

**NORTHERN MOTORS, INC., PETITIONER, VS. THE HONORABLE
JORGE R. COQUIA, EXECUTIVE JUDGE OF THE COURT OF FIRST
INSTANCE OF MANILA, HONESTO ONG, THE SHERIFF OF MANILA,
DOMINADOR Q. ...**

G.R. No. L-40018. August 29, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Northern Motors, Inc., in its motion for the reconsideration of this Court's decision promulgated on March 21, 1975, raised anew the issue of whether its chattel mortgage lien over certain taxicabs, which were levied upon by the mortgagor's unsecured judgment creditor, could be asserted in the case where the judgment was rendered or should be ventilated in an independent action, as held in that decision. It invoked the additional ground that it has an unpaid vendor's lien on the mortgaged taxicabs.

As set forth in the decision, the factual background of that issue is as follows:

Manila Yellow Taxicab Co., Inc. in May and June, 1974 purchased on the installment plan from Northern Motors, Inc. two hundred Holden Torana cars at the price of P28,250 for each car. It made a downpayment of P1,000 on each car. It executed chattel mortgages on the cars in favor of Northern Motors, Inc. as security for the promissory notes covering the balance of the price. The notes and the chattel mortgages for 172 cars were assigned to Filinvest Credit Corporation.

Tropical Commercial Co., Inc. obtained a judgment for P167,311.27 against Manila Yellow Taxicab Co., Inc. in Civil Case No. 71584 of the Court of First Instance of Manila. Part of that judgment or the sum of P110,000 was eventually assigned to Honesto Ong for an unspecified valuable consideration.

To satisfy the judgment credit, the sheriff on December 12, 1974 levied upon twenty taxicabs of which eight were mortgaged to Northern Motors, Inc. and twelve to Filinvest Credit Corporation under the assignment already mentioned.

Northern Motors, Inc. and Filinvest Credit Corporation filed the corresponding third-party claims with the sheriff. On December 18, 1974 Tropical Commercial Co., Inc. posted indemnity bonds. On that same day, at two-thirty in the afternoon, the cars were sold at public auction although there was an alleged agreement that the cars would be sold at four o'clock. Later, the lower court cancelled the indemnity bonds without notice to the third-party claimants.

The sheriff made an additional levy on thirty-five mortgaged taxicabs to satisfy the unpaid balance of the judgment. Of those thirty-five taxicabs, seven were mortgaged to Northern Motors, Inc. while twenty-eight were mortgaged to Filinvest Credit Corporation. Again, Northern Motors, Inc. and Filinvest Credit Corporation filed third-party claims. The auction sale was scheduled on January 23, 1975.

The lower court in its resolution of January 17, 1975 refused to reinstate the indemnity bonds. It ruled that the chattel mortgagee was not entitled to the possession of the mortgaged taxicabs by the mere fact of the execution of the mortgage and that the mortgage lien followed the chattel whoever might be its actual possessor.

On January 23, 1975 Northern Motors, Inc. filed its certiorari petition in this case to annul the resolution of January 17, 1975 and to stop the second auction sale. This Court issued a restraining order against the scheduled auction sale, the writ of execution and the disposition proceeds of the first execution sale. Filinvest Credit Corporation was allowed to intervene in the action.

In the decision sought to be reconsidered, the petition was denied and the restraining order was dissolved. We ruled that the mortgagee's remedy is to vindicate its claim in a proper action as provided in section 17, Rule 39 of the Rules of Court, and that its mortgage lien attached to the taxicabs wherever they might be.

Upon motion of Northern Motors, Inc. on the ground that the decision had not yet become final, the restraining order was maintained. (Filinvest Credit Corporation did not file any motion for reconsideration because it had entered into a compromise with Ong. It agreed to pay Ong, through his counsel, P145,000 for the release of twenty-eight taxicabs. It realized that an independent action would be illusory).

