

ERNEST BERG, PLAINTIFF AND APPELLANT, VS. VALENTIN TEUS, DEFENDANT AND APPELLANT.*G.R. No. L-6453. October 30, 1954*

Ponente: CONCEPCION, J.

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Late in September, 1944, defendant Valentin Teus applied from plaintiff Ernest Berg, and the latter granted him, "a credit line up to P80,000," to be available to Teus "for the discounting of promissory notes payable on demand two (2) years after the declaration of Armistice, between Japan and the United States of America, but never before that date, bearing interest at the rate of eight (8%) per cent per annum." Soon after, Teus obtained from Berg the aggregate sum of P80,000, covered by six (6) promissory notes issued and delivered by the former to the latter. To guarantee compliance with the obligation thus contracted by him, Teus executed in Manila, on November 22, 1944, a real estate and chattel mortgage, on several parcels of land situated in the municipality of Candon, Ilocos Sur, and the machineries and equipment of the Central Azucarera del Norte, operated thereon, and belonging exclusively to Teus. Among other things, it was stipulated in the deed of mortgage, that Teus shall seasonably pay such taxes on the mortgaged property, as may be due from time to time; that he shall not alienate, encumber, or otherwise dispose of said property, or make any material alteration thereon, without the previous consent, in writing, of Berg; and that, in case of failure of the mortgagor to comply with any of his obligations under said deed, the mortgage shall be automatically foreclosed, and the mortgagee could proceed with the foreclosure, either extra-judicially or judicially, with the right, in the latter case, to the appointment of a receiver without bond, in addition to "attorney's fees and costs of collection to an amount equal to ten per cent (10%) of the total indebtedness then unpaid, but not less than two Hundred (P200) Pesos, apart from all costs and fees allowed by the Rules of Court. . ."

Alleging that the mortgagor had violated said provisions of the deed of mortgage, on May 19, 1948, plaintiff instituted this action in the Court of First Instance of Ilocos Sur and prayed in the complaint that the mortgage in question be automatically foreclosed, a receiver appointed, and judgment rendered against the defendant for the sum of P80,000, with interest thereon, at the rate of 8 per cent per annum, from November 22, 1944 until full payment, plus 10 per cent of the principal and interest, as attorney's fees, and the sum of P385.57 for the registration of the deed of mortgage, in addition to the costs. On motion of Teus, predicated upon the Moratorium Law, the lower court dismissed the case, but, on appeal, this Court reversed the order of dismissal and remanded the case to the court of origin for further proceedings. Subsequently, Teus filed an answer, admitting some allegations of the complaint, denying other allegations thereof, and setting up several special defenses and counterclaims.

After submission of the case for decision, upon a partial stipulation of facts and the evidence presented, the Court of First Instance of Ilocos Sur rendered a decision, the dispositive part of which reads as follows:

"Por consiguiente, el Juzgado dicta decision en esta causa declarando al demandado Sr. Don Valentin Teus en deber al demandante Sr. Don Ernest Berg en la cantidad de Ochenta mil pesos (P80,000) con los intereses

pactados de Ocho por ciento (8%) de esta suma desde el 22 de Noviembre de 1944 hasta el dia de su completo pago, mas P248.80 por el registro de la Escritura de Ilipoteca Exhibit A y la rconstitucion de los correspondientes Certificados de Titulos, las costas de aplacion (en G. R. No. L-2987) y las costas en esta instancia; ordenando a dicho demandado a pagar al referido demandante o depositar en este Juzgado, dentro del periodo de 90 dias desde la fecha del servicio de esta decision, las cantidades susodichas, con Ja advertencia de que, en defecto de dicho pago o deposito, se dispondra que, en la forma y bajo las regulacionos que rigen las ventas de bienes raices en virtud de ejecucion, so vendan de las propiedades hipotecadas Begun la Escritura Exhibit A unido a la "Completa Demanda" aquellos bienes solamente con cuyo importe se cubran o satisfagan las expresadaa cantidades, sin perjuicio de que, conforme al pronunciamiento directivo de la Hon. Corte Suprema en G. R. No. L-2987, el demandado pueda pedir la suspension de la ejecucion fundandose en la moratoria y el demandante pueda impugnar la constitucionalidad de las Ordenes Ejecutivas Nos. 25 y 32, y la Ley No. 342 de la Itepublica; denegando la peticion de nom-bramiento de depositario y de confirmacion de la alegada automatica designaeion del demandante corao apoderado legal y absolviendo plenamente a Mr. Ernest Berg de la contrademanda, sin especial prommciainiento en cuanto de las costaa ocasionadas en Virtud de esta." (Joint Record on Appeal, pp. 146-147,)

Both parties have appealed from this decision. Plaintiff maintains that the lower court erred:

"1. In failing to render judgment in favor of plaintiff for the 10 per cent attorney's fees provided for in the real and chattel mortgage, quoted in the Record on Appeal; pages 13 to 94, and 97 to 1C9.

