

**GOVERNMENT SERVICE INSURANCE SYSTEM,
PLAINTIFF-APPELLEE, VS. CALSONS, INC., CESARIO P. CALANOS,
AND NENITA GODINEZ, DEFENDANTS-APPELLANTS.**

G.R. No. L-19867. May 29, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from the decision of the Court of First Instance of Manila.

On April 11, 1957 appellant CALSONS, INC. applied for a loan of P2,000,000.00 to appellee to pay the balance of the purchase price of certain parcels of land situated at the corner of Globo de Oro and Elizondo Streets, Quiapo, Manila, and to finance the construction of a two-storey textile market building on said land. The application was approved by appellee's Board of Trustees on August 26, 1957. In connection with said loan appellants executed on October 31, 1957 a promissory note binding themselves jointly and severally to pay appellee the sum of P2,000,000.00, with interest at the rate of 7% per annum compounded monthly, in 120 equal monthly installments of P23,221.69 each. Under said note "the first installment shall be due and payable beginning the month following the last release and/or the month following the expiration of the period for the construction of the textile market building, whichever is earlier, and the rest on the 7th day of every month thereafter until the principal of TWO MILLION PESOS (P2,000,000.00) and the interest shall have been fully paid." To secure pay-ment of the note "and/or the interest thereon and/or other obligations arising thereunder", appellants executed on the same date a first mortgage in favor of appellee on five (5) parcels of land particularly described in the mortgage contract, "together with all the buildings and improvements now existing thereon or which may hereafter be constructed on the mortgaged property (ies) of which MORTGAGOR is the absolute owner, free from all liens and encumbrances." The aforementioned five (5) parcels of land were among the properties acquired by appellant CALSONS, INC., from Tuason & Sampedro, Inc., for and in consideration of the sum of ONE MILLION ONE HUNDRED THOUSAND PESOS (P1,100,000.00) under a Deed of Assignment dated October 29, 1957.

The conditions of the mortgage contract which are relevant to this case are the following:

"2. The MORTGAGOR shall not sell, dispose of, mortgage, nor in any manner encumber the mortgaged property (ies) without the prior written consent of the MORTGAGEE.

"4. If the MORTGAGOR shall, at any time, fail or refuse to pay any of the amortizations on the indebtedness, or the interest when due, or whatever other obligation herein agreed, then all the amortizations and other obligations of the MORTGAGOR of any nature, shall become due, payable and defaulted and the MORTGAGEE may immediately foreclose this mortgage judicially or extrajudicially under Act 3135, as amended and/or under C.A. 186, as amended, and/or Act No. 1508, as amended. x x x."

"14. This mortgage shall furthermore be subject to the following ADDITIONAL CONDITIONS:

1) That the applicant shall pay to the system P23,221.70 monthly, including principal and interest.

2) That the first release of P819,000.00 on this loan shall be made only after:

xxx xxx xxx

b. The submission of evidence showing payment on realty taxes up to and including that of the current year;

c. The submission of evidence showing the reduction of applicant's account on the lot to at least P819,000.00;

d. The submission of the certificates of title in the name of the applicant to the property offered as collateral for this loan; provided, that if the said certificates of title could not be secured without paying the balance of the purchase price, said balance shall be paid first from the first release of this loan;

3) That the check covering the obligation of applicant on the lots offered as collateral shall be drawn in favor of the vendor of said lots;

4) That subsequent releases on this loan shall be controlled in such manner that the amount to be released shall depend on the progress of the work done on the proposed building but in no case shall the amount to be re-leased and the amounts already released exceed 60% of the appraised value of the lots and the existing improvements thereon as of every release;

xxx xxx xxx

6) That the proposed building shall be completed within twelve (12) months from the date the first release on this loan is made;"

The first release in the amount of P819,000.00 was made on November 7, 1957, while the second (and last) release in the amount of P30,000.00 was made on May 15, 1958. The checks covering both releases were drawn in favor of the vendor of the mortgaged properties.

In accordance with the agreement between the parties, the old building standing on the mortgaged properties was insured for P300,000.00 on December 1, 1959. Appellee advanced the sum of P5,628.00 for the annual premium, but appellants failed to reimburse the same.