Northern Motors, Inc. contends in its motion for reconsideration that as chattel mortgagee and unpaid vendor it has the better right to the possession of the mortgaged taxicabs and that its claims should be resolved in the case where the writ of execution was issued and not in a separate action which allegedly would be an ineffective remedy. It further contends that the lower court gravely abused its discretion in cancelling the indemnity bonds posted by the judgment creditor of the chattel mortgagor.

It insists that it is entitled to the possession of the taxicabs because the condition of the chattel mortgages had already been broken and, for that reason, the Serra ruling (*infra*) does not apply to this case. It alleges that some of the buyers at the auction sale were fictitious and that the cars valued at P28,250 each were sold for less than P3,000 each.

The judgment creditor and the sheriff, in their opposition to the motion for reconsideration, reiterate their contention that the chattel mortgagee's remedy is in an independent action, as held in *Serra vs. Rodriguez*, L-25546, April 22, 1974, 56 SCRA 538, per Makasiar, J. It was ruled in the Serra case that a chattel mortgagee could not be regarded as a third-party claimant within the meaning of section 14, Rule 57 of the Rules of Court (similar to section 17, Rule 39, the rule involved in the instant case) "because a chattel mortgage is merely a security for a loan and does not transfer title of the property mortgaged to the chattel mortgagee".

As a corollary, the judgment creditor and the sheriff argue that, since Northern Motors, Inc., the chattel mortgagee, was not a proper third-party claimant, there was no necessity for an indemnity bond.

We hold, under the facts of this case, that Northern Motors, Inc., as chattel mortgagee and unpaid vendor, should not be required to vindicate in a separate action its claims for the seven mortgaged taxicabs and for the proceeds of the execution sale of the other eight mortgaged taxicabs.

Inasmuch as the condition of the chattel mortgages had already been broken and Northern Motors, Inc. had in fact instituted an action for replevin so that it could take possession of the mortgaged taxicabs (Civil Case No. 20536, Rizal CFI), it has a superior, preferential and paramount right to have possession of the mortgaged taxicabs and to claim the proceeds of the execution sale (See *Bachrach Motor Co. vs. Summers*, 42 Phil. 3; *Northern Motors, Inc. vs. Herrera*, L-32674, February 22, 1973, 49 SCRA 392).

Respondent sheriff wrongfully levied upon the mortgaged taxicabs and erroneously took possession of them. He

could have levied only upon the right or equity of redemption pertaining to the Manila Yellow Taxicab Co., Inc. as chattel mortgagor and judgment debtor, because that was the only leviable or attachable property right of the company in the mortgaged taxicabs (Manila Mercantile Co. vs. Flores, 50 Phil. 759; Levy Hermanos, Inc. vs. Ramirez and Casimiro, 60 Phil. 978, 981). "After a chattel mortgage is executed, there remains in the mortgagor a mere right of redemption" (Tizon vs. Valdez and Morales, 48 Phil. 910, 916).

To levy upon the mortgagor's incorporeal right or equity of redemption, it was not necessary for the sheriff to have taken physical possession of the mortgaged taxicabs. It would have sufficed if he furnished the chattel mortgagor, Manila Yellow Taxicab Co., Inc., with a copy of the writ of execution and served upon it a notice that its right or equity of redemption in the mortgaged taxicabs was being levied upon pursuant to that writ (Sec. 15, 2nd par., Rule 39 and sec. 7[e], Rule 57 of the Rules of Court). Levying upon the property itself is distinguishable from levying on the judgment debtor's interest in it (McCullough & Co. vs. Taylor, 25 Phil. 110, 115).

Justice Imperial, in a concurring opinion, noted that if the only attachable interest of a chattel mortgagor in a mortgaged car was his right of redemption and if the purchaser at the execution sale could not acquire anything except such right of redemption, then the purchaser was "not entitled to the actual possession and delivery of the automobile without first paying" the mortgage debt (Levy Hermanos, Inc. vs. Ramirez and Casimiro, 60 Phil. 978, 984, 985).

In this case what the sheriff could have sold at public auction was merely the mortgagor's right or equity of redemption. The sheriff and the judgment creditor are deemed to have constructive notice of the chattel mortgages on the taxicabs (Ong Liong Tiak vs. Luneta Motor Co., 66 Phil. 459). As a consequence of the registration of the mortgages, Northern Motors, Inc. had the symbolical possession of the taxicabs (Meyers vs. Thein, 15 Phil. 303).

