

**PEOPLE'S BANK AND TRUST COMPANY,
PLAINTIFF-APPELLEE, VS. SYVEL'S INCORPORATED,
ANTONIO V. SYYAP AND ANGEL Y. SYYAP,
DEFENDANTS-APPELLANTS.**

G.R. No. L-29280. August 11, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision dated May 16, 1968 rendered by the Court of First Instance of Manila, Branch XII in Civil Case No. 68095, the decretal portion of which states:

"IN VIEW OF THE FOREGOING, judgment is rendered sentencing all the defendants to pay the plaintiff jointly and severally the sum of P601,633.01 with interest thereon at the rate of 11% per annum from June 17, 1967, until the whole amount is paid, plus 10% of the total amount due for attorney's fees and the costs of suit. Should the defendants fail to pay the same to the plaintiff, then it is ordered that all the effects, materials and stocks covered by the chattel mortgages be sold at public auction in conformity with the provisions of Sec. 14 of the Chattel Mortgage Law, and the proceeds thereof applied to satisfy the judgment herein rendered. The counterclaim of the defendants, upon the evidence presented and in the light of the authorities above cited, is dismissed for lack of merit.

"SO ORDERED."

(pp. 89-90, Record on Appeal; p. 15, Rollo)

The facts of the case based on the statement of facts, made by the trial court in its decision as cited in the briefs of both parties are as follows:

"This is an action for foreclosure of chattel mortgage executed in favor of the plaintiff by the defendant Syvel's Incorporated, on its stocks of goods, personal properties and other materials owned by it and located at its stores or warehouses at No. 406, Escolta, Manila; Nos. 764-766 Rizal Avenue, Manila; Nos. 10-11 Cartimar Avenue, Pasay City; No. 886 Nicanor Reyes, Sr. (formerly Morayta), Manila; as evidenced by Annex 'A'. The chattel mortgage was duly registered in the corresponding registry of deeds of Manila and Pasay City. The chattel mortgage was in connection with a credit commercial line in the amount of P900,000.00 granted the said defendant corporation, the expiry date of which was May 20, 1966. On May 20, 1965, defendants Antonio V. Syyap and Angel Y. Syyap executed an undertaking in favor of the plaintiff whereby they both agreed to guarantee absolutely and unconditionally and without the benefit of excussion the full and prompt payment of

any indebtedness to be incurred on account of the said credit line. Against the credit line granted the defendant Syvel's Incorporated the latter drew advances in the form of promissory notes which are attached to the complaint as Annexes 'C' to 'I'. In view of the failure of the defendant corporation to make payment in accordance with the terms and conditions agreed upon in the Commercial Credit Agreement the plaintiff started to foreclose extrajudicially the chattel mortgage. However, because of an attempt to have the matter settled, the extra-judicial foreclosure was not pushed thru. As no payment had been paid, this case was eventually filed in this Court.

"On petition of the plaintiff based on the affidavits executed by Mr. Leopoldo R. Rivera, Assistant Vice President of the plaintiff bank and Atty. Eduardo J. Berenguer on January 12, 1967, to the effect, among others, that the defendants are disposing of their properties with intent to defraud their creditors, particularly the plaintiff herein, a preliminary writ of attachment was issued. As a consequence of the issuance of the writ of attachment, the defendants, in their answer to the complaint set up a compulsory counterclaim for damages.

"After the filing of this case in this court and during its pendency defendant Antonio V. Syyp proposed to have the case settled amicably and to that end a conference was held in which Mr. Antonio de las Alas, Jr., Vice President of the Bank, plaintiff, defendant Antonio V. Syyp and Atty. Mendoza were present. Mr. Syyp requested that the plaintiff dismiss this case because he did not want to have the goodwill of Syvel's Incorporated impaired, and offered to execute a real estate mortgage on his real property located in Bacoor, Cavite. Mr. De las Alas consented, and so the Real Estate Mortgage, marked as Exhibit A, was executed by the defendant Antonio V. Syyp and his wife Margarita Bengco Syyp on June 22, 1967. In that deed of mortgage, defendant Syyp admitted that as of June 16, 1967, the indebtedness of Syvel's Incorporated was P601,633.01, the breakdown of which is as follows: P568,577.76 as principal and P33,055.25 as interest. Complying with the promise of the plaintiff thru its Vice President to ask for the dismissal of this case, a motion to dismiss this case without prejudice was prepared, Exhibit C, but the defendants did not want to agree if the dismissal would mean also the dismissal of their counterclaim against the plaintiff. Hence, trial proceeded.

