

OCEJO, PEREZ & CO., PLAINTIFFS AND APPELLEES, VS. THE INTERNATIONAL BANKING CORPORATION, DEFENDANT AND APPELLANT. FRANCISCO CHUA SECO, AS ASSIGNEE, INTERVENER AND APPELLANT.

G. R. No. 10658. February 14, 1918

Ponente: FISHER, J.

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FISHER, J.:

On the 7th day of March, 1914, Chua Teng Chong of Manila, executed and delivered to the International Banking Corporation, hereinafter referred to as "the bank," a promissory note, payable one month after date, for the sum of P20,000. Attached to this note was another private document, signed by Chua Teng Chong, in which it was stated that he had deposited with the bank, as security for the said note, 5,000 piculs of sugar, which in said document were said to be stored in a warehouse situated at No. 1008, Calle Toneleros, Binondo, Manila. It appears from the evidence, assuming that the sugar was in the warehouse on that date, that the bank did not take possession of it when the document was executed and delivered, and that Chua Teng Chong continued to retain the sugar in his possession and control. The bank made no effort to exercise any active ownership over said merchandise until the 16th of April, when it discovered that the amount of sugar stored in the said warehouse was much less than the 5,000 piculs mentioned in the contract. The agreement between the bank and Chua Teng Chong with respect to the alleged pledge of the sugar was never recorded in a public instrument. It does not appear from the evidence that the promissory note represents money delivered by the bank on the date of its execution, although it is stated therein that it was executed for value received.

On the 24th day of March, 1914, the plaintiff partnership Ocejo, Perez & Co., entered into a contract with Chua Teng Chong for the sale to him of a lot of sugar. It was agreed that delivery should be made in the month of April, the sugar to be weighed in the buyer's warehouse. It appears that this sugar was brought to Manila by a steamer in the month of April, and 5,000 piculs were delivered by plaintiff to Chua Teng Chong. The delivery was completed April 16, 1914, and the sugar was stored in the buyer's warehouse situated at No. 119, Muelle de la Industria. On April 17, 1914, plaintiff partnership presented, for collection, its account for the purchase price of the sugar, but the buyer refused to make payment, and up to the present time the sellers have been unable to collect the purchase price of the merchandise in question.

On the same date as that on which the 5,000 piculs of sugar were delivered into the warehouse on Muelle de la Industria, the bank sent an employee to inspect the sugar described in the pledge agreement, and which, as therein stated, should have been stored in the Calle Toneleros warehouse. The bank's representative then discovered that the amount of sugar in that warehouse did not exceed 1,800 piculs, whereas the amount which should have been there, according to the contract, was 5,000 piculs. Upon making this discovery, the bank's representative, accompanied by a lawyer, went immediately to see Chua Teng Chong, and the latter informed him that the rest of the sugar covered by the pledge agreement was stored in the warehouse at No. 119, Muelle de la Industria. The bank's representative immediately went to this warehouse and upon arrival there found some 3,200 piculs of

sugar, of which he took immediate possession, closing the warehouse with the bank's padlocks. It is admitted that the sugar seized by the bank in the Muelle de la Industria warehouse is the same sugar which the plaintiff firm delivered to Chua Teng Chong. On the date on which the bank took possession of the sugar the promissory note executed March 17, 1914, had fallen due and was unpaid.

