

PEDRO G. VASQUEZ, PLAINTIFF AND APPELLEE, VS. AGUSTIN JOCSON AND JOSE ARANETA, DEFENDANTS AND APPELLANTS.

G.R. No. 43234. November 27, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendants Agustin Jocson and Jose Araneta from the judgment rendered by the Court of First Instance of Occidental Negros, the dispositive part of which reads as follows:

"Wherefore, the court renders judgment in this case ordering the defendant Agustin Jocson to pay to the plaintiff the sum of P42,301.11, with interest thereon at 8 per cent per annum from the filing of this complaint until fully paid, plus 10 per cent of said sum of P42,301.11 as attorney's fees. Said defendant Agustin Jocson is ordered to deposit the above amounts with the corresponding interest thereon in the office of the clerk of this court within the period of three months from the date this judgment becomes final, failing which, it is ordered that the hacienda San Isidro be sold at public auction and the proceeds thereof applied to the payment of the aforesaid amounts, without special pronouncement as to costs.

"It is so ordered."

In support of their appeal, the appellants assign seven alleged errors as committed by the court a quo in its said judgment, which will be discussed in the course of this decision.

The pertinent facts necessary for the resolution of the questions raised in this appeal are as follows:

On January 8, 1931, the plaintiff Pedro G. Vasquez sold and conveyed to the defendant Agustin Jocson the hacienda San Isidro, situated within the municipality of Bacolod, Occidental Negros, with certificate of title No. 12559 (Exhibit B), for the sum of P100,000, executing the public instrument Exhibit A to that effect. The hacienda was charged with two former mortgages in favor of the Philippine National Bank for the total sum of P5,000, and in the same instrument a third mortgage was constituted thereon by the purchaser in favor of the vendor to secure the payment of the purchase price. In the 7th paragraph of the deed of sale and mortgage Exhibit A, it is stipulated as follows:

"If the mortgagor at any time should fail or refuse to pay upon maturity any of the obligations secured by this mortgage or to comply with any of the conditions or agreements herein stipulated, or allow the value of the mortgaged property to suffer any material depreciation without giving additional security to the mortgagee; or should he sell or dispose of said property or withdraw any portion thereof or constitute another mortgage thereon or lease the same without the written consent of the mortgagee, the latter may immediately foreclose this mortgage in accordance with law, * * *."

After the execution of said deed of sale with mortgage (Exhibit A), the defendant Agustin Jocson paid the amounts of the first and second mortgages to the Philippine National Bank, converting that constituted in favor of the plaintiff Pedro G. Vasquez from a third into a first mortgage.

On March 16, 1933, while the said mortgage in favor of the plaintiff was in force, the defendant Agustin Jocson constituted a second mortgage on said hacienda San Isidro in favor of his codefendant Jose Araneta (Exhibit C), the corresponding deed having been presented for notation in the registry of deeds of Occidental Negros, on March 20, 1933.

On April 11, 1933, the defendant Agustin Jocson received from the plaintiff Pedro G. Vasquez the certificate of title (Exhibit B) of the hacienda San Isidro, issuing the following receipt (Exhibit 20) :

"I have received from Mr. Pedro G. Vasquez the title No. 12559 of the hacienda San Isidro, lot No. 555 of the Cadastre of Himamaylan, Occidental Negros, to enable the notation thereon of the mortgage of my vested rights in said hacienda in favor of Mr. Jose Araneta of the City of Hoik). "Hacienda Naval, Himamaylan, April 11, 1933.

(Sgd.) "Agustin Jocson"

On October 17, 1933, the defendant Agustin Jocson leased several lots of said hacienda to Delfin Verde (Exhibit D). In February 1934, he likewise leased several lots of the same hacienda to Amparo L. Jocson (Exhibit E). On December 11, 1933, he also leased several lots thereof to Juliano and Teodulfo Bxcija (Exhibit F).

On December 10, 1933, the plaintiff Pedro G. Vasquez wrote to the defendant Agustin Jocson a letter (Exhibit 19) which reads as follows:

"Vivero San Isidro, Dec. 10, 1933 "Mr. Agustin Jocson

"Hacienda Naval

"DEAR FRIEND: Inclosed herewith is your receipt for the title to the hacienda which you borrowed from me. Kindly deliver it to the bearer.

"If you already have funds I shall be very grateful if you can lend me any amount which will always be appreciated.

"My efforts to sell the hacienda are fruitless to date and I think it will be difficult to do so due to the prevalent crisis.

