

THE MANILA TRADING & SUPPLY COMPANY, PLAINTIFF AND APPELLEE, VS. TOMAS SANTOS AND GENARO D. SAEZ, DEFENDANTS AND APPELLANTS.

G.R. No. 43861. September 26, 1938

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

On October 3, 1933, the plaintiff sold to the defendants a "Ford Truck chassis, Model BB, 157-WB, L. S. Dual Wheels standard equipment." For the unpaid balance of the price amounting to P2,200, the defendants executed twenty promissory notes, the first three for P150 each and the others for P100 each, payable successively on the 16th of every month beginning November 16, 1933. The defendants also bound themselves to pay interest at 12 per cent per annum. To secure these promissory notes, the defendants mortgaged to the plaintiff the "Ford Truck chassis" and accordingly executed on the same date the corresponding instrument which was acknowledged before a notary public on the 9th of the same month and later registered in the office of the registrar of deeds. As the defendants failed to pay any of the promissory notes, the plaintiff attached the chattel mortgaged, which was sold by the sheriff at public auction on February 24, 1934, in accordance with Act No. 1508, for the sum of P700 in favor of said plaintiff who was the highest bidder. The plaintiff credited the defendants with said amount, as a result of which the latter still owed P1,897.55. The plaintiff instituted the present action for the purpose of collecting this balance with its interest. In their answer the defendants set up the special defense that plaintiff's action cannot prosper because it is contrary to Act No. 4122. The case was submitted under the following stipulation:

"Come now the parties in the above-entitled case, by their respective attorneys, and to this honorable court respectfully submit this case for decision in conformity with the pleadings, for the reason that the only issue raised therein is the applicability of Act No. 4122 of the Philippine Legislature; and the parties accordingly agree:

"1. That the mortgage instrument was executed on October 3, 1933.

"2. That the mortgaged property was sold at public auction on February 24, 1934, by reason of the failure to pay some installments.

"3. That the complaint was filed on August 31, 1934.

"4. That the defendants admit that they were required to pay the sum of P1,897.55 on May 23, 1934, or after the public sale of the mortgaged property which took place while Act No. 4122 was already effective.

"Wherefore, it is respectfully prayed that this case be considered submitted for decision of this honorable court."

The defendants appealed from the decision of the court sentencing them to pay the plaintiff the sum of P1,897.55, with interest at 12 per cent per annum from February 24, 1934, and the costs.

- Under their first assignment of error the defendants contend that the court erred in not applying to this case the

provisions of Act No. 4122 which took effect on December 9, 1933. In the part pertinent hereto, this law provides that the vendor who has chosen to foreclose the mortgage shall have no further action against the purchaser for the recovery of any unpaid balance owing by the same, any agreement to the contrary being null and void. The prohibition undoubtedly refers to the deficiency judgment spoken of in section 260 of the Code of Civil Procedure which is applicable to real estate mortgages.

The court held that Act No. 4122 has no application, because otherwise it would be given retroactive effect. The defendants insist that the aforesaid law should govern, because it was already in full force and effect when the present action was brought. We are of the opinion that this pretension is unfounded. It is a legal principle embodied in article 3 of the Civil Code that laws have no retroactive effect unless it is otherwise provided therein. It is conceded that there is nothing in Act No. 4122 which states that its provisions have retroactive effect. In criminal law the principle of irretroactivity equally applies, except when the penal provisions are favorable to the accused (article 22, Revised Penal Code). As a corollary principle, rights and obligations are governed by the law by which they are created (article 1090, Civil Code). Rights and obligations arising from contracts have the force of law between the contracting parties and are governed by their stipulations (article 1091, Civil Code), and consensual agreements are binding provided they are not contrary to law, morals or public order (article 1255, Civil Code). In accordance with the rule of irretroactivity, Act No. 4122 is not applicable to this case, for the reason that the mortgage which gave rise to the plaintiffs rights was executed on October 3, 1933 and the aforesaid Act took effect only on December 9, 1933. The contention that said Act must be applied because the present action was instituted when it was already effective, cannot be sustained. The action is the correlative of a right and is nothing more than a remedy conceded by law to protect that right. If the plaintiff was entitled to a deficiency judgment under Act No. 1508, this right already existed when Act No. 4122 was approved and cannot be affected by the prohibition contained in the latter Act.

