

AMBROSIO MANAHAN, PETITIONER, VS. HONORABLE FERNANDO A. CRUZ, JUDGE, COURT OF FIRST INSTANCE OF RIZAL, BRANCH XII (CALOOCAN CITY); CITY SHERIFF OF CALOOCAN CITY; AND PHILIPPINE ...

G.R. No. L-26086. November 21, 1974

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/f481ea750021/>

FERNANDO, J.:

A specific codal provision to the effect that a mortgage extends "to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due,"[1] as interpreted authoritatively in *Bischoff vs. Pomar*,[2] a 1909 decision, adhered to uninterruptedly all these years, precludes this Court from lending approval to petitioner's plea to have it set aside an order of respondent Judge Fernando A. Cruz granting a motion for the issuance of a writ of possession including the residential building as part of the mortgaged property, rejecting the contention of petitioner that such was not the intention of the parties. It is to be admitted that the petition for certiorari and prohibition as presented could not be looked upon as totally devoid of plausibility. Nonetheless, upon a closer scrutiny of the undisputed facts and the controlling law, it becomes evident that it is not impressed with merit. We sustain the order of respondent Judge.

The facts are not open to dispute. Petitioner, as the registered owner of two (2) parcels of land situated at Caloocan City with Transfer Certificate of Title Nos. 20421 and 20423 of the Registry of Deeds of Rizal, on which was constructed his residential building of strong materials with an assessed value of P15,030.00, executed a deed of mortgage on January 13, 1959, the same in favor of the respondent Philippine National Bank.[3] On September 20, 1961, the petitioner executed a Deed of sale with Assumption of Mortgage over the said two (2) parcels of land, no express reference being made as to the improvements existing on the said parcels of land in favor of the Rapid Construction Supplies, Inc., but with the latter assuming the existing mortgage debt of the petitioner "under the same terms and conditions" with the respondent Bank, with its conformity and approval; and, as a consequence, T.C.T. Nos. 20421 and 20423 were cancelled and in lieu thereof, T.C.T. Nos. 91268 and 91269 were respectively issued in the name of the Rapid Construction Supplies, Inc.[4] In view of the failure of the Rapid Construction Supplies, Inc. to satisfy such mortgage indebtedness within the period provided for, said respondent Bank extra-judicially foreclosed the said mortgage under Act No. 3135 as amended; and on May 4, 1964, the respondent City Sheriff, upon petition of the respondent Bank, caused to be issued and published the corresponding notice of extra-judicial sale of the mortgaged properties.[5] On June 3, 1964, the said two (2) parcels of land were sold in public auction by the respondent City Sheriff; and, the respondent Bank, being the highest bidder in the amount of P36,589.48, covering the principal, interests, attorney's fees and other necessary legal expenses, in full satisfaction of the mortgage indebtedness of the mortgagor Rapid Construction Supplies, Inc. The corresponding Certificate of Sale over the said two (2) parcels of land was thereafter issued on June 4, 1964.[6] On April 28, 1965, the respondent Bank filed a petition with the respondent Judge under G.L.R.O. Cad. Rec. No. 15777, Case No. C-217 praying for the issuance of a writ of possession for the properties described in

the aforesaid certificates of title.[7] On June 16, 1965, respondent Judge issued an order granting the issuance of a writ of possession in favor of respondent Bank, stating therein likewise that the one year period of redemption had already expired.[8] Pursuant to such order, the Clerk of Court of the Court of First Instance of Rizal, on June 21, 1965, issued a writ of possession over the two (2) parcels of land.[9] On July 9, 1965, the respondent City Sheriff, acting on the said writ of possession, served a copy of a letter to the petitioner, requesting that the two (2) parcels of land and the residential building of the petitioner be vacated.[10] On July 19, 1965, petitioner filed an Ex-Parte Urgent Motion before the respondent Judge in G.L.R.O. Cad. Rec. No. 1577, Case No. C-217 praying that an order be issued declaring said residential building of the petitioner not included in the effects of said writ of possession and that the respondent City Sheriff be prevented from carrying out the ejectment of the petitioner from the residential building in question.[11] Petitioner was unsuccessful, On April 20, 1966, he received an order from the respondent Judge, dated April 5, 1966, which stated that the residential building in question be deemed included in the said Certificate of Sale and which granted respondent Bank's Urgent Motion dated July 21, 1965 to authorize the respondent City Sheriff to break open the padlock of the residential building in question so that the writ of possession could be carried out.[12] Hence this petition for certiorari and prohibition.

As set forth at the outset, it is not impressed with merit. Respondent Judge must be upheld.