If the judgment creditor, Tropical Commercial Co., Inc., or the assignee, Ong, bought the mortgagor's equity of redemption at the auction sale, then it would step into the shoes of the mortgagor, Manila Yellow Taxicab Co., Inc. and be able to redeem the vehicles from Northern Motors, Inc., the mortgagee, by paying the mortgage debt.[1]

Act No. 1508 provides:

"SEC. 13. When the condition of a chattel mortgage is broken a mortgagor or person holding a subsequent mortgage, or a subsequent attaching creditor may redeem the same by paying or delivering to the mortgagee the amount due on such mortgage add the reasonable costs and expenses incurred by such breach of condition before the sale thereof. An attaching creditor who so redeems shall be subrogated to the rights of the mortgagee and entitled to foreclose the mortgage in the same manner that the mortgagee could foreclose it by the terms of this Act."

"The equity of redemption of the mortgagor will pass to the purchaser at an execution sale" (Tizon vs. Valdez and Morales, 48 Phil. 910, 914).

Inasmuch as what remains to the mortgagor is only the equity of redemption, it follows that the right of the judgment or attaching creditor, who purchased the mortgaged chattel at an execution sale, is subordinate to the lien of the mortgagee who has in his favor a valid chattel mortgage (Cabral vs. Evangelista, L-26860, July 30, 1969, 28 SCRA 1000, 1006; Ong Liong Tiak vs. Luneta Motor Co., 66 Phil. 459, 462).

In the Cabral case the unsecured judgment creditor (of the chattel mortgagor) who bought the mortgaged chattels at the execution sale was held solidarily liable with the mortgagor to the chattel mortgagee for the mortgage obligation.[2]

Our ruling in this case is in consonance with the purpose of the Chattel Mortgage Law to promote business and

trade and to give impetus to the country's economic development (Torres vs. Limjap, 56 Phil. 141, 145). In the business world the chattel mortgage has greatly facilitated sales of goods and merchandise. Dealers of cars, trucks, appliances and machinery, who resort to installment sales, have relied on the chattel mortgage as an effective security. Sales of merchandise would be sluggish and insubstantial if the Chattel Mortgage Law could not protect dealers against the defaults and delinquencies of their customers and if the mortgagee's lien could be nullified by the maneuvers of an unsecured judgment creditor of the chattel mortgagor. It is not right nor just that the lien of a secured creditor should be rendered nugatory by a wrongful execution engineered by an unsecured creditor.

Northern Motors, Inc. prayed in its motion that the two indemnity bonds for P480,000 filed on December 18, 1974 by Filriters Guaranty Assurance Corporation for Tropical Commercial Co., Inc. be reinstated. The lower court cancelled ex parte the said bonds in its order of January 3, 1975 and reaffirmed the cancellation in its order of January 17, 1975.

We hold that there was grave abuse of discretion in canceling the said bonds without notice to Northern Motors, Inc. and Filinvest Credit Corporation. A chattel mortgagee, as a third-party claimant, comes within the purview of the following provisions of Rule 39:

SEC. 17. Proceedings where property claimed by third person. — If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

"The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action.

x x x"

The chattel mortgagee may file a third-party claim, even before there is a breach of the mortgage because, as already noted, the recording of the mortgage gives him the symbolical possession of the mortgaged chattel which was construed as "equivalent to the actual delivery of possession to the creditor" (Meyers vs. Thein, supra on page 306), and because what a judgment creditor of the chattel mortgagor can attach is only the equity or right of redemption and, to effectuate the attachment or levy, it is not requisite that the mortgaged chattel itself be seized by the sheriff. The Chattel Mortgage Law, in relation to article 319 of the Revised Penal Code, contemplates that the mortgagor should always have the physical possession of the mortgaged chattel until there is a breach, in which case the mortgagee become entitled to take possession of the chattel so that the mortgage can be foreclosed.

