

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. MANUEL PAEZ, ADMINISTRATOR OF THE INTESTATE ESTATE OF HUGO PAEZ, ESTEBAN DE LA RAMA, ASTURIAS SUGAR CENTRAL, INC., AN...

G. R. No. 31684. February 05, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

This action is for the recovery of a mortgage credit. The plaintiff bank prays in its complaint for a judgment as follows:

" (a) Ordering the defendants Manuel Paez, on his own behalf and as judicial administrator of the intestate estate of the deceased Hugo Paez, Magdalena Rubin Vda. de Paez, Cristina Paez, Clara Paez and Magdalena Paez to pay the plaintiff the sum of P7,863.44 upon the first cause of action, plus the interest at the rate of 10 per cent per annum from August 1, 1928, until fully paid.

"(b) Ordering the defendants Manuel Paez, on his own behalf and as judicial administrator of the intestate estate of the deceased Hugo Paez, Magdalena Rubin Vda. de Paez, Cristina Paez, Clara Paez and Magdalena Paez to pay the plaintiff the sum of P7,301.33, plus the interest at the rate of 12 per cent per annum on the sum of P4,000, or the daily amount of P1.33 from August 1, 1928, until fully paid, besides an additional sum equal to 20 per cent on the total amount claimed as attorney's fees, and costs.

"(c) Ordering the sheriff, in case the judgment is not satisfied within the period prescribed by law, to sell at public auction, in accordance with the provisions of the Code of Civil Procedure, the properties mortgaged to the plaintiff, applying the proceeds of the sale to the payment of the sums claimed by the plaintiff in this complaint; and

"(d) That in case the proceeds of the sale of the properties mentioned in this complaint are not sufficient to pay all the sums claimed in this complaint, plus the interest and costs, an order of execution be issued against any property of the deceased Hugo Paez not exempt therefrom to cover the resulting balance.

"The plaintiff likewise prays this Honorable Court for such other remedy as may be just and equitable." (Pages 19 and 20, Bill of Exceptions.)

One of the parties in this case is the Asturias Sugar Central, Inc., which was included as defendant because it has in its favor a third mortgage on lots Nos. 1401, 1403, 1154, 872 and 542, and a fourth mortgage on lot No. 539, all of which lots are mentioned in the complaint as properties subject to the mortgage credit which the plaintiff bank

is trying to recover.

The defendant Asturias Sugar Central, Inc., besides denying generally and specifically each and every allegation of the complaint, sets up a counterclaim and prays in its favor for:

" * * * judgment against the plaintiff, Philippine National Bank, acknowledging the right of the Asturias Sugar Central, Inc., in the collection and execution, in preference to the right of action which the plaintiff Philippine National Bank has or might have; and that as soon as the latter obtains final judgment against the defendants, heirs of the deceased Hugo Paez and judicial administrator and the properties subject to the mortgage in favor of the plaintiff are sold, the proceeds of the sale or sales of said properties be applied, first, to the satisfaction of the total account of Don Hugo Paez in favor of the Asturias Sugar Central, Inc., giving the plaintiff and the other mortgage creditors the right to retain the balance after payment of the amount due to the defendant Asturias Sugar Central, Inc., to which preference it is entitled, under the terms of the written contract dated November 10, 1923, entered into between the plaintiff and the defendant Asturias Sugar Central, Inc.; and for such other remedy as the court may deem just and equitable." (Pages 47 and 48, Bill of Exceptions.)

After trial, the Court of First Instance of Iloilo rendered judgment. Of its dispositive part we transcribe only the following portion which is the subject of this appeal, leaving the rest as it has no connection at all with the controversy before us. Said portion reads as follows:

"Declaring that the Asturias Sugar Central, Inc., is entitled to collect, with preference over the Philippine National Bank, out of the amounts which the latter may secure in the foreclosure of the mortgage constituted by the deceased Hugo Paez on the properties described in the complaint, the sum of P18,602.88, Philippine currency, representing the unpaid balance of the advance made to the deceased Hugo Paez by the Asturias Sugar Central, Inc., for the planting, (Cultivation and harvesting of sugar cane on the lands mortgaged to said bank; provided, however, that the bank shall answer for this balance in favor of the Asturias Sugar Central, Inc., only to the extent of the proceeds of the sale of the mortgaged properties, in case said sale is effected, in conformity with law.

