

**PACIFIC COMMERCIAL CO., PLAINTIFF AND APPELLANT, VS.
MIGUEL E. WEBB AND ANTONIO FALCON, DEFENDANTS. ANTONIO
FALCON, APPELLEE.**

G.R. No. 28333. March 20, 1928

Ponente: STATEMENT The plaintiff is a domestic corporation and the defendants are residents of the City of Manila. Plaintiff alleges that about May 24, 1926, the defendant Webb executed to it a certain promissory note for the sum of P1,200, payable in twelve equal monthly installments, a copy of which is attached to, and made a part of, the complaint, marked Exhibit A. That on the same date and to secure its payment, Webb executed to the plaintiff a chattel mortgage on a second-hand Hudson Speedster Model 1923, Engine No. 169511, which mortgage was duly recorded in the office of the register of deeds of the City of Manila. That defendant Webb failed to pay the respective notes as they matured, and that by reason thereof, all of the unpaid promissory note became due and payable, and that for such failure plaintiff foreclosed its chattel mortgage. That in such proceedings on or about December 23, 1926, the deputy sheriff of the City of Manila and an agent of the plaintiff made a demand upon the defendant Antonio Falcon, who was then and is now in the possession of said automobile for its delivery to them, but that defendant Falcon refused to make such delivery, and wrongfully retains its possession. That there is now due and owing from the defendant Webb to the plaintiff on the note described in the chattel mortgage P698.19 as principal, with interest at 10 per cent from November 6, 1926. That by the terms of the note, defendant Webb agreed to pay the further sum of 10 per cent as attorney's fees in the event of suit or action. That by reason of the failure of the defendant Falcon to deliver the auto, plaintiff has been damaged in the sum of P300. Plaintiff prays for judgment that defendant Falcon deliver the possession of the auto to the plaintiff, and ordering its sale at public auction, under foreclosure proceedings, and that the proceeds of the sale be applied to the satisfaction of its claim against the defendant Webb, with interest, and 10 per cent attorney's fees, and that it have judgment against Falcon for P300 as damages. The defendant Webb made a default. The defendant Falcon filed the following answer: "Comes now the undersigned attorney in the name and on behalf of the defendant Antonio Falcon, and for answer to the plaintiff's complaint, denies each and every allegation contained therein, and as special defense alleges: "SPECIAL DEFENSE "1. That the defendant Antonio Falcon is owner of an automobile repair shop situated in the City of Manila, Philippine Islands. "2. That long before the commencement of this action, his co-defendant Miguel E. Webb, who then had the legal possession of the automobile in question, ordered in said shop of the defendant Antonio Falcon certain repairs to be made in said automobile, which repairs, including materials and labor, amount to the sum of four hundred twenty pesos, and his codefendant Miguel E. Webb not having paid him the said sum nor a part thereof, the defendant Antonio Falcon, under the laws now in force, had a perfect right to retain the car as security for the payment of the repairs made thereon until the full payment of the total sum of P420. And, therefore, this defendant refused to deliver the automobile in question to the sheriff of the city when the latter attempted to seize the same extra judicially by order of the plaintiff, by virtue of a supposed mortgage and long before the initiation of this case. "On the occasion of this proceeding unduly initiated by the plaintiff, the defendant Antonio Falcon has suffered damages in the sum of P150. "Wherefore, the defendant Antonio Falcon prays this Honorable Court that he be absolved from the complaint. and in case the sale of the automobile in question is ordered, that the sheriff of the City of Manila be directed to pay the herein defendant the sum of P420 plus the damages which amount to P150, taking into account that the claim of this defendant has a preferential character according to the laws now in force." The lower court rendered judgment against the defendant Webb as prayed for in the complaint, and ordered that the auto be sold and that from and out of the proceeds of such sale, the defendant Falcon should be first paid the sum of P420 and the further sum of P150 as damages, and costs. Plaintiff's motion for a new trial was denied and exception taken, and on appeal it assigns the following errors: "I. The trial court erred in holding that the claim of defendant Antonio Falcon for alleged repairs in the

sum of four hundred twenty pesos (P420) is superior to the claim of plaintiff. "II. The trial court erred in not finding and holding that the claim of plaintiff over the automobile in question as mortgagee is superior to the claim of defendant Antonio Falcon for alleged repairs and damages or attorneys' fees. "III. The trial court erred in finding and holding that defendant Antonio Falcon had no knowledge of the existence of a chattel mortgage on the automobile in question. "IV. The trial court erred in holding that attorneys' fees constitute damages. "V. The trial court erred in holding that the claim of defendant Antonio Falcon for attorneys' fees in the sum of one hundred fifty pesos (P150) is superior to the claim of plaintiff. "VI. The trial court erred in denying plaintiff's motion for new trial." JOHNS, J.

