

J. W. MEYERS, PLAINTIFF AND APPELLANT, VS. WILLIAM THEIN ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 5577. February 21, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

William Thein is indebted to J. W. Meyers for a loan in the sum of P1,000. As security for payment of the loan, William Thein mortgaged to J. W. Meyers certain furniture owned by him which constitutes the fittings of a saloon situated in Calle Real, No, 124, in the district of Intramuros, Manila, to which effect a public instrument was executed on the 20th of June, 1908.

The premises at No. 124 Calle Real, district of Intramuros, are owned by Flora Broto, who leased the place to William Thein. The latter opened a saloon therein, of which the said furniture formed a part.

William Thein, as lessee, was indebted to the lessor, Flora Broto, in the sum of P215, for rent due for the months of June and July, 1908.

In the months of June and July, 1908, the furniture in question was in the place leased by William Thein, and, at the request of J. W. Meyers, was removed therefrom by the sheriff, notwithstanding the protest of Flora Broto, the lessor.

The said furniture was sold by the sheriff, and the proceeds of the sale amounted to P972.30.

Preference with respect to payments to be made from the above sum is claimed on the one hand by J. W. Meyers, as mortgage creditor, or rather as pledgee under contract, and on the other by Flora Broto, as mortgage creditor by operation of the law.

The contract of mortgage, or rather of pledge, invoked by J. W. Meyers, appears in the record.

The mortgage or legal pledge invoked by Flora Broto arises under article 1922 of the Civil Code, which provides:

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

"1. * * * * *

* * * * *

"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." * * * * *

Paragraph 2 of said article also contains the following:

"Credits secured by a pledge which may be in the possession of the creditor, with regard to the thing pledged and to the extent of its value."

Were this contest as to preference to be based only on the provisions of article 1922, paragraph 7, in favor of the

lessor who is a defendant herein, and on paragraph. 2 in favor of the creditor-pledgee who is the plaintiff, it would have to be decided in favor of the lessor, for the reason that, in order-that the creditor-pledgee may enjoy the preference over the thing pledged to him, it is a necessary condition that the same shall be in his possession. As in this case, however, the furniture in question was not in the possession of the creditor Meyers, but in that of the debtor, William Thein, it follows that the creditor Meyers can not claim the preference prescribed by paragraph 2 of article 1922 of the Civil Code; while the lessor Broto, on the other hand, should have the preference specified in paragraph 7 over such personal property existing on the premises leased and in possession of the debtor Thein.

But the present contention as to preference does not rest upon the above-mentioned paragraphs 2 and 7 of article 1922 of the Civil Code; on the part of the lessor it is based upon said paragraph 7 of article 1922 of the Civil Code, and, on the part of the creditor-pledgee, upon Act No. 1508 of the Philippine Commission, enacted July 2, 1906, under the provisions of which a chattel mortgage was executed by Thein in favor of Meyers.

Between the said Act and paragraph 2 of article 1922 already cited, as well as article 1863 of the Civil Code, there is now a radical difference.

While according to the Civil Code it is an essential requisite, in constituting a contract of pledge, that the creditor, or a third person named by common accord, be placed in possession of the pledge, under Act No. 1508 of the Philippine Commission this is not necessary in order to make the pledge valid and efficient as against the debtor; it is only necessary, to constitute a valid pledge as against third persons; notwithstanding this exception, the registration of the contract of pledge or mortgage of the personal property so given as security, in the registry of titles of the province, is equivalent to the actual delivery of possession to the creditor-pledgee.

The instrument of pledge or chattel mortgage executed by Thein in favor of Meyers is recorded in the registry of mortgages of its proper class (B. of E., 7).

Taking into consideration the different legal grounds on which each party bases his claim for preference over the other with respect to the personal property of the common debtor, it becomes necessary to determine in whose favor the contention should be decided, inasmuch as the proceeds of the sale of the said personal furniture is not sufficient to pay both claims.