"Very truly yours,

(Sgd.) "P. G. VASQUEZ"

On February 6, 1934, the plaintiff Pedro G. Vasquez wrote to the defendant Agustin Jocson the following letter (Exhibit H):

"VIVERO SAN ISIDRO

"February 6, 193

"MR. AGUSTIN JOCSON

"Hacienda Naval

"MY DEAR FRIEND : Permit me to call your attention to the 7th clause of the mortgage deed of the hacienda San Isidro which has been violated with the loan obtained by you from Mr. Jose Araneta.

"Kindly inform me on this particular.

"Very truly yours,

(Sgd.) "P. G. Vasquez"

On February 27, 1934, the plaintiff again wrote to the defendant the following letter (Exhibit J):

"HIMAMAYLAN, Feb. 27, 1934

"MR. AGUSTIN JOCSON

"Hacienda Naval, Himamaylan

"In answer to yours of the 26th instant, please be informed that it is very far from me to ask for the cancellation of the mortgage of your vested rights in the hacienda San Isidro but I will surely declare due all your obligations contained in the deed of mortgage and foreclose the same immediately in accordance with law, as stipulated in the 7th clause of our mortgage contract, without bulging a bit therefrom; and for the sake of our friendship, which has never been perturbed but for infringement of said clause, it is not my desire to judicially foreclose your mortgage in order to avoid your paying the 10 per cent penalty on the total amount of the unpaid debt, aside from fees and costs, but only amicably demand immediate payment of the net proceeds of the hacienda San Isidro. I would surely regret to be compelled, in the absence of an amicable settlement, to bring the case to court.

* * * * *

"P. G. Vasquez"

Both the second mortgage constituted in favor of Jose Araneta and the leases in question were made by the defendant Agustin Jocson without the written consent of the plaintiff Pedro G. Vasquez.

Furthermore, the defendant Agustin Jocson cut the coconut and nanca trees which formed part of the improvements of the hacienda, also without the written consent of said plaintiff.

The first question to be decided in this appeal, which is raised in the first assignment of alleged error, is whether or not the lower court erred in not declaring that the plaintiff consented and by his conduct induced the defendant Agustin Jocson to execute all the acts complained of.

The pertinent part of paragraph 7 of the deed of mortgage sought to be foreclosed in this action, reads as follows :

"Seventh.—If the mortgagor at any time * * * should allow the value of the mortgaged property to suffer any material depreciation without giving additional security to the mortgagee; * * * or constitute another mortgage thereon or lease the same without the written consent of the mortgagee, the latter may immediately foreclose this mortgage in accordance with law, * * *."

As we have seen from the above statement of facts, the defendant Agustin Jocson, on March 16, 1933, while the mortgage Exhibit A, executed by him in favor of the plaintiff Pedro G. Vasquez, was in force, constituted a second mortgage on the same hacienda San Isidro in favor of his codefendant Jose Araneta (Exhibit C) without a previous written consent of the mortgagee, the said plaintiff-appellee Pedro G. Vasquez. The mortgagor, the herein defendant appellant Agustin Jocson, contends that said mortgagee impliedly consented to the constitution of the second mortgage in question inasmuch as he issued to the latter the above quoted receipt Exhibit 20 upon receiving the title of the hacienda San Isidro.

The plaintiff Pedro G. Vasquez, testifying on this point, stated that he was not informed of said second mortgage until the month of February 1934 when he saw it noted at the back of the certificate of title, and on the 6th of said month and year he addressed to said mortgagor the letter Exhibit H above quoted calling his attention to the infringement committed by him of the 7th clause of the mortgage deed, Exhibit A.

It is clear, therefore, that not only was there no written consent on the part of the mortgagee Pedro G. Vasquez to the constitution of the second mortgage by the mortgagor Agustin Jocson in favor of his codefendant-appellant Jose Araneta but also that immediately after the former had known of the constitution of said second mortgage, from the notation at the back of the certificate of title, he protested it and reminded said mortgagor of the

condition contained in the 7th clause of the mortgage contract Exhibit A.

Neither does it appear that the written consent of the mortgagee has been obtained relative to the contracts of lease executed by the mortgagor Agustin Jocson in favor of one Nava, Delfin Verde, Filemon Jocson, Juliano Excija and Antonio Sanchez (Exhibits D, E and F). While the fact that the plaintiff-appellee Pedro G. Vasquez became a guarantor of a loan granted by Warner, Barnes & Co., Ltfd., to Nava, in the document Exhibit 17 evidencing which, it appeared that Nava was a lessee of the hacienda San Isidro, may be considered an implied consent to said lease, said consent cannot, however, be extended to the other contracts of lease in question.

