

**MAMBULAO LUMBER COMPANY, PLAINTIFF-APPELLANT, VS.
PHILIPPINE NATIONAL BANK AND ANACLETO HERALDO, DEPUTY
PROVINCIAL SHERIFF OF CAMARINES NORTE,
DEFENDANTS-APPELLEES.**

G.R. No. L-22973. January 30, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

An appeal from a decision, dated April 2, 1964, of the Court of First Instance of Manila in Civil Case No. 52089, entitled "Mambulao Lumber Company, plaintiff, versus Philippine National Bank and Anacleto Herald, defendants", dismissing the complaint against both defendants and sentencing the plaintiff to pay to defendant Philippine National Bank (PNB for short) the sum of P3,582.52 with interest thereon at the rate of 6% per annum from December 22, 1961 until fully paid, and the costs of suit.

In seeking the reversal of the decision, the plaintiff advances several propositions in its brief which may be restated as follows:

1. That its total indebtedness to the PNB as of November 21, 1961, was only P56,485.87 and not P58,213.51 as concluded by the court a quo; hence, the proceeds of the foreclosure sale of its real pro-perty alone in the amount of P56,908.00 on that date, added to the sum of P738.59 it remitted to the PNB thereafter was more than sufficient to liquidate its obligation, thereby rendering the subsequent fore-closure sale of its chattels unlawful;
2. That it is not liable to pay PNB the amount of P5,821.35 for attorney's fees and the additional sum of P298.54 as expenses of the foreclosure sale;
3. That the subsequent foreclosure sale of its chattels is null and void, not only because it had already settled its indebtedness to the PNB at the time the sale was effected, but also for the reason that the said sale was not conducted in accordance with the provisions of the Chattel Mortgage Law and the venue agreed upon by the parties in the mortgage contract;
4. That the PNB, having illegally sold the chattels, is liable to the plaintiff for its value; and
5. That for the acts of the PNB in proceeding with the sale of the chattels, in utter disregard of plaintiff's vigorous opposition thereto, and in taking possession thereof after the sale thru force, intimidation, coercion, and by detaining its "man--in-charge" of said properties, the PNB is liable to plaintiff for damages and attorney's fees.

The antecedent facts of the case, as found by the trial court, are as follows:

"On May 5, 1956, the plaintiff applied for an industrial loan of P155,000 with the Naga Branch of defendant PNB and the former offered real estate, machinery, logging and transportation equipments as collaterals. The application, however, was approved for a loan of P100,000 only. To secure the payment of the loan, the plain-tiff mortgaged to defendant PNB a parcel of land, together with the buildings and improvements existing

thereon, situated in the poblacion of Jose Panganiban (formerly Mambulao), province of Camarines Norte, and covered by Transfer Certificate of Title No. 381 of the land records of said province, as well as various sawmill equipment, rolling unit and other fixed assets of the plaintiff, all situated in its compound in the aforementioned municipality.

"On August 2, 1956, the PNB released from the approved loan the sum of P27,500, for which the plaintiff signed a promissory note wherein it promised to pay to the PNB the said sum in five equal yearly installments at the rate of P6,528.40 beginning July 31, 1957, and every year thereafter, the last of which would be on July 31, 1961.

"On October 19, 1956, the PNB made another release of P15,500 as part of the approved loan granted to the plaintiff and so on the said date, the latter executed another promissory note wherein it agreed to pay to the former the said sum in five equal yearly installments at the rate of P3,679.64 beginning July 31, 1957, and ending on July 31, 1961.

"The plaintiff failed to pay the amortizations on the amounts released to and received by it. Repeated demands were made upon the plaintiff to pay its obligation but it failed or otherwise refused to do so. Upon inspection and verification made by employees of the PNB, it was found that the plaintiff had already stopped operation about the end of 1957 or early part of 1958.

"On September 27, 1961, the PNB sent a letter to the Provincial Sheriff of Camarines Norte requesting him to take possession of the parcel of land, together with the improvements existing thereon, covered by Transfer Certificate of Title No. 381 of the land records of Camarines Norte, and to sell it at public auction in accordance with the provisions of Act No. 3135, as amended, for the satisfaction of the unpaid obligation of the plaintiff, which as of September 22, 1961, amounted to P57,646.59, excluding attorney's fees. In compliance with the request, on October 16, 1961, the Provincial Sheriff of Camarines Norte issued the corresponding notice of extra-judicial foreclosure sale and sent a copy thereof to the plaintiff. According to the notice, the mortgaged property would be sold at public auction at 10:00 a.m. on November 21, 1961, at the ground floor of the Court House in Daet, Camarines Norte.