"As regards the liabilities of the defendants, there is no dispute that a credit line to the maximum amount of P900,000.00 was granted to the defendant corporation on the guaranty of the merchandise or stocks in goods of the said corporation which were covered by chattel mortgage duly registered as required by law. There is likewise no dispute that the defendants Syyp guaranteed absolutely and unconditionally and without the benefit of excussion the full and prompt payment of any indebtedness incurred by the defendant corporation under the credit line granted it by the plaintiff. As of June 16, 1967, its indebtedness was in the total amount of P601,633.01. This was admitted by defendant Antonio V. Syyp in the deed of real estate mortgage executed by him. No part of the amount has been paid by either of the defendants. Hence their liabilities cannot be questioned."(pp. 3-6, Brief for Appellee; p. 26, Rollo)

In their brief, appellants assign the following errors:

I

The lower court erred in not holding that the obligation secured by the Chattel Mortgage sought to be fore-closed in the above-entitled case was novated by the subsequent execution between appellee and appellant Antonio V. Syyp of a real estate mortgage as additional collateral to the obligation secured by said

chattel mortgage.

II

The lower court erred in not dismissing the above-entitled case and in finding appellants liable under the complaint.

III

The lower court erred in not holding that the writ of preliminary attachment is devoid of any legal and factual basis whatsoever.

IV

The lower court erred in dismissing appellants' counterclaim and in not holding appellee liable to appellants for the consequent damages arising out of a wrongful attachment. (pp. 1-2, Brief for the Appellants, p. 25, Rollo)

Appellants admit that they are indebted to the appellee bank in the amount of P601,633.01, breakdown of which is as follows: P568,577.76 as principal and P33,055.25 as interest. After the filing of the case and during its pendency, defendant Antonio V. Syyp proposed to have the case amicably settled and for that purpose a conference was held in which Mr. Antonio de las Alas, Jr., Vice President of plaintiff People's Bank and Trust Company, defendant Antonio V. Syyp and Atty. Mendoza were present. Mr. Syyp requested that the plaintiff dismiss this case as he did not want to have the goodwill of Syvel's Incorporated impaired, and offered to execute a real estate mortgage on his real property located in Bacoor, Cavite. Mr. de las Alas consented, and so the Real Estate Mortgage (Exhibit "A") was executed by defendant Antonio Syyp and his wife Margarita Bengco Syyp on June 22, 1967. Defendants did not agree with plaintiff's motion to dismiss which included the dismissal of their counterclaim and filed instead their own motion to dismiss (Record on Appeal, pp. 68-72) on the ground that by the execution of said real estate mortgage, the obligation secured by the chattel mortgage subject of this case was novated, and therefore, appellee's cause of action thereon was extinguished.

In an Order dated September 23, 1967, the motion was denied for not being well founded (Record on Appeal, p. 78).

Appellants' contention is without merit.

Novation takes place when the object or principal condition of an obligation is changed or altered. It is elementary that novation is never presumed; it must be explicitly stated or there must be manifest incompatibility between the old and the new obligations in every aspect (*Goni v. CA*, 144 SCRA 223 [1986]; *National Power Corp. v. Dayrit*, 125 SCRA 849 [1983]).

In the case at bar, there is nothing in the Real Estate Mortgage which supports appellants' submission. The contract on its face does not show the existence of an explicit novation nor incompatibility on every point between the "old" and the "new" agreements as the second contract evidently indicates that the same was executed as new

additional security to the chattel mortgage previously entered into by the parties.

