103 Phil. 950

[G.R. No. L-7955. May 30, 1958]

JOAQUIN LOPEZ, PETITIONER, VS. ENRIQUE P. OCHOA, RESPONDENT.

D E C I S I O N

BAUTISTA ANGELO, J.:
This is a petition for review of a decision of the Court of Appeals modifying that of the court *a quo* in the sense that "all the amounts awarded * * *shall be reduced to its equivalent in actual Philippine currency in the proportion of 15 to 1", without costs.

On August 26, 1943, Enrique P. Ochoa executed in favor of Joaquin Lopez a document whereby he mortgaged a piece of land located in Manila as security for the payment of a loan in the amount of P15,000 in Japanese military notes to bs paid, among other conditions, as follows:

> "1.—Devolera dicha cantidad en el plazo de DOS AÑOS, a contar desde la fecha de esta escritura, cuyo plazo se estipula estrietamente en beneficio reciproeo del deudor y del acreedor. Dc tal manera que el deudor no podra pagar al acreedor el capital ni parte del mismo, antes de la expiracion del plazo, aunque ofrezca pagar los intereses correspondientes al periodo no transcurrido de diclio plazo; y de igual manera, el acreedor tampoco podra exigir el pago del capital de este prestamo antes del plazo convenido. Esta clausula se considera como una condition especial y esencial de este contrato, que forma parte de su consideration especial y de este contrato, que forma parte de su eonsideracion legal, pues sin ella las partes contratantes no liub:eran aeeptado este contrato.
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> "2.—Pagara sobre la mencionada cantidad intereses a razon de ci.nco por ciento annual, pagaderos por semestres vencidos en la redencia del acreedor y

sin necesidad de requerimiento."

On March 1, 1944, Ochoa paid Lopez the sum of P375 as interest on the principal of the aforesaid loan for the period from August 26, 1943 to February 25, 1944 and on June 12, 1944, he paid P5,000, in Japanese war notes, on account of the principal for which Lopez issued a receipt.

On August 25, 1944, Ochoa made another payment in the sum of P323.62 on account of interest for the period from February 26, 1944 to August 26, 1944. On October 2, 1944, he tendered to Lopez the payment of the balance of the indebtedness with the corresponding interest, but the latter refused to accept it on the ground that it was against the terms of the mortgage. In view of such refusal, Ochoa advised Lopez that he would deposit the money in court and, accordingly, he filed a complaint with the Court of First Instance of Manila accompanied hy a deposit in the amount of P10,631.50. Lopez was properly served with summons on October 77 1944 but the case was never tried nor its record reconstituted after its destruction during the battle for the liberation of the City of Manila.

His several demands to cancel the mortgage having failed, Ochoa commenced the present action on January 30, 1950 before the Court of First Instance of Manila with the prayer that the tender of payment and consignation made by him of the amount of P10,000 be declared as complete payment of his obligation and that the mortgage executed by him be cancelled, with costs. Defendant pleaded that the alleged consignation of the obligation had not been validly made, and set up a counterclaim seeking the judgment against plaintiff for the mortgage debt of P10,000, still due, together with the stipulated interest and attorneys' fees and, in default thereof, for the foreclosure of the mortgage in accordance with law.

Finding that the alleged consignation was not valid for it was made when the debt was not yet due and upholding the validity of the terms of the mortgage contract, the court rendered judgment absolving the defendant of the complaint and sentencing the plaintiff to pay the sum of PI0,000, with interest at the rate of 5% per annum from January 26, 1950, the further sum of P2,707.09 as accrued interest, with interest at the legal rate from January 26, 1950, and the

sum of 10% on the principal amount as attorneys' fees, plus the cost, and ordering plaintiff to make said payment within ninety days, with the warning that, upon his default, the mortgaged property shall be sold as provided for in the Rules of Court. The Court of Appeals modified this judgment as stated in the early part of this decision.

After considering the terms of the mortgage contract with regard to the period within which the loan may be paid particularly the clause to the effect that the debtor shall not pay the capital before the expiration of two years, in the light of the partial payment made by Cehoa of the sum of P5,000 on account of the principal obligation which Lopez accepted on June 12, 1944, the Court of Appeals made the following findings:

> "2.—The acceptance of the partial payment in the sum of P5,000.00 made by the plaintiff-appellant on June 12, 1944 (Exh. 'I') was not a novation of the contract, but it was undoubtedly a waiver by defendant-appellee of the aforesaid term of two years. It was a relinquishment of his right to refuse any payment before the expiration of said term. No explanation having been given why defendant-appellee received said partial payment before the maturity of the obligation, it may be presumed that his relinquishment was intentional and his choice to dispense with the term, voluntary. It was not a mere forbearance. (56 Am. Jur. pp. 102, 104, 107 and 113)"