"If within the period of ninety days after the rendition of this judgment, the defendants Magdalena Rubin Vda. de Paez, Manuel Paez, Cristina, Clara and Magdalena, surnamed Paez, shall not have paid to the Philippine National Bank the amount of this judgment, it is ordered that all the mortgaged properties be sold, and the proceeds of said sale applied, as follows:

"First, to the payment of the amount of P18,602.88 to the Asturias Sugar Central, Inc. The difference, if any, between the total amount which the bank is entitled to collect and the amount of P18,602.88 which the Asturias Sugar Central, Inc., has a preferred right to collect, shall be applied to the payment of the judgment rendered in favor of the Philippine National Bank. After providing for the payment of the total amount which the Philippine National Bank is entitled to recover, including therein the sum of P18,602.88 awarded to the Asturias Sugar Central, Inc., the balance shall be applied to the payment of the judgment rendered in favor of the other defendant Esteban de la Rama or Sons of I. de la Rama. In case the proceeds of the sale are not sufficient to cover the amounts awarded to the Philippine National Bank and Esteban de la Rama, or Sons of I. de la Rama, in the judgment, it is ordered that an execution be levied on the other properties of the defendants Magdalena Rubin, widow of Paez, and Manuel, Cristina, Clara and Magdalena, all surnamed Paez, for the unpaid balance of said amounts." (Pp. 141 and 142, Bill of Exceptions.)

From that portion of the judgment of the trial court, the plaintiff bank appeals and contends that the court erred:

"1. In not holding that the preference mentioned in paragraph 4 of the contract Exhibit 1-A. S. C. is the preference in the collection of the loans on the crops made by the Central to Hugo Paez, in connection only with the proceeds of the sale of the sugar which had been given as a security for the payment of said loans;

"2. In holding that by the agreement Exhibit 1-A. S. C. the Philippine National Bank had granted to the

Asturias Sugar Central, Inc., the right to collect, in preference to the Philippine National Bank, the sum of P18,602.88 out of the amounts which the latter may secure from the foreclosure of the mortgage executed by the deceased Hugo Paez on the properties described in the complaint.

"3. In not holding that even if such had been the intention in the agreement Exhibit 1-A. S. C, Mr. Kalaw did not have any authority to bind the Philippine National Bank; and more so because there was no cause or consideration for the Philippine National Bank to assign its mortgage credit to the Asturias Sugar Central, Inc.

"4. In holding that the Asturias Sugar Central, Inc., in advancing money to Hugo Paez, did not do so for the account of the latter but for that of the Philippine National Bank.

"5. In not holding that even if Exhibit 1-A. S. C, the Philippine National Bank had assigned its mortgage credit to the Asturias Sugar Central, Inc., said assignment would only be by way of security and therefore the obligation of the bank to the Central would only be subsidiary.

"6. In not holding that even if the Philippine National Bank had assigned as a security to the Asturias Sugar Central, Inc., its mortgage credit against Hugo Paez, the subsidiary obligation of the Philippine National Bank was cancelled when the Asturias Sugar Central, Inc., without the consent of the Philippine National Bank, consolidated the accounts of the deceased Hugo Paez with those of Manuel Paez and Sixto Muyco, and required and obtained from the latter the mortgage Exhibit J to guarantee the total payment of the sum of P23,000 and interest.

"7. In not holding that the counterclaim of the Asturias Sugar Central, Inc., does not state sufficient facts to constitute a cause of action against the Philippine National Bank, and that the evidence presented by the Asturias Sugar Central, Inc., does not establish any cause of action against the Philippine National Bank.

"8. In not absolving the Philippine National Bank from the counterclaim of the Asturias Sugar Central, Inc.

"9. In not holding that, at all events, the fees of the attorney of the Philippine National Bank have preference over the claim of the Central, with regards to the proceeds of the sale of the real properties mortgaged to the Bank."

The agreement upon which the defendant-appellee central bases principally its counterclaim is contained in Exhibit 1-ASC, the text of which is as follows:

"Know all men by these presents:

"That we: Asturias Sugar Central, Inc., of the first part, a corporation duly established in accordance with the laws of the Philippines and represented in these presents by its Manager, Mr. Thomas J. Ford, who has the authority to enter into contracts as the present; and the Philippine National Bank of the second part, represented by the Manager of its Iloilo branch, Mr. Primitivo Kalaw, covenant and stipulate the following:

"First. The Philippine National Bank has granted loans to Messrs. Sabas Solinap, Generoso Solinap, Joaquin F. Herrerias, Pedro Palmares, and Hugo Paez, to develop the respective plantations of each and every one of them, and as security for the granting of said loans, the persons above mentioned constituted a special and preferential mortgage in favor of the Philippine National Bank of their own properties under the covenants and conditions in their respective indentures.

