

JOSE R. MARTINEZ, AS ADMINISTRATOR OF THE INTESTATE ESTATE OF PEDRO RODRIGUEZ, DECEASED, PLAINTIFF AND APPELLANT, VS. PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLEE.

G.R. No. L-4080. September 21, 1953

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

As of February 1942, the estate of Pedro Rodriguez was indebted to the defendant Philippine National Bank in the amount of P22,128.44 which represented the balance of the crop loan obtained by the estate upon its 1941-1942 sugar cane crop. Sometime in February 1942, Mrs. Amparo R. Martinez, late administratrix of the estate upon request of the defendant to the said bank two (2) *quedans* according to plaintiff-appellant issued by the Bogo-Medellin Milling Co. where the sugar was stored covering 2,198.11 piculs of sugar belonging to the estate, although according to the defendant-appellee, only one *quedan* covering 1,071.04 piculs of sugar was endorsed and delivered. During the last Pacific war, sometime in 1943, the sugar covered by the *quedan* or *quedans* was lost while in the warehouse of the Bogo-Medellin Milling Co. In the year 1948, the indebtedness of the estate including interest was paid to the bank, according to the appellant, upon the insistence of and pressure brought to bear by the Bank.

Under the theory and claim that sometime in February 1942, when the invasion of the Province of Cebu by the Japanese Armed Forces was imminent, the administratrix of the state asked the bank to release the sugar so that it could be sold at a good price which was about P25 per picul in order to avoid its possible loss due to the invasion, but that the bank refused the request and as a result the amount of P54,952.75 representing the value of said sugar was lost, the present action was brought against the defendant bank to recover said amount. After trial, the Court of First Instance of Manila dismissed the complaint on the ground that the transfer of the *quedan* or *quedans* representing the sugar in the warehouse of the Bogo-Medellin Milling Co. to the bank did not transfer ownership of the sugar, and consequently, the loss of said sugar should be borne by the plaintiff-appellant. Administrator Jose R. Martinez is now appealing from that decision.

We agree with the trial court that at the same time of the loss of sugar during the war, sometime in 1943, said sugar still belonged to the estate of Pedro Rodriguez. It had never been sold to the bank so as to make the latter owner thereof. The transaction could not have been a sale, first, because one of the essential elements of the contract of sale, namely, consideration was not present. If the sugar was sold, what was the price? We do not know, for nothing was said about it. Second, the bank by its charter is not authorized to engage in the business of buying and selling sugar. It only accepts sugar as security for payment of its crop loans and later on pursuant to an understanding with the sugar planters, it sell said sugar for them. or the planters find buyers and direct them to the bank. The sugar was given only as a security for the payment of the crop loan. This is admitted by the appellant as shown by the allegations in its complaint filed before the trial court and also in the brief for appellant filed before us. According to law, the mortgage or pledgee cannot become the owner of or convert and appropriate to himself

the property mortgaged or pledged (Article 1859, old Civil Code; Article 2088, new Civil Code). Said property continues to belong to the mortgagee or pledgee is to have said property sold at public auction and the proceeds of the sale applied to the payment of the obligation secured by the mortgage or pledge.

The position and claim of plaintiff-appellant is rather inconsistent and confusing. First, he contends that the endorsement and delivery of the quedan or quedans to the bank transferred the ownership of the sugar to said bank so that as owner, the bank should suffer the loss of the sugar on the principle that "a thing perishes for its owner". We take it that by endorsing the quedan, defendant was supposed to have sold the sugar to the bank for the amount of the outstanding loan of P22,128.44 and the interest then accrued. That would mean that plaintiff's account with the bank has been entirely liquidated and their contractual relations ended, the bank, suffering the loss of the amount of the loan and interest. But plaintiff-appellant in the next breath contends that had the bank released the sugar in February 1942, plaintiff could have sold it for P54,952.75, from which the amount of the loan and interest could have been deducted, the balance to have been retained by plaintiff, and that since the loan has been entirely liquidated in 1948, then the whole expected sales price of P54,952.75 should now be paid by the bank to appellant. This second theory presupposes that despite the endorsement of the quedan, plaintiff still retained ownership of the sugar, a position that runs counter to the first theory of transfer of ownership to the Bank.

