

**ALBERTA B. CABRAL AND RENATO CABRAL,
PLAINTIFFS-APPELLEES, VS. TEODORA EVANGELISTA AND JUAN N.
EVANGELISTA, DEFENDANTS-APPELLANTS, AND GEORGE L.
TUNAYA, DEFENDANT.**

G.R. No. L-26860. July 30, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this appeal from a decision of the Court of First Instance, and certified by the Court of Appeals to this Court upon agreement of the parties as involving only questions of law, we reaffirm the well settled principle that the rights of a mortgage creditor over the mortgaged properties are superior to those of a subsequent attaching creditor.

On December 12, 1959, defendant George L. Tunaya had executed in favor of plaintiffs-appellees a chattel mortgage covering a "MORRISON" English piano, made in England, Concert model, Serial No. 6079 and a Frigidaire General Motors Electric Stove with four burners and double oven, bearing Serial No. 21009298, as security for payment to the plaintiffs-mortgagees of a promissory note in the sum of P1,000.00 executed on the same date by said defendant Tunaya with his wife, Esperanza N. Angeles. The chattel mortgage deed was duly inscribed in the Chattel Mortgage Register of Rizal province on December 14, 1959. The promissory note, which provided for payment of 12% interest per annum and of an additional 15% of the total amount due for attorney's fees and costs of collection was not paid within the two-months maturity period therein provided.

Meanwhile, defendants-appellants, the Evangelista spouses, obtained on January 4, 1960, a final money judgment against defendant Tunaya in Civil Case No. 5550 of the Court of First Instance of Rizal. They caused the levy in execution on personal properties of said defendant Tunaya, including the piano and stove mortgaged to plaintiffs. The said mortgaged chattels, together with other personal properties of the judgment debtor, were sold at public auction on June 24, 1960, after the corresponding notice of sheriff's sale, to the defendants-appellants as the highest bidders for the total sum of P2,373.00. The judgment credit of defendants-appellants, as judgment creditors in said Civil Case No. 5550, was considered paid up to the said amount and the Sheriff of Rizal issued the corresponding certificate of sale in their favor.

Subsequently, on October 11, 1960, or 8 months after the maturity of Tunaya's promissory note and his having defaulted in the payment thereof, plaintiffs filed their complaint in the City Court of Manila against Tunaya and the Evangelista spouses, alleging the above facts and that the Evangelista spouses had refused their demands to pay the amount due on Tunaya's promissory note or to exercise their right of redemption and praying for judgment, ordering the defendants, jointly and solidarily, to pay them the amounts stipulated on the note, and in case of the failure to make such payment, to order defendants to deliver to the Sheriff of Manila the mortgaged chattels for sale at public auction to satisfy their mortgage credit.

The City Court, on November 29, 1960, rendered judgment in favor of plaintiffs against the mortgage debtor,

Tunaya, on confession of the latter, but granted the motion to dismiss of the defendants Evangelista spouses on the ground of failure to state a cause of action and dismissed the complaint as against said spouses.

On appeal from the City Court's adverse decision, the court a quo upheld the superior rights of plaintiffs-appellees as mortgage creditors to the personal properties in question, holding that defendants-appellants, "being subsequent judgment creditors in another case, have only the right of redemption." [1] It therefore rendered the rendered the following judgment:

"(1) Ordering defendant George L. Tunaya and spouses Teodora Evangelista and Juan Evangelista, jointly and solidarily, to pay to plaintiff Alberta B. Cabral and Renato Cabral the sum of P1,000.00, with interest at 12% per annum, plus the costs of suit and attorney's fees at 15% of the whole amount due conformably to the provisions of the chattel mortgage deed; and

"(2) In the event of their failure to pay, ordering defendants to deliver to the Sheriff of Manila the properties mortgaged to plaintiffs, for the sheriff to sell the same at public auction to satisfy the judgment debt.