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STATEMENT

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"Comes now the undersigned attorney in the name and on behalf of the defendant Antonio Falcon, and for answer to the plaintiff's complaint, denies each and every allegation contained therein, and as special defense alleges:

"SPECIAL DEFENSE

"1. That the defendant Antonio Falcon is owner of an automobile repair shop situated in the City of Manila, Philippine Islands.

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thereof, the defendant Antonio Falcon, under the laws now in force, had a perfect right to retain the car as security for the payment of the repairs made thereon until the full payment of the total sum of P420. And, therefore, this defendant refused to deliver the automobile in question to the sheriff of the city when the latter attempted to seize the same extra judicially by order of the plaintiff, by virtue of a supposed mortgage and long before the initiation of this case.

"On the occasion of this proceeding unduly initiated by the plaintiff, the defendant Antonio Falcon has suffered damages in the sum of P150.

"Wherefore, the defendant Antonio Falcon prays this Honorable Court that he be absolved from the complaint, and in case the sale of the automobile in question is ordered, that the sheriff of the City of Manila be directed to pay the herein defendant the sum of P420 plus the damages which amount to P150, taking into account that the claim of this defendant has a preferential character according to the laws now in force."

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"VI. The trial court erred in denying plaintiff's motion for new trial."

JOHNS, J.:

There is no dispute about any material fact, and the only question involved on this appeal is one of law, and although the amount involved is small, yet, the question is of great importance and is one of first impression in this court.

It is admitted that on May 24, 1926, Webb purchased the automobile in question from the plaintiff and gave it his certain promissory note for P1,200, payable in twelve equal monthly installments. That to secure its payment, he executed a chattel mortgage on the auto which he purchased, and that upon the date of its execution, the chattel mortgage was duly registered in the office of the register of deeds of the City of Manila, and that among other things, it contains the following provision:

"It is agreed that the mortgagor cannot encumber the property herein mortgaged for repairs subsequently made on said property without the consent in writing of the mortgagee, and that any claim for such repairs shall be subordinated to the mortgage herein constituted."

That the defendant Webb failed to pay the promissory note in the manner specified, as a result of which the whole

remaining amount of the purchase price became due and owing as alleged in plaintiff's complaint. That by reason thereof, the plaintiff undertook to foreclose its chattel mortgage and to have the automobile sold at public auction. That it was then in the possession of the defendant Falcon, who refused to deliver it to the deputy sheriff, and that on account of such refusal, plaintiff brought this action.

That is to say, the record is conclusive that since the 24th day of May, 1926, as between the plaintiff and the defendant Webb, it had a good and valid chattel mortgage lien upon the auto, to secure the unpaid balance of the note, and that for a breach of the conditions of the chattel mortgage as between the plaintiff and the defendant Webb, the plaintiff was legally entitled to the possession of the automobile. As a special defense, the defendant Falcon alleged that long prior to the commencement of the action, the defendant Webb had and was in the legal possession of the auto, and while in such possession he brought it to the shop of the defendant Falcon, for the purpose of having certain repairs made on the auto which, including labor and materials, amounted to P420, which have not been paid, and that by reason thereof, the defendant Falcon claimed the right to retain possession of the car as security until such time as his claim was paid, and it was for that reason only that Falcon refused to deliver possession of the auto. The question is thus squarely presented whether defendant Falcon had a legal right to retain possession of the automobile for the payment of his claim, and whether or not his claim is superior to the chattel mortgage lien of plaintiff.

It is admitted that after the chattel mortgage was executed on May 24, 1926, the auto in question was delivered by the plaintiff to the defendant Webb, and that he continued in such possession and used it in the ordinary course of business, and that he took the car and delivered it to the defendant Falcon, for the purpose of making the repairs, and that they were made at the sole instance and request of Webb. It is also admitted that at all of such times, Webb was the owner of the auto, subject only to the chattel mortgage lien of the plaintiff, and that he was legally entitled to its possession at the time he delivered the auto to the defendant Falcon, for the purpose of having such repairs made and labor performed.

