45 Phil. 286

[G.R. No. 20013. October 18, 1923]

ANDRES PUIG, PLAINTIFF AND APPELLEE, VS. GEO. C. SELLNER AND B. A. GREEN, DEFENDANTS AND APPELLANTS.

D E C I S I O N

VILLAMOR, J.:

This litigation arose from the non-payment of a promissory note signed by the defendants, which is as follows:

> "On or before July 12, 1921, we promise to pay jointly and severally at Manila to the order of D. Andres Puig or his general attorney-in-fact, D. Ramon Salinas, the sum of forty seven thousand pesos (P47,000), Philippine currency, which we received on this date from said Mr. Salinas by way of loan at 10 per cent per annum; and we hereby guarantee our said obligation with five hundred seventy (570) preferred shares of the Manila Improvement Co. of the face value of one hundred pesos (P100) each, which will be issued within fifteen (15) days in the name of Mr. Puig, who shall hold them until we fulfill this obligation. In case we fail to make payment on July 12, 1921, the shares pledged shall become the property of D. Andres Puig.—Manila, July 12, 1920.—(Sgd.) Geo. C. Sellner.—(Sgd.) B. A. Green."

The Honorable Geo. R. Harvey, judge, rendered a carefully prepared decision, sentencing the defendants Geo. C. Sellner and B. A. Green to pay the plaintiff jointly and severally the sum of forty-seven thousand pesos (P47,000), as principal, thirty-five pesos (P35), balance of the interest for the fourth quarter of 1921, the interest on said principal at the rate of ten per cent (10%) per annum from January 1, 1922, until the judgment is paid, and the costs; and ordering, moreover, in the event that the defendants should fail to pay the

full amount of the judgment within three (3) months from the date thereof, that the sheriff of this city proceed to sell the five hundred seventy (570) shares pledged at public auction to the highest bidder, after attaching the same and advertising said sale during the legal period in two local newspapers, one in English and another in Spanish, in order that the plaintiff may recover the amount of the judgment after compliance with the formalities prescribed by law. From this judgment the defendants have appealed, and in their brief they assign seven errors, which, to our mind, can be reduced to one, namely, that numbered 2, which is as follows:

> "The trial court erred in not holding that the condition contained in the note, to wit, 'In case we fail to make payment on July 12, 1921, the shares pledged shall become the property of D. Andres Puig,' was valid and binding against the plaintiff, as well as against the defendants."

The question as to the validity of a stipulation, such as that now before us, was already decided by the supreme court of Spain in the negative, as may be seen, among others, in a decision dated November 3, 1902, wherein it is said:

> "That while it is true that contracts are binding, whatever may be the form in which they may have been entered into, if the essential conditions required for their validity exist, and that the obligations arising therefrom have the force of law between the contracting parties, who must fulfill them according to the terms thereof, it is likewise evident that these two precepts of articles 1278 and 1091 of the Civil Code are subject to the provisions of article 1255, which does not permit the making of stipulations contrary to law, morals or public order, one of which stipulations would be, according to the general language of article 1859, that wherein it is agreed that the debtor (creditor) may appropriate the thing pledged, as if it were sold to him, by the mere lapse of the term of the contract of loan, and said stipulation being void, under article 1884 of said Code, as to the mortgagee, there is no reasonable ground, in view of the precedents of our old law, for holding it lawful with respect to the pledgee, who in the absence of other conditions validly stipulated may not ignore the requirements of article 1872 in the alienation of the property

> pledged, for if it is a right granted the creditor and can be waived by him, it is also a guaranty given the debtor, which he should not lose by the will alone of the creditor, or by making a stipulation that is void in law." (94 Jur. Civ., 412, 420.)

And in this jurisdiction, a similar question was presented several times to this court for decision. In the case of Mahoney *vs*. Tuason (39 Phil., 952), it was held:

> "The creditor has no right to appropriate to himself the personal property and chattels pledged, nor can he make payment by himself and to himself for his own credit with the value of the said property, because he is only permitted to recover his credit from the proceeds of the sale at public auction of the chattels and personal property pledged not in the manner prescribed by article 1872 of the Civil Code but in that provided for in section 14 of the said Act No. 1508, which is the one in force."

And it was further held:

> "The vice of nullity which vitiates the additional agreement entered into by the contracting parties authorizing the creditor to appropriate the property and effects pledged in payment of his credit does not affect substantially the principal contract of chattel mortgage with regard to its validity and efficacy, for the reason that the principal contract of pledge or chattel mortgage having been perfected it can subsist although the contracting parties have not agreed as to the manner the creditor could recover his credit from the value of the things pledged, in case of the insolvency of the debtor, inasmuch as the law has expressly established the procedure in order that the creditor may not be defrauded or deceived in his right to recover his credit from the proceeds of the chattels retained by him as a security, in case the debtor does not comply with his obligation, because, if the debtor could not pay his debt, there exists no just or legal reason which prevents the creditor from recovering his credit from the proceeds of the effects pledged sold at a sale effected in accordance with law."

Adhering, therefore, to the doctrines laid down by this court in the case aforecited, we hold that the judgment appealed from is in accordance with law, and must be, as is hereby, affirmed with costs against the appellants. So ordered.

Street, Malcolm, Avanceña, Johns, and *Romualdez, JJ.,* concur.
Johnson, J., did not take part.

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