

EL HOGAR FILIPINO, MUTUAL BUILDING AND LOAN ASSOCIATION, PETITIONER AND APPELLANT, VS. THE PHILIPPINE NATIONAL BANK, OPPOSITOR AND APPELLEE.

G. R. Nos. 43459 and 43460. August 11, 1937

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

On November 5, 1919, Serafin Novella, Mercedes Novella, Cecilia Magalona and Robustiano Magalona constituted a first mortgage on lots Nos. 194, 158 and 14 of the cadastre of Victorias, Occidental Negros, and on lots Nos. 700, 817 and 706 of the cadastre of Saravia, Occidental Negros, to secure the payment of the sum of P28,000, with interest thereon at 9 per cent per annum, representing their indebtedness to El Hogar Filipino, Mutual Building and Loan Association. This mortgage was duly registered and noted in the corresponding certificates of title. The deed of mortgage contains the following clause:

"TENTH. The borrowers hereby give and confer upon the eventual manager of the Association sufficient and irrevocable power so that, in case the debt hereby acknowledged should become due by reason of the nonfulfillment by the borrower of any of the obligations stated in the second, fourth, fifth, eleventh, twelfth, thirteenth, sixteenth, seventeenth, and twenty-first clauses of this instrument, upon resolution of the board of directors declaring that the Association has chosen to make use of its right to consider the borrower's debt due, and upon publication of notices in a newspaper of general circulation in this city once a week for three (3) consecutive weeks, he may proceed with the extrajudicial sale at public auction of the mortgaged property, before the notary or auctioneer designated by the board of directors, the eventual manager of the Association being likewise vested with irrevocable power, as agent of the borrower, to execute the corresponding deed of sale in favor of the highest bidder at the auction. Provided, however, That said instrument of sale shall not be executed until after the expiration of thirty (30) days from the date of the auction sale. And provided, further, That if within said period of thirty (30) days from the date of the auction sale, the borrower should pay to the Association the full amount of his indebtedness on that date, plus the accrued interest thereon and the expenses occasioned by the auction sale, minus the withdrawal value of his shares, the auction sale shall be of no effect and the representative of the Association shall execute the corresponding instrument of cancellation of the mortgage constituted hereby, the expenses for the execution of said instrument of cancellation being for the account of the borrower."

Subsequently, on June 6, 1930, Serafin Novella constituted a second mortgage on his 3/4 share of said lots in favor of the Philippine National Bank. El Hogar Filipino consented to the constitution of the second mortgage in favor of the Philippine National Bank on condition that it be considered subordinate to the first mortgage constituted in favor of the former.

The Novellas and Magalonas having violated the contract, El Hogar Filipino declared the debt due, as to them, and proceeded with the auction sale of the mortgaged lots strictly in accordance with the conditions set forth in the above-quoted tenth clause of the mortgage deed. El Hogar Filipino having been the highest bidder at said sale, the lots sold were adjudicated to it for the amount of its credit of P39,063.71.

Before the auction sale of the lots in question was carried out, the Philippine National Bank was notified thereof. After the sale had been made, it was likewise notified for the purposes of its right of repurchase. The Philippine National Bank, however, never made use of its said right of repurchase to this date.

Thirty days after the auction sale had been made, the corresponding deed of sale was issued in favor of El Hogar Filipino. When said document was presented to the office of the register of deeds for the cancellation of the titles to said lots and the issuance of new certificates in favor of El Hogar Filipino, the Philippine National Bank opposed, alleging that, under the law, it had one year within which to redeem the lots. Notwithstanding said opposition, the document was registered with a notation of the mortgage in favor of the Philippine National Bank, which notation was agreed to by El Hogar Filipino provided it was made to appear that it was merely taken from the original certificate of title.

El Hogar Filipino brought these two actions in the Court of First Instance of Occidental Negros to have the court declare the mortgage lien in favor of the Philippine National Bank extinguished and order the register of deeds to cancel the annotation of said mortgage in favor of the Philippine National Bank on the transfer certificates of title issued in favor of El Hogar Filipino.

The court, after due trial, rendered judgment denying the petition of El Hogar Filipino and from said judgment an appeal was taken to this court.

By virtue of the mortgage constituted in favor of El Hogar Filipino, and the credit thereof having become demandable, said mortgagee was entitled to have the mortgaged lots sold in order to apply the proceeds to the payment of its credit. Such is the legal effect of the mortgage. The Philippine National Bank, by reason of the second mortgage constituted in its favor which was accepted by it as subordinate to the first mortgage in favor of El Hogar Filipino, cannot oppose such effect. The above-quoted tenth clause of the contract being valid (*El Hogar Filipino vs. Paredes*, 45 Phil., 178), the validity of the sale made strictly in accordance therewith cannot be questioned. The sale in question excluded the mortgaged lots from the estate of the debtors and said lots should thereafter be considered extinguished in so far as they secured the payment of the credit of the Philippine National Bank. Therefore, the security in favor of said bank, as second creditor, was in fact extinguished thereby. Aside from the right of repurchase, the Philippine National Bank's only right under the mortgage constituted in its favor would be to apply to the payment of its credit the excess of the proceeds of the sale after the payment of that of El Hogar Filipino, such being the effect of the subordination of its mortgage to that of the latter. However, inasmuch as the credit of El Hogar Filipino has absorbed the entire proceeds of the sale, the mortgage in favor of the bank was in fact extinguished with it because it cannot be enforced by said bank beyond the total value of the mortgaged lots. Consequently, the lots passed to the purchaser free from the mortgage in favor of the bank. The bank's claim that the second mortgage in its favor stands to the prejudice of the purchaser is untenable, particularly because, as the purchaser in this case is the first mortgagee itself, the result, inverting the legal effects of the two mortgages, would practically be to convert the second mortgage, constituted in favor of the Philippine National Bank, into a first mortgage, and the first mortgage, constituted in favor of El Hogar Filipino, into a second mortgage. The fact that El Hogar tolerated the annotation of the bank's second mortgage on the transfer certificates of title in its name is of no avail, it being clear that El Hogar's consent to this effect was not an admission of the existence of the bank's second mortgage but merely a compromise with the bank's claim that it was still timely for the latter to redeem the lots sold, as shown by the fact that El Hogar consented thereto provided it was made to appear that the annotation was merely taken from the debtors' certificates of title.

In this instance, Serafin Novella filed a petition to intervene on April 6, 1937, after the case had already been submitted. As said petition was not filed on time, it should be denied (*Felismino vs. Gloria*, 47 Phil., 967; *De Borja vs. Jugo*, p. 464, ante).

For the foregoing considerations, the appealed judgment is reversed, and the second mortgage constituted on the lots in question in favor of the Philippine National Bank is ordered cancelled, without special pronouncement as to costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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