

CEBU INTERNATIONAL FINANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS, ROBERT ONG AND ANG TAY, RESPONDENTS.

G.R. No. 107554. February 13, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In this petition for review on certiorari under Rule 45 of the Revised Rules of Court, petitioner seeks to set aside the decision of the Court of Appeals in CA-G.R. C.V. No. 26257 dated 2 July 1992 which affirmed the decision of the Regional Trial Court in Civil Case No. CEB-6919, declaring the chattel mortgage void and ordering petitioner and private respondent Robert Ong to pay damages to private respondent Ang Tay. The Court of Appeals' resolution dated 30 September 1992 is similarly impugned for denying petitioner's motion for reconsideration.

Gleaned from the records are the following facts:

On 4 March 1987, Jacinto Dy executed a Special Power of Attorney[1] in favor of private respondent Ang Tay, authorizing the latter to sell the cargo vessel owned by Dy and christened LCT "Asiatic."

On 28 April 1987, through a Deed of Absolute Sale,[2] Ang Tay sold the subject vessel to private respondent Robert Ong (Ong) for P900,000.00. Ong paid the purchase price by issuing three (3) checks in the following amounts: P150,000.00, P600,000.00 and P150,000.00. However, since the payment was not made in cash, it was specifically stipulated in the deed of sale that the "LCT Asiatic shall not be registered or transferred to Robert Ong until complete payment." [3] Thereafter, Ong obtained possession of the subject vessel so he could begin deriving economic benefits therefrom. He, likewise, obtained copies of the unnotarized deed of sale allegedly to be shown to the banks to enable him to acquire a loan to replenish his (Ong's) capital. The aforementioned condition, however, which was handwritten on the original deed of sale does not appear on Ong's copies.

Contrary to the aforementioned agreements and without the knowledge of Ang Tay, Ong had his copies of the deed of sale (on which the aforementioned prohibition does not appear) notarized on 18 May 1987.[4] Ong presented the notarized deed to the Philippine Coast Guard which subsequently issued him a Certificate of Ownership[5] and a Certificate of Philippine Register[6] over the subject vessel on 27 May 1987. Ong also succeeded in having the name of the vessel changed to LCT "Orient Hope." Scslx

On 29 October 1987, Ong acquired a loan from petitioner in the amount of P496,008.00 to be paid in installments as evidenced by a promissory note of even date.[7]

As security for the loan, Ong executed a chattel mortgage over the subject vessel,[8] which mortgage was registered with the Philippine Coast Guard and annotated on the Certificate of Ownership.[9] In paragraph 3 of the Deed of Chattel Mortgage, it was stated that:

3. The said sum of FOUR HUNDRED NINETY SIX THOUSAND EIGHT ONLY Pesos (P496 008.00) represents the balance due on the purchase price of the above-described property purchased by the

MORTGAGOR(S) from the MORTGAGEE and is payable in the office of the MORTGAGEE at Cebu City or in the office of the latter's assignee, in case the rights and interests of the MORTGAGEE in the foregoing mortgage are assigned to a third person, under the terms of said promissory note, as follows: (a) TWENTY THOUSAND SIX HUNDRED SIXTY SEVEN ONLY** Pesos (P20,667.00) on or before . . . and (b) the balance in Twenty Four (24) equal successive monthly installments on the . . . day of each and every succeeding month thereafter until the amount is fully paid. The interest on the foregoing installments shall be paid on the same date that the installments become payable and additional interest at the rate of fourteen (14%) per cent per annum will be charged on all amounts, principal and interest, not paid on due date.[10] (Underscoring ours.)

