

ALLIED BANKING CORPORATION, PETITIONER, VS. HON. EMILIO V. SALAS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE CFI OF RIZAL, BRANCH I, PASIG, METRO MANILA AND METROPOLITAN BANK AND...

G.R. No. L-49081. December 13, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Petition for certiorari, prohibition and mandamus directed against the Order dated July 27, 1978 of the Hon. Emilio V. Salas, Presiding Judge of the Court of First Instance (now Regional Trial Court) of Rizal, Branch 1 in Civil Case No. 25988 entitled "Metropolitan Bank and Trust Company, Plaintiff, versus Clarencio S. Yujuico and Jesus Z. Yujuico, Defendants" restraining the Sheriff of Quezon City, who apparently was not a party in the aforesaid case, from selling at public auction on July 28, 1978 certain printing machineries and equipment claimed to have been previously levied upon pursuant to a writ of attachment dated April 22, 1977 issued by said respondent Judge Emilio V. Salas in Civil Case No. 25988.

The aforesaid order of July 27, 1978 is assailed on jurisdictional grounds centering on the propriety of its issuance.

Briefly, the antecedent facts are:

Petitioner's predecessor, General Bank and Trust Company granted Gencor Marketing, Inc, a time loan in the principal amount of P400,000.00 evidenced by a Promissory Note executed by the latter through its President, Dr. Clarencio S. Yujuico.[1] As security for the time loan and pursuant to a resolution of the Board of Directors of Gencor Marketing,[2] a Deed of Chattel Mortgage[3] was executed by Gencor Marketing in favor of General Bank and Trust Company involving the following personal properties:

- Linotype Machine-Model 32
- Aurelia 46-Offset Machine
- Solna 125-Offset Machine
- Dainippon Camera D.S.C. 24-D
- Heidelberg-Letterpress 19" x 127"
- Titan Automatic Cylinder Press 15-1/2" x 21-1/2"
- Minerva Conventional Letterpress 12" x 18"
- Honer - Conventional Letterpress 12" x 15-1/2"
- Printex Guillotine Cutter Model 107 31" x 42"

- Saeg-Paper Stitching Machine
- Von Yong Die Cutting Machine
- Punching Machine
- Embossing Machine
- Graining Machine
- Horizontal Plate Making
- Stamping Machine

The Deed of Chattel Mortgage was duly recorded in the Chattel Mortgage Registry of Quezon City on February 7, 1974 under Page No. 365, Volume No. 104, File No. 5884.

On maturity date of Gencor's Time Loan and allegedly after several subsequent extensions of time for Gencor to settle its account, Gencor failed to pay its obligations either to General Bank and Trust Company or to herein petitioner which took over the affairs and/or acquired all the assets and assumed the liabilities of General and Bank and Trust Company.

Consequently, on June 15, 1978, petitioner extrajudicially foreclosed the aforesaid Chattel Mortgage and requested the City Sheriff of Quezon City to effect the said foreclosure. The City Sheriff of Quezon City, through Deputy Sheriff A. Tabbada levied upon the aforescribed mortgaged personal properties in question and issued the corresponding Notice of Sheriff's Sale dated July 13, 1978.[4]

It appears, however, that prior to the extrajudicial foreclosure effected by petitioner involving the personal properties in question, private respondent Metropolitan Bank and Trust Company filed Civil Case No. 25988, an action for a sum of money in the amount of P5,402,740.17 with preliminary attachment against Clarencio Yujuico and Jesus Yujuico. On April 29, 1977, a writ of preliminary attachment was issued in said case and the Sheriff of the Court of First Instance of Rizal levied upon the personal properties in question.

