

VICENTE GOTAMCO HERMANOS, PETITIONER, VS. IRMA ROHDE SHOTWELL, ASSISTED BY HER HUSBAND, ANSELMO M. SHOTWELL, RESPONDENTS.

G.R. No. L-22519. March 27, 1971

Ponente: DIZON, J.

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DIZON, J.:

The case at bar was commenced in the Court of First Instance of Manila by Irma Rohde Shotwell, assisted by her husband, Anselmo M. Shotwell, against the partnership Vicente Gotamco Hermanos — hereinafter referred to simply as Gotamco — for the final liquidation and payment of the unpaid balance of a pre-war loan, secured by mortgage, granted to the latter wayback in 1926 by William J. Rohde, plaintiff's father. In its answer Gotamco Hermanos relied mainly on the defense of (a) payment, and (b) on the claim that whatever reservation was made by its creditor regarding the revaluation of payments made was subject to the condition that there should be a law enacted governing revaluation of payments of pre-war monetary obligations with Japanese military notes, and that no such legislation has ever been enacted.

After trial upon the issue thus joined, the court rendered judgment as follows:

"WHEREFORE, judgment is rendered in favor of plaintiff and against the defendant ordering the latter to pay plaintiffs the sum of P7,879.33, unpaid balance as of April 30, 1945 with interest at 8% per annum from May 1, 1945 until paid, payable monthly with penalty of 1% per month on the unpaid accrued interest and costs."

Gotamco appealed to the Court of Appeals where, in due time, the appealed decision — modifying that of the trial court — was rendered. Its dispositive part is of the following tenor:

"WHEREFORE, the appealed judgment is modified and defendant is hereby ordered to pay plaintiffs the sum of P42,474.45 with interests at 8% per annum from May 1, 1946 until full payment, and the costs. Defendant's counterclaim is dismissed."

The Court of Appeals made the following findings of fact:

"The loan was originally for P85,000.00 bearing interest at 9% per annum and was secured by a mortgage on real estate situated in Manila. Initially, the loan was payable within three years from February 24, 1926, but the period was several times extended at the request of the debtor, the last extension being for two years from February 24, 1942. The rate of interest was reduced to 8% per year from 1932. Before the last war, only the interests were paid, quarterly, up to the third quarter of 1941 (Exhs. O to J).

On April 28, 1942, upon written request of defendant on the ground that it then had a very low income, temporary reduction of the interests by 50% was granted (Exh. F). Accordingly, payments were made and accepted thereafter from May 11, 1942, which were expressly applied to cover 50% of the stipulated interests only, which were computed quarterly up to and including the last quarter of 1942 at P850.00 per quarter (Exhs. E to X for plaintiffs, also marked Exhs. 2 to 15 for defendant).

On October 2, 1943 defendant delivered the amount of P1,800.00 in Japanese war notes as payment of the interests for three quarters (January to September, 1943), which was received for the creditor by plaintiff Irma Rohde Shotwell and her husband Anselmo Shotwell. Irma signed on behalf of the creditor the covering receipt (Exh. Y) dated October 2, 1943, which was also presented in evidence as Exh. 16 by defendant.

After the payment appearing on Exh. Y (October 2, 1943) the following amounts only, were admittedly paid in 1944, also in Japanese war notes, to wit:

Date of Payment

Amount

Covering Receipt

January 3, 1944

P5,000.00

Exhibit Z

March 14, 1944

3,000.00

Exhibit AA

April 17, 1944

4,000.00

Exhibit BB

May 19, 1944

__17,000.00__

Exhibit CC

T O T A L.....P30,000.00

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In 1945 and 1946 plaintiffs admittedly received from defendant the following payments in Philippine currency:

Date of Payment

Amount

Covering Receipt

June 25, 1945

P1,000.00

Exhibit DD

June 27, 1945

2,000.00

Exhibit EE

September 15, 1945

10,000.00

Exhibit FF

April 24, 1946

20,000.00

Exhibit GG

April 30, 1946

23,120.00

Included in

Exhibit HH

The mortgagee, William J. Rohde, died on July 16, 1945 leaving as survivors his wife, Isabel Salgado de Rohde, and their only child, Irma Rohde Shotwell. The widow died in 1947, survived by the only daughter, herein plaintiff Irma.

