

MANILA MERCANTILE CO., PLAINTIFF AND APPELLANT, VS. MARIANO FLORES ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 27552. September 27, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the Manila Mercantile Co. from a judgment of the Court of First Instance of Manila, dismissing the complaint, with costs of both instances against the plaintiff.

In support of the appeal, the appellant assigns the following alleged errors as committed by the trial court in its decision, to wit: (1) The trial court erred in holding that plaintiff's contention to the effect that when the judgment debtor Jose Espino pledged the property in question to the plaintiff, it was free of all liens and encumbrances, while true in a certain sense, is untenable, however, in regard to the legal effects said to arise from the condition of said property; (2) the trial court erred in holding that it cannot be successfully contended that the property released from attachment was exempt from all legal obligations or encumbrances; (3) the trial court erred in holding that the mortgage of the personal property in question, executed by Jose Espino in favor of plaintiff, was a null, and fraudulent contract because it was executed to the prejudice of the creditor and plaintiff Mariano R. Flores; (4) the trial court erred in dismissing the complaint filed by the plaintiff with the costs of both instances.

At the hearing of the case, the parties submitted a stipulation of facts to the court, which reads as follows:

"1. That Jose Espino's obligation to Mariano R. Flores dates from January to October, 1924, and to the Manila Mercantile Co., from January, 1925, and that these debts are the source of plaintiff's and defendant's claims against Jose Espino's property:

"2, That by virtue of the writ of preliminary attachment issued in civil cause No. 28982 of this Court of First Instance of Manila, Mariano R. Flores being the plaintiff and Jose Espino the defendant, on November 17, 1925, a preliminary attachment was levied on the property of Jose Espino, among which are the goods or personal property described in paragraph 1 of the complaint in this civil case No. 30308, the value of which then was P300;

"3. That in said civil case No. 28982, defendant Jose Espino filed a bond, by virtue of which, the preliminary attachment issued against the property was dissolved on November 19, 1925, which bond is made an integral part hereof and is marked Exhibit A;

"4. That on November 27, 1925, Jose Espino executed the mortgage deed marked Exhibit B in favor of the Manila Mercantile Co. which is made an integral part hereof;

"5. That on February 17, 1926, judgment was rendered in civil cause No. 28982 against Jose Espino, which is made an integral part hereof, and is marked Exhibit C;

"6. That upon Jose Espino's failure to pay the sums agreed upon, and ordered paid by judgment Exhibit C, civil case No. 28982, a writ of execution was issued on April 6, 1926 in said case, for the total amount of the said judgment, and by virtue thereof, an attachment was levied on the property of the said Jose Espino, including

the personal property described in paragraph 1 of the complaint in civil case No. 30308, which is the subject-matter of the document Exhibit B;

"7. That the Manila Mercantile Co. filed a third party claim in civil cause No. 28982 opposing said attachment, which claim is made an integral part hereof as Exhibit D;

"8. That, on being notified of such third party claim plaintiff Mariano R. Flores in civil case No. 28982, filed a bond in favor of the sheriff for the sum of P600, and the attachment was maintained until the sale under execution, the total proceeds of which amounted to only P1,261.84;

"9. That the present action, No. 30308, coming on appeal from the judgment of the municipal court of the City of Manila, was instituted to enforce the alleged rights of the Manila Mercantile Co., by virtue of its third party claim in civil case No. 28982;

"10. That because the proceeds of the execution sale in said civil cause No. 28982 were not sufficient for the payment of judgment Exhibit C, and for the reasons alleged in the motion of April 16, 1926, filed by plaintiff Mariano R. Flores in the said cause, which is attached hereto marked Exhibit E, the court issued the order of May 24, 1926, which is made an integral part hereof marked Exhibit F, and, subsequently, upon petition of the sureties, as evidenced by the petition attached to said record No. 28982 as Exhibit G, the same court issued the order now marked Exhibit H on June 17, 1926, reconsidering the former order Exhibit F."

As to the first assignment of error, it will be seen that the preliminary attachment levied on Jose Espino's property, by virtue of the complaint filed against him by Mariano R. Flores in civil cause No. 28982, was dissolved on November 19, 1925, because said defendant and owner of the attached property, filed the proper bond, subscribed by the Philippine Guarantee Co., Inc. (Exhibit A), in accordance with the provisions of section 440 of the Code of Civil Procedure.

In accordance with this article, the bond filed takes the place of the goods released. If this is so, the property here in question became entirely free and returned to the status and juridical state in which it was before the attachment (6 C. J., 464). It is unreasonable to suppose that it was the intention of the legislator, in order to protect the rights of the attaching plaintiff, that the attached property should continue subject to the results of the action, notwithstanding the bond filed, because it would be contrary to its purpose to permit the defendant, whose property was attached, to, release the same by filing a bond, which purpose is no other than to protect the interest of said defendant, inasmuch as an attachment always works to the prejudice of the person whose property is attached, because it diminishes his credit and exposes the property to a depreciation, either because of a lowering of prices, deterioration or decomposition, according to its nature, in not being able to realize at the execution sale the value it had on being attached, and the defendant has to pay the difference.

