

INVOLUNTARY INSOLVENCY OF THE GULF PLANTATION CO. PACIFIC COMMERCIAL COMPANY, PHILIPPINE-AMERICAN DRUG COMPANY AND STANDARD OIL COMPANY, PETITIONERS AND APPELLANTS, VS. PHILIPPI...

G. R. No. 24893. August 23, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

At Davao, Davao, P. I., on August 24, 1918, the Gulf Plantation Company, a corporation, through its president, executed to the Philippine National Bank a certain instrument known in the record as Exhibit A, in which the Plantation Company is named and styled as the pledgor, and the Philippine National Bank as the pledgee, in which it is recited that the Gulf Plantation Company has obtained certain credits, loans, overdrafts, etc., from the pledgee, which. the parties have mutually agreed should be guaranteed and secured, including the costs, charges, and interest "of keeping the pledged property," and "all other expenditures of the pledgee incurred in connection with this pledge." In consideration thereof, and other valuable consideration received by the pledgor, and for the purpose of securing the payment of all sums not exceeding P165,000, the pledgor hypothecated and pledged to the pledgee and hereby delivered the possession, for the purpose of the pledge, of all the property itemized in schedule A on the back of this pledge. The pledgor agreed without demand to pledge and deliver to the pledgee any further and additional securities required, and to pay the taxes and keep the property insured. That, if the pledgor shall pay to the pledgee such sums of money as the pledgee may advance under the terms of the pledge, then the pledged property may be returned to the pledgor, and "this pledge shall be of no further effect, otherwise, to remain in force, and the pledgee may dispose of the pledged property in the manner herein provided, or in accordance with the Chattel Mortgage Law, at the option of the pledgee." The pledgor appoints the pledgee as attorney-in-fact of the pledgor with full power and authority after any condition of the pledge may have been broken to enter the premises where the pledged property is located, and take possession of it by force, if necessary, and seize and take actual possession of it without an order of the court, and to sell, assign and deliver the property pledged, or any part thereof, at the option of the pledgee. Provision is then made for the application of the proceeds of any sale of the property under the pledge. The instrument was duly executed and acknowledged before a notary public as of the date it was signed.

Schedule A, which is a part of the instrument, is as follows :

"Lease No. 63 of 534 hectares of public land situated in the municipality district of Pantucan, Davao Province, P. I., planted to 236,000 hemp and 700 coconut trees, valued at P430,000.

"Forty-eight buildings of permanent materials valued at P5,500 situated on above lease. Two buildings of strong materials valued at P15,000.

"One thousand piculs hemp now in the plantation bodega at Pantucan all belonging to the 'Gulf Plantation, Incorporated' valued at P45,000. "Twenty three carabaos, 38 bullocks, 18 horses, valued at P6,450.

"One launch 'Peril' valued at P18,000; one auxiliary boat "Manuela," P9,000; one launch 'Rigel' P800; one launch 'New Kirk,' P3,500 and cargo boats, P200."

The instrument contains the following endorsement:

"THE PROVINCIAL GOVERNMENT OF DAVAO

"Doc. stamps

"OFFICE OF THE REGISTER OF DEEDS

affixed

"Received this 24th day of Feb., 1921,

"P17.20

at 9.30 o'clock a. m.

"Entry No. 90, page 3, Volume Day Book (Provisional).

"THE PROVINCIAL GOVERNMENT OF DAVAO

"OFFICE OF THE REGISTER OF DEEDS

"Received this 24th day of Feb., 1921,

at 9.30 o'clock a. m."

