

CLEMENCIA GRAÑO, PETITIONER, VS. HONORABLE ISIDRO PAREDES, JUDGE OF FIRST INSTANCE OF LAGUNA, AND ESTANISLAO REYES, RESPONDENTS. SEBASTIANA MARTINEZ ET AL., INTERVENORS.

G.R. No. 27019. March 04, 1927

Ponente: STREET, J.

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STREET, J.:

This is an application for a peremptory writ of mandamus to require the respondent judge to execute an order made by himself on October 9, 1925, in the case of Martinez et al. vs. Graño et al., dissolving a receivership and directing Estanislao Reyes, as receiver, to surrender the property in litigation to the parties in interest, which order was affirmed, with slight modification, upon appeal to this court (G. R. No. 25437).[1] The petitioner in the present proceeding is Clemencia Graño and the respondent judge was named in the original petition as the sole defendant. However, after the proceeding had been instituted, the complaint was amended for the purpose of adding the name of Estanislao Reyes as codefendant with the respondent judge; and various parties in interest bearing the surname of Martinez intervened in the same right as the plaintiff and asked for the same relief. The cause is now before us upon amended petition, petition of intervention, and the answers of the respondents.

In the opinion of this court, to which reference is made, we affirmed the judgment, declaring the receivership dissolved and ordering the receiver to surrender the property to the persons in interest. However, near the end of said opinion, the following paragraph is found:

"The court, however, is of the opinion that if upon the prompt submission and examination of the receiver's accounts, it should be found that he has actually paid out for the conservation and protection of the property which is the subject of the receivership more than he has received by way of income, or should have received in the exercise of reasonable diligence, such balance in his favor should be recognized as a lawful claim constituting a lien on the property."

The declaration, in the foregoing paragraph, to the effect that any lawful balance in the receiver's favor should be recognized as a lawful claim constituting a lien on the property has proved a stumbling-block to the court below, owing to a misunderstanding of the meaning and effect of the word "lien," as there used. The respondent Judge interprets the word "lien" as the equivalent of "right of retention," and he has accordingly refused to proceed to the execution of the judgment out of deference to the order of this court as thus interpreted. The result is that the receiver still remain entrenched in possession of the property pending the proceedings incident to the accounting which was ordered by the court.

This is of course all wrong. The very essence of the question in dispute in the appeal referred to was this right of retention; and after we had decided the appeal adversely to the receiver, an elaborate motion for reconsideration was filed by him, insisting that we should recognize a right of retention in his favor until the balance alleged to be due to him should be ascertained and paid. This petition was denied.

The error into which his Honor fell was no doubt due to the fact that "derecho de retencion" is sometimes used as an equivalent in Spanish of the English word "lien;" and it is also true that a right of retention is sometimes, but not always, an incident to the "lien" as understood in the common law. The word "lien" is of the same etymological origin as the word "liable;" and in its broader sense "lien" expresses the liability of property for a certain legal duty, or a right to resort to certain property in order to enforce the duty. In this sense "lien" includes every case in which property is charged with the payment of a debt. The Spanish word "gravamen" therefore more nearly translates the English word "lien" than any other term. It was in this sense that the word "lien" is used in our opinion. A common-law lien on personal property usually imports a right of the lien holder, having possession, to retain possession until his lien is satisfied; but when used with reference to a charge on real property, the word does not necessarily import a right of retention.

That the word was not intended to import the right of retention in the connection in which it is used in our opinion, is quite apparent from the very nature of the issue determined. In this connection it must be remembered that respondent Reyes was in possession as receiver, and he has no other right to occupy the property than such as is derived from his receivership. When the receivership was abolished, as it was by the order of October 9, 1925, affirmed upon appeal in this court, there could not be the slightest pretense for supposing that the receiver could still remain in possession.

The writ of mandamus will be issued as prayed, requiring the respondent judge to oust the respondent Estanislao Reyes and cause delivery of the property to be made to proper parties in interest. So ordered, with costs against the respondent Reyes.

Johnson, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] 49 Phil., 214.

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