

**PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK,
ADMINISTRATOR OF THE TESTATE ESTATE OF THE DECEASED
PLAINTIFF C. N. HODGES, PLAINTIFF-APPELLANT, VS. JUAN
SOBREDO AND ROSALIO CARTECIA...**

G.R. No. L-27766. February 15, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This case involves a picayune amount but it has travelled through the entire judicial system of the Philippines.

C. N. Hodges sold a truck to Juan Sobredo for P1,800.00. Not being able to pay cash for the truck, Sobredo and Rosalio Carteciano executed a promissory note wherein they promised to pay Hodges jointly and severally the sum of P1,800.00 with interest at the rate of 1% per month plus 10% as attorney's fees in case of litigation.

Sobredo paid only P800.00 so Hodges sued him and the surety in the Municipal Court of Iloilo which decided in favor of the plaintiff.

Defendants appealed to the Court of First Instance of Iloilo. There Carteciano claimed he was a mere guarantor, not a surety. Both defendants also claimed damages for the attachment of their properties. However, the Court of First Instance in a decision dated November 4, 1960, rendered the following judgment:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff C.N. Hodges and against the defendants Juan Sobredo and Rosalio Carteciano, ordering the latter two to pay jointly and severally to the plaintiff C.N. Hodges the sum of P1,000.00, with interest at the rate of 1% per month beginning June 30, 1953 until the full amount is paid; to pay jointly and severally to said plaintiff the sum of P100.00 as attorney's fees and to pay the cost of the proceedings.

"For lack of merits, the counterclaim interposed by defendants Juan Sobredo and Rosalio Carteciano are hereby dismissed without costs."

Defendants appealed to the Court of Appeals where Sobredo got partial relief because in a decision promulgated on January 28, 1965, the court rendered the following judgment:

"WHEREFORE, the judgment appealed from is modified in the sense that plaintiff is ordered to pay defendant Juan Sobredo P480.00 on his counterclaim which should be offset as of May 23, 1954 against the judgment of P1,000.00 with interest for the plaintiff."

While the case was pending in the Court of Appeals, Hodges died on December 25, 1962, and Philippine Commercial and Industrial Bank (PCIB) was appointed administrator of his estate.

After the decision of the Court of Appeals became final, PCIB filed a motion with the CFI of Iloilo for the execution of the amount adjudged plus costs in the CFI and Municipal Court. No objection to the motion was interposed so it was granted on June 10, 1966, and a writ of execution was issued on June 22, 1966.

On July 21, 1966, defendants filed an urgent motion to declare the notice of sale illegal and to suspend the sale at public auction on the ground that the notice did not conform to the writ of execution; that in view of the modification by the Court of Appeals of the decision of the Court of First Instance, the defendants should pay only the sum of P520.00 plus interest at the rate of 1% per month from May 23, 1953 and not P1,000.00 with interest at the rate of 1% per month as stated in the notice of sale; that the notice of sale was made on June 30, 1966, less than ten days from receipt of the writ of execution by Rosalio Carteciano, without giving him sufficient time to pay the money judgment, hence, contrary to Rule 39, Section 11 of the Rules of Court; and finally that the notice of sale directed the sheriff to collect the attorney's fees in the amount of P100.00 when the same was already paid by the defendants to Atty. Leon P. Gellada, the former counsel of the late C.N. Hodges.

On July 23, 1966, the Court issued an order directing the Sheriff to "hold in abeyance the sale at public auction the property or properties of the defendant Rosalio Carteciano x x x until such time that this court shall have decided the exact amount to be executed against the defendant Rosalio Carteciano including attorney's fees in the final judgment handed down by the Court of Appeals dated January 28, 1965."

On September 20, 1966, the court issued the following order:

"This motion dated July 21, 1966, is an Urgent Motion to Declare the Notice of Sale at Public Auction as Illegal and to Suspend the Sale of the Properties Described in the Notice on July 25, 1966 at 9:00 A. M. The Court, pending resolution of this motion, in an Order dated July 23, 1966, ordered the Provincial Sheriff or any of his authorized deputies to hold in abeyance the sale at public auction of the properties of defendant Rosalio Carteciano on July 25, 1966 at 9:00 A. M., until such time that the exact amount to be executed against defendant Rosalio Carteciano including attorney's fees shall have been determined.