"On November 6, 1961, the PNB sent a letter to the Provincial Sheriff of Camarines Norte requesting him to take possession of the chattels mortgaged to it by the plaintiff and sell them at public auction also on November 21, 1961, for the satisfaction of the sum of P57,646.59, plus 6% annual interest thereon from September 23, 1961, attorney's fees equivalent to 10% of the amount due and the costs and expenses of the sale. On the same day, the PNB sent notice to the plaintiff that the former was foreclosing extrajudicially the chattels mortgaged by the latter and that the auction sale thereof would be held on November 21, 1961, between 9:00 and 12:00 a.m., in Mambulao, Camarines Norte, where the mortgaged chattels were situated.

"On November 8, 1961, Deputy Provincial Sheriff Anacleto Heraldo took possession of the chattels mortgaged by the plaintiff and made an inventory thereof in the presence of a PC Sergeant and a police-man of the municipality of Jose Panganiban. On November 9, 1961, the said Deputy Sheriff issued the corresponding notice of public auction sale of the mortgaged chattels to be held on November 21, 1961, at 10:00 a.m., at the plaintiff's compound situated in the municipality of Jose Panganiban, Province of Camarines Norte.

"On November 19, 1961, the plaintiff sent separate letters, posted as registered air mail matter, one to the Naga Branch of the PNB and another to the Provincial Sheriff of Camarines Norte, protesting against the foreclosure of the real estate and chattel mortgages on the grounds that they could not be effected unless a Court's order was issued against it (plaintiff) for said purpose and that the foreclosure proceedings, according to the terms of the mortgage contracts, should be made in Manila. In said letter to the Naga Branch of the PNB, it was intimated that if the public auction sale would be suspended and the plaintiff would be given an extension of ninety (90) days, its obligation would be settled satisfactorily because an important negotiation was then going on for the sale of its "whole interest" for an amount more than sufficient to liquidate said obligation.

"The letter of the plaintiff to the Naga Branch of the PNB was construed by the latter as a request for extension of the fore-closure sale of the mortgaged chattels and so it advised the Sheriff of Camarines Norte to defer it to December 21, 1961, at the same time and place. A copy of said advice was sent to the plaintiff for its information and guidance.

"The foreclosure sale of the parcel of land, together with the buildings and improvements thereon, covered by Transfer Certificate of Title No. 381, was, however, held on November 21, 1961, and the said property was sold to the PNB for the sum of P56,908.00, subject to the right of the plaintiff to redeem the same within a period of one year. On the same date, Deputy Provincial Sheriff Heraldo executed a certificate of sale in favor of the PNB and a copy thereof was sent to the plaintiff.

"In a letter dated December 14, 1961 (but apparently posted several days later), the plaintiff sent a bank draft for P738.59 to the Naga Branch of the PNB, allegedly in full settlement of the balance of the obligation of the plaintiff after the application thereto of the sum of P56,908.00 representing the proceeds of the foreclosure sale of parcel of land described in Transfer Certificate of Title No. 381. In the said letter, the plaintiff reiterated its request that the foreclosure sale of the mortgaged chattels be discontinued on the grounds that the mortgaged indebtedness had been fully paid and that it could not be legally effected at a place other than the City of Manila.

"In a letter dated December 16, 1961, the plaintiff advised the Provincial Sheriff of Camarines Norte that it had fully paid its obligation to the PNB, and enclosed therewith a copy of its letter to the latter dated December 14, 1961.

"On December 18, 1961, the Attorney of the Naga Branch of the PNB, wrote to the plaintiff acknowledging the remittance of P738.59 with the advice, however, that as of that date the balance of the account of the plaintiff was P9,161.76, to which should be added the expenses of guarding the mortgaged chattels at the rate of P4.00 a day beginning December 19, 1961. It was further explained in said letter that the sum of P57,646.59, which was stated in the request for the foreclosure of the real estate mortgage, did not include the 10% attorney's fees and expenses of the sale. Accordingly, the plaintiff was advised that the foreclosure sale scheduled on the 21st of said month would be stopped if a remittance of P9,161.76, plus interest thereon and guarding fees, would be made.

"On December 21, 1961, the foreclosure sale of the mortgaged chattels was held at 10:00 a.m. and they were awarded to the PNB for the sum of P4,200 and the corresponding bill of sale was issued in its favor by Deputy Provincial Sheriff Heraldo.

"In a letter dated December 26, 1961, the Manager of the Naga Branch of the PNB advised the plaintiff giving it priority to repurchase the chattels acquired by the former at public auction. This offer was reiterated in a letter dated January 3, 1962, of the Attorney of the Naga Branch of the PNB to the plaintiff, with the suggestion that it exercise its right of redemption and that it apply for the condonation of the attorney's fees. The plaintiff did not follow the advice but on the contrary it made known of its intention to file appropriate action or actions for the protection of its interests.