"The counterclaim [2] of defendant Teodora Evangelista and Juan Evangelista is dismissed." [3]

It should be noted that the lower Court rendered its above-quoted judgment only on February 22, 1965, since defendants-appellants, after the lower court denied their motion to affirm the judgment of the City Court and to dismiss plaintiffs' appeal therefrom, moved further for the remand of the case to the City Court and contested the lower court's jurisdiction to try the case as in contravention of Rule 40, section 10, of the Rules of Court. Upon denial by the lower court of their motion for the remand of the case, defendants-appellants filed a petition for certiorari and prohibition with this Court, docketed as Case L-20416, which writs this Court denied in its decision of January 30, 1964, holding that "once (defendants-appellants) had assented to the exercise of the court's jurisdiction, (they) are not permitted thereafter to alter the position thus voluntarily chosen, and to insist once more that the case be returned to the Municipal Court. Any other rule would allow the parties to confuse and delay at will the course of litigation." [4]

Defendants-appellants' appeal from the lower court's above-quoted judgment is now before us. In their first four assignments of error, defendants-appellants claim that their right over the mortgaged chattels as purchasers at the public sale in execution of their judgment against their debtor, defendant Tunaya, should not be held subordinate to the mortgage lien of plaintiffs-appellees as mortgagees, by virtue of prescription and laches on the part of said mortgagees as well as of their having purchased the chattels at a public sheriff's sale. We find no merit in these contentions. Appellants' contention of prescription is based on a patent misreading of the provisions of section 14 of the Chattel Mortgage Law (Act No. 1508) that "the mortgagee ... may after thirty days from the time of condition broken, cause the mortgaged property, or any part thereof, to be sold at public auction." It does not follow from this provision as wrongly contended by appellants, that failure on the part of plaintiffs to immediately foreclose their chattel mortgage within the 30-day period from February 12, 1960 (when the promissory note matured) to March 12, 1960, resulted in the prescription of plaintiff's mortgage right and action. This thirty-day period is the minimum period after violation of the mortgage condition for the mortgage creditor to cause the sale at public auction of the mortgaged chattels, with at least ten days notice to the mortgagor and posting of public notice of the time, place and purpose of such sale, and is a period of grace for the mortgagor, who has no right of redemption after the sale is held, to discharge the mortgage obligation. [5] The prescription period for recovery of movables for foreclosure purposes such as in the present case is eight years as provided in Article 1140 of the Civil Code, [6] and here plaintiffs had timely filed their action within 8 months from the mortgage debtor's default. By the same token, neither could laches properly be imputed against plaintiffs, who filed their action promptly after they had been advised by their debtor, defendant Tunaya, of the public auction sale on June 24, 1960 of the chattels at the instance of defendants-appellants as his judgment creditors. [7]

Defendants-appellants' purchase of the mortgaged chattels at the public sheriff's sale and the delivery of the chattels to them with a certificate of sale did not give them a superior right to the chattels as against plaintiffs-mortgagees. Rule 39, section 22 of the old Rules of Court (now Rule 39, section 25 of the Revised Rules), cited by appellants precisely provides that "the sale conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied." It has long been settled by this Court that "The right of those who so acquire said properties should not and can not be superior to that of the creditor who has in his favor an instrument of mortgage executed with the formalities of the law, in good faith, and without the least indication of fraud. This is all the more true in the present case, because, when the plaintiff purchased the automobile in question on August 22, 1933, he knew; or at least, it is presumed that he knew, by the mere fact that the instrument of mortgage, Exhibit 2, was registered in the office of the register of deeds of Manila, that said automobile was subject to a mortgage line. In purchasing it, with full knowledge that such circumstances existed, it should be presumed that he did so, very much willing to respect the lien existing thereon, since he should not have expected that with the purchase, he would acquire a better right than that which the vendor then had." [8] In another case between two mortgagees, we held that "As between the first and second mortgagees, therefore, the second mortgagee has at most only the right to redeem, and even when the second mortgagee goes through the formality of an extrajudicial foreclosure, the purchaser acquires no more than the right of redemption from the first mortgagee." [9] The superiority of the mortgagee's lien over that of a subsequent judgment creditor is now expressly provided in Rule 39, section 16 of the Revised Rules of Court, which states with regard to the effect of levy on execution as to third persons that "The levy on execution shall create a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, subject to liens or incumbrances then existing."

