

THE BELGIAN CATHOLIC MISSIONARIES, INC., PLAINTIFF AND APPELLEE, VS. MAGALLANES PRESS, INC., ET AL., DEFENDANTS. JOSE MARIA MEMIJE, APPELLANT.

G. R. No. 25729. November 24, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Jose Maria Memije from a judgment of the Court of First Instance of Manila the dispositive part of which is as follows:

"For all the foregoing, the court is of the opinion that the plaintiff has a right to the relief prayed for in its complaint. Wherefore, judgment is rendered declaring that Exhibits C and D, that is, the mortgage deeds in question in this proceeding, in so far as they prejudice the rights of the plaintiff, are null and void; that the preliminary injunction issued in this case against the defendant Jose Ma. Memije is final and absolute; and that the plaintiff recover the amount of the fire insurance policies of the defendant 'Magallanes Press, Inc.,' which, or the representatives of which, is hereby ordered to endorse said insurance policies to the plaintiff, with the costs of the proceeding against the defendants, with the exception of J. P. Heilbronn Co., Inc. It is so ordered."

In support of his appeal, the appellant assigns the following supposed errors as committed by the lower court in its judgment, to wit: (1) The court erred in overruling the demurrer filed by this defendant to the complaint in this action; (2) the trial court erred in giving the plaintiff corporation possession of the property mortgaged to this appellant without following the necessary proceedings or complying with the provisions of the law; (3) the trial court erred in issuing the writ of preliminary injunction against the appellant and E. E. Elser, restraining the former from receiving from the latter, or the latter from delivering to the former, the amount of the insurance policies covering the property mortgaged to the appellant, which was damaged by the fire that occurred in the establishment of the Magallanes Press, Inc.; (4) the trial court erred in giving to the unnecessary intervention of the Magallanes Press, Inc., in the execution, of the deed Exhibit C an interpretation which is neither based upon law nor upon the contract; (5) the trial court erred in ordering the suspension of the foreclosure of the appellant's mortgage on the property of the Magallanes Press, Inc.; (6) the trial court erred, under the facts proven in this case, in applying article 1297 of the Civil Code; (7) the trial court erred in finding in its decision that the defendant Jose Ma. Memije should not have executed the documents Exhibits C and D without taking into account the rights of the plaintiff corporation, The Belgian Catholic Missionaries, Inc.; (8) the trial court erred in declaring Exhibits C and D null and void in so far as they prejudice the rights of the plaintiff, over whose credit that of the herein appellant is preferential; in declaring the writ of preliminary injunction issued against the defendant Jose Ma. Memije final and absolute; in giving judgment for the plaintiff to recover the amount of the fire insurance policies of the defendant the Magallanes Press, Inc.; and (9) the trial court erred in not making any pronouncement as to the counter-claim and cross-complaint of the defendant Jose Ma. Memije in this action, nor taking the same into consideration and rendering judgment thereon in favor of said defendant.

The oral evidence has not been forwarded to this court so that we are compelled to base our opinion exclusively upon the documentary evidence and the facts found and stated by the trial court in its judgment.

It appears that on December 1, 1921, the Magallanes Press, through its manager H. Cameña, executed a promissory note in favor of J. P. Heilbronn & Co., Inc., for the sum of P3,472.92, with interest at 10 per cent per annum, payable at the rate of P250 a month, plus the interest earned on the unpaid balance, until the whole amount of the indebtedness shall have been paid, the first payment to be made on January 1, 1922, with the condition that upon the failure to pay any monthly installment or the interest earned on the unpaid balance, the whole amount of the indebtedness shall become due, and the maker shall pay the payee an additional sum equivalent to 15 per cent of the total balance, for attorney's fee and expenses of collection, forfeiting all right of exemption.

