46 Phil. 881

[G.R. No. 21029. November 03, 1923]

R. O. WARRINGTON, PLAINTIFF AND APPELLEE, VS. ESTEBAN DE LA RAMA, DEFENDANT AND APPELLANT.

D E C I S I O N

VILLAMOR, J.:

On April 1, 1921, the firm of Hijos de I. de la Rama, through its manager Esteban de la Rama, executed and signed the promissory note Exhibit A, which is as follows:

> "On or before July 1st, 1921, for value received, we promise to pay to the order of the *Oriental Products Corporation, Inc.,* at their office in the City of Iloilo, P. I., the sum of pesos ten thousand 00/100 only (P10,000), Philippine currency, with interest thereon at the rate of twelve per centum (12%) per annum.
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> "It is further agreed that if default be made in the payment of the principal or interest of this note, when the same becomes due and payable, an additional sum equal to twenty (20%) per cent of the total amount then due thereon, shall be paid to the holder or holders hereof as attorney's fees and cost of collection.
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> "If this promissory note is discounted by the Philippine National Bank, this will constitute their authority to debit by account, upon the date of maturity, with the full amount of the note and the interest thereof.
>
> "ILOILO, P. I.
> "*April 1, 1921.*
>
> (Sgd.) "HIJOS DE I. DE LA RAMA

This note was, before its maturity, endorsed by the Oriental Products Corporation, Inc., to R. O. Warrington, who is the legal holder and owner of the said promissory note Exhibit A.

Said note not having been paid by the defendant on July 1, 1921, notwithstanding the repeated demands made upon him for the purpose, the plaintiff prays that the defendant be sentenced to pay the sum stated in said note, with interest thereon at the rate of 12 per centum per annum from April 1, 1921, until full payment thereof, plus an additional sum equivalent to 20 per centum of the principal and interest as attorney's fee, and the costs of the action.

By a judgment rendered March 20, 1923, the Honorable F. Santamaria, judge, who tried this case, sentenced the defendant Esteban de la Rama to pay the plaintiff the aforesaid sums of P10,000, P2,364.33 as interest up to that date, and the sum of P2,472.86 as attorney's fee, plus interest at the rate of 12 per centum per annum on the sum of P10,000 from March 21st of this year until payment, and to pay the costs.

Two errors are assigned by appellant's counsel in his brief, to wit: (*a*) The trial court erred in entering the order of April 5, 1922, overruling the defendant's demurrer, said demurrer having already been sustained by the same court in an order of November 12, 1921, issued by another Judge, to whom said demurrer was submitted; and (*b*) the trial court erred in rendering judgment against Esteban de la Rama for the payment to the plaintiff of the sum of P10,000, with interest thereon at the rate of 12 per centum per annum, and 20 per centum of the whole of said sum as attorney's fee, and the costs of the action.

The appellant argues that the trial court erred in entering its order of April 5, 1922, setting aside the order entered by another judge in the same case under date of November 12, 1921, that is to say, four months after the same had been entered, overruling the demurrer of the defendant. It must be borne in mind, however, that the order of November 12, 1921, was entered in the wrong belief that at the time of the filing of the complaint, the firm known as "Hijos

de I. de la Rama" existed, due to the allegation in the demurrer as follows:

> "It is very well known that 'Hijos de I. de la Rama' is a corporation duly registered under the laws in force in the Philippine Islands, with its principal office in the City of Iloilo, Province of Iloilo, P. I., its manager being Mr. E. de la Rama."

But it having subsequently been shown that the firm ceased to exist on September 25, 1907, the trial court considered the plaintiff's motion of March 6, 1922, as a petition for relieving him from complying with the aforesaid order of November 12, 1921, under the provision of section 113 of the Code of Civil Procedure. We hold that the trial court, for the reasons alleged by the plaintiff in support of his motion, was right in setting aside the order of November 12, 1921, and in entering another of April 5, 1922, ordering the defendant to answer the complaint within the period prescribed by the rules.

As to the second error, we find that the trial court sentenced the defendant to pay 20 per centum of the principal and interest at the rate of 12 per centum per annum up to the date of the judgment, that is, P2,472.86 as attorney's fee. We think this sum is excessive as attorney's fee in this case, and notwithstanding tfie provision contained in Exhibit A to that effect, this court has the power to reduce it to its just limit. In the case of Bachrach *vs*. Golingco (39 Phil., 138) this court held: "The courts have the same power to limit the amount recoverable under a special provision in a promissory note whereby the debtor obligates himself to pay a specified amount, or a certain per centum of the principal debt, in satisfaction of the attorney's fee for which the creditor would become liable in suing upon the note."

And in Bachrach Garage and Taxicab Co. *vs*. Golingco (39 Phil., 912) this court said: "The stipulation that in case of non-compliance the debtor shall pay a fixed amount for the fees of the attorney who may be employed by the creditor for the purpose of enforcing compliance with the obligation is not deemed to be an interest within the purview of Act No. 2655, and neither is the computation fixed by said Act applicable thereto. It is not an indemnity for gain which cannot be realized, but an amount which the creditor spends and which constitutes a loss really suffered by reason of the non-compliance with the

obligation.

> "When the amount stipulated for the attorney's fees is so exorbitant that it exceeds that which should justly be paid for that purpose, the excess shall be considered as indirect or simulated interest, according to the spirit of the law, and should therefore be subject to the computation. In the case at bar, the 12½ per cent to which the trial court reduced the 25 per cent stipulated represent, in our opinion, the amount which the plaintiff was justly obliged to pay for his attorney's fees, and should not be considered as interest in the computation of the latter."

Under the circumstances of the present litigation, we think that the amount of P1,500 is sufficient to cover the fee of the plaintiff's attorney, and we hold that the sum allowed by the trial court on this account must be reduced to P1,500.

As thus modified, the judgment appealed from is affirmed with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Avanceña, Johns,
and *Romualdez, JJ.,* concur.

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