"2. In failing to uphold and give effect to all the agreements in that mortgage (Record on Appeal pages 20 and 103).

"3. In not granting plaintiff's motion for reconsideration." whereas the defendant contends that:

"El Juzgado inferior erro al condenar al demandado-apelante Valentin Teus, a pagar al demandante-apelante la suma de ochenta mil pesos (P80,000) con interescs al 8 por ciento anual dosde el 31 de Octubre de 1944 hasta su completo pago en moneda de circulation corriente."

Briefly stated, it is urged by the plaintiff that the defendant had violated the terms and conditions of the aforementioned deed of mortgage, inasmuch as he had been in default in the payment of taxes and had conveyed to J. A. Elizalde and Manuel Elizalde the property in question, and made material alterations thereon, without the consent of the plaintiff, who, accordingly, insists that the lower court should have, likewise, sentenced the defendant to pay the special indemnity provided therefor in the contract—and to which reference has been made in the preceding paragraphs—as prayed for in the complaint.

In this connection, it should be noted that during the occupation of the Philippines by the Japanese, and, hence, at the time of the execution and delivery of the promissory notes and the deed of mortgage above referred to, the Central Azucarera del Norte was in the possession and control of, as well as under operation by, the Japanese Military Administration. Plaintiff Ernest Berg was aware of this fact. Before abandoning the property, upon the liberation of the Philippines,, the Japanese blew up the central, destroyed its machinery and carried away some of its equipment. In order to rehabilitate the central, on January 30, 1946, Teus entered into a contract with J. A. Elizalde and Manuel Elizalde, pertinent provisions of which we quote:

"3. The Owner states and makes known that the Central Azucarera Del Norte had a mortgage account with the Philippine National Bank in the sum of Two Hundred Thousand Pesos (P200,000) as above stated, settlement whereof was made on or about Septemner and October, 1944, and fully realizes that the validity of such payment is for the present not definitely settled and determined by congressional action or judicial pronouncement, and therefore said Owner agrees with Elizalde that the latter shall be entitled as of right to withhold payment of the promissory notes aforementioned to the extent of Two Hundred Thousand Pesos (P200,000) until such time as a definite policy or ruling shall have been made on the question of the validity of

the payment made with the Philippine National Bank in settlement of the Owner's mortgage 'account. The Owner further states that his subsequent mortgage obligation with Ernest Berg of Eighty Thousand Pesos (P80,000), consummated on November 22, 1944, is likewise in the nature of a contingent liability the validity of which remains to be determined by congressional action and judicial interpretation, and agrees in relation thereto that Elizalde may withhold payment of the promissory notes aforementioned to the extent of Eighty Thousand Pesos (P80,000) until the validity of said transaction is definitely determined.

"In the event that the aforementioned obligations of the Owner with the Philippine National Bank and Ernest Berg in their respective agreements, shall be held to be valid and the liabilities thereunder to be subsisting and enforceable, Elizalde may pay such amount to the parties concerned out of the remaining balance of the Owner's credit with Elizalde.

"4. Once a definite policy or ruling has been laid down by congressional act and/or judicial pronouncement on the validity of payments made by the Owner to the Philippine National Bank and/or legality and subsistence of his real estate and chattel mortgage with Ernest Berg, Elizalde agrees to form with the Owner a new corporation the name of which is to be designated later, with an authorized capital stock of Nine Hundred Thousand Pesos (P900,000), divided into Nine Thousand (9,000) shares with a par value of One Hundred Pesos (P100) each share, which will absorb all assets of Central Azucarera Del Norte, and the interest of Elizalde and the Owner in the new entity will be on the basis of 5/9 for the former and 4/9 for the latter. Both Elizalde and the Owner may designate their respective nominees to the corporation which may be formed pursuant to this agreement,

"6. The parties agree that Elizalde & Co., Inc. shall operate and be appointed General Managers for Central Azucarera Del Norte or of the new corporation to be organized later, and that said Elizalde & Co., Inc. may finance the reconstruction of the Central under terms and conditions to be agreed upon. * * *." (Exhibit 1-9, Stipulation of Facts, pp. 116-119; underscoring supplied.)

