

**BUENAVENTURA T. SALDAÑA, PLAINTIFF AND APPELLANT, VS.
PHILIPPINE GUARANTY COMPANY, INC., ET AL., DEFENDANTS AND
APPELLEES.**

G.R. No. 13194. January 29, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This case arose from a complaint for damages filed by Buenaventura Saldaña (docketed as Civil Case No. 32703 of the Court of First Instance of Manila) that was dismissed by order of the Court dated August 20, 1957, for lack of sufficient cause of action. In another order of September 30, 1957 of the same court, plaintiff's motion for reconsideration was denied, and the case was appealed to this Court.

The facts are that on May 8, 1953, in order to secure an indebtedness of P15,000.00, Josefina Vda. de Eleazar executed in favor of the plaintiff-appellant Buenaventura Saldaña a chattel mortgage covering properties described as follows:

"A building of strong materials, used for restaurant business, located in front of the San Juan de Dios Hospital at Dewey Boulevard, Pasay City, and the following personal properties therein contained:

- 1 Radio, Zenith, cabinet type
- 1 Cooler
- 1 Electric range, stateside, 4 burners
- 1 Frigidaire, 8 cubic feet
- 1 G.E. Deepfreezer
- 8 Tables, stateside
- 32 Chromium chairs, stateside
- 1 Sala set upholstered, 6 pieces
- 1 Bedroom set, 6 pieces.

And all other furnitures, fixtures or equipment found in the said premises."

Subsequent to the execution of said mortgage and while the same was still in force, the defendant Hospital de San Juan de Dios, Inc. obtained, in Civil Case No. 1930 of the Municipal Court of Pasay City, a judgment against Josefina Vda. de Eleazar. A writ of execution was duly issued and, on January 28, 1957, the same was served on the judgment debtor by the sheriff of Pasay City; whereupon, the following properties of Josefina Eleazar were levied upon:

- 8 Tables with 4 (upholstered) chairs each
- 1 Table with 4 (wooden) chairs
- 1 Table (large) with 5 chairs
- 1 Radio-phono (Zenith, 8 tubes)
- 2 Showcases (big, with mirrors)

- 1 Rattan sala set with 4 chairs, 1 table and 3 sidetables
- 1 Wooden drawer
- 1 Tocador (brown with mirror)
- 1 Aparador
- 2 Beds (single type)
- 1 Freezer (deep freeze)
- 1 Gas range (magic chef, with 4 burners)
- 1 Freezer (G.E.).

On January 31, 1957, the plaintiff-appellant Saldaña filed a third-party claim asserting that the above-described properties levied are subject to his chattel mortgage of May 8, 1953. In virtue thereof, the sheriff released only some of the property originally included in the levy of January 28, 1957, to wit:

- 1 Radio, Zenith, cabinet type
- 8 Tables, stateside
- 32 Chromium chairs, stateside
- 1 G.E. Deep freezer

To proceed with the execution sale of the rest of the properties still under levy, the defendants-appellees Hospital de San Juan de Dios, Inc. and the Philippine Guaranty Co., Inc. executed an indemnity bond to answer for any damages that plaintiff might suffer. Accordingly, on February 13, 1957, the said properties were sold to the defendant hospital as the highest bidder, for P1,500.00.

Appellant claims that the phrase in the chattel mortgage contract—"and all other furnitures, fixtures and equipment found in the said premises", validly and sufficiently covered within its terms the personal properties disposed of in the auction sale, as to warrant an action for damages by the plaintiff mortgagee.

There is merit in appellant's contention. Section 7 of Act No. 1508, commonly and better known as the Chattel Mortgage Law, does not demand a minute and specific description of every chattel mortgaged in the deed of mortgage but only requires that the description of the properties be such "as to enable the parties in the mortgage, or any other person, after reasonable inquiry and investigation to identify the same". Gauged by this standard, general descriptions have been held valid by this Court. (See *Strochecker vs. Ramirez*, 44 Phil., 993; *Pedro de Jesus vs. Guam Bee Co., Inc.*, 72 Phil., 484).