March 25, 1922, an insolvency petition was filed to have the Gulf Plantation Company declared insolvent, and it was declared insolvent on September 16, 1922, and the court ordered the sheriff to take possession of all the assets of the insolvent estate. October 25, 1922, with the consent and approval of all creditors, including the Philippine National Bank, an assignee was appointed, and on October 27, 1922, he filed an inventory of all of the properties of the plantation company, March 17, 1923, the court made an order requiring the assignee to render an account and to give the creditors a copy. March 20, 1923, the assignee filed his account for the period between October 1, 1922, and February 28, 1923. On January 7, 1924, the assignee filed a further account covering the period from October 1, 1922, to November 30, 1923. Both of which accounts are still pending and waiting the approval of the court. November 28, 1923, the assignee filed a petition for authority to sell at public auction all of the properties of the insolvent estate, which application is also now pending and waiting the order of the court. November 3, 1922, the Philippine National Bank filed a petition, to which was attached a copy of Exhibit A and made a part of it, reciting the execution of the instrument and a breach of its conditions, and praying for the following order from the court:

"(a) That the mortgage or pledge executed in its favor by the Gulf Plantation, Inc., a copy of which is attached to this claim as Appendix A be declared effective and matured;

"(b) That the assignee appointed in this insolvency proceeding, or if the latter has not yet been appointed, the sheriff of the Province of Davao be authorized to sell at public or private sale, after notice to the Philippine National Bank, all such interest, right or share as the Gulf Plantation, Inc. has or may have in the properties

described in Exhibit A;

"(c) That should the proceeds of the sale of the properties mentioned in Appendix A be greater than the sum of P165,000, this amount of P165,000 be delivered to the Philippine National Bank, and the balance to the assignee in insolvency; and

"(d) In the event that the proceeds of the sale of the properties mentioned in Appendix A is less than the sum of P165,000, that said proceeds be delivered to the Philippine National Bank, and for the balance of difference not paid of the debt of the insolvent corporation to the claimant company, the Philippine National Bank be admitted as an ordinary creditor in this insolvency proceeding."

February 9, 1924, the bank, through the fiscal of Davao, and in compliance with an order of the court, filed objections to the approval of the accounts rendered by the assignee.

In this situation, the court rendered a judgment in favor of the Philippine National Bank to the effect that it was entitled to the possession of all of the estate of the insolvent corporation, and that in the year 1919 the bank had appointed H. B. Hughes as its representative or administrator of the properties of the Plantation Company, and requiring the bank to pay certain preferred claims, including the income tax and the land tax, and that the bank was entitled to, and should have, possession of all the properties of the insolvent corporation, and to have the property sold and the proceeds of the sale applied to the satisfaction of the claim of the bank, and upon the payment of such preferred claims, to have the proceeds of the sale applied to the satisfaction of the claim of the bank, and that the creditors of the Plantation Company should share in any amount remaining after such application, and dismissed the case, without costs.

From this judgment, the creditors appeal and assign the following errors:

"I. The lower court erred in not finding and holding that the so-called 'agreement of pledge' executed by the insolvent Gulf Plantation Company in favor of the Philippine National Bank is null and void on account of its many defects.

"II. The lower court erred in not finding and holding that the Philippine National Bank has renounced its alleged preferred lien on the properties of the insolvent covered by the pledge, by giving its consent to the appointment of an assignee and by permitting said assignee to take possession of said properties.

"III. The lower court erred in not finding and holding that the claim of the Philippine National Bank is an ordinary claim.

"IV. The lower court erred in holding that the Philippine National Bank is entitled to the possession of the properties of the insolvent.

"V. The lower court erred in holding that the mortgage in favor of the Philippine National Bank is effective and due.

"VI. The lower court erred in not overruling the opposition of the Philippine National Bank dated February 9, 1924, to the accounts submitted by the assignee.

"VII. The lower erred in dismissing the insolvency proceedings."

JOHNS, J.:

In view of the numerous recitals made in it, what is known in the record as Exhibit A must be construed as a pledge in both form and substance. It is very apparent from the language used in the instrument that it was prepared on the customary blank form of a pledge for the taking of properties under a pledge. It will be noted that it was never received or filed for any purpose until the 24th of February, 1921, which was two years and a half

after it was executed, and that it was then endorsed, only received in the "office of the register of deeds" with "Entry No. 90 page 3, Volume Day Book (Provisional)." That is to say, there is no evidence that it was ever received, filed or recorded anywhere or by anyone, either as a chattel mortgage or a pledge of personal property. Hence, the receiving of it in the office of the register of deeds on February 24, 1921, is a nullity as to both a pledge and a chattel mortgage.

