

GONZALO CHUA GUAN, PLAINTIFF AND APPELLANT, VS. SAMAHANG MAGSASAKA, INC., AND SIMPLICIO OCAMPO, ADRIANO G. SOTTO, AND EMILIO VERGARA, AS PRESIDENT, SECRETARY AND TREASURER RESPE...

G.R. No. 42091. November 02, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Nueva Ecija in an action for a writ of mandamus. The case is remarkable for the following reason: that the parties entered into a stipulation in which the defendants admitted all of the allegations of the complaint and the plaintiff admitted all of the special defenses in the answer of the defendants, and on this stipulation they submitted the case for decision.

The complaint alleges that the defendant Samahang Magsasaka, Inc., is a corporation duly organized under the laws of the Philippine Islands with principal office in Cabanatuan, Nueva Ecija, and that the individual defendants are the president, secretary and treasurer respectively of the same; that on June 18, 1931, Gonzalo H. Co Toco was the owner of 5,894 shares of the capital stock of the said corporation represented by nine certificates having a par value of P5 per share; that on said date Gonzalo H. Co Toco, a resident of Manila, mortgaged said 5,894 shares to Chua ChiU' to guarantee the payment of a debt of P20,000 due on or before June 19, 1932. The said certificates of stock were delivered with the mortgage to the mortgagee, Chu Chiu. The said mortgage was duly registered in the office of the register of deeds of Manila on June 23, 1931, and in the office of the said corporation on September 30, 1931.

On November 28, 1931, Chua Chiu assigned said his right and interest in said mortgage to the plaintiff and the assignment was registered in the office of the register of deeds in the City of Manila on December 28, 1931, and in the office of the said corporation on January 4, 1932.

The debtor, Gonzalo H. Co Toco, having defaulted in the payment of said debt at maturity, the plaintiff foreclosed said mortgage and delivered the certificates of stock and copies of the mortgage and assignment to the sheriff of the City of Manila in order to sell the said shares at public auction. The sheriff auctioned said 5,894 shares of stock on December 22, 1932, and the plaintiff having been the highest bidder for the sum of P14,390, the sheriff executed in his favor a certificate of sale of said shares.

The plaintiff tendered the certificates of stock standing in the name of Gonzalo H. Co Toco to the proper officers of the corporation for cancellation and demanded that they issue new certificates in the name of the plaintiff. The said officers (the individual defendants) refused and still refuse to issue said new shares in the name of the plaintiff.

The prayer is that a writ of mandamus be issued requiring the defendants to transfer the said 5,894 shares of stock to the plaintiff by cancelling the old certificates and issuing new ones in their stead.

The special defenses set up in the answer are as follows. that the defendants refuse to cancel the said certificates standing in the name of Gonzalo H. Co Toco on the books of the corporation and to issue new ones in the name of the plaintiff because prior to the date when the plaintiff made his demand, to wit, February 4, 1933, nine attachments had been issued and served and noted on the books of the corporation against the shares of Goip^lo H. Co Toco and the plaintiff objected to having these attachments noted on the new certificates which he demanded. These attachments noted on the books of the corporation against the shares of Gonzalo H. Co Toco are as follows:

"(1) Con fecha agosto 26, 1931, se recibio por el Secretario de la entidad demandada la notificacion de embargo expedida por el Juzgado de Primera Instancia de Nueva Ecija en la causa civil No. 6043, siendo partes Lucia Matias contra Gonzalo H. Co Toco y otros, siendo la cantidad reclamada P23,582.55.

"(2) Con fecha agosto 27, 1931, se recibio por el Secretario de la entidad demandada la notificacion de embargo expedida por eUuzgado de Paz de Cabanatuan, Nueva Ecija. en la causa civil No. 2322, siendo partes Samahang Magsasaka, Inc. contra Gonzalo H. Co Toco, abarcando las acciones o titulos Nos. 280 al 2,279 o 2,000 acciones por valor de mo,000.

