

**PEOPLES BANK & TRUST COMPANY, PLAINTIFF AND APPELLEE,
VS. W. J. ODOM, DEFENDANT AND APPELLANT.***G. R. No. 43670. February 25, 1937*

Ponente: IMPERIAL, J.

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The plaintiff brought this action to recover from the defendant the balance of an overdraft owing to it from the latter, and to foreclose the mortgage of properties to guarantee his obligation. The defendant appealed from the judgment of the Court of First Instance of Manila ordering him to pay to the plaintiff the sum of P138,403.68, with 9 per cent interest per annum from January 4, 1934, until fully paid, plus P500 as attorney's fees, and 4he costs. The judgment decreed that the principal and interest should be paid within three months, failing which the mortgaged properties will be sold at public auction, consisting of the rights, title and interest of the defendant in the contracts of lease of the buildings known as the "Sugar News Co. Building" and "Edward J. Nell Co. Building" as well as his rights, title, and interest in the land on which the two buildings are constructed, and that the proceeds of the sale should be applied to the payment of the amount of the judgment.

On January 12, 1927, the defendant entered into a contract with A. D. Gibbs (Exhibit E) whereby the latter authorized him to construct two concrete buildings of three floors each, upon his land on Loaisa Street, District of Binondo, City of Manila, described in certificate of title No. 27584. Upon that date, the building known as the Sugar News Co. Building was completely constructed and its first floor was occupied by the Peoples Bank & Trust Co., but the two upper floors were not fully equipped; the other building known as the "Edward J. Nell Co. Building" was then under construction. Under the contract the defendant bore all the expenses of construction of the "Sugar News Co. Building," and in consideration thereof Gibbs assigned to him all the rents which the building may produce for a period of eight (8) years from November 1, 1926, as to the first floor then already occupied, and as to the other floors to be equipped, from the date they are thus fully equipped. As to the other building, "Edward J. Nell Co. Building", the parties agreed that the defendant would also bear all the expenses of construction until it is fully completed, and in consideration thereof Gibbs assigned to him all the rents which it may produce for a period of eight (8) years and three (3) months from the date of the termination of its construction; this period, however, to be counted from the completion of each floor in the event that the floors composing the building should not be completed and equipped at the same time.

By virtue of contracts entered into with the plaintiff, the defendant obtained an overdraft from the former amounting to P110,000. To secure this overdraft, the defendant, on April 26, 1928, assigned to the plaintiff all his rights, title and interest in the contracts of lease with the Sugar News Company, Manila Machinery & Supply Co., Inc., and T. Yamamoto of the various portions of the "Sugar News Company Building", as well as the rights, title and interest which he had acquired in the land on which the said building was constructed under the contract which he had with A. D. Gibbs. As additional security, the defendant also assigned to the plaintiff his insurance policy No. 402894 for P100,000 issued by the Manufacturers Life Insurance Company (Exhibit C).

The overdraft was increased to P150,000, and to secure the payment thereof the defendant executed Exhibit B on

September 18, 1928, in favor of the plaintiff, whereby he assigned to the latter also by way of guaranty the same securities which he had given for the overdraft of P110,000.

On January 20, 1931, the overdraft was again increased to P165,000, and to guarantee the payment thereof the defendant executed Exhibit D whereby he assigned to the plaintiff his rights, title and interest in the contracts of lease with Edward J. Nell Company, El Progreso, Inc., and France & Goulette of various portions of the "Edward J. Nell Company Building"; in whatever contracts of lease of any portion of the same building which he may enter into in the future, and the rights, title and interest which he had in the land occupied by the building according to his contract with A. D. Gibbs on January 12, 1927.

On the same date, January 20, 1931, the plaintiff and the defendant executed Exhibit F, whereby the latter assigned to the former his right to collect the rents of the "Edward J. Nell Company Building" to secure the payment of the overdraft of P165,000 with interest at 9 per cent per annum. The annual rentals then produced by the building were the following: from Edward J. Nell Company P1,300, from El Progreso P300 and from the Lyric Film Exchange, Inc., successor of France & Goulette, P800.

Pursuant to the aforesaid contracts, the defendant drew funds upon the plaintiff by way of overdrafts, and on January 4, 1934, his account showed a balance against him in the amount of P138,403.68, including stipulated interest up to said date.

The defendant contends in his first assigned error that the contract Exhibit D took the place of the previous contracts Exhibits B and C. To resolve this point, it is necessary to take into account the intention of the parties expressed in the contract Exhibit D and the terms in which it was drawn. It was executed, according to the contract itself, as a result of the increase of the overdraft to P165,000 as well as of the additional guaranty given by the defendant, consisting of the assignment by way of guaranty of his rights in the contracts of lease of the Edward J. Nell Company Building and of his rights in the land occupied by the said building. Clause 3 of said contract stipulated that the contract Exhibit C of April 26, 1928, was incorporated therein and also constituted a guaranty of the payment of the overdraft as increased to P165,000. In the light of these facts, it is evident that the intention of the parties was neither to set aside the previous contracts nor to substitute Exhibit D therefor.

