

LUIS. B. YANGCO, PLAINTIFF AND APPELLEE, VS. ARSENIO CRUZ HERRERA AND SERAFIN WY PLACO, DEFENDANTS AND APPELLANTS.

G.R. No. 4463. October 06, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

On March 16, 1904, the defendant Herrera borrowed from the plaintiff P10,000, which was by two subsequent loans increased to P25,000, as security for which he mortgaged two parcels of real estate in the district of Ermita, in the city of Manila, P23,000 being charged upon the larger property and P2,000 upon the smaller. These mortgages contained the following clause:

"By agreement with the agent of the creditor I fix as the value of the aforesaid property the sum of P45,000 Philippine pesos, which sum shall serve as tipo (upset price) at the only auction which shall be held, in case the creditor is obliged to enforce his claim, hereby waiving any other valuation and any action which might be available to me to that end."

The judge of First Instance of the city of Manila ordered the foreclosure of the mortgages and the sale of the real estate without reference to the clause above quoted. The defendant Serafin Wy Placo was included in the foreclosure as a subsequent purchaser of the smaller parcel.

The debated question here is the effect of the clause fixing the tipo, that is to say, the basis of sale or upset price. In the case of *El Banco Español-Filipino vs. Donaldson Sim & Co. et al* (5 Phil. Bep., 418), we held such a clause in regard to chattels ineffective, and directed a sale, under the provisions of the Code of Civil Procedure. The pledge in that instance had been created before the new code went into effect. The mortgage now before us was executed while that code was in force, and it is contended that, for this reason, its provisions must be regarded as referring to the existing law embodied in that code, so that upon elementary principles for the construction of contracts, the parties thereto being held to have contracted with a knowledge of the law, their stipulations shall be construed so as to give them effect rather than so as to destroy them by holding them in conflict with it.

We are of the opinion that the principle of the *Donaldson Sim & Co.* case applies to this action. The clause quoted from the mortgage operates to essentially vary the procedure laid down in the code: first, it apparently provides that there shall be no more than one auction, whereas under the existing practice, the court may, in its discretion, for a variety of reasons, vacate a sale and order a resale of a mortgaged property; second, the provision for an upset price for less than which the property could not be sold contravenes the peremptory direction of the statute that the property shall be sold to the highest bidder; third, inasmuch as the mortgagee did not covenant to bid up to the tipo fixed in the mortgage and was under no obligation to do so, the result of an auction at which he failed to so bid would be either one of three consequences: (a) a resale under the new practice, in violation of the rights of other bidders and which must needs prove futile, because the rights and obligations thereat would not be varied from those of the first auction; or (b) a resale with an abatement of the price, thereby reducing the tipo in

accordance with certain provisions of the Spanish code and regulations, now repealed; or (c) a blockade of procedure, leaving the rights of the parties unadjusted with no apparent method of enforcing them. None of these consequences is compatible with the scheme of the Code of Civil Procedure which positively requires a final disposition of the property offered for sale, and admits of a resale not in the regular order of procedure, but only for special reasons satisfactory to the court. It is evident, therefore, that such a stipulation can not be enforced without substituting a procedure agreed upon by the parties, for the one prescribed by law. This it is not in the power of private individuals to do. Their agreements as to their substantive rights will be given effect, but not their covenants as to adjective rights or methods of procedure in the courts, which are already regulated by law and lie beyond their control.

This conclusion renders it unnecessary for us to determine what is the precise interpretation of this clause which itself is substantially a repetition of certain clauses of articles 127 and 128 of the Spanish Mortgage Law and of the one hundred and sixty-eighth and one hundred and seventy-second regulations for its enforcement. Suffice it to say that the provision of the mortgage is subject to the objection above pointed out.

From this decision it does not follow that the parties to a mortgage may not agree that the mortgagee shall make good to the mortgagor any difference between an agreed valuation and what the property brings at a sale under foreclosure, nor that he can not personally obligate himself to bid at the sale a stipulated price. We only hold that such a contract on the part of individuals can not interfere with the procedure of the courts.

The judgment of the Court of First Instance is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.

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