"(3) Con fecha 27 de agosto, 1931, se recibio por el Secretario de la entidad demandada la notificacion de embargo expedida por el Juzgado de Paz de Cabanatuan, Nueva Ecija, en la causa civil No. 2323, siendo partes Samahang Magsasaka, Inc. contra Gonzalo H. Co Toco, abarcando las acciones o titulos Nos. 280 al 2,279 o 2,000 acciones por valor de P10,000.

"(4) Con fecha 28 de agosto, 1931, se recibid por el Secretario de la entidad demandada la notificacion de embargo expedida por el Juzgado de Primera Instancia de Nueva ficija en la causa civil No, 6049, siendo partes Hermenegilda Garcia contra Gonzalo H. Co Toco, siendo la cantidad reclamada P3,064.72.

"(5) Con fecha 29 de agosto, 1931, se recibí6 por el Secretario de la entidad demandada la notificacion de embargo expedida por el Juzgado de Primera Instancia de Nueva ficija en la causa civil No. 6052, siendo partes Licerio Soto contra Gonzalo H. Co Toco, y abarcando todas las acciones o titulo a nombre del Sr. Gonzalo H. Co Toco.

"(6) Con fecha septiembre 1, 1931, se recibí6 por el Secretario de la entidad demandada la notificaci6n de embargo expedida por el Juzgado de Primera Instancia de Manila en la causa civil No. 40211, siendo partes Asiatic Petroleum Co. (P. I.), Ltd. contra Gonzalo H. Co Toco y abarcando todas las acciones o titulos a nombre del Sr. Gonzalo H. Co Toco.

"(7) Con fecha septiembre 1, 1931, se recibí6 por el Secretario de la entidad demandada la notificacion de embargo expedida por el Juzgado de Primera Instancia de Nueva Ecija en la causa civil No. 6053, siendo partes Rufina Pacheco contra Gonzalo H. Co Toco, y abarcando todas las acciones o titulos a nombre del Sr. Gonzalo H. Co Toco.

" (8) Con fecha septiembre 2, 1931, se recibio por el Secretario de la entidad demandada la notificaci6n de embargo expedida por el Juzgado de Primera Instancia de Manila en la causa civil No. 40294, siendo partes Manuel Borja contra Gonzalo H. Co Toco y abarcando todas las acciones o titulos a nombre del Sr. Gonzalo H. Co Toco.

"(9) Que el enero 15, 1932, se recibí6 por el Secretario de la entidad demandada la notincacion de embargo expedida por el Juzgado de Primera Instancia de Manila en la causa civil No. 40244, siendo partes The Philippine Guaranty Co., Inc. contra Gonzalo H. Co Toco y otros y abarcando todas las acciones o titulos a nombre del Sr. Gonzalo H. Co Toco."

It will be noted that the first eight of the said writs of attachment were served on the corporation and noted on its records before the corporation-'received notice from the mortgagee Chua Chiu of the mortgage of said shares

dated June 18, 1931. No question is raised as to the validity of said mortgage or of said writs of attachment and the sole question presented for decision is whether the said mortgage takes priority over the said writs of attachment.

It is not alleged that the said attaching creditors had actual notice of the said mortgage and the question therefore narrows itself down to this: Did the registration of said chattel mortgage in the registry of chattel mortgages in the office of the register of deeds, Manila, under date of July 23, 1931, give constructive notice to the said attaching creditors?

In passing, let it be noted that the registration of the said chattel mortgage in the office of the corporation was not necessary and had no legal effect. (*Monserrat vs. Ceron*, 58 Phil., 469.) The long mooted question as to whether or not shares of a corporation could be hypothecated by placing a chattel mortgage on the certificate representing such shares we now regard as settled by the case of *Monserrat vs. Ceron*, supra. But that case did not deal with any question relating to the registration of such a mortgage or the effect of such registration. Nothing appears in the record of that case even tending to show that the chattel mortgage there involved was ever registered anywhere except in the office of the corporation, and there was no question involved there as to the right of priority among conflicting claims of creditors of the owner of the shares.