The only witness for either party was Carlos Garcia, the manager of the bank at Davao, and he was called for the sole purpose of testifying as to the amount of the bank's claim, which he placed at about P60,000, and that it was due and owing. To make Exhibit A valid as a pledge, as to the personal property therein described, it was the duty of the bank to take the actual, physical possession of the property, and to continue and remain in such possession, and to make it valid against creditors or the assignee, the bank must have been in such actual, physical possession at the time the Plantation Company was declared insolvent. Upon that question, there is no evidence in the record. Without it, Exhibit A is void as a pledge, and the bank would not have a preference, and would not now be entitled to the possession of the property of the Plantation Company, or to have it sold and the proceeds applied to the satisfaction of its claim.

Upon the question of pledge, article-1863 of the Civil Code provides:

"In addition to the requisites mentioned in article 1857, it shall be necessary, in order to constitute the contract of pledge, that the pledge be placed in the possession of the creditor or of a third person appointed by common consent."

Section 4 of Act No. 1508, entitled "An Act providing for the mortgaging of personal property, and for the registration of the mortgages so executed" provides:

"A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same, or, if he resides without the Philippine Islands, in the province in which the property is situated."

That is to say, a chattel mortgage is not valid against any person except the mortgagor, his executors or administrators, without delivery of possession of the property, unless the mortgage is recorded in the office of the register of deeds of the province. It will be noted that, in the absence of such delivery of possession or the recording of the instrument in the office of the register of deeds, a chattel mortgage is valid only as to the mortgagor, his executors or administrators. Hence, it follows that, in the absence of such record and the delivery of possession, a chattel mortgage is void as against the creditors or the assignee of an insolvent estate, and upon that question, there is no evidence in the record.

If it was the purpose and intent of the bank to have Exhibit A received, filed and recorded as a chattel mortgage, it was not only its duty to so instruct the register of deeds, but it was its further duty to see that the instrument was received, filed and recorded as a chattel mortgage. Upon that point, there is no evidence.

Again, in the very nature of things, a pledge or chattel mortgage is confined and limited to personal property, and it cannot be extended or made to apply to real property.

In what is known as schedule A, attached to Exhibit A, the property is described as lease No. 63 of 534 hectares of public land planted to 236,000 hemp and 700 coconut trees valued at P430,000, and forty-eight buildings of permanent materials valued at P5,500, and two buildings of strong materials valued at P15,000. It may well be doubted whether that kind of property could become the subject-matter of a pledge or chattel mortgage

It will be noted that it is a pledge of a lease of public land which is planted to hemp and coconut trees, and of forty-eight buildings of permanent materials and of two buildings of strong materials, clearly indicating that the buildings were attached to the soil and as such would be real estate.

It will also be noted that the pledge was executed in 1918, and it is very probable that the one thousand piculs of hemp have long since been sold. As to the twenty-three carabaos, thirty-eight bullocks and eighteen horses, there is no provision for the increase. Hence, the pledge, if valid for any purpose, should be confined and limited to the particular property described in the pledge, and would not include any increase.

That is to say, if it be a fact that at the time the pledge was executed the bank took the actual, physical possession of the property described in it, and continued to remain in such possession up to the time the petition for insolvency was filed, or that it was in such possession for more than thirty days prior to the filing of the petition, the pledge would then be valid as to the personal property, and the bank would then have a preference on that property for the amount found due and owing upon its claim. If it be a fact that the bank was not in the actual, physical possession of the property at the time the insolvency petition was filed, and that the Plantation Company was in such possession as its own, then the bank would not have a preference over any other unsecured creditor.

From what has been said, it follows that the judgment of the lower court is reversed, and the case remanded, with instructions for the assignee to proceed with the administration of the insolvent estate in the ordinary course of business and in the manner provided by law, and for such further proceedings as are not inconsistent with this opinion, with costs in favor of the appellant. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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