

**THE BACHRACH MOTOR CO., INC., PLAINTIFF AND APPELLEE, VS.
JOSE ESTEVA AND TEAL MOTOR CO., INC., DEFENDANTS. JOSE
ESTEVA, APPELLANT.**

G. R. No. 40233. February 14, 1934

Ponente: MALCOLM, J.

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MALCOLM, J.:

This case presents the unusual circumstances of a chattel mortgage, the debt evidenced by a series of promissory notes executed by two parties, the holder of the mortgage retaining the mortgage but transferring the notes to a third party, the mortgagee foreclosing the mortgage, and the third party suing upon the promissory notes. A skeleton narration of the facts will more clearly elucidate the foregoing statement, and may be made as follows:

Beginning with 1927, Jose Esteva bought a number of motor trucks from the Teal Motor Co., Inc. The latter company assured Esteva that it would not make any attempt to repossess the property in less than three months after the due date of any one note, but this assurance, dated September 25, 1929, referred to the set of notes executed on that date. On April 8, 1930, a chattel mortgage was made which consolidated all of Esteva's indebtedness to the Teal Motor Co., Inc. The mortgage was for the sum of P54,500, and was given as security for the payment of twenty-two promissory notes maturing on specified dates. On April 12, 1930, the Teal Motor Co., Inc., endorsed the promissory notes to the Bachrach Motor Co., Inc. Esteva failed to make payments of certain notes as they became due. A proposition was made by him to the Teal Motor Co., Inc., for the formation of a corporation, but the papers for this purpose were never signed. On March 31, 1931, foreclosure proceedings were started by the Teal Motor Co., Inc., and shortly thereafter the trucks, trailers, and automobile of Esteva were sold to the highest bidder, which was the Teal Motor Co., Inc., for the sum of P20,000. Subsequently, on December 9, 1931, the instant action was begun by the Bachrach Motor Co., Inc., to secure the payment from Jose Esteva and the Teal Motor Co., Inc., of the amounts due under the promissory notes. The attempt of Esteva to present a cross-complaint for damages failed, and the case went to trial on the complaint of the plaintiff and the answers of the defendants. Judgment was rendered in favor of the plaintiff and against the defendants, jointly and severally, for the sum of P34,749.41, with interest at the rate of 12 per cent per annum from December 10, 1931, and with an additional sum of P3,483.72 as penalty, and in favor of the plaintiff and against the Teal Motor Co., Inc., for the sum of P20,000, with interest at the rate of 12 per cent per annum from December 10, 1931, with an additional sum of P2,000 as penalty, with costs against the defendants.

Appealing from the judgment just mentioned, Esteva makes the following assignments of error:

- "1. The trial court erred in not admitting Jose Esteva's amended answer dated February 12, 1932.
- "2. The trial court erred in admitting as part only of the special defense of Jose Esteva his cross-complaint dated June 15, 1932.
- "3. The trial court erred in stating that as the Teal Motor Co., Inc., has not accepted the proposition of Jose Esteva to form a corporation to assume his obligation, there was no novation of contract.

"4. The trial court erred in stating that the foreclosure of the mortgage of Jose Esteva was timely.

"5. The trial court erred in not deciding that the foreclosure of the mortgage of Jose Esteva by Teal Motor Co., Inc., was illegal.

"6. The trial court erred in not deciding that there was collusion between plaintiff and defendant Teal Motor Co., Inc., in depriving Jose Esteva illegally of his mortgaged properties.

"7. The trial court erred in not granting the motion of Jose Esteva for new trial.

"8. The trial court erred in deciding that the damages proved by Jose Esteva were speculative.

"9. The trial court erred in not adjudging plaintiff and defendant Teal Motor Co., Inc., responsible for the return of Jose Esteva's vehicles and for the payment of the corresponding damages."

With reference to the assigned errors, we may say generally that, we either find unsustainable or unnecessary to discuss errors 1, 2, 3, 4, 7, and 8, and that we find sustainable error 5 in toto and errors 6 and 9 in part.