Ong defaulted in the payment of the monthly installments. Consequently, on 11 May 1988, petitioner sent him a letter[11] demanding delivery of the mortgaged vessel for foreclosure or in the alternative to pay the balance of P437,802.00 pursuant to paragraph 11 of the deed of chattel mortgage.[12]

Meanwhile, the two checks (worth P600,000.00 and P150,000.00) paid by Ong to Ang Tay for the Purchase of the subject vessel bounced. Ang Tay's search for the elusive Ong and all attempts to confer with him proved to be futile. A subsequent investigation and inquiry with the Office of the Coast Guard revealed that the subject vessel was already in the name of Ong, in violation of the express undertaking contained in the original deed of sale.

As a result thereof, on 13 January 1988, Ang Tay and Jacinto Dy filed a civil case for rescission and replevin with damages against Ong and his wife (docketed as Civil Case No. CEB-6565) with the Regional Trial Court of Cebu City, Branch 10. The trial court issued a writ of replevin and the subject vessel was seized and subsequently delivered to Ang Tay.

On 9 March 1988, petitioner filed a motion for intervention but withdrew the same on 29 April 1988. Instead, on 26 May 1988, petitioner filed a separate case for replevin and damages against Ong and "John Doe" (Ang Tay) with the same trial court, docketed as Civil Case No. CEB-6919.

The trial court granted petitioner's prayer for replevin. The vessel was seized and placed in the custody of the trial court. However, Ang Tay posted a counterbond and the vessel was returned to his possession.

On 3 October 1990 in CEB-6565, the trial court rendered a decision in favor of Ang Tay and Jacinto Dy. The sale of the subject vessel was rescinded, the registration of the vessel with the Office of the Coast Guard and other government agencies in Ong's name nullified and the vessel's registration in Dy's name revived. Ong was, likewise, ordered to pay Jacinto Dy and Ang Tay actual damages for lost income, moral damages, attorney's fees and litigation expenses.[13]

The Court of Appeals affirmed the trial court's decision and Ong's petition for review before this Court was dismissed for lack of merit in a resolution dated 15 March 1993.

On the other hand, in CEB-6919, the subject of the present appeal, the trial court in a decision dated 14 February 1990, declared the chattel mortgage on the subject vessel null and void and ordered petitioner and Ong to pay Ang Tay damages. The dispositive portion states, thus:

WHEREFORE, in view of all the foregoing, the chattel mortgage on the vessel LCT ORIENT HOPE is declared null and void, rendering its annotation and registration at the back of the Certificate of Ownership and Certificate of Philippine Registry respectively, to be of no force and effect.

Plaintiff CIFIC and defendant Robert Ong are hereby ordered to pay jointly and severally to defendant Ang Tay the following amounts: P50,000.00 as unrealized income during the five-day period when the vessel was taken from Ang Tay's possession; P100,000.00, representing the premiums Ang Tay paid for the redelivery of the vessel to him and other expenses; P10,000.00 as actual expenses for the recovery of the vessel; P100,000.00 as

moral damages; P50,000.00 as exemplary damages; P40,000.00 as actual expenses in attending trials and litigation expenses; and P30,000.00 as attorney's fees.

SO ORDERED.[14]

On 2 July 1992, the Court of Appeals affirmed in toto the abovementioned decision.[15] Hence, the present petition for review on certiorari.

Petitioner enumerates the alleged errors of the Court of Appeals as follows:

I

THE COURT OF APPEALS ERRED IN BASING ITS DECISION ON SPECULATION, CONJECTURE, AND SURMISE, WHEN IT DECLARED THAT THE CONTRACT BETWEEN CIFIC AND ROBERT ONG WAS ONE OF SALE, AND NOT LOAN (MUTUUM) WITH MORTGAGE.

II

THE RULING OF THE COURT OF APPEALS IS CONTRARY TO EXISTING AND WELL-SETTLED JURISPRUDENCE THAT A MORTGAGEE HAS THE RIGHT TO RELY ON WHAT APPEARS IN THE CERTIFICATE OF OWNERSHIP (TITLE).

