

**SIM JANCO, APPLICANT. THE BANK OF THE PHILIPPINE ISLANDS,
PETITIONER AND APPELLANT, VS. TY CAMCO SOBRINO ET AL.,
RESPONDENTS AND APPELLEES.**

G.R. No. 36524. February 06, 1933

Ponente: HULL, J.

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HULL, J.:

Ty Camco Sobrino is the registered owner of two parcels of land situated in the municipality of Rosario, Province of Pangasinan, described in Transfer Certificates of Title Nos. 1803 and 1804.

On April 2, 1924 Ty Camco Sobrino executed a deed of first mortgage on these parcels of land in favor of the Philippine National Bank, and the mortgage was noted on the back of the transfer certificates of title.

On February 21, 1930, Ty Camco Sobrino executed a deed of second mortgage on the same properties in favor of Cu Yeg Keng and Simon A. Chan Bona, without having secured the written consent of the Philippine National Bank. The mortgagor obtained the certificates of title from this bank. The register of deeds for Pangasinan registered and noted on the Transfer Certificates of Title Nos. 1803 and 1804 the second mortgage.

Among the clauses of the mortgage it is provided:

"The Mortgagor shall not, during the existence of this mortgage, sell, or in any manner dispose of the mortgaged property, or incur the same with a second mortgage or lease it for more than a year without the written consent of the mortgagee.

"If at any time the mortgagor shall fail, neglect or refuse to pay any of the indebtedness hereby secured when due, or to comply with any of the conditions and covenants herein agree, * * *, or shall sell, dispose of, or remove, any portion of the mortgaged property or incur said mortgaged property with a second mortgage without the written consent of the mortgagee, the latter may forthwith foreclose this mortgage in accordance with law, * * *. After any condition of this mortgage has been broken, all other obligations of whatever nature of the mortgagor to the mortgagee shall be considered due and payable, * * *." Subsequently a third mortgage was given to the Bank of the Philippine Islands with a written consent of the Philippine National Bank.

On April 14, 1931, the Philippine National Bank filed in the Court of First Instance of Pangasinan, a petition praying that the annotation or inscription of the second mortgage be declared null and void, and ordered cancelled. On April 17, 1931, the Bank of the Philippine Islands filed its petition to substitute the Philippine National Bank as petitioner on the ground that it had acquired by purchase, all the rights, interests, and actions, of the latter in the first mortgage.

The Court of First Instance held that the petition of the bank was equivalent to questioning the validity of the second mortgage, which in its judgment could only be done in an ordinary action, and not under section 112 of the Land Registration Act (No. 496). The Bank of the Philippine Islands brings the case to this court on appeal relying on the first portion of the mortgage above quoted, and the second headnote of the Philippine Industrial

Company vs. El Hogar Filipino and Vallejo (45 Phil., 336).

"2. PACT AGAINST SECOND MORTGAGES OF REALTY REGISTERED IN THE REGISTRY OF PROPERTY UNDER THE TORRENS SYSTEM.—Where the property mortgaged is registered in the registry of property under the Torrens system provided by Act No. 496, as article 107 of the Mortgage Law is made inapplicable by express provision of section 124 of said Act No. 496, said stipulation not to make a new mortgage, not being contrary to law, morals or public order, is valid and is, therefore, an obstacle to the registration of subsequent mortgages in the registry of property."

While our practice is not as clear as it should be, we believe the Court of First Instance of Pangasinan to be correct in its holding that the cancellation of the second mortgage on the registry of property involves the validity of the second mortgage, a question not within the purview of the register of deeds. But, at the request of the parties we will not stop by disposing of the case on the technical ground of pleading, but proceed to consider the case on its merits.

The mortgage contract should be read in its entirety. (Cañizares Hiva vs. Philippine Trading Co., 4 Phil., 74; Hibberd vs. Estate of McElroy, 25 Phil., 164; Barretto vs. Santa Marina, 26 Phil., 200; Ignacio vs. Martinez and Martinez, 33 Phil., 576; and Hanlon vs. Haussermann and Beam, 40 Phil., 796.) If so read, it is at once seen that while the making of the second mortgage except with the written consent of the mortgagee is prohibited, the contract continues and states the penalty for such a violation, namely, it gives to the mortgagee the right to immediately foreclose the mortgage. It does not give the mortgagee the right to treat the second mortgage as null and void.

It is also to be noted that this case is a marked example of the inadvisability of relying upon a headnote. If the decision of the Philippine Industrial Company vs. El Hogar Filipino and Vallejo, *supra*, is read with care it will be seen at once that the headnote goes further than the decision and is therefore incorrect. We are of the opinion that the second mortgage is valid, which opinion renders it unnecessary to consider the question as to whether the bank, by delivering the certificate of title to the mortgagor, with a view of having the second mortgage registered, is not estopped from complaining of the execution of the second mortgage.

The orders of the Court of First Instance of Pangasinan are affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, Villa-Real, Abad Santos, Vickers, Imperial, and Butte, JJ., concur.

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