On the same date, December 1, 1921, the said Magallanes Press, through its manager H. Camena, also executed a promissory note in favor of J. P. Heilbronn & Co., Inc., for the sum of P0,715.77, with interest at 12 per cent per annum, payable at the rate of P500 a month, together with the interest earned on the unpaid balance, until the whole amount of the indebtedness shall have been paid, the first payment to be made on January 1, 1922, with the condition that upon the failure to pay any monthly installment or the interest earned on the unpaid balance, the whole amount of the indebtedness shall become due, and the maker shall pay the payee an additional sum equal to 15 per cent of the total balance for attorney's fee and expenses of collection, forfeiting all right of exemption.

To secure the payment of said promissory notes which amounted to a total of P14,188.69, H. Cameña, as general manager of the Magallanes Press, executed a chattel mortgage on all the printing machinery and its accessories, belonging to the said Magallanes Press, in favor of J. P. Heilbronn & Co., Inc.

On June 19, 1922, the Magallanes Press Co., Inc., successor to the Magallanes Press, with all the latter's rights and obligations, through its duly authorized president, E. F. Clemente, executed a chattel mortgage on the same printing machinery and its accessories in favor of the Belgian Catholic Missionaries Co., Inc., which the Magallanes Press had mortgaged to J. P. Heilbronn & Co., Inc., to secure the payment of a loan of P30,500, with interest at 12 per cent per annum, which the said Magallanes Press & Co., Inc., had obtained from the Belgian Catholic Missionaries Co., Inc., the duration of the mortgage loan being one year from the execution of the mortgage deed.

In December, 1922 the appellant Jose Ma. Memije made a loan in the sum of P2,000 to E. F. Clemente which was paid on account of the indebtedness of the Magallanes Press to J. P. Heilbronn & Co., Inc., together with the sum of P1,641 which A. F. Mendoza owed said E. F. Clemente.

On the occasion of the issuance of the writ of attachment in civil cause No. 23818 of the Court of First Instance of Manila, entitled Jose Ma. Cavanna vs. The Magallanes Press Co., Inc., the defendant Jose Ma. Memije, on February 21, 1923, filed an intervention in said case.

All the promissory notes executed by the Magallanes Press in favor of J. P. Heilbronn & Co., Inc., having been overdue for non-payment of the installments, as well as the respective chattel mortgage, the said J. P. Heilbronn & Co., Inc., transferred all its mortgage credit against the Magallanes Press to Jose Ma. Memije in consideration of the sum of P8,280.90, the balance of said mortgage credit.

On March 14, 1923, Enrique Clemente, as manager of the Magallanes Press Co., Inc., executed a deed in favor of Jose Ma. Memije by virtue of which the chattel mortgage which was given by the Magallanes Press in favor of J. P. Heilbronn & Co., Inc., and transferred by the latter to Jose Ma. Memije, was made to cover an additional loan of P5,895.79, which included the sum of P2,000 which said Jose Ma. Memije had advanced said Enrique

Clemente in December, 1922.

On April 21, 1923, a fire occurred in the building where the printing machinery, its accessories and other personal property of the Magallanes Press Co., Inc., were located and which were covered by said chattel mortgages. Said property was insured, and the insurance policies covering it were endorsed to J. P. Heilbronn & Co., Inc., upon the execution of the chattel mortgage thereon in favor of the latter. When J. P. Heilbronn & Co., Inc., transferred its mortgage credit to Jose Ma. Memije it, in turn, endorsed said insurance policies to him. The insurance companies were disposed to pay the respective insurance policies, which amounted to P7,686.45, but due to the issuance of the above-mentioned writ of preliminary injunction, payment could not be made.

Due to the filing of the complaint in the present case on May 9, 1923, and the issuance of the writ of preliminary injunction on May 10th of the same year, Jose Ma. Memije was unable to collect the amount of the insurance policies, and when he was summoned under the complaint on May 14, 1923, he made demand on the Magallanes Press Co., Inc., for the payment of his mortgage credit and on the same date the manager of said corporation, E. F. Clemente, permitted the secretary of the said corporation to place the property covered by the mortgage into the hands of the said Jose Ma. Memije in order that the same might be sold, but the sale could not be consummated due to the issuance of the said writ of preliminary injunction.