Berg was then confined on charges of collaboration and his consent to said contract between Teus and the Elizaldes was not secured. On February 5, 1946, Teus sold one thousand (1,000) of his shares in the Central Azucarera del Norte to Patrocinio Roco, with the obligation on his part to transfer and deliver to her the corresponding certificate of stock upon the incorporation of the Central and the issuance of said certificate of stock.

Although no insurance on the mortgaged properties had been taken prior thereto, on February 4, 1948, the Central Azucarera del Norte insured said properties against fire for P100,250.00. The next day, said Central obtained from the Commissioner of Securities and Exchange the corresponding certificate of incorporation. Such was the situation when plaintiff commenced this action on May 19, 1948. , Soon after, or on June 18, 1948, Teus executed a deed of transfer in favor of the corporation, Central Azucarera del Norte, containing the following stipulations:

I

"For and in consideration of Nine Thousand (P9,000) fully paid up shares of the capital stock of a corporation to be formed under the laws of the Philippines, to be known as 'Central Azucarera Del Norte', of a par value each of One Hundred (P100) Pesos, Philippine Currency to be issued upon the formation of said corporation to the following named persons as nominees of said Grantors, to wit:

J. M. Elizalde

2,499 Shares

Jose Yulo

1 Share

Valentin Elizalde

2,499 Shares

Valentin Teus

4,000 Shares

Celso Lobregat

1 Share

Total

9,000 Shares

and in consideration further of the undertaking and agreement of said 'Central Azucarera Del Norte', to assume all the liabilities of the Grantors as shown by its books at the close of business on December 31, 1946, the Grantors have sold, transferred, conveyed, assigned and set over and do by these presents sell, transfer, convey, assign and set over unto the Grantee, Rafael Beltran, as Treasurer of said 'Central Azucarera Del Norte', in trust for the benefit and to the credit of said corporation, all the property and assets, real, personal or mixed, of the Grantors as of the close of business on said December 31, 1946, all of which property and assets are more particularly described in the annexed schedule marked Annexes 'A' and 'B' and made a part hereof; it being expressly understood and agreed that this sale, assignment and transfer includes any and all property, real, personal, or mixed, property rights and leasehold rights, rights under powers of attorney, and any and all cash on hand or in bank, as well as any and all goods, chattels, credits, accounts receivable, bills, notes, contracts, agreements, securities fixtures, equipment, apparatus, materials, goodwill, choses in action, and all other property, assets and appurtenances belonging to and forming part of the business of the Grantors as of the close of said business on December 31, 1946, whether described and enumerated in said Annexes 'A' and 'B' hereof or of not, including the right to use the firm name 'Central Azucarera Del Norte'.

"It is understood and agreed that as soon as said corporation to be formed, 'Central Azucarera Del Norte', shall become a legal corporate entity, this sale, transfer and assignment shall operate Ipso facto' to vest the title to the property, assets and appurtenances hereby sold, transferred and assigned in the said 'Central Azucarera Del Norte', as fully and effectually as though they have been regularly and formally sold, transferred and assigned to said corporation.

II

"As part of the consideration for the sale, transfer, and assignment as above set forth; the said 'Central Azucarera Del Norte' upon its becoming a legal entity, shall undertake, assume, pay, satisfy, and discharge, all the debts and liabilities, and shall perform and fulfill all contracts, engagements and obligations, of whatsoever kind and nature in relation to or connected with the property, assets and business hereby sold by said Grantors, and shall be subrogated in all actions, proceedings, claims and demands in respect thereof.

III

"This sale and transfer shall be subject in all respect to the terms, conditions and stipulations of that certain agreement executed between Valentin Tens and J. M. Elizalde and Manuel Elizalde on the 30th day of January, 1946, before Notary Public Pacifico de Ocampo of the City of Manila, and identified in the latter's registry as Doc. No. 44, Page No. 11, Book No. II, Series of 1946, herein made a part of this instrument as Annex 'C', and to that certain real estate and chattel mortgage executed between Valentin Tens and Ernest Berg on the 22nd day of November, 1944, before Notary Public F. S. Falgui of the City of Manila, and identified in the latter's registry as Doc. No. 41, Page No. 10, Book No. V, Series of 1941, herein incorporated to this instrument as Annex 'D'.

