

[G.R. No. 20482. October 25, 1923]

THE PHILIPPINE INDUSTRIAL CO., PLAINTIFF AND APPELLEE, VS. EL HOGAR FILIPINO AND SALVADOR VALLEJO, DEFENDANTS. EL HOGAR FILIPINO, APPELLANT.

D E C I S I O N

VILLAMOR, J.:

The parties submitted this case to the trial court for decision upon a stipulation of facts, which is inserted in the judgment appealed from, and from which it appears that the defendant Salvador Vallejo executed a mortgage in favor of his codefendant, El Hogar Filipino, upon a certain real estate belonging to him, registered in the registry of property under the Torrens law. This mortgage contains a stipulation that the mortgagor cannot create any legal light upon the realty in favor of a third person, nor make, with regard to said realty, any contract of lease registerable under the law, or whereby a rental for more than one month is to be paid in advance, without obtaining the previous consent in writing of the association El Hogar Filipino. That same mortgage, moreover, contains a stipulation that in case the debt falls due for non-compliance, on the part of the debtor, with any of the obligations mentioned in the contract, the manager of the association El Hogar Filipino is authorized to proceed to the extrajudicial sale of the mortgaged property at public auction before a notary, or an auctioneer to be designated by the board of directors of the association, after publication of notice thereof in a newspaper of general circulation in this city, once a week for three consecutive weeks; the manager of the association being likewise authorized to execute, as agent of the borrower, the corresponding deed of sale in favor of the highest bidder who may present himself at the auction at the time and in the manner prescribed in the tenth clause of said contract.

After said mortgage was noted as a lien and encumbrance on the certificate of title of the property mortgaged, a document was presented to the register of deeds whereby the debtor made a second mortgage in favor of the plaintiff corporation, the herein appellee. The register of deeds refused to register said second mortgage on the ground that it did not appear therein that the first mortgagee, El Hogar Filipino, ever consented to the registration, in accordance with the prohibiting clause of the mortgage previously recorded; and an administrative proceeding having been instituted against the action of the register of deeds, the trial court ruled that the validity or nullity of the prohibiting clause in question must be litigated in an ordinary action.

The first mortgage having fallen due, according to the terms thereof, El Hogar Filipino advertised the sale at public auction of the property mortgaged and the plaintiff then brought this action, wherein it is prayed that the prohibiting clause above mentioned be declared void, and a preliminary injunction issued against the defendants, El Hogar Filipino and Salvador Vallejo, their attorneys, agents and representatives and other persons acting on their behalf, commanding them to abstain from carrying out the advertised sale of the land in question.

The trial court, in view of the stipulation of facts, held that the prohibition to register the second mortgage executed by the defendant Salvador Vallejo is of no effect, and ordered the register of deeds of this city to register the same, and declared, furthermore, the preliminary injunction previously issued to be final.

From this judgment the defendant corporation, El Hogar Filipino, took an appeal and assigned in its brief, as errors of the trial court, the following: (1) The holding that the clause of the contract of mortgage wherein the debtor binds himself not to create any subsequent real right in favor of a third person is of no effect; (2) the finding as to the value of the property twice mortgaged when no evidence was introduced as to what its value was; (3) the pronouncement declaring the preliminary injunction final, whereby the foreclosure of the first mortgage is prevented, notwithstanding the fact that it was due; and (4) the failure to dismiss the complaint with the costs against the plaintiff.

In an old decision dated September 6, 1863, the supreme court of Spain held

that when a contract, whereby a thing is specially mortgaged, contains the additional stipulation that the same should not be mortgaged for the second time, a stipulation which is not contrary to law, the new encumbrance being otherwise void, any other mortgage that may have been made upon the same property can have no effect. This doctrine, however, was modified by the Mortgage Law, which took effect in the Philippines on December 1, 1889, article 107, No. 4, of which provides:

“Art. 107. The following are mortgageable, but with such restrictions as are hereinafter expressed:

* * * * *
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“4. Property already mortgaged, even if it was agreed not to mortgage it again, provided the preference is reserved which the creditors in whose favor the prior mortgages are created have in the collection of their loans.”