Appellee filed a complaint for the foreclosure of the mortgage with the Court of First Instance of Manila on August 11, 1958, alleging a number of violations of the mortgage contract, to wit: (1) that the mortgaged properties had not been freed by the mortgagor from certain liens and encumbrances other than the mortgage itself; (2) that without the prior written consent of plaintiff defendants removed and disposed of the complete band sawmill and filing machine which formed part of the properties mortgaged; (3) that defendant Calsons, Inc., failed to submit to appellee evidence showing the reduction of defendant's account on the lot to at least P819,000.00; (4) and that Calsons, Inc. failed to begin, much less complete, the construction of the super-market building on the mortgaged properties. On August 11, 1959, plaintiff filed supplemental complaint, which was admitted without opposition. Two additional grounds for the foreclosure of the mortgage were alleged, namely: (1) that defendants failed, despite demands therefor, to pay the amortizations due and payable, including accrued interest and surcharges, on the portion of the loan released to them; and (2) that defendants failed to complete the construction of the textile market building on the mortgaged properties within 12 months from November 7, 1957, the date of the first release of P819,000.00.

Judgment was rendered on March 3, 1962 in favor of plaintiff, and defendants brought this appeal directly to this Court in view of the amount involved.

In their brief, appellants make the following assignment of errors:

1. The Trial Court erred in holding that it is not true that defendants have not defaulted in any of their

obligations under the mortgage contract.

2. The Trial Court erred in ruling that with respect to the liens and encumbrances, the defendants' failure to pay the balance of the purchase price of the mortgaged properties from their original owners subjected the said properties to a vendor's lien.

3. The Trial Court erred in holding that the machineries on the mortgaged properties are part of the mortgage and that the removal and subsequent disposal of the same therefrom by the defendants violated the said mortgage contract.

4. The Trial Court erred in holding that defendant Calsons, Inc. has failed to reduce its account on the loan to at least P819,000.00 and that such failure is a clear violation of a contract of mortgage.

5. The Trial Court erred in holding that the defendants failed despite demand therefor, to pay the amortization due and payable, including interests and surcharges on the portion of the loan released to them.

6. The Trial Court erred in rendering judgment for plaintiff and against the defendants ordering the latter to pay jointly and severally the plaintiff of the sum of (1) P819,000.00 with interests at the rate of 7% per annum compounded monthly from November 8, 1957 until the same is fully paid; (2) P30,000.00 with interests at the rate of 7% per annum compounded monthly, from May 16, 1958 until the same is fully paid; (3) P5,628.00 yearly insurance premium with interests of 7% per annum compounded monthly, from December 1959 until the same is fully paid; (4) the sum equivalent to 10% of the foregoing sums as expenses of collection and attorney's fees, plus the costs of this action.

7. The Trial Court erred in failing and/or neglecting to act and pass upon the counterclaim of the defendants-appellants notwithstanding the fact that said counterclaim is fully established by the evidence on records.

The second and fourth errors assigned are interrelated and will first be taken up. The two certificates of title covering the mortgaged properties do not show any lien or encumbrance thereon other than the mortgage it-self. This is admitted by both parties. Appellee refers, however, to the vendor's lien in favor of the former owners, representing the unpaid balance of P280,000.00 on the purchase price of the lots mortgaged. The lien, appellee points out, is a legal encumbrance and therefore effective although not recorded. On the other hand, appellants contend that appellee is estopped from invoking its right to have the mortgaged properties free from the vendor's lien on two grounds, namely: (1) that appellant had previous knowledge of said lien as evidenced by the two releases of P819,000 and P30,000 directly to the vendor of the mortgaged properties, and (2) that appellant committed itself to pay to the said vendor the amount of P280,000.00, balance on the purchase price, within a period of six (6) months from October 28, 1957.