III

THE DECISION OF THE COURT OF APPEALS IS REPUGNANT TO THE CLEAR RULING OF THE HONORABLE COURT THAT BETWEEN TWO INNOCENT PERSONS, THE ONE WHO MADE THE DAMAGE POSSIBLE BY HIS ACT OF CONFIDENCE MUST BEAR THE LOSS.[16]

We grant the petition.

In upholding the nullity of the chattel mortgage on the subject vessel, the Court of Appeals declared thus:

In Par. 3 of the Chattel Mortgage Contract executed between appellants CIFIC and Robert Ong, it was made to appear that the subject vessel was sold by the plaintiff Cebu International Finance Corporation to Robert Ong on installment. However, there is no showing that appellant CIFIC acquired the vessel in question from either Jacinto Dy or Ang Tay, the owner of such vessel. Since, CIFIC appears to have sold the vessel in question to Ong on installment basis, the said contract is null and void, because CIFIC was never the owner of the vessel.

Moreover, Robert Ong, CIFIC's mortgagor, did not acquire ownership of the vessel because of an express stipulation in the Deed of Sale that the vessel "shall not be registered or transferred to Robert Ong until complete payment." (Exh. "7-C-1".) Since Ong clearly was not the owner of the vessel at the time of the execution of the mortgage, the said mortgage is null and void on that ground.

Furthermore, the evidence on record shows the chattel mortgage in question did not comply with the requirements of P.D. 1521, The Ship Mortgage Decree of 1978 . . . [17]

The Court of Appeals nullified the chattel mortgage contract between petitioner and Ong because paragraph 3 of the said contract (where it appeared that petitioner sold the subject vessel to Ong on installment basis and that the amount supposedly loaned to Ong represented the balance due on the purchase price) seemed to indicate that the owner of the vessel mortgaged was petitioner although it had been duly established that another party (Jacinto Dy) was the true owner thereof.[18]

We disagree with the aforequoted ruling of the Court of Appeals. The chattel mortgage contract should not be

viewed in such a myopic context. The key lies in the certificate of ownership issued in Ong's name (which, along with the deed of sale, he submitted to petitioner as proof that he is the owner of the ship he gave as security for his loan). It was plainly stated therein that the ship LCT "Orient Hope" ex "Asiatic," by means of a Deed of Absolute Sale dated 28 April 1987, was "sold and transferred by Jacinto Dy to Robert Ong." [19] There can be no dispute then that it was Dy who was the seller and Ong the buyer of the subject vessel. Coupled with the fact that there is no evidence of any transaction between Jacinto Dy or Ang Tay and petitioner, it follows, therefore, that petitioner's role in the picture is properly and logically that of a creditor-mortgagee and not owner-seller. It is paragraph 2 of the mortgage contract [20] which accurately expresses the true nature of the transaction between petitioner and Ong -- that it is a simple loan with chattel mortgage. The amount petitioner loaned to Ong does not represent the balance of any purchase price since, as we have previously discussed, the aforementioned documents state that Ong is already the absolute owner of the subject vessel. Obviously, therefore, paragraph 3 of the said contract was filled up by mistake. Considering that petitioner used a form contract, it is not improbable that such an oversight may have been committed -- negligently but unintentionally and without malice. As testified to by Mr. Benjamin C. Alfaro, petitioner's Senior Vice President for Operations they only use one form for several kinds of transaction:

ATTY. UY: (TO WITNESS)

Q: Mr. Alfaro, as a financing institution, Cebu International Finance Corporation, how many kinds of lending transaction do you have in a firm? Do you have financing, leasing, discounting or whatever? Can you explain briefly to the Honorable Court?

WITNESS:

A: We have direct loan transaction. We have financing transaction and we have leasing transaction. Now, in the leasing transaction, the document will show that we are the owner of the equipment and we leased it out. In the financing transaction, where we used the same Chattel Mortgage instrument, there are three parties involved, the seller of the equipment. And then, the seller of the equipment would sell or assign the contract with the financing company. That is the financing transaction. And in the simple loan transaction, there appears only two parties involved, the borrower and the lender.