"Upon perusal of the record this Court finds that the Notice of Sale at Public Auction dated June 30, 1966, duly signed by Mr. Jose Dineros, Senior Deputy Sheriff did not conform to the Writ of Execution dated June 22, 1966, hence defective and erroneous. Furthermore, it was found by this Court that the Notice of Sale at Public Auction was made less than ten (10) days after the levy of the properties of the defendant Rosalio Carteciano, without giving the latter sufficient time to pay the money judgment hence contrary to the provisions of Sec. 11, Rule 39, of the New Rules of Court, thereby making the proceedings irregular.

"With respect to the exact amount to be executed against defendant Rosalio Carteciano, this Court takes into consideration the decision of the Lower Court dated November 4, 1960, the dispositive portion of which reads as follows:

'IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff C.N. Hodges and against the defendants Juan Sobredo and Rosalio Carteciano, ordering the latter to pay jointly and severally to the plaintiff C.N. Hodges the sum of P1,000.00, with interest at the rate of 1% per month beginning June 30, 1953 until the full amount is paid; to pay jointly and severally to said plaintiff the sum of P100.00 as attorney's fees and to pay the costs of the proceeding.'

and the decision of the Court of Appeals promulgated on January 28, 1965, modifying the above-quoted decision, the dispositive portion of which reads:

'WHEREFORE, the judgment appealed from is modified in the sense that plaintiff is ordered to pay defendant Juan Sobredo P480.00 on his counterclaim which should be offset as of May 23, 1954 against the judgment of P1,000.00 with interest for plaintiff. No costs in this instance.'

"It is clear from the above-quoted decision of the Court of Appeals that from June 30, 1953 to May 23, 1954 or for a period of ten months and twenty three days, the amount of P1,000.00 due to plaintiff Hodges will bear an interest of 1% per month which is computed by this Court to be P107.59. Taking into account the modification of the judgment by the Court of Appeals, the amount of P480.00 which is the counterclaim of Juan Sobredo

allowed by the appellate Court shall be deducted from P1,000.00 making a difference of P520.00 which shall bear interest of 1% per month from May 23, 1954 until fully paid. From May 23, 1954 to September 23, 1966 or for a period of 148 months, the amount of P520.00 will bear an interest of P769.60.

"The plaintiff claims that defendant Rosalio Carteciano is not entitled to the benefit of the modification of the judgment in favor of Juan Sobredo because the judgment is modified with respect to Juan Sobredo only and not to Rosalio Carteciano. This contention is without merit because the judgment states that the amount of P480.00 should be offset as of May 23, 1954 against the judgment of P1,000.00, with interest for the plaintiff, which judgment also includes defendant Rosalio Carteciano he being jointly and solidarily liable with the other solidary debtor Juan Sobredo. It would be absurd and ambiguous to state that one solidary debtor will have more obligation than the other solidary debtor who is fortunate only to abscond free from his obligation just because he could not be reached by judicial process as is the case of defendant Juan Sobredo. Since Juan Sobredo is entitled to P480.00 from plaintiff, Rosalio Carteciano should also avail of such benefit.

"Summarizing, the exact amount to be executed against the defendant Rosalio Carteciano is as follows:

P107.59

interest of P1,000.00 at 1% per month for 10 months & 23 days

P520.00

principal amount payable after deducting P480.00 due to Sobredo

P769.60

interest of P520. 00 for 148 months

P29.74

costs of the suit

P1426.93

- 480.00

amount due to Carteciano being solidary co-debtor with Sobredo

P946.93

total amount payable by Carteciano as of September 23, 1966.

"As regards the amount of P100.00 for attorney's fees, this amount was already paid to Atty. Leon P. Gellada, plaintiff's counsel who handled this case up to the appellate Court as shown by a certification submitted to this Court duly signed by Atty. Leon P. Gellada.