The contention cannot be sustained on the first ground. One of the reasons why appellant Calsons, Inc., applied for the P2,000,000.00 loan was precisely to use part thereof to pay the balance of the purchase price of five (5) parcels of land it mortgaged to appellee. And to assure itself that no vendor's lien attached to the said properties appellee caused the following conditions to be added to the original terms of the mortgage contract:

2) That the first release of P819,000.00 on this loan shall be made only after:

e. The submission of evidence showing the reduction of applicant's account on the lot to at least P819,000.00;

d. The submission of the certificates of title in the name of the applicant to the property offered as collateral for this loan; provided, that if the said certificates of title could not be secured without paying the balance of the purchase price said balance shall be paid first from the first release of this loan;

3) That the check covering the obligation of applicant on the lots offered as collateral shall be drawn in favor

of the vendor of said lots;

Pursuant to the foregoing conditions the check covering the first release of P819,000.00 was drawn in favor of the vendor of the properties, and the release was made upon submission of the two transfer certificates of title already in the name of appellant Calsons, Inc., as vendee, without any annotation thereon of any lien or encumbrance except the mortgage itself in favor of appellee. It turned out, however, that appellants had failed to reduce their account on the lot to P819,000.00, as stipulated in the mortgage contract, since there was still a balance of P280,000 on the purchase price. With respect to the second release of P30,000.00, the check was also drawn in favor of the vendor with the understanding that it would be used to pay the real estate taxes due on said properties and thus remove the corresponding tax lien imposed by law.

The steps taken by appellee negate any inference that it agreed to waive its right to have the properties "free from all liens and encumbrances," as provided in the mortgage contract.

Estoppel is invoked by appellants on the basis of a letter dated October 28, 1957, sent by the Manager of appellee's Real Estate Department to the vendor of the properties, to the effect that the balance of the purchase price in the amount of P280,000.00 would be released within six (6) months from the date of the said letter. The commitment of said Manager was not recognized by the Board of Trustees of the appellee as shown by the fact that it was not incorporated in the mortgage contract, which was executed on a later date - October 31, 1957. While the schedule of sub-sequent releases was clearly defined in the mortgage contract, no mention was made about the said commitment. Thus, Paragraph 14 (4) of the mortgage contract states:

"(4). That subsequent releases on this loan shall be controlled in such manner that the amount to be released shall depend in the progress of the work done on the proposed building but in no case shall the amount to be released and the amounts already released exceed 60%, of the appraised value of the lots and the existing improvements thereon as of every release;

Regarding the third error assigned, appellants do not deny the fact that they removed and disposed of the machineries installed in the building which were standing on the mortgaged properties. However, they contend that the said machineries were not included in the mortgage. The contention is groundless.

The mortgage was on the lands "together with all the buildings and improvements now existing or which may hereafter be constructed" thereon. And the machineries, as found by the trial court, were permanently attached to the property, and installed there by the former owner to meet the needs of certain works or industry therein. They were therefore part of the immovable pursuant to Article 415 of the Civil Code, and need not be the subject of a separate chattel mortgage in order to be deemed duly encumbered in favor of appellee.

Under the fifth assignment of error, appellants point out that there is no time specified in the mortgage contract within which the amortizations on the loan should begin to be paid, and conclude that they should begin only from the time the proposed building started earning rentals. The provision of Paragraph 14 (13) of the mortgage contract is invoked, to wit:

"That rentals from the proposed building equivalent to the monthly amortization on this loan shall be assigned in favor of and made payable to the System."

As a corollary argument, appellants add that since the present action was instituted three (3) months before the expiration of the twelve-month period (from November 7, 1957) within which the construction of the supermarket building should be completed the premature institution of the suit rendered the construction of said building impossible, and hence no default in payment was incurred.

Again this contention of appellants is without merit. The promissory note executed by them clearly provides when

the first installment, as well as subsequent ones, would become due, thus:

"The first installment shall be due and payable beginning the month following the last release and/or the month following the expiration of the period for the construction of the textile market building, whichever is earlier, and the rest on the 7th day of every month thereafter until the principal of TWO MILLION PESOS (P2,000,000.00) and the interest shall have been fully paid."

As previously mentioned, the mortgage contract provides that the proposed building should be completed within twelve (12) months from the date of the first release. Said release having been made on November 7, 1957, the construction period of 12 months expired on November 7, 1958; hence, the first installment became due one month thereafter or on December 7, 1958, and the rest on the 7th day of every month thereafter. Appellants' failure to pay the amortizations, interest and surcharges demanded of them by appellee, therefore, constitutes a violation of the mortgage contract and is sufficient ground for the foreclosure of the mortgage.

IN VIEW OF THE FOREGOING, the sixth and seventh assignments of error are without merit.

The judgment appealed from is hereby affirmed, with costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

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