In the course of the discussion of this case among the members of the Tribunal, one or two of them who will dissent from the majority view sought to cure and remedy this apparent inconsistency in the claim of appellant and sustain the theory that the endorsement of the quedan made the bank the owner of the sugar resulting in the payment of the loan, so that now, the bank should return to appellant the amount of the loan it improperly collected in 1948.

In support of the theory of transfer of ownership of the sugar to the bank by virtue of the endorsement of the quedan, reference was made to the Warehouse Receipts Law, particularly section 41 thereof, and several cases decided by this court are cited. In the first place, this claim is inconsistent with the very theory of plaintiff-appellant that the sugar far from being sold to the bank was merely given as security for the payment of the crop loan. In the second place, the authorities cited are not directly applicable. In those cases this court held that for purposes of facilitating commercial transaction, the endorsee or transferee of a warehouse receipt or quedan should be regarded as the owner of the goods covered by it. In other words, as regards the endorser or transferor, even if he were the owner of the goods, he may not take possession and dispose of the goods without the consent of the endorsee or transferee of the quedan or warehouse receipt; that in some cases the endorsee of a quedan may sell the goods and apply the proceeds of the sale to the payment of the debt; and as regards third persons, the holder of a warehouse receipt or quedan is considered the owner of the goods covered by it. To make clear the view of this court in said cases, we are quoting a portion of the decisions of this court in two of these cases cited which are typical.

"As to the first cause of action, we hold that in January, 1919, the bank became and remained the owner of the five quedans Nos. 30, 35, 38, 41, and 42; that they were in form negotiable, and that, as such owner; it was legally entitled to the possession and control of the property therein described at the time the insolvency petition was filed and had a right to sell it and apply the proceeds of the sale to its promissory notes, including the three notes of P18,000 each, which were formerly secured by the three quedans Nos. 33, 36, and 39, which the bank surrendered to the firm." (Philippine Trust Co. vs. National Bank, 42 Phil., 413, 427).

"* * * Section 58 provides that within the meaning of the Act 'to "purchase" includes to take as mortgagee or pledgee' and "purchaser" includes mortgagee and pledgee.' It therefore seems clear that, as to the legal title to the property covered by a warehouse receipt, a pledgee is on the same footing as a vendee except that the former is under the obligation of surrendering his title upon the payment of the debt secured. To hold otherwise

would defeat one of the principal purposes of the Act, i.e., to furnish a basis for commercial credit." (Bank of the Philippine Islands vs. Herridge, 47 Phil. 57, 70).

It is obvious that where the transaction involved in the transfer of a warehouse receipt or quedan is not a sale but pledge or security, the transferee or endorsee does not become the owner of the goods but that he may only have the property sold and then satisfy the obligation from the proceeds of the sale. From all this, it is clear that at the time the sugar in question was lost sometime during the war, estate of Pedro Rodriguez was still the owner thereof.

It is further contended in this appeal that the defendant-appellee failed to exercise due care for the preservation of the sugar, and that the loss was due to its negligence as a result of which the appellee incurred the loss. In the first place, this question was not raised in the court below. Plaintiff's complaint failed to make any allegation regarding negligence in the preservation of this sugar. In the second place, it is a fact that the sugar was lost in the possession of the warehouse selected by the appellant to which it had originally delivered and stored it, and for causes beyond the bank's control, namely, the war.

In connection with the claim that had the bank released the sugar sometime in February, 1942, when requested by the plaintiff, said sugar could have been sold at the rate of P25 a picul or a total of P54,952.75, the amount of the present claim, there is evidence to show that the request for release was not made to the bank itself but directly to the official of the warehouse, the Bogo-Medellin Milling Co. and that the bank was not aware of any such request, but that before April 9, 1942, when the Cebu branch of the defendant was closed, the bank through its officials offered the sugar for sale but that there were no buyers, perhaps due to the unsettled and chaotic conditions then obtaining by reason of the enemy occupation.

In conclusion, we hold that where a warehouse receipt or quedan is transferred or endorsed to a creditor only to secure the payment of a loan or debt, the transferee or endorsee does not automatically become the owner of the goods covered by the warehouse receipt or quedan but he merely retains the right to keep and with the consent of the owner to sell them so as to satisfy the obligation from the proceeds of the sale, this for the simple reason that the transaction involved is not a sale but only a mortgage or pledge, and that if the property covered by the quedans or warehouse receipts is lost without the fault or negligence of the mortgagee or pledgee or quedan, then said goods are to be regarded as lost on account of the real owner, mortgagor or pledgor.