ATTY. UY: (TO WITNESS)

Q: Now, Mr. Alfaro, the same document, Chattel Mortgage will apply also to financing transaction, leasing transaction and simple loan transaction?

WITNESS:

A: Simple loan and financing transactions.

ATTY. UY: (TO WITNESS)

Q: Now, Mr. Alfaro, this paragraph 2 of Chattel Mortgage, can this apply to a financing transaction?

WITNESS:

A: No, the paragraph 3 will be the one that is applicable to a financing transaction. (Witness reading the document and after reading continued) Paragraph 2 applies to both financing and simple loan transaction. Scslx

ATTY. UY:

Q: And paragraph 3?

WITNESS:

A: Paragraph 3 applies to both financing and lending transactions but paragraph 3 does not apply to simple lending transaction.

xxx [21]

ATTY. LOGRONIO: (TO WITNESS)

Q: You do not affirm the assertion made by your counsel that paragraph 3 arise only in case that your rights to a mortgage were assigned by you to a third person, do you agree that also?

WITNESS:

A: This form of chattel mortgage, in fact, you will notice that the portion for mortgagor and mortgagee are all blank because this is the same form which is used by the company, used for the parties when there is a dealer involved, when there is installment buyer involved and when we come in as third party purchaser of the document because as practiced by the different dealer, this is the same form used between the buyer and the dealer of the motor vehicle. After this is being consummated already, it is assigned to a finance company and these are the same documents used. Now, in this particular case, this becomes already . . . this is a direct transaction between the finance company and the borrower. We, the finance company becomes the direct lender and Mr. Ong became the direct borrower. As I explained earlier, this document is also the form used between a dealer of a motor vehicle and an installment buyer wherein after paying the down payment, the unpaid balance which is secured by the chattel mortgage, the promissory note, and the disclosure statement and this document is sold to a third party and that is the finance company by the dealer.Scslx

ATTY. LOGRONIO:

Q: Up to this point, when you had the transaction with Mr. Ong, this form that you executed, the Chattel Mortgage was in what kind of form that was already used by the company?

WITNESS:

A: These are forms available to us.

ATTY. LOGRONIO:

Q: This is a form used when there is a buyer and a . . .

WITNESS:

A: Third party or direct borrowing lender.

ATTY. LOGRONIO:

Q: And this refers to a direct borrower or lending transaction?

WITNESS:

A: Yes.

ATTY. LOGRONIO:

Q: No third party assignment has been involved so far?

WITNESS:

A: No.

xxx [22]

Accordingly, the chattel mortgage contract between petitioner and Ong is valid and subsisting.

The next issue for our determination is whether or not petitioner is a mortgagee in good faith whose lien over the mortgaged vessel should be respected.

The prevailing jurisprudence is that a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor to the property given as security and in the absence of any sign that might arouse suspicion, has no obligation to undertake further investigation. Hence, even if the mortgagor is not the rightful owner of or does not have a valid title to the mortgaged property, the mortgagee or transferee in good faith is nonetheless entitled to protection.[23] Although this rule generally pertains to real property, particularly registered land, it may also be

applied by analogy to personal property, in this case specifically, since shipowners are, likewise, required by law to register their vessels with the Philippine Coast Guard.

Private respondent Ang Tay, however, contends that the aforementioned rule does not apply in the case at bar in the face of the numerous "badges of bad faith" on the part of petitioner.

Capitalizing on paragraph 3 of the chattel mortgage contract, Ang Tay argues as follows:

. . . The fraud and conspiracy by Robert Ong and some responsible employees of CIFIC against Jacinto Dy and Ang Tay are thus brought to the open by this stipulation. Since CIFIC appears in the registered chattel mortgage to have sold the vessel in question to Robert Ong, the said contract is null and void because CIFIC never for a second or a moment became the owner of the vessel. CIFIC was the one who prepared the chattel mortgage and the one who registered the same without contemporaneous or subsequent correction or modification; it cannot, after it notified the public by means of registration that it acquired the vessel and became its owner, now shy away from a stipulation which is the heart and nerve-center of the contract and which it made and registered. This is both the essence and consequence of estoppel. Applicable is Article 1459 of the Civil Code which provides inter alia: ". . . the vendor must have a right to transfer the ownership thereof (the thing sold) at the time it is delivered."