As to whether the plaintiff had a right to a deficiency judgment in conformity with the Chattel Mortgage Law, Act No. 1508, we have already so held in the cases of *Bank of the Philippine Islands vs. Olutanga Lumber Co.* (47 Phil, 20), and *Manila Trading & Supply Co. vs. Tamaraw Plantation Co.* (47 Phil., 513). In the latter case it was said:

" 'Under these two cases, the appellant argues:

" 'It is, therefore, beyond doubt that a chattel mortgage executed in accordance with Act No. 1508 is a conditional sale, or sale of the chattels with right of repurchase.

" 'A chattel mortgage under Act No. 1508 is a sale with right of repurchase, almost identical to that with similar name of the Civil Code; it was so held by this Honorable Court in *Meyers vs. Thein* (16 Phil., 303), and incidentally it was said in *Rosales vs. Reyes and Ordoveza* (25 Phil., 495) that " * * * a chattel mortgage, is in many respects similar to a sale under pacto de retro. * * * It is, therefore, clear that a chattel mortgage partakes of the character of the sale with right of repurchase of the Civil Code, and that it is not a mortgage within the meaning of said Code. What then is a contract of sale with right of repurchase? According to this Honorable Court, interpreting articles 1607 and 1518 of the Civil Code 'Conventional redemption is the right which the vendor reserves to himself to recover the thing sold, with the obligation to reimburse to the vendee the price of the sale, the expenses of the contract, and any other legitimate payment made by reason of the sale, and the useful and necessary expenses incurred for account of the thing sold.' " (*Lichauco vs. Berenguer*, 20 Phil., 12.)

" 'What would be the effect of a contract of sale with right of repurchase, if the vendor does not comply with the condition subsequent? Article 1509 of the Civil Code says that "the vendee shall acquire irrevocably the ownership of the thing sold," and no more. There is no law whatever providing that, if the value of the thing sold is not sufficient to cover the debt owing from the vendor to the purchaser, that is to say, the purchase price, the purchaser shall have an action against the vendor to recover the difference. Nor is there any such

provision in Act No. 1503, the Chattel Mortgage Law. All said Act No. 1508 provides on this point is what appears in section 14 thereof.

" 'A reading of said section 14 of Act No. 1508 will show that there does not exist any such right to maintain an action for the difference between the price obtained in a sale at public auction and that which must really be paid.'

"In answer to this argument, it must be noted in the first place that in *Meyers vs. Thein*, supra, it is not said that a chattel mortgage is in effect the same as a contract of sale with right of repurchase, but is a sale with right of repurchase almost identical to that of the Civil Code having said denomination. And in *Bachrach vs. Mantel*, supra, the court holds that the mortgagee in a chattel mortgage is the legal, and the mortgagor the equitable, owner. Secondly, what is held in those two cases is that a chattel mortgage is a conditional sale as security for the payment of the debt, according to section 3 of Act No. 1508. If the thing pledged is sold, it is for the purpose of securing the payment of the debt; so that if the price of the sale is insufficient to cover the debt, the debtor is not thereby relieved from the payment of the balance, just as the creditor cannot retain the surplus in case the price of the sale should exceed the debt secured. In the case of *Bachrach Motor Co. vs. Summers* (42 Phil., 8), we said that: 'The definition of the chattel mortgage found in section 3 of the Chattel Mortgage Law (Act No. 1508) is a description of the form in which the contract used to be commonly drafted in common-law countries rather than a statement of its legal effects; and while it is true that the contract has been customarily written in the form of an out and out sale, conditioned to be void upon performance of some condition subsequent, as for instance, the payment of the secured debt, nevertheless the equitable conception of the mortgage, now generally dominant, treats the mortgage merely as a security. There is no real analogy between the chattel mortgage contract and a conditional sale as understood in the civil law.'