IV

"Valentin Teus for his part agrees that as soon as the corporation 'Central Azucarera Del Norte' shall have been formally organized, said corporation shall retain and hold in trust for him, shares of stocks of said corporation with a par value of Two Hundred Eighty Thousand P280,000 Pesos, to answer for any contingent liability provided for in clauses 3 and 4 of the agreement of January 30th, 1946.

V

"The Grantors herein, individually or jointly, hereby undertake and agree to sign, execute and deliver to and in favor of said Rafael Beltran as Treasurer of said 'Central Azucarera Del Norte', or to and in behalf of the latter corporation, upon its formation, upon demand, such deeds, instruments or other writings as may be convenient and necessary to make this transfer and assignment effective." (Exhibit J-II, Folder of Stipulation of Facts, pp. 143-147; Italics supplied.)

According to paragraphs 13-a and 13-b of the stipulation submitted by the parties:

"13-a. Que desde la constitucion de la corporacion denominada con el nombre 'Central Azucarera Del Norte' hasta la actualidad el demandado Valentin Teus dejo y entrego, la posesion y custodia de 800 acciones del capital de dicha corporacion, por un valor de P80,000 y pertenecientes a el exclusivamente, al Tesorero de dicha corporacion Sr. Rafael Beltran para tenerlo en Fideicomiso con el fin de responder de la responsabilidad que dicho Valentin Teus tiene a favor del demandante Ernest Berg y el resto de sus acciones propias o sea 2,200 acciones de una valor par de P220,000 en la referida corporacion, 'Central Azucarera Del Norte', tambien los dijo en poder y posesion del mismo Tesorero, Sr. Rafael Beltran, para responder de la misma obligacion en favor del demandante, segun se comprueba por el Certificado librado por dicho Tesorero Sr. Rafael Beltran que se acompaña a esta estipulacion y se marca como Exh. L-13.

"13-b. Que en 11 de Noviembre de 1949, el demandado Valentin Teus otorgo un convenio con la Central Azucarera Del Norte y los Sres. Elizalde & Co. Inc., por virtud del cual, arrendo por el periodo de 8 años o sea desde Noviembre 11, 1949 o Octubre 11, 1957, toda la Central Azucarera Del Norte con sus maquinarias e implementos incluyendo las quotas de azucar pertenecientes a la misma, y los terrenos, mediante un pago anual de P50,000 y los intereses anuales que la Central Azucarera Del Norte debe de pagar a los Sres. Elizalde, por el balance de la cuenta con dichos Elizaldes: con el convenio ademas, de que a la terminacion del periodo del contrato, si el demandado ha cumplido con regularidad en el pago de las rentas convenidas y sus intereses, tendra opcion exclusiva de pedir que se apliquen todos los pagos de alquileres asi hechos, al pago de todos los derechos, participacion e intereses de los Sres. Elizalde en la corporacion denominada Central Azucarera Del Norte y los Sres. Elizalde traspasaran al Sr. Valentin Teus todas las 6,000 acciones que poseen en dicha Central Azucarera Del Norte, quedando exclusivo dueño de la corporacion, del negocio y de todas sus maquinarias, terrenos etc., el aqui demandado, Valentin Teus, una copia de esta estipulacion o convenio se acompaña a esta estipulacion y se marca Exhibito L-14. (Joint Record on Appeal, pp. 86-88.)

It further appears that, as of September 4, 1948, the property in question were delinquent in the payment of real estate taxes for the years 1947 and 1948, in the total sum of P3,134.35; which, together with the taxes which fell due in the meantime, were fully paid by Teus on or before December 6, 1951 (Exhibit 8).

As of December 31, 1951, the Central Azucarera del Norte had, however, a net asset of P1,079,302.10, after allowing 10 per cent for depreciation without any liability other than the obligation in favor of plaintiff herein, for P80,000, with interest thereon.

In the light of the foregoing facts, although there has been a technical violation of the terms and conditions of the deed of mortgage above referred to, owing to delinquency in the payment of taxes, the conveyance to the Elizaldes, and the material alterations made in the mortgaged properties, without the consent of the mortgagee, the

circumstances surrounding these events fully justify the action taken by His Honor, the trial Judge, for the following reasons, namely:

- When the promissory notes and the deed of mort gage in question were executed, plaintiff knew that the Central Azucarera del Norte was in the possession and under the control of the Japanese. He must have known that the mortgaged properties were subject to the inci dents of the hostile military occupation and must have been willing to assume, therefore, the corresponding risks, including that oi the subsequent damage to said properties due to acts of the Japanese forces, which were beyond defendant's control.