The Court of First Instance of the city of Manila decided the question in favor of the lessor, granting to the defendant, Flora Broto, preference in the payment of her claim; the judgment "sentences William Thein, the other defendant, to pay the said Flora Broto the sum of P200, which sum must, as far as possible, be paid to the said defendant out of the proceeds of the sale of the furniture made by the sheriff on the petition of the plaintiff, Meyers, to which end the latter is ordered to deliver to the said defendant out of the proceeds of said sale the above-mentioned sum of P200, being the amount of the aforesaid rent. And the plaintiff is further ordered to pay the costs of the action."

Against the foregoing judgment the plaintiff, Meyers, has appealed and, among other assignments of error, alleges the fact that preference was granted in favor of the claim for rent by the defendant, Flora Broto, over a credit secured by pledge executed and registered in accordance with the provisions of Act No. 1508 of the Philippine Commission. This is the only question to be resolved in this instance, for the reason that it was the only one decided by the court below. The grounds upon which the trial court has based its opinion are the following:

- That Act No. 1508 does not repeal the provisions of the Civil Code with respect to this matter, because it does not mention such repeal.

- That although the registration of a mortgage or pledge of personal property prejudices a third party, a privileged creditor, such as a lessor claiming the rent for his leased property, who, in law, has a mortgage upon the furniture

of the lessee existing upon the premises, can not be considered as such third party, but any other third party by any other title different from that derived from the lease, recognizing no superior claim except one of pledge of personal property, and this only when the property is in the possession of the creditor-pledgee.

- That said privilege or right of retention on the part of the lessor would be vain and illusory if preference were given to a credit secured by a pledge for the mere reason that it was registered, and such registration would be contrary to the "right of possession," arising by operation of law and in favor of the lessor, over the furniture existing upon the premises leased.

- That it being unnecessary that a legal mortgage, such as that of the lessor, be entered in the registry for the reason that it is created by the law itself, a contractual mortgage can not take preference over it for the mere reason that it is registered.

- That as the debt of the lessee Thein in favor of the lessor Broto bears a date prior to that of the debtor Thein in favor of the creditor-pledgee Meyers, the mortgage created by law in favor of the former became effective before the contractual mortgage; so that, when the latter was registered, the former was already a lien upon the furniture pledged in favor of another.

It becomes necessary to pass upon the nature of the contract of mortgage or pledge of personal property, in accordance with the provisions of section 3 of the said Act No. 1508 which prescribes that "a chattel mortgage is a conditional sale of personal property as security for the payment of a debt, or the performance of some other obligation specified therein, the condition being that the sale shall be void upon the seller paying to the purchaser a sum of money or doing some other act named. If the condition is performed according to its terms the mortgage and sale immediately become void, and the mortgagee is thereby divested of his title."

From the language of the law it now appears: (1) That by the operation of Act No. 1508 the actual contract of pledge of the Civil Code degenerates into one of sale by mutual consent; (2) that, under Act No. 1508, a chattel mortgage is a sale with pacto de retro, almost equivalent to that under the same name in the Civil Code; (3) that as in a contract of sale with pacto de retro where the juridical dominion and possession of the thing sold pass to the purchaser as soon as the sale is consummated, so also in a chattel mortgage the dominion and possession of the mortgaged personal property pass to the creditor-pledgee, because, as the law provides, it is nothing more than a conditional sale; (4) that, in the same manner that a contract of sale is consummated by the delivery, either actual or symbolic, of the thing sold, which symbol of the delivery may be the inscription of the instrument in the registry, so also a chattel mortgage is consummated by a similar delivery, actual or symbolic, by means of an analogous inscription in the registry.

Therefore, so long as the mortgage exists, the dominion, with respect to the mortgaged personal property, rests with the creditor-pledgee from the time of the inscription of the mortgage in the registry, and the furniture ceases to be the property of the debtor for the reason that it has become the property of the creditor, in like manner as the dominion of a thing sold is transferred to the purchaser and ceases to belong to the vendor from the moment of the delivery thereof, as a result of the sale. According to the Civil Code, a thing given in pledge never becomes the property of the creditor-pledgee; the debtor continues to be the owner thereof (art. 1869); the creditor does not become the owner; he is nothing more than a creditor with a real right over the thing in his possession as a pledge, which he can dispose of through a notary at a public sale according to the Civil Code, the same as the creditor-pledgee may now, under the provisions of Act No. 1508, sell the pledge through the sheriff. (Civil Code, 1872; Act No. 1508, sec. 14.).

