

**DIOSDADO YULIONGSIU, PLAINTIFF AND APPELLANT, VS.
PHILIPPINE NATIONAL BANK (CEBU BRANCH), DEFENDANT AND
APPELLEE.***G.R. No. L-19227. February 17, 1968*

Ponente: BENGZON, J.P., J.

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Plaintiff-appellant Diosado Yulionsiu[1] was the owner of two (2) vessels, namely: The M/S Surigao, valued at P109,925.78 and the M/S Don Dino, valued at P63,000.00, and operated the FS-203, valued at P210,672.24, which was purchased by him from the Philippine Shipping Commission, by installment or on account. As of January or February, 1948, plaintiff had paid to the Philippine Shipping Commission only the sum of P76,500 and the balance of the purchase price was payable at P50,000 a year, due on or before the end of the current year.[2]

On June 30, 1947, plaintiff obtained a loan of P50,000 from the defendant Philippine National Bank, Cebu Branch. To guarantee its payment, plaintiff pledged the M/S Surigao, M/S Don Dino and its equity in the FS-203 to the defendant bank, as evidenced by the pledge contract, Exhibit "A" & "1-Bank", executed on the same day and duly registered with the office of the Collector of Customs for the Port of Cebu.[3]

Subsequently, plaintiff effected partial payment of the loan in the sum of P20,000. The remaining balance was renewed by the execution of two (2) promissory notes in the bank's favor. The first note, dated December 18, 1947, for P20,000, was due on April 16, 1948 while the second, dated February 26, 1948, for P10,000, was due on June 25, 1948. These two notes were never paid at all by plaintiff on their respective due dates[4]

On April 6, 1948, the bank filed criminal charges against plaintiff and two other accused for estafa thru falsification of commercial documents, because plaintiff had, as last indorsee, deposited with defendant bank, from March 11 to March 31, 1948, seven Bank of the Philippine Islands checks totalling P184,000. The drawer thereof — one of the co-accused — had no funds in the drawee bank. However, in connivance with one employee of defendant bank, plaintiff was able to withdraw the amount credited to him before the discovery of the defraudation on April 2, 1948. Plaintiff and his co-accused were convicted by the trial court and sentenced to indemnify the defendant bank in the sum of P184,000. On appeal, the conviction was affirmed by the Court of Appeals on October 31, 1950. The corresponding writ of execution issued to implement the order for indemnification was returned unsatisfied as plaintiff was totally insolvent.[5]

Meanwhile, together with the institution of the criminal action, defendant bank took physical possession of the three pledged vessels while they were at the Port of Cebu, and on April 29, 1948, after the first note fell due and was not paid, the Cebu Branch Manager of defendant bank, acting as attorney-in-fact of plaintiff pursuant to the terms of the pledge contract, executed a document of sale, Exhibit "4", transferring the two pledged vessels and plaintiff's equity in FS-203, to defendant bank for P30,042.72.[6]

The FS-203 was subsequently surrendered by the defendant bank to the Philippine Shipping Commission which rescinded the sale to plaintiff on September 8, 1948, for failure to pay the remaining installments on the purchase

price thereof.[7] The other two boats, the M/S Surigao and the M/S Don Dino were sold by defendant bank to third parties on March 15, 1951.

On July 19, 1948, plaintiff commenced action in the Court of First Instance of Cebu to recover the three vessels or their value and damages from defendant bank. The latter filed its answer, with a counterclaim for "P202,000 plus P5,000 damages. After issues were joined, a pre-trial was had resulting in a partial stipulation of facts dated October 2, 1958, reciting most of the facts above-narrated. During the course of the trial, defendant amended its answer reducing its claim from P202,000 to P8,846.01,[8] but increasing its alleged damages to P35,000.

The lower court rendered its decision on February 13, 1960 ruling: (a) that the bank's taking of physical possession of the vessels on April 6, 1948 was justified by the pledge contract, Exhibit "A" & "1-Bank" and the law; (b) that the private sale of the pledged vessels by defendant bank to itself without notice to the plaintiff-pledgor as stipulated in the pledge contract was likewise valid; and (c) that the defendant bank should pay to plaintiff the sums of P1,153.99 and ¥8,000, as his remaining account balance, or set-off these sums against the indemnity which plaintiff was ordered to pay to it in the criminal cases.