Thus, upon learning of the Notice sent by City Sheriff Tabbada for the sale of the foreclosed personal properties in question, private respondent filed in Civil Case No. 25988 an Urgent Motion to Enjoin the Sheriff of Quezon City from foreclosing and selling at public auction the said properties, alleging that the printing machineries and equipment previously levied and attached by the Sheriff of Rizal belonged exclusively to defendant Clarencio S. Yujuico, doing business under the firm name of Gencor Printing and as such, may not legally be foreclosed and sold at auction by the Sheriff of Quezon City. The hearing of said Motion was set on July 27, 1978.

Meanwhile, on July 29, 1978, private respondent Metropolitan Bank and Trust Company filed a Third Party Claim with the Quezon City Sheriff's Office over the personal properties in question levied upon and sought to be sold at public auction by City Sheriff A. Tabbada, alleging that these same personal properties had been previously levied upon by the Deputy sheriff of Branch I of the Court of First Instance Rizal, pursuant to a Writ of Attachment issued by herein respondent Judge Emilio V. Salas in Civil Case No. 25988.

Allegedly to protect petitioner's rights over the personal properties in question, petitioner's counsel entered a special appearance during the scheduled hearing on July 27, 1978 for the exclusive purpose of opposing private respondent's motion on jurisdictional grounds and gross irregularity of procedure amounting to lack of jurisdiction. However, over petitioner's opposition, respondent Judge rendered the assailed Order dated July 27, 1978, which reads:

ORDER

"Before this Court is plaintiff's 'Urgent Motion to Enjoin the Sheriff of Quezon City from Foreclosing and Selling at Public Auction Properties Previously Levied Under Writ of Attachment Issued Herein by This Court'. When the motion was called for hearing today, Atty. Arturo A. Alafriz, counsel for the plaintiff and Atty. Joselito Generoso, counsel for Allied Banking Corp. appeared. Atty. Alafriz claims that the properties sought to be sold at public auction by the Sheriff of Quezon City which were allegedly mortgaged by Gencor Marketing, Inc., to General Bank and Trust predecessor-in-interest of Allied Banking Corp. belong exclusively to the Gencor Printing, a sole proprietorship of defendant Clarencio Yujuico, and not to the mortgagor, Gencor Marketing, Inc. This fact is admitted by Atty. Generoso. Such being the case, Gencor Marketing, Inc. had no authority to mortgage the properties in question and, consequently, the same cannot be sold at public auction in an extra-judicial foreclosure of the mortgage to the General Bank and Trust Co.

PREMISES CONSIDERED, the Sheriff of Quezon City is restrained from selling at public auction on July 28, 1978 the printing machineries and equipment previously levied pursuant to the writ of attachment of April 22, 1977 issued in this case.

SO ORDERED."[5]

On the same day, petitioner's counsel received a copy of a "Notice of Issuance of Restraining Order" from private respondent addressed to the Sheriff of Quezon City stating, among others, that: Pending official service upon you of the restraining order of the Court, this advance notice is being served upon you to subserve all legal effects".[6]

Finding that to seek reconsideration of the assailed Order of July 27, 1978 would be an exercise in futility, petitioner filed the instant petition for certiorari, prohibition and mandamus with preliminary injunction, asserting that respondent judge lacks jurisdiction over the person of petitioner and the city sheriff of Quezon City, and that the respondent judge acted without and/or in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction in acting upon the motion of respondent Metropolitan Bank and Trust Company dated July 24, 1978 and consequently erred as well in issuing the disputed Order of July 27, 1978 enjoining the sale at public auction on July 28, 1978 of the printing machineries and equipment previously mortgaged to herein petitioner. Further, petitioner maintains that respondent court could not pass upon the validity and authenticity of the Deed of Chattel Mortgage as these were not in issue in Civil Case No. 25988, the same being merely an action for a sum of money. Moreover, petitioner argues that granting arguendo that the mortgaged properties were owned by Clarencio Yujuico, the same did not make the chattel mortgage void since Clarencio Yujuico, as the owner thereof, in effect ratified the mortgage because he signed the Board Resolution authorizing the execution of the mortgage and he himself signed the promissory note which was the principal obligation secured by the chattel mortgage.

