

12 Phil. 690

[G.R. No. 4373. February 02, 1909]

**SAMUEL BISCHOFF, PLAINTIFF AND APPELLANT, vs. JUAN D. POMAR AND THE
COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, DEFENDANTS AND
APPELLEES.**

D E C I S I O N

TORRES, J.:

Without prejudice to the issuance of a statement of the basis upon which this court affirms the judgment of the lower court of February 28, 1907, appealed from, by virtue whereof it is held that the steam sugar mill fitted with a portable 8-horsepower boiler, with its attachments and a complete tramway with rails and other fittings and fifteen small cars, all of which were at the Hacienda San Jose, should be considered as included in the mortgage executed by Romana Ganson in favor of Lazaro Mota, which mortgage was afterwards transferred and conveyed by the mortgagor to the Compañia General de Tabacos, we absolve the defendants without special ruling as to costs, and reserve in favor of the plaintiff, Samuel Bischoff, the right of action which he may have to recover from Romana Ganson the sum paid for that property, and said judgment is hereby affirmed without special ruling as to the costs in this instance.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

BASIS OF THE DECISION.

FEBRUARY 6, 1909.

TORRES, J.:

On the 27th of December, 1905, counsel for Samuel Bischoff filed a complaint, alleging that the latter was the owner of a steam sugar mill fitted with a portable 8-horsepower boiler with its attachments, a complete tramway with rails and other fittings for a distance of not

less than 3 kilometers, and fifteen small cars, all of which were at the Hacienda San Jose, of San Carlos, Occidental Negros; that the defendant Compañia de Tabacos had asked and obtained from the Court of First Instance, in or about the month of October of the same year, the appointment of a receiver for the property of Romana Ganzon, among which property that described above was included at the instance of the defendant as belonging to the debtor Ganzon; that at the designation of the Compañia de Tabacos Juan Pomar was appointed receiver and upon taking charge of the property of the said Romana Ganzon he did not confine himself thereto, but unlawfully and without any right whatever took possession, as receiver, of the property of the plaintiff hereinbefore described; that notwithstanding the repeated demands made by the plaintiff, Bischoff, the latter was unable to secure from the defendants the return of the said property; that they refused to deliver the said property to him and continued to use the same to the prejudice of the plaintiff, whose loss and damages amounted to P30 a day; the plaintiff therefore prayed that judgment be entered in his favor, declaring that the property described in the first paragraph of the complaint belonged to him, and that the said defendants be ordered to pay the said losses and damages with costs.

In his written answer, counsel for the Compañia General de Tabacos denied the allegations 1, 4, 6, 7, and 8 of the complaint, and as a defense alleged, that under a public instrument executed before the notary Gregorio Yulo, on the 20th of July, 1900, Lazaro Mota y Ayo loaned to Romana Ganzon or Tan son, widow of Vega, the sum of 11,209 pesos, payable at the expiration of two years from the date of the instrument, and as security for her debt, the said Romana Ganzon mortgaged to her creditor, Mota, the sugar plantation called Ban Jose, situated in the sitio of Sibungcogon, barrio of San Carlos, in the town of Calatrava, Occidental Negros; that by another instrument executed on October 8, 1900, Lazaro Mota and Romana Ganzon agreed to increase the said mortgage credit by a further sum of 4,177.20 pesos; that this was duly paid to the debtor, whose total indebtedness thus amounted to 15,386.20 pesos, the said mortgage remaining as security for both amounts; that by another instrument executed on September 6, 1902, before the same notary, the loan or debt was further increased by the sum of 6,037.73 pesos, which Mota delivered to Ganzon; this last amount, added to the previous 15,386.20 pesos, makes a total of 21,423.93 pesos, and it was agreed upon between the parties in this last instrument that, if Ganzon was not able to pay the creditor Mota on or before July 20, 1904, the mortgaged hacienda would be disposed of at public auction, together with its buildings, machinery and agricultural implements, and the whole amount of the indebtedness would be collected from the proceeds thereof; that this instrument was entered in the registry of property on

