SERVICEWIDE SPECIALISTS, INCORPORATED, PETITIONER, VS. THE HON. COURT OF APPEALS, JESUS PONCE, AND ELIZABETH PONCE, RESPONDENTS.

G.R. No. 116363. December 10, 1999

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This controversy is between a mortgagor who alienated the mortgaged property without the consent of the mortgagee, on the one hand, and the assignee of the mortgagee to whom the latter assigned his credit without notice to the mortgagor, on the other hand.

Sometime in 1975, respondent spouses Atty. Jesus and Elizabeth Ponce bought on installment a Holden Torana vehicle from C. R. Tecson Enterprises. They executed a promissory note and a chattel mortgage on the vehicle dated December 24, 1975 in favor of the C. R. Tecson Enterprises to secure payment of the note. The mortgage was registered both in the Registry of Deeds and the Land Transportation Office. On the same date, C.R. Tecson Enterprises, in turn, executed a deed of assignment of said promissory note and chattel mortgage in favor of Filinvest Credit Corporation with the conformity of respondent spouses. The latter were aware of the endorsement of the note and the mortgage to Filinvest as they in fact availed of its financing services to pay for the car. In 1976, respondent spouses transferred and delivered the vehicle to Conrado R. Tecson by way of sale with assumption of mortgage. Subsequently, in 1978, Filinvest assigned all its rights and interest over the same promissory note and chattel mortgage to petitioner Servicewide Specialists Inc. without notice to respondent spouses. Due to the failure of respondent spouses to pay the installments under the promissory note from October 1977 to March 1978, and despite demands to pay the same or to return the vehicle, petitioner was constrained to file before the Regional Trial Court of Manila on May 22, 1978 a complaint for replevin with damages against them, docketed as Civil Case No. 115567. In their answer, respondent spouses denied any liability claiming they had already returned the car to Conrado Tecson pursuant to the Deed of Sale with Assumption of Mortgage. Thus, they filed a third party complaint against Conrado Tecson praying that in case they are adjudged liable to petitioner, Conrado Tecson should reimburse them.

After trial, the lower court found respondent spouses jointly and solidarily liable to petitioner, however, the third party defendant Conrado Tecson was ordered to reimburse the respondent spouses for the sum that they would pay to petitioner.[1] On appeal, the Court of Appeals reversed and set aside the judgment of the court a quo on the principal ground that respondent spouses were not notified of the assignment of the promissory note and chattel mortgage to petitioner.[2] Hence, this petition for review.

The resolution of the petition hinges on whether the assignment of a credit requires notice to the debtor in order to bind him. More specifically, is the debtor-mortgagor who sold the property to another entitled to notice of the assignment of credit made by the creditor to another party such that if the debtor was not notified of the assignment, he can no longer be held liable since he already alienated the property? Conversely, is the consent of

the creditor-mortgagee necessary when the debtor-mortgagor alienates the property to a third person?

Only notice to the debtor of the assignment of credit is required. His consent is not required. In contrast, consent of the creditor-mortgagee to the alienation of the mortgaged property is necessary in order to bind said creditor. To evade liability, respondent spouses invoked Article 1626 of the Civil Code which provides that "the debtor who, before having knowledge of the assignment, pays his creditor shall be released from the obligation." They argue that they were not notified of the assignment made to petitioner. This provision, however, is applicable only where the debtor pays the creditor prior to acquiring knowledge of the latter's assignment of his credit. It does not apply, nor is it relevant, to cases of non-payment after the debtor came to know of the assignment of credit. This is precisely so since the debtor did not make any payment after the assignment.

In the case at bar, what is relevant is not the assignment of credit between petitioner and its assignor, but the knowledge or consent of the creditor's assignee to the debtor-mortgagor's sale of the property to another.

When the credit was assigned to petitioner, only notice to but not the consent of the debtor- mortgagor was necessary to bind the latter. Applying Article 1627 of the Civil Code,[3] the assignment made to petitioner includes the accessory rights such as the mortgage. Article 2141, on the other hand, states that the provisions concerning a contract of pledge shall be applicable to a chattel mortgage, such as the one at bar, insofar as there is no conflict with Act No. 1508, the Chattel Mortgage Law. As provided in Article 2096 in relation to Article 2141 of the Civil Code,[4] a thing pledged may be alienated by the pledgor or owner "with the consent of the pledgee." This provision is in accordance with Act No. 1508 which provides that "a mortgagor of personal property shall not sell or pledge such property, or any part thereof, mortgaged by him without the consent of the mortgagee in writing on the back of the mortgage and on the margin of the record thereof in the office where such mortgage is recorded."[5] Although this provision in the chattel mortgage has been expressly repealed by Article 367 of the Revised Penal Code, yet under Article 319 (2) of the same Code, the sale of the thing mortgaged may be made provided that the mortgagee gives his consent and that the same is recorded.[6] In any case, applying by analogy Article 2128 of the Civil Code[7] to a chattel mortgage, it appears that a mortgage credit may be alienated or assigned to a third person. Since the assignee of the credit steps into the shoes of the creditor-mortgagee to whom the chattel was mortgaged, it follows that the assignee's consent is necessary in order to bind him of the alienation of the mortgaged thing by the debtor-mortgagor. This is tantamount to a novation. As the new assignee, petitioner's consent is necessary before respondent spouses' alienation of the vehicle can be considered as binding against third persons. Petitioner is considered a third person with respect to the sale with mortgage between respondent spouses and third party defendant Conrado Tecson.

