

CARRIED LUMBER COMPANY, PLAINTIFF-APPELLEE, VS. AGRICULTURAL CREDIT AND COOPERATIVE FINANCING ADMINISTRATION(ACCFA), DEFENDANT-APPELLANT.

G.R. No. L-21836. April 22, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case regarding concurrence and preference of credits.

The Agricultural Credit and Cooperative Financing Administration (ACCFA)[*] appealed on pure questions of law from the decision of the Court of First Instance of Pangasinan, holding that the Carried Lumber Company has a lien over the warehouse and ricemill building of the Sta. Barbara Facoma in the amount of P5,610.50 plus P45 as sheriff's fee (Civil Case No. D-1174).

In that decision it was further held that the lien was superior to the ACCFA's mortgage credit and that the company was entitled to the material possession of the warehouse and ricemill building if the ACCFA did not satisfy its claim. Moreover, the ACCFA was ordered to pay the company the sum of P2,000 as expenses, "damages and attorney's fees plus costs (99-100 Record on Appeal).

The documentary evidence and the parties' stipulation disclose the following facts:

Lumber company's materialman's lien. — From October 11 to November 8, 1954 the Sta. Barbara Farmer's Cooperative Marketing Association, Inc. (Facoma) purchased on credit from the Carried Lumber Company lumber and materials which were used in the construction of the Facoma's warehouse (Exh. H and H-1). The company extended credit to the Facoma after having been informed by the ACCFA's General Manager in a telegram dated October 23, 1954 that a loan of P27,200 had been approved for the construction of the Facoma's warehouse (Exh. G and G-1).

On October 27, 1954, after the company had supplied the Facoma with lumber and construction materials worth P4,999.40, they executed a contract whereby it was agreed that the company would sell lumber and construction materials to the Facoma with a value not exceeding P27,200 (Exh. F-1).

For the construction of the warehouse, the company actually delivered to the Facoma lumber and construction materials valued at P8,233.55. The Facoma made partial payments. As of January 1, 1955 it had not paid to the company the balance of its account amounting to P4,733.55. On May 18, 1959 the company sued the Facoma for the recovery of that amount (Exh. F). In a decision dated September 26, 1960, based on a compromise, the lower court ordered the Facoma to pay the company the sum of P5,500 in monthly installments from October 31, 1960 to March 31, 1961, subject to the acceleration proviso that failure on the part of the Facoma to pay any installment would render the whole unpaid balance due and demandable (Exh. A; Civil Case No. D-899; 24-25 Record on Appeal).

In view of the Facoma's failure to pay the stipulated installments, the Carried Lumber Company secured a writ of

execution to enforce the judgment. The sheriff levied upon the Facoma's lease rights, warehouse and ricemill building. On January 3, 1961 he issued a notice scheduling the sale of the attached properties on January 31, 1961 (Exh. C; 28-30 Record on Appeal).

On January 25, 1961 the ACCFA filed a third-party claim with the sheriff. Its provincial director informed the sheriff that the properties levied upon had already been sold to the ACCFA on November 5, 1960. For that reason, it contended that the same could not again be sold at public auction. It formally objected to the proposed auction sale (Exh. 7; 79-81 Record on Appeal).

As scheduled, the sheriff on January 31, 1961 sold for P5,610.50 the Facoma's lease rights, warehouse and ricemill building to the Carried Lumber Company, as the highest bidder. On that same date, he issued a certificate of sale to the company (Exh. D; 31-32 Record on Appeal).

There being no redemption within the one-year period, the sheriff on June 29, 1962 issued a final deed of sale in favor of the Carried Lumber Company for the said lease rights, warehouse and ricemill building (Exh. E).

ACCFA's mortgage lien. — As already stated, the Facoma obtained from the ACCFA a loan of P27,200 for the construction of its warehouse. As security for that loan, the Facoma on November 10, 1954 mortgaged to the ACCFA its lease rights over a parcel of land located at Barrio Maningding, Sta. Barbara, Pangasinan and the warehouse to be constructed on the said land together with the other improvements existing thereon (Exh. 1). The mortgage was recorded on November 13, 1954 in the registration book provided for in Act No. 3344 (53 Record on Appeal).

Two supplementary mortgages dated February 19 and October 19, 1955 were executed by the Facoma in favor of the ACCFA as security for other loans amounting to P11,600 and P15,408.80, respectively. The other loans were used by the Facoma for the construction of a ricemill building and for the purchase of a ricemill which were also mortgaged to the ACCFA (Exh. 2 and 3). The two instruments were recorded in the chattel mortgage register on February 22 and November 17, 1955, respectively (59, 66 Record on Appeal).

The Facoma also defaulted in the payment of its mortgage obligations. The ACCFA in a letter dated September 19, 1960 requested the Provincial Sheriff of Pangasinan to foreclose the mortgages extrajudicially (Exh. 4). The sheriff issued a notice of auction sale dated October 13, 1960. He scheduled the sale on November 5, 1960 (Exh. 5).