On April 30, 1946 a deed entitled "Release of Mortgage" (Exhibit HH for plaintiff, Exh. 1 for defendant) was executed by Isabel Salgado de Rohde and Inmaculada Rohde, (the same plaintiff Irma), stating the receipt of P42,000.00 on account of the principal and P1,120.00 on account of the interest from January 1, 1946 to April 30, 1946. There is no question that the sum of P43,120.00 mentioned in the said release of mortgage consisted of the

P20,000.00 paid on April 24, 1946 (Exh. GG), and the P23,120.00 paid on April 30, 1946. This was the last payment.

As there appeared no question as to the original amount of the mortgage debt and the total amount actually paid - including payment of the interests due up to September 30, 1943 - the Court of Appeals summed up the controverted points submitted for its resolution as follows:

"(a)

Defendant contends that the interests from October 1, 1943 to December 31, 1945 were totally condoned by the creditor; while plaintiffs contend that there has been no such total con-donation and that, on the contrary, the 50% reduction ceased from October 1, 1943;

(b)

Defendant contends that the 1944 payments totalling P30,000.00 in Japanese war notes were entirely applied to the principal, at par with the Philippine Peso; while plaintiffs contend that the application of the payments to interest and to principal was held in abeyance, because they were accepted subject to revaluation to be made after the war. to be then applied first to interest and then to the principal:

(c)

Defendant contends that plaintiffs' right to revaluation of the 1944 payments was dependent upon the enactment of a law which would provide for such revaluation, but no such law has been enacted and that the receipts and the release of mortgage (Exh. HH; Exh. 1) contain no reservation for revaluation such that plaintiffs are precluded from claiming such revaluation as well as the interests; while plaintiffs contend that their right to the revaluation of the 1944 payments start from the agreement between the parties, as well as from the readjustment clause (Sec. 8, Art. XI) of the Constitution of the war time Republic of the Philippines, and their right to unsatisfied interests emanates from the loan contract, and that the receipts and the release of mortgage did not, and do not, bar the revaluation of the 1944 payments and collection of the unsatisfied interests, which were precisely made and intended to be in accordance with said agreement, as in fact they left the door open for, and contemplated, further readjustment and final settlement of the obligation."

The first and second points are obviously intimately related in the sense that if it is true that the: interests on the balance of the mortgage debt, from October 1, 1943 to December 31, 1945, were totally condoned by the creditor, it would necessarily follow that the 1944 payments made by Gotamco totalling P30,000.00 in Japanese war notes must be deemed to have been entirely applied to the principal obligation. In reality, therefore, the following are the questions decisive of the whole case: (a) the alleged total condonation of the interests, and (b) whether the revaluation of the 1944 payments is in order in the light of the facts of the case.

Petitioner's position in relation to the above questions is that the interests from October 1, 1943 to December 31, 1945 were totally condoned; that the 1944 payments made in Japanese war notes were not subject to revaluation; that their total amount together with the post-liberation payments should be applied to the balance due on the mortgage debt; that the result would be the full satisfaction of its obligation.

On the other hand, respondent's contention is that there was no condonation of the interests due from October 1, 1943 to December 31, 1945; that the 1944 payments were not and should not entirely be applied to the principal

obligation because they were intended for both such principal obligation and the interests due thereon, without any specific application to either, by reason of the agreement between the parties to reevaluate them after the war; that only after such revaluation could any specific portion of the payments aforesaid be applied to interests and to the principal obligation; that by doing so the result would be that petitioner's obligation has not been fully satisfied.

On the question of total condonation of interests the trial court's finding against petitioner was affirmed by the Court of Appeals who also found and declared that there had been no such total condonation of interests at all. While the findings of fact of the Court of Appeals are not reviewable on appeal, we have nevertheless carefully considered the opposing views expounded by the parties in their briefs in relation to this particular matter, in view of its decisive influence upon the resolution of this appeal. After doing so, we feel satisfied that both courts were right.

Petitioner's case rests entirely on the testimony of Go Lang, its general manager, which the Court of Appeals found to be unworthy of credence. The following portion of the appealed decision fully justifies said court's opinion:

"At first Go Lang testified that the total condonation was granted in writing, and when pressed for the writing he pointed to Exhibit F; but, when he realized that Exhibit F dealt only with 50% reduction and did not even mention total condonation, he changed his testimony saying that total condonation was verbally requested by the debtor and verbally granted by the creditor also in 1942 in the early part of the Japanese occupation, effective October, 1943 to December, 1945. This is incredible."