In the written contract by which the plaintiff firm undertook to sell the sugar in question to Chua Teng Chong nothing was said concerning the time and place for payment. The court below found that the delivery of the sugar by plaintiff to Chua Teng Chong was made upon the mutual understanding that the price was to be paid in cash "upon the completion of delivery." The plaintiff firm proved that in sales of this kind it is the custom among merchants in Manila for the seller to deliver the merchandise into the warehouse of the buyer, for inspection and verification of weights, and that as soon as this operation is completed, the price is payable on demand. After Chua Teng Chong had refused to pay the bill for the price of the sugar which the plaintiff firm presented to him, the day after" its delivery, an attempt was made by plaintiff to recover possession of the sugar, and to that end, on April 24, 1914, the plaintiff made a demand on the bank for the delivery of the sugar, to which demand the bank refused to accede. On April 24, 1914, the buyer Chua Teng Chong was judicially declared to be insolvent, and Francisco Chua Seco was appointed as assignee of the insolvency. On the same date, and a few minutes after the insolvency proceedings "were commenced, the plaintiff partnership filed a complaint, upon which this action was commenced, naming the bank as defendant, alleging that said defendant was unlawfully holding some 4,711 pilones of sugar, the property of the plaintiff firm, which the bank had received from Chua Teng Chong, and prayed for judgment for the possession of said sugar. A few days after, the plaintiff firm took advantage of those provisions of the procedural law which permit a plaintiff to replevin personal property. Subsequently, by agreement of the parties, the sugar was sold and the proceeds of the sale deposited in bank, subject to the order of the court upon the final disposition of the case. After the answer of the defendant bank was filed, a complaint in intervention was filed by Chua Seco, in which he asserts a preferential right to the sugar, or to the proceeds of its sale, upon the ground that the delivery of the sugar by plaintiff, by virtue of which it passed into the possession and control of Ghua Teng Chong, had the effect of transmitting the title of the sugar to the latter, and that, on the other hand, the pledge asserted by the bank was null and void. Upon these allegations the intervener contends that the sugar is the property of the insolvent estate represented by him. The lower court rendered judgment in favor of the plaintiff and from this decision appeals have been taken by the bank and by the intervener.

Upon these facts the following questions arise:

- (a) Did title to the sugar pass to the buyer upon its delivery to him?
- (b) Assuming that the title passed to the buyer, did his failure to pay the purchase price authorize the seller to rescind the sale?
- (c) Was the commencement of a replevin suit by the seller equivalent to the rescission of the sale?
- (d) Can the pledge of the sugar to the bank be sustained upon the evidence as to the circumstances under which it obtained physical possession thereof?

Clearly, there can be no doubt that from March 24, 1914, on which date the parties agreed in regard to the quantity and quality of the sugar which the seller was to deliver and the price which the buyer was to pay, the contract was perfected. (Civil Code, art. 1450.) It is also clear that the obligation of the seller to make delivery of the thing sold was not subject to the condition that the buyer was to pay the price before delivery. The witness Pomar, called on behalf of the seller, testified that the price was to be paid after the completion of delivery. (Stenographic notes, p. 4.)

The sugar was delivered to the buyer March 16, 1914. The seller delivered it into the buyer's warehouse, leaving it entirely subject to his control. Article 1462 of the Civil Code provides that the thing sold is deemed to be delivered "when it passes into the possession and control of the buyer." It is difficult to see how the seller could have divested himself more completely of the possession of the sugar, or how he could have placed it more completely under the control of the buyer.

On the day following the delivery of the sugar the seller presented his bill to the buyer, but the latter failed and refused to make payment. We agree with the seller's contention that he was entitled to demand payment of the sugar at any time after its delivery. No term having been stipulated within which the payment should be made, payment was demandable at the time and place of the delivery of the thing sold. (Civil Code, art. 1500.) The seller did not avail himself of his right to demand payment as soon as the right to such payment arose, but as no term for payment was stipulated, he was entitled to require payment to be made at any time after delivery, and it was the duty of the buyer to pay the price immediately upon demand. But the seller not only argues that he was entitled to demand payment at any time after delivery, but contends further that until such payment was in fact made, title to the sugar did not pass to the buyer. We cannot agree with this contention.

As Manresa says (vol. 10, p. 120), tradition is a true mode of acquiring ownership "which effects the passage of title and the birth of the right in rem. Therefore, the delivery of the thing * * * signifies that title has passed from the seller to the buyer."