In his second assignment of error the defendant contends that the court should have held that the obligation contracted by him was with a term, and the parties not having fixed the date of payment, the plaintiff should have first brought an action to fix said date under article 1128 of the Civil Code providing that, when it is to be inferred from the nature and circumstances of the obligation that it was intended to grant the debtor time to pay, and the term is not otherwise stated, the courts should fix the date of the maturity of the obligation. The contract Exhibit D is a complement of the contracts Exhibits B and C, hence, its language and the intention of the parties must be interpreted in relation to and jointly with those of the latter under the provisions of article 1285 of the same Code. It was expressly stipulated in Exhibits B and C that the obligation contracted by the defendant shall expire and be due upon demand of the plaintiff, and in view of the fact that the latter deed was incorporated in Exhibit D as above stated and that the defendant was required by the plaintiff to pay all his indebtedness, it is plain that the obligation was without a term and that it became due and is demandable. Wherefore, article 1128 of the Civil Code relied upon is not applicable.

The subject of the third assignment of error is the ruling of the court that the contracts evidenced by Exhibits B, C and D are one of mortgage and that the plaintiff's action is for the foreclosure thereof. The defendant vigorously argues that none of the three contracts is one of mortgage, but an assignment of rights, because in none of said contracts did the parties intend to constitute a mortgage. A careful examination of the documents shows, in our opinion, that they were really mortgage contracts in as much as they were executed to guarantee the principal

obligations of the defendant, consisting of the overdrafts or the indebtedness resulting therefrom. It positively appears in each of them that the defendant assigned to the plaintiff all his rights in the contracts of lease, in the land, and in the insurance policy to guarantee his indebtedness resulting from the overdrafts. An assignment to guarantee an obligation is in effect a mortgage and not an absolute conveyance of title which confers ownership on the assignee. (Title Guaranty & Surety Co. vs. Witmire, 195 Fed., 41, 44; Polhemus vs. Trainer, 30 Cal., 685; Campbell vs. Woodstock Iron Co., 83 Ala., 351; Dunham vs. Whitehead, 21 N. Y., 131; Woodward vs. Crump, 32 S. W., 195.) In Exhibits C and D it was stipulated, among other things, that if the defendant should comply with all the conditions of the contracts and should pay his indebtedness, together with interest at 9 per cent per annum, the assignments would become null and void, otherwise they would remain in full force. If the parties' intention, as contended by the defendant, were that the assignments are absolute, and not by way of guaranty or mortgage, the stipulation would not have been made because it would be inconsistent with the will of the contracting parties. Wherefore, we hold that the third assignment of error is untenable.

As a corollary of his theory that the contracts are absolute conveyances, the defendant contends in his fourth and last assignment of error that his civil liability has ceased and that he does not now owe the plaintiff anything. The conclusions that we have reached in resolving the next preceding assignment of error show that this last contention of the defendant is equally untenable. The assignments he made not being absolute, and the plaintiff having established that he has not paid his total overdraft, inasmuch as he still owes the amount of money above stated, with interest, it is evident that he is not yet relieved of his obligation.

Before closing, it is necessary to pass upon an aspect of the case which substantially affects the rights of the defendant. Under the contracts, the plaintiff was authorized to collect the rents of the two buildings during the period of the existence of the contracts of lease, which period, in turn, might be that fixed in the contract entered into between the defendant and A. D. Gibbs. We use the conditional form because the contracts of lease have not been put in evidence, hence, we cannot point out the duration thereof with precision. On the other hand, the plaintiff liquidated the account of the defendant up to January 4, 1934, only, and in the appealed judgment it was decreed that the mortgaged rights be sold at public auction should the defendant fail to pay his indebtedness within three months. If the indebtedness has already been paid with the rents which the plaintiff failed to account for, then there would be no ground to take this step. If the indebtedness has not yet been fully paid, neither would it be proper to sell any of the rights in the mortgage contracts of lease because the latter have already matured according to the contract with Gibbs. For this reason, it is necessary to provide for the one and the other case. As to the insurance policy, nothing can be said about it as the appealed judgment is silent thereon.

In view of the foregoing, we affirm the appealed judgment, except that part ordering the public sale of the mortgaged rights, with the costs to the defendant and appellant. The plaintiff is ordered to account to the defendant for the rents received from the two buildings which have not been included in its liquidation, Exhibit G-4, and within ten days from notice of this judgment by the court of origin, it shall file a written liquidation showing the final state of the account of the defendant. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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