

CHINA BANKING CORPORATION, IN SUBSTITUTION OF FILIPINAS COMPANIA DE SEGUROS, PLAINTIFF AND APPELLEE, VS. FAUSTINO LICHAUCO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-22001. November 04, 1924

Ponente: AVANCEÑA, J.

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AVANCEÑA, J.:

The dispositive part of the judgment appealed from is literally as follows:

"For all of the foregoing it is adjudged and decreed that the defendant Faustino Lichauco be, as is hereby, sentenced to pay the plaintiff the sum of P21,500, with interest at 12 per cent per year from September 13, 1922 until full payment thereof, and in addition, interest at 6 per cent per annum from the filing of the complaint upon P1,935, interest of the sum claimed for 9 months prior to the filing of the complaint, and of such sums as subsequently have become or may become due, from their respective dates of maturity until the payment of said interest; he is further sentenced to pay the sum of P14,200 as fees of plaintiff's attorney, expenses and troubles caused by the litigation for the collection of said sum of P21,500, with interest thereon; and all the defendants are sentenced to pay the sum of P50,000 with interest at the rate of 12 per cent per annum from September 5, 1921, capitalized monthly to earn the same interest as the principal, until full payments thereof, and in addition 5 per cent of P50,000 and the interest due at the time of the filing of the complaint, as costs of suit and other expenses of whatever kind, including attorney's fees, incurred by the plaintiff for the recovery of said sum, and it is ordered that the payment of all these amounts be made within three months from the date of the judgment and that in case of non-payment of all these amounts within the aforesaid period, the mortgaged property be sold for the payment of the amount or amounts not paid."

The judgment appealed from contains a complete and exact statement of all the facts from which the liability of the defendants arose.

There is no question in this appeal but that the defendant Faustino Lichauco owes the plaintiff the sum of P21,500, with interest thereon at the rate of 12 per cent per year from September 13, 1922. Nor is there about the fact that, at the filing of the herein complaint* Faustino Lichauco owed the sum of P1,935, as interest for the preceding nine months. But it is alleged that the lower court erred in allowing legal interest at the rate of 6 per cent from the filing of the complaint upon this sum of P1,935, the amount of interest due on that date. This is no error. Article 1109 of the Civil Code expressly provides that interest due shall earn legal interest from the date payment thereof is judicially demanded, although the obligation may be silent on the matter;

As to the part of the judgment sentencing all the defendants to pay the plaintiff the sum of P50,000, it is necessary to take into account the previous transactions that gave rise to this liability of the defendants. Lichauco & Company, Inc., owed the plaintiff a large sum by way of loan. On September 5, 1921, Faustino Lichauco and his wife Luisa F. de Lichauco executed a document (Exhibit C) in favor of the plaintiff whereby they secured with a mortgage upon the property described in the document the payment of a part of this loan in the amount of p50,000

with interest at 9 per cent per year. It was agreed that in case of non-fulfillment of the contract, this mortgage would stand as security also for the payment of all the costs of the suit and expenses of any kind, including attorney's fees, which by way of liquidated damages are fixed at 5 per cent of the principal. It is stated lastly in this document that if Faustino Lichauco and Luisa F. de Lichauco should fail to pay this amount of P50,000, the mortgage shall be in full force and effect.

On the 20th of December, 1922, Lichauco & Co., Inc., Faustino Lichauco, and Luisa F. de Lichauco executed another document (Exhibit D) in which, among other things, they ratified the former mortgage and stated that the payment of the P50,000 shall continue to be secured in the same manner and with the same property, and shall earn interest at 12 per cent per year from October 20, 1920. The appellants argue in this court that the obligation of Faustino Lichauco and Luisa F. de Lichauco lacked consideration, because what they guaranteed with this mortgage was a debt of Lichauco & Co., Inc. This contention does not find support in law. As a mortgage is an accessory contract, its consideration is the very consideration of the principal contract, from which it receives its life, and without which it cannot exist as an independent contract, although, as in the instant case, it may secure an obligation incurred by another (art. 1857 of the Civil Code). That this amount of P50,000 is to earn interest, and that 5 per cent must be paid in addition for judicial expenses and attorney's fees, was expressly stipulated in the contract. The trial court, however, fixed this interest at 12 per cent from September 5, 1921, which we believe is an error. In the contract of December 20, 1922, it was stipulated that from October 20, 1920, the interest must be 12 per cent. Undoubtedly a clerical error was committed in the writing of this date, inasmuch as then Faustino Lichauco and Luisa F. de Lichauco had not executed the mortgage yet. The lower court held that this date must be September 5, 1921, but this view is groundless, since in the contract of September 5, 1921, this interest was fixed at 9 per cent. This date must, therefore, be construed to be the date of the second contract, December 20, 1922, as it cannot be presumed that the parties ever intended to make it effective from a former date.

For the foregoing, it being understood that the defendants must pay interest at 9 per cent from September 5, 1921, and 12 per cent from December 20, 1922, the judgment appealed from is affirmed in all other respects, without special pronouncement as to costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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