Galindo and Escosura,^[1] commenting on this provision of the Mortgage Law which is the same as that in force in the Peninsula, say:

“Doubt may be entertained as to whether or not subsection 2 of paragraph 4 of article 107 is in force, which authorizes the mortgaging of a property already mortgaged, although the previous mortgage was executed with the stipulation that no subsequent mortgages should be made.

“In order to repeal our old civil law on this point which allowed said stipulation (decision of February 6, 1863), the committee took into account that ‘it is an onerous condition that should not have any binding civil effect, because it is devoid of any object, and unnecessarily, unjustly and without any possible reason whatsoever diminishes the territorial credit, and rather than a guaranty, it seems to be an exorbitant exaction made thru the painful situation in which the owner may be found in certain cases.’ “

After the promulgation of the Civil Code, which recognizes in its article 1255 the absolute liberty of the contracting parties to make such stipulations as they may deem fit, provided that they are not contrary to law, morals and public order, there being no statute whatsoever prohibiting the stipulation in question and the same not being immoral nor contrary to public order, it seems that it must be given effect; but as article 1880 of the same Code provides that the form, operation and effect of mortgages, as well as all matters relating to their creation, modification and extinction and *all other matters* which have not been included in Chapter 3, Title 15, Book 4, wherein nothing is said as to said article 107, shall be subject to the provisions of the Mortgage Law, it seems clear that as article 107, No. 4, of the Mortgage Law in effect, restricts, to a certain extent, the liberty of the contracting parties to make such stipulations as they may deem fit, said stipulation not to make any second mortgage has no effect whatsoever under said article. It should be noted that the Mortgage Law does not declare void the stipulation prohibiting a second mortgage, but simply limits itself to permitting the registration of a second mortgage upon the mortgaged property, where the first mortgage contains such a stipulation. And it is for the purpose of giving effect to this legal provision that article 1880 of the same Code' declares that the form, operation and effect of mortgages are subject to the provisions of the Mortgage Law.

But in the instant case, said article 107 of the Mortgage Law has no application because this is a case of a property registered in accordance with the Torrens system prescribed by Act No. 496, section 124 of which provides that the system of registration established by the laws in force on the matter in the Philippine Islands should continue to be applicable to properties not registered in accordance with this law, with the modifications established therein. Nor can said article 1880 of the Civil Code, giving effect to the provisions of the Mortgage Law, be invoked. Therefore, the provision of article 1255 of the Civil Code remains in force, which gives the contracting parties absolute liberty to make such stipulations as they may deem fit, provided they are not contrary to law, morals and public order; and there being no, law whatsoever prohibiting the stipulation that no other mortgage should be made, and said stipulation not being immoral, nor contrary to public order, we are of the opinion that such a stipulation is valid and binding between the parties.

It is evident that the mortgagor may obtain subsequent loans by means of

subsequent and successive mortgages of his property, but when the debtor voluntarily binds himself not to make any second mortgage without the consent of the mortgagee, we see no reason whatsoever why said debtor should not be bound to comply with all the conditions of the contract. As has been stated, article 107, No. 4, of the Mortgage Law not being applicable, which expressly permits the registration of subsequent mortgages executed upon a real estate previously mortgaged under the Mortgage Law, even if there is a stipulation that no other mortgage should be made, there exists no law prohibiting such a stipulation and the debtor, having agreed not to make any second mortgage without the consent of the creditor, is bound thereby.

For all of the foregoing, the judgment appealed from must be, as is hereby, reversed, the complaint herein is dismissed and the preliminary injunction issued in this case is dissolved, without special finding as to costs in this instance. So ordered.

Araullo, C.J., Johnson, Avanceña, and Romualdez, JJ., concur.

^[1] Legislacion Hipotecaria, vol. 3, p. 166.

DISSENTING

STREET, J.:

I dissent and am of the opinion that the judgment should be affirmed.