"Second. The Philippine National Bank, in accordance with the indentures executed by Messrs. Hugo Paez, Generoso Solinap, Joaquin F. Herrerias, Pedro Palmares, and Sabas Solinap, and as mortgage creditor of each and every one of the said persons, can foreclose their respective mortgages for noncompliance by said persons of their contracts or of any of their clauses.

"Third. The Philippine National Bank as mortgage creditor and by virtue of its rights as such, by these presents, empowers and authorizes the Asturias Sugar Central, Inc., so that it may grant crop loans to the

planters mentioned in the first paragraph of this document, to be used in the planting, cultivation, and taking care of the sugar in their respective plantations, for the term of five crops beginning with the 1923-1924 crop and ending with the 1928-1929 crop, forbearing, during this time from the right granted to it by the respective indentures, to foreclose the mortgage for noncompliance of its terms by the persons mentioned in the first paragraph of this document, on condition that the covenants contained in paragraph four of this contract are complied with.

"Fourth. During the five crops in which the Asturias Sugar Central, Inc., grants loans to the planters for the planting, care, and cutting of the sugar cane that the said Sabas Solinap, Generoso Solinap, Joaquin F. Herrerias, Pedro Palmares, and Hugo Paez may grow on their plantations, the Asturias Sugar Central, Inc., shall have preference in the recovery of any amount that it may have advanced for the purposes above enumerated, and of the balance, if any, shall be delivered to the National Bank, the sums mentioned in the plan of amortization of the mortgage deed of each planter with the bank, or to be applied to the payment of interest of said accounts with the exception of Hugo Paez, against whose balance a deduction of two thousand pesos shall be made to be applied to the payment of his account with Esteban de la Rama who holds a second mortgage.

"Fifth. If for any circumstance beyond the control of the Asturias Sugar Central, Inc., the latter shall not be able to grant the crop loans to all or any of the planters mentioned in the first paragraph, it shall immediately notify the National Bank in writing and by registered mail, not later than the 15th of October of each year, of its impossibility to grant loan or loans, in which case the National Bank shall take the necessary steps that it may deem convenient for the protection of its interests, considering as cancelled the obligation that it might have with the Asturias Sugar Central with respect to the planter or planters to whom the Central may not be able to extend loans in the future, but leaving as ratified and valid what has been performed with respect to the last crop.

"Sixth. The Asturias Sugar Central shall employ due diligence so that all the amounts that this entity may grant to the planters mentioned in paragraph one shall be invested in the planting, cultivation and care of the sugar cane, cutting and transporting the same, purchase of necessary work animals, payment of land taxes, and expenses until the cane has been converted into centrifugal sugar.

"Seventh. The Asturias Sugar Central monthly shall furnish the Philippine National Bank with a copy of the account of each planter, wherein shall appear the amounts taken during the month.

"Eighth. The Asturias Sugar Central, Inc., and the Philippine National Bank accept this contract in the terms in which it is executed." (Bill of Exceptions, pp. 127-131.)

The fundamental question raised by the parties is that relative to the preference granted to the appellee central in this agreement. While the central contends that said preference relates to the proceeds of the sale of the real properties mortgaged, the appellant bank contends that it relates only to the proceeds of the sale of the sugar given as security.

We notice in the fourth paragraph of the agreement Exhibit 1-ASC that the appellee central is granted "preference in the recovery of any amount which it may have advanced for the purposes above enumerated." It is true that said document does not expressly state that such preference relates to the proceeds of the sale of the lands in case they are sold as a result of foreclosure proceedings; but we understand that such preference could not refer to the proceeds of the sale of the products of the lands only, because, as rightly observed by the lower court, it was not necessary to grant such preference since it is granted by the law itself. With such preference alone, the appellee

central would surely not have taken the risk of advancing sums of money to said planters, knowing that the bank itself, a mortgagee of the latter, and naturally entitled by force of law to the same preference in the crop, did not venture to give them further loans on the crop. The central, in risking its capital, must have been actuated by some consideration more favorable to its interests or by some well-founded expectation, and under the circumstances of the case, such consideration or expectation can be no other than the security afforded by the said lands. On the part of the herein appellant bank, its then manager in that locality, Kalaw, would not have considered the granting to the appellee central of such preferential right to the value of the lands a matter of much importance, inasmuch as in those days he believed that these lands were of no value as a security because there was a controversy as to the ownership thereof between Paez who mortgaged them and his relatives.