2. Robert Ong, CIFIC's mortgagor, did not acquire ownership of the vessel because of an express stipulation which he signed that the vessel "shall not be registered or transferred to Robert Ong until complete payment." (Exh. "7-C-1".) This stipulation is expressly covered by Article 1478 of the Civil Code: "The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price." Since Ong clearly was not the owner of the vessel at the time of the execution of the mortgage, the said mortgage is null and void on that ground.[24] Scslx

Ang Tay's contentions are unmeritorious. As previously discussed, paragraph 3 of the chattel mortgage contract was erroneously but unintentionally filled up. The failure of petitioner to exercise due care in filling up the necessary provisions in the chattel mortgage contract does not, however, amount to bad faith. It was a mere oversight and not a deliberate and malicious act.

Petitioner's bad faith is further demonstrated, Ang Tay avers, by its failure to comply with the following requirements of P.D. No. 1521 or the Ship Mortgage Decree of 1978:

- 1) The loan secured by the mortgaged vessel was not for any of purposes specified in Sec. 2 of P.D. No. 1521, i.e., "financing the construction, acquisition, purchase of vessels or initial operation of vessels"[25] and that petitioner failed to furnish the Central Bank a copy of the mortgage;[26]
- 2) The special affidavit of good faith required in Sec. 4 of P.D. No. 1521 was lacking; and
- 3) Ong failed to disclose his creditors and lienors as provided in Sec. 6 of P.D. No. 1521.

There is no merit in private respondent's allegations. In the 9 November 1989 hearing, Ang Tay confirmed his statement in his affidavit, executed in Civil Case No. CEB-6565, that Ong wanted to obtain a loan to replenish his capital because he had used up his money in the purchase of the subject vessel[27] and that the ship was delivered to Ong so that he could begin deriving economic benefits therefrom.[28] Mr. Randolph Veloso, petitioner's collector, processing clerk, credit investigator and appraiser, further testified as follows:

Q: Do you know the purpose for that loan

A: Yes.

Q: What was his purpose?

A: He was going to mortgage the vessel to us.

Q: What was the purpose of the loan?

A: We don't usually ask our client what they will do with it.

Q: You don't ask the purpose?

A: It is understood that whenever a client approach the institution he usually has a purpose for the money.

Q: Did not the corporation was what need has he for the money?

A: He is going to use it for his business in the boat.

Q: And that is his only statement? What was his specific statement?

ATTY. UY:

Already answered. He will use it in the business of his boat.

ATTY. LOGRONIO:

What was the purpose.

ATTY. UY:

Already answered Your Honor and besides it is immaterial.

ATTY. LOGRONIO:

Very material and it is important Your Honor as there is a violation of the law. I am entitled to insist for the answer.

COURT:

Witness may answer, if he knows.

(TO WITNESS)

Q: Did he tell you what was the purpose?

A: For the business of the boat.

ATTY. LOGRONIO: (TO WITNESS)

Q: That's all, that he is going to use the money for the business of the boat?

A: Yes.

xxx [29]

From the foregoing, therefore, it can be readily deduced that the loan was for the initial operation of the subject vessel and thus falls under the purposes laid down in the Ship Mortgage Decree.

The special affidavit of good faith, on the other hand, is required only for the purpose of transforming an already valid mortgage into a "preferred mortgage." [30] Thus, the abovementioned affidavit is not necessary for the validity of the chattel mortgage itself but only to give it a preferred status.