Petitioner now contends that the Court of Appeals erred in considering the acceptance of the partial payment of P5,000 on account *as a waiver on his part of the period of two years for the reason that such defense was not set up by respondent in the court a quo* and as such it was error to entertain it to his prejudice. It appears however that in the respondent's reply to petitioner's answer and counterclaim, the former made the following averment: "defendant herein is *now estopped* from claiming that payment of the obligation on the mortgage indebtedness cannot be made before the expiration of two years as alleged by him in paragraph (5) and sub-paragraph 1 of paragraph (7) of his counterclaim, assuming without admitting that such alleged stipulation was a condition in the mortgage deed executed between the parties." It may be contended that there is an allegation of estoppel, and not of waiver, but these

two terms are frequently used as convertible. The doctrine of waiver belongs to the family of, or is based upon, estoppel. This is especially true where the waiver relied upon is constructive or implied from the conduct of a party, when it is said that the elements of estoppel are attendant.

> "(2) B. *Native of Doctrine*.—The doctrine of waiver has been characterized as technical, as of some arbitrariness. It is one of the most familiar in the law, prevalent in ancient as well as in modern times throughout every branch of law as well as of practice. * * * It is a doctrine resting upon an equitable principle which courts of law will recognize, that a person, with full knowledge of the facts shall not be permitted to act in a manner inconsistent with his former position or conduct to the injury of another, a rule of judicial policy, the legal outgrowth of judicial abhorrence so to speak, of a person's taking inconsistent positions and gaining advantages thereby through the aid of courts. The doctrine, it has been said, belongs to the family of, is of the nature of, is based upon, estoppel. The essence of waiver, it has been stated, is estoppel, and where there is no estoppel, there is no waiver. 'Waiver' and 'estoppel' are frequently used as convertible. On the other hand, it has been said that the terms are not convertible, that an estoppel in pais has connections in no wise akin to waiver, and that the doctrine of waiver does not necessarily depend on estoppel or misrepresentation; thus, a waiver does not necessarily imply that one has been misled to his prejudice or into an altered position; a waiver may be created by .acts, conduct, or declarations to create a technical estoppel. However, the distinction, it has been said, is more easily preserved in dealing with express waiver, *but where the waiver relied upon is constructive or merely implied from the conduct of a party, irrespective of what his actual intention may have been, it is at least questionable if there are not present some of the elements of estopp*el." (67 C. J. pp. 294-295. Italics supplied.)

Petitioner also contends that it was error to consider that respondent made a partial payment of P5,000 on account of his principal obligation *there being no proof submitted by him to that effect*. But the Court of Appeals found it as a fact that such partial payment was actually made especially considering the receipt signed by him acknowledging said payment. It being a question of fact,

it cannot now be looked into at this stage of the proceeding.

Another contention refers to the application of the Balantyne scale of values to the present case on the pretense that the same has not been set up as a defense nor has evidence to prove it been presented. But this pretense is untenable because said Ballantyne scale is now a matter that conies with in judicial notice it having been applied by this Court in several previous cases and had become part of our jurisprudence. There is therefore no cogent reason why it cannot new be considered even if it has not been set up as a defense.

It is finally contended that the Court of Appeals erred in revaluing the balance of the obligation under the Ballantyne scale of values taking as basis the month of June, 1944 because, in the opinion of petitioner, the basis should be the date of the mortgage, or on August 26, 1943. On this point, the court said: "Defendant-appellee having waived, on June 12. 1944, his right to the term of two years agreed upon in the contract (Exh. '1'), the obligation under consideration became payable since June 13, 1944 and during the Japanese military occupation. Hence, conformably with the ruling of the Supreme Court, it should be revalued on the basis of the relative value of the Japanese military notes in Philippine genuine currency on June, 1944 under the Ballantyne sliding scale of values, which is 15 to 1."

There is nothing incorrect in this finding considering that the obligation only became payable on June 13, 1944. This became possible because of petitioner's waiver. In fact, several attempts were made by respondent to pay the whole obligation thereabouts but his attempts failed because of petitioner's refusal. It is therefore reasonable that the revaluation be made as of said date and not on the date of the mortgage.

The decision appealed from being in accordance with law, the same is hereby affirmed, with costs against petitioner.

Paras, C.J., Bengzon, Labrador, Concepcion, Reyes, J.B.L., Endencia, and *Felix, JJ.,* concur.

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