Thus, the witness Garcia who directly and personally intervened in the negotiations which culminated in the execution of the agreement Exhibit 1-ASC, which he drafted himself, testifies without contradiction as follows:

"A" The true agreement, as I have already said, was that Mr. Primitivo KalaW said that with regard to the hacienda of Mr. Paez, it was of no value as a security because the greater part of the lands of said Mr. Paez were lands questioned by his relatives who claimed the ownership thereof; that the Bank was not there to litigate against the relatives of Mr. Paez, and it could not therefore recover that security. But to improve that security he told me that he authorized the central to finance Mr. Paez and in consideration thereof, the bank assigned to the central the preference which it had in the recovery by virtue of the mortgages which it had in its favor, and the bank renounced during the period covered by the agreement to execute the mortgages which it had in its favor, among which was that of Mr. Hugo Paez. He told me also that I should draft the document, which I did; and thereafter he signed the same; that fact already appears in my testimony because I already told it before; and if Mr. Kalaw were here I am sure that he cannot deny that he told me all this."

This testimony has been impugned as of little importance because it was made by Garcia, an interested party in this case. We find no sufficient reason in the record for disregarding the value and weight of such testimony nor for overruling the action of the trial court in accepting the same as an expression of the truth as to what, in fact, was the intention of the parties in entering upon the agreement in question, and in stipulating upon the said preference in favor of the appellee central.

And if the reference to Kalaw made by said witness Garcia was a challenge (it does not so appear), the appellant bank could have presented the testimony of said Kalaw, either in the form of a testimony directly given in court, or, if the facts so warranted, in the form of a deposition; but it did not do so.

As to the relevancy and competence of said testimony of Garcia, there can be no question, in view of the fact that the terms of the aforesaid agreement are not sufficiently clear as to the object of the preference herein disputed. The intention of the parties must therefore be taken into account and this becomes apparent, after a survey of all the circumstances of the case, in the testimony of Garcia which furnishes sufficient data for this purpose. Such is the procedure provided for by law and the jurisprudence in cases of this nature (See article 1281 and related articles, of the Civil Code; [Sections 288 and 289, Code of Civil Procedure; *Palanca vs. Fred Wilson & Co.*, 37 Phil., 506; *Kidwell vs. Carter*, 43 Phil., 953). As to whether such oral evidence is admissible, it is certainly so under the circumstances surrounding the case (See *Robles vs. Lizarraga Hermanos*, 50 Phil., 387).

With reference to the contention of the appellant bank in its brief, that Kalaw was not authorized to sign such document, the fact is that said Kalaw executed and signed it as manager of said appellant bank in its branch in Iloilo, where the agreement was entered into. Besides, the appellant bank, in its answer to the counterclaim of the appellee central, admitted the execution of said agreement without questioning the power or authority of Kalaw to execute the same in the name and representation of the herein plaintiff.

As to the cause or consideration of said contract, it was, as to the bank, the receipt of the balance which the farmer

may have at the end of each harvest, and the strengthening of its security, which for Kalaw, meant very little at the time, by the possibility of a gradual amortization of the indebtedness of the farmers to said bank.

The appellant bank contends that the advances made to Hugo Paez by the appellee central were for the account of said Paez, and not for the account of the bank. In this connection, it must be observed that, by virtue of such agreement, the one who received the sugar corresponding to Hugo Paez was the bank and not Paez for which reason, it was not stipulated in the agreement that Paez would answer directly for said advances nor was he made a party to said agreement.

Paez not being directly responsible for the aforesaid advances stipulated in said agreement, to which he was not a party, no one was directly responsible to the appellee central, under the terms of the aforesaid agreement, except the appellant bank with which alone the aforesaid central entered into the said agreement. The bank entered into such an agreement, not precisely to promote the interests of Paez nor to directly favor him, but to promote its own interests as creditor of said Paez, expecting to find, in the execution of such agreement, the means of collecting the debt of the aforesaid Paez, thus incidentally strengthening the security given by the latter. And such transaction was not and is not prohibited, expressly or impliedly to the plaintiff bank.

As to the legal effect which the acceptance by the appellee central of the mortgage Exhibit J of Hugo Paez himself may have produced upon the agreement Exhibit 1-ASC under consideration, the appellant bank contends that said mortgage had the effect of cancelling its obligation to the aforesaid central. But said mortgage Exhibit J does not guarantee the same amount claimed herein by the appellee central according to the testimony of Garcia, nor are the parties in the agreement Exhibit 1-ASC the same parties in the contract of mortgage Exhibit J. Consequently, this mortgage does not affect said agreement because it refers to a distinct obligation contracted by different parties.

