

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS.
GABINO BARRETTO P. PO E. JAP ET AL., DEFENDANTS AND
APPELLEES.**

G.R. No. 29196. December 29, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

On May 3, 1919, the defendant Gabino Barretto P. Po E. Jap executed a real estate mortgage in favor of the plaintiff on a parcel of land, with buildings and improvements, situated in the municipality of Tacloban, Province of Leyte, and described in transfer certificate of title No. 58 of that province. The provisions of the mortgage pertinent to this case read as follows:

"Whereas the mortgagor has obtained certain credits, loans, overdrafts, etc., from the mortgagee, all of which the parties hereto have mutually agreed should be guaranteed and secured, including the indebtedness incurred, the interest accruing thereon, the costs of collecting the same, and all other expenses of the mortgagee incurred in connection with this mortgage:

"Now, therefore, in consideration of the credits, etc., above-mentioned and other valuable consideration received by the mortgagor, and for the purpose of securing the payment of all sums not to exceed sixty thousand pesos, (P60,000) Philippine currency, plus the interest thereon at the rate of seven per cent (7%) per annum, the cost of the collection, and other items for which the mortgagor has or may hereafter become indebted to the mortgagee, the mortgagor, by way of mortgage, hereby grants, sells and conveys to the mortgagee, its successors or assigns, the land described in Schedule A on the back of this mortgage, together with all the buildings, mills, machinery, improvements and fixtures thereon belonging to the mortgagor.

* * * * *

"This mortgage is made upon the condition that, if all sums of money which the mortgagee has advanced, or may advance on the security of this mortgage, or which may become payable by the mortgagor to the mortgagee at any time hereafter, shall be paid when due with the interest thereon, plus the costs of collection and other expenses of the mortgagee in connection therewith, then this mortgage shall be discharged and of no further effect, otherwise it shall remain in full force and be enforceable as herein provided."

When the mortgage was executed, Gabino Barretto P. Po E. Jap was indebted to the plaintiff jointly and severally with the partnership Gabino Barretto & Co., Ltd. He was under no other personal liability to the bank at the time, and, in our opinion, it is well established that the mortgage was given as part security for that debt and for possible future advances to Gabino Barretto & Co. Another mortgage on certain property belonging to Gabino Barretto P. Po E. Jap and situated in the City of Manila, was also executed to partly secure the same indebtedness. Sometime during the year 1924, the bank brought an action to foreclose the mortgage on the Manila property, and on October 3, 1924, the Court of First Instance of Manila rendered a decision in said action, of which decision the dispositive part reads as follows:

"* * * the court hereby renders judgment in favor of the plaintiff and against the defendants Gabino Barretto & Co., Ltd., Gabino Barretto Po E. Jap and Po E. Soon, sentencing them to pay jointly and severally to said plaintiff the sum of P273,294.13 and the interest on said sum at the rate of 12 per cent per annum from October 1, 1923, up to the complete payment thereof. This judgment shall not take effect until 30 days to be computed from today. In default of payment of the amount of this judgment or any part thereof within ninety (90) days from this date, it is hereby ordered that the property described above and mortgaged in favor of the said plaintiff by said defendant as a security for the payment of the said obligation be sold at public auction subject to the first mortgage on said property in favor of the Postal Savings Bank, and the proceeds of the sale thereof to be applied to the payment of this judgment. In case the proceeds of the sale be not sufficient to satisfy the entire amount of this judgment, it is hereby ordered that execution be made on other properties of the defendants not exempt from execution. The defendants should pay the costs of this instance. The defendants are further sentenced to pay to the plaintiff by way of attorney's fees and costs of collection an amount equivalent to 12 per cent of the entire indebtedness."

The Manila property was sold at public auction in accordance with the aforesaid decision and after deducting the proceeds of the sale and the sum of P6,000, which the defendant Gabino Barretto P. Po E. Jap had deposited in the plaintiff bank, a deficiency in the amount of P319,913.05 remained.

This action is brought for the foreclosure of the mortgage on the Tacloban property to cover the aforesaid deficiency. In the meantime, on November 29, 1921, Gabino Barretto P. Po E. Jap had sold the property to his herein codefendant, Po Tecsi, who obtained a transfer certificate of title, upon which the mortgage was noted by memorandum. During the pendency of the case, Po Tecsi died, and Po Son Suy, one of his sons and judicial administrator of his estate, was substituted as party defendant in the place of his deceased father. Upon trial the court below held that the mortgage on the Tacloban property only secured the credit of P60,000 granted to Gabino Barretto by the Philippine National Bank and did not cover any other sum independent of the P60,000; that Gabino Barretto had not received the P60,000 mentioned in the mortgage, and that therefore the mortgage was without force and effect. Upon these grounds, the court absolved the defendants from the complaint, with the costs against the plaintiff. From this judgment the plaintiff appealed.

The mortgage in question is written on a printed form. It is somewhat carelessly prepared, and at the trial it became necessary for the plaintiff to introduce evidence aliunde to show the circumstances under which the document was made and to what debt it related. The defendants' counsel objected to this evidence on the ground that it was not alleged in the complaint that the document did not express the true intent and agreement of the parties. The objection was properly overruled by the trial court Explanatory evidence may be offered and received without special allegations in the pleadings (sec. 289 and par. 2, sec. 285, Code of Civ. Proc.).

The evidence referred to shows sufficiently that the mortgage was given to secure Gabino Barretto P. Po E. Jap's guaranty of the indebtedness of the partnership Gabino Barretto & Co., Ltd., to the plaintiff bank and that said indebtedness is the same as that referred to in the judgment rendered by the Court of First Instance of Manila on October 3, 1924. If so, it seems obvious that the mortgage here in question may be foreclosed to cover a portion of the deficiency judgment in that case. In view of the fact that the transaction is in the nature of a suretyship and that therefore the mortgage must be construed strictly in favor of the surety, and the further fact that the mortgaged property has passed into the hands of a third party, we are of the opinion that the recovery under said mortgage must be limited to P60,000, plus interest at the rate of 7 per cent per annum from the date of the filing of the complaint in the present case. The other Items referred to in the printed form on which the mortgage is written are not in harmony with the evident purpose of the mortgage and can hardly be considered binding on the present owner of the mortgaged property.

The appealed judgment is hereby reversed, and it is ordered that unless the defendants, within four months from

the return of the record to the court below, pay to the plaintiff the sum of P60,000, plus interest at the rate of 7 per cent per annum from August 6, 1925, the mortgaged property shall be sold in the manner provided for in section 257 of the Code of Civil Procedure to realize the mortgage debt. Without costs. So ordered.

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

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