If we were to sustain the seller's contention, the consequences to the business community would, in our judgment, be most deplorable. If the seller, may make delivery of the thing sold and clothe the buyer with all the appearances of ownership but without the passage of title until the purchase price is actually paid, it occurs to us to inquire how long this anomalous state of affairs may be permitted to continue? It is the buyer's duty, upon the assumed facts, to pay the price on demand, but the seller is not bound to present his account immediately. In the present case the buyer was not called upon to make payment until the following day. If the seller had allowed three, four, or five days to go by before presenting his account for payment, would it be permitted him still to contend that title had not passed? If title did not pass, any sale which might in the meantime be made by the buyer; would be void, as it is evident that no one can transfer a greater interest than that which he possesses. With even greater reason, the destruction of the thing in the possession of the buyer, before demand upon him for payment, would relieve him from the obligation to pay—the thing perishes for its owner. (Tan Leonco vs. Go Inqui, 8 Phil. Rep., 531.)

The seller calls this transaction a cash sale, but, strictly speaking, it is not a cash sale. It is not like a sale made in a retail store, in which delivery and payment are to be made simultaneously. Of course, when no term for payment is stipulated the seller is not bound to deliver the thing sold until the buyer has paid him the price; but if, notwithstanding this right, delivery is consummated without requiring payment to be made in advance or simultaneously, in fact he grants a term of credit to the buyer, however short and indeterminate it may be, and waives his right to insist upon payment in advance or, simultaneously with delivery, but in lieu thereof he becomes entitled to payment upon demand therefor made upon the buyer. As is correctly stated in Williston on Sales:

"Confusion especially may be caused by use of the words 'cash sale' or 'terms cash' by business men. In business dealings these words are frequently used when in reality a short period of credit is contemplated. In such a case it is clear there is no cash sale in the legal sense; for, under the circumstances suggested, it is not contemplated that the buyer shall refrain from dealing with the goods or even from reselling them, and if such is the contemplation of the parties, it is impossible to say that the property was not to pass until the price was paid." (Williston, Sales, par. 343.)

It is not contended that there was an express agreement in this case that the passage of title should be subject to the payment of the price, as a condition precedent. As was stated by Justice Mapa, the author of the decision in the case of *De la Rama vs. Sanchez*, (10 Phil. Rep., 432) :

"The fact that the price of the property has not yet been paid in full is not, nor can it be, an obstacle to the acquisition of the ownership thereof by the plaintiff, because as such a condition was not stipulated in the contract, the latter immediately produced its natural effects in law, the principal and most important of which being the conveyance of the ownership by means of the delivery of the thing sold to the purchaser, without prejudice, of course, to the right of the vendor to claim payment of any sum still due."

The same fundamental doctrine was stated by Chief Justice Arellano in the case of *Gonzalez vs. Rojas* (16 Phil. Rep., 51) :

"* * * ownership of things is not transferred by contract merely but by delivery. Contracts only constitute titles or rights to the transfer or acquisition of ownership, while delivery or tradition is the method of accomplishing the same, the title and the method of acquiring it being different in our law."

In the case of *Kuenzle & Streiff vs. Watson & Co.* (13 Phil. Rep., 26), the court sustained the validity of a sale of personal property subject to the stipulation that title should not pass until the payment of the purchase price. On the other hand, when there has been no such express agreement and the thing sold has been delivered, title passes from the moment the thing sold is placed in the "possession and control of the buyer."

Having concluded that the effect of the delivery was to transmit the title of the sugar to the buyer, we will now consider the legal effect of the failure on the part of the buyer to pay the price on demand.

Article 1506 of the Civil Code provides that the contract of sale may be rescinded for the same causes as all other obligations, in addition to the special causes enumerated in the preceding articles. It is to be observed that the article does not distinguish the consummated sale from the merely perfected sale, and we do not believe that there is any reason for making this distinction. Article 1124 of the Civil Code establishes the principle that all reciprocal obligations are rescindible in the event that one of the parties bound should fail to perform that which is incumbent upon him. In the contract of sale the obligation to pay the price is correlative to the obligation to deliver the thing sold. Nonperformance by one of the parties authorizes the other to exercise the right, conferred upon him by the law, to elect to demand the performance of the obligation or its rescission (*Mateos vs. Lopez*, 6 Phil. Rep., 206), together with damages in either event. But the right to rescind the sale for nonperformance on the part of the buyer is not absolute. The law subordinates it to the rights of third persons to whom bad faith is not imputable (Civil Code, arts. 1124 and 1295), and the defendant bank seeks to invoke in its defense this principle, alleging that the sugar in question was pledged to it, after its delivery to the buyer and before the latter was placed in default with respect to the payment of the price.