In a letter dated October 20, 1960 the Carried Lumber Company notified the sheriff and the Facoma that pursuant to article 2242(4) of the Civil Code, it had a preferential lien over the warehouse of the Facoma for having furnished the lumber and materials used in its construction and the cost of which had not been fully paid for. The company specified that its unpaid claim amounted to P5,500 and that it was evidenced by a judgment dated September 26, 1960 (Exh. B; 26-28 Record on Appeal).

The sheriff proceeded with the foreclosure sale. On November 5, 1960 he sold the mortgaged properties to the ACCFA, as the highest bidder, for the sum of P68,067.35. On that date, he issued a certificate of sale covering the Facoma's lease rights, warehouse, ricemill, ricemill building and a diesel engine (Exh. 6). Upon application with the Court of First Instance, the ACCFA was placed in possession of the mortgaged properties by virtue of a writ of possession dated January 27, 1961 (Exh. 8, 9 and 10) or four days before the auction sale which the sheriff conducted at the instance of the Carried Lumber Company (Exh. D). The certificate of sale was registered on March 23, 1961.

Proceedings in this case. — On March 1, 1961 or after the execution of the Carried Lumber Company's judgment against the Facoma and the issuance of the certificate of sale in its favor, the company sued the ACCFA for the

purpose of asserting its preferential lien over the Facoma's warehouse and ricemill building and in order to obtain possession thereof. One of ACCFA's defenses was that the company waived its lien when it filed an ordinary action to recover its claim instead of enforcing its lien.

After trial, the lower court held that the lumber company's materialman's lien was superior to the ACCFA's mortgage lien because the company's lien is sanctioned by paragraph 4 of article 2242 of the Civil Code, whereas the ACCFA's mortgage lien is covered by paragraph 5 of the same article. The lower court reasoned out that the company's lien "existed ahead" of the ACCFA's mortgage lien. It noted that the ACCFA was aware of the company's claim because the company sent to the ACCFA on October 23, 1954 a telegraphic inquiry as to the loan which the ACCFA would extend to the Facoma for the construction of its warehouse and the ACCFA confirmed in a telegraph answer that the loan would be granted to the Facoma (Exh. G).

The ACCFA contends in this appeal that the lumber company's unregistered judgment credit was not preferred; that while its materialman's lien might have enjoyed preference under article 2242 of the Civil Code, that preferential status was lost when it secured a judgment for its credit as an ordinary claim, and that, in the alternative, the company's credit, if preferred, and the ACCFA's mortgage credit should be paid pro rata pursuant to article 2249 of the Civil Code.

Ruling. — As this is a clear case of concurrence of credits with respect to an immovable property, the Facoma warehouse, it has to be resolved under the following provisions of the Civil Code:

"ART. 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

x x x x x x x x

"(4) Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canals or other works, upon said buildings, canals or other works;

"(5) Mortgage credits recorded in the Registry of Property, upon the real estate mortgaged;

x x x x x x x x. (1923a)"

"ART. 2243. The claims or credits enumerated in the preceding articles (2241 and 2242) shall be considered as mortgages or pledges of real or personal property, or liens within the purview of legal provisions governing insolvency. Taxes mentioned in No. 1, article 2241, and No. 1, article 2242, shall first be satisfied. (n)"

"ART. 2249. If there are two or more credits with respect to the same specific real property or real rights, they shall be satisfied pro rata, after the payment of the taxes and assessments upon the immovable property or real right. (1927a)"

The term pro rata in article 2249 means in proportion or ratably, or a division according to share, interest or liability of each (72 C.J.S. 967-8).

The trial court erred in holding that the lumber company's lien over the warehouse is superior to the ACCFA's mortgage lien. It was mistaken in assuming that the enumeration of ten claims, mortgages and liens in article 2242 creates an order of preference. It is not correct to say that the materialman's (mechanic's) lien or refectionary credit of the lumber company, being listed as No. 4 in article 2242, is superior to the ACCFA's mortgage credit which is listed as No. 5. The enumeration in article 2242 is not an order of preference. That article lists the credits which may concur with respect to specific real properties and which would be satisfied pro rata according to article 2249.

There is no dispute that the Facoma warehouse was constructed by means of the materials supplied by Carried Lumber Company and that the construction was financed by the ACCFA which had loaned P27,200 to the

Facoma (Exh. 1). Therefore, it is just and proper that the two creditors should have a pro rata shares in that warehouse.

The lower court's solution of awarding the warehouse to the lumber company was an unwarranted disregard of the ACCFA's claim. On the other hand, the sheriff's adjudication of the whole warehouse to the ACCFA nullifies the lumber company's claim. Neither solution is just because it results in unjust enrichment by one party at the expense of the other.

The instant case is different from *Luzon Lumber & Hardware Co. vs. Quiambao*, 94 Phil. 663, where the defendant spouses mortgaged their three lots and the two buildings to be constructed thereon to the Rehabilitation Finance Corporation (RFC) to secure a loan. The mortgage was registered on September 13, 1948. The materials used in the construction of the two buildings were bought on credit by the defendant spouses from plaintiff lumber company during the period from October, 1948 to March, 1949 or after the registration of the mortgage. To cover the unpaid balance of the price of the materials, plaintiff lumber company sued defendant spouses. The RFC was impleaded as a defendant after it had foreclosed the mortgage and bought the lots and building as the highest bidder at the auction sale.