Lending additional support to the Court of Appeals' decision on the point under consideration are the following facts:

(a) It is not disputed that between the mortgagee William J. Rohde and the respondent partnership, friendly relations existed before the war and up to the former's death. This notwithstanding, respondent's request for a partial reduction of the rate of interests as well as the mortgagee's assent thereto were reduced into writing. If subsequently there was, as respondent claims, a total condonation of interests, it is but logical to expect that the parties would have reduced their agreement to that effect also in writing. And yet, as already stated before, all that respondent can rely upon now is the biased and untrustworthy testimony of its general manager.

(b) The 50% reduction of the stipulated rate of interests was due, according to respondent's own letter of April 28, 1942 (Exh: A), to its depleted income and poor financial condition at that time, and the reduction asked and granted was intended to be temporary. In relation to these factors there is ample evidence in the record, as found by the Court of Appeals, that prior to October 1943 and thereafter, respondent's business and income had improved to such an extent that it was able to pay and liquidate in full a good portion of its pre-war obligations to the tune of hundreds of thousands of pesos." Consequently, We can not but agree with said court when it said that while the 50% reduction of the rate of interests was understandable on April 28, 1942, there was obviously no reason neither for its indefinite continuation nor for a total condonation of interests from October 1943 and thereafter. What would seem to be logical instead is the resumption of the full stipulated rate of interests. Indeed, it appears in this connection that when the payment of P1,800.00 covered by the receipt Exhibit Y was made on October 2, 1943 for the interests due from January 1 to September 30 of the year 1943, Attorney Shotwell - to whom the matter of accepting the payment was referred by his parents-in-law, Mr. & Mrs. Rohde - brought up the unfairness of petitioner's paying its obligation in Japanese war notes and at a reduced rate of interests, the ever declining value of said war notes being well-known to everybody at that time. Shotwell - the Court of Appeals found - accepted the payment with reluctance and only with the understanding that it was to be the last payment at par and at the reduced rate of interest, and that subsequent payments would be subject to revaluation after the war.

Accordingly, the Court of Appeals further found in this connection that the P5,000.00 evidenced by Exhibit 2 paid on January 15, 1944 and the subsequent amounts of P3,000.00 paid on March 14, 1944 (Exh. AA), P5,000.00 paid on April 17, 1944 (Exh. BB) and P17,000.00 paid on May 19, 1944 (Exh. CC) were all made and accepted under the understanding that the reduction of the rate of interests had ceased; that, instead, the originally stipulated rate of 8% per year was to apply from October 1, 1943, and that the Japanese war notes received were to be revalued after the war. This, according to the court, was the reason why the aforesaid payments made in the year 1944 were not, as shown by the above-mentioned receipts, prepared by respondent's own accountant, the subject of specific application to either interests or principal - something possible to do only after revaluation of the amounts paid.

But petitioner advances the contention that respondent's right to a revaluation of the 1944 payments was dependent upon the enactment of a law providing for such revaluation, and that no such law having thus far been enacted and inasmuch as the receipts evidencing said payments as well as the release of mortgage contained no reservation for such revaluation, the respondent is now precluded from claiming a right to it. It is respondent's contention in this regard, on the other hand, that the right to the revaluation of the 1944 payments is based upon the agreement between the parties as well upon the re-adjustment clause (Section 8, Article XI) of the war time constitution of the Republic of the Philippines; and that their right to unpaid interests is based on the contract of loan itself.

The issue of fact thus arising was the subject of evidence, both testimonial and documentary presented before the trial court, bearing principally upon the facts and circumstances surrounding the payments aforesaid as well as those made after liberation. The documentary evidence consisted mainly of the corresponding receipts and the document Exhibit HH releasing the mortgage. On the basis of all such evidence, the Court of Appeals declared that the revaluation of the payments already mentioned as well as respondent's right to the unpaid interests was not intended by the parties to depend upon the enactment of a law providing for such revaluation. We quote hereunder with approval the considerations made by said court as well as its conclusion upon this issue:

"Was the right to revalue the 1944 payments dependent upon the enactment of a law which would provide therefor? In thus contending, defendant argued that to this effect is the wording of the post liberation receipts and release of mortgage. In maintaining the contrary, plaintiffs alleged that the said writings do not clearly express the true intention of the parties, which clearly appears considering the circumstances surrounding their execution. To this end, evidence was properly admitted. It is well settled that in construing a writing, particularly a written agreement, the reason behind and the circumstances surrounding its execution are of paramount importance to place the interpreter in the situation of the parties concerned at the time the writing was executed. This brings us to a review of the facts and circumstances attendant upon the post liberation receipts and the release of mortgage.