On the question of such a lien, Ruling Case Law, vol. 17, p. 601, says:

"8. Generally.—A common law lien is the right of a person to retain that which is in his possession belonging to another until certain demands against such other person are satisfied. It is, however, quite impossible to find uniform rules by which it may always be determined when such a lien results. Derived from the civil law, and founded on considerations of equity and justice, the rules by which they are governed vary with the grounds on which such rights are given. Particular liens have always been admitted, by the common law, in favor of those persons, such as innkeepers, farriers, common carriers and warehousemen, who are bound by law to serve the public in their trades and occupations. And the privilege of a particular lien—the privilege to detain and hold the possession of some particular property of another as security for some debt or obligation—has been extended to other persons, in a variety of cases, where such persons by their labor and skill have imparted an additional value to the goods. This includes artisans, tradesmen, mechanics and laborers who receive property (although not obliged to receive it) for the purpose of mending, repairing and improving its condition for hire, and they have, by the common law, a lien on such property until the reasonable charges for their labor and expenses thereon are paid."

Following which, the author says:

"It is indispensable to the existence of a common law lien that the party who claims it should have an independent and exclusive possession of the property, the right to the lien being based directly upon the idea of possession."

And on page 606, it is said:

"When a party entitled to a lien dependent upon possession voluntarily delivers the property to the owner, the

lien is extinguished."

As to the question of priority, on page 609, the author says:

"It is one of the characteristics of common law liens which arise, upon considerations of justice and policy, by operation of law, as distinguished from liens created by contract or statute, that the former, as a general rule, attach to the property itself, without any reference to ownership, and override all other rights in the property, while the latter are subordinate to all prior existing rights therein. Furthermore, it may be said that a lien which arises by force of the common law may be, under special circumstances, superior to prior existing contractual or statutory liens on the same property. Thus, a lien on property, by operation of the common law, may have precedence of an existing mortgage."

In the case of *Drummond Carriage Company vs. Mills* (vol. 40 L. R. A., p. 761), the Supreme Court of Nebraska said:

"2. By operation of the common law, in the absence of any specific agreement, every person who has bestowed labor and skill on a chattel bailed to him for the purpose, and has thereby increased its value, has a lien on such chattel, and may retain it until paid his reasonable charges for his services.

"3. Such rule of the common law is in force in this state.

"4. The common law-lien to which we have just referred may, by force of special facts or circumstances, override or be superior to prior contractual or statutory liens.

"5. In this state the title to mortgaged chattels remains in the mortgagor until foreclosure of the mortgage."

In *Provident Institution for Savings in New Jersey vs. Mayor and Aldermen of Jersey City* (28 Law. ed., 1102), the Supreme Court of the United States laid down the rule that a lien which is given for the preservation or betterment of the common pledge is, in natural equity, fairly entitled to a preference.

Huddy on Automobiles, sixth edition, section 877, says:

"In some cases, it has been held that the lien of a repairman on a motor vehicle, while in his possession, is superior to the title of a mortgagee or conditional vendor of such property. But in other jurisdictions, a contrary view has been taken. The theory on which the priority of the lien for repairs is sustained, is that the chattel mortgagee or vendor, by permitting the property to remain in control of the mortgagor or purchaser, gives the latter implied authority to have necessary repairs made thereto and to afford the repairman a superior lien therefor. A statute permitting such divesting of the security of a mortgagee or conditional vendor, is not unconstitutional."

The car in question was first brought to the defendant Falcon and repaired on October 24, 1925, and after such repairs were made, it was then delivered to the defendant Webb. For the amount of that work P50 still remains unpaid. Falcon having delivered the auto to Webb after those repairs were made is not entitled to a lien for the P50. On December 2, 1926, the car was brought back to Falcon for the second time, when repairs were then made and labor performed, amounting to P370, the itemized bill for which is in the record, and known as defendant's Exhibit 2.

From an examination of that exhibit, it appears that the work and labor performed and materials furnished by the defendant Falcon were necessary for the use and operation of the car. In fact the repairs were necessary to keep the automobile in running order and good condition, and for such reason when made they enhanced the value of the car to the full amount of P370.

In this connection, it should be borne in mind that when the plaintiff sold and the defendant Webb purchased the car, it was contemplated by both parties that Webb could and would use the automobile for the purposes for which

it was intended; otherwise, it would not be of any value to him, and there was no reason why he should purchase it.

