

B. A. BATTERTON, PLAINTIFF AND APPELLEE, VS. CONSUELO CABRATALA VIUDA DE VELOSO, ADMINISTRATRIX OF THE ESTATE OF THE DECEASED MARIANO G. VELOSO, AND GAVINO M. VELOSO, DEFENDANTS...

G. R. No. 42630. August 09, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

This action was instituted on December 2, 1932, in the Court of First Instance of Cebu, by the plaintiff-appellee against the defendants, Consuelo Carratala, widow of Mariano G. Veloso, as administratrix of the estate of her deceased husband, and Gabino M. Veloso for the purpose of recovering from said defendants the sum of P15,600, with interest thereon at the rate of 10 per cent per annum, evidenced by a promissory note, and for the foreclosure of a duly registered mortgage and real property executed by Mariano G. Veloso, on December 7, 1927, to secure the payment of the said amount in accordance with the terms of the above-mentioned promissory note, which reads as follows:

P15,600.00 Cebu, Cebu, P. I., December 1, 1927

"On or before five years from date, for value received, I promise to pay to Roberto Manulat, or order, at Cebu, Cebu, Philippine Islands, the sum of fifteen thousand six hundred pesos (P15,600), together with interest thereon at the rate of ten per cent (10%) per annum, payable monthly,

"This note is secured by real estate mortgage of even date herewith.

(Sgd.) "GABINO M. VELOSO "
Principal

"MARIANO G. VELOSO
"Surety"

This promissory note and the real estate mortgage executed to secure its payment were, on February 21, 1928, duly assigned, for a valuable consideration, to the plaintiff, B. A. Batterton, by Roberto Manulat, the payee of said note and in whose favor the mortgage was executed.

The defendant administratrix contends that she should be absolved from the complaint in view of the alleged fact that no notice of this assignment was given to Mariano G. Veloso in his lifetime and that payments on account have been made to Roberto Manulat after the assignment was made. She also contends that the execution of the real estate mortgage on December 7, 1927, constituted a novation of the note secured by it.

The first contention is untenable and the latter as to novation is absurd. A mortgage executed for the express purpose of securing the payment of a promissory note certainly does not extinguish that note.

With regard to the first contention of plaintiff, it is certain that the, note in question is a negotiable instrument and

that it was assigned to the plaintiff for value before its maturity.

Section 114 of the Code of Civil Procedure provides in part as follows:

"SEC. 114. Parties to Actions.—Every action must be prosecuted in the name of the real party in interest. But in the case of an assignment of a right of action, an action by the assignee shall be without prejudice to any set-off or other defense existing at the time of or before notice of the assignment; but this last provision shall not apply to a negotiable promissory note, or a draft or a bill of exchange, transferred in good faith and upon good consideration before maturity. * * *"

Article 153 of the Spanish Mortgage Law provides:

"ART. 153. In a mortgage created to guarantee negotiable obligations or deeds to bearer, when the mortgage interest is alienated or assigned, it shall be understood that the latter is transferred together with the obligation or with the deed, it being unnecessary to give notice thereof to the debtor, or record the transfer in the Registry."

"Apart from the statutes, it has been frequently held that the recording of an assignment of a mortgage will not give constructive notice thereof to the mortgagor, so as to invalidate subsequent payments on the mortgage debt made by him to the mortgagee, and actual notice of the assignment is necessary to charge the mortgagor, except where the mortgage is security for a negotiable note. * * *" (Jones on Mortgages, Vol. 1 [7th ed.], sec. 480.)

Aside from the above, the evidence of record shows that the principal maker of the promissory note, Gabino M. Veloso, who is the son of Mariano G. Veloso, deceased, knew of the assignment, as he actually intervened in that transaction and actually received the check issued by the plaintiff in favor of Roberto Manulat. The plaintiff also testified that Mariano G. Veloso, before his death, made interest payments after the assignment of the note in question.

However, in view of the above quotations from section 114 of the Code of Civil Procedure, article 153 of the Spanish Mortgage Law and from volume 1, 7th edition, of Jones on Mortgages, section 480, it is evident that actual notice of the assignment of the promissory note in question was not necessary to bind Mariano G. Veloso and consequently his estate.

The judgment of the trial court in favor of the plaintiff, B. A. Batterton, is affirmed with costs in this instance against the defendant-appellant Consuelo Carratala Viuda de Veloso in her capacity as administratrix of the estate of her deceased husband, Mariano G. Veloso.

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

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