The first question raised by the defendant and appellant has reference to the overruling of the demurrer filed by him to the complaint.

One of the grounds of said demurrer was that the complaint in this case did not allege facts sufficient to constitute a cause of action against the said defendant, in that, notwithstanding the fact that the said complaint was instituted to annul the document of transfer of the mortgage credit Exhibit C, it was not alleged in the said complaint that the defendant Jose Ma. Memije had any intention to defraud the interests of the plaintiff corporation, which was absolutely impossible due to the nature of the transaction and the preferential character of the mortgage credit of J. P. Heilbronn & Co., Inc.

As to this paragraph of the complaint, the plaintiff company having known of the existence of a chattel mortgage in favor of J. P. Heilbronn & Co., Inc., the latter, either as the first or as the second mortgagee, had a perfect right to transfer its mortgage credit, without the knowledge or consent of any other mortgagee, inasmuch as whoever acquired it, would have exactly the same status as the transferor with the same rights and obligations. The fact, therefore, that the Magallanes Press Co., Inc., had consented to the transfer of the mortgage credit of J. P. Heilbronn & Co., Inc., to Jose Ma. Memije, does not constitute a fraud that can vitiate the said transfer, inasmuch as the order of preference of the existing mortgages has not been altered, and its allegation does not constitute a cause of action to annul the said transfer.

In regard to the allegation contained in the ninth paragraph of the complaint, it is very clear that the increase made by Jose Ma. Memije in the mortgage credit acquired by him from J. P. Heilbronn & Co., Inc., and the extension made by the Magallanes Press, Inc., of the mortgage to said additional credit without the knowledge or consent of the plaintiff company, as second mortgagee, prejudices the credit of the latter, inasmuch as the security for the payment of said credit was reduced as to it, and, therefore, constitutes a fraud that vitiates the contract of extension of the mortgage evidenced by the deed Exhibit D, rendering it void.

The facts alleged in paragraph 9 of the complaint are sufficient to constitute a cause of action of nullity, and the lower court did not err in overruling the demurrer filed by the defendant Jose Ma. Memije.

In regard to the second assignment of error, it appears that the defendant Jose Ma. Memije having attempted to foreclose the mortgage, by which the mortgage credit acquired by him from J. P. Heilbronn & Co., Inc., was

secured, in order to recover not only the original credit but also the increase, the Belgian Catholic Missionaries Co., Inc., filed a complaint, with a petition for a writ of preliminary injunction against the sheriff, in whose hands the foreclosure of the mortgage was placed. The writ of preliminary injunction having been issued, upon the filing of a bond in the sum of P15,000, and there being no person more interested in the conservation and custody of the property covered by the mortgage than said plaintiff company, being the largest creditor, it applied and obtained from the court the possession of the same.

Contrary to the contention of the appellant, this case is not one of replevin but simply a proceeding instituted by the plaintiff for the deposit of the property in-litigation, upon the filing of a bond, said plaintiff acting as a receiver by authority of the court, being the person most interested in the conservation and care of the same (sec. 174, Act No. 190; 11 C. J., 726).

The lower court, therefore, did not err in authorizing the plaintiff company to take possession of the personal property in litigation upon the filing of a bond sufficient to secure the conservation or value thereof.

The third assignment of error raises the question as to the preference of right between the plaintiff company and the defendant over the mortgaged property and the amount of the insurance policies covering a part thereof which was destroyed by fire.

