

**THE EMPLOYEES' CLUB, INC., PETITIONER AND APPELLEE,
VS. CHINA BANKING CORPORATION, OPPOSITOR AND APPELLANT.***G. R. No. 40188. July 27, 1934*

Ponente: DIAZ, J.

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This is an appeal taken by the oppositor-appellant China Banking Corporation, as mortgage creditor of the Intestate Estate of Jose Javier Go Chioco, from the order entered by the trial court on May 16, 1933, requiring it to surrender to the register of deeds of the City of Manila the duplicate of transfer certificate of title No. 21192 of the said registry, which it has in its possession, in order that the contract of lease evidenced by Exhibit A which was executed under judicial authorization on November 29, 1932, by the administrator of the intestate estate of said deceased Jose Javier Go Chioco might be noted thereon and entered in the corresponding records.

The oppositor-appellant contends that the order appealed from is not enforceable because the contract of lease to which it refers was not, and is not, by its nature, registerable in the registry of deeds. Its grounds are: that said contract does not create a real right and that, under the provisions of the Civil Code and the Mortgage Law, only real rights are susceptible of registration in the registry of deeds, with no other exception than those cases in which the lease is for a period exceeding six years, or the rent corresponding to three years is paid in advance, or there is an express covenant requiring the lease to be inscribed in the registry of deeds.

The only pertinent clauses of the contract of lease in question are the second and the fourteenth, which translated read as follows:

"2. That the term of this contract is three years from December 10, 1932, to November 30, 1935.

* * * * *

"14. In case of sale of the property where the subject matter of this lease is situated, the lessor is bound to impose upon the purchaser the obligation to respect the present contract of lease."

In passing, it should be stated that there is no dispute between the parties with respect to the following facts: that during the lifetime of Jose Javier Go Chioco, of whose intestate estate Francisco Gumila is the judicial administrator, the appellant granted him a loan of some two hundred fifty thousand pesos; that to secure the payment of said loan, said debtor mortgaged, among other properties belonging to him, his property at No. 419 Dasmariñas Street, Binondo, Manila, which is covered by the above-mentioned transfer certificate of title; that inasmuch as the obligation of said Jose Javier Go Chioco or his intestate estate, which was secured by the aforesaid mortgage, became due, the appellant instituted civil case No. 42578 of the Court of First Instance of Manila for the recovery of the debt; and that while said case was pending, the administrator of the intestate estate of said deceased mortgagor leased to the appellee, in the manner above stated, the third floor of the property referred to in said contract of lease Exhibit A.

The appellant, in support of its contention that said contract of lease was and is not, registerable, because its term

is only for three years and the rent corresponding to said term of three years has not been paid in advance, nor was there any covenant between the lessor and the lessee, requiring the contract to be inscribed in the registry of deeds. invokes and quotes Manresa's commentary on article 1571 of the Civil Code, which reads as follows:

"In Chapter I of this title, we have amply discussed the question whether or not a lease creates a real right in favor of the lessee. From our study of the preceding and the actual state of legislation, we are led to the conclusion that, in our law, the right created in favor of the lessee by reason of the contract is, as a general rule, personal in nature, and, by exception, real, when it is among the cases provided for in article 2, No. 5, of the Mortgage Law, that is, when the lease is for a period exceeding six years; the rent for three years is paid in advance, or there is an express covenant for its inscription in the registry of deeds, which are the only three cases in which the lease is registerable." (10 Manresa, page 637.)

The article commented on partly provides as follows:

"ART. 1571. The purchaser of a leased estate shall be entitled to terminate any lease in force at the time of making the sale, unless the contrary is stipulated, and subject to the provisions of the Mortgage Law."

The appellant forgets, or rather ignores, the fact that the property in question is registered, not under the old Mortgage Law but under Act No. 496, in accordance with the Torrens system; and it forgets furthermore that the latter Act expressly provides that all interests—and this word includes the interest arising from a contract of lease, like that which the petitioner-appellee has in its favor—in land registered in the registry under said Act are not only susceptible of registration therein but must necessarily be registered in order to affect third persons. Sections 51 and 52 of the said Act provide as follows:

"SEC. 51. Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry affecting registered land which would under existing laws, if recorded, filed, or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time of such registering, filing, or entering.

"SEC. 52. No new certificate shall be entered or issued upon any transfer of registered land which does not divest the land in fee simple from the owner or from some one of the registered owners. All interests in registered land less than an estate in fee simple shall be registered by filing with the register of deeds the instrument creating or transferring or claiming such interest and by a brief memorandum thereof made by the register of deeds upon the certificate of title, signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interest shall be registered in the same manner."

The appellant contends that the provisions of section 52 are not applicable in this case because, according to it, the section in question refers exclusively to real rights or interests in land registered in the registry of deeds. This is emoneous, on the ground that the Spanish text of the law is relied upon by the appellant whereas Act No. 496 was originally enacted by the Legislature in English. (Act No. 63.) The rule that governs in this jurisdiction is that the English text of a law should prevail over the Spanish text when the same had been promulgated in that language. (Section 15 of the Revised Administrative Code of 1917.)

The Spanish translation of the phrase: "All interests in registered land" used in the said section 52, which reads: "La inscripcion o registro de todo derecho real", is inaccurate because it restricts the meaning expressed by the phrase in question, which is, that all interests in registered land less than an estate in fee simple are registerable, without the necessity, however, of issuing a new certificate of title therefor.