1. The order of respondent Judge of April 5, 1966 is self-explanatory. Insofar as pertinent, it reads: "[On the issue] as to whether the house in question should be deemed included in the writ of possession, the Court, after a careful consideration of the arguments adduced for and against ***, is of the opinion that the house standing on the two parcels of land subject-matter of the writ of possession should be deemed included in the sheriff's certificate of sale, as well as in the writ of possession, because the said house was included in the deed of mortgage originally executed ***, which mortgage was assumed by the Rapid Construction and Supplies, Inc." [13] Such an order, as noted earlier, is in accordance with the aforesaid Article 2127 of the Civil Code. This provision is but a reiteration of Article 1877 of the former Civil Code. In the leading case of *Bischoff vs. Pomar*, [14] the 1909 decision already cited, Justice Torres made clear that both under the Civil Code and the Mortgage Law, [15] the improvements found on the mortgaged property form part of and are deemed therein included. What is more, the ponente stressed that the same doctrine prevails in American law. The *Bischoff* ruling was cited with approval by Justice Moreland twice, in *Cea vs. Villanueva*, [16] decided two years later, and *Government vs. Sugar Estates Co.*, [17] promulgated after another two-year period. *Cu Unjieng e Hijos vs. Mabalacat Sugar Co.*, [18] a 1933 decision, is even more relevant. There, as here, the question raised was "whether or not the sheriff committed an irregularity by including in the sale certain machinery and accessories alleged not to have been included in the mortgage nor in the notice of sale at public auction." [19] This Court, through Justice Villa-Real, answered the query thus: "As to whether or not the machinery and accessories in question were included in the notice of sale at public auction, inasmuch as the sheriff stated therein that he would sell all the properties belonging to the Mabalacat Sugar Central and said machinery and accessories are integral parts of said sugar central, they were included in the notice in question, following the principle of law that the accessory follows the principal." [20]

So it has to be in accordance with law. As was set forth by Manresa commenting on Article 1877 of the former Civil Code, now reproduced as Article 2127: "Otra de las cualidades o de los caracteres distintivos de la hipoteca es el relativo a su extension, al cual se contrae el precepto contenido en el art. 1.877, segundo de los que al presente examinamos, y afecta tambien esencialmente dicha cualidad a aquel de los efectos de la hipoteca de que venimos ocupandonos, o sea a la sujecion de los bienes hipotecados a las responsabilidades indicadas, pues por virtud de ella la hipoteca sujeta directa e inmediatamente a dichas responsabilidades, no solo a los bienes sobre los que expresamente se constituye, seno que, ademas, se extiende la afeccion o la carga a todas las accesiones naturales que los mismos tuvieren, a las mejoras de los mismos, a sus frutos pendientes y rentas no percibidas al vencer la obligacion y al importe de las indemnizaciones concedidas o debidas al propietario por los aseguradores

de los bienes hipotecados, o en virtud de expropiacion por causa de utilidad publica, en la forma expuesta en el citado art. 1.877, o, lo que es lo mismo, a todos los aumentos naturales o industriales de dichos bienes." [21] He did likewise emphasize the ancient lineage of such a provision: "Dicho principio fue proclamado por el Derecho romano, del cual lo tomaron las leyes de Partidas, siendo confirmado tambien por casi todas las legislaciones. En el proyecto de Codigo de 1851 se consignaron preceptos analogos en su arts. 1.800 y 1.801, y al redactarse la ley Hipotecaria se erigio en regla general e invariable el principio citado en sus arts. 110 y 111. segun el segundo de los cuales se entendian hipotecados justamente con la finca gravada, aunque no se mencionasen en el contrato, ***" [22]

2. Nor is this all. It is not only the letter of the strict law as construed with such undeviating rigidity, but also the equities that support the challenged order of respondent Judge. The petition includes the deed of sale with assumption of mortgage by and between petitioner and his spouse Virginia D. Manahan as vendors, and the Rapid Construction Supplies, Inc. as vendees. [23] Mention has already been made of the fact that there was therein an express assumption of the mortgage indebtedness of the Manahan spouses in favor of respondent Philippine National Bank "under the same terms and conditions of the mortgage contract" theretofore executed between the latter and petitioner. What is equally notable is that on behalf of the vendee Rapid Construction Supplies, Inc., such a deed of mortgage was executed by the same Virginia D. Manahan in her capacity as secretary-treasurer and as attorney-in-fact of such corporation. For petitioner and his spouse, therefore, to pretend ignorance of what was included in the mortgage was to manifest an attitude at war with bona fides. It would run counter to deeply-ingrained principles of the legal order, with its understandable concern that fairness should mark business transactions, for this Court to pay heed to the claim of petitioner in a suit for certiorari and prohibition, which are equitable remedies.

WHEREFORE, this petition for certiorari and prohibition is dismissed. The preliminary injunction issued by this Court according to its resolution of May 26, 1966 is set aside and declared to be of no further force and effect. Costs against petitioner.

Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Article 2127 of the Civil Code reads in full: "The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or it passes into the hands of a third person."

[2] 12 Phil. 690.

[3] Petition, par. 2-4.

[4] Ibid, par. 5.

[5] Ibid, par. 6 and Annex C.

[6] Ibid, par. 7.

[7] Ibid, par. 8 and Annex E.

[8] Ibid, par. 9 and Annex F.

[9] Ibid, par. 10 and Annex G.

[10] Ibid, par. 11.

[11] Ibid, par. 13.

[12] Ibid, par. 19.

[13] Order of Respondent Judge.

[14] 12 Phil. 690.

[15] Article 110.

[16] 18 Phil. 538 (1911).

[17] 30 Phil. 27 (1915). Cf. Philippine Sugar Estates Development Co. vs. Camps, 34 Phil. 426 (1916) and Philippine Trust Co. vs. Echaus, 55 Phil. 381 (1930).

[18] 58 Phil. 439.

[19] Ibid, 441.

[20] Ibid, 443.

[21] XII Manresa, Código Civil Español, Quinta edición, 535-536 (1951).

[22] Ibid, 536.

[23] Petition, Annex B.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.