As to the disclosure requirement in Sec. 6 of the Ship Mortgage Decree, [31] it was intentional on Ong's part not to inform petitioner that he had yet to pay in full the purchase price of the subject vessel. Ong presented himself to petitioner as the absolute owner of the LCT "Orient Hope" ex "Asiatic." The Certificate of Ownership in Ong's name showed that the ship was conveyed to him by means of a Deed of Absolute Sale which gave the idea that the purchase price had been fully paid and the sale completed.

Petitioner had every right to rely on the Certificate of Ownership and Certificate of Philippine Register duly

issued by the Philippine Coast Guard in Ong's name. Petitioner had no reason to doubt Ong's ownership over the subject vessel. The documents presented by Ong, upon petitioner's insistence before accepting the said vessel as loan security, were all in order and properly issued by the duly constituted authorities. There was no circumstance that might have aroused petitioner's suspicion or alerted it to any infirmity committed by Ong. It had no participation in and was not privy to the sale transaction between Jacinto Dy (through Ang Tay) and Ong. Petitioner, thus, had no obligation to undertake further investigation since it had the necessary documents to prove Ong's ownership. In addition, petitioner even took pains to inspect the subject vessel which was in Ong's possession. Mr. Benjamin C. Alfaro testified thus:

xxx

ATTY. LOGRONIO:

Q: In your credit investigation of Mr. Robert Ong, did you have a chance yourself or any of your employees to verify the condition and the location of the vessel at the very time?

WITNESS:

A: Yes.

ATTY. LOGRONIO:

Q: Will you tell the Court where was the vessel at the time that he applied for a loan with your bank?

WITNESS:

A: It was under finishing touches in the drydock in . . . I think in Lapulapu or Mandaue.

ATTY. LOGRONIO:

Q: So, more or less, you are sure that at the time that he applied for a loan and you approved the same, this vessel was still at the drydock?

WITNESS:

A: Yes, finishing touches. In fact, it had pictures to support the application. I don't know if we have it now.

ATTY. UY:

We have. (Counsel producing a picture of a vessel and handing it to the witness).

WITNESS: (Cont.)

This is the picture of the vessel because we required him to submit.

ATTY. LOGRONIO

Q: You are referring to the picture which you asked the Court to mark as Exhibit . . .

ATTY. UY:

No, we are requesting now Your Honor. This has not been marked yet. We asked that the picture showing the back portion of the vessel, Orient Hope be marked as Exhibit 'I' and the picture showing the front portion of the vessel as Exhibit 'I-1'

COURT: (TO INTERPRETER)

Mark it.

ATTY. LOGRONIO: (TO WITNESS)

Q: So, at the time that the vessel was submitted to you as collateral for the loan, the condition of the vessel was as it is reflected in this exhibit? (Cross-examiner referring to the picture).

WITNESS:

A: Yes.

xxx [32]

Anent the last issue, although Ang Tay may also be an innocent person, a similar victim of Ong's fraudulent machinations, it was his act of confidence which led to the present fiasco. Ang Tay readily agreed to execute a deed of absolute sale in Ong's favor even though Ong had yet to make a complete payment of the purchase price. It is true that in the copy of the said deed submitted in evidence by Ang Tay there was an undertaking that ownership will not vest in Ong until full payment.[33] However, Ong was able to obtain several copies of the deed[34] with Ang Tay's signature and had these notarized without the aforementioned undertaking, as evidenced by the copy of the deed of sale presented by petitioner.[35] The Deed of Absolute Sale consisted of two (2) pages. The signatures of Ang Tay and Ong appeared only on the first page of the deed. The second page contained the continuation of the acknowledgment and the undertaking. Ong could have easily reproduced the second page without the undertaking since this page was not signed by the contracting parties. To complete the deception, Ang Tay unwittingly allowed Ong to have possession of the ship. Hence, in consonance with our ruling that:

. . . as between two innocent persons, the mortgagee and the owner of the mortgaged property, one of whom must suffer the consequence of a breach of trust, the one who made it possible by his act of confidence must bear the loss.[36]

it is Ang Tay and his principal Jacinto Dy, who must, unfortunately, suffer the consequences thereof. They are considered bound by the chattel mortgage on the subject vessel.