In view of the foregoing, the decision appealed from is hereby affirmed, with costs.

Bengzon, Padilla, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

DISSENTING

PARAS, C. J.,

The plaintiff seeks to recover from the defendant Philippine National Bank the sum of P54,952.75, representing the value of 2,198.11 piculs of sugar covered by two quedans indorsed and delivered to the bank by the administratrix of the estate of the deceased Pedro Rodriguez to secure the indebtedness of the latter in the amount of P22,128.44. It is alleged that when the two quedans were indorsed and delivered to the defendant bank in or about January, 1942, the sugar was in deposit at the Bogo-Medellin Sugar Co., Inc.; that said sugar was lost during the war; that the indebtedness of P22,128.44 was liquidated in 1948 by the estate of the deceased Pedro Rodriguez and that, notwithstanding demands, the defendant bank refused to credit the plaintiff with the value of the sugar lost.

There is no question as to the existence of the sugar covered by the two quedans, or as to the indorsement and delivery of said quedans to the defendant bank. The Court of First Instance of Manila which decided against the plaintiff and held that the defendant bank is not liable for the loss of the sugar in question, indeed state that the only question that arises is whether the indorsement of the warehouse receipts transferred the ownership of the sugar to the defendant bank; that if it did, the bank should suffer the loss, but if it did not, the loss should be for the account of the estate of the deceased Pedro Rodriguez. In dismissing the plaintiff's action, the trial court held that the indorsement of the quedans to the defendant bank did not carry with it the transfer of ownership of the sugar, as the indorsement and delivery were effected merely to secure the payment of an indebtedness, to facilitate the sale of the sugar, and to prevent the debtor from disposing of it without the knowledge and consent of the defendant bank. The plaintiff has appealed.

The applicable legal provision is section 41 of Act No. 2137, otherwise known as the Warehouse Receipt Law, which reads as follows:

"SEC. 41. Rights of person to whom a receipt has been negotiated.—A person to whom a negotiable receipt has been duly negotiated acquires thereby:

"(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

"(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him."

This provision plainly states that a person to whom a negotiable receipt (such as the sugar quedans in question) has been duly negotiated acquires title to the goods covered by the receipt, as well as the possession of the goods through the warehouseman, as if the latter had contracted directly with the person to whom the negotiable receipt has been duly negotiated. Consequently, the defendant bank to whom the two quedans in question have been indorsed and delivered, thereby acquired the ownership of the sugar covered by said quedans, with the logical result that the loss of the article should be borne by the defendant bank. The fact that the quedans were indorsed and delivered as a security for the payment of an indebtedness did not prevent the bank from acquiring ownership, since the only effect of the transfer was that the debtor could reacquire said ownership upon payment of his obligation. Section 41 of Act No. 2137 had already been construed by this court in the sense that ownership passes to the indorsee, although the quedans are indorsed and delivered merely as a security. (*Sy Cong Bieng vs. Hongkong & Shanghai Bank*, 56 Phil., 498; *Philippine Trust Co. vs. Philippine National Bank*, 42 Phil., 438; *Bank of the Philippine Islands vs. Herridge*, 47 Phil., 57; *Roman vs. Asia Banking Corporation*, 46 Phil., 405.)

The relation of a pledgor of a warehouse receipt, duly indorsed and delivered to the pledgee, is substantially analogous to the relation of a vendor and vendee, with right of repurchase. The vendor actually transfers the ownership of the property sold to the vendee, but the former may reacquire said ownership upon payment of the repurchase price. If the property sold a retro is lost before being repurchased, the vendee naturally has to bear the loss, with the vendor having nothing to repurchase. But if the loss should occur after the repurchase price has been paid but before the property sold a retro is actually reconveyed, the vendee is bound to return to the vendor only the repurchase price paid, and not the value of the property.

In my opinion, therefore, the loss of the sugar should be for the account of the defendant bank, which should return to the plaintiff P22,128.44, the amount of the indebtedness of the estate of the deceased Pedro Rodriguez which had already been paid in 1948, without however being liable for the difference between P54,952.75 (actual

value of the sugar) and the amount of said payment.

The appealed judgment should therefore be reversed and the defendant bank sentenced to pay to the plaintiff the sum of P22,128.44.

Pablo, J., concurs.

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