

PHILIPPINE TRUST COMPANY, PLAINTIFF AND APPELLEE, VS. LUCIO ECHAUS, DEFENDANT AND APPELLANT.

G.R. No. 33113. December 13, 1930

Ponente: JOHNS, J.

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JOHNS, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

December 6, 1916, Siuliong & Co., then the owner of lots Nos. 485, 588, and 904, of the cadastral survey of .Iloilo, mortgaged them to Maria Caballero y Aparici for P47,500. August 28, 1922, and while the mortgage was in full force and effect, Siuliong & Co. sold the lots to Enrique Echaus for P24,000, and as a condition, of the sale, Enrique Echaus assumed and agreed to pay the balance due and owing on the mortgage, which was then P25,500, in which it was specifically agreed that should Enrique Echaus fail to pay, and Siuliong & Co. should find itself compelled to pay the mortgage, then the sale would become null and void, and that the property would revert to the vendor. This sale was not recorded. In August, 1924, the construction of a cement building was commenced and finished in May, 1925. August 19, 1926, Enrique Echaus sold all of his right, title, and interest to the lots to his sister, Leonor Echaus, by a public document. The deed of sale from Siuliong & Co. to Enrique Echaus, with the conditions therein stipulated as to its nullity in the event that the vendee should fail to pay the mortgage, was incorporated in, and made a part of, the deed, in addition to which this paragraph was inserted:

"That it is expressly understood that the buildings mentioned in the deed quoted above are not the ones existing at present; for instead of the media agua (shed) along the front part on the Muelley Loney side, there is now a building of concrete which serves as the office of the vendor herein, and there have been besides divers modifications made in the aforesaid sheds."

October 20, 1927, plaintiff, having obtained a judgment against Enrique Echaus, levied upon all of the right, title, and interest which he then had or might have in or to the lots and buildings. November 29, 1927, by reason of the fact that Enrique Echaus had failed to pay P27,500, which was then due and owing on the original mortgage, Siuliong & Co.; was forced to pay the mortgage, which it did. January, 1929, the plaintiff at public sale purchased all of the right, title, and interest which Enrique Echaus had in or to the property. Plaintiff being advised of the legal rights of Siuliong & Co. to the property by reason of the failure of Enrique Echaus to pay the original mortgage, purchased from Siuliong & Co. all of the lots and buildings, the corresponding transfer certificates of title for which were issued on March 25, 1929. Plaintiff thus became the owner of the buildings and lots by purchase at public sale of any right, title or interest which Enrique Echaus might have in or to them, and having acquired the original mortgage from Siuliong & Co., titles to both lots and buildings became merged in the plaintiff.

Assuming, without deciding, that the defendant actually constructed and paid for the cement building on lot 485,

the stubborn fact remains that the original mortgage was existing at the time the building was constructed, and that Enrique Echaus made default and never paid or satisfied the mortgage, and for its own protection Siuliong & Co. was forced to pay and take over the mortgage, and that to protect its interests, plaintiff was forced to pay Siuliong & Co. the amount which it paid to acquire the mortgage.

In the case of Philippine Sugar Estates Development Co. vs. Camps (36 Phil., 85), this court held :

"Where a parcel of land, together with the building thereon erected has been mortgaged, and where after execution of the mortgage, but before the expiration of the mortgage period, the debtor tears down the building and erects another and more costly one in its place, no stipulation whatever being contained in the mortgage deed that the new building should be expressly excluded from the mortgage encumbering the land and the construction thereon ; it is unquestionable that the mortgage actually includes the new building, which forms one indivisible whole with the land or lot on which it was erected." And in *Bischoff vs. Pomar and Compañia General de Tabacos* (12 Phil., 690), it also held:

"In order that it may be understood that the machinery and other objects placed upon and used in connection with a mortgaged estate are excluded from the mortgage, when it was stated in the mortgage that the improvements, buildings, and machinery that existed thereon were also comprehended, it is indispensable that the exclusion thereof be stipulated between the contracting parties."

The original mortgage contains covenants that it was a lien on the land and improvements thereon to secure the payment of the debt, and there is no claim or pretense that any exception was ever made of its legal force and effect for the construction of the cement building. How then and upon what legal principle can the defendant claim to be the owner of the cement building on lot 485? In the final analysis, plaintiff's title to the property dates and relates back to the original mortgage executed by Siuliong & Co. to Maria Caballero y Aparici on December 6, 1916.

There is no merit in the appeal. The judgment of the lower court is affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand and Villa-Real, JJ., concur.

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