Moreover, records show that in the real estate mortgage, appellants agreed that the chattel mortgage "shall remain in full force and shall not be impaired by this (real estate) mortgage".

The pertinent provision of the contract is quoted as follows:

"That the chattel mortgage executed by Syvel's, Inc. (Doc. No. 439, Book No. I, Series of 1965, Notary Public Jose C. Merris, Manila); real estate mortgage executed by Angel V. Syyap and Rita V. Syyap (Doc. No. 441, Page No. 90, Book No. I, Series of 1965, Notary Public Jose C. Merris, Manila) shall remain in full force and shall not be impaired by this mortgage (par. 5, Exhibit 'A', italics ours)."

It is clear, therefore, that a novation was not intended. The real estate mortgage was evidently taken as additional security for the performance of the contract (*Bank of P.I. v. Herrige*, 47 Phil. 57).

In the determination of the legality of the writ of attachment by the Court of First Instance of Manila, it is a well established rule that the grant or denial of a writ of attachment rests upon the sound discretion of the court. Records are bereft of any evidence that grave abuse of discretion was committed by respondent judge in the issuance of the writ of attachment.

Appellants contend that the affidavits of Messrs. Rivera and Berenguer on which the lower court based the issuance of the writ of preliminary attachment relied on the reports of credit investigators sent to the field and not on the personal knowledge of the affiants. Such contention deserves scant consideration. Evidence adduced during the trial strongly shows that the witnesses have personal knowledge of the facts stated in their affidavits in support of the application for the writ. They testified that Syvel's Inc. had disposed of all the articles covered by the chattel mortgage but had not remitted the proceeds to appellee bank; that the Syvel's Stores at the Escolta, Rizal Avenue and Morayta Street were no longer operated by appellants and that the latter were disposing of their properties to defraud appellee bank. Such testimonies and circumstances were given full credit by the trial court in its decision (Brief for Appellee, p. 14). Hence, the attachment sought on the ground of actual removal of property is justified where there is physical removal thereof by the debtor, as shown by the records (*McTaggart v. Putnam Corset Co.*, 8 N.Y. S 800 cited in *Moran*, Comments on the Rules of Court, 1970 Ed., Vol. 3, p. 7).

Besides, the actuations of appellants were clearly seen by the witnesses who "saw a Fiat Bantam Car - Fiat Car, a small car and about three or four persons hurrying; they were carrying goods coming from the back portion of this store of Syvel's at the Escolta, between 5:30 and 6:00 o'clock in the evening." (Record on Appeal, pp. 45-46). Therefore, "the act of debtor (appellant) in taking his stock of goods from the rear of his store at night, is sufficient to support an attachment upon the ground of the fraudulent concealment of property for the purpose of delaying and defrauding creditors." (4 Am. Jur., 841 cited in *Francisco*, Revised Rules of Court, Second Edition, 1985, p. 24).

In any case, intent to defraud may be and usually is inferred from the facts and circumstance of the case; it can rarely be proved by direct evidence. It may be gleaned also from the statements and conduct of the debtor, and in this connection, the principle may be applied that every person is presumed to intend the natural consequences of his acts (*Francisco*, Revised Rules of Court, *supra*, pp. 24-25). In fact the trial court is impressed "that not only has the plaintiff acted in perfect good faith but also on facts sufficient in themselves to convince on ordinary man that the defendants were obviously trying to spirit away a portion of the stocks of Syvel's Incorporated in order to render ineffectual at least partially any judgment that may be rendered in favor of the plaintiff." (Decision; Civil Case No. 68095; Record on Appeal, pp. 88-89).

Appellants having failed to adduce evidence of bad faith or malice on the part of appellee in the procurement of the writ of preliminary attachment, the claim of the former for damages is evidently negated. In fact, the allegations in the appellee's complaint more than justify the issuance of the writ of attachment.

PREMISES CONSIDERED, this appeal is DISMISSED for lack of merit and the judgment appealed from is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman) and Sarmiento, JJ., concur.

Padilla, J., no part; was counsel for plaintiff-appellee bank.

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