"On May 24, 1962, several employees of the PNB arrived in the compound of the plaintiff in Jose Pangasinan, Camarines Norte, and they informed Luis Salgado, Chief Security Guard of the premises, that the properties therein had been auctioned and bought by the PNB, which in turn sold them to Mariano Bundok. Upon being advised that the purchaser would take delivery of the things he bought, Salgado was at first reluctant to allow any piece of property to be taken out of the compound of the plaintiff. The employees of the PNB explained that should Salgado refuse, he would be exposing himself to a litigation wherein he could be held liable to pay big sum of money by way of damages. Apprehensive of the risk that he would take, Salgado immediately sent a wire to the President of the plaintiff in Manila, asking advice as to what he should do. In the meantime, Mariano Bundok was able to take out from the plaintiff's compound two truck loads of equipment.

"In the afternoon of the same day, Salgado received a telegram from plaintiff's President directing him not to deliver the 'chattels' without court order, with the information that the company was then filing an action for damages against the PNB. On the following day, May 25, 1962, two trucks and men of Mariano Bundok arrived but Salgado did not permit them to take out any equipment from inside the compound of the plaintiff. Thru the intervention, however, of the local police and PC soldiers, the trucks of Mariano Bundok were able finally to haul the properties originally mortgaged by the plaintiff to the PNB, which were bought by it at the foreclosure sale and subsequently sold to Mariano Bundok."

Upon the foregoing facts, the trial court rendered the decision appealed from which, as stated in the first paragraph of this opinion, sentenced the Mambulao Lumber Company to pay to the defendant PNB the sum of P3,582.52 with interest thereon at the rate of 6% per annum from December 22, 1961 (day following the date of the questioned foreclosure of plaintiff's chattels) until fully paid, and the costs. Mambulao Lumber Company interposed the instant appeal.

We shall discuss the various points raised in appellant's brief in seriatim.

The first question Mambulao Lumber Company poses is that which relates to the amount of its indebtedness to the PNB arising out of the principal loans and the accrued interest thereon. It is contended that its obligation under the terms of the two promissory notes it had executed in favor of the PNB amounts only to P56,485.87 as of November 21, 1961, when the sale of real property was effected, and not P58,213.51 as found by the trial court.

There is merit to this claim. Examining the terms of the promissory note executed by the appellant in favor of the PNB, we find that the agreed interest on the loan of P43,000.00 - P27,500.00 released on August 2, 1956, as per promissory note of even date (Exhibit C-3), and P15,500.00 released on October 19, 1956, as per promissory note of the same date (Exhibit C-4) - was six per cent (6%) per annum from the respective date of said notes "until paid". In the statement of account of the appellant as of September 22, 1961, submitted by the PNB, it appears that in arriving at the total indebtedness P57,646.59 as of that date, the PNB had compounded the principal of the loan and the accrued 6% interest thereon each time the yearly amortizations became due, and on the basis of these compounded amounts charged additional delinquency interest on them up to September 22, 1961; and to this erroneously computed total of P57,646.59, the trial court added 6% interest per annum from September 23, 1961 to November 21 of the same year. In effect, the PNB has claimed, and the trial court has adjudicated to it, interest on accrued interests from the time the various amortizations of the loan became due until the real estate mortgage executed to secure the loan was extra-judicially foreclosed on November 21, 1961. This is an error. Section 5 of Act No. 2655 expressly provides that in computing the interest on any obligation, promissory note or other instrument or contract, compound interest shall not be reckoned, except by agreement, or in default thereof, whenever the debt is judicially claimed. This is also the clear mandate of Article 2212 of the new Civil Code which provides that interest due shall earn legal interest only from the time it is judicially demanded, and of Article 1959 of the same code which ordains that interest due and unpaid shall not earn interest. Of course, the parties may, by stipulation, capitalize the interest due and unpaid, which as added principal shall earn new interest; but such stipulation is nowhere to be found in the terms of the promissory notes involved in this case. Clearly therefore, the trial court fell into error when it awarded interest on accrued interests, without any agreement to that effect and before they had been judicially demanded.

Appellant next assails the award of attorney's fees and the expenses of the foreclosure sale in favor of the PNB. With respect to the amount of P298.54 allowed as expenses of the extra-judicial sale of the real property, appellant maintains that the same has no basis, factual or legal, and should not have been awarded. It likewise decries the award of attorney's fees which, according to the appellant, should not be deducted from the proceeds of the sale of the real property, not only because there is no express agreement in the real estate mortgage contract to pay

attorney's fees in case the same is extra-judicially foreclosed, but also for the reason that the PNB neither spent nor incurred any obligation to pay attorney's fees in connection with the said extra-judicial foreclosure under consideration.

There is reason for the appellant to assail the award of P298.54 as expenses of the sale. In this respect, the trial court said:

"The parcel of land, together with the buildings and improvements existing thereon covered by Transfer Certificate of Title No. 381, was sold for P56,908. There was, however, no evidence how much was the expenses of the foreclosure sale although from the pertinent provisions of the Rules of Court, the Sheriff's fees would be P1 for advertising the sale (par. k, Sec. 7, Rule 130 of the Old Rules) and P297.54 as his commission for the sale (par. n, Sec. 7, Rule 130 of the Old Rules) or a total of P298.54."

