

**MOBIL OIL PHILIPPINES, INC., PLAINTIFF-APPELLANT, VS. RUTH R. DIOCARES, ET AL., DEFENDANTS-APPELLEES.***G.R. No. L-26371. September 30, 1969*

Ponente: FERNANDO, J.

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It may very well be, as noted by jurists of repute, that to stress the element of a promise as the basis of contracts is to acknowledge the influence of natural law.[1] Nonetheless, it does not admit of doubt that whether under the civil law or the common law, the existence of a contract is unthinkable without one's word being plighted. So the New Civil Code provides: "A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." [2] So it is likewise under American law. Thus: "A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." [3]

The law may go further and require that certain formalities be executed. Thus, for a mortgage to be validly constituted, "it is indispensable, \* \* \*, that the document in which it appears be recorded in the Registry of Property." The same codal provision goes on: "If the instrument is not recorded, the mortgage is nevertheless binding between the parties." [4]

The question before us in this appeal from a lower court decision, one we have to pass upon for the first time, is the effect, if any, to be given to a mortgage contract admittedly not registered, only the parties being involved in the suit. The lower court was of the opinion that while it "created a personal, obligation [it] did not establish a real estate mortgage." [5] It did not decree foreclosure therefor. Plaintiff-appellant appealed. We view the matter differently and reverse the lower court.

The case for the plaintiff, Mobil Oil Philippines, Inc., now appellant, was summarized in the lower court order of February 25, 1966, subject of this appeal. Thus: "In its complaint plaintiff alleged that on Feb. 9, 1965 defendants Ruth R. Diocares and Lope T. Diocares entered into a contract of loan and real estate mortgage wherein the plaintiff extended to the said defendants a loan of P45,000.00; that said defendants also agreed to buy from the plaintiff on cash basis their petroleum requirements in an amount of not less than 50,000 liters per month; that the said defendants will pay to the plaintiff 9-1/2% per annum on the diminishing balance of the amount of their loan; that the defendants will repay the said loan in monthly installments of P950.88 for a period of five (5) years from February 9, 1965; that to secure the performance of the foregoing obligation they executed a first mortgage on two parcels of land covered by Transfer Certificates of Title Nos. T-27136 and T-27946, both issued by the Register of Deeds of Bacolod City. The agreement further provided that in case of failure of the defendants to pay any of the installments due and purchase their petroleum requirements in the minimum amount of 50,000 liters per month from the plaintiff, the latter has the right to foreclose the mortgage or recover the payment of the entire obligation or its remaining unpaid balance; that in case of foreclosure the plaintiff shall be entitled to 12% of the indebtedness as damages and attorney's fees. A copy of the loan and real estate mortgage contract executed between the plaintiff and the defendants is attached to the complaint and made a part thereof. The complaint

further alleges that the defendant paid only the amount of P1,901.76 to the plaintiff, thus leaving a balance of P43,098.24, excluding interest, on their indebtedness. The said defendants also failed to buy on cash basis the minimum amount of petroleum which they agreed to purchase from the plaintiff. The plaintiff, therefore, prayed that the defendants be ordered to pay the amount of P43,098.24, with interest at 9-1/2% per annum from the date it fell due, and in default of such payment that the mortgaged properties be sold and the proceeds applied to the payment of defendants' obligation."[6]

Defendants, Ruth R. Diocares and Lope T. Diocares, now appellees, admitted their indebtedness as set forth above, denying merely the alleged refusal to pay, the truth, according to them, being that they sought for an extension of time to do so, inasmuch as they were not in a position to comply with their obligation. They further set forth that they did request plaintiff to furnish them with the statement of accounts with the view of paying the same on installment basis, which request was, however, turned down by the plaintiff.

Then came a motion from the plaintiff for a judgment on the pleadings, which motion was favorably acted on by the lower court. As was stated in the order appealed from: "The answer of the defendants dated October 21, 1965 did not raise any issue. On the contrary, said answer admitted the material allegations of the complaint. The plaintiff is entitled to a judgment on the pleadings."[7]

As to why the foreclosure sought by plaintiff was denied, the lower court order on appeal reads thus: "The Court cannot, how-ever, order the foreclosure of the mortgage of properties, as prayed for, because there is no allegation in the complaint nor does it appear from the copy of the loan and real estate mortgage contract attached to the complaint that the mortgage had been registered. The said loan agreement although binding among the parties merely created a personal obligation but did not establish a real estate mortgage. The document should have been registered. (Art. 2125, Civil Code of the Phil.)"[8] The dispositive portion is thus limited to ordering defendants "to pay the plaintiff the account of P43,098.24, with interest at the rate of 9-1/2% per annum from the date of the filing of the complaint until fully paid, plus the amount of P2,000.00 as attorneys' fees, and the costs of the suit."[9]

Hence this appeal, plaintiff-appellant assigning as errors the holding of the lower court that no real estate mortgage was established and its consequent refusal to order the foreclosure of the mortgaged properties. As set forth at the outset, we find the appeal meritorious. The lower court should not have held that no real estate mortgage was established and should have ordered its foreclosure.