What is stated herein is not in conflict with the provisions of section 51 which reads: "Every * * * lease * * * affecting registered land which would under existing laws, if recorded, filed, or entered in the office of the register

of deeds, etc.", because the phrase "which would under existing laws" used therein does not necessarily mean the Mortgage Law or the Civil Code. It also includes Act No. 496 of which said section is a part because, as already stated, said Act requires, rather than permits, the inscription in the registry of all rights or interests in registered land, whether the same arises from a mortgage, from an attachment, or from a lease or any other lien.

We should not be understood as giving no force to the provisions of article 1571 of the Civil Code with respect to the right of the purchaser of a leased estate to terminate the lease existing at the time of the sale. It would be too premature to decide said question at this time, for the reason that neither have the parties raised it nor do the alleged and proven facts call for the same. Perhaps said provisions will be of value especially in the appellant's case if, at the proper time, it becomes the purchaser of the property in question in the proceedings instituted by it against the intestate estate of the deceased Jose Javier Go Chioco for the recovery of the debt, on the ground that the case involves a lease executed after the constitution of the mortgage in its favor. However, this does not, for the reasons already stated, prevent the lease granted to the appellee from being inscribed in the registry of deeds in order to protect it, at least, from other liens that may be constituted on the property which is the subject matter of the lease.

Wherefore, this court considers it necessary for the appellant to surrender to the register of deeds of the City of Manila the duplicate of transfer certificate of title No. 21192, which it has in its possession, in order that said official may make a notation on the said document as well as on the original thereof and in the corresponding records of his office, of the contract of lease contained in Exhibit A.

The order appealed from is affirmed, with the costs against the appellant. So ordered.

Street, Malcolm, Villa-Real, Hull, Vickers, Imperial, and Butte, JJ., concur.

DISSENTING

AVANCENA, C. J.,

I agree with the dissenting opinion of Justice Abad Santos. My point of view, however, goes farther. Even granting that the lease of the property in favor of the plaintiff is registerable, it cannot be registered in so far as it affects the mortgage rights of the defendant previously registered. The purpose of the mortgage is to secure with the value thereof the payment of the debt. In this sense, it may be said that it affects the value of the property more than the property itself. It is for this essential reason in the mortgage that the debtor cannot diminish the value of the mortgaged property and, therefore, cannot execute any act which might in one way or another tend to cause its depreciation.

If the lease in favor of the plaintiff is registered, it would affect third persons and would have to be respected by the purchaser in case the property is sold. This would be the legal effect of the registration thereof. It can easily be understood that a lease for a period which must be respected, necessarily causes depreciation in the value of the property in case the same is sold, or, what is more, it may not be sold because of this circumstance. In this way, if in the proceedings already instituted by the defendant for the recovery of the debt, the property is sold, it will not obtain the price which it should otherwise obtain in the absence of the registered lease, and perhaps the amount due the defendant may not be recovered for lack of a purchaser of the property with said lien.

Inasmuch as the registration of the lease affects the mortgage rights of the defendant in the manner above stated, such registration cannot be made.

The circumstance that the defendant may perhaps be entitled to terminate the lease, although the same be

registered if it becomes the purchaser of the property, is of no moment, for the reason that such may not be the case and the defendant is entitled in all cases to be protected in its mortgage credit.

DISSENTING

ABAD SANTOS, J.,

I dissent.

I am of the opinion that a contract of lease of real property for a period not exceeding six years is not entitled to be recorded, unless the stipulated rent has been paid in advance for three or more years, or the parties thereto have expressly agreed that the same be recorded. (Mortgage Law, article 2 [5].)

Section 52 of Act No. 496 does not require or authorize mere personal covenants to be recorded. The term "all interests in registered land less than an estate in fee simple", means exactly what it says; it denotes estates in the land or real rights. It does not include personal contracts relating to real property, which can convey no interest in the land. (Storz vs. Kirsch, 78 Ind. A., 431; 138 N. E., 36.)

In this jurisdiction, the nature and effect of a contract of lease are governed by the provisions of the Civil Code. While by the common law a lease conveys an interest in land, under our law it does not; it is a mere personal contract. (Civil Code, arts. 1542 and 1543; 10 Manresa, p. 637; Berwind-White Coal Mining Company vs. Borinquen Sugar Company, 6 Porto Rico Fed., 252.) It creates no estate or interest in land.

"While the common law regards a lease for years as the grant of an estate, the civil law on the other hand regards a lease for years as a mere transfer of the use and enjoyment of the property. Hence, in the various civil-law jurisdictions, there are statutes defining a lease as a contract by which one party gives to the other the enjoyment of a thing at a fixed price, and as a contract in which one party undertakes to give to the other the use of a thing for a definite or indefinite period in consideration of a price certain. A lease has also been defined as a contract by which one of the parties agrees to give to the other for a fixed time and price the use or profit of a thing, or of his services. A lease is a commutative and a personal contract." (35 C. J., 1141.)

It is not necessary to the validity of a lease that it be recorded, but leases of real property which are not duly recorded have no effect as against third persons. (Civil Code, article 1549.) Under the Mortgage Law a lease of real property may be recorded (1) if it is for a period exceeding six years, (2) if rent has been paid thereon in advance for three or more years, and (3) if it contains a special covenant by which record thereof is required. (Art. 2 [5].)

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