We believe that this contention of the defendant bank cannot be sustained. In the first place, even giving all possible effect to the contract evidenced by the private document exhibited by the bank (Exhibit No. 1), it is evident that the sugar therein mentioned is not the same as that here in dispute. By this document, which bears date March 4, 1919, an attempt was made to pledge the lot of sugar deposited in warehouse No. 1008, Calle Toneleros, Manila. The sugar in dispute has never been in that warehouse, as the seller delivered it into the bodega at No. 119, Muelle de la Industria. The sugar here in question could not possibly have been the subject matter of the contract of pledge which the parties undertook to create by the private document dated March 7, 1914, inasmuch as it was not at that time the property of the defendant, and this constitutes an indispensable requisite for the creation of a pledge. (Civil Code, art. 1857.) It does not appear from the record that any effort was made to pledge the sugar which is the subject matter of this case. It is true that it appears that in the afternoon

of the day the sugar was delivered, the buyer gave the bank's representative the keys of the warehouse on the Muelle de la Industria in which the sugar was stored, but it also appears from the testimony of the bank's witness, Grey, to whom the keys of the warehouse were delivered, that this was not done because of an agreement concerning the pledge of the sugar now in dispute. Grey testified that on the afternoon of April 16, 1914, he ascertained, after an inspection of the warehouse on Calle Toneleros, that the sugar therein stored was not more than 1,800 piculs, instead of five thousand, as stated in the document of pledge; that upon observing this shortage he asked the debtor to account for it, whereupon the latter stated "that the rest was in the warehouse at No. 119, Muelle de la Industria;" that upon receiving this reply the witness went to the warehouse at No. 119, Muelle de la Industria, demanded the keys from the person in charge, and then closed the warehouse with the bank's own padlocks. From these statements it appears that no attempt was made to enter into any agreement for the pledge of the sugar here in question. The bank took possession of that sugar under the erroneous belief, based upon the false statement of Chua Teng Chong, that it was a part of the lot mentioned in the private document dated March 7, 1914. But even if it were assumed that on the afternoon of April 16, 1914, an attempt was made to pledge the sugar and that delivery, was made in accordance with the agreement, the pledge so established would be void as against third persons. Article 1865 of the Civil Code provides that a pledge is without effect as against third persons "if the certainty of the date does not appear by public instrument." In the case of *Tec Bi & Co. vs. Chartered Bank of India, Australia and China*, 16 Off. Gaz., 908 decided February 5, 1916, this court held that when the contract of pledge is not recorded in a public instrument, it is void as against third persons; that the seller of the thing pledged, seeking to recover the purchase price thereof, is a third person within the meaning of the article cited; and that the fact that the person claiming as pledgee has taken actual physical possession of the thing sold will not prevent the pledge from being declared void as against the seller. The court held that the principle established by article 1865 of the Civil Code is not adjective in its character, but that "it prescribes a condition without which the contract of pledge cannot adversely affect third persons." Applying the doctrine of the decision cited, it is evident that the pledge asserted by the International Bank is inefficacious.

In the brief filed on behalf of the bank it is argued that in no case may a revindictory action be maintained when the plaintiff attempts to exercise the right to rescind the sale for nonpayment of the purchase price and that therefore a replevin suit will not lie. But as it is held that the bank has no interest in this matter, as its alleged contract of pledge is utterly unavailing, it is evident that the question of procedure does not affect it. It appears that by reason of the insolvency of the buyer Chua Teng Chong an insolvency proceeding was commenced in a court of competent jurisdiction and in that proceeding Francisco Chua Seco was appointed assignee of the property of the insolvent. As such assignee Chua Seco filed a complaint in intervention in this suit, in which he contends that by reason of its sale and delivery by plaintiff to the insolvent, title to the sugar passed to the latter and that the pledge set up by the bank is void as to third persons. Standing in the place of the insolvent buyer, the assignee asks that he be recognized in his representative capacity as the owner of the sugar in question. The voluntary intervention of the assignee of the insolvent buyer cures the defect of nonjoinder of the latter as a party defendant, and all parties in interest have been heard in this proceeding.

