

PAUL A. WEEMS, PLAINTIFF AND APPELLANT, VS. FRANKLIN BAKER CO. OF THE PHILIPPINES, PHILIPPINE NATIONAL BANK, AND ROMAN MABANTA, RECEIVER OF THE PHILIPPINE VEGETABLE OIL CO., INC...

G. R. No. 31978. March 05, 1930

Ponente: JOHNS, J.

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JOHNS, J.:

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Plaintiff cites and relies upon section 469 of the Code of Civil Procedure which provides:

"Rents and profits pending redemption.—The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. * * * "

He concedes that under the provisions of its mortgage, if its conditions were broken, the bank would have a legal right to enter and take possession of the property and collect the rent, but vigorously contends that there is no evidence to show that the conditions of the mortgage were broken, or that the bank ever entered, took or had possession of the property by or through Mabanta as its custodian or any one else. In the last analysis, that is the real question.

The mortgage expressly provides that for conditions broken, the bank may take actual possession of the property with or without an order of the court, and that it has the power "to lease, rent or hire any of the mortgaged property and collect, rent or payment therefor," and that "any funds received from rent, sales, etc., as above-mentioned may be applied by the mortgagee in payment of repairs, improvements, taxes, or any obligation incurred in connection with the mortgaged property, or in payment of the original indebtedness," and that "the power herein granted shall not be revoked during the existence of this mortgage, and all acts done by the mortgagee in conformity are hereby ratified."

The following appears in the corporate minutes of the bank of April 20, 1923:

"Oil Committee's Report was approved by the Board, said report being made a part of these minutes. * * *

('Custodian for mill properties

"For the purpose of providing economical care and supervision of the different oil properties that are now in the hands of the bank, it is recommended that the Chief Accountant of the Philippine Vegetable Oil Co., Mr. Mabanta, be appointed Custodian of such properties. He has had extensive training and long experience in the

affairs of the largest mill interest of the bank, and it is believed that he can supervise the care and upkeep of the mills that are not to be scrapped, collect rents of rented premises, and sell salvaged materials."

April 21, 1923, this letter was sent to the defendant Mabanta:

"Please be advised that the Board of Directors of this Bank at its regular meeting held yesterday appointed you Custodian of the oil properties belonging to the Philippine National Bank, effective April 20, 1923."

April 25, 1923, this letter was sent to him by the General Manager of the bank:

"In conformity with the action of the Board of Directors, you are hereby appointed to take over the property and management of the oil mills held by the Philippine National Bank. You will proceed at once to take charge of all the property and accounts, arranging with Mr. Abry for an inventory of all property."

It further appears from the decision of Judge Imperial of date July 28, 1928, in and to which plaintiff was a party, that the court then said:

"8. That the incomes of the properties leased to the Philippine Food Company from the time it came under the administration of the Philippine National Bank up to date were collected and received by the latter."

Mabanta also testified that pursuant to the instructions Which he received from the bank, he took possession of the property for and on account of the bank and as its custodian. Even so the appellant says:

"1. On May 5, 1923, Roman Mabanta was put in as treasurer of the Philippine Vegetable Oil Co., Inc., by the Philippine National Bank, due to its control of the Board of Directors of the Philippine Vegetable Oil Co., Inc. (See plaintiff's Exhibit 3.)

"2. He has not exhibited in this case one solitary document of any character whatsoever purporting to have been signed by him as 'Custodian for the Philippine National Bank.'

"3. He, thereafter, leased the properties of the Philippine Vegetable Oil Co., Inc., as 'Treasurer of the Philippine Vegetable Oil Co., Inc.' and not as 'Custodian for the Philippine National Bank.' (See plaintiff's Exhibit 4.)

"4. He endorsed all checks as 'Treasurer of the Philippine Vegetable Oil Co., Inc.,' not as 'Custodian.' (See plaintiff's Exhibits 6E—6-EE.)

"5. On checks which he indorsed twice, (plaintiff's Exhibits 6-0-6-EE) he did not style himself as 'Custodian for the Philippine National Bank' ever, but simply as 'Roman Mabanta'.

"6. In all of the letters, dating from June 16, 1923, to October 26, 1926, Roman Mabanta signed as 'Treasurer of the Philippine Vegetable Oil Co., Inc.,' and never as 'Custodian' for the Philippine National Bank. (See plaintiff's Exhibits 7-14.)"