The Chattel Mortgage Law, Act No. 1508, as amended by Act No. 2496, contains the following provision:

"Sec. 4. A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province in which the mortgagor resides at the time of making the same, or, if he resides without the Philippine Islands, in the province in which the property is situated: Provided, However, That if the property is situated in a different province from that in which the mortgagor resides, the mortgage shall be recorded in the office of the register of deeds of both the province in which the mortgagor resides and that in which the property is situated, and for the purposes of this Act the City of Manila shall be deemed to be a province."

The practical application of the Chattel Mortgage Law to shares of stock of a corporation presents considerable difficulty and we have obtained little aid from the decisions of other jurisdictions because that form of mortgage is ill suited to the hypothecation of shares of stock and has been rarely used elsewhere. In fact, it has been doubted whether shares of stock in a corporation are chattels in the sense in which that word is used in chattel mortgage statutes. This doubt is reflected in our own decision in the case of *Fua Cun vs. Summers and China Banking Corporation* (44 Phil., 705), in which we said:

"* * * an equity in shares of stock is of such an intangible character that it is somewhat difficult to see how it can be treated as a chattel and mortgaged in such a manner that the recording of the mortgage will furnish constructive notice to third parties. * * *" And we held that the chattel mortgage there involved: "at least operated as a conditional equitable assignment." In that case we quoted the following from *Spalding vs. Paine's Adm'r.* (81 Ky., 416), with regard to a chattel mortgage of shares of stock:

"These certificates of stock are in the pockets of the owner, and go with him where he may happen to locate, as choses in action, or evidence of his right, without any means on the part of those with whom he proposes to deal on the faith of such a security of ascertaining whether or not this stock is in pledge or mortgaged to others. He finds the name of the owner on the books of the company as a subscriber of paid-up stock, amounting to 180 shares, with the certificates in his possession, pays for these certificates their full value, and has the transfer to him made on the books of the company, thereby obtaining a perfect title. What other inquiry is he to make, so as to make his investment certain and secure? Where is he to look, in order to ascertain whether or not this stock has been mortgaged? The chief office of the company may be at one place today and at another tomorrow. The owner may have no fixed or permanent abode, and with his notes in one pocket and his

certificates of stock in the other—the one evidencing the extent of his interest in the stock of the corporation, the other his right to money owing him by his debtor, we are asked to say that the mortgage is effectual as to the one and inoperative as to the other.' "

But the case of *Fua Cun vs. Summers and CMna Banking Corporation*, supra, did not decide the question here presented and gave no light as to the registr&jtkm of a chattel mortgage of shares of stock of a corporation under the provisions of section 4 of the Chattel Mortgage Law, supra.

Section 4 of Act No. 1508 provides two ways for executing a valid chattel mortgage which shall be effective against third persons. First, the possession of the property mortgaged must be delivered to and retained by the mortgagee; and, second, without such delivery the mortgage must be recorded in the proper office or offices of the register or registers of deeds. If a chattel mortgage of shares of stock of a corporation may validly be made without the delivery of possession of the property to tlj^mortgagee and the mere registration of the mortgage-is sufficient to give constructive notice to third partier we are confronted with the question as to the proper pl#ce of registration of such a mortgage. Section 4 provides that in such a case the mortgage snail be registered in the province in which the mortgago/resides at the time of making1 the same or, if he is a non-resident, in the province in which the property is situated; and it also provides that if the property is situated in a different province from that in which the mortgagor resides the mortgage shall be recorded-^iJbth in the province of the mortgagor's residence and in the province whlsre the property is situated.

If with respect to a chattel mortgage of shares of stock of a corporation, registration in the province of the owner's domicile should be sufficient, those who lend on such security would be confronted with the practical difficulty of being compelled not only to search the records of every province in which the mortgagor might have been domiciled but also every province in which a chattel mortgageby any former owner of such shares might be registered. We cannot think that it was the intention of the legislature to put this almost prohibitive impediment upon the hypothecation of shares of stock in view of the great volume of business that is done on the faith of the pledge of sMrs of stock as collateral.