WHEREFORE, this Court GRANTS the Petition for Review and REVERSES the questioned decision and resolution of the Court of Appeals. The validity of the chattel mortgage on the vessel LCT ORIENT HOPE is hereby upheld without prejudice to whatever legal remedies private respondent Ang Tay may have against private respondent Robert Ong in the premises.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug and Hermosisima, Jr., JJ., concur.

[1] Exhibit "1," Folder of Exhibits, p. 15.

[2] Exhibit "7," Id., at 20-21.

[3] Exhibit "7-C-1" & "7-C-2," Id., at 21.

[4] Exhibit "13," Id., at 27.

[5] Exhibit "C," Id., at 6.

[6] Exhibit "D," Id., at 7.

[7] Exhibit "A," Id., at 1.

[8] Exhibit "B," Id., at 2-5.

[9] Exhibit "C-1," Id., at 6-A.

[10] Exhibit "B," Id., p. 2.

[11] Exhibit "F," Id., p. 9.

[12] Exhibit "B-1-a," Id., p. 4.

11. The MORTGAGOR(S) for all purposes of this mortgage, and for the foreclosure of the same, hereby fix(es) his (their) residence at the place hereinabove indicated without regard to the actual residence of the MORTGAGOR(S) of the place where the mortgaged property may be found. In any case of default in the part of the MORTGAGOR(S), the latter shall, on demand of the MORTGAGEE, deliver said property to said MORTGAGEE, in the same condition as when received (ordinary wear and tear excepted) in MORTGAGEE'S address given above or other address indicated in the demand, free of all charges; and should the MORTGAGOR(S) not deliver the said property as aforesaid, the MORTGAGEE is hereby authorized to take possession of the said property wherever it may be found, and have the same brought to its office as given above or in any city or municipality where the MORTGAGEE may have any office, at the option of the MORTGAGEE, and the expenses of locating and bringing the said property as well as damages which the mortgaged property may have suffered (ordinary wear and tear excepted) shall be for the account of the MORTGAGOR(S) and form part of the sum secured by this mortgage; PROVIDED, however, that the MORTGAGEE shall have the option of selling the said property at any place where the same may be found or in the addresses or places hereinabove provided. (Underscoring ours.)

[13] Rollo of G.R. No. 106359, pp. 24-25.

[14] Original Records, pp. 183-184.

[15] Rollo, p. 53.

[16] Id., at 150.

[17] Id., at 51-52.

[18] Supra, see Note 13.

[19] Annex "C", Rollo, p. 56.

[20] 2. This mortgage is given as security for the payment by the MORTGAGOR(S) to the MORTGAGEE of that certain promissory note executed on October 29, 1987 by the MORTGAGOR(S) in favor of the MORTGAGEE, for the sum of FOUR HUNDRED NINETY SIX THOUSAND EIGHT ONLY ** Pesos (P496,008.00) in which sum the MORTGAGOR(S) acknowledge to be indebted to the MORTGAGEE, which promissory note is herein incorporated by reference and made a part hereof, and further, as security for the payment of any total or partial extension, replacement, restructuring or renewal of the said note, a copy of which is hereto attached as Annex "A."

[21] TSN, 10 November 1989, pp. 24-25.

[22] TSN, 31 March 1989, pp. 32-33.

[23] Sunshine Finance & Investment Corp. v. IAC, 203 SCRA 210 (1991); Planters Development Bank v. CA, 197 SCRA 698 (1991); PNB v. CA, 187 SCRA 735 (1990); Gonzales v. IAC, 157 SCRA 587 (1988); Philippine National Cooperative Bank v. Carandang-Villalon, 139 SCRA 570 (1985); Penullar v. PNB, 120 SCRA 171 (1983).