Moreover, the purpose of attachment is to secure the payment of a claim which is sought to be enforced judicially, and if the bond, which represents the value of the attached property, takes the place of the same, the release of the property attached does not prejudice the rights of the attaching party.

That property released from attachment may be freely and validly encumbered by a chattel mortgage, is inferred from the doctrine laid down by the Supreme Court of California in the case of *Mullally vs. Townsend* (119 Cal., 47), in interpreting sections 554 and 555 of the Code of Civil Procedure of California, from which section 440 of our own was taken, which doctrine is as follows:

"ATTACHMENT—DEMAND FOR REDELIVERY—CHATTEL MORTGAGE—REFUSAL.—Where, subsequently to the release of the property attached, it has been subjected by the defendant to a chattel mortgage executed to a third party, the plaintiff, upon the issuance of execution with instructions to levy upon the property attached, is not bound to accept the property burdened with such chattel mortgage, and the refusal

of the defendant and the chattel mortgagee to deliver the property to the sheriff, upon his demand therefor, otherwise than upon the payment of such chattel mortgage, is a refusal to redeliver the attached property to the sheriff."

If the released property returned to the state in which it was before the attachment, and defendant could dispose of it freely and validly, either by encumbering or selling it the chattel mortgage on it executed by Jose Espino in favor of the plaintiff-appellant was legal and valid.

Since a chattel mortgage is a conditional sale (sec. 3, Act No. 1508), and the ownership of the chattels mortgaged passes to the mortgagee (Meyers vs. Thein, 15 Phil., 303), the only thing that can be the object of attachment under execution is the mortgagor's right to redeem it; and in the present case, the purchaser of the released property in question acquired no more than the judgment debtor Jose Espino's, right of redemption.

The trial court, then, erred in holding that notwithstanding the release of the property attached, the released property remained subject to the results of the civil cause in which it was attached.

The second assignment of error is but a corollary of the first, and the question raised therein was solved by the solution of that raised in said first assignment of error.

Passing to the third assignment of error, if the property released in that cause was free of all liens and encumbrances, and the credit of plaintiff Mariano R. Flores was secured by the bond filed by the defendant Jose Espino, the fact that the latter executed a chattel mortgage on the released property in favor of the herein plaintiff-appellant, Manila Mercantile Co., was not in fraud of said Mariano R. Flores, and the transaction was legal and valid; inasmuch as the presumption of fraud established in article 1297 of the Civil Code, exists when, there being no security in favor of the creditor, the debtor disposes of his property after judgment has been rendered against him, or a writ of preliminary attachment has been issued against his property, even if it were for onerous consideration.

In the present case, when on November 27, 1925, the defendant Jose Espino mortgaged the personal property in question to the Manila Mercantile Co., no judgment or preliminary attachment existed in favor of Mariano R. Flores and against said Jose Espino, since the only attachment that existed on the property of the latter had been dissolved.

The trial court, then, erred in holding that the chattel mortgage on the release property executed by Jose Espino in favor of the Manila Mercantile Co. was fraudulent and null.

If the encumbrance in favor of the plaintiff-appellant Manila Mercantile Co., on the personal property in question was legal and valid, and was executed in accordance with the law, said commercial firm has a right to the return of said property, unless the purchaser at the execution sale made by the sheriff, redeems it by paying the amount of the credit secured by said mortgage.

Wherefore, the judgment appealed from is reversed and another is entered ordering the defendants-appellees to return to the plaintiff-appellant the property levied upon by virtue of the writ of execution, or to pay it its credit, which amounts to P300, with interest at 6 per cent per annum from the date hereof, with costs against the appellees. So ordered.

Johnson, Street, Villamor, Johns, and Romualdez, JJ., concur.

AVANCEÑA, C. J., AND MALCOLM, J., DISSENTING:

The Code of Civil Procedure in section 440 provides a means for the dissolution of an order of attachment. Among other things, it authorizes the execution of a bond, with sufficient sureties, by the defendant to the plaintiff "to the effect that in case the plaintiff recover judgment in the action, the defendant will, on demand, redeliver the attached property so released to the officer of the court, to be applied to the payment of the judgment, or, in default thereof, that the defendant and surety, will, on demand, pay to the plaintiff the full value of the property released." Under this law, the attached property constitutes the principal obligation. The bond permitted for the dissolution of the order of attachment on the property constitutes the subsidiary obligation. In other words, the primary promise of the defendant to the plaintiff acting under judicial supervision is to redeliver the attached property, a promise which cannot be fulfilled if the property be allowed to pass from the jurisdiction of the court. When, therefore, the property is mortgaged subsequent to the approval of an order of discharge, the mortgage should not be given a preference over the attachment, for to do so would be to destroy the attachment and to make the subsidiary obligation superior to the principal obligation. The parties cannot disclaim knowledge of the attachment when the mortgage was executed. Moreover, in this jurisdiction, the Code of Civil Procedure interlocks with the Civil Code in which in article 1297 it is provided: "Alienations for valuable considerations, made by a person against whom any judgment in any instance has been previously rendered, or against whom any writ of attachment has been issued, shall also be presumed fraudulent."

For such reasons and others which are well expressed in the decision of Judge of First Instance Imperial, our vote is for the affirmance of the judgment.

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