Our Chattel Mortgage Law, Act No. 1508, in its section 3, defines a chattel mortgage as "a conditional sale of personal property as security for the payment of a debt, or the performance of some other obligation specified therein." Section 5 of the law sets forth the form of a chattel mortgage, which form was substantially followed in the present instance. Otherwise, the law is silent with reference to the facts before us. However, there are certain basic principles which it is only needful to write down in order to see clearly the correct result.

In the law of chattel mortgages the debt is the principal thing. The mortgage is but an incident to the debt. Separated from the debt, the mortgage has no determinate value. Customarily the foreclosure of the mortgage accompanied as it is by the debt follows in due course without mishap. Ordinarily also, the transfer of the debt carries with it the mortgage. So a sale and delivery of notes secured by a chattel mortgage, although unaccompanied by an assignment of the mortgage itself, authorizes the purchaser to act as the mortgagee's agent and to do whatever he could have done to enforce the mortgage. So likewise, whatever discharges the debt discharges the mortgage. All this unless there be an agreement to the contrary.

Possibly as good a presentation of the applicable law as any is that to be found in the old case of *Langdon vs. Buel* ([1832], 9 Wend. N. Y., 80). This was a case of a chattel mortgage being executed on a steam engine and with the debt shown by two notes. The notes which this mortgage was given to secure were assigned to a third party. The question was, did not the mortgage pass with the notes as incidents to them and should the action not have been brought in the name of the third party? The court answered: "A mortgage of either real or personal estate is but an accessory or incident to the debt, or the security which is given as the evidence of the debt. The assignment of the security passes the interest in the mortgage. The mortgage cannot exist as an independent debt. If by special agreement it does not accompany the security assigned, it is ipso facto extinguished, and ceases to be a subsisting demand."

In the instant case, the mortgage cannot be impliedly found to have passed as an incident of the debt because there was an agreement to the contrary. The Teal Motor Co., Inc., retained the mortgage and foreclosed it, while the Bachrach Motor Co., Inc., received the promissory notes and sued upon them. What was the legal effect of this unique arrangement knowingly entered into? As to the mortgage, it ceased to exist because there was no debt to which it could attach. The foreclosure proceedings were as a consequence a nullity. As to the debt, the promissory notes unpaid, they were obligations of Esteva to the Teal Motor Co., Inc., which assigned its rights to the Bachrach Motor Co., Inc. The latter, as a holder of the notes, could sue upon them. But what cannot be countenanced is the separation of the notes from the mortgage and both the foreclosure of the mortgage and a suit on the notes.

The rights of Bachrach Motor Co., Inc., are as above indicated and include the privilege of securing payment from Esteva of all that is due on the promissory notes. The rights of Esteva, who has been injured by an illegal foreclosure of the mortgage, consist in securing damages from the entities who caused him these damages. In this connection it may be said that the evidence is sufficient to establish the interlocking relationship between the Teal Motor Co., Inc., and the Bachrach Motor Co., Inc. The action of Esteva would, therefore, lie against both corporations. This conclusion is the more evident when we realize that to hold otherwise might simply result in permitting Esteva to prove damages against the Teal Motor Co., Inc., a corporation with possibly no visible assets. The corresponding obligations of the Bachrach Motor Co., Inc., the Teal Motor Co., Inc., and Jose Esteva will necessarily have to be determined at a new trial, at which the Bachrach Motor Co., Inc., can establish the debt due from Esteva and the latter can set off against the debt whatever damages he can prove at the trial.

Agreeable to the foregoing pronouncements, the appealed judgment will be set aside, and the record remanded for a new trial, with permission to the parties to file their corresponding pleadings, and present their evidence. So ordered, the costs of this instance to be paid by the plaintiff and appellee.

Villa-Real, Hull, Imperial, and Goddard, JJ., concur.

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