There is really no evidence of record to support the conclusion that the PNB is entitled to the amount awarded as expenses of the extra-judicial foreclosure sale. The court below committed error in applying the provisions of the Rules of Court for purposes of arriving at the amount awarded. It is to be borne in mind that the fees enumerated under paragraphs k and n, Section 7, of Rule 130 (now Rule 141) are demandable only by a sheriff serving processes of the court in connection with judicial foreclosure of mortgages under Rule 68 of the new Rules, and not in cases of extra-judicial foreclosure of mortgages under Act 3135. The law applicable is Section 4 of Act 3135 which provides that the officer conducting the sale is entitled to collect a fee of P5.00 for each day of actual work performed in addition to his expenses in connection with the foreclosure sale. Admittedly, the PNB failed to prove during the trial of the case, that it actually spent any amount in connection with the said foreclosure sale. Neither may expenses for publication of the notice be legally allowed in the absence of evidence on record to support it.^[1] It is true, as pointed out by the appellee bank, that courts should take judicial notice of the fees provided for by law which need not be proved; but in the absence of evidence to show at least the number of working days the sheriff concerned actually spent in connection with the extra-judicial foreclosure sale, the most that he may be entitled to, would be the amount of P10.00 as a reasonable allowance for two day's work - one for the preparation of the necessary notices of sale, and the other for conducting the auction sale and issuance of the corresponding certificate of sale in favor of the buyer. Obviously, therefore, the award of P298.54 as expenses of the sale should be set aside.

But the claim of the appellant that the real estate mortgage does not provide for attorney's fees in case the same is extra-judicially foreclosed, cannot be favorably considered, as would readily be revealed by an examination of the pertinent provision of the mortgage contract. The parties to the mortgage appear to have stipulated under paragraph (c) thereof, inter alia:

"x x x For the purpose of extra-judicial foreclosure, the Mortgagor hereby appoints the Mortgagee his attorney-in-fact to sell the property mortgaged under Act 3135, as amended, to sign all documents and to perform all acts requisite and necessary to accomplish said purpose and to appoint its substitute as such attorney-in-fact with the same powers as above specified. In case of judicial foreclosure, the Mortgagor hereby consents to the appointment of the Mortgagee or any of its employees as receiver, without any bond, to take charge of the mortgaged property at once, and to hold possession of the same and the rents, benefits and profits derived from the mortgaged property before the sale, less the costs and expenses of the receivership; the Mortgagor hereby agrees further that in all cases, attorney's fees hereby fixed at Ten Per Cent (10%) of the total indebtedness then unpaid, which in no case shall be less than P100.00 exclusive of all fees allowed by law, and the expenses of collection shall be the obligation of the Mortgagor and shall with priority, be paid to the Mortgagee out of any sums realized as rents and proceeds derived from the mortgaged property or from the proceeds realized from the sale of the said property and this mortgage shall likewise stand as security therefor. x x x."

We find the above stipulation to pay attorney's fees clear enough to cover both cases of foreclosure sale mentioned thereunder, i. e., judicially or extra-judicially. While the phrase "in all cases" appears to be part of the second sentence, a reading of the whole context of the stipulation would readily show that it logically refers to extra-judicial foreclosure found in the first sentence and to judicial foreclosure mentioned in the next sentence. And the ambiguity in the stipulation suggested and pointed out by the appeal by reason of the faulty sentence construction should not be made to defeat the otherwise clear intention of the parties in the agreement.

It is suggested by the appellant, however, that even if the above stipulation to pay attorney's fees were applicable to the extra-judicial foreclosure sale of its real properties, still, the award of P5,821.35 for attorney's fees has no legal justification, considering the circumstance that the PNB did not actually spend anything by way of attorney's fees in connection with the sale. In support of this proposition, appellant cites authorities to the effect: (1) that when the mortgagee has neither paid nor incurred any obligation to pay an attorney in connection with the foreclosure sale, the claim for such fees should be denied;^[2] and (2) that attorney's fees will not be allowed when the attorney conducting the foreclosure proceedings is an officer of the corporation (mortgagee) who receives a salary for all the legal services performed by him for the corporation.^[3] These authorities are indeed enlightening; but they should not be applied in this case. The very same authority first cited suggests that said principle is not absolute, for there is authority to the contrary. As to the fact that the foreclosure proceedings were handled by an attorney of the legal staff of the PNB, we are reluctant to exonerate herein appellant from the payment of the stipulated attorney's fees on this ground alone, considering the express agreement between the parties in the mortgage contract under which appellant became liable to pay the same. At any rate, we find merit in the contention of the appellant that the award of P5,821.35 in favor of the PNB as attorney's fees is unconscionable and unreasonable, considering that all that the branch attorney of the said bank did in connection with the foreclosure sale of the real property was to file a petition with the provincial sheriff of Camarines Norte requesting the latter to sell the same in accordance with the provisions of Act 3135.