It was held that the mortgage credit of the RFC was superior to the refectionary credit (*credito refaccionario*) held by the lumber company. The RFC loan was used to defray the cost of constructing the two buildings. By express stipulation, the mortgage included all the improvements which would be constructed on the lots. The mortgage lien over the buildings attached thereto as of the recording of the mortgage and not as of the time of their construction. (Under article 1923 of the old Code a refectionary credit should be registered and, if not recorded, it is inferior to a registered mortgage credit).

Also inapplicable to this case is the ruling that in order to implement the pro rata sharing among the creditors mentioned in article 2242, as directed in article 2249, the said creditors "must necessarily be convened and the import of their claims ascertained" and that, to do so, "there must be first some proceeding where the claims of all the preferred creditors may be bindingly adjudicated, such as insolvency, the settlement of a decedent's estate under Rule 87 (now 86) of the Rules of Court, or other liquidation proceedings of similar import" (Resolution of the motion for reconsideration in *De Barretto vs. Villanueva*, 110 Phil. 896, 904, 906).

The Barretto ruling was predicated on the assumption that such an insolvency proceeding is necessary in order "to enable the court to ascertain the pro rata dividend corresponding to each" of the two creditors as well as the "other creditors" entitled to preference under article 2242.

Where, as in this case, it appears that there are no other creditors aside from the Carried Lumber Company and the ACCFA, the requirement that the pro rata dividend should be ascertained in an insolvency or similar proceeding should not be enforced.

Moreover, the instant case has features that easily distinguish it from the Barretto case. Here, the lumber company, before the registration of the mortgage, inquired from the ACCFA whether it would extend a loan to the Facoma. The lumber company continued to supply lumber to the Facoma after the ACCFA had made the telegraphic assurance that it would extend a loan of P27,200 to the Facoma. In effect, the ACCFA had prior notice of the lumber company materialman's lien.

Furthermore, in the Barretto case, the controversy was between the supposed unpaid vendor and the mortgagee who had acted in good faith and was unaware of the vendor's lien for the unpaid price (No. 2 in article 2242). This Court found that the vendor's lien was questionable and could not stand on equal footing with the mortgage lien.

As already noted, the ACCFA has been in possession of the warehouse since January 27, 1961 (Exh. 10). The trial

court should ascertain whether the warehouse has yielded any income during the time that the ACCFA has been in possession thereof. In any event, the rental value of the warehouse should be determined. The ACCFA is entitled to deduct from the earnings of the warehouse or its rental value the taxes and necessary and useful expenses which it had incurred for the said warehouse. By reason of its lien, the Carried Lumber Company has a pro rata share in the net earnings or rental value of the warehouse.

There is another aspect of this case which has eluded the attention of the parties. The lumber company in its original complaint asserted a lien not only over the Facoma's warehouse but also over its ricemill building. The trial court sustained the lumber company's lien over the Facoma's ricemill building. That is an error.

The evidence for the lumber company shows that it supplied materials only for the construction of the warehouse (Exh. F, F-1). The company in its letter to the sheriff specified that it was asserting a lien only over the warehouse (Exh. B). It did not mention the ricemill building. It has no materialman's lien on the ricemill building. On the other hand, the ACCFA had a mortgage lien on the ricemill building (Exh. 2). It foreclosed its mortgage and bought the ricemill building at the auction sale held on November 5, 1960 (Exh. 5, 6).

WHEREFORE, the trial court's judgment is reversed. It is hereby adjudged that the Carried Lumber Company and the ACCFA have concurrent liens on the Sta. Barbara Facoma warehouse in the proportion of their credits amounting to P5,655.50 (including the sheriff's fee of P45) and P41,370.11 (Exh. 4), respectively.

Should the parties within a period of thirty (30) days from the finality of this judgment be unable to agree as to how their liens over the Facoma warehouse should be satisfied, then the warehouse may be sold at public auction by the sheriff to the highest bidder, and the net proceeds of the sale should be allocated pro rata to the lumber company and the ACCFA.

The trial court should ascertain the net earnings or net rental value of the warehouse from January 27, 1961, when the ACCFA was placed in possession thereof, up to the time the Carried Lumber Company's lien is satisfied. Such net earnings or net rental value should also be allocated pro rata to the lumber company and the ACCFA. No pronouncement as to costs.

SO ORDERED.

Makalintal, C.J., Castro, Fernando, Teehankee, Barredo, Antonio, Esguerra, Muñoz Palma, and Concepcion, Jr., JJ., concur.

Makasiar, J., is on leave.

[*] Chartered under Republic Act No. 821 and renamed Agricultural Credit Administration (ACA) under section 101 of the Code of Agrarian Reforms, Republic Act No. 3844. See ACCFA vs. Confederation of Unions in Government, L-21484, November 29, 1969, 30 SCRA 649.

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