DISSENTING

MALCOLM, J., with whom concurs **JOHNS,**

J.:

The court has heretofore gone far, and I say it with regret, in sanctioning laws, pacts and clauses in documents intended to authorize unconscionable advantages for creditors in their dealings with debtors, the latter many times of the most ignorant class. It has reluctantly validated the iniquitous *pacto de retro*. (Cuyugan vs. Santos [1916], 34 Phil., 100.) It has, against the dissent of Justices Ostrand, Johns, and Malcolm, approved of private sales at the option of the Philippine National Bank. (National Bank vs. De Poli and Wise & Co., 44 Phil., 763.) It has, against the dissent of Justices Johns and Malcolm, legalized, unconditionally, the power of sale in mortgages. (El Hogar Filipino vs. Paredes, R. G. No. 19843.^[1]) It has, against the dissent of Justices Street and Malcolm, permitted usurers to recover the principal of their loans. (Go Chioco vs. Martinez, R. G. No. 19684, and Ortiga Hermanos vs. Go Chioco, R. G. No. 19685.^[1]) And now, carried along on the same current of authority, against the views of competent judges of First Instance and to the detriment of the poorer strata of the community, the court confirms clauses in a mortgage permitting of a private sale by the mortgagor and denying to the mortgagee the right further to mortgage his property. Although my dissent in similar cases has been of little avail, and will again be of little weight, I feel it my duty to register my nonconformity.

The senior mortgage accomplished by Salvador Vallejo, running in favor of El Hogar Filipino, contains two clauses reading as follows:

“Thirteenth.—It is agreed and stipulated that the borrower cannot create any real right upon the mortgaged property in favor of a third party, nor make, with regard to said realty, any contract of lease registerable in accordance with law, or that the amount of rents for more than one month be paid in advance, without previously obtaining the written consent of the partnership; provided that any breach of the agreement contained in this clause will cause the debt to become due at once and the partnership will have the right to proceed with the collection thereof in the manner provided in the tenth clause

hereof.

“Tenth.—The borrower does hereby give and grant the manager of the partnership sufficient and irrevocable power in case the debt hereby acknowledged becomes due by reason of the borrower having failed to fulfill any of the obligations mentioned in the second, fourth, fifth, eleventh, twelfth, *thirteenth*, sixteenth, seventeenth and twentieth clauses hereof, and upon a resolution being adopted by the Board of Directors declaring that the partnership has elected to exercise its right to consider the debt of the borrower to. have fallen due, and after publication of notices in a newspaper of general circulation in this city, once a week during three successive weeks, to proceed to sell extrajudicially and at public auction before a notary or an auctioneer to be designated by the Board of Directors the realty hereby mortgaged and the manager of the partnership acting at the time is likewise authorized and given the irrevocable power to execute, as agent of the borrower, the proper deed of sale in favor of the highest bidder, provided, however, that said deed of sale shall not be executed except after the expiration of the period of thirty days from the date of the auction and, provided further, that if within the said period of thirty days from the date of the auction, the borrower shall pay to the partnership the total amount of his debt at that time, plus the interest due and the expenses occasioned by the auction sale, less the withdrawing value of the shares, the auction sale shall become of no effect and the corresponding deed of cancellation of the mortgage hereby made shall be executed by the representative of the partnership, the expenses of the execution of the document of cancellation to be for the account of the borrower.”

The trial judge, the Honorable Simplicio del Rosario, held the clauses above quoted invalid, and it is this decision which the court would now reverse.

Any contract which is contrary to law, morals or public policy is void. Any contract which takes property without due process of law is likewise void. The rights of the original mortgagee cannot be bartered away through an extrajudicial sale. The rights of subsequent mortgagees cannot legally be defeated by any arrangement between a prior mortgagee and the mortgagor, or by any adjudication of their respective rights. A junior mortgagee cannot be

prejudiced in respect to. his security by an agreement of the debtor with the senior lienor to which he is no party. Such undue interference with the rights of ownership, such undue interference with the rights of creditors, such undue interference with the rights of third parties cannot be countenanced without violation of the most elementary principles of law and justice. (Civil Code, arts. 4, 1115, 1255; 8 Manresa, *Comentarios alCodigo Civil*, p. 574; 3 Sanchez Roman, p. 807; 2 Jones on Mortgages, p. 125.)

I think sufficient has been said to show the legal and ethical untenability of the stand of the court, not alone in the instant case, but in a series of similar cases. I vote for the affirmance of the judgment.

^[1] Page 178, *ante*.

^[1] Page 256, *ante*.
