roman upon a lot of leaf tobacco, consisting of 576 bales, and found in the possession of said, insolvent, superior to that claimed by the appellant, the Asia Banking Corporation.

The order appealed from is based upon the following stipulation of facts:

> "It is hereby stipulated and agreed by and between Felisa Roman and Asia Banking Corporation, and on their behalf by their undersigned attorneys, that their respective rights, in relation to the 576 *bultos* of tobacco mentioned in the order of this court dated April 25, 1921, be, and hereby are, submitted to the court for decision upon the following:
>
> "I. Felisa Roman claims the 576 *bultos* of tobacco under and by virtue of the instrument, a copy of which is hereto attached and made a part hereof and marked Exhibit A.
>
> "II. That on November 25, 1920, said Felisa Roman notified the said Asia Banking Corporation of her contention, a copy of which notification is hereto attached and made a part hereof and marked Exhibit B.
>
> "III. That on November 29, 1920, said Asia Banking Corporation replied as per

copy hereto attached and marked Exhibit C.

"IV. That at the time the above entitled insolvency proceedings were filed the 576 *bultos* of tobacco were in possession of U. de Poli and now are in possession of the assignee.

"V. That on November 18, 1920, U. de Poli, for value received, issued a quedan, covering aforesaid 576 *bultos* of tobacco, to the Asia Banking Corporation as per copy of quedan attached and marked Exhibit D.

"VI. That aforesaid 576 *bultos* of tobacco are part and parcel of the 2,777 *bultos* purchased by U. de Poli from Felisa Eoman..

"VII. The parties further stipulate and agree that any further evidence that either of the parties desire to submit shall be taken into consideration together with this stipulation.

"Manila, P. I.,
April 28, 1921.

(Sgd.) " ANTONIO V. HERRERO
"Attorney for Felisa Roman

(Sgd.) "WOLFSON, WOLFSON & SCHWARZKOPF
"Attorneys for Asia Banking Corp."

Exhibit A referred to in the foregoing stipulation reads:

"1.° Que la primera parte es dueña de unos dos mil quinientos a tres mil quintales de tabaco de distintas clases, producidos en los municipios de San Isidro, Kabiaw y Gapan adquiridos por compra con dinero perteneciente a sus bienes parafernales, de los cuales es ella administradora.

"2.° Que ha convenido lg, venta de dichos dos mil quinientos a tres mil quintales de tabaco mencionada con la

Segunda Parte, cuya compraventa se regirá por las condiciones siguientes:

"(*a*) La Primera Parte remitirá a la Segunda debidamente enfardado el tabaco de que ella es propietaria en *bultos* no menores de cincuenta kilos, siendo de cuenta de dicha Primera Parte todos los gastos que origine dicha mercancía hasta la estación de ferrocarril de Tutuban, en cuyo lugar se hará cargo la Segunda y desde cuyo instante serán de cuenta de ésta los riesgos de la mercancía.

"(*b*) El precio en que la Primera Parte vende a la Segunda el tabaco mencionado es el de veintiséis pesos (P26), moneda filipina, por quintal, pagaderos en la forma que después se establece.

"(*c*) La Segunda Parte será la consignataria del tabaco en esta Ciudad de Manila quien se hará cargo de él cuando reciba la factura de embarque y la guía de Rentas Internas, trasladándolo a su bodega quedando en la misma en calidad de depósito hasta la fecha en que dicha Segunda Parte pague el precio del mismo, siendo de cuenta de dicha Segunda Parte el pago de almacenaje y seguro.

"(*d*) Llegada la última expedición del tabaco, se procederá a pesar el mismo con intervención de la Primera Parte o de un agente de ella, y conocido el número total de quintales remitidos, se hará liquidación del precio a cuenta del cual se pagarán quince mil pesos (P15,000), y el resto se dividirá en cuatro pagarés vencederos cada uno de ellos treinta días después del anterior pago; esto es, el primer pagaré vencerá a los treinta días de la fecha en que se hayan pagado los quince mil pesos, el segundo a igual tiempo del anterior pago, y así sucesivamente; conviniéndose que el capital debido como precio del tabaco devengará yn interés del diez por ciento anual.

"Los plazos concedidos al comprador para el pago del precio quedan sujetos a la condición resolutoria de que si antes del vencimiento de cualquier plazo, el comprador vendiese parte del tabaco en proporción al importe de cual- quiera de los pagarés que restasen por vencer, o caso de que vendiese, pues se conviene para este caso que desde el momento en que la Segunda Parte venda el tabaco, el depósito del mismo, como garantía del pago. del precio, queda cancelado y simultáneamente es exigible el importe de la parte por pagar.

"Leído este documento por los otorgantes y encontrándolo conforme con lo por

> ellos convenido, lo firman la Primera Parte en el lugar de su residencia, San Isidro de Nueva Écija, y la Segunda en esta Ciudad de Manila, en las fechas que respectivamente al pie de este documento aparecen.

