

ENRIQUE LOPEZ, PETITIONER, VS. VICENTE OROSA, JR., AND PLAZA THEATRE, INC., RESPONDENTS.*G.R. No. 10817-18. February 28, 1958*

Ponente: FELIX, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10817-18/>**FELIX, J.:**

Enrique Lopez is a resident of Balayan, Batangas, doing business under the trade name of Lopez-Castelo Sawmill. Sometime in May, 1946, Vicente Orosa, Jr., also a resident of the same province, dropped at Lopez' house and invited him to make an investment in the theatre business. It was intimated that Orosa, his family and close friends were organizing- a corporation to be known as Plaza Theatre, Inc., that would engage in such venture. Although Lopez expressed his unwillingness to invest on the same, he agreed to supply the lumber necessary for the construction of the proposed theatre, and at Orosa's behest and assurance that the latter would be personally liable for any account that the said construction might incur, Lopez further agreed that payment therefor would be on demand and not cash on delivery basis. Pursuant to said verbal agreement, Lopez delivered the lumber which was used for the construction of the Plaza Theatre on May 17, 1946, up to December 4 of the same year. But of the total cost of the materials amounting to P62,255.85, Lopez was paid only P20,848.50, thus leaving a balance of. P41,771.35.

We may state at this juncture that the Plaza Theatre was erected on a piece of land with an area of 679.17 square meters formerly owned by Vicente Orosa, Jr., and was acquired by the corporation on September 25, 1946, for P6,000. As Lopez was pressing Orosa for payment of the remaining unpaid obligation, the latter and Belarmino Rustia, the president of the corporation, promised to obtain a bank loan by mortgaging- the properties of the Plaza Theatre, Inc., out of which said amount of P41,771.35 would be satisfied, to which assurance Lopez had' to accede. Unknown to him, however, as early as November, 1946, the corporation already got a loan for P30,000 from the Philippine National Bank with the. Luzon Surety Company as surety, and the corporation in turn executed a mortgage on the land and building in favor of said company as counter-security. As the land at that time was not yet brought under the operation of the Torrens System, the mortgage on the same was registered on November 16, 1946, under Act No. 3344. Subsequently, when the corporation applied for the registration of the land under Act 496, such mortgage was not revealed and thus Original Certificate of Title No. 0-391 was correspondingly issued on October 25, 1947, without any encumbrance appearing thereon.

Persistent demand from Lopez for the payment of the amount due him caused Vicente Orosa, Jr. to execute on March 17, 1947, an alleged "deed of assignment" of his 420 shares of stock of the Plaza Theater, Inc., at P100 per share or with a total value of P42,000 in favor of the creditor, and as the obligation still remained unsettled, Lopez filed on November 12, 1947, a complaint with1 the Court of First Instance of Batangas (Civil Case No. 4501 which later became R-57) against Vicente Orosa, Jr. and Plaza Theatre, Inc., praying that defendants be sentenced to pay him jointly and severally the sura of P41,771.35, with legal interest from the filing of the action; that in case defendants fail to pay the same, that the building and the land covered by OCT No. 0-391 owned by the corporation be sold at public auction and the proceeds thereof be applied to said indebtedness; or that the 420

shares of the capital stock of the Plaza Theatre, Inc., assigned by Vicente Orosa, Jr., to said plaintiff be sold at public auction for the same purpose; and for such other remedies as may be warranted by the circumstances. Plaintiff also caused the annotation of a notice of lis pendens on said properties with the Register of Deeds.

Defendants Vicente Orosa, Jr., and Plaza Theatre, Inc., filed separate answers, the first denying that the materials were delivered to him as a promoter and later treasurer of the corporation, because he had purchased and received the same on his personal account; that the land on which the movie house was constructed was not charged with a Hen to secure the payment of the aforementioned unpaid obligation; and that the 420 shares of stock of the Plaza Theatre, Inc. was not assigned to plaintiff as collaterals but as direct security for the payment of his indebtedness. As special defense, this defendant contended that as the 420 shares of stock assigned and conveyed by the assignor and accepted by Lopez as direct security for the payment of the amount of P41,771.35 were personal properties, plaintiff was barred from recovering any deficiency if the proceeds of the sale thereof at public auction would not be sufficient to cover and satisfy the obligation. It was thus prayed that he be declared exempted from the payment of any deficiency in case the proceeds from the sale of said personal properties would not be enough to cover the amount sought to be collected.

Defendant Plaza Theatre, Inc., on the other hand, practically set up the same line of defense by alleging that the building materials delivered to Orosa were on the latter's personal account; and that there was no understanding that said materials would be paid jointly and severally by Orosa and the corporation, nor was a lien charged on the properties of the latter to secure payment of the same obligation. As special defense, defendant corporation averred that while it was true that the materials purchased by Orosa were sold by the latter to the corporation, such transactions were in good faith and for valuable consideration thus when plaintiff failed to claim said materials within 30 days from the time of removal thereof from Orosa, said lumber became a different and distinct specie and plaintiff lost whatever rights he might have in the same and consequently had no recourse against the Plaza Theatre, Inc.; that the claim could not have been refectionary credit, for such kind of obligation referred to an indebtedness incurred in the repair or reconstruction of something already existing and this concept did not include an entirely new work; and that the Plaza Theatre, Inc., having been incorporated on October 14, 1946, it could not have contracted any obligation prior to said date. It was, therefore, prayed that the complaint be dismissed; that said defendant be awarded the sum of P5,000 for damages, and such other relief as may be just and proper in the premises.

