

44 Phil. 933

[ G. R. No. 18700. September 26, 1922 ]

**INVOLUNTARY INSOLVENCY OF PAUL STROCHECKER, APPELEE, VS. ILDEFONSO RAMIREZ, CREDITOR AND APPELLANT. WILLIAM EDMONDS, ASSIGNEE.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

The question at issue in this appeal is, which of the two mortgages here in question must be given preference? Is in the one in favor of the Fidelity & Surety Co., or that in favor of Ildefonso Ramirez. The first was declared by the trial court to be entitled to preference.

In the lower court there was three mortgagees each of who claimed preference. They were the two above mentioned and Concepcion Ayala. The latter's claim was rejected by trial court, and from that ruling she did not appeal.

There is no question as to the priority in time of the mortgage in favor of the Fidelity & Surety Co. which was executed on March 10, 1919, and registered in due time in the registry of property, that in favor of the appellant being dated September 22, 1919, and registered also in the registry.

The appellant claims preference on these grounds: (a) That the first mortgage above-mentioned is not valid because the property which is the subject-matter thereof is not capable of being mortgaged, and the description of said property is not sufficient; and (b) that the amount due the appellant is a purchase price, citing article 1922 of the Civil Code in support thereof, and that his mortgage is but a modification of the security given by the debtor on February 15, 1919, that is, prior to the mortgage executed in favor of the Fidelity & Surety Co.

As to the first ground, the thing that was mortgaged to this corporation is described in the document as follows: "\* \* \* his half interest in the drug business known as Antigua Botica

Ramirez (owned by Srta. Dolores del Rosario and the mortgagor herein referred to as the partnership), located at Calle Real Nos. 123 and 125, District of Intramuros, Manila, Philippine Islands.”

With regard to the nature of the property thus mortgaged, such interest is a personal property capable of appropriation and not included in the enumeration of real properties in article 335 of the Civil Code, and may be the subject of mortgage. All personal property may be mortgaged. (Sec. 2, Act No. 1508.)

The description contained in the document is sufficient. The law (sec. 7, Act No. 1508) requires only a description of the following nature:

“The description of the mortgaged property shall be such as to enable the parties to the mortgage, or any other person, after reasonable inquiry and investigation, to indentify the same.”

Turning to the second error assigned, numbers 1, 2, and 3 of article 1922 of the Civil Code invoked by the appellant are not applicable. Neither he, as debtor, nor the debtor himself, is in possession of the property mortgaged, which is, and since the registration of the mortgage has been, legally in possessin of the Fidelity & Surety Co. (Sec. 4, Act No. 1508; Meyers vs. Thein, 15 Phil., 303.)

In no way can the mortgage executed in favor of the appellant on September 22, 1919, be given effect as of February 15, 1919, the date of the sale of the drug store in question. On the 15th of February of that year, there was a stipulation about a personal security, but not a mortgage upon any property, and much less upon the property in question.

Moreover, the appellant cannot deny the preferential character of the mortgage in favor of the Fidelity & Surety Co. because in the very document executed in his favor it was stated that his mortgage was a second mortgage, subordinate to the one made in favor of the Fidelity & Surety Co.

The judgment appealed from is affirmed with costs against the appellant. So ordered.

*Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.*

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