34 Phil. 488

[G.R. No. 11156. March 28, 1916]

IN THE MATTER OF THE VOLUNTARY INSOLVENCY OF DU TEC CHUAN. M. G. VELOSO AND M. F. DE SOUZA, PLAINTIFFS AND APPELLANTS.

D E C I S I O N

PER CURIAM:

This appeal involves two claims presented to the assignee in the bankruptcy proceedings of Du Tec Chuan; one by M. F. de Souza for services rendered to Du Tec Chuan before going into bankruptcy; and the other by M. G. Veloso who asks to be declared a preferred creditor and entitled to have his claim paid out of the insurance money collected as a result of the destruction by fire of certain personal property on which the said Veloso held a chattel mortgage. The fact that claimant held the chattel mortgage is the reason why the preference is claimed.

After a careful examination of the record we have reached the conclusion that the trial court was correct in its decision with respect to both claims; and on the opinions written in these two cases we affirm the judgment appealed from, with costs against the appellants. So ordered.

Torres, Johnson, Trent, and *Araullo, JJ.*
Moreland, J., see concurring opinion.

CONCURRING OPINION

MORELAND, J.:

This appeal involves two claims presented to the assignee in the bankruptcy proceedings of Du Tec Chuan; one is presented by M. F. de Souza for services rendered to Du Tec Chuan before going into bankruptcy, and the other by M. G. Veloso who asks to be declared a preferred creditor and entitled to have his claim paid out of the insurance money collected as a result of the destruction by fire of certain personal property on which the said Veloso held a chattel mortgage. The fact that claimant held the chattel mortgage is the reason why the preference is claimed.

With regard to the claim of De Souza the trial court said:

> "M. F. de Souza has filed a claim against the insolvent estate of Du Tec Chuan for the sum of ₱1,374.34 being 10 per cent of the amount collected on two fire insurance policies. Mr. de Souza bases his claim principally on the document marked 'M. F. de Souza's Exhibit 1,' which evidences an agreement between Du Tec Chuan and his creditors and M. F. de Souza for a liquidation of the affairs of the firm *La Fama*. The proposed liquidation appears to have been in the nature of an extrajudicial insolvency proceeding in which Mr. de Souza would act as assignee. The agreement is silent in regard to Mr. de Souza's compensation but provides that he should have a bond in the sum of ₱20,000 for the faithful performance of his duties.
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> "Mr. de Souza never gave the bond mentioned and it is self-evident that having failed to fulfill one of its essential conditions he cannot recover under the agreement. Nor has he, in the opinion of the court, established his right to recover upon any other basis. The evidence in regard to the services he alleges to have rendered is so vague and unsatisfactory as to leave the court in doubt as to whether they were of any value whatever. The claim is therefore denied."

After an examination of the record with respect to this claim I cannot but agree with the decision of the lower court and particularly with that portion where the court says that "the evidence in regard to the services he alleges to have rendered is so vague and unsatisfactory as to leave the court in doubt as to whether they were of any value whatever."

With respect to the other claim the trial court said:

> "Mariano G. Veloso has presented a claim against the insolvent estate of Du Tec Chuan for ₱5,000 with interest at the rate of 12 per cent per annum from July 21, 1912, and maintains that said claim is entitled to preference. Only the alleged right to preference and not the claim itself is opposed by the assignee.
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> "The claim to preference rests upon the alleged pledge of a fire insurance policy, under which policy the insolvent recovered from the Assurance Company the sum of ₱7,174.45, which sum is now in the hands of the assignee. No documentary evidence substantiating the claim to preference has been presented and the court is not aware of any legal provision under which an oral assignment or pledge of a chose in action can be held effective as against third parties. The reference in the chattel mortgage Exhibit 3 to payment of insurance premium is not a sufficient assignment.
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> "The court therefore holds that the insolvent estate of Du Tec Chuan is indebted to Mariano G. Veloso in the sum of ₱5,000 with interest at the rate of 12 per cent per annum from July 21, 1912, but that the credit is not entitled to preference."