In the fifth assignment of error, appellants contend that the lower court erred in ordering them to pay solidarily with defendant Tunaya the amount due on Tunaya's note in favor of plaintiffs, and in the event of their failure to pay, to deliver the chattels to the Sheriff for sale at public auction. Article 559 of the Civil Code providing that "If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor. x x" cited by appellants has no application in the present case, for as pointed above, they acquired the chattels subject to the existing mortgage lien of plaintiffs thereon. Appellants state in their brief that they paid for the chattels the amount of P2,373.00. [10] As pointed out by appellees, the record shows that defendants-appellants had disposed of the mortgaged chattels "to other persons at a discounted rate" [11] and had, therefore, appropriated the same as if the chattels were of their absolute ownership, in complete derogation of plaintiffs' superior mortgage lien and in disregard of plaintiffs' demands to them prior to the filing of their complaint on October 11, 1960, to pay or exercise their right of redemption. Appellants by their act of disposition of the mortgaged chattels, whose value were admittedly more than adequate to secure Tunaya's mortgage obligation, have thus practically nullified plaintiffs' superior right to foreclose the mortgage and collect the amount due them. Considering the long period that has elapsed since October 11, 1960 when plaintiffs tried to enforce their claim and defendants-appellants' adamant resistance thereof and unjust refusal to recognize plaintiffs' clearly superior right to the chattels, which appellants admittedly disposed of without lawful right to other unknown persons obviously to defeat plaintiffs' rights over the same, we are satisfied that justice and equity justify the lower court's judgment holding the defendants-appellants solidarily liable for the amount due plaintiffs-appellees.

WHEREFORE, the lower Court's judgment ordering defendant Tunaya and the defendants-appellants Teodora Evangelista, jointly and solidarily, to pay plaintiffs the sum of P1,000.00 with interest at 12% per annum, plus the costs of suit and attorney's fees at 15% of the whole amount due, conformably to the provisions of the chattel mortgage deed, modified so as to expressly provide that the interest accrues from the date of the execution of the

promissory note on December 12, 1959, is hereby affirmed. As the chattels have been disposed of to unknown persons, Paragraph 2 of the dispositive part of the judgment providing for the delivery to the Sheriff of the mortgaged chattels in the event of defendants' failure to pay the judgment is eliminated. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, Capistrano, and Barredo, JJ., concur.

Zaldivar, J., did not take part.

[1] Rec. on Appeal, p. 43.

[2] For moral and compensatory damages and attorney's fees.

[3] Rec. on Appeal, pp. 43-44.

[4] Juan N. Evangelista et al. vs. Hon. Luis B. Reyes, etc. et al., 10 SCRA, 55; Record on Appeal, pp. 34-38.

[5] In real estate mortgages, this grace period is 90 days from receipt of the foreclosure order, Rule 68, section 3, Rules of Court.

[6] Assuming that the 10-year prescription period for a mortgage action in Art. 1142 of the Civil Code is applicable only to real estate mortgages.

[7] T.S.N., pp. 6-7.

[8] Ong Liong Tiak vs. Luneta Motor Co., 66 Phil. 459, 462-463; See also Givante vs. Republic Saving Bank, L-29696, Nov. 29, 1968; Dumlao vs. Domingo, L-18835, April 29, 1963.

[9] Tizon vs. Valdez 48 Phil., 910, 916.

[10] Appellants' Brief, pp. 13-14.

[11] Rec. on Appeal, p. 23.

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