October 11, 1902; that by an instrument dated September 30, 1904, Lazaro Mota y Ayo unreservedly transferred the said credit, free of all incumbrance, together with all of his rights, to the Compañia General de Tabacos for the sum of P21,423.93, subrogating to the latter all his rights with respect to the collection of the debt from Ganzon; that by another instrument dated December 10, 1904, Romana Ganzon created a mortgage in favor of the said company on the aforesaid Hacienda of San Jose for all the amounts owed, which amounts are, the said P21,423.93 transferred by Mota to the Compañia General de Tabacos, and P31,195.99, plus P422.61 as interest at 10 per cent on Mota's credit, making a grand total of P53,042.53, said instrument being entered in the registry of property; that the aforesaid steam sugar mill and portable 8-horsepower boiler, the tramway, with all its fittings, appurtenances, and rails, and all the cars upon the above-mentioned Hacienda of San Jose, are fixtures thereon, and the machinery, vessels, implements, and utensils are necessary for the working of said hacienda and formed an integral part of the same when the said mortgages were executed; that the plaintiff Bischoff was informed and knew of said mortgages prior to making the alleged purchase of the goods mentioned in his complaint; that the property referred to in the complaint, together with the Hacienda of San Jose, was mortgaged to the creditor company as security for its loan of P53,042.53; that said mortgage still stands because neither Romana Ganzon nor the plaintiff have paid it; that the credit of the Compañia General de Tabacos, secured by the said mortgages, is anterior and preferent to the purchase alleged by the plaintiff, and, therefore, the defendant prays that judgment be entered in his favor dismissing the complaint; that all the property claimed by the plaintiff as his own property, be held to be included in the mortgage in favor of the Compañia General de Tabacos, and that the mortgage credit of the said Compañia General de Tabacos be declared as preferred.

The other defendant, Juan Pomar, in his answer denied the allegations contained in the complaint, and as a defense set forth that by virtue of an order of the Court of First Instance of Occidental Negros, dated September 27, 1905, in the matter of The Compañia General de Tabacos vs. Romana Ganzon or Tanson, viuda de Vega, the deponent was appointed receiver of the property claimed in the complaint; that both the petitioner and the Compañia Tabacalera had executed the bonds required by law in the amounts of P12,000 and P6,000, respectively, which bonds were approved on the 31st of October of the same year; that after being duly sworn, he was appointed receiver, assumed the duties of his office, and took charge of the said property with no other interest than the faithful and exact compliance of the orders of the lower court in the performance of his duties; for this reason he prayed that the complaint be dismissed with costs.

At the trial of the case evidence was adduced by both parties and their exhibits were made of record. On February 28, 1907, the court below rendered judgment, holding that the steam sugar mill and 8-horsepower portable boiler and fittings, the tramway, rails and cars upon the Hacienda of San Jose, should be considered as included in the mortgage executed by Romana Ganzon in favor of Lazaro Mota, which mortgage was transferred to the Compañia General de Tabacos and ratified in favor of the latter by the debtor; the defendants were therefore absolved of the complaint without costs, and such right of action was reserved to Samuel Bischoff as he may be entitled for the return from Romana Ganzon of whatever sum he paid for the said property.

From the above judgment the plaintiff appealed and moved that the same be set aside and a new trial granted; his motion was overruled, to which overruling he excepted and presented the corresponding bill of exceptions; the latter was approved by the court below and submitted to this court.

Supposing that the steam sugar mill and portable boiler, and the tramway with fifteen small wagons, rails, and other fittings, mounted at the Hacienda San Jose and in use thereon, were improvements upon said hacienda, are they to be considered for this sole reason as necessarily included in the mortgage of the said hacienda, even though not specifically described in the instruments as included therein?