The principle that courts should reduce stipulated attorney's fees whenever it is found under the circumstances of the case that the same is unreasonable, is now deeply rooted in this jurisdiction to entertain any serious objection to it. Thus, this Court has explained:

"But the principle that it may be lawfully stipulated that the legal expenses involved in the collection of a debt shall be defrayed by the debtor does not imply that such stipulations must be enforced in accordance with the terms, no matter how injurious or oppressive they may be. The lawful purpose to be accomplished by such a stipulation is to permit the creditor to receive the amount due him under his contract without a deduction of the expenses caused by the delinquency of the debtor. It should not be permitted for him to convert such a stipulation into a source of speculative profit at the expense of the debtor.

"Contracts for attorney's services in this jurisdiction stands upon an entirely different footing from contracts for the payment of compensation for any other services. By express provision of section 29 of the Code of Civil Procedure, an attorney is not entitled in absence of express contract to recover more than a reasonable compensation for his services; and even when an express contract is made the court can ignore it and limit the recovery to reasonable compensation if the amount of the stipulated fee is found by the court to be unreasonable. This is a very different rule from that announced in section 1091 of the Civil Code with reference to the obligation of contracts in general, where it is said that such obligation has the force of law between the contracting parties. Had the plaintiff herein made an express contract to pay his attorney an uncontingent fee of P2,115.25 for the services to be rendered in reducing the note here in suit to judgment, it would not have been enforced against him had he seen fit to oppose it, as such a fee is obviously far greater than is necessary to remunerate the attorney for the work involved and is therefore unreasonable. In order to enable the court to ignore an express contract for an attorney's fees, it is not necessary to show, as in other contracts, that it is contrary to morality or public policy (Art. 1255, Civil Code). It is enough that it is

unreasonable or unconscionable." [4]

Since then this Court has invariably fixed counsel fees on a quantum meruit basis whenever the fees stipulated appear excessive, unconscionable, or un-reasonable, because a lawyer is primarily a court officer charged with the duty of assisting the court in administering impartial justice between the parties, and hence, the fees should be subject to judicial control. Nor should it be ignored that sound public policy demands that courts disregard stipulations for counsel fees, whenever they appear to be a source of speculative profit at the expense of the debtor or mortgagor. [5] And it is not material that the present action is between the debtor and the creditor, and not between attorney and client. As court have power to fix the fee as between attorney and client, it must necessarily have the right to say whether a stipulation like this, inserted in a mortgage contract, is valid. [6]

In determining the compensation of an attorney, the following circumstances should be considered: the amount and character of the services rendered; the responsibility imposed; the amount of money or the value of the property affected by the controversy, or involved in the employment; the skill and experience called for in the performance of the service; the professional standing of the attorney; the results secured; and whether or not the fee is contingent or absolute, it being a recognized rule that an attorney may properly charge a much larger fee when it is to be contingent than when it is not. [7] From the stipulation in the mortgage contract earlier quoted, it appears that the agreed fee is 10% of the total indebtedness, irrespective of the manner the foreclosure of the mortgage is to be effected. The agreement is perhaps fair enough in case the foreclosure proceedings is prosecuted judicially but, surely, it is unreasonable when, as in this case, the mortgage was foreclosed extra-judicially, and all that the attorney did was to file a petition for foreclosure with the sheriff concerned. It is to be assumed though, that the said branch attorney of the PNB made a study of the case before deciding to file the petition for foreclosure; but even with this in mind, we believe the amount of P5,821.35 is far too excessive a fee for such services. Considering the above circumstances mentioned, it is our considered opinion that the amount of P1,000.00 would be more than sufficient to compensate the work aforementioned.

The next issue raised deals with the claim that the proceeds of the sale of the real properties alone together with the amount it remitted to the PNB later was more than sufficient to liquidate its total obligation to herein appellee bank. Again, we find merit in this claim. From the foregoing discussion of the first two errors assigned, and for purposes of determining the total obligation of herein appellant to the PNB as of November 21, 1961 when the real estate mortgage was foreclosed, we have the following illustration in support of this conclusion:

A. -

I. Principal Loan

(a) Promissory note dated

August 2, 1956

P27,500.00

(1) Interest at 6% per

annum from Aug. 2,

1956 to Nov. 21,

1961.

8,751.78

(b) Promissory note dated

October 19, 1956

P15,500.00

(1) Interest at 6% per

annum from Oct. 19,

1956 to Nov. 21,

1961

4,734.08

II. Sheriff's fees (for two [2]

day's work

10.00

III. Attorney's fees

1,000.00

Total obligation as

of Nov. 21, 1961

P57,495.86

B. -

I. Proceeds of the foreclosure

sale of the real estate mort-

gage on Nov. 21, 1961

P56,908.00

II. Additional amount remitted

to the PNB on Dec. 18, 1961

738.59

Total amount of Payment

made to PNB as of Dec. 18,

1961.