However, inasmuch as the one hundred twenty-day period for filing an action against the sheriff had already expired, and since Tropical Commercial Co., Inc. and the surety have not been impleaded in this case, the propriety and justice of ordering them to re-file the indemnity bonds appear to be doubtful.

Northern Motors, Inc. is entitled to bring the appropriate action to recover the damages which it might have suffered in consequence of the wrongful execution.

WHEREFORE, the decision of March 21, 1975 is reconsidered and set aside. Respondent Sheriff is directed to deliver to Northern Motors, Inc. (a) the proceeds of the execution sale held on December 18, 1974 for the eight

taxicabs mortgaged to it less the expenses of execution and (b) the seven taxicabs which were levied upon by him and which are also mortgaged to the corporation.

Following the ruling in the Cabral case, respondent Honesto Ong is held solidarily liable with Manila Yellow Taxicab Co., Inc. for the mortgage obligations secured by the eight mortgaged taxicabs which were sold at the execution sale, less the net proceeds of the sale. Costs against respondent Ong.

SO ORDERED.

Makalintal, C.J., Castro, Teehankee, Makasiar, Esguerra, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

Fernando, J., in the result.

Barredo, J., did not take part.

Antonio, J., is on leave.

[1] Originally, the chattel mortgage was regarded as a conditional sale of personal property (Sec. 3, Act No. 1508). As such, it was similar to a pacto de retro sale of personality.

As clarified in *Bachrach Motor Co. vs. Summers*, 42 Phil. 3, "there is no real analogy between the chattel mortgage contract and a conditional sale as understood in the civil law". The prevailing equitable conception of the chattel mortgage is that it is mere) a security. To regard it as a conditional sale is to rattle "the bones of an antiquated skeleton from which all semblance of animate life has long since departed."

Article 2140 of the Civil Code, in defining a chattel mortgage as the recording of personal property in the Chattel Mortgage Register as a security for the performance of an obligation, has adhered to the equitable conception of that contract. At the same time, article 2140 has preserved the distinction between pledge and chattel mortgage which was blurred by section 4 of the Chattel Mortgage Law when it provided that in a chattel mortgage "the possession of the property is delivered to and retained by the mortgagee" or, if no such possession is delivered, the mortgage should be recorded in the proper registry of deeds.

Historically, it is not proper that the contract of pledge (*pignus*), as one of the four real contracts of the *jus civile* (the others being *mutuum*, *commodatum* and *depositum*), should be absorbed by the chattel mortgage contract.

Under Section 4 of the Chattel Mortgage Law, it was held that the registration of the chattel mortgage was tantamount to the symbolical delivery of the possession of the mortgaged chattel to the mortgagee, a symbolical delivery which was equivalent to actual delivery (*Meyers vs. Thein*, 15 Phil. 303, 306, per Arellano, C.J.).

Justice Moreland, in his concurring opinion in the case of *In re Du Tec Chuan*, 34 Phil. 488, observed that "no one can take the title away from the mortgagee except the mortgagor and he only in the manner prescribed by the mortgage itself" and that "the general statement is therefore correct that after the execution of a chattel mortgage and its registry as required by law, nobody can obtain an interest in that property adverse to that of the mortgagee".

That the chattel mortgagee has the symbolical possession and that he has the preferential right to have physical possession is inferable from article 319 of the Revised Penal Code which penalizes any person who knowingly removes the mortgaged chattel to any province or city, other than the one in which it was located at the time of the execution of the mortgage, without the written consent of the mortgagee or his executors, administrators or assigns. It penalizes also any mortgagor who sells or pledges the mortgaged chattel without the consent of the mortgagee written on the back of the register of deeds of the province where such chattel is located. (Article 319

was taken from section 9 to 12 of the Chattel Mortgage Law).

[2] "A third person with actual or constructive notice who wrongfully interferes with a mortgaged chattel may be liable for damages or for a conversion. A seizure and sale of the mortgaged property under a writ of attachment or execution in derogation of the mortgagee's rights constitutes a conversion." (14 C.J.S. 822-824).

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