The plaintiff avers, without proof, that the said articles were excluded from the mortgage of the Hacienda San Jose where they are to be found, because in the instruments wherein the Hacienda San Jose was repeatedly mortgaged, far from it being stated that, by agreement between the contracting parties, the objects claimed in the complaint should be understood to be positively excluded, in the successive mortgage deeds executed by Romana Ganzon in favor of Lazaro Mota y Ayo on July 20 and October 8, 1900, and September 6, 1902, Exhibit D, as security for the increasing loans made by the latter, the debtor mortgaged her Hacienda San Jose with the improvements thereon to guarantee the payment of the total sum of 21,423.93 pesos; in the last instrument, as well as in the previous ones, it is stated that the warehouse, farmhouse, furnaces, machinery, and the described land that constitutes the said hacienda shall be liable for the payment of her total indebtedness, the legal interest thereon, and loss and damages and costs in case of judicial proceedings having to be instituted; said instrument, like the previous ones, was recorded in the registry of property, and it should be noted that by express desire of the contracting parties, in the successive documents of indebtedness of 1900, the mortgage of the hacienda with the improvements thereon was maintained, and was afterwards repeated in the last instrument.

Owing to the nonpayment of the said sum of P21,423.93, notwithstanding the demands made upon, and extensions of time granted to the debtor, on September 30, 1904, the creditor, Lazaro Mota, assigned and transferred the said credit with all his rights to the Compañia General de Tabacos by means of a public instrument which was recorded in the registry, and appears as Exhibit B herein.

In the private document marked as Exhibit A, dated September 10, 1902, it appears that the Compañia General de Tabacos opened an annual credit of P15,000 under the conditions therein stated, the debtor having offered as security the said hacienda with the cattle, buildings, and two steam engines, and stating in addition, that the said hacienda with its buildings, machinery, and cattle had already been mortgaged by her to Lazaro Mota.

Moreover, even in the instrument executed on the 10th of December, 1904, when Romana Ganzon created a mortgage in favor of the Compañia General de Tabacos to guarantee her debt of P53,042.53, she designated the said hacienda with all the improvements, buildings, machinery, and carabaos thereon, and in addition declared that the same hacienda and its dependencies were already mortgaged to the said Lazaro Mota.

So that in the instruments of mortgage above referred to, three of which are anterior to the sale *a retro*, effected on the 8th of November, 1904, upon which the plaintiff bases his claim, the improvements on the Hacienda San Jose, among which is the machinery that was already mounted, appear as expressly mortgaged at the time of executing the instrument of mortgage of September 6, 1902, and later on, that of transfer of the mortgage credit on the 30th of September, 1904, to the Compañia General de Tabacos.

From none of the said instruments does it appear that the contracting parties had expressly agreed to exclude the said machinery and tramway from the repeated mortgages of said hacienda, so that no value would be given to the words written therein proving in an unquestionable manner that it was the will of the contracting parties to include in the lien all the improvements upon the hacienda, among which was the machinery mounted thereon for the needs of the said hacienda:

Article 110 of the Mortgage Law in force reads:

“A mortgage extends to natural increase, improvements, growing crops, and rents not collected when the obligation falls due, and the value of indemnities allowed or due the owner for insurance on the property mortgaged, or by virtue

of condemnation by right of eminent domain.”

The same precept is repeated in detail and more extensively in the following article 111 of said law.

Article 1877 of the Civil Code contains the same precept but treats at greater length than in the preinserted article 110 of the Mortgage Law; it is as follows:

“A mortgage includes the natural accessions, improvements, growing fruits, and rents not collected when the obligation is due, and the amount of the indemnities granted or due the owner by the underwriters of the property mortgaged or by virtue of the exercise of eminent domain by reason of public utility, with the declarations, amplifications, and limitations established by law, in case the estate continues in the possession of the person who mortgaged it, as well as when it passes into the hands of a third person.”