The surety company, in the meantime, upon discovery that the land was already registered under the Torrens System and that there was a notice of lis pendens thereon, filed on August 17, 1948, or within the 1-year period after the issuance of the certificate of title, a petition for review of the decree of the land registration court dated October 18, 1947, which was made the basis of OCT No. 0-319, In order to annotate the rights and interests of the surety company over said properties (Land Registration Case No. 17 GLRO Rec. No. 296). Opposition thereto was offered by Enrique Lopez, asserting that the amount demanded by him constituted a preferred lien over the properties of the obligors; that the surety company was guilty of negligence when it failed to present an opposition "to the application for registration of the property; and if any annotation of the rights and interest of said surety would ever be made, same must be subject to the Hen in his favor.

The two cases were heard jointly and in a decision dated October 30, 1952, the lower Court, after making an exhaustive and detailed analysis of the respective stands of the parties and the evidence adduced at the trial, held that defendants Vicente Orosa, Jr., and the Plaza Theatre, Inc., were jointly liable for the unpaid balance of the cost of lumber used in the construction of the building and the plaintiff thus acquired the materialman's lien over the same. In making the pronouncement that the lien was merely confined to the building and did not extend to the land on which the construction was made, the trial judge took into consideration the fact that when plaintiff

started the delivery of lumber in May, 1946, the land was not yet owned by the corporation; that the mortgage in favor of Luzon Surety Company was previously registered under Act No. 3344; that the codal provision (Art. 1923 of the old Spanish Civil Code) specifying that refection credits are preferred could refer only to buildings, which are also classified as real properties, upon which said refection was made. It was, however, declared that plaintiff's lien on the building was superior to the right of the surety company. And finding that the Plaza Theatre, Inc., had no objection to the review of the decree issued in its favor by the land registration court and the inclusion in the title of the encumbrance in favor of the surety company, the court a quo granted the petition filed by the latter company. Defendants Orosa and the Plaza Theatre, Inc., were thus required to pay jointly the amount of P41,771.35 with legal interest and costs within 90 days from notice of said decision; that in case of default, the 420 shares of stock assigned by Orosa to plaintiff be sold at public auction and the proceeds thereof be applied to the payment of the amount due the plaintiff, plus interest and costs; and that the encumbrance in favor of the surety company be endorsed at the back of OCT No. 0-391, with the notation that with respect to the building, said mortgage was subject to the material man's lien in favor of Enrique Lopez.

Plaintiff tried to secure a modification of the decision in so far as it declared that the obligation of therein defendants was joint instead of solidary and that the lien did not extend to the land, but same was denied by order of the court of December 23, 1952. The matter was thus appealed to the Court of Appeals, which affirmed the lower court's ruling, and then to this Tribunal. In this instance, plaintiff-appellant raises 2 issues: (1) whether a materialman's lien for the value of the materials used in the construction of a building attaches to said structure alone and does not extend to the land on which the building is adhered to; and (2) whether the lower court and the Court of Appeals erred in not providing that the materialman's lien is superior to the mortgage executed in favor of the surety company not only on the building but also on the land.

It is to be noted in this appeal that Enrique Lopez has not raised any question against the part of the decision sentencing defendants Orosa and Plaza Theatre, Inc., to pay jointly the sum of P41,771.35, so We will not take up or consider anything on that point. Appellant, however, contends that the lien created in favor of the furnisher of the materials used for the construction, repair or refection of a building, is also extended to the land on which the construction was made, and in support thereof he relies on Article 1923 of the Spanish Civil Code, the pertinent law on the matter, which reads as follows:

ART. 1923. With, respect to determinate real property and real rights of the debtor, the following' are preferred:

* * * * *

5. Credits for refection, not entered or recorded, with respect to the real estate upon which the refection was made, and only with respect to other credits different from those mentioned in four next preceding paragraphs.

It is argued that in view of the employment of the phrase real estate or immovable property, and inasmuch as said provision does not contain any specification delimiting the lien to the building, said article must be construed as to embrace both the land and the building or structure adhering thereto. We cannot subscribe to this view, for while it is true that generally, real estate connotes the land and the building constructed thereon, it is obvious that the inclusion of the building, separate and distinct from the land, in the enumeration of what may constitute real properties,[1] could mean only one thing-that a building is by itself an immovable property, a doctrine already pronounced by this Court in the case of *Leung Yee vs. Strong Machinery Co.*, 37 Phil., 644. Cc Moreover, and in view of the absence of any specific provision of law to the contrary, a building is an immovable property, irrespective of whether or not said m structure and the land on which it is adhered to belong 2 to the same owner.

A close examination of the provision of the Civil Code invoked by appellant reveals that the law gives preference

to unregistered refectionary credits only with respect to the real estate upon which the refection or work was made. This being so, the inevitable conclusion must be that the lien so created attaches merely to the immovable property for the construction or repair of which the obligation was incurred. Evidently, therefore, the lien in favor of appellant for the unpaid value of the lumber used in the construction of the building attaches only to said structure and to no other property of the obligors.

Considering the conclusion thus arrived at, i.e., that the materialman's lien could be charged only to the building for which the credit was made or which received the benefit of refection, the lower court was right in holding that the interest of the mortgagee over the land is superior and cannot be made subject to the said materialman's lien. Wherefore, and on the strength of the foregoing considerations, the decision appealed from is hereby affirmed, with costs against appellant. It is so ordered.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

[1]Article 415 of the new Civil Code (Art. 334 of the old) enumerates what are considered immovable property, among which are land, buildings, roads and constructions of all kinds adhered to the soil.

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.