To support its contention that no jurisdiction was acquired over the persons of petitioner and City Sheriff Tabbada, petitioner asserts that its counsel appeared before respondent judge on the scheduled hearing of herein private respondent's urgent motion to enjoin the public sale of other personal properties in question by way of special appearance precisely for the sole purpose of questioning the jurisdiction of the court a quo. On the other hand, private respondent argues that counsel for petitioner voluntarily appeared before respondent judge during said hearing thereby also voluntarily submitting the person of petitioner to the authority of the court in said case.

The court considers these arguments immaterial. Regardless of the nature of counsel for petitioner's appearance before respondent judge, the central thrust of the problem and what we consider the pivotal issue in this case is whether respondent judge may validly enjoin the public sale of the extrajudicially foreclosed properties, granting that proper legal procedures were observed by private respondent in order that respondent court may validly acquire jurisdiction over the person of petitioner.

While counsel for petitioner admitted during the hearing on July 27, 1978 that the personal properties in question belonged to Clarencio Yujuico and not to Gencor Marketing, Inc., the Court nevertheless finds that the chattel mortgage over the printing machineries and equipment was ratified and approved by Clarencio Yujuico. As earlier stated and as pointed out by petitioner, it was Clarencio Yujuico as president of Gencor Marketing, Inc., who signed the promissory note evidencing the time loan granted by petitioner's predecessor General Bank and Trust Company in favor of Gencor Marketing, Inc.

Finding the chattel mortgage to be valid, the Court takes special note of the fact that said chattel mortgage was registered and duly recorded in the Chattel Mortgage Registry of Quezon City on February 7, 1974, prior to April 22, 1977, the date the writ of attachment of the properties in question was issued. This is a significant factor in determining who of two contending claimants should be given preference over the same properties in question.

The registration of the chattel mortgage more than three years prior to the writ of attachment issued by respondent judge is an affective and binding notice to other creditors of its existence and creates a real right or a lien, which being recorded, follows the chattel wherever it goes.[7] The chattel mortgage lien attaches to the property wherever it may be. Thus, private respondent as attaching creditor acquired the properties in question subject to petitioner's mortgage lien as it existed thereon at the time of the attachment.

In this regard, it must be stressed that the right of those who so acquire said properties should not and cannot be superior to that of the creditor who has in his favor an instrument of mortgage executed with the formalities of law, in good faith, and without the least indication of fraud.[8]

Applying the foregoing principle to the case at bar, the Court finds the lien of petitioner's chattel mortgage over the mortgaged properties in question superior to the levy on attachment made on the same by private respondent as creditor of chattel mortgagor Clarencio Yujuico. What may be attached by private respondent as creditor of said chattel mortgagor is only the equity or right of redemption of the mortgagor.[9]

WHEREFORE, in view of the foregoing, the instant petition is GRANTED. The order dated July 27, 1978 of the respondent judge restraining the Sheriff of Quezon City from selling at public auction the printing machineries and equipment question is hereby annulled and set aside. Respondent judge is ordered to desist and refrain from further interfering with petitioner's property rights in the aforesaid Deed of Chattel Mortgage and to allow the Sheriff of Quezon City and his deputies to proceed with the auction sale of the foreclosed personal properties. Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Petition, Annex "B", Rollo p. 29

[2] Petition, Annex "C", Rollo, p. 30

[3] Petition, Annex "D", Rollo, p. 31

[4] Petition, Annex "G", Rollo, p. 37

[5] Petition, Annex "N", Rollo, p. 63

[6] Petition, Annex "O" Rollo, p. 64

[7] Northern Motors, Inc. vs. Coquia, 68 SCRA 374

[8] Ong Liong Tiak vs. Luneta Motor Co., 66 Phil 459

[9] Northern Motors, Inc., vs. Coquia, Supra at 377

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