That being the purpose and intent of the sale and purchase, and Webb being the actual owner of the car, subject only to the chattel mortgage, and legally in its possession, it must follow that, if it was necessary to have the repairs made on the car, to keep it in good running order and condition, so that it could be used and operated in the ordinary course of business, for the purpose for which it was sold and purchased, Webb, as the owner of the car, had a legal right to have such repairs made, and to that end and for that purpose, to deliver the car to the defendant Falcon, and it appearing from the work and materials furnished and the nature of the repairs made, that they were necessary for the use and operation of the car, and that when made they enhanced the value of the car to the amount of the repairs, it must follow that Falcon had a lien on the car for the amount of such repairs, so long as he kept the car in his possession. Under the existing conditions, to deny the defendant Falcon a lien on the car for the amount of such repairs would in legal effect deprive him of any remedy and defeat the collection of his claim. On the other hand, if the value of the auto was enhanced to the amount of such repairs, in legal effect, it gave the plaintiff additional security for the enhanced value of the car.

As stated, there is a conflict of authorities upon the legal question involved, and it is one of first impression in this court. But in the instant case, it appearing from the testimony that the repairs in question were necessary for the use and operation of the car, and that its value was enhanced to the amount of such repairs, we are inclined to follow the law as laid down in the authorities above cited, and to hold that, under the special facts, the lien of Falcon for P370 is prior and superior to the chattel mortgage lien of the plaintiff.

Even so, we do not know of any legal principle upon which the damages claimed by Falcon and allowed by the lower court should be made a prior lien to the chattel mortgage. Plaintiff relies upon the provision in the chattel mortgage above quoted, that the mortgagor cannot encumber the property for repairs without the written consent of the mortgagee, and that the amount of such repairs shall be subordinated to the mortgage.

It must be conceded that the clause in question is valid between the plaintiff and Webb, but there is no claim or pretense that Falcon had any personal knowledge of the existence of that clause in the mortgage, and hence, for want of such knowledge, it is not binding on him. To give it the legal effect for which plaintiff contends, would be to deprive the garage man of any lien for any purpose, and thus nullify his fundamental right to a common law lien for repairs.

This opinion should be construed to confine the lien of a garage man to such repairs as are necessary and required for the use and operation of the automobile in the ordinary course of business when the car is brought to the shop by its owner, who at the time had the legal possession of the car, and where it appears that the actual value of the car has been enhanced to the amount of such repairs, and where it further appears that the actual possession of the car is kept and held to secure the payment of the bill for repairs, and such a lien should be confined and limited to reasonable and necessary repairs for the use and operation of the car in the ordinary course of business.

The judgment of the lower court is modified, and one will be entered here to the effect that the defendant Falcon is entitled to have and hold the automobile in question until such time as his bill for repairs, amounting to P370, without interest, is paid, and upon such payment, he shall then deliver the car to the plaintiff. Neither party to recover costs. So ordered.

Malcolm, Ostrand, Romualdez, and Villa-Real JJ., concur.

DISSENTING

JOHNSON, J.:

I cannot give my conformity to this decision. The majority opinion holds that the cost of repairs of the automobile in question has preference over the purchase price of said automobile. At the time of the sale of said automobile a mortgage was given to secure the payment of the balance of the purchase price. That mortgage was duly executed and registered. The world therefore had notice of its conditions. One of the printed conditions of such chattel mortgage was: "It is agreed that the mortgagor cannot encumber the property herein mortgaged for repairs subsequently made on said property without the consent in writing of the mortgagee, and that any claim for such repairs shall be subordinated to the mortgage herein constituted." Parties have a right to enter into any contract which is legal and not contrary to public policy. When that contract is made it constitutes the law between the parties, and is just as binding upon them as if the contract was an act of the Legislature. When a contract, like the one before us, is duly registered in the public registry of property, it is just as binding, not only upon the parties to it but upon all, and just as much so as if it was an act of the Legislature, of which all of the inhabitants of the jurisdiction must take notice.

There is no allegation nor intimation that the present contract was not a legal contract, nor that it was contrary to public policy. It should therefore be enforced. The plaintiff should not be deprived of the balance due on said contract. It is entitled to collect the balance due, without reference to the lien claimed by the defendant.

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