When his motion for reconsideration and new trial was denied, plaintiff brought the appeal to Us, the amount involved being more than P200,000.00.

In support of the first assignment of error, plaintiff-appellant would have this Court hold that Exhibit "A" & "1-Bank" is a chattel mortgage contract so that the creditor defendant bank could not take possession of the chattels object thereof until after there has been default. The submission is without merit. The parties stipulated as a fact that Exhibit "A" & "1-Bank" is a pledge contract—

"3. That a credit line of P50,000.00 was extended to the plaintiff by the defendant Bank, and the plaintiff obtained and received from the said Bank the sum of P50,000, and in order to guarantee the payment of this loan, the pledge contract, Exhibit "A" & Exhibit "1-Bank", was executed and duly registered with the Office of the Collector of Customs for the Port of Cebu on the date appearing therein;" (Italics supplied)

Necessarily, this judicial admission binds the plaintiff. Without any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[9]

The defendant bank as pledgee was therefore entitled to the actual possession of the vessels. While it is true that plaintiff continued operating the vessels after the pledge contract was entered into, his possession was expressly made "subject to the order of the pledgee." [10] The provision of Art. 2110 of the present Civil Code [11] — being new — cannot apply to the pledge contract here which was entered into on June 30, 1947. On the other hand, there is authority supporting the proposition that the pledgee can temporarily entrust the physical possession of the chattels pledged to the pledgor without invalidating the pledge. In such a case, the pledgor is regarded as holding the pledged property merely as trustee for the pledgee. [12]

Plaintiff-appellant would also urge Us to rule that constructive delivery is insufficient to make pledge effective. He points to *Betita v. Ganzon*, 49 Phil. 87 which ruled that there has to be actual delivery of the chattels pledged. But then there is also *Banco Español-Filipino v. Peterson*, 7 Phil. 409 ruling that symbolic delivery would suffice. An examination of the peculiar nature of the things pledged in the two cases will readily dispel the apparent contradiction between the two rulings. In *Betita v. Ganzon*, the objects pledged — carabaos — were easily capable of actual, manual delivery unto the pledgee. In *Banco Español-Filipino v. Peterson*, the objects pledged — goods contained in a warehouse — were hardly capable of actual, manual delivery in the sense that it was impractical as a whole for the particular transaction and would have been an unreasonable requirement. Thus, for purposes of showing the transfer of control to the pledgee, delivery to him of the keys to the warehouse sufficed. In other words, the type of delivery will depend upon the nature and the peculiar circumstances of each case. The parties

here agreed that the vessels be delivered by the "pledgor to the pledgor who shall hold said property subject to the order of the pledgee." Considering the circumstances of this case and the nature of the objects pledged, i.e., vessels used in maritime business, such delivery is sufficient.

Since the defendant bank was, pursuant to the terms of the pledge contract, in full control of the vessels thru the plaintiff, the former could take actual possession at any time during the life of the pledge to make more effective its security. Its taking of the vessels therefore on April 6, 1948, was not unlawful. Nor was it unjustified considering that plaintiff had just defrauded the defendant bank in the huge sum of ₱ 184,000.

The stand We have taken is not without precedent. The Supreme Court of Spain, in a similar case involving Art. 1863 of the old Civil Code,[13] has ruled:[14]

"Que si bien la naturaleza del contrato de prenda consiste en pasar las cosas a poder del acreedor o de un tercero y no quedar en la del deudor, como ha sucedido en el caso de autos, es lo cierto que todas las partes interesadas, o sean acreedor, deudor y Sociedad, convinieron que continuaran los coches en poder del deudor para no suspender el trafico, y el derecho de no uso de la prenda pertenece al deudor, y el de dejar la cosa bajo su responsabilidad al acreedor, y ambos convinieron por creerlo util para las partes contratantes, y estas no reclaman perjuicios, no se infringio, entre otros, este articulo."

