8 Phil. 83

[G.R. No. 2562. March 19, 1907]

MARIANO VELOSO, PLAINTIFF AND APPELLEE, VS. MANUEL VELOSO Y RUBI, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

This is an action brought in the matter of foreclosure of a mortgage, all of which appears duly set out in the complaint filed herein. The amount due as a credit of the mortgagee, and as such claimed by the plaintiff, is in the sum of 19,000 pesos, together with interest thereon at the rate of 12 per cent per annum, such mortgage being a public act or instrument executed on May 31, 1897. The debtor obligated himself therein to pay the consideration, named and expressed, in eight yearly installments counting or beginning from the date of the execution of the mortgage, to wit, seven yearly installments of 4,000 pesos each in payment on account of the principal due together with the interest due thereon, and the eighth or last installment in the sum of 2,001.88 pesos, the amount then remaining due on account of said principal and interest after the payment of the said seven yearly installments. (Clause 1 of the mortgage.) The defendant is named in the instrument or mortgage as the debtor and Buenaventura Veloso del Rosario, now deceased, as the creditor-mortgagee, the rights of the latter in and to this credit under said mortgage having been transferred and subrogated to the plaintiff herein by virtue of lawful succession.

Clause 3 of the said mortgage or instrument contains the following stipulation:

> "The failure or default in the payment of any one of the installments mentioned and stipulated in number 1 of this mortgage or instrument shall give the right to Don Buenaventura Veloso del Rosario to proceed against the properties mortgaged for the purpose of obtaining the payment of the same, and of all other installments due and unpaid, until he shall obtain the complete or full payment of the principal together with the interest thereon then due and owing; that the

> costs and expenses incurred and arising in case the said Don Buenaventura Veloso del Rosario be obliged to proceed judicially for the collection thereof shall be against and for the account of the debtor; the eight periods still subsisting for the payment of each installment as it falls due."

The last of the eight installments, as stipulated, would have fallen due on May 31, 1905, but notwithstanding this fact, the plaintiff filed his complaint on December 12, 1903, praying for the full payment of the amount of the indebtedness together with interest thereon, alleging as a reason that the defendant had not paid even one of the several installments then due and that such fact was a lawful cause and reason for declaring due and payable all the other and remaining installments in accordance with the agreement contained in the clause last above quoted of the said mortgage.

The defendant in his answer denied in general terms each and all of the facts as alleged in the complaint.

Judgment was rendered in favor of the plaintiff for the full sum of the credit under said mortgage—that is to say, for the sum of 19,000 pesos—together with interest thereon at the rate of 12 per cent per annum from the 31st day of May, 1897, and the costs of the action, from which judgment the defendant took due exception.

The judgment of the court below is based, as stated therein, upon the third finding thereof, which sets forth: "That the defendant has failed to comply with the conditions of the agreement and has been negligent in the payment of the installments of the said sum of 19,000 pesos, which sum is now due and owing, as well as in the payment of the interest due on the same; and that in accordance with the terms or provisions of said document the sum of 19,000 pesos, together with interest thereon from May 31, 1897, amounting to a total sum of 37,240 pesos, is now due and payable to said plaintiff, as well as the costs of this action."

This conclusion is, according to the appellant, erroneous. In fact, the only two errors of the court below as assigned in the brief of the appellant refer particularly and exclusively to this conclusion. And the conclusion of the court below is erroneous, as appellant claims, for the reason that it is not supported by any proof. As a matter of fact the plaintiff has not presented any *affirmative* proof tending to show that the defendant has not paid the installments due, or any one of such installments. In accordance with the terms of the mortgage this was a precise or necessary condition by which could be declared or

considered due and payable, from that time, all of the future or remaining installments, and making available and effective the action on the part of the creditor to enforce the collection of the full amount of the said installments, without it being necessary to wait for the maturity of the same. The theory of the appellant is that the appellee should prove, before anything else, the appellee's fulfillment of the said condition—that is to say, the failure to make payment of the installments then due—in order to properly base the action instituted with respect to the future or remaining installments, or in other words, the installments not yet due at the time of the filing of the complaint.

The appellee maintains, at the same time, that the failure to pay being a negative and indefinite fact, and in addition thereto, by reason of its peculiar character, is not susceptible, in any manner, of proof, that it was incumbent upon the appellant to prove to the contrary, for the reason that the negative of such fact as asserted and alleged in appellant's written answer covers the affirmation of the payment; and it is a rule of law that the proof is always incumbent upon the party affirming, and not upon the one denying the fact.

Section 297 of the Code of Civil Procedure prescribes the following:

> "Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, nor even in such case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party."

Supposing, for the sake of argument in this decision, that in accordance with the provisions above quoted, it was in fact the duty or obligation of the appellant to prove the allegation of the failure of payment, the question then remains simply to determine whether the allegation can be considered as proven or not within the merits of the case.

The appellant proved the certainty of the credit claimed. It was proven by a public instrument which is complete and efficient proof in law. The existence of an obligation being proven it is presumed to exist during the time its fulfillment or extinction is not proven, and, consequently, the proof thereof is incumbent on the part of the debtor. (Art. 1214, Civil Code.) In such a case the allegation as to the failure of payment or compliance with the

obligation has in its favor the presumption of law, inasmuch as payment is never presumed without proof and outside of certain special circumstances or conditions not concurring herein. From the fact that said allegation of appellant is supported by a legal presumption there are deduced two unavoidable and inevitable legal consequences:

(1) That it was not necessary to show affirmatively by means of other proof independent of the same allegation the certainty of said allegation, because, in accordance with articles 1250 and 1251 of said code, "presumptions established by law, exempt those favored thereby from producing any further proof, but may be destroyed by proof to the contrary, except in the cases in which it is expressly prohibited:" and

(2) That once existing a legal presumption in favor of said allegation, this carries with itself *prima facie* proof of its certainty, since presumptions constitute one of the probatory means of proof expressly recognized by law. "Proofs," says article 1215, "may be given by instruments, by confessions, by the personal inspection of a judge, by experts, by witnesses, and by *presumptions*." The Code of Civil Procedure, now in force and effect, also admits presumptions as one of the proofs admissible during trial, in accordance with sections 333 and 334 of said code.

This being so, we can not sustain the point that the allegation as to the failure of payment made in the complaint has remained unproven during the trial of this cause. From a review of the record of the trial of this cause we find in the same that the presumption of the law is in favor of said allegation, which is by itself a proof to be taken into consideration in accordance with law. Therefore the court below did not err in finding that the said allegation was true.

Wherefore, the judgment appealed from is affirmed with the costs of this instance against the appellant. After the expiration of twenty days from the notification of this decision, let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

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

Date created: July 25, 2014