As to the cutting of 1,900 fruit-bearing coconut trees and about 50 nanca trees, also fruit-bearing, without the written consent of the mortgagee, the material value of the land was depreciated thereby inasmuch as said trees were permanent improvements on the hacienda San Isidro, said cutting being an infringement of the aforesaid 7th clause of the contract of mortgage Exhibit A.

The fact that the mortgagee did not take immediate action upon having knowledge of said cutting of trees and of the contracts of lease in violation of the 7th clause of the mortgage deed, Exhibit A, does not imply consent nor is it in itself sufficient to constitute a bar in equity to the institution of this action because it is necessary for the existence of said bar that the delay be inexcusable (*Tuason vs. Marquez*, 45 Phil., 381), which does not exist in this case because the mortgagor took action on the violation of the condition prohibiting the constitution of a second mortgage and lease on the property mortgaged without his written consent within a reasonable time and before the action prescribed.

Having arrived at the conclusion that the mortgagee Pedro G. Vasquez has not given his written consent to the constitution by the mortgagor of a second mortgage on the mortgaged property, nor to the lease of several portions thereof, and having taken action on the violation of the prohibitory condition to mortgage and lease, within a reasonable time and before said action had prescribed, the mortgage debt became due on account of said violation and the action for foreclosure of the mortgage brought by him lies (*Bank of the Philippine Islands vs. Ty Cameo Sobrino*, 57 Phil., 801).

As to the fifth assignment of alleged error, the only question to be determined relative to Exhibits 7, 8, 9, 12 and 14, which are promissory notes and receipts of different amounts received by the plaintiff Pedro G. Vasquez from the defendant Agustin Jocson, is the amount to be credited to the latter as interest which, according to him, should be computed up to July 2, 1934. It appears from our computation of the interest on the credits stated in Exhibits 7, 8, 9, 12 and 14 that the total amount of the interest granted by the trial court, from whose decision the plaintiff appellee Pedro G. Vasquez did not appeal, is greater than that of the interest claimed by the defendant-appellant Agustin Jocson.

With regard to the sum of ₱6,746.17 paid by the defendant-appellant Agustin Jocson to the Philippine National Bank at Iloilo on account of the plaintiff-appellee's debt, it appears that the latter credited the former in his statement of accounts Exhibit G the sum of ₱998.33 as interest thereon at 8 per cent per annum from July 14, 1932, when payment thereof was made to the bank, to May 20, 1934, although said defendant-appellant is not entitled to it inasmuch as with said payment he only paid part of his indebtedness to the plaintiff-appellee.

The defendant-appellant Agustin Jocson claims interest on the ₱35,000 paid by him to the Philippine National Bank to redeem the hacienda San Isidro from the first two mortgages constituted thereon in favor of the bank in question. Inasmuch as the defendant-appellant had bought said hacienda from the plaintiff-appellee subject to the aforesaid charges, he assumed payment of the indebtedness secured by said mortgages and he has no right, therefore, to charge the plaintiff-appellee, as vendor, interest on payment of his own debt.

The defendant-appellant Agustin Jocson insists that he be credited with the sum of P1,000 claimed by him to be the value of the lease granted to one Lorenzo Villafranca, of which he had no knowledge because the plaintiff-appellee had concealed it from him. The evidence shows that the defendant-appellant Agustin Jocson was not ignorant of the existence of said lease at the time of the execution of the mortgage deed Exhibit A. Furthermore, the law grants him, as purchaser of a leased estate, the right to terminate the lease, reserving to the lessee only the right to gather the fruits of the crop corresponding to the current agricultural year. The right to recover damages of the vendor belongs to the lessee (article 1571, Civil Code). The herein defendant was under no obligation to indemnify the lessee and in doing so he merely purchased the right granted to said lessee by article 1571 of the Civil Code to the fruits of the crop pending at the time of the sale of the hacienda.

As to the ten gondola cars included in the sale, which the vendor, the herein plaintiff-appellee Pedro G. Vasquez, did not deliver to the purchaser, the herein defendant-appellant Agustin Jocson, we agree to the price of P800 given thereto by the lower court which had the opportunity to see their state and condition before assessing them. The plaintiff should, therefore, be credited with P200 more.

The sum of P100 appearing in item (p) of the counterclaim should be deducted, being the same sum in item (m) thereof.

For the foregoing considerations, and not finding any error in the judgment appealed from, it is affirmed in toto, with costs to the appellants. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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