For the foregoing considerations, we hold that the preference recognized in favor of the appellee central is supported by the facts and the law, and that the assignment of errors of counsel for the appellant bank are without merit. The judgment appealed from is hereby affirmed, with costs against the appellant. So ordered.

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

DISSENTING

Street and Villamor, JJ., :

We are unable to agree with the court in the conclusion reached in this case that the contract Exhibit 1-ASC creates in favor of the Asturias Sugar Central, Inc., for advances made by it to certain planters, a preference over the bank's credit, not only with respect to the proceeds of the crops made on their land but with respect to the proceeds of the land when the mortgage of the bank should be foreclosed. The language of the third and fourth articles of said contract sufficiently show, in our opinion, that the preference was intended to extend only to the proceeds of the yearly crops; and the circumstances surrounding the making of the contract clearly support this interpretation of the contract. The bank, it will be noted, had an old mortgage on the farms of certain planters and, under article 1877 of the Civil Code, upon the maturity of said mortgage the bank became, or would become, entitled to "all natural accessions, improvements, growing fruits, and rents not collected." Ford, the manager of the central, said that he had no doubt that, with the necessary assistance, the planters whose land was mortgaged would be able to pay off the mortgage from the proceeds of the crops; and as the central was naturally interested in taking care of its clients, the manager of the central decided to extend assistance. But this could not be safely

done without a waiver, upon the part of the bank, of its right to the produce of the land. Under these circumstances the contract in question was signed; and We quote its third and fourth clauses as follows:

"Third. The Philippine National Bank as mortgage creditor and by virtue of its rights as such, by these presents, empower and authorizes the Asturias Sugar Central, Inc., so that it may grant crop loans to the planters mentioned in the first paragraph of this document, to be used in the planting, cultivation, and taking care of the sugar in their respective plantations, for the term of five crops beginning with the 1923-1924 crop and ending with the 1928-1929 crop, forbearing,, during this time from the right granted to it by the respective indentures, to foreclose the mortgage for noncompliance of its terms by the persons mentioned in the first paragraph of this document, on condition that the covenants contained in paragraph four of this contract are complied with.

"Fourth. During the five crops in which the Asturias Sugar Central, Inc., grants loans to the planters for the planting, care, and cutting of the sugar cane that the said Sabas Solinap, Generoso Solinap, Joaquin F. Herrerias, Pedro Palmares, and Hugo Paez may grow on their plantations, the Asturias Sugar Central, Inc., shall have preference in the recovery of any amount that it may have advanced for the purposes above enumerated and of the balance, if, any, shall be delivered to the National Bank, the sums mentioned in the plan of amortization of the mortgage deed of each planter with the Bank, or to be applied to the payment of interest of said accounts with the exception of Hugo Paez, against whose balance a deduction of two thousand pesos shall be made to be applied to the payment of his account with Esteban de la Rama who holds a second mortgage."

The preference intended in the fourth clause evidently means, we think, a preference as defined in subsection 6 of article 1922 of the Civil Code; and the fund in which the preference was intended to be created consists of the proceeds of the crops. In this connection it should be noted that in the third clause the bank stipulates merely to forbear foreclosing its mortgage for a period of time, leading to the inference that, after the period stated should be ended, the mortgage might be foreclosed, with the usual incidents of foreclosure; and there is nothing to show that foreclosure resulting from the lapse of the; period stated or from noncompliance with the stipulations of clause 4, was intended to have any other effect than any ordinary foreclosure, which is to give the mortgage creditor the right to apply the proceeds of the mortgaged property to the payment of the secured debt. Again, under the fourth clause, the fund in which the preference is intended is supposed to be a fund resulting from the sale of the crops. The stipulation that the "balance" shall be delivered to the bank to be applied in part satisfaction of the mortgage shows that the parties were contemplating a balance derived from the sale of the crops. The words "preference," "amount," and "balance" all point with certainty to the fund derived from the crops. This interpretation is further borne out by the use of the word "balance" in the peculiar stipulation relating to the share of Hugo Paez. With respect to this individual it is stated that P2,000 should be deducted from his "balance" to be applied to the payment of the claim of a second mortgagee. This shows that the parties were thinking about the proceeds of the crop as the sole fund in which the preference was intended to be created. Certainly there was no intention to subordinate any part of the first mortgage lien on the land to the second mortgage of another person.

These reflections are so clearly deducible from the language of the third and fourth clauses of the contract in question that, in the opinion of the undersigned, oral testimony is not needed as an aid in the interpretation of those articles and much less is oral testimony admissible to vary their meaning.

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