The judgment of the court below awards the plaintiff the product of the sale of the sugar, it having been so disposed of by agreement by the parties during the pendency of the suit. The intervener excepted to the decision and joined in the bank's appeal. In his brief in this court the intervener raises a question as to the sufficiency of the complaint to support the decision of the court below, adopting the argument of the bank upon this point. That is, assuming that by reason of the nonpayment of the purchase price, the seller is entitled to elect to rescind the sale, is the rescission effected ipso facto by such election, or is it necessary for him to bring an action of rescission? The action of replevin, the intervener contends, is based (Code of Civil Procedure, sec. 263) upon the assumption that the plaintiff at the time of bringing the action is either the owner of the thing which is the subject matter of

the suit or entitled to its possession. But the question presented is whether, in cases in which title has passed by delivery and in which the buyer has failed to pay the purchase price on demand, title is revested in the seller by the mere fact that he has mentally determined to elect to rescind? In its brief the plaintiff partnership contends for the affirmative, saying that the acts of the seller—the filing of its complaint—imply that it has made the election. But the intervener, adopting the argument of the bank, contends that the party to whom article 1124 of the Civil Code grants the right to rescind "must apply to the court for a decree for the rescission of the contract * * *" (Scaevola, vol. 19, p. 673) ; and this conclusion is supported by the last paragraph of the article cited. Of course, if the action of the court is necessary in order to effectuate the rescission of the sale, such rescission does not follow ipso jure by reason of nonpayment and the determination of the seller to elect to rescind. Consequently, the action of replevin cannot be, maintained. The right to rescind a sale, established by article 1506, in no wise differs. from that which is established, in general terms, with respect to reciprocal obligations, by article 1124 in "the event that one of the obligors fails to perform the obligation incumbent upon him." But the right so conferred is not an absolute one. The same article provides that "the court shall decree the rescission demanded, unless there are causes. which justify him in allowing a term."

Therefore, it is the judgment of the court and not the mere will of the plaintiff which produces the rescission of the sale. This being so, the action of replevin will not lie upon the theory that the rescission has already taken place and that the seller has recovered title to the thing sold.

If the buyer himself had intervened, instead of the assignee in the bankruptcy suit, we might perhaps have said that all the parties in interest having been heard, we would overlook the matter of procedure and proceed to adjudicate the rights of the parties upon the evidence submitted. But as the buyer has been declared insolvent, it is clear that his creditors have an interest in this question, and that if this interest is discussed in the bankruptcy proceedings, they will have an opportunity to be heard. In the present condition of the case, the only thing we can do is to decide that the title to the sugar having passed to the buyer and no action for rescission having been commenced against him before the declaration of insolvency, the assignee, standing in the shoes of the buyer, has a better right to its possession or to the product of its sale during the pendency of this action. We cannot apply section 126 of the Code of Civil Procedure, because one of the material averments of the complaint is that Chua Teng Chong unlawfully took possession of the sugar. The evidence shows, on the contrary, that it was delivered to him by plaintiff. Strictly speaking the mission of the court ends at this point, but following the. practice adopted in other cases, for the purpose of avoiding an unnecessary multiplicity of suits, and bearing in mind the fact that the assignee of the bankruptcy is. a party to this proceedings, we deem it advisable to indicate that we are of the opinion that the rights of the seller are protected by section 48 of Act No. 1956, inasmuch as the sugar in question had not passed by an "irrevocable title" when the buyer was declared insolvent. Attention is also invited to the decision of the court overruling the motion for a rehearing in the case of Tec Bi & Co. vs. Chartered Bank of India, Australia & China, cited above.[1]

The decision of the court below is therefore reversed, and it is decided that the assignee of the bankruptcy of Chua Teng Chong is entitled to the product of the sale of the sugar here in question, to wit, P10,826.76, together with the interest accruing thereon, reserving to the seller the right to file his claim in the insolvency proceedings. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Araullo, Street, and Malcolm, JJ., concur.

[1] 16 Off. Gaz., 911.

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