

45 Phil. 514

[G.R. No. 21044. December 11, 1923]

BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CHARLES D. GOOCH AND JAMES R. REDFERN, DEFENDANTS. JAMES R. REDFERN, APPELLANT.

D E C I S I O N

JOHNSON, J.:

The

only question presented by this appeal is: What is the effect of changing the rate of interest of a contract to pay money? The facts are brief and may be stated as follows:

On the 14th day of October, 1918, the said Charles D. Gooch entered into a contract with the plaintiff, by virtue of which the latter conceded to the former a "credit in current account" of not to exceed P10,000, upon condition that the former should pay interest at the rate of eight per cent (8%) "upon all sums so taken, computed upon average daily balances and payable upon the last day of each quarter of the calendar year." Mr. Gooch further promised to give security for the payment of the principal and interest of said loan and to pay whatever sum might be and remaining due upon the demand of the said bank. On the same day the defendant James R. Redfern signed a bond with his codefendant Charles D. Gooch, by virtue of the terms of which, they were held and bound jointly and severally unto the Bank of the Philippine Islands in the sum of P10,000 to be paid in accordance with the terms of the said contract between Mr. Gooch and the plaintiff. Finally a demand was made by the bank for the payment of the principal and interest of said loan. Payment was not made and the present action was commenced. The

defendants interposed a general and special defense. Trial was had and judgment was rendered in favor of the plaintiff and against the defendants for the sum of P8,804.35, with interest at 12 per cent from the 17th day of July, 1922, and costs. From that judgment the defendant James R. Redfern appealed and alleges that the lower court committed an error in not relieving him from liability as surety, because of certain changes made in the principal obligation by the plaintiff, without his knowledge or consent.

It was proved during the trial of the cause that while Gooch was operating on his credit account, the bank on April 12, 1920, raised the interest rate on advances to 9 per cent, and later, on February 10, 1922, raised it to 12 per cent per annum. It is further proved that the bank charged the interest to Gooch monthly rather than quarterly as provided in the contract. It is not denied that these changes were made without the knowledge or consent of Mr. Redfern. The original contract was not actually altered or changed. The plaintiff simply notified Mr. Gooch that he would have to pay the additional rate of interest after a certain date. *The change* in the rate of interest was a *collateral agreement* between the bank and Mr. Gooch.

Did said change in the rate of interest have the effect of relieving Mr. Redfern from liability under his bond? The appellant insists that it did, and cites some very convincing authorities in support of his contention. There is no allegation nor intimation that the change in the rate of interest was fraudulently done. No charge of fraud was made.

While the general rule of the effect of an alteration in a written contract of the character before us is as the appellant states it to be, yet, nevertheless, when the alteration was not made fraudulently, it will not relieve the parties from their original obligation. Mr. Justice Lawrence, in the case of *Elliott vs. Blair* (47 Ill., 342), said: "If the alteration were material, but not fraudulently done, the party may recover upon the original consideration." To the same effect may be cited the following cases: (*Clough vs. Seay*, 49 Iowa, 111; *Sullivan vs. Rudisill*, 63 Iowa, 158; 2 *Corpus Juris*, 1181; 32 *Cyc. of Law and Pr.*, 185, 186; *Cambridge Savings Bank vs. Hyde*, 131 Mass., 77; 2 *Cyc. of Law and Pr.*, 183.)

It will be noted that the original contract was not actually altered or changed. The plaintiff simply notified Mr. Gooch that he would have to pay the additional rate of interest. Mr. Gooch was under no obligation to pay the extra rate of interest. He promised to pay the extra rate of interest perhaps to avoid an immediate demand for the payment of the principal. The change of the rate of interest was a collateral agreement between the Bank and Mr. Gooch. When he promised to pay the extra rate of interest on demand of the plaintiff, it was his contract, separate and apart from his original contract. His agreement to pay the additional rate of interest was an additional burden upon him. It was an obligation assumed by him, and in no way affected the original contract of the appellant. The appellant's liability remained unchanged. (Keene's Admr. vs. Miller, 103 Ky., 628; Parson on Bills & Notes, 571; Chitty on Bills, 212; Matteson vs. Ellsworth, 33 Wis., 488.)

Mr. Redfern was still liable together with his principal for whatever sum remaining due under his bond at the time of the demand of the plaintiff, calculated in accordance with the terms of the bond. The record is, therefore, hereby ordered to be returned to the lower court, with direction that the plaintiff be given an opportunity to show by proper and competent evidence the amount which was due at the time of the demand in accordance with the terms of the contract and bond, with the privilege, of course, on the part of the appellant to present whatever proof he may have per contra. And without any finding as to costs it is so ordered.

Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.