(Fdos.) "FELISA ROMÁN
VDA. DE MORENO
"U. DE POLI

"Firmado en presencia de:
(Fdos.)"Antonio V. Herrero
"T. Barretto
("Acknowledged before
Notary")

Exhibit D is a warehouse receipt issued by the warehouse of U. de Poli for 576 bales of tobacco. The first paragraph of the receipt reads as follows:

> "Quedan depositados en estos almacenes por orden del Sr. U. de Poli la cantidad de quinientos setenta y seis fardos de tabaco en rama según marcas detalladas al margen, y con arreglo a las condiciones siguientes:"

In the left margin of the face of the receipt, U. de Poli certifies that he is the sole owner of the merchandise therein described. The receipt is endorsed in blank "Um-berto de Poli;" it is not marked "non-negotiable" or "not negotiable."

Exhibits B and C referred to in the stipulation are not material to the issues and do not appear in the printed record.

Though Exhibit A in its paragraph (*c*) states that the tobacco should remain in the warehouse of U. de Poli as a deposit until the price was paid, it appears clearly from the language of the exhibit as a whole that it evidences a contract of sale and the recitals in an order of the Court of First Instance, dated January 18, 1921, which form part of the printed record, show that De Poli received from Felisa Roman, under this contract, 2,777 bales of tobacco of the total value of P78,815.69, of which he paid P15,000 in cash and executed four notes of P15,953.92 each for the balance. The sale having been thus consummated, the only

lien upon the tobacco which Felisa Roman can claim is a vendor's lien.

The order appealed from is based upon the theory that the tobacco was transferred to the Asia Banking Corporation as security for a loan and that as the transfer neither fulfilled the requirements of the Civil Code for a pledge nor constituted a chattel mortgage under Act No. 1508, the vendor's lien of Felisa Roman should be accorded preference over it.

It is quite evident that the court below failed to take into consideration the provisions of section 49 of Act No. 2137 which reads:

> "Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation."

The term "purchaser" as used in the section quoted, includes mortgagee and pledgee. (*See* section 58 (*a*) of the same Act.)

In view of the foregoing provisions, there can be no doubt whatever that if the warehouse receipt in question is negotiable, the vendor's lien of Felisa Roman cannot prevail against the rights of the Asia Banking Corporation as the indorsee of the receipt. The only question of importance to be determined in this case is, therefore, whether the receipt before us is negotiable.

The matter is not entirely free from doubt. The receipt is not perfect: It recites that the merchandise is deposited in the warehouse "por orden" instead of "a la orden" or "sujeto a la orden" of the depositor and it contains no other direct statement showing whether the goods received are to be delivered to the bearer, to a specified person, or to a specified person or his order.

We think, however, that it must be considered a negotiable receipt. A warehouse receipt, like any other document, must be interpreted according to its evident intent (Civil Code, arts. 1281 et seq.) and it is quite obvious that the deposit evidenced by the receipt in this case was intended to be made subject to the order of the depositor and therefore negotiable.

That the words "por orden" are used instead of "a la orden" is very evidently merely a clerical or grammatical error. If any intelligent meaning is to be attached to the phrase "Quedan depositados en estos almacenes por orden del Sr. U. de Poli" it must be held to mean "Quedan depositados en estos almacenes a la orden del Sr. U. de Poli." The phrase must be construed to mean that U. de Poli was the person authorized to endorse and deliver the receipt; any other interpretation would mean that no one had such power and the clause, as well as the entire receipt, would be rendered nugatory.

Moreover, the endorsement in blank of the receipt in controversy together with its delivery by U. de Poli to the appellant bank took place on the very date of the issuance of the warehouse receipt, thereby immediately demonstrating the intention of U. de Poli and of the appellant bank, by the employment of the phrase "por orden del Sr. U. de Poli" to make the receipt negotiable and subject to the very transfer which he then and there made by such endorsement in blank and delivery of the receipt to the bank.

As hereinbefore stated, the receipt was not marked "non-negotiable." Under modern statutes the negotiability of warehouse receipts has been enlarged, the statutes having the effect of making such receipts negotiable unless marked "non-negotiable." (27 R. C. L., 967 and cases cited.)

Section 7 of our own Warehouse Receipts Act (No. 2137) which is a copy of the Uniform Warehouse Receipts Act, says:

> "A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it 'non-negotiable,' or 'not negotiable.' In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.
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> "This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character."

This section appears to give any warehouse receipt not marked "non-negotiable" or "not negotiable" practically the same effect as a receipt which, by its terms, is negotiable provided the holder of such unmarked receipt acquired it for value supposing it to be

negotiable, circumstances which admittedly exist in the present case.

We therefore hold that the warehouse receipt in controversy was negotiable and that the rights of the endorsee thereof, the appellant, are superior to the vendor's lien of the appellee and should be given preference over the latter.

The order appealed from is therefore reversed without costs. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and *Romualdez, JJ.,* concur.

Order reversed.

Date created: November 25, 2014