

LI HANG SHEONG, PLAINTIFF AND APPELLANT, VS. VENANCIO C. DIAZ, DEFENDANT AND APPELLEE.

G.R. No. 3989. August 28, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

The facts disclosed by the record are as follows:

First. That on the 1st day of July, 1904, a Chinaman by the name of Emilio Samson Dy Payco executed and delivered to Venancio C. Diaz his promissory note for the sum of P3,500, payable on or about, the 31st of December, 1904, and on the 19th of July, 1904, the said Dy Payco executed and delivered to the said Diaz a mortgage for the purpose of guaranteeing the payment of the said promissory note, upon a certain parcel of land, with all its edifices and improvements, which piece or parcel of land was located within the municipality of Guinobatan; a more particular description of which appears in paragraph 1 of the complaint filed in the present case.

Second. That the said mortgage was never registered in the registry of property by the said Venancio C. Diaz.

Third. That on the 31st day of July, the plaintiff herein, Li Hang Sheong, and the said By Payco entered into an agreement by which the latter agreed to sell to the former the said parcel of land, under a pacto de retro, for the sum of P4,000, and on the same day went to the office of a notary public for the purpose of executing the said agreement.

Fourth. After Li Hang Sheong and Dy Payco had arrived at the office of the said notary public, the notary public, accompanied by Dy Payco, went to the house of the said Venancio C. Diaz, for the purpose of ascertaining whether or not the said mortgage executed by Dy Payco to the said Diaz was still subsisting as a lien against the property in question.

Fifth. The notary public inquired of the said Diaz concerning the said mortgage and the said Diaz replied with the statement that if Dy Payco would pay to him the sum of P2,000 that he would cancel said mortgage.

Sixth. The notary public and Dy Payco returned to the house of the former and informed the said Li Hang Sheong concerning the statements made by Venancio C. Diaz, whereupon and on the 2d day of August, 1904, the said pacto de retro by Dy Payco in favor of Li Hang Sheong was executed and delivered, and Li Hang Sheong paid to Dy Payco the sum of P4,000.

Seventh. Between the 1st day of August, 1904, and the 6th day of September, 1904 (see Exhibits C, D, and E), Dy Payco paid to Venancio C. Diaz the sum of P3,000.

Venancio C. Diaz claims that the said P3,000 was received by him and applied to the payment of a current account between himself and Dy Payco, and that it was not a payment or part payment of the said mortgage indebtedness.

Li Hang Sheong contends that, in accordance with the promise of Venancio C. Diaz, the said mortgage was canceled by virtue of the fact that Dy Payco had paid to him not only the sum of P2,000, in accordance with the agreement, but had actually paid the sum of P3,000, and that this sum should have been applied to the liquidation of the mortgage indebtedness.

On the 25th day of January, 1905, the said Venancio C. Diaz commenced an action in the Court of First Instance of the Province of Albay, for the purpose of recovering of the defendant, Dy Payco, the sum of P3,500, the amount due on the said promissory note, and to subject the parcel of land in question to the payment of the said indebtedness. The defendant, Dy Payco, answering the petition of the plaintiff (Venancio C. Diaz), set up the following fact:

"1. That the property described in paragraph 2 of the complaint which had been mortgaged to the plaintiff, was, with the latter's consent, sold by the defendant with pacto de retro to Ly Ang Sheung, a resident of Legaspi, the plaintiff binding himself to cancel the mortgage document, delivering at once to the defendant the title deeds of the property in order that he might sell the same to the said Li Ang Sheung, from which sale the plaintiff recovered P3,000.

"In view of the foregoing, and without prejudice to the former answer, the defendant prays the court to declare the mortgage of the said property to the plaintiff to be canceled."

After hearing the evidence adduced during the trial of that cause, the court found that the P3,000 which Dy Payco had paid to Venancio C. Diaz, was properly applied to the payment of the current account existing between them and decreed that the plaintiff, Venancio C. Diaz, was entitled to a judgment for the sum of P3,500, with interest at the rate of 10 per cent from the 1st of July, 1904, and ordered that if the defendant, Dy Payco, did not pay the said sum, with interest and costs, on or about the first days of the following term of the court, that the court would issue an order directing the sale of the property in question.