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 the sum of money or doing some other act named. The execution of a chattel mortgage transfers the title to the purchaser who receives it subject to a defeasance by the happening of the event named in the mortgage. In strict sense, a chattel mortgage is not a pledge of personal property as that term is defined in the Civil Code. Where a pledge of personal property exists the title remains in the pledgor and does not pass to the pledgee. Moreover, where there is a pledge the property pledged is liable for any debts which the pledgor may create in favor of the pledgee during the existence thereof. This is not the case with a chattel mortgage. Furthermore, in case of pledge the property pledged must be delivered to the pledgee or to some third person in his behalf; in case of a, chattel mortgage such delivery is not necessary. Finally, the act of pledging creates a preference in favor of the creditor which gives him certain advantages over the creditors of the pledgor. Such is not the case in a chattel mortgage. A chattel mortgage creates no preference in favor of the mortgagor, as the word preference is used in the Civil Code. It is rather a sale of property by which the vendor divests himself of the title in favor of the vendee subject to the possibility of such title being defeated by the payment of the money or the performance of the act required by

the terms of the mortgage. A chattel mortgage relates to specific personal property. A preference does not refer to specific property but is simply a right to share in advance of some other person in the assets of the debtor after they have been marshalled and converted into money. A chattel mortgage has nothing to do with the marshalling of the assets of the debtor or with the money into which those assets are converted. It deals exclusively with the specific property described in the mortgage and for that reason is on entirely different footing from a right of preference. No one can take the title away from the mortgagee except the mortgagor and he only in the manner prescribed by the mortgage itself. No other person has or can have an interest in the property, except those persons who have under the law special liens resulting from repairs to the mortgaged property necessary to preserve it and the housing thereof for the same purpose. But such liens spring from acts which are as beneficial to the mortgagee as they are to the mortgagor and without which the property would be lost to both. The general statement is therefore correct that, after the execution of a chattel mortgage and its registry as required by law, nobody can obtain an interest in that property adverse to that of the mortgagee. As a necessary result it is clear, as we have already stated, that a chattel mortgage cannot be considered a pledge of the property which it covers. Nor does it give a preference with regard to the general property of the debtor as that word is defined in the Civil Code. It would be contradictory, if not absurd, to say that a mortgagee has a preference with regard to property which he himself owns. A preference can exist only with respect to property which is owned by the *debtor*. The case of Meyers *vs.* Thein (15 Phil. Rep., 303), cited by the appellant, is not in conflict with the observations herein made as that case related to the right of a person with respect to mortgaged property which he had housed and preserved, such act being for the benefit of the mortgagee as well as the mortgagor, giving him a lien on the property superior to that of the mortgagee. The reason why charges for repairs and for other acts which go directly to the preservation of the property are prior liens even upon mortgaged property is that they operate directly in benefit of the mortgagee as well as the mortgagor.

While the mortgage in question was given on a stock of goods in a store it does not appear whether sales were made from the stock or not; and therefore we do not have before us the question whether such a mortgage is in violation of the last part of section 7 of Act No. 1508.

The question whether the chattel mortgage, being a transfer of the title of the property to the mortgagee, did not subrogate the mortgagee to or place him in such a position in equity as would entitle him to exercise all of the rights which the mortgagor had in the property, including the insurance policy in case of loss, is one which has not been raised on this

appeal or argued in any way and we therefore do not feel called upon to discuss or to decide it.

I am in accord with the finding of the trial court that there is no substantial evidence to the effect that the policy of insurance was assigned to the mortgagee and that, apart from the theory of subrogation, he had any interest in the insurance policy. All of the acts of the claimant are contrary to his contention that the insurance policy was assigned. After the property insured had burnt an action on the policy was begun by Du Tec Chuan in his own name with the knowledge of the mortgagee. He obtained judgment for ₱7,174.45 which, with the knowledge and consent' of the mortgagee, was turned over to the assignee as property belonging to Du Tec Chuan. Not only this, but the claimant, in addition, presented his claim to the assignee asking that it be paid out of the ₱7,174.45 obtained on the insurance policy. This it would seem was in effect an admission that the ₱7,174.45 was the property of Du Tec Chuan, as the claim could not be paid out of property belonging to any one else.

Upon the whole case I am convinced that the decision of the trial court is correct.

Date created: May 29, 2014