In this case, however, since the alienation by the respondent spouses of the vehicle occurred prior to the assignment of credit to petitioner, it follows that the former were not bound to obtain the consent of the latter as it was not yet an assignee of the credit at the time of the alienation of the mortgaged vehicle.

The next question is whether respondent spouses needed to notify or secure the consent of petitioner's predecessor to the alienation of the vehicle. The sale with assumption of mortgage made by respondent spouses is tantamount to a substitution of debtors. In such case, mere notice to the creditor is not enough, his consent is always necessary as provided in Article 1293 of the Civil Code.[8] Without such consent by the creditor, the alienation made by respondent spouses is not binding on the former. On the other hand, Articles 1625,[9] 1626[10] and 1627 of the Civil Code on assignment of credits do not require the debtor's consent for the validity thereof and so as to render him liable to the assignee. The law speaks not of consent but of notice to the debtor, the purpose of which is to inform the latter that from the date of assignment he should make payment to the assignee and not to the original creditor. Notice is thus for the protection of the assignee because before said date, payment to the original creditor is valid.

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When Tecson Enterprises assigned the promissory note and the chattel mortgage to Filinvest, it was made with respondent spouses' tacit approval. When Filinvest in turn, as assignee, assigned it further to petitioner, the latter should have notified the respondent spouses of the assignment in order to bind them. This, they failed to do. The testimony of petitioner's witness that notice of assignment was sent to respondent spouses was stricken off the record. Having asserted the affirmative on the issue of notice, petitioner should have substantiated its allegations in order to obtain a favorable judgment. In civil cases, the burden is on the party who would be defeated if no evidence is given on either side.[11] Being the plaintiff in the trial below, petitioner must establish its case, relying on the strength of its own evidence and not upon the weakness of that of its opponent.[12] The consent to the assignment given by respondent spouses to Filinvest cannot be construed as the spouses' knowledge of the assignment to petitioner precisely because at the time of the assignment to the latter, the spouses had earlier sold the vehicle to another.

One thing, however, that militates against the posture of respondent spouses is that although they are not bound to obtain the consent of the petitioner before alienating the property, they should have obtained the consent of Filinvest since they were already aware of the assignment to the latter. So that, insofar as Filinvest is concerned, the debtor is still respondent spouses because of the absence of its consent to the sale. Worse, Filinvest was not even notified of such sale. Having subsequently stepped into the shoes of Filinvest, petitioner acquired the same rights as the former had against respondent spouses. The defenses that could have been invoked by Filinvest against the spouses can be successfully raised by petitioner. Therefore, for failure of respondent spouses to obtain the consent of Filinvest thereto, the sale of the vehicle to Conrado R. Tecson was not binding on the former. When the credit was assigned by Filinvest to petitioner, respondent spouses stood on record as the debtor-mortgagor.

WHEREFORE, the decision of the Court of Appeals is REVERSED and SET ASIDE. The decision of the Regional Trial Court is AFFIRMED and REINSTATED. Respondents Jesus Ponce and Elizabeth Ponce are ORDERED to pay petitioner, jointly and severally, the following sums:

a) P26,633,09, plus interest at 14% per annum from April 26, 1978 until fully paid;
b) 25% of the above sum in item (a) as liquidated damages;
c) P5,000.00 as attorney's fees; and
d) costs of suit.

In connection with the Third Party Complaint of the respondents, the third party defendant Conrado Tecson is hereby ordered to reimburse respondents Ponce for all the sums the latter would pay to petitioner, and attorney's fees of P3,000.00.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Decision dated November 8, 1989 of Regional Trial Court (RTC-Branch IX, Manila), penned by Judge Edilberto G. Sandoval, pp. 11-12; Rollo, pp. 78-79, reads: "WHEREFORE, judgment is hereby rendered, ordering the defendants to pay the plaintiff jointly and severally the following sums:

a.) P26,633,09, plus interest at 14% per annum from April 26, 1978 until fully paid;
b.) 25% of the above sum in item (a) as liquidated damages;
c.) P5,000.00 as attorney's fees; and
d.) costs of suit.

In connection with the Third Party Complaint of the defendants-third-party plaintiffs, the third party defendant Conrado Tecson is hereby ordered to reimburse defendants Ponce for all the sums the latter would pay to the plaintiff, and attorney's fees of P3,000.00.

SO ORDERED."

[2] The dispositive portion of the Court of Appeals (CA) Decision, promulgated April 29, 1994 with Justice Ricardo J. Francisco, ponente, and Justices Montoya and Barcelona, concurring, p. 6; Rollo, p. 59, reads: "WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE."

[3] The assignment of a credit includes all the accessory rights, such as a guaranty, mortgage, pledge or preference.

[4] The provisions of this Code on pledge, insofar as they are not in conflict with the Chattel Mortgage Law shall be applicable to chattel mortgages.

[5] Section 10, Act 1508, "The Chattel Mortgage Law."

[6] People v. Alvarez, 45 Phil. 472.

[7] The mortgage credit may be alienated or assigned to a third person, in whole or in part, with the formalities required by law.

[8] Testate Estate of Mota v. Serra, 47 Phil. 464 (1925); Garcia v. Khu Yek Chiong, 65 Phil. 466 (1938).

[9] ART. 1625. An assignment of a credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property.

[10] ART. 1626. The debtor who, before having knowledge of the assignment, pays his creditor shall be released from the obligation.

[11] Summa Insurance Corporation v. CA, 253 SCRA 175.

[12] Trans-Pacific Supplies, Inc. v. CA, 235 SCRA 494; Geraldez, v. CA, 231 SCRA 498.

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