On the 31st of October, 1905, the plaintiff in this action, Li Hang Sheong, commenced an action in the Court of First Instance of the Province of Albay against the said Venancio C. Diaz, for the purpose of securing an annulment of that part of the sentence of the court authorizing the sale of the property in question, rendered in the case of Venancio C. Diaz vs. Dy Payco, and for the dissolution of the receivership in said case also.

After hearing the evidence adduced during the trial of the cause, the lower court rendered a judgment in favor of the defendant, Venancio C. Diaz, declaring that the said mortgage was valid and ordered that the said property be sold in order to pay the amount of the judgment rendered in the cause of Venancio C. Diaz vs. Dy Payco.

From this judgment of the lower court the plaintiff appealed and made several assignments of error.

The lower court in its decision argued that because of the fact that Li Hang Sheong had actual knowledge of the existence of the mortgage in favor of Venancio C. Diaz at the time the former accepted the pacto de retro from the said Dy Payco, that he was bound by its terms and that said mortgage was an existing prior lien. That would be true, perhaps, if it were not for the fact which the evidence discloses, to wit, that he, Venancio C. Diaz, had agreed to cancel his mortgage upon said property when

Dy Payco should pay to him the sum of P2,000. This agreement on the part of Venancio C. Diaz was communicated to the said Li Hang Sheong by the notary public, who had gone into the said Diaz, representing Li Hang Sheong, for the express purpose of ascertaining the character of the lien which he held against the property of Dy Payco. Relying upon this promise of Venancio C. Diaz to cancel the mortgage when P2,000 were paid he entered into the contract with Dy Payco and paid to him the sum of P4,000. When Dy Payco had paid to Venancio C. Diaz the sum of P2,000, Li Hang Sheong had a right to rely upon the fulfillment of the promise of Diaz, to wit, that the said mortgage would be canceled. Nothing is shown in the record as to why Venancio C. Diaz agreed to

cancel his mortgage upon the payment of P2,000; the record does show, however, that he did agree to cancel his mortgage upon that condition. Not only was Diaz by virtue of his promise obliged to apply the payment to the liquidation of the mortgage but also by virtue of the provision of article 1174 of the Civil Code. The other account was a current account.

There is nothing in the record which shows that Li Hang Sheong knew of the pendency of the cause between Venancio C. Diaz and Dy Payco, brought for the purpose of foreclosing the said mortgage. In fact it is alleged by Li Hang Sheong that he had no knowledge whatever of the pendency of the said action.

From the record it is made clear to us that Li Hang Sheong entered into the said pacto de retro and paid Dy Payco the sum, of P4,000, relying upon the fact that the defendant, Venancio C. Diaz, had promised to cancel the said mortgage upon the payment of P2,000 by Dy Payco, and upon the promise that Dy Payco would pay the said sum of P2,000. This being true, we are of the opinion, and so hold, that the prayer of the petition of Li Hang Sheong in the present action should have been granted.

Much might be said upon the question of the effect of the failure of Venancio C. Diaz in not having his mortgage recorded, as well as the effect of the knowledge which Li Hang Sheong had concerning the existence of said mortgage and prior lien upon the property in question. The property in question was not registered in the name of Dy Payco. The mortgage could not, therefore, be recorded. But, whatever might be the conclusion from this discussion, we are of the opinion that Venancio C. Diaz agreed to cancel the said mortgage when he should receive the sum of P2,000 from Dy Payco, which sum he did actually receive, and even more, and that Li Hang Sheong entered into his contract with Dy Payco relying upon said agreement, and actually gave to Dy Payco the sum of P4,000 upon the said pacto de retro. Had Dy Payco not paid the agreed sum (P2,000), then a different question would be presented. It was the promise of Venancio C. Diaz which evidently induced Li Hang Sheong to part with his money and to enter into the said pacto de retro. Venancio C. Diaz should not now be allowed to prejudice Li Hang Sheong by violating that agreement.

Therefore the judgment of the lower court is hereby reversed and it is ordered and decreed that a judgment be entered annulling that part of the sentence of the lower court in the case No. 377 of that court, of Venancio C. Diaz vs. Emilio Samson Dy Payco, in which the lower court ordered that the property in question be sold for the purpose of satisfying the judgment of P3,500, with costs and interest against the said Dy Payco, and that the receivership in relation to said property be dissolved, with costs. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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