

MAKATI LEASING AND FINANCE CORPORATION, PETITIONER, VS. WEAREVER TEXTILE MILLS, INC., AND HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 58469, May 16, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for review on certiorari of the decision of the Court of Appeals (now Intermediate Appellate Court) promulgated on August 27, 1981 in CA-G.R. No. SP-12731, setting aside certain Orders later specified herein, of Judge Ricardo J. Francisco, as Presiding Judge of the Court of First Instance of Rizal, Branch VI, issued in Civil Case No. 36040, as well as the resolution dated September 22, 1981 of the said appellate court, denying petitioner's motion for reconsideration.

It appears that in order to obtain financial accommodations from herein petitioner Makati Leasing and Finance Corporation, the private respondent Wearever Textile Mills, Inc, discounted and assigned several receivables with the former under a Receivable Purchase Agreement. To secure the collection of the receivables assigned, private respondent executed a Chattel Mortgage over certain raw materials inventory as well as a machinery described as an Artos Aero Dryer Stentering Range.

Upon private respondent's default, petitioner filed a petition for extrajudicial foreclosure of the properties mortgage to it. However, the Deputy Sheriff assigned to implement the foreclosure failed to gain entry into private respondent's premises and was not able to effect the seizure of the aforescribed machinery. Petitioner thereafter filed a complaint for judicial foreclosure with the Court of First Instance of Rizal, Branch VI, docketed as Civil Case No. 36040, the case before the lower court.

Acting on petitioner's application for replevin, the lower Court issued a writ of seizure, the enforcement of which was however subsequently restrained upon private respondent's filing of a motion for reconsideration. After several incidents, the lower court finally issued on February 11, 1981, an order lifting the restraining order for the enforcement of the writ of seizure and an order to break open the premises of private respondent to enforce said writ. The lower court reaffirmed its stand upon private respondent's filing of a further motion for reconsideration.

On July 13, 1981, the sheriff enforcing the seizure order, repaired to the premises of private respondent and removed the main drive motor of the subject machinery.

The Court of Appeals, in certiorari and prohibition proceedings subsequently filed by herein private respondent, set aside the Orders of the lower court and ordered the return of the drive motor seized by the sheriff pursuant to said Orders, after ruling that the machinery in suit cannot be the subject of replevin, much less of a chattel mortgage, because it is a real property pursuant to Article 415 of the new Civil Code, the same being attached to the ground by means of bolts and the only way to remove it from respondent's plant would be to drill out or destroy the concrete floor, the reason why all that the sheriff could do to enforce the writ was to take the main drive motor of said machinery. The appellate court rejected petitioner's argument that private respondent is

estopped from claiming that the machine is real property by constituting a chattel mortgage thereon.

A motion for reconsideration of this decision of the Court of Appeals having been denied, petitioner has brought the case to this Court for review by writ of certiorari. It is contended by private respondent, however, that the instant petition was rendered moot and academic by petitioner's act of returning the subject motor drive of respondent's machinery after the Court of Appeals' decision was promulgated.

The contention of private respondent is without merit. When petitioner returned the subject motor drive, it made itself unequivocally clear that said action was without prejudice to a motion for reconsideration of the Court of Appeals decision, as shown by the receipt duly signed by respondent's representative.^[1] Considering that petitioner has reserved its right to question the propriety of the Court of Appeals' decision, the contention of private respondent that this petition has been mooted by such return may not be sustained.

The next and the more crucial question to be resolved in this petition is whether the machinery in suit is real or personal property from the point of view of the parties, with petitioner arguing that it is a personalty, while the respondent claiming the contrary, and was sustained by the appellate court, which accordingly held that the chattel mortgage constituted thereon is null and void, as contended by said respondent.