In view of the above it must be concluded: (1) That from June 20, 1908, the furniture belonging to Thein, which existed in the house leased by Flora Broto, ceased to be the property of the first named and passed to the dominion

and juridical possession of J. W. Meyers, the material possession alone continuing in the hands of Thein, and the property actually remaining in the leased building; (2) that when" the lessor tried to collect the rent due for the months of June and July, 1908, the furniture that existed in the building was no longer the property of the lessee but belonged to a third person who had acquired it as a pledge which, under the law, is a sale, and as such the ownership is transferable, although conditionally and depending upon whether the debtor (the conditional seller) fulfills the condition subsequent, and is similar to a sale with pacto de retro; (3) the preference in the payment of rents due for one year, granted by paragraph 7 of article 1922, refers to "personal property of the lessee;" hence, as the furniture existing in the house leased no longer belongs to Thein but to J. W. Meyers, according to the public instrument recorded in the public registry, the said right of preference has not existed since the 20th of June, 1908; (4) the registration of a chattel mortgage, executed in accordance with Act No. 1508, is not in violation of the right of possession, supposed to have been acquired ex lege by the lessor over the furniture existing upon the leased premises, because no such right of possession is granted by the law to the lessor over the personal property of the lessee upon the estate leased; it is subject only to the payment of rent for one year, a condition which may become vain and illusory by a transaction like the one now in question, to wit, when the lessee executes a mortgage upon such personal property in favor of a third person, in the same manner as he could have previously performed these or other acts of disposal in respect thereto, inasmuch as his right to dispose of the same was not then, and is not now limited by reason of their being in a leased building; against this contingency the lessor should take proper precautions in order to ensure the payment of rent by means of an express lien thereon, since the personalty is merely affected by a tacit lien under the circumstances presumed by the law, to wit, that it belongs to the lessor and continues upon the premises and is liable only for the rent for one year.

The mortgage executed by Thein in favor of Meyers being a valid one, and considering the latter merely as a mortgage creditor (passing over the juridical effects of a sale with which the law has compared a chattel mortgage), he is entitled to have the property sold, as he did, through the sheriff, and to pay himself from the proceeds thereof in preference to subsequent mortgages, in accordance with said section 14 of Act No. 1508. Against this preference, that claimed in this case under paragraph 7 of article 1922 of the Civil Code can not prevail from the moment that it is admitted that, over and above the claim for rent, that described in paragraph 2 of the same article has the superior preference, whenever, in accordance with its provisions, the pledge is in the possession of the creditor. The case at bar falls within the circumstances prescribed by section 4 of Act No. 1508 which reads as follows:

"A chattel mortgage shall not be valid against any person except the mortgagor, his executors or administrators, unless the possession of the property is delivered to and retained by the mortgagee or unless the mortgage is recorded in the office of the register of deeds of the province * * * ."

The above provision does not, in this respect, repeal paragraph 2 of the said article 1922, but extends the provisions thereof by providing that the property pledged is to be considered as being delivered to the mortgage creditor and to be in his possession, if the mortgage is recorded in the office of the register of deeds of the province. The code only refers to the actual delivery of the pledge; Act No. 1508 provides both for the actual and for the symbolic delivery thereof by means of the registration of the title.

The judgment appealed from is reversed, without any special ruling as to the costs of both instances.

It is hereby decided and decreed that, from the proceeds of the sale, preferential payment shall be made to the plaintiff J. W. Meyers; provided, however, that the debtor William Thein alone is adjudged to pay the claim of the latter as prayed for in the complaint. So ordered.

Torres, Mapa, Johnson, Carson, and Moreland, JJ., concur.

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