

JOSE MOVIDO, PLAINTIFF AND APPELLANT, VS. REHABILITATION FINANCE CORPORATION AND THE PROVINCIAL SHERIFF OF SAMAR, DEFENDANTS AND APPELLEES.

G.R. No. 11990. May 29, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

On 1 July 1946 the Vet Bros. & Company, Inc. mortgaged to Jose S. Movido its rights, title, interest and participation "in a complete sawmill in barrio Mauo, Allen, Samar, with all its machineries, tools and equipment in good running condition" to secure the payment of a loan of P15,000 and interest at the rate of 12% per annum obtained by the former from the latter (Exhibits A; 1-B, Sabarre; 1-B, RFC). On 28 February 1947 the chattel mortgage was registered in the Office of the Registrar of Deeds in and for the province of Samar (Exhibit A-l). On 28 July 1948 Jose S. Movido brought an action against Vet Bros. & Company, Inc. in the Court of First Instance of Leyte to recover the sum of P13,494.35 with interest at the rate of 12 per annum from 1 July 1948 until the principal is fully paid and P2,000 by way of damages and expenses of litigation (civil No. 441; Exhibits 1; 1-A, Sabarre; 1-A, RFC). On 7 February 1949 the parties thereto, assisted by their respective counsel, entered into and submitted to the Court a compromise agreement terminating their dispute and renouncing their respective claims for damages and any other claim in connection with the subject matter of the case which was approved and the Court rendered judgment in accordance therewith (Exhibits 1-C, Sabarre; 1-C, RFC; 1-D, Sabarre; 1-D, RFC).

On 3 March 1949, by an instrument duly executed, Vet Bros. & Company, Inc. and the spouses Simeon G. Toribio and Maximiana Escobar de Toribio mortgaged the real estate and chattels therein enumerated and described in favor of the Rehabilitation Finance Corporation to secure the payment of a loan of P46,000 (Exhibit 8, RFC), and on 17 May 1949 on "addendum to chattel mortgage" describing the sawmill building erected and enumerating and describing the machinery and logging equipments purchased out of the proceeds of the loan was duly executed by the mortgagors (Exhibit 9, RFC). On 4 March 1949 and 18 May 1949 the chattel mortgages were registered in the registry of deeds for the province of Rizal. On 12 March 1949 and 10 June 1949 the same chattel mortgages were registered in the registry of deeds for the province of Samar (Exhibit 9, RFC).

On 14 April 1953, upon petition of the Rehabilitation Finance Corporation, the Provincial Sheriff of Samar advertized a public auction sale to be held on 14 May 1953 from 9:00 o'clock in the morning to 4:00 o'clock in the afternoon at the municipal building of Allen, Samar, under the provisions of Act No. 3135, as amended by Act No. 4118, of the chattels enumerated and described in Exhibits 8, RFC and 9, RFC "to apply the proceeds of the sale to the payment of the amount of P31,165.12 computed as of January 20, 1953, including interest thereon up to the date of the sale, plus P3,451.59 thereafter, plus 10% of said amount as attorney's fees, and plus the sheriff fees and incidental expenses;" (Exhibit G-l). On 24 April 1953 Jose S. Movido filed with the Sheriff a third party claim on the chattels advertised for sale at public auction asserting a prior and superior right in them because of his chattel mortgage recorded before that of the Rehabilitation Finance Corporation and by virtue of a judgment in his favor rendered by the Court of First Instance of Leyte in civil case No. 441 (Exhibit B). Despite such claim the

Sheriff proceeded to carry out the sale and on 11 June 1953, after the sale had been successively postponed to 14 May and 28 May, sold the chattels, except those expressly excluded from the public auction sale, to the successful bidders. The proceeds of the sale in the amount of P10,794 was turned over to the Rehabilitation Finance Corporation (Exhibit C). On 26 June 1953, or 15 days after the auction sale, a writ of execution was issued in civil case No. 441 (Exhibits 1-F, Sabarre and 1-F, RFC).

On 1 March 1955 Jose S. Movido brought in the Court of First Instance of Leyte an action against the Rehabilitation Finance Corporation and the Provincial Sheriff of Samar charging the latter with having unlawfully, fraudulently and maliciously disregarded his third party claim on the chattels and sold them at public auction on 11 June 1953, upon the request and for the benefit of the former, thereby causing him actual damages in the sum of P13,119.72 and moral damages in the sum of P5,000 in addition to the expense of P2,000 for attorney's fee. He prayed that the Rehabilitation Finance Corporation be ordered to indemnify him for actual and moral damages and for attorney's fee; and the Sheriff to indemnify him for any and whatever liability he had incurred by reason of the extrajudicial foreclosure of the mortgage made at the instance and for the benefit of his co-defendants, and both, to pay costs (civil No. 1896).