In the second assignment of error imputed to the lower court, plaintiff-appellant attacks the validity of the private sale of the pledged vessels in favor of the defendant bank itself. It is contended first that the cases holding that the statutory requirements as to public sales with prior notice in connection with foreclosure proceedings are waivable, are no longer authoritative in view of the passage of Act 3135, as amended; second, that the charter of defendant bank does not allow it to buy the property object of foreclosure in case of private sales; and third, that the price obtained at the sale is unconscionable.

There is no merit in the claims. The rulings in *Philippine National Bank v. De Poli*, 44 Phil. 763 and *El Hogar Filipino v. Paredes*, 45 Phil. 178 are still authoritative despite the passage of Act 3135. This law refers only, and is limited, to foreclosure of real estate mortgages.[15] So, whatever formalities there are in Act 3135 do not apply to pledge. Regarding the bank's authority to be the purchaser in the foreclosure sale, Sec. 33 of the Act 612, as amended by Acts 2747 and 2938 only states that if the sale is public, the bank could purchase the whole or part of the property sold "free from any right of redemption on the part of the mortgagor or pledgor." This even argues against plaintiff's case since the import thereof is that if the sale were private and the bank became the purchaser, the mortgagor or pledgor could redeem the property. Hence, plaintiff could have recovered the vessels by exercising this right of redemption. He is the only one to blame for not doing so.

Regarding the third contention, on the assumption that the purchase price was unconscionable, plaintiff's remedy was to have set aside the sale. He did not avail of this. Moreover, as pointed out by the lower court, plaintiff had at the time an obligation to return the "₱184,000 fraudulently taken by him from defendant bank.

The last assignment of error has to do with the damages allegedly suffered by plaintiff-appellant by virtue of the taking of the vessels. But in view of the results reached above, there is no more need to discuss the same.

On the whole, We cannot say the lower court erred in disposing of the case as it did. Plaintiff-appellant was not all-too-innocent as he would have us believe. He did defraud the defendant bank first. If the latter countered with the seizure and sale of the pledged vessels pursuant to the pledge contract, it was only to protect its interests after plaintiff had defaulted in the payment of the first promissory note. Plaintiff-appellant did not come to court with clean hands.

Wherefore, the appealed judgment is, as it is hereby, affirmed. Costs against plaintiff-appellant.

So ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Judgment affirmed.

[1] Diosdado Yuliongsiu has, since December 6, 1962, died and been subsequently substituted by his widow Emerenciana A. Yuliongsiu, for herself and as guardian ad litem of their daughter Rose Yuliongsiu.

[2] Par. 1, Pre-Trial Order of Oct. 2, 1958; Record on Appeal, p. 39. Par.

[3] Pre-Trial Order of Oct. 2, 1958; Record on Appeal, p. 40.

[4] Par. 4, Pre-Trial Order of Oct. 2, 1958; Record on Appeal, pp. 40-43.

[5] Pars. 8-9, Pre-Trial Order of Oct. 2, 1958; Record on Appeal, pp. 45-46.

[6] Par. 6, Pre-Trial Order of Oct. 2, 1958; Record on Appeal, p. 44.

[7] Par. 5, Pre-Trial Order of Oct. 2, 1958; Record on Appeal, pp. 43-44.

[8] There was an 8th check, for P18,000, deposited by plaintiff and for which the drawer had no funds. This amount less plaintiffs actual balance of P9,153.99 in his account gives the bank an P8,846.01 credit.

[9] Sec. 2, Rule 129, Rules of Court.

[10] Exh. "A" & "1-Bank" recites in par: ". .. the Pledgor . .. hereby gives Possession of such property for the purpoco of this pledge to the Pledgor who shall hold said property, subject to the order of the Pledgee." (Italics supplied)

[11] Providing that if after the perfection of the pledge, the thing is found in the pledgor's possession, it is presumed that the same was returned by the pledgee, thereby extinguishing the pledge.

[12] 72 C.J.S. 40-41.

[13] Which provides: "In addition, to the requisites mentioned in Article 1857, it shall be necessary, in order to constitute the contract of pledge, that the pledge be placed in the possession of the creditor or of a third person appointed by common consent."

[14] Sentencia del 23 de Abril de 1929, cited in 29 Scaevola 346.

[15] Luna v. Encarnacion, 91 Phil. 531.

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