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Notice of Sale at Public Auction dated June 30, 1966, is hereby declared Illegal and the expenses incident to the publication of the Notice of Sale shall not be charged against defendant Rosalio Carteciano. It is hereby ordered further that the exact amount to be executed against defendant Rosalio Carteciano as of September 23, 1966, shall be P946.93. Let copy of this Order be served by the Sheriff or any of his authorized deputies to defendant Rosalio Carteciano personally so that the latter could be given time to settle his obligation before another Notice of Sale at Public Auction shall have been

published."

On October 5, 1966, PCIB filed a motion for reconsideration of the above-quoted order and in response thereto, the court issued the following order dated November 16, 1966:

"This is a motion for reconsideration of the Order of this Court dated September 20, 1964, declaring the notice of sale at public auction dated June 30, 1966, as illegal and fixing the exact amount to be executed against Rosalio Carteciano, one of the defendants.

"Upon review of the records and taking into account the pleadings submitted, this Court finds that through oversight the bill of costs allowed for the plaintiff in the Court of First Instance amounting to P46.20 was not included in the computation of the exact amount to be executed against Rosalio Carteciano.

"WHEREFORE, the Order of this Court dated September 20, 1966 is hereby modified by including the amount of P46.20 to the exact amount to be executed against Rosalio Carteciano in aforesaid Order. With respect to other points raised by the plaintiff in his Motion for Reconsideration, for lack of merits, the same are hereby DENIED."

PCIB filed a notice of appeal on December 1, 1966, and thereafter the following were likewise filed: (a) a printed Record on Appeal consisting of 88 pages; (b) Appellant's printed brief consisting of 22 pages; and (c) Appellees' printed brief consisting of 19 pages.

In its brief, PCIB makes three assignments of errors, namely:

"I. THE COURT OF FIRST INSTANCE ERRED IN HOLDING THAT THE EXACT AMOUNT TO BE EXECUTED AGAINST THE DEFENDANT-APPELLEE ROSALIO CARTECIANO IS THE SUM OF P946.93 AS OF SEPTEMBER 23, 1967.

"II. THE COURT OF FIRST INSTANCE ERRED IN HOLDING THAT THE NOTICE OF SALE ISSUED WITHIN TEN (10) DAYS FROM THE LEVY ON EXECUTION WITHOUT GIVING THE DEFENDANT-APPELLEE ROSALIO CARTECIANO SUFFICIENT TIME TO PAY THE MONEY JUDGMENT, AND WHICH DOES NOT CONFORM TO THE WRIT OF EXECUTION, IS ILLEGAL.

"III. THE COURT OF FIRST INSTANCE ERRED IN HOLDING THAT PAYMENT OF ATTORNEY'S FEES TO ATTY. LEON P. GELLADA IS VALID AND CONSEQUENTLY, THE DEFENDANTS-APPELLEES NEED NOT PAY THE SAME TO THE PLAINTIFF-APPELLANT."

We sustain the first and the third assignment of errors.

Anent the first assignment of error, it was proper as the court a quo said, to give to Carteciano the benefit of Sobredo's counterclaim of P480.00 which was allowed by the Court of Appeals. Hence as of May 23, 1954, the principal amount due to the Hodges estate was only P520.00 as correctly stated in the computation. However, it was improper to deduct again the amount of P480.00 representing "amount due to Carteciano being solidary co-debtor with Sobredo" as stated also in the computation for it had already been previously deducted from the principal amount. The result is that the total amount payable by the defendants as of September 23, 1966, is P1,426.93, not P946.93.

With regard to the third assignment of error, the payment of P100.00 to Atty. Leon P. Gellada, plaintiff's counsel, should not have been deducted from what was due under the judgment because the attorney's fees which had been stipulated in the contract between Hodges on the one hand and Sobredo and Carteciano on the other hand were not due personally to the attorney but to Hodges and ultimately to his estate. Moreover, it appears that as early as January 24, 1964, or two years after the death of Hodges, his heirs had paid in full Atty. Gellada for all his legal services.

WHEREFORE, the orders of the court a quo dated September 20 and November 16, 1966, are hereby modified in that the appellees shall pay to the plaintiff the sum of P1,473.13 (P1,426.93 plus P46.20) with interest at 1% per month from September 23, 1966, until fully paid plus P100.00 as attorney's fees. No costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur.

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