

ZAMBOANGA TRANSPORTATION CO., INC., PETITIONER, VS. THE PUBLIC UTILITY COMMISSION, RESPONDENT.

G.R. No. 26327. April 01, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a proceeding instituted by the Zamboanga Transportation Co., Inc., against the Public Utility Commission in which, for the reasons stated therein, it prays for the reversal of the decision of the Auxiliary Commissioner of Public Utilities, Hon. Manuel V. del Rosario, approving a chattel mortgage executed by the petitioner in favor of the Bachrach Motor Co., Inc., and the sale to the latter of said property by virtue of the foreclosure of said mortgage, as well as the ruling of said Auxiliary Commissioner of July 17, 1926, denying the motion for a new trial.

In support of its petition the petitioner makes eleven assignments of error in its brief alleged to have been committed by the said Auxiliary Commissioner of Public Utilities in his decision and ruling.

The only question to be decided in the present proceeding is whether or not the Public Utility Commission had the power to approve the chattel mortgage in question and the sale, by virtue of its foreclosure, of the mortgaged property.

That part of section 16 of Act No. 3108 which is pertinent to the point in question, reads as follows:

"SEC. 16. No public utility as herein defined shall:

* * * * *

"(h) Without the approval of the Public Utility Commission first had, sell, alienate, mortgage, encumber, or lease its property franchises, privileges or rights, or any part thereof; nor merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other public utility as herein defined. The approval herein required shall be given, after notice to the public and after hearing the persons interested at a public hearing, if it be shown that there are just and reasonable grounds for making the sale, alienation, mortgage, or encumbrance for liabilities of more than one year maturity, lease, merger, or consolidation to be approved, and that the same are not detrimental to the public interest, and in case of a sale, the date on which the same is to be consummated shall be fixed in the order of approval: Provided, however, That the sale, alienation, mortgage or encumbrance, and lease of the property of public utilities which, on account of the nature and conditions of their business, are, in the judgment of the Commission, of little importance to the public interest, shall be exempt from the requisite of the approval of the Commission; but the public utilities shall in every case give notice of these transactions to the Commission. Any sale, alienation, mortgage or encumbrance, lease, fusion or consolidation made without the approval herein required shall be null and void: Provided, further, That nothing herein contained shall be construed to prevent the sale, alienation, or lease by any public utility of any of its property in the ordinary course of its business."

It will be seen that the legal provision above quoted prohibits a public utility, as denned by said law, from mortgaging its properties, franchises or rights, or any part thereof, without first obtaining the approval of the

Public Utility Commission and provides that any mortgage or lien created without said approval, shall be null and void.

Inasmuch as a public utility has for its object public service in general, the law, in order to prevent the public from being unjustly exploited, requires that every enterprise of such nature, before commencing operations, shall obtain a certificate of public convenience from the Public Utility Commission. After the public utility has obtained said certificate and commenced operations, the Public Utility Commission is under obligation to see that said public utility complies with its duty to the public and is not prejudicial to it. As a mortgage or a lien on the property of a public utility may prejudice the public interests, the law also requires that before public utilities mortgage their properties they must obtain the necessary approval of the Public Utility Commission for the purpose of determining if the mortgage is injurious or beneficial to the public interests. If this is the purpose of the law the approval may be given before or after the creation of the lien, since without said approval said lien cannot have the desired effect, being null and void.

In view of the state of the commercial relations then existing between the Zamboanga Transportation Co., Inc., and the Bachrach Motor Co., Inc., due to the difficulties which the former encountered in complying with the promises made to the latter in the payment of the price of the trucks which it had purchased from the former on credit and which the Zamboanga Transportation Co., Inc., had mortgaged to the Bachrach Motor Co., Inc., to secure said payment, it was more convenient and beneficial to the public interests for the Zamboanga Transportation Co., Inc., to execute the chattel mortgage here in question in favor of the Bachrach Motor Co., Inc., to prevent the foreclosure of the original mortgage. Inasmuch as the Zamboanga Transportation Co., Inc., upon which it was incumbent to petition the Public Utility Commission to authorize said mortgage, or, if already executed to secure its approval, failed to do so, the Bachrach Motor Co., Inc., in order to protect its interests, requested said approval. The fact that the law imposes upon the Zamboanga Transportation Co., Inc., the duty to request such approval, does not deprive the Bachrach Motor Co., Inc., as mortgagee, of the right to request such approval when the mortgagor has been negligent in complying with its duty or did not want to comply with it for reasons prejudicial to the good name of the company and its directors.

The approval of the Public Utility Commission required by law before the execution of a mortgage on the property of a public utility or the sale thereof, has no more effect than an authorization to mortgage or sell and does not affect the essential formalities of a contract, but its efficacy. The Public Utility Commission's approval gives effect to the mortgage or sale of the properties of a public utility which complies with all of the essential requisites prescribed by law, but cannot give validity or efficacy to a contract of that nature which is not executed with all the intrinsic and extrinsic formalities required by law.

The public utility auxiliary commissioner, Hon. Manuel V. del Rosario, therefore, did not commit an error in approving the mortgage referred to herein, believing it to be convenient and not prejudicial to the public interests.

In regard to the approval of the sale of the mortgaged property by virtue of the foreclosure of the mortgage, it may be considered superfluous and not prejudicial, because the validity of said sale depends upon the intrinsic contractual validity of the mortgage, the approval or disapproval of which is not important.

By virtue of the foregoing and finding no error in the decision and ruling appealed from, the same are affirmed in their entirety, with the costs against the appellant.

Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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