

SALVACION RIOSA, PETITIONER, VS. STILIANOPULOS, INC., RESPONDENT.

G.R. No. 46002. April 19, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

This petition for certiorari was filed to reverse the decision of the Court of Appeals rendered in CA-G. R. No. 44309 entitled, Stilianopulos, Inc. vs. Salvacion Riosa, which originated from the Court of First Instance of Albay as Civil Case No. 5708.

In support of the remedy prayed for, the petitioner advances four propositions in her brief, to wit:

(1)

The parties cannot make any stipulation contrary to the express provisions of section 14 of Act No. 1508, otherwise known as the Chattel Mortgage Law.

(2)

Jurisdictional matters cannot be affected by any contract;

(3)

There was a failure to follow the necessary legal formalities at the public sale of the automobile in question; and

(4)

American jurisprudence and conscience, the public interest and considerations of morality dictate that the respondent take nothing from the petitioner in the light of the special circumstances of the case.

The facts found established by the Court of Appeals may be briefly stated as follows: The respondent, which is a corporation organized under the laws of the Philippines, sold to the petitioner on May 10, 1929, for P2,000 which was not then paid, plus one used car, a five-passenger 1929 model Chevrolet International Sedan 'AC, bearing factory No. 16857 and engine No. 119802. The petitioner turned over the used car to the respondent in partial payment of the Chevrolet purchased by her, and as to the P2,000, she executed a promissory note payable in monthly installments at an annual interest of 12 per cent from June 15, 1929, to January 15, 1931. To secure the payment of said note, the petitioner executed on May 10, 1929, a deed of mortgage under the provisions of the Chattel Mortgage Law, No. 1508, one of the clauses of which reads:

"It is further agreed, that in default of payment of the principal sum or any part thereof, or interest thereon, as and when the same shall become due and payable, the mortgagee may at once take and retain possession of all the said property and may remove it to the province in which is located the principal office of the mortgagee and may there proceed to enforce this mortgage in the manner provided by law, and in the event that the mortgagor fail to deliver to the mortgagee immediately upon such default the property covered by this

mortgage, then the mortgagee may proceed to sell such property forthwith, pursuant to section 14 of the Chattel Mortgage Law, without waiting for the expiration of the thirty-day period therein specified and without the ten-day notice therein provided for, the mortgagor hereby expressly waiving in the said event all right to such period and notice aforesaid and to any period or notice before sale to which he (they) may be entitled under the law. In case of the sale at public auction under foreclosure proceedings of the property herein mortgaged, or of any part thereof, the mortgagee shall be entitled to bid for the property so sold; or for any part thereof and to have the amount of its bid applied to the payment of the obligation secured by this mortgage without requiring payment in cash of the amount of such bid, such mortgagee, to have the right furthermore, in case the amount realized at such sale or sales should not be sufficient to cover the entire indebtedness then due in accordance with the terms of this mortgage, together with the interest and legal expenses, to sue the mortgagor for such deficiency and recover judgment therefore."

After paying P1,205.61, representing the total monthly payments made to the respondent from June, 1929, to May, 1930, plus P5.61 also paid to the respondent in June of the year last mentioned, the petitioner failed to make any other payment. Accordingly, the sheriff, at the respondent's instance, took possession of the mortgaged Chevrolet car for the purpose of selling it at public auction as provided by law, notifying, however, the petitioner by registered mail sent on February 5, 1932, of what he then intended to do. The petitioner received the notice on the 10th of the said month and year, and the sale was effected by the sheriff, as she had been previously informed, on April 9, 1932, in the municipality of Legaspi, Albay, not that of Tabaco where the petitioner resided at the time and from where the car had been taken some days before by the said sheriff. As the respondent was the highest bidder at the public sale, having offered to pay P550 for the car, the same was adjudicated to said respondent. After the sale and the deduction of the proceeds thereof from the respondent's credit, there remained a balance to be paid by the petitioner in the amount of P575.10 plus stipulated interest thereon at 12 per cent per annum, and the costs.

The Court of Appeals also found as an established fact that the petitioner, after acquiring the Chevrolet car as above stated, equipped it with an electric lighter and a horn, for which she spent P1.50 and P8 respectively; that the said articles were included in the sale, and that one month before the sale the petitioner received from Paulino Samesa an offer of P1,000 for the car, which she refused.

From a reading of the aforequoted clause of the mortgage executed by the petitioner in favor of the respondent, in connection with section 14 of Act No. 1508, it will be readily seen that the sale of the Chevrolet car in question was in accordance with the said clause and with the law. The said section reads in part:

"Sec. 14. The mortgagee, his executor, administrator, or assign, may, after thirty days from the time of condition broken, cause the mortgaged property, or any part thereof, to be sold at public auction by a public officer at a public place in the municipality where the mortgagor resides, or where the property is situated, provided at least ten days' notice of the time, place, and purpose of such sale has been posted at two or more public places in such municipality, and the mortgagee, his executor, administrator, or assign, shall notify the mortgagor or person holding under him and the persons holding subsequent mortgages of the time and place of sale, either by notice in writing directed to him or left at his abode, if within the municipality, or sent by mail if he does not reside in such municipality, at least ten days previous to the sale."

It seems clear that the purpose of the law in providing for the requisites and procedure to be followed before proceeding to the sale of a mortgaged chattel under the provisions of the cited law, is plainly to protect the rights of the mortgagor. Nothing which took place in the case before us can be said to have affected the public interest or that of a third person. At most, all that it affected was the personal interest of the petitioner as mortgagor, and nothing else. In view thereof, the remedy prayed for does not lie and will not prosper, because it is a general principle, also clearly provided by law, that a person may waive any right conferred on him by law, unless such

waiver is prohibited or is not authorized by law because against public interest or prejudicial to a third person.

"Rights granted by law may be waived, provided such waiver be not contrary to public interest or public order, or prejudicial to a third person." (Article 4, Civil Code.)

After a thorough examination and analysis of the clauses of the mortgage executed by the petitioner, particularly that quoted herein, we failed to find in the waiver contained therein anything which might be against public interest or prejudicial to a third person.

If the sale was effected in Legaspi where the respondent had its main office, and not in Tabaco where the petitioner resided, it was because the latter so expressly agreed and consented thereto. The aforequoted clause of the mortgage deed clearly shows this.

In the light of the facts and considerations above set out, we hold that the remedy sought does not lie.

Wherefore, the petitioner is denied and the case is dismissed, with the costs to the petitioner. So ordered.

Avancena, C. J., Villa-Real, Imperial, Laurel, and Concepcion, JJ., concur.

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