A similar rule obtains in the United States courts and decisions there have repeatedly upheld clauses of general import in mortgages of chattels other than goods for trade, and containing expressions similar to that of the contract now before us. Thus, "and all other stones belonging to me and all other goods and chattels" (*Russel vs. Winne*, 97 Am. Dec. 755); "all of the property of the said W.W. Allen used or situated upon the leased premises" (*Dorman vs. Crooks State Bank*, 64 A.L.R. 614); "all goods in the store where they are doing business in E. City, N.C." (*Davis vs. Turner*, 120 Fed. 605); "all and singular the goods, wares, stock, iron tools manufactured articles and property of every description, being situated in or about the shop or building now occupied by me in Howley Street" (*Winslow vs. Merchants Ins. Co.*, 38 Am. Dec. 368, were held sufficient description, on the theory that parol evidence could supplement it to render identification of the chattels mortgaged possible. The prevailing rule is expressed in *Walker vs. Johnson* (Mont.) 124 A.L.R. 937:

"The courts and textbook writers have developed several rules for determination of the sufficiency of the description in a chattel mortgage. The rules are general in nature and are different where the controversy is between the parties to the mortgage from the situation where third parties without actual notice come in. In 11 C.J. 457, it is said: 'As against third persons the description in the mortgage must point out its subject matter so that such person may identify the chattels covered, but it is not essential that the description be so specific that

the property may be identified by it alone, if such description or means of identification which, if pursued will disclose the property conveyed.' In 5 R.C.L. 423 the rule is stated that a description which will enable a third person, aided by inquiries which the instrument itself suggests to identify the property is sufficiently definite. In 1 Jones on Chattel Mortgages and Conditional Sales, Bower's Edition, at page 95 the writer says: 'As to them (third persons), the description is sufficient if it points to evidence whereby the precise thing mortgaged may be ascertained with certainty.' Here there is nothing in the description '873 head of sheep' from which anyone, the mortgagee or third persons, could ascertain with any certainty what chattels were covered by the mortgage.

"In many instances the courts have held the description good where, though otherwise faulty, the mortgage explicitly states that the property is in the possession of the mortgagor, and especially where it is the only property of that kind owned by him."

The specifications in the chattel mortgage contract in the instant case are, we believe, in substantial compliance with the "reasonable description rule" fixed by the chattel Mortgage Act. We may notice in the agreement, moreover, that the phrase in question is found after an enumeration of other specific articles. It can thus be reasonably inferred therefrom that the "furnitures, fixtures and equipment" referred to are properties of like nature, similarly situated or similarly used in the restaurant of the mortgagor located in front of the San Juan de Dios Hospital at Dewey Boulevard, Pasay City, which articles can be definitely pointed out or ascertained by simple inquiry at or about the premises. Note that the limitation found in the last paragraph of section 7 of the Chattel Mortgage Law[1] on "like or substituted properties" make reference to those "thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged", not to those already existing and originally included at the date of the constitution of the chattel mortgage. A contrary view would unduly impose a more rigid condition than what the law prescribes, which is that the description be only such as to enable identification after a reasonable inquiry and investigation.

The case of Giberson vs. A. N. Jureidini Bros., 44 Phil., 216, 219, cited by the appellees and the lower court, cannot be likened to the case at bar, for there, what were sought to be mortgaged included two stores with all its merchandise, effects, wares, and other bazar goods which were being constantly disposed of and replaced with new supplies in connection with the business, thereby making any particular or definite identification either impractical or impossible under the circumstances. Here, the properties deemed covered were more or less fixed, or at least permanently situate or used in the premises of the mortgagor's restaurant.

The rule in the Jureidini case is further weakened by the Court's observation that (44 Phil., p. 220)—

"Moreover, if there should exist any doubts on the questions we have just discussed, they should be threshed out in the insolvency proceedings,"

which appears inconsistent with the definitive character of the rulings invoked.

We find that the ground for the appealed order (lack of cause of action) does not appear so indubitable as to warrant a dismissal of the action without inquiry into the merits and without submission of evidence, since the latter may supplement the description in the deed of mortgage (Nico vs. Blanco, 81 Phil., 213; Zobel vs. Abreau, 52 Off. Gaz., 3592).

Wherefore, the orders appealed from are set aside and the case remanded to the lower court for further proceedings. Costs against appellees.

Paras, C. J., Bengzon, Montemayor, Bautista, Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

Padilla, J., took no part.

[1] "A chattel mortgage shall be deemed to cover only the property described therein and not like or substituted property thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged, anything in the mortgage to the contrary notwithstanding."

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