HAWAIIAN PHILIPPINE CO., PLAINTIFF AND APPELLEE, VS. JOSE E. HERNAEZ, DEFENDANT AND APPELLANT.

G.R. No. 21382. February 25, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

The parties to this case unite in saying that the general legal issue is whether the time of payment of a mortgage may be extended by a parol agreement beyond that expressed in the mortgage.

Under date of August 1, 1919, Jose E. Hernaez executed a real estate mortgage upon a certain parcel of land in favor of Alberto Kappeler in the sum of Pl0,000 payable on August 1, 1922. On October 21, 1922, this real estate mortgage was assigned by Kappeler to the Hawaiian Philippine Company. The holder of the mortgage alleging that Hernaez had never paid any portion of the indebtedness, it instituted action in the Court of First Instance of Occidental Negros against Hernaez on two causes of action, the first to recover P10,000 claimed to be unpaid upon the mortgage, plus interest thereon at 10 per cent per annum from August 1, 1922, and the second to recover P404.28 paid by the plaintiff for the account of the defendant to settle the land taxes. Hernaez set up as a special defense that on the occasion when he paid the interest due on the mortgage, Mr. Gemperle, as legal representative of Alberto Kappeler, agreed to extend the time for the payment of the P10,000 for a term of two years, or until August 1, 1924. When the case was called for trial, the plaintiff by the witnesses Hernaez and Pitcairn, Exhibits A, B, C, D, E, F and G, and the deposition of W. Gemperle, made out its case. The first witness called by the defense was the defendant who attempted to testify as to a verbal understanding between himself and Mr. Gemperle, only to be met by the objection of counsel for the plaintiff sustained by the trial judge who ordered the testimony stricken from the record. Judgment then followed as a matter of course in favor of the plaintiff and against the defendant practically in the terms of the prayer of plaintiff's complaint.

Adverting but casually to the facts and paying no attention to the second cause of action as not here challenged, we take up for consideration the question suggested in the introductory paragraph of this decision.

The common-law rule is to the effect that a verbal agreement to extend the time of payment of a mortgage is binding, and suspends the right to foreclose if founded on a good consideration and otherwise valid; but if made without consideration, it amounts to nothing, and the mortgage may be foreclosed at any time. (2 Jones on Mortgages, pp. 825 et seq.; 5 Wigmore on Evidence, pp. 330, 331; 19 R. C. L., 306; Goss vs. Lord Nugent, 5 B. & Ad., 58; Goodall vs. Boardman [1880], 53 Vt., 89; Cummings vs. Arnold [1842], 3 Metcalf, Mass., 486.)

Our local law is not greatly dissimilar in many respects to the common-law rule relating to subsequent verbal alteration of a written contract. It is true that article 1280 of the Civil Code provides that acts or contracts whose object is the creation, transmission, modification, or extinction of rights which affect real property, must be reduced to writing in a public instrument. But the courts in a series of decisions have held that article 1280 of the Civil Code permits a verbal agreement for the sale of real estate, and that it is not necessary that such an agreement be evidenced by a public document. In other words, the codal provisions do not require

accomplishment of acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy so that after the existence of the act or contract has been admitted, the party bound may be compelled to execute the document. (Doliendo vs. Depino [1909], 12 Phil., 758; Dievas vs. Acufia Co Chongco [1910], 16 Phil., 447.) The Civil Code provision has further been modified by section 335 of the Code of Civil Procedure, announcing the cases in which agreements are unenforceable by action unless made in writing, and, what is of more particular interest, by the provisions of the Land Registration Law, Act No. 496.

A discussion of the reasons for the institution of the Torrens system and an analysis of the Land Registration Law are not needed here. It is sufficient to invite attention to sections 38, 47, 50, 60 and 62 of the law last mentioned. Section 60 is peculiarly precise when providing that the owners of registered land may mortgage the same by executing a mortgage deed, and such deed may be extended, etc., or otherwise dealt with by the mortgagee by any form of deed or instrument sufficient in law for the purpose. But such mortgage deed and all instruments assigning, extending, discharging, and otherwise dealing with the mortgage, shall be registered and shall take effect upon the title only from the time of registration.

As the land here mortgaged is registered land, as the mortgage of Kappeler and the assignment to the Hawaiian Philippine Company are noted as encumbrances affecting the property, and as the plaintiff is a third party, the situation would appear to be different than generally it is under the common-law rule. The interests of the Philippines will be best served by a strict adherence to the provisions of the Land Registration Law.

Conceding, however, without deciding, that the law is as claimed by the appellant and is in the Philippines no different than in the majority of the jurisdictions in the United States, yet defendant's case is still fatally defective. His answer failed to specify that the extension of time for payment of his debt was pursuant to an oral agreement supported by a valuable consideration. At the trial, the defendant likewise failed to make an offer to prove the verbal agreement as made for a legal and good consideration. Unless there was present some unusual circumstance which would permit of the application of the doctrine of estoppel, it was incumbent upon the defendant in his pleadings and at the trial to make the necessary allegations and the necessary offer to show a new contract made on a good consideration like every other contract.

We rule that a mortgage deed of registered land may only be legally extended by a form of written instrument sufficient in law for the purpose. We rule that a consideration is necessary for a modification of a contract such as an agreement for the extension of time of performance of a mortgage, and that the moving party must plead and prove such consideration.

Finding therefore no reversible error to have been committed by the trial court, judgment is affirmed with the costs of this instance against the appellant. So ordered.

Araullo, C. J., Johnson, Street, Avancena, Ostrand, Johns, and Romualdez, JJ., concur.

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