- Although the contracts with the Elizaldes were executed, and the corresponding alterations in said properties were made, without plaintiff's consent, said acts were per formed precisely to restore said properties to the original condition thereof. Wliat is more, the Elizaldes were ad vised by the defendant of his obligation in favor of the plaintiff, and proper arrangements were made with the Elizaldes and the Central to protect sufficiently the rights of the plaintiff, to wit: (a) by depositing with the treas urer of the corporation, 800 of defendant's shares of stock therein, with an aggregate par value of P80,000, in trust and for the benefit of plaintiff Ernest Berg apart from 2,200 shares of stock of the defendant, with an ag gregate par value of P220,000.00, likewise, to answer for the payment of the credit of plaintiff herein; and (b) by entering into a contract of lease, at a reasonable rental, whereby defendant was given the option to apply the same to the purchase of the rights of the Elizaldes and, hence, to reacquire full ownership of the Central, the net assets of which, as of December 31, 1951, are worth P1,079,302.10, without any pending obligation, except that existing in favor of plaintiff herein. In other words, the aforementioned acts of the defendants have inured to the benefit of plaintiff, Ernest Berg. It is clear, however, that such acts could not have been understood by the parties to the deed of mortgage as a "violation" of the rights of the mortgagee. Hence, the special indemnity stipulated in said deed, for the event of violation thereof, could not have been intended to apply to a situation like the one under consideration.

- The delinquency in the payment of the real estate taxes for 1947 and 1948, is easily understandable when we consider that the mortgaged property was unproductive, owing to the extensive damages caused by the Japanese, and would have remained unproductive to this day, were it not for the efforts of the defendant to rehabilitate the central by incorporating the same with the financial backing of the Elizaldes. At any rate, said taxes were paid on or before December 6, 1951, and any substantial injury to the rights of the plaintiff herein was thus avoided. Indeed, although technically mortgaged to him since 1944, the Central Azucarera del Norte was then of no value to the plaintiff, it being in the hands of the Japanese at that time. Neither was it of any practical value to him upon the liberation of the Philippines, in view of the condition in which it was left by the Japanese. Now, thanks to the defendant, there is a reconstructed central, operated by the defendant himself and producing under his seemingly competent management. Surely, he does not deserve to be penalized for this.

Invoking equity, defendant, in turn, alleges that instead of paying P80,000 with the corresponding interest, in Philippine currency, for P80,000, which he claims to have received in Japanese military notes in 1944, he should be allowed to settle his obligation in conformity with the Ballantyne schedule. Equity demands, however, that he live up to the terms of his contract, which clearly contemplates payment of P80,000 in genuine Philippine currency, not only because his promissory notes specifically provide that payment shall be made in "Philippine Treasury Certificates" but, also, because under the terms of the deed of mortgage, payment of said promissory notes shall be demandable "two (2) years after the declaration of Armistice between Japan and the United States of America, and never before." On this point, the decision appealed from merely adheres to the long line of decisions of this Court thereon. (Roño vs. Gomez, 46 Off. Gaz., [Suppl. No. 11] 339; Gomez vs. Tabia, 47 Off. Gaz., [Suppl. No. 2] 641; Arevalo vs. Barreto, 89 Phil., 633; De la Cruz vs. Del Rosario G. R. No. L-4859, Minute Resolution of July 24, 1951, and Garcia vs. De los Santos, 93 Phil., 683, 49 Off. Gaz., 4830.)

However, the reservation, made in said decision, in favor of the defendant, of the right to ask the suspension of its execution, pursuant to the provisions of the Moratorium Laws (Executive Orders Nos. 25 and 32, and Republic Act No. 342), although proper at the time of the rendition of said decision (April 10, 1952), is no longer in order, in view of our decision in the case of *Rutter vs. Esteban*, 93 Phil., 63, declaring said laws unconstitutional.

Wherefore, with the elimination of said reservation, the decision appealed from is hereby affirmed, in all other respects, without special pronouncement as to costs in this instance. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Baulista Angelo and Reyes, J. B, L., JJ., concur.

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