As may be seen from the doctrine established by the Supreme Court of Washington in its decision in the matter of *The Royal Insurance Company vs. R. Miller, liquidator, and Amadeo* (26 Sup. Ct. Rep., 46¹) the above-quoted legal precepts in force in these Islands are in accord with the American laws:

“3. *Mortgage-Right of Mortgagee to Insurance on Harvested Crop.*-The avails of insurance on sugar and molasses coming into the sugar house on a sugar plantation as the result of the manufacture of a crop growing thereon when the insurance was effected inure to the benefit of the mortgagee in a mortgage of the realty and the fruits thereof if the loss occurred after the execution of the mortgage, under the Porto Rico Mortgage Law of 1880, which subjects to a mortgage of real property the crops growing or harvested when the mortgage falls due, ‘but not yet removed or warehoused,’ and the indemnities awarded or due the owner of the realty either for the insurance or for the crops, provided the damage occurred after the creation of the mortgage.

“4. *Mortgage-Right of Mortgagee to Sue for Insurance without Exhausting Other Remedies.*-The mortgage creditor in a mortgage governed by the civil law may sue for the avails of insurance subject to his mortgage without first exhausting

his remedies against other property embraced by the mortgage.”

So that even though no mention had been made of said machinery and tramway in the mortgage instrument, the mortgage of the property whereon they are located is understood by law to extend to them and they must be considered as included therein, as well as all other improvements, unless there was an express stipulation between the parties that they should be excluded. Such exclusion, however, certainly does not appear in the record; on the contrary, they are manifestly included in the mortgage.

It has already been stated that the machinery in question was already mounted on said property and was in use thereon when the mortgage given to secure the debt of Romana Ganzon to the original creditor, Lazaro Mota, was created; but even if this were not so, article 111 of the Mortgage Law, hereinbefore cited, provides that the following shall be considered as mortgaged with the estate, provided they belong to the owner of said estate, although they be not mentioned in the contract:

“1. Chattels permanently located in a building, either useful or ornamental, or for the service of some industry, even though they were placed there after the creation of the mortgage.”

It should be noted that the said machinery and tramway were exclusively owned by Romania Ganzon, the owner of the hacienda, and at the time when the mortgage was made they had not yet been sold *a retro* to the plaintiff Bischoff; this sale was effected on November 8, 1904, long after the property was mortgaged.

Given the rights of dominion possessed by Romana Ganzon over the articles in question it is not possible to deny that she had the right to dispose of them, as she did, by sale under *pacto de retro* to the plaintiff, but the alienation thereof does not release them from the encumbrance to which they are subjected until redeemed from the mortgage that weighs upon them, since the right of the creditor limits that of the owner of the thing mortgaged, and the purchaser, assuming that he was able to effect a valid purchase, is necessarily bound to acknowledge and respect the encumbrance to which is subjected the purchased thing and which is at the disposal of the said creditor in order that he, under the terms of the contract, may recover the amount of his credit therefrom.

If it be a true and incontrovertible fact that at the time the plaintiff Bischoff acquired under

pacto de retro the machinery and the tramway in question, they were already affected by and included in the mortgage of the Hacienda San Jose, the placing of the said hacienda, together with all of the property existing thereon in the hands of a receiver at the instance of the creditor, the Compañia General de Tabacos, has not occasioned any damage to the plaintiff, inasmuch as the defendant limited itself to the exercise of a perfect right protected by law, and it is the duty of the plaintiff to respect the encumbrance that burdens the property acquired by him under these conditions, and therefore, he can not have acquired any right to indemnity for loss and damages, for the reason that he purchased goods that were already liable to the credit of the company that was the creditor of Romana Ganzon, and which latter sold them on *pacto de retro*; he therefore did not obtain possession of the same.

For the above considerations, and accepting the conclusions contained in the judgment appealed from in so far as they agree with the foregoing, it is our opinion that the same should be affirmed, without any ruling as to the costs of this instance.

Arellano, C, J., Mapa, Carson, and Willard, JJ., concur,

^[1] 199 U. S., 353.