It must be conceded that the above statements are verified by the record. It is also an undisputed fact that two days before the period of redemption expired from the sheriff's sale, through which plaintiff claims title, that on motion of the bank, the defendant Mabanta was appointed receiver of all of the property of the oil company, including the lands in question, and that he took the actual, physical possession of the property. Hence, it must be conceded that from the time the receiver was appointed, the bank was in the actual or constructive possession of the property, through the receiver, and as stated the lower court found as a fact, which is not disputed, that the incomes derived from¹ the property from the time it came under the administration of the bank were collected and received by the bank.

That is to say, from April 25, 1923, when the manager of the bank notified Mabanta that he was appointed to take over the property and management of the oil mills held by the bank and instructed him to take charge of all the

property and accounts and make an inventory, the bank has received the rents of all of the property including the rents in question, and under the terms and provisions of its mortgage, it had the legal right to take and receive such rentals after the terms and conditions of its mortgage were broken. It will be noted that the mortgage upon which the bank now relies was executed on November 18, 1920, and that the authority to Mabanta to take over the property was given on April 25, 1923, and that the mortgage now in question is for P3,500,000. It is also apparent that the oil company gave its "conforme" and approved the acts of the bank at the time of Mabanta's appointment as custodian of its property, which is confirmed by the fact that ever since his appointment, all of the rents in question were paid over and delivered to the bank.

The plaintiff concedes that any title which he claims to the property is subject and inferior to the mortgage lien of the bank of November 18, 1920, for P500,000, and there is no claim, or pretense by the oil company, the plaintiff, or any one else, that the mortgage has ever been paid, which would be a matter of proof, the burden of which would be on the plaintiff.

The bank is a domestic banking corporation organized under special charter of the Legislature, and in the absence of counterproof, we must assume that its business was conducted in the ordinary and usual manner that banks do business, from which it follows that after a lapse of two years and a half, the mortgage debt of the oil company would be due and owing. That is to say, in the ordinary course of banking business, in the absence of any counterproof, the court has the legal right to assume that the debt of the oil company to the bank was due and owing on April 25, 1923, and if so the conditions of the mortgage were broken, and under its provisions the bank would then have the legal right to collect and receive the rentals and apply them to the satisfaction of its mortgage debt, and the record is conclusive, in fact it is not disputed, that after the 25th of April, 1923, the bank has received the rents in question.

In the last analysis, the real question in this case is between the plaintiff and the bank, as to which one is entitled to the rents which have been paid by the Franklin Baker Company since the plaintiff purchased the property at the sheriff's sale on November 21, 1926. Plaintiff alleges that since that date, the reasonable rental was P1,550 per month, which on August 7, 1928, amounted to P31,878.22.

On November 29, 1924, the plaintiff recovered judgment by default against the oil company for P11,493.34, with interest and costs, to satisfy which the property of the oil company was sold by the sheriff on the 21st of November, 1925, and the sheriff's deed was issued on June 9, 1926, and the period for redemption expired on November 20, 1926.

Section 469 of the Code of Civil Procedure, upon which plaintiff relies, also provides:

"* * * But when any rents have been received by the judgment creditor or purchaser? or his or their assignee from property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; * * *"

That is to say, if the plaintiff should have and receive the rentals for the property from and after the sheriff's sale up to the time the receiver was appointed, it would be more than sufficient to redeem the property from the sheriff's sale, which in any event would be the limit of the amount which plaintiff would be entitled to recover.

As we analyze it the record is conclusive that on April 25, 1923, the terms and conditions of the mortgage of the bank were broken for failure of the oil company to pay the amount of the debt, and for such reason by the express provisions of the mortgage, the bank had the legal right to collect and receive the rents, and its mortgage being prior in time, such right would be continuous and was not divested by the sheriff's sale under which plaintiff claims title, from which it follows that any right acquired by the plaintiff at that sale is subject and inferior to the express terms and provisions of the mortgage, and there is no merit in the appeal.

There is nothing in the record tending to show that the bank has taken any action to foreclose its mortgage, and the question as to how and when it should be done is not before this court.

The judgment of the lower court is affirmed, with costs. So ordered.

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

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