The lower court predicated its inability to order the fore-closure in view of the categorical nature of the opening sentence of the governing article[10] that it is indispensable, "in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property." Not that it ignored the succeeding sentence: "If the instrument is not recorded, the mortgage is nevertheless binding between the parties." Its conclusion, however, is that what was thus created was merely "a personal obligation but did not establish a real estate mortgage."

Such a conclusion does not commend itself for approval. The codal provision is clear and explicit. Even if the instrument were not recorded, "the mortgage is nevertheless binding between the parties." The law cannot be any clearer. Effect must be given to it as written. The mortgage subsists; the parties are bound. As between them, the mere fact that there is as yet no compliance with the requirement that it be recorded cannot be a bar to fore-closure.

A contrary conclusion would manifest less than full respect to what the codal provision ordains. The liability of the mortgagor is therein explicitly recognized. To hold, as the lower court did, that no foreclosure would lie under the circumstances would be to render the provision in question nugatory. That we are not allowed to do. What the

law requires in unambiguous language must be lived up to. No interpretation is needed, only its application, the un-disputed facts calling for it.[11]

Moreover to rule as the lower court did would be to show less than fealty to the purpose that animated the legislators in giving expression to their will that the failure of the instrument to be recorded does not result in the mortgage being any the less "binding between the parties." In the language of the Report of the Code Commission: "In article [2125] an additional provision is made that if the instrument of mortgage is not recorded, the mortgage, is nevertheless binding between the parties." [12] We are not free to adopt then an interpretation, even assuming that the codal provision lacks the forthrightness and clarity that this particular norm does and therefore requires construction, that would frustrate or nullify such legislative objective.

Nor is the reason difficult to discern why such an exception should be made to the rule that is indispensable for a mortgage to be validly constituted that it be recorded. Equity so demands, and justice is served. There is thus full acknowledgment of the binding effect of a promise, which must be lived up to otherwise the freedom a contracting party is supposed to possess becomes meaningless. It could be said of course that to allow foreclosure in the absence of such a formality is to offend against the demands of jural symmetry. What is "indispensable" may be dispensed with. Such an objection is far from fatal. This would not be the first time when logic yields to what is fair and what is just. To such an overmastering requirement, law is not immune.

WHEREFORE, the lower court order of February 25, 1966 is affirmed with the modification that in default of the payment of the above amount of P43,028.94 with interests at the rate of 9-1/2% per annum from the date of the filing of the complaint, that the mortgage be foreclosed with the properties subject thereof being sold and the proceeds of the sale applied to the payment of the amounts due the plaintiff in accordance with law. With costs against defendants-appellees.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Capistrano, Teehankee, and Barredo, JJ., concur.

Reyes, JBL, J., on official trip.

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[1] Cohen and Cohen, Readings in Jurisprudence and Legal Philosophy, p. 102 (1951), citing Chief Justice Marshall in *Sturges v. Crowninshield*, 4 Wheat 122 (1819) and Chief Justice Taney in *Charles River Bridge v. Warren Bridge*, 11 Pet. 420 (1837).

[2] Art. 1305, The New Civil Code.

[3] American Law Institute, Restatement of the Law on Contracts, p. 1 (1932).

[4] Art. 2125 of the New Civil Code provides: "In addition to the requisites stated in article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties."

[5] Order of the lower court, Record on Appeal, p. 24.

[6] *Ibid*, pp. 21-23.

[7] *Ibid*, p. 24.

[8] *Ibid*, p. 24.

[9] *Ibid*, p. 25.

[10] Article 2125, New Civil Code.

[11] Cf. *People v. Mapa*, 20 SCRA 1164 (1967); *Pacific Oxygen & Acetylene Co. v. Central Bank*, 22 SCRA 917 (1968); *Dequito v. Lopez*, 22 SCRA 1352 (1968); *Padilla v. City of Pasay*, 23 SCRA 1349 (1968); *Garcia v. Vasquez*, 27 SCRA 505 (1969) and *La Perla Cigar. & Cigarette Factory v. Capapas*, L-27948 & 28001-11, July 31, 1969.

[12] Report of the Code Commission, at p. 158 (1948).

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