

B. H. MACKE, ADMINISTRATOR OF THE ESTATE OF REBECCA BAYER, DECEASED, AND ESTELLA L. P. MACKE, PLAINTIFFS AND APPELLEES, VS. JOSE RUBERT, DEFENDANT AND APPELLANT.

G.R. No. 4532. October 22, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

On the 14th day of December, 1904, Rubert & Guamis, to whose rights the defendant has succeeded, leased to F. A. Bayer the upper part of a house in Manila known as "The Grand Hotel." At that time Rebecca Bayer was the wife of F. A. Bayer. On the 14th day of December, 1904, F. A. Bayer and his wife borrowed of the plaintiff, Estella L. P. Macke, P5,000, and gave her a promissory note therefor, signed by both of them. Mrs. Bayer died on the 25th of August, 1905. On the 14th day of September, 1905, Bayer, for the purpose of securing the payment of the P5,000 above mentioned, pledged to Estella L. P. Macke all the furniture situated in the building leased by him from Rubert & Guamis. By the terms of the written contract of pledge, it was agreed between the parties that W. N. Chandler should take possession of the property therein described and hold the same for the purposes thereof. The evidence shows that, immediately upon the execution of the document, Chandler did take possession of the property in accordance with the terms of the agreement. The defendant in this case made no effort to show that such possession was not real and did not attempt to prove that Chandler was not the person who was in fact in possession of the property after the contract was made.

On the 1st day of January, 1906, Rubert & Guamis, to whose rights the defendant has succeeded, leased to Bayer the lower part of the "Grand Hotel." On the 30th of January, 1906, Bayer borrowed of Estella L. P. Macke 1,000 and gave his note therefor. On the 23d of July, 1906, he borrowed another P1,000 from her and gave her another note therefor. On the same day, the 23d day of July, 1906, Bayer and Estella L. P. Macke made a contract which recited that there was still due to her upon the various loans above mentioned P6,500, which Bayer was unable to pay. By this contract she agreed to extend the time of payment of the indebtedness and Bayer pledged to her all the property, furniture, and fixtures then in the "Grand Hotel." This contract provided, as did the contract of 1905, that W. N. Chandler should take possession of the property and hold the same for the purposes of the pledge. The evidence in the case shows that he did take actual possession and the defendant made no effort to show that Chandler was not the person who really was in possession of the property during the time covered by the pledge.

On the 1st day of August, 1906, Bayer executed and delivered to Estella L. P. Macke a bill of sale for all the property covered by the contracts of pledge for the expressed consideration of P6,500 and she then took the actual possession of the same. On the same day she made a contract with Bayer by the terms of which she leased to him all of such personal property for the term of six months for the rental of P100 a month. About the middle of September, 1906, B. H. Macke, her husband, by virtue of an arrangement between all the creditors of Bayer, among whom were Rubert & Guamis, took possession of the hotel and managed the business for about six weeks, as the representative of his wife and these creditors. On the 26th of October, the defendant recovered judgment before a justice of the peace of Manila against Bayer for the possession of the premises covered by the two leases

above' mentioned and for P2,250 rent due for the months of July, August, September, and October, 1906. Under this judgment Bayer was ejected from the premises, and for the purpose of collecting the amount thereof, the sheriff, under the direction of the defendant, levied the execution upon the personal property above mentioned, whereupon the plaintiffs brought this action of replevin to recover the possession of the same. Judgment was entered, in the court below in favor of the plaintiffs, and the defendant has appealed.

After the death of Mrs. Bayer, proceedings were taken in the court of First Instance of Manila for the settlement of her estate, and the plaintiff, B. H. Macke, was appointed administrator thereof, and on the 24th day of September, 1906, an order was made allowing the claim of Estella L. P. Macke against the estate for P5,000, the amount of the promissory note dated the 14th day of December, 1904, above referred to.

The principal claim of the defendant is that by virtue of article 1922, paragraph 7, of the Civil Code, he has a lien upon the property in question for the amount of the rent due him. That article is as follows:

"ART. 1922. With regard to specified personal property of the debtor, the following are preferred:

* * * * *

"7. Credits for rents and leases for one year with regard to the personal property of the lessee existing on the estate leased and on the fruits thereof."

The construction of this article was before this court in the case of Peña vs. Mitchell (9 Phil. Rep., 587, 595), and it was there said:

"But whatever construction be put upon the word, it is evident that it is applicable only to cases wherein the right of ownership in such property continues in the debtor, and the provisions of this paragraph, therefore, are not applicable to cases where the debtor has sold the property and parted with his ownership therein.

"Paragraph 7 of article 1922 not conferring a lien upon the property therein mentioned, and the property in question having become the property of the plaintiff in this faction prior to the date of the attachment in favor of the interveners, Rubert & Guamis, the attachment was illegal, * * *"

That case is decisive of this so far as the existence of any lien is concerned.

It remains to consider whether at the time the execution in this case was levied on the 26th of October, 1906, Bayer was still the owner of the property in question, or whether other persons had acquired interests therein. In this particular case it makes no difference whether Estella L. P. Macke had acquired an interest in the property as purchaser or as pledgee, for even if she were only a pledgee, by the terms of article 1922, paragraph 2, in connection with article 1926, paragraph 1, both of the Civil Code, she would be entitled to priority as pledgee, as against the defendant. That these pledges were valid and subsisting so far as the matter of taking possession of the property is concerned by the pledgee or a third person, can not be questioned. The evidence shows that Bayer, the original owner of the property, was never in possession thereof after the 14th day of September, 1905.

It is claimed, however, by the defendant that Bayer was the owner only of one-half of the property and consequently had no right to pledge the whole of it, the owner of the other half being the estate of the deceased wife. Even if this claim could be admitted, we do not see how it would aid the defendant, for it would show that as to one-half of the property at least, Bayer, the debtor of Rubert & Guamis, was not the owner.

The debt represented by the judgment of the defendant was not the debt of Mrs. Bayer nor the debt of the conjugal partnership. A part of it grew out of a contract of lease made by Bayer after the death of his wife. The rest of it, although it grew out of a contract made during the existence of the conjugal partnership, was for rent which accrued long after the dissolution of the partnership by the death of the wife. For installments of rent accruing a

year after the dissolution of the conjugal partnership, neither that partnership nor the estate of the deceased spouse is liable. (*Wilder vs. Peabody*, 37 Minn., 248.) Whether upon the dissolution of the conjugal society by the death of one of the spouses and an immediate breach of the contract of lease by an abandonment of the premises, the partnership would be liable for the damages caused by such breach, is a question which we do not find it necessary to decide. (See *Kalkhoff vs. Nelson*, 60 Minn., 284.)

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

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

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