P57,646.59

Deduct: Total obligation

to the PNB

P57,495.86

Excess Payment to the

PNB

P 150.73

From the foregoing illustration or computation, it is clear that there was no further necessity to foreclose the mortgage of herein appellant's chattels on December 21, 1961; and on this ground alone, we may declare the sale of appellant's chattels on the said date, illegal and void. But we take into consideration the fact that the PNB must have been led to believe that the stipulated 10% of the unpaid loan four attorney's fees in the real estate mortgage was legally maintainable, and in accordance with such belief, herein appellee bank insisted that the proceeds of the sale of appellant's real property was deficient to liquidate the latter's total indebtedness. Be that as it may, however, we still find the subsequent sale of herein appellant's chattels illegal and objectionable on other grounds.

That appellant vigorously objected to the foreclosure of its chattel mortgage after the foreclosure of its real estate mortgage on November 21, 1961, cannot be doubted, as shown not only by its letter to the PNB on November 19, 1961, but also in its letter to the provincial sheriff of Camarines Norte on the same date. These letters were followed by another letter to the appellee bank on December 14, 1961, wherein herein appellant, in no uncertain terms, reiterated its objection to the scheduled sale of its chattels on December 21, 1961 at Jose Panganiban, Camarines Norte for the reasons therein stated that: (1) it had settled in full its total obligation to the PNB by the sale of the real estate and its subsequent remittance of the amount of P738.59; and (2) that the contemplated sale at Jose Panganiban would violate their agreement embodied under paragraph (i) in the Chattel Mortgage

which provides as follows:

"(i) In case of both judicial and extra-judicial foreclosure under Act 1508, as amended, the parties hereto agree that the corresponding complaint for foreclosure of the petition for sale should be filed with the courts or the sheriff of the City of Manila, as the case may be; and that the Mortgagor shall pay attorney's fees hereby fixed at ten per cent (10%) of the total indebtedness then unpaid but in no case shall it be less than P100.00, exclusive of all costs and fees allowed by law and of other expenses incurred in connection with the said foreclosure." [Underscoring supplied]

Notwithstanding the above-quoted agreement in the chattel mortgage contract, and in utter disregard of the objection of herein appellant to the sale of its chattels at Jose Panganiban, Camarines Norte and not in the City of Manila as agreed upon, the PNB proceeded with the foreclosure sale of said chattels. The trial court, however, justified said action of the PNB in the decision appealed from in the following rationale:

"While it is true that it was stipulated in the chattel mortgage contract that a petition for the extra-judicial foreclosure thereof should be filed with the Sheriff of the City of Manila, nevertheless, the effect thereof was merely to provide another place where the mortgage chattel could be sold, in addition to those specified in the Chattel Mortgage Law. Indeed, a stipulation in a contract cannot abrogate much less impliedly repeal a specific provision of the statute. Considering that Section 14 of Act No. 1508 vests in the mortgagee the choice where the foreclosure sale should be held, hence, in the case under consideration, the PNB has three places from which to select, namely: (1) the place of residence of the mortgagor; (2) the place of the mortgaged chattels were situated; and (3) the place stipulated in the contract. The PNB selected the second and, accordingly, the foreclosure sale held in Jose Panganiban, Camarines Norte, was legal and valid."

To the foregoing conclusion, We disagree. While the law grants power and authority to the mortgagee to sell the mortgaged property at a public place in the municipality where the mortgagor resides, or where the property is situated,[8] this Court has said that the sale of a mortgaged chattel may be made in a place other than that where it is found, provided that the owner thereof consents thereto; or that there is an agreement to this effect between the mortgagor and the mortgagee.[9] But when, as in this case, the parties agreed to have the sale of the mortgaged chattels in the City of Manila, which, any way, is the residence of the mortgagor, it cannot be rightly said that the mortgagee still retained the power and authority to select from among the places provided for in the law and the place designated in their agreement, over the objection of the mortgagor. In providing that the mortgaged chattel may be sold at the place of residences of the mortgagor or the place where it is situated, at the option of the mortgagee, the law clearly contemplated benefits not only to the mortgagor but to the mortgagee as well. Their rights arising thereunder, however, are personal to them; they do not affect either public policy or the rights of third persons. They may validly be waived. So, when herein mortgagor and mortgagee agreed in the mortgage contract that in cases of both judicial and extra-judicial foreclosure under Act 1508, as amended, the corresponding complaint for foreclosure or the petition for sale should be filed with the courts or the Sheriff of Manila, as the case may be, they waived their corresponding rights under the law. The correlative obligation arising from that agreement have the force of law between them and should be complied with in good faith.[10]

"By said agreement the parties waived the legal venue, and such waiver is valid and legally effective, because it was merely a personal privilege they waived, which is not contrary to public policy or to the prejudice of third persons. It is a general principle that a person may renounce any right which the law gives unless such renunciation is expressly prohibited or the right conferred is of such nature that its renunciation would be against public policy."[11]