It is a common but najxaccuracygeneralization that the J situs of shares of stock is at the domicile of the owner. The term situs is not one of fixed/or invariable meaning or usage. Nor should we lose sight of the difference between the situs of the shares and the situs ot^the certificates of shares. The situs of shares of stpjsic for some purpose? may be at the domicile of the owner and for j\$Kers at the domicile of the corporation; and even elsewhere. (Cf. *Vidal vs. South American Securities Co.*, 276 Fed., 855; *Black Eagle Min. Co. vs. Conroy*, 94 Okla., 199; 221 Pac, 425; *Norrie vs. Kansas City Southern Ry. Co.*, 7 Fed. [2d]. 158.) It is a general rule that for purposes pf execution, attachment and garnishment, it is not the domicile of the owner of a certificate but the domicile 6J/the corporation which is decisive. (Fletcher, *Cyclopedia of the Law of Private Corporations*, vol. 11, paragraph 5106. Cf. sections 430 and 450, Code of Civil Procedure.)

By analogy with the foregoing and considering the ownership of shares in a corporation as property distinct from the certificates which are merely the evidence of such ownership, it seems to us a reasonable construction of section 4 of Act No. 1508 to hold that the property in the shares maybe deemed to be situated in the province in which the corporation has its principal office or place of business. If this province is also the province of the owner's domicile, a single registration is sufficient. If not, the chattel mortgage should be registered both at the owner's domicile and in the province where the corporation has its principal office or place of business. In this sense the property mortgaged is not the certificate but the participation and share of the owner in the assets of the corporation.

Apart from the cumbersome and unusual method of hypothecating shares of stock by chattel mortgage, it appears that in the present state of our law, the only safe way to accomplish the hypothecation of share of stock of a

Philippine corporation is for the creditor to insist on the assignment and delivery of the certificate and to obtain the transfer of the legal title to him on the books of the corporation by the cancellation of the certificate and the issuance of a new one to him. From the standpoint of the debtor this may be unsatisfactory because it leaves the creditor as the ostensible owner of the shares and the debtor is forced to rely upon the honesty and solvency of the creditor. Of course, the mere possession and retention of the debtor's certificate by the creditor gives some security to the creditor against an attempted voluntary transfer by the debtor, provided the by-laws of the corporation expressly enact that transfers may be made only upon the surrender of the certificate. It is to be noted, however, that section 35 of the Corporation Law (Act No. 1459) enacts that shares of stock "may be transferred by delivery of the certificate endorsed by the owner or his attorney in fact or other person legally authorized to make the transfer." The use of the verb "may" does not exclude the possibility that a transfer may be made in a different manner, thus leaving the creditor in an insecure position even though he has the certificate in his possession. Moreover, the shares still standing in the name of the debtor on the books of the corporation will be liable to seizure by attachment or levy on execution at the instance of other creditors. (Cf. *Uy Piaoco vs. McMicking*, 10 Phil., 286, and *Uson vs. Diosomito*, 61 Phil., 535.) This unsatisfactory state of our law is well known to the bench and bar. (Cf. Fisher, *The Philippine Law of Stock Corporations*, pages 163-168.) Loans upon stock securities should be facilitated in order to foster economic development. The transfer by endorsement and delivery of a certificate with intention to pledge the shares covered thereby should be sufficient to give legal effect to that intention and to consummate the juristic act without necessity for registration.

We are fully conscious of the fact that our decisions in the case of *Monserat vs. Ceron*, supra, and in the present case have done little perhaps to ameliorate the present uncertain and unsatisfactory state of our law apitficable to pledges and chattel mortgages of shares of stock of Philippine corporations. The remedy lies with the legislature.

In view of the premises, the attaching creditors are entitled to priority over the defectively registered mortgage of the appellant and the judgment appealed from must be affirmed without special pronouncement as to/costs in this instance.[1]

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

Judgment affirmed.

[1] Resolution of November 20, 1935.

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