[24] Rollo, pp. 80-81.

[25] SEC. 2. Who May Constitute a Ship Mortgage. — Any citizen of the Philippines, or any association or

corporation organized under the laws of the Philippines, at least sixty per cent of the capital of which is owned by citizens of the Philippines may, for the purpose of financing the construction, acquisition, purchase of vessels or initial operation of vessels, freely constitute a mortgage or any other lien or encumbrance on his or its vessels and its equipment with any bank or other financial institutions, domestic or foreign.

[26] Section 3, P.D. No. 1521.

[27] COURT: (TO WITNESS)

A: Alright, can you recall having executed an affidavit in connection with the case you have filed against Mr. Ong?

WITNESS:

A: Perhaps I have executed.

ATTY. UY: (TO WITNESS)

Q: I am showing to you this affidavit Mr. Ang Tay (showing witness an affidavit) is this the affidavit you executed in the case you filed against Mr. Robert Ong in Civil Case No. CEB-6565?

WITNESS:

A: Yes, this is my affidavit because I have my signature here.

ATTY. UY: We respectfully request your Honor that the same affidavit be marked as Exhibit K, the first page and Exhibit K-1, page 2.

COURT: (TO INTERPRETER)

Mark the exhibits accordingly.

ATTY. ERAMES:

May I have the privilege to see the affidavit Your Honor before the next question is asked.

COURT:

Go ahead.

ATTY. UY:

It's part of the records.

(TO WITNESS)

Q: Mr. Ang Tay you said you executed, this affidavit, you have read this affidavit now marked Exhibit K?

WITNESS:

A: Yes.

ATTY. UY: (TO WITNESS)

Q: Now, I will quote to you Mr. Ang Tay the last sentence of paragraph 5 of this affidavit:

The purpose for its execution was to enable him to convince any financing company to lend him money to replenish his dwindling capital as he had used his money to buy the vessel.

do you understand that phrase?

WITNESS:

A: Yes, sir.

xxx (TSN, 9 November 1989, pp. 7-8).

[28] Annex "M," Rollo, p. 70.

[29] TSN, 30 March 1989, p. 9.

[30] SEC. 4 Preferred Mortgages. —

(a) A valid mortgage which at the time it is made includes the whole of any vessel of domestic ownership shall have, in respect to such vessel and as of the date of recordation, the preferred status given by the provisions of Section 17 hereof, if —

(1) The mortgage is recorded as provided in Section 3 hereof;

(2) An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future creditor of the mortgagor or any lien of the mortgaged vessel;

(3) The mortgage does not stipulate that the mortgagee waives the preferred status thereof;

(b) Any mortgage which complies with the above conditions is hereafter called a "preferred mortgage". For purposes of this Decree, a vessel holding a provincial Certificate of Philippine Registry is considered a vessel of domestic ownership such that it can be subject of preferred mortgage. The Philippine Coast Guard is hereby authorized to enter a vessel holding a Provisional Certificate of Philippine Registry in the Registry of Vessels and to record any mortgage execute thereon. Such mortgage shall have the preferred status as of the date of recordation upon compliance with the above conditions.

xxx (Underscoring ours.)

[31] SEC. 6. Prior and Subsequent Maritime Liens on Mortgaged Vessel. -- The mortgagor (1) shall, upon request of the mortgagee, disclose in writing to him prior to the execution of any preferred mortgage, the existence of any maritime lien, prior mortgage or other obligation or liability upon the vessel to be mortgaged, that is known to the mortgagor, xxx.

[32] TSN, 31 March 1989, pp. 17-18; Exhibits "I" and "I-1", Folder of Exhibits.

[33] Original Records, pp. 20-21.

[34] TSN, 9 Nov. 1989, p. 3.

[35] Rollo, pp. 65-66.

[36] Tomas v. Tomas, 98 SCRA 280 (1980). See also Penullar v. PNB, 120 SCRA 171 (1983).

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