"Section 14 of Act No. 1508 provides, with regard to the application of the proceeds of the sale of the chattels mortgaged, as follows:

" '* * * The proceed of such sale shall be applied to the payment, first, of the costs and expenses of keeping and sale, and then to the payment of the demand or obligation secured by such mortgage, and the residue shall be paid to persons holding subsequent mortgages in their order, and the balance, after paying the mortgages, shall be paid to the mortgagor or person holding under him on demand.'

"Which simply shows that the contention of the appellant is untenable.

"But where the same question now raised by the appellant was directly solved is in *Bank of the Philippine Islands vs. Olutanga Lumber Co.* (47 Phil., 20). In that case there was raised the question whether or not a creditor, holding a chattel mortgage as security for the payment of the debt, may maintain an action for the recovery of the balance remaining unpaid after the foreclosure of the mortgage. This court decided this question in the affirmative. In the body of the decision the court said:

" 'The theory of the court a quo evidently is, that a chattel mortgage is a conditional sale of the property, and, in case of a failure of the condition, to wit: to pay the debt, the sale becomes absolute and the creditor is obliged to resort to the mortgaged property for a payment of this debt, and the foreclosure of the mortgage is his sole recourse.

" 'While it is true that section 8 of Act No. 1508 provides that "a chattel mortgage is a conditional sale," it further provides that it "is a conditional sale of personal property as security for the payment of a debt, or for the performance of some other obligation specified therein." The lower court overlooked the fact that the chattels included in the chattel mortgage are only given as a security and not as a payment of the debt, in case of a failure of payment * * *.

" 'The theory of the lower court would lead to the absurd conclusion that if the chattels mentioned in the mortgage, given as security, should sell for more than the amount of the indebtedness secured, that the creditor would be entitled to the full amount for which it might be sold, even though that amount was greatly in excess of the indebtedness. Such a result certainly was not contemplated by the legislature when it adopted Act No. 1508. There seems to be no reason supporting that theory under the provision of the law. The value of chattels changes greatly from time to time, and sometimes very rapidly. If, for example, the chattels should greatly increase in value and a sale under that condition should result in largely overpaying the indebtedness, and if the creditor is not permitted to retain the excess, then the same token would require the debtor to pay the deficiency in case of a reduction in the price of the chattels between the date of the contract and a breach of the condition.

" 'Mr. Justice Kent, in the 12th edition of his commentaries, as well as other authors on the question of chattel mortgages, have said, that "in case of a sale under a foreclosure of a chattel mortgage, there is no question that the mortgagee or creditor may maintain an action for the deficiency, if any should occur." And the fact that Act No. 1508 permits a private sale, such sale is not, in fact, a satisfaction of the debt, to any greater extent than the value of the property at the time of the sale. The amount received at the time of the sale, of course, always requiring good faith and honesty in the sale, is only a payment, pro tanto, and an action may be maintained for a deficiency in the debt.' "

We hold, in conclusion, that the court did not err in declaring Act No. 4122 to be inapplicable and in ruling that the plaintiff is entitled to a deficiency judgment in accordance with Act No. 1508.

- The defendants pretend under their second assignment of error that the court erred in sentencing them jointly and severally to pay the sum hereinbefore mentioned with interest and the costs. It is argued that the promissory notes signed by them are imaginary or fictitious because they did not receive any money, and said notes represent the unpaid balance of the price of the Ford Truck chassis. The argument is so unfounded that we would be justified to disregard this assignment of error. However, it may be stated that said notes are not without consideration and that, as they are onerous contracts, their consideration is the undertaking or promise assumed by the defendants to pay their value (article 1274, Civil Code). As regards the amounts of the notes, there is no doubt that they are true and correct since their total represents the unpaid balance of the price of the chassis sold to the defendants.

- The last assignment of error refers to the denial of the motion for new trial filed by the defendants pro forma for purposes of their appeal. We hold, for the reasons already set forth in connection with the other assignments of error, that the court properly denied the motion for new trial.

The appealed judgment, being in accordance with law, is affirmed with costs against the defendants-appellants. So ordered.

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

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