A similar, if not identical issue was raised in *Tumalad vs. Vicencio*, 41 SCRA 143 where this Court, speaking through Justice J.B.L. Reyes, ruled:

"Although there is no specific statement referring to the subject house as personal property, yet by ceding, selling or transferring a property by way of chattel mortgage defendants-appellants could only have meant to convey the house as chattel, or at least, intended to treat the same as such, so that they should not now be allowed to make an inconsistent stand by claiming otherwise. Moreover, the subject house stood on a rented lot to which defendants-appellants merely had a temporary right as lessee, and although this can not in itself alone determine the status of the property, it does so when combined with other factors to sustain the interpretation that the parties, particularly the mortgagors, intended to treat the house as personalty. Finally, unlike in the *Iya* cases, *Lopez vs. Orosa, Jr. & Plaza Theatre, Inc. & Leung Yee vs. F.L. Strong Machinery & Williamson*, wherein third persons assailed the validity of the chattel mortgage, it is the defendants appellants themselves, as debtors-mortgagors, who are attacking the validity of the chattel mortgage in this case. The doctrine of estoppel therefore applies to the herein defendants-appellants, having treated the subject house as personalty."

Examining the records of the instant case, We find no logical justification to exclude and rule out, as the appellate court did, the present case from the application of the above-quoted pronouncement. If a house of strong materials, like what was involved in the above *Tumalad* case, may be considered as personal property for purposes of executing a chattel mortgage thereon as long as the parties to the contract so agree and no innocent third party will be prejudiced thereby, there is absolutely no reason why a machinery, which is movable in its nature and becomes immobilized only by destination or purpose, may not be likewise treated as such. This is really because one who has so agreed is estopped from denying the existence of the chattel mortgage.

In rejecting petitioner's assertion on the applicability of the *Tumalad* doctrine, the Court of Appeals lays stress on the fact that the house involved therein was built on a land that did not belong to the owner of such house. But the law makes no distinction with respect to the ownership of the land on which the house is built and We should not lay down distinctions not contemplated by law.

It must be pointed out that the characterization of the subject machinery as chattel by the private respondent is indicative of intention and impresses upon the property the character determined by the parties. As stated in *Standard Oil Co. of New York vs. Jaramillo*, 44 Phil. 630, it is undeniable that the parties to a contract may by agreement treat as personal property that which by nature would be real property, as long as no interest of third

parties would be prejudiced thereby.

Private respondent contends that estoppel cannot apply against it because it had never represented nor agreed that the machinery in suit be considered as personal property but was merely required and dictated on by herein petitioner to sign a printed form of chattel mortgage which was in a blank form at the time of signing. This contention lacks persuasiveness. As aptly pointed out by petitioner and not denied by the respondent, the status of the subject machinery as movable or immovable was never placed in issue before the lower court and the Court of Appeals except in a supplemental memorandum in support of the petition filed in the appellate court. Moreover, even granting that the charge is true, such fact alone does not render a contract void ab initio, but can only be a ground for rendering said contract voidable or annulable pursuant to Article 1390 of the new Civil Code, by a proper action in court. There is nothing on record to show that the mortgage has been annulled. Neither is it disclosed that steps were taken to nullify the same. On the other hand, as pointed out by petitioner and again not refuted by respondent, the latter has indubitably benefited from said contract. Equity dictates that one should not benefit at the expense of another. Private respondent could not now therefore, be allowed to impugn the efficacy of the chattel mortgage after it has benefited therefrom.

From what has been said above, the error of the appellate court in ruling that the questioned machinery is real, not personal property, becomes very apparent. Moreover, the case of *Machinery and Engineering Supplies Inc. v. CA*, 96 Phil 70, heavily relied upon by said court is not applicable to the case at bar, the nature of the machinery and equipment involved therein as real properties never having been disputed nor in issue, and they were not the subject of a Chattel Mortgage. Undoubtedly, the *Tumalad* case bears more nearly perfect parity with the instant case to be the more controlling jurisprudential authority.

WHEREFORE, the questioned decision and resolution of the Court of Appeals are hereby reversed and set aside, and the Orders of the lower court are hereby reinstated, with costs against the private respondent.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero and Escolin, JJ., concur.
Abad Santos, J., in the result.

[1] p. 52, Rollo.

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