"On the other hand, if a place of sale is specified in the mortgage and statutory requirements in regard thereto are complied with, a sale is properly conducted in that place. Indeed, in the absence of a statute to the contrary, a sale conducted at a place other than that stipulated for in the mortgage is invalid, unless the mortgagor

consents to such sale."[12]

Moreover, Section 14 of Act 1508, as amended, provides that the officer making the sale should make a return of his doings which shall particularly describe the articles sold and the amount received from each article. From this, it is clear that the law requires that sale be made article by article, otherwise, it would be impossible for him to state the amount received for each item. This requirement was totally disregarded by the Deputy Sheriff of Camarines Norte when he sold the chattels in question in bulk, notwithstanding the fact that the said chattels consisted of no less than twenty different items as shown in the bill of sale.[13] This makes the sale of the chattels manifestly objectionable. And in the absence of any evidence to show that the mortgagor had agreed or consented to such sale in gross, the same should be set aside.

It is said that the mortgagee is guilty of conversion when he sells under the mortgage but not in accordance with its terms, or where the proceedings as to the sale of foreclosure do not comply with the statute.[14] This rule applies squarely to the facts of this case where, as earlier shown, herein appellee bank insisted, and the appellee deputy sheriff of Camarines Norte proceeded with the sale of the mortgaged chattels at Jose Panganiban, Camarines Norte, in utter disregard of the valid objection of the mortgagor thereto for the reason that it is not the place of sale agreed upon in the mortgage contract; and the said deputy sheriff sold all the chattels (among which were a skagit with caterpillar engine, three GMC 6 x 6 trucks, a Herring Hall Safe, and Sawmill equipments consisting of a 150 HP Murphy Engine, planer, large circular saws, etc.) as a single lot in violation of the requirement of the law to sell the same article by article. The PNB has resold the chattels to another buyer with whom it appears to have actively cooperated in subsequently taking possession and removing the chattels from appellant's compound by force, as shown by the circumstance that they had to take along PC soldiers and municipal policemen of Jose Panganiban who placed the chief security officer of the premises in jail to deprive herein appellant of its possession thereof. To exonerate itself of any liability for the breach of peace thus committed, the PNB would want us to believe that it was the subsequent buyer alone, who is not a party to this case, that was responsible for the forcible taking of the property; but assuming this to be so, still the PNB cannot escape liability for the conversion of the mortgaged chattels by parting with its interest in the property. Neither would its claim that it afterwards gave a chance to herein appellant to repurchase or redeem the chattels, improve its position, for the mortgagor is not under obligation to take affirmative steps to repossess the chattels that were converted by the mortgagee.[15] As a consequence of the said wrongful acts of the PNB and the Deputy Sheriff of Camarines Norte, therefore, We have to declare that herein appellant is entitled to collect from them, jointly and severally, the full value of the chattels in question at the time they were illegally sold by them. To this effect was the holding of this Court in a similar situation.[16]

"The effect of this irregularity was, in our opinion to make the plaintiff liable to the defendant for the full value of the truck at the time the plaintiff thus carried it off to be sold; and of course, the burden is on the defendant to prove the damage to which he was thus subjected. x x x."

This brings us to the problem of determining the value of the mortgaged chattels at the time of their sale in 1961. The trial court did not make any finding on the value of the chattels in the decision appealed from and denied altogether the right of the appellant to recover the same. We find enough evidence of record, however, which may be used as a guide to ascertain their value. The record shows that at the time herein appellant applied for its loan with the PNB in 1956, for which the chattels in question were mortgaged as part of the security therefor, herein appellant submitted a list of the chattels together with its application for the loan with a stated value of P107,115.85. An official of the PNB made an inspection of the chattels in the same year giving it an appraised value of P42,850.00 and a market value of P85,700.00.[17] The same chattels with some additional equipment acquired by herein appellant with part of the proceeds of the loan were reappraised in a reinspection conducted by the same official in 1958, in the report of which he gave all the chattels an appraised value of P26,850.00 and a

