

RODOLFO B. SANTIAGO, ETC. PLAINTIFF AND APPELLEE, VS. AMADO DIMAYUGA, ETC., DEFENDANT AND APPELLANT.

G.R. No. L-17883. December 30, 1961

Ponente: DE LEON, J.

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DE LEON, J.:

This is an action for various sums of money upon six causes of action, plus interests, attorney's fees and costs. The first five causes of action are based upon promissory notes executed on different dates for the payment on instalment basis of the balance of the costs of automobiles purchased by defendant from plaintiff, while the sixth cause of action is based on sales invoices covering costs of materials and repairs made by plaintiff on defendant's motor vehicles on various occasions.

On March 19, 1959, after defendant's answer was filed, the parties and their respective counsel filed a joint petition which is in the nature of a partial amicable settlement. In that petition, defendant admitted his liability for the principal amounts alleged in the first five causes of action (unpaid instalments which, according to the notes, became due and payable upon defendant's failure to pay any of said instalments), aggregating P42,789.23, payment of which is partially assumed by a third person. The other questions were left to the court for decision. The aforesaid partial amicable settlement was approved by the court, and the attached properties of defendant were released from the attachment. On June 15, 1959, the parties and their stipulation of facts, whereby defendant counsel submitted admitted his liability for the costs of materials and repairs, without interest, alleged in the sixth cause of action, as well as his liability for accrued interests upon the first five causes of action. They submitted to the court's discretion the determination of the amount of attorney's fees and costs of suit.

From the parties' agreements, the court a quo rendered judgment ordering defendant to pay plaintiff the sum of P208.39 as cost of repairs, P886.84 as interests up to and including March 19, 1959, plus an additional amount of 20% on the sum of P42,789.23 as attorney's fees, and the costs of suit. Regarding the award for attorney's fees, the court below stated in its decision:

"In the promissory notes executed by the defendant, the latter undertook to pay to the plaintiff a sum equivalent to 33-1/3% by way of attorney's fees, plus expenses of collection and costs. Considering the facts and circumstances of this case, the Court is of the opinion that an amount of 20% is reasonable as attorney's fees."

Not satisfied, defendant appealed to the Court of Appeals, upon the following assignment of errors:

- That the trial court erred in not finding that the provision of the promissory notes on the award of attorney's fees in the event of judicial proceedings to enforce collection is not applicable in this case; and,
- That the trial court erred in determining as reasonable 20% of the amount involved in the complaint for attorney's fees.

The Court of Appeals, by resolution, certified the case to this Court for disposition, on the ground that the appeal involves purely questions of law.

The genuineness of the five promissory notes copied in their entirety in the complaint is not controverted. The stipulations as to the payment of attorney's fees are the same in all the notes, and read:

"In the event of my (our) failure to pay any of the foregoing instalments, the whole sum remaining then unpaid will immediately become due and payable, at the option of the holder of this note, and in the event of judicial proceedings to enforce collection, I (we, jointly and severally), further promise to pay to the holder of this note an additional sum equivalent to 33-1/3% of the amount due, for and as attorney's fees and expenses of collection, in addition to the costs of suit."

A stipulation or agreement regarding the payment of attorney's fees is neither illegal nor immoral and is enforceable as the law between the parties (*Luneta Motor vs. Mora Limponco*, 73 Phil. 80). Under the new Civil Code, attorney's fee is an element of recoverable damages, whether it be in writing (Articles 11226, *supra*), or not stipulated at all in certain cases (Article 2208, *supra*). Attorney's fee is in the concept of actual damages (*Fores vs. Miranda*, 105 Phil., 266; 57 Off. Gaz., [44] 7938, except that when it is stipulated and therefore in the form of Liquidated damages no proof of pecuniary loss is required (Article 2216, *supra*).

Article 1229 of the new Civil Code provides:

"ART. 1229. The judge shall equitably reduce the penalty, when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable."

The above legal proviso fully justifies the action of the lower court in reducing the attorney's fee from an amount equivalent to 33-1/3% to 20% of the principal obligation due and admitted in this case, it appearing that several instalment payment had already been made by defendant-appellant on the five promissory notes before the commencement of the action. Furthermore, it is the opinion of this Court that where a contract does not expressly stipulate that a fixed sum by way of attorney's fees shall be paid by defendant in case of collection even if same is subsequently settled by compromise, it is just and fair to reduce the amount of counsel fee, in the court's exercise of its discretionary power, where the case is partially or fully settled out of court.

Appellant, however, wants to remove this action of plaintiff from the purview of their stipulation above-quoted, by claiming that this case is not a "judicial proceeding to enforce collection" but for the purpose of settling the disagreement as to the manner of application of the payments on the five promissory notes. But it is clear that the complaint is for collection or recovery of various sums of money. As repeatedly stated, the purpose of action or suit and the law to govern it is to be determined by the complaint itself, its allegations and the prayer for relief (*Benares vs. Benares*, G. R. No. L-6438, June 30, 1955; *Belandres vs. Lopez Sugar Central*, 97 Phil., 100; 51 Off. Gaz., [6] 2881). Needless to state, were it not for this suit, accompanied by an attachment on defendant's automobiles, it is not far-fetched to surmise that defendant may probably, as before, neglect or refuse to pay the instalments as they fall due.

Wherefore, the decision appealed from is affirmed, with costs against defendant-appellant.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes and Dizon, JJ. concur.

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