

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. MABALACAT SUGAR CO., AND GEO. C. SELLNER, DEFENDANTS AND APPELLANTS.*G.R. No. 34960. September 25, 1931*

Ponente: IMPERIAL, J.

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This is an appeal taken by the defendants from the decision and its amendments rendered by the Court of First Instance of Pampanga, by virtue of which it was ordered: (a) That all the mortgaged personal property according to Exhibit C and its annex A, be sold at public auction and from the proceeds of the sale, the sum of P75,203.20 with interest at 10 per cent per annum, compounded monthly from June 20, 1930, plus 10 per cent of the amount as attorney's fees, be paid to the plaintiff, with costs; (b) that Geo. C. Sellner pay to the plaintiff any balance resulting from the insufficiency of the proceeds of the sale to cover the amount of the judgment, provided, however, that his liability shall not exceed the sum of P110,000; (c) that the Mabalacat Sugar Co. pay whatever balance remains unpaid in the event Sellner is found to be insolvent; (d) that within three days Sellner execute in favor of the plaintiff a document including in the mortgage, Exhibit C and its annex A, the sugar-cane crop corresponding to the agricultural year, 1930-1931, in default of which the said crop shall be understood to be included in said mortgage; and (e) that Rafael Fernandez, who has been appointed receiver at the petition of the plaintiff, qualify as such within five days upon filing a bond of P10,000.

In the months of November and December, 1928, and January, 1929, the Mabalacat Sugar Co., a domestic corporation, bound itself to deliver to the Compañia General de Tabacos de Filipinas during the 1928-1929 milling season 14,243.42 piculs of centrifugal sugar at a stipulated price, in consideration of certain sums of money it had received in advance. Said appellant failed to deliver all the sugar promised within the period specified and, according to the liquidation made on June 25, 1930, Exhibit G, it remained indebted in the amount of P75,203.20 including the capital and accrued interest agreed upon. To guarantee said obligation, the appellant, by virtue of Exhibit A, assigned to the herein appellee the chattel mortgage deed, Exhibit C and its annex A, which the other appellant, Geo. C. Sellner, executed in its favor. By virtue of this contract, Sellner mortgaged to the Mabalacat Sugar Co. all the sugar-cane crop corresponding to the agricultural year 1929-1930, the sugar to be derived therefrom, the work animals, the agricultural implements and the non-permanent improvements belonging to him that were to be found on the "Hacienda Concepcion", to guarantee the sum of P110,000 of which P95,000 had already been received by him in advance. The principal condition of said mortgage was that the same was constituted to secure the delivery by Sellner of the 1929-1930 crop mentioned; and it was further stipulated that in case, after a liquidation, the proceeds from the sale of the sugar obtained from the 1929-1930 crop are insufficient, Sellner would be bound to execute whatever documents would be necessary to mortgage, or to include in the mortgage already existing, the sugar-cane crop of the agricultural year 1930-1931.

The Mabalacat Sugar Co. having failed to pay the balance of its account with the appellee, the latter filed the present action to foreclose the mortgage on the personal property, Exhibit C, executed by Sellner.

The appellants assign the following alleged errors in the decision appealed from, and the amendments thereto:

"I. The trial court erred in not dismissing the complaint in this case.

"II. The trial court erred in ordering the sale of the property covered by the mortgage deed, Exhibit C.

"III. The trial court erred in denying the defendants motion for new trial.

"IV. The trial court erred in ordering the defendant, Geo. C. Sellner, to execute a document extending the scope of the mortgage, Exhibit C, so as to include the crop of the Hacienda Concepcion corresponding to the year 1930-1931, and in declaring that said Exhibit C includes the aforementioned 1930-1931 crop of the Hacienda Concepcion."

In the first three assignments of error, the appellants attempt to show that the court a quo should have dismissed the complaint and denied the remedies it granted the appellee. It is contended, that the action should not have prospered inasmuch as it was not proved that Sellner violated his obligation, the fulfillment of which is guaranteed by the aforesaid chattel mortgage. The contention is well founded. We have reviewed carefully all the evidence presented and admitted, and find nothing to justify the essential allegation of the complaint that said Sellner failed to deliver the crop or sugar produced during the agricultural year 1929-1930. The only two witnesses presented by the plaintiff-appellee did not testify on this important point; neither does the documentary evidence adduced shed any light nor offer any explanation as to it. It appears that the attorney for the plaintiff-appellee incidentally attempted to establish that such was the case, through motions filed after the original decision was rendered but, aside from the fact that such documents do not constitute evidence in themselves, they could not be admitted on the ground that a reopening of the case was not asked for nor granted.

As correctly sustained by the attorney for the appellants, the obligations of the Mabalacat Sugar Co. and Geo. C. Sellner are distinct and separate, with equally different and independent remedies. If the former failed to pay its debt, it could properly be compelled to make the payment, but the mortgage executed by the latter cannot be foreclosed unless he failed to fulfill the principal condition by not delivering the sugar-cane crop or the sugar derived therefrom corresponding to the agricultural year, 1929-1930, a thing which has not been established. The reason for this is that the delay of the Mabalacat Sugar Co. does not necessarily imply the non-fulfillment of Sellner's obligation for which the mortgage was created.

The last assignment of error refers to the judicial pronouncement to the effect that the mortgage includes the sugar-cane crop corresponding to the agricultural year, 1930-1931, and to the court's order to sell the same in order to apply the proceeds thereof to the payment of the Mabalacat Sugar Company's debt. The same reasoning expounded above militates in favor of the appellants on this point. The documents which the appellee attached to its motion, and with which it attempted to show that Sellner had not complied with his principal obligation, are not admissible as evidence and cannot be considered as such unless there has been a reopening of the case which in this instance has not been asked for nor granted by the court. At any rate it would be unjust and anomalous to admit such evidence over the objection and protest of the appellants' attorneys who insistently invoked the right of their clients to be heard at the trial so that they might prove their various defenses alleged in their answers to said motions. The authority given the courts to amend their decisions and orders should not be interpreted as giving them the power to deprive a party of its inalienable right to be heard and to present competent and pertinent evidence in its favor.

Wherefore, the decision and its amendments appealed from are hereby reversed and it is ordered that the case be remanded to the court a quo with direction that a new trial be held and that the parties be given an opportunity to present evidence on the alleged non-fulfillment of Sellner's obligation and the various special defenses interposed by him and his coappellant, the Mabalacat Sugar Co., without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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