market value of P48,200.00.[18] Another reinspection report in 1959 gave the appraised value of P19,400.00 and the market value of P25,600.00.[19] The said official of the PNB who made the foregoing reports of inspection and reinspections testified in court that in giving the values appearing in the reports, he used a conservative method of appraisal which, of course, is to be expected of an official of the appellee bank. And it appears that the values were considerably reduced in all the reinspection reports for the reason that when he went to herein appellant's premises at the time, he found the chattels no longer in use with some of the heavier equipments dismantled with parts thereof kept in the bodega; and finding it difficult to ascertain the value of the dismantled chattels in such condition, he did not give them anymore any value in his reports. Noteworthy is the fact, however, that in the last reinspection report he made of the chattels in 1961, just a few months before the foreclosure sale, the same inspector of the PNB reported that the heavy equipments of herein appellant were "lying idle and rusty", but were "with a shed, free from rains", [20] showing that although they were no longer in use at the time, they were kept in a proper place and not exposed to the elements. The President of the appellant company, on the other hand, testified that its caterpillar (tractor) alone is worth P35,000.00 in the market, and that the value of its two trucks acquired by it with part of the proceeds of the loan and included as additional items in the mortgaged chattels were worth no less than P14,000.00. He likewise appraised the worth of its Murphy engine at P16,000.00 which, according to him, when taken together with the heavy equipments he mentioned, the sawmill itself and all other equipments forming part of the chattels under consideration, and bearing in mind the current cost of equipments these days which he alleged to have increased by about five (5) times, could safely be estimated at P120,000.00. This testimony, except for the appraised and market values appearing in the inspection and reinspection reports of the PNB official earlier mentioned, stand uncontroverted in the record; but We are not inclined to accept such testimony at its par value, knowing that the equipments of herein appellant had been idle and unused since it stopped operating its sawmill in 1958 up to the time of the sale of the chattels in 1961. We have no doubt that the value of the chattels was depreciated after all those years of inoperation, although from the evidence aforementioned, We may also safely conclude that the amount of P4,200.00 for which the chattels were sold in the foreclosure sale in question was grossly unfair to the mortgagor. Considering, however, the facts that the appraised value of P42,850.00 and the market value of P85,700.00 originally given by the PNB official were admittedly conservative; that two 6 x 6 trucks subsequently bought by the appellant company had thereafter been added to the chattels; and that the real value thereof, although depreciated after several years of inoperation, was in a way maintained because the depreciation is off-set by the marked increase in the cost of heavy equipment in the market, it is our opinion that the market value of the chattels at the time of the sale should be fixed at the original appraised value of P42,850.00.

Herein appellant's claim for moral damages, however, seems to have no legal or factual basis. Obviously, an artificial person like herein appellant corporation cannot experience physical sufferings, mental anguish, fright, serious anxiety, wounded feelings, moral shock or social humiliation which are the basis of moral damages.[21] A corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages. The same cannot be considered under the facts of this case, however, not only because it is admitted that herein appellant had already ceased in its business operation at the time of the foreclosure sale of the chattels, but also for the reason that whatever adverse effect the foreclosure sale of the chattels could have upon its reputation or business standing would undoubtedly be the same whether the sale was conducted at Jose Panganiban, Camarines Norte, or in Manila which is the place agreed upon by the parties in the mortgage contract.

But for the wrongful acts of herein appellee bank and the deputy sheriff of Camarines Norte in proceeding with the sale in utter disregard of the agreement to have the chattels sold in Manila as provided for in the mortgage contract, to which their attentions were timely called by herein appellant, and in disposing of the chattels in gross

for the mis-erable amount of P4,200.00, herein appellant should be awarded exemplary damages in the sum of P10,000.00. The circumstances of the case also warrant the award of P3,000.00 as attorney's fees for herein appellant.

WHEREFORE AND CONSIDERING ALL THE FOREGOING, the decision appealed from should be, as hereby, it is set aside. The Philippine National Bank and the Deputy Sheriff of the province of Camarines Norte are ordered to pay, jointly and severally, to Mambulao Lumber Company the total amount of P56,000.73, broken as follows: P150.73 overpaid by the latter to the PNB, P42,850.00 the value of the chattels at the time of the sale with interest at the rate of 6% per annum from December 21, 1961, until fully paid, P10,000.00 in exemplary damages, and P3,000.00 as attorney's fees. Costs against both appellees.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur. Bengzon, J.P., J., Pursuant to Rule 137 Sec. 1, took no part.

[1] See, *Gorospe et al. v. Gochangco*, L-12735, October 30, 1959.

[2] 59 C.J.S. 1547.

[3] 59 C.J.S. 1549.

[4] *Bachrach v. Golingco*, 39 Phil. 138.

[5] See, *Gorospe, et al. v. Gochangco*, *supra*.

[6] *Bachrach v. Golingco*, *supra*.

[7] *Delgado v. De la Rama*, 43 Phil. 419.

[8] Section 14, Act. No. 1508.

[9] *Riosa v. Stilianopulos, Inc.*, 67 Phil. 422.

[10] Art. 1159, new Civil Code.

[11] *General Azucarera de Tarlac v. De Leon*, 56 Phil. 169; See also, *Bautista v. De Borja, et al.*, L-20600, October 28, 1966.

[12] 14 C.J.S. 1030.

[13] Exhibit Q.

[14] C.J.S. 817-818.

[15] 14 C.J.S. 819.

[16] *Bachrach v. Golingco*, *supra*.

[17] Exhibit 5.

[18] Exhibit 6.

[19] Exhibit 6-b.

[20] Exhibit 6-c.

[21] See Art. 2217, Civil Code.

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