The defendants filed separate answers. The Rehabilitation Finance Corporation set up the defense that by filing a complaint against the Vet Bros. & Company, Inc. in the Court of First Instance of Leyte (civil No. 441), to recover the sum due from it, the plaintiff waived his right to foreclose the mortgage and for that reason abandoned his mortgage lien on the chattels; that the plaintiff's third party claim was not valid and sufficient in form and substance to stop and frustrate the public auction sale in question, it being a mere claim for preference in the distribution of the proceeds of the public auction sale; that the alleged chattel mortgage of the plaintiff was invalid and did not bind the chattels; that its mortgage lien in the real estate and chattels was prior, preferred and superior to that of the plaintiff's; and that it had not done or caused to be done any actionable wrong or harm to the plaintiff to make it liable for damages claimed to have been sustained by the plaintiff. It prayed that the complaint be dismissed with costs against the plaintiff and that he be ordered to pay it the sum of P2,000 as damages suffered because of the bringing of an unfounded suit.

The Sheriff answered that he did not require the Rehabilitation Finance Corporation to file an indemnity bond and proceeded with the auction sale, because the plaintiff's third party claim on the chattels to be sold did not show sufficient basis for the plaintiff's claim that his lien on the chattels was prior, preferred and superior to that of the Rehabilitation Finance Corporation, and because upon the strength of the judgment rendered by the Court of First Instance of Leyte in civil case No. 441 no writ of execution was presented by him, and prayed that the complaint be dismissed with costs against the plaintiff; that he be ordered to pay him a reasonable amount for moral and exemplary damages; and that he be granted other just and equitable relief.

The plaintiff replied to the answer of the Rehabilitation Finance Corporation and controverted its counterclaim.

After trial, on 8 September 1955 the Court rendered judgment holding that the compromise agreement entered into by and between the parties in civil case No. 441 and the judgment rendered by the Court pursuant thereto novated the plaintiff's, credit secured by the chattel mortgage, and that when the Vet Bros. Company, Inc. and the spouses Simeon G. Toribio and Maximiana Escobar de Toribio mortgaged to the Rehabilitation Finance Corporation the same chattels and other properties enumerated in Exhibits 8, RFC and 9, RFC, the plaintiff's lien on the chattels no longer existed; and dismissing the plaintiff's complaint with costs against him but without awarding damages to the defendants. His motion and amended motion for new trial and motion for reconsideration were denied. Hence this appeal originally to the Court of Appeals but certified to this Court on the ground that only questions of law are involved.

A mortgagee who sues and obtains a personal judgment against a mortgagor upon his credit waives thereby his right to enforce the mortgage securing it.¹ By instituting civil case No. 441 in the Court of First Instance of Leyte to recover the sum of P13,494.35 from the Vet Bros. & Company, Inc., on 28 July 1948 and by securing a judgment in his favor upon the compromise agreement entered into by and between him and the defendant therein on 7 February 1949, the appellant abandoned his mortgage lien on the chattels in question. When on 3 March 1949 and on 17 May 1949, therefore, Vet Bros. & Company, Inc. and the spouses Simeon G. Toribio and Maximiana Escobar de Toribio mortgaged the chattels and other properties described in Exhibits 8, RFC 9, RFC to the appellee, the appellant had no longer any lien on the chattels. The rule in *Tizon vs. Valdez*, 48 Phil., 910 and *Matienzo vs. San Jose*, G. R. No. 39510, 16 June 1934, relied upon by the appellants, has been abandoned in *Bachrach Motor Company vs. Icarangal*, *supra*. Moreover, the appellant secured a writ of execution of the judgment rendered in civil case No. 441 on 26 June 1953 only (Exhibits 1-F, Sabarre; 1-F, RFC), or fifteen days after the public auction sale had been carried out.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angela, Labrador, Concepcion, and Endencia, JJ., concur.

[1] *Bachrach Motor Company vs. Icarangal*, 68 Phil., 287; *Manila Trading Company vs. Co Kim*, 71 Phil., 448.

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