

[G.R. No. 3298. February 27, 1907]

**FELISA NEPOMUCENO AND MARCIANA CANON, PLAINTIFFS AND APPELLEES,
VS. GENARO HEREDIA, DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

The complaint alleges that on the 24th of September, 1904, the defendant had in his possession for administration 500 pesos, the property of Felisa Nepomuceno, and 1,500 pesos, the property of Marciana Canon; that on that day he entered into an agreement with them, in accordance with which he was to invest this money in a mortgage, or conditional purchase of good real estate, the investment to bring in 1 per centum per month, and the principal to be payable in one year; and that the defendant has failed to make the investment in accordance with his agreement and has refused, and continues to refuse, to return the money.

The following facts are fully established by the evidence of record, and are substantially uncontroverted: That the defendant is the business adviser of the plaintiff, Marciana Canon, and as such had in his hands 1,500 pesos paid to him on her account on the 22d of September, 1904; that about the same time Felisa Nepomuceno, the other plaintiff, had an unsecured debt due her of 500 pesos from one Marcelo Leño; that on demand for security her debtor proposed to give her a deed of conditional sale (*venta con pacto de retro*) to a certain tract of land, together with the buildings and improvements thereon, in consideration of 2,000 pesos, she to be credited with 500 pesos on the purchase price and to advance the balance of 1,500 pesos; that knowing that the defendant had in his hands that amount of money, the property of her coplaintiff, Marciana Canon, she proposed to the said Marciana Canon that they make a joint investment in the land; that together they discussed the proposition with the defendant and later directed him to draw up the necessary documents; that a deed of conditional sale of the land was executed on the 24th of September, 1904, the vendor reserving the privilege of repurchasing the land at the end of

one year and obligating himself to make monthly payments in consideration of the right to retain the land in his possession in sufficient amount to bring the plaintiffs' interest on their money at the rate of 17 per centum per annum, and the vendees, the plaintiffs in this action, paying to the vendor the sum of 1,500 pesos, cash, and discharging the above-mentioned credit of 500 pesos due the plaintiff, Felisa Nepomuceno; that the title to the land under the deed was placed in the name of the defendant, Genaro Heredia; and that a few days thereafter the defendant, at the request of the plaintiffs, executed before a notary public a formal memorandum of the fact that the plaintiffs had furnished the money with which the land had been purchased, said memorandum setting forth the amount furnished by each and their proportionate interest in the investment.

The plaintiffs insist that the defendant took the deed to the land in his own name without their knowledge or consent, but we think that the weight of the evidence sustains the defendant's claim that he did so by their express direction as their agent, and for their convenience, and that in any event his action in this regard was ratified and approved by their request for and acceptance of the memorandum setting out the facts and by their continuance in the enjoyment of the profits of the transaction after the purchase and without making any effort to have the title transferred in their own names.

The plaintiffs also allege that the defendant, without express authority from them, undertook to extend, and did extend, the period within which the vendor had the privilege of repurchase, but we think that his action in this connection was also ratified, approved, and acquiesced in by the plaintiffs and that in any event it can have no bearing on the merits of the question submitted on appeal.

More than a year after the transactions above set out, during which time the vendor of the land continued to pay, and the plaintiffs to receive, the stipulated payments in consideration of the right to retain possession, a cloud was cast on the title to the land by the institution of proceedings for the recovery of possession by third parties, which proceedings are still pending on appeal from the judgment of the Court of First Instance, and the plaintiffs thereupon brought this action in which they are seeking to recover from the defendant the whole of the amount of money invested, with interest from the date of the investment, alleging that the purchase of the land was not made in accordance with their instructions, or on their account.

The trial court gave judgment in favor of the plaintiffs for the full amount claimed on the ground that while acting as their agent the defendant invested their money in land to which

the vendor had not a good and sufficient title, contrary to the tenor of his instructions. On appeal the plaintiffs ask that this judgment be affirmed, not on the grounds assigned by the trial judge, but because, as they insist, their money was invested by the defendant in his own name and on his own account, and not as their agent, or on their behalf. The judgment can not be sustained on either ground.

It was clearly established at the trial that the defendant was acting merely as the agent for the plaintiffs throughout the entire transaction; that the purchase of the land was made not only with their full knowledge and consent, but at their suggestion; and that after the purchase had been effected, the plaintiffs, with full knowledge of the facts, approved and ratified the actions of their agent in the premises. There is nothing in the record which would indicate that the defendant failed to exercise reasonable care and diligence in the performance of his duty as such agent, or that he undertook to guarantee the vendor's title to the land purchased by direction of the plaintiffs.

The judgment of the lower court should be, and is hereby, reversed, with the costs against the plaintiffs in the first instance and without special condemnation of costs in this instance. After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the record be returned to the court wherein it originated for execution. So ordered.

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