As we have seen in the statement of the pertinent facts necessary for the clear and accurate solution of the questions of law involved in the present appeal, the firm of J. P. Heilbronn & Co., Inc., had a mortgage credit against the Magallanes Press for the sum of P14,186.69, secured by a first chattel mortgage. The plaintiff company, the Belgian Catholic Missionaries Co., Inc., also had a mortgage credit for the amount of P30,500, secured by a second mortgage on the same personal property. After this second mortgage had been executed, the payment of the mortgage credit of J. P. Heilbronn & Co., Inc., became due, which credit had been reduced to the sum of P8,280.90 through partial payments, and the herein defendant-appellant Jose Ma. Memije acquired said mortgage credit and increased it by P5,895.59, of which increase P2,000 was a previous loan.

There is no question but that J. P. Heilbronn & Co., Inc., at the time of the transfer of its mortgage rights to Jose Ma. Memije, had a preferential right over that of the Belgian Catholic Missionaries Co., Inc., for the remainder of the amount of the mortgage credit, that is, P8,280.90. The plaintiff company had a preferential right to the rest of the value of the mortgaged property after deducting the remaining mortgage credit of J. P. Heilbronn & Co., Inc.

The increase of P5,895.59 made by the defendant Jose Ma. Memije in favor of the Magallanes Press Co., Inc., and the extension of the mortgage thereto, are not only subordinate to the mortgage credit of the plaintiff company, being subsequent in time and in registration, but said increase in the security is also void. The increase of the mortgage security becomes a new mortgage in itself, inasmuch as the original mortgage did not contain any stipulation in regard to the increase of the mortgage credit, and even if it did, said increase would take effect only from the date of the increase. A mortgage that contains a stipulation in regard to future advances in the credit will take effect only from the date the same are made and not from the date of the mortgage (11 C. J., 448; 5 R. C. L., 420-421). In accordance with the provisions of section 5 of Act No. 1508, known as the Chattel Mortgage Law, the parties to the original deed swore that the same was mortgaged "to secure the obligations specified therein and for no other purpose." Neither the increase in question, nor the extension of the mortgage to secure the payment of the same, is specified in the deed, consequently said extension is void. "Where the statute provides that the parties to a chattel mortgage must make oath that the debt is a just debt, honestly due and owing from the mortgagor to the mortgagee, it is obvious that a valid mortgage cannot be made to secure a debt to be thereafter contracted." (11 C. J., 448.)

Briefly, therefore, we have the following:

(a) That Jose Ma. Memije has a preferential right to the value of the chattels mortgaged and the amount of the insurance policies up to the sum of P8,280.90;

(b) That the plaintiff corporation, the Belgian Catholic Missionaries Co., Inc., has a right to the remainder of the value of said chattels and the insurance policies up to the amount of P30,500, after deducting the preferential credit of Jose Ma. Memije;

(c) That as to the increase of P5,895.59, the right of the defendant Jose Ma. Memije is that of an ordinary creditor.

In regard to the damages claimed by the defendant in his counterclaim and which is the subject-matter of his remaining assignments of error, said defendant has a right to interest at 12 per cent on the P8,280.90, the amount of the mortgage credit acquired by him from J. P. Heilbronn & Co., Inc., from February 26, 1923, the date of the acquisition until fully paid.

For the foregoing reasons, the judgment appealed from is revoked and it is ordered that another be entered declaring all the mortgages overdue, and the mortgage credit of Jose Ma. Memije preferential over that of the Belgian Catholic Missionaries Co., Inc., up to the amount of P8,280.90, with interest at the rate of 12 per cent per annum from February 26, 1923, until fully paid; the mortgage credit of the Belgian Catholic Missionaries Co., Inc., for the sum of P30,500 with interest at the rate of 12 per cent per annum, from June 19, 1922, until fully paid, plus the sum of P3,000 for attorney's fees, over the additional credit of Jose Ma. Memije for P5,895.59; and ordering the foreclosure of the said mortgages by selling the mortgaged property at public auction, to the proceeds of which shall be added the amount of the insurance policies and the above-mentioned credits in the order of preference above established, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, and Johns, JJ., concur.

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