

TIRSO GARCIA, AS RECEIVER OF THE MERCANTILE BANK OF CHINA, PLAINTIFF AND APPELLEE, VS. ARSENIA ENRIQUEZ, DEFENDANT AND APPELLANT.

G. R. No. 47461. April 08, 1941

Ponente: MORAN, J.

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MORAN, J.:

On December 4, 1934, plaintiff, the Mercantile Bank of China, then a banking corporation organized and existing under the laws of the Philippine Islands, filed a complaint in the Court of First Instance of Manila for the foreclosure of the mortgage executed in its favor by the defendant, Arsenia Enriquez. The mortgage in part recites:

"Whereas, the mortgagor (Arsenia Enriquez) has heretofore made application unto the mortgagee for general credit facilities in the amount not to exceed P60,000 including the sum of P20,000 paid by the mortgagee to Albina de los Santos as purchase price for the same amount held by the latter against the mortgagor herein;

"Whereas, the mortgagor has offered and agreed to secure the repayment of any credit facilities that the mortgagee may grant to the mortgagor together with interest thereto or accruing thereon by means of a good and valid mortgage on her property as hereinafter enumerated and the mortgagee (the Mercantile Bank of China) has consented to grant the said credit facilities upon security."

The trial court dismissed the complaint, declaring that the foreclosure of the mortgage cannot be decreed for failure of proof of breach of the terms of the deed. This Court reversed this judgment and remanded the case for new trial, with instruction to the lower court to determine (a) the total indebtedness of the defendant secured by the deed of mortgage, and (b) whether or not the amount of P19,866.14, covered by the 36 checks issued by the defendant is chargeable to another separate account of said defendant with the plaintiff bank. After new trial, the lower court rendered judgment, ordering the defendant to pay the sum of P107,491.74 as her indebtedness on her overdraft account; the sum of P3,976.76 as her indebtedness on her acceptance account; the sum of P2,117.32 as additional account of said defendant; the sum of P2,500 as attorney's fees, or an aggregate sum of P113,586.08, with interest from October 2, 1939, of 12 per cent per annum upon P20,000; 10 per cent upon P91,468.70; and legal interest upon P2,117.32; and in the event of defendant's failure to pay this total amount within three months from the date the judgment becomes final, the properties mortgaged were ordered sold at public auction. From this judgment the instant appeal was taken.

Defendant contended that the amount of P19,866.14, covered by the 36 checks she issued on different dates, is chargeable to her overdraft account. The evidence, however, discloses that this amount was charged by the bank to her acceptance account consisting of drafts drawn against her by foreign companies and paid for by the bank; that statements were made out by the bank and sent monthly to the defendant, specifying the application of her payments in checks to her acceptance account; and that the defendant signed said statements approving the status of her account as thus sent to her monthly by the bank. Under these circumstances, she cannot now be heard to

contest the application of such amount to her acceptance account with the plaintiff bank, because, under article 1172, second paragraph, of the Civil Code, "if the debtor should accept from the creditor a receipt which recites the application to be given the payment, he cannot contest it, unless there should be ground for treating the contract as void."

Defendant contends however, that as her overdraft account is more burdensome than her acceptance account, her payments should have been applied to the former, citing, to this effect, article 1174 of the Civil Code. But by the express provision of the said article, the same is applicable only "when the payment cannot be applied in accordance with the preceding rules," one of which being article 1172 aforecited.

Defendant also contends that the sum of P3,976.76, representing the balance of her acceptance account with the plaintiff bank is not covered by the deed of mortgage and, therefore, its recovery can be had only in an independent proceeding. We think there is sufficient ground to consider defendant's acceptance account as included in the credit facilities covered by the mortgage, but even assuming that it is not so included, the result is the same. Since the acceptance account, though constituting a separate cause of action, has been properly joined in the foreclosure suit, any surplus after the sale of the mortgaged properties may be applied thereto there being no junior encumbrances.

Judgment is affirmed, with costs against appellant.

Imperial, Diaz, Laurel, and Horrilleno, JJ., concur. Avanceña, C. J., did not take part.

Judgment affirmed.

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