At the time, certain measures were under consideration by the Government to solve the problem brought about by the payments in Japanese war notes during the Japanese occupation of pre-war obligations. Prominent among them was the Ballantyne proposal. It was submitted to Congress by the President of the Philippines with a message and this fact appeared in the Manila newspapers of June 21, 1945 (Exhs. UU W and WW), a few days before the first liberation payment (Exhibit DD). The Ballantyne Memorandum (Exh. BB) advocated for the revaluation of the Japanese war notes and proposed the condonation of the interests during the Japanese occupation. It also contained a schedule of values of the said war notes in terms of Philippine Peso during different periods of the Japanese occupation. The evidence discloses that, as it was but natural, the Ballantyne plan was talked about and taken into account by Shotwell and Go Lang when the first post-liberation payment was made on June 25, 1945, as well as during the other post-liberation payments and when the release of mortgage was executed.

As above stated, the interests from October 1, 1943 to December 31, 1945, had not been condoned, and the reduction of the interests was terminated, while the stipulated rate of 8% per year was to apply from October 1,

1943; the Japanese war notes received in 1944 were accepted under the agreement that they were subject to be revaluated after the war, and, in consonance therewith, their application was held in abeyance, to be made upon the revaluation. Under the Constitution, promulgated in 1943 of the war time Republic of the Philippines (Sec. 3, Art. VIII) which the parties also had in mind in connection with their agreement to revalue, the creditor would be entitled to the revaluation of the 1944 payments. After the liberation, the Rohdes were financially in no better position than defendant such that they could forego the revaluation of the 1944 payments and the unsatisfied interests. The long standing friendly relations and the actual confidence continued between the Rohdes and the Gotamcos. While the Rohdes wanted to have their money, already in Philippine currency, defendant was interested in the release of the mortgage to use the property for bigger loans for defendant's business. The Ballantyne Proposal mentioned above, then pending consideration by the Government, was more or less in line with the revaluation agreement between the parties herein; and Go Lang, taking the one therefrom, believed that there should be no interests from October, 1943 to December, 1945, but was agreeable that there should be interests from January, 1946, while Shotwell maintained that, notwithstanding the revaluation, the interests for that period should also be paid. In this "situation, the post liberation receipts and the release of mortgage (Exhibit HH) were issued.

Now, is it logical that the parties intended to make the revaluation of the 1944 payments and the collection of the aforesaid interests contingent upon the enactment of a law which would grant such revaluation and interests? On the part of the creditor, the affirmative, in case no such law would be enacted, would amount to a waiver or abandonment of the right to the revaluation to which he was entitled by virtue of the agreement had since 1944 and also under the readjustment provision of the Constitution of the war time Republic of the Philippines, and of the right to the aforesaid interests to which the creditor was entitled by virtue of the contract of loan. That the creditor had so intended is difficult to believe. It does not make sense to say that the creditor intended to jeopardize the right to the revaluation and the right to the aforesaid interests, which he already had irrespective of any new law, so as to lose them in case no such law would be enacted. On the part of defendant debtor, there was no justification for it to demand or require the creditor to agree to such waiver. The more so, taking into consideration the old standing friendly relations and mutual confidence which still continued between the Rohdes and the Gotamcos at the time. Construction which would amount to impairment or loss of right is not favored; conservation and preservation, not waiver, abandonment or forfeiture of a right, is the rule.

The release of mortgage. Exhibit HH, as aptly stated by the trial court, merely lifted the mortgage lien, and was not intended to extinguish the obligation; this was left subsisting for whatever would be the balance upon final liquidation, although without any more collateral to secure the same, as the creditor relied upon the solvency of the defendant.

There is logic and verity in plaintiffs' version and Shotwell's testimony that the post liberation receipts and the release of mortgage were not intended to make the revaluation of the 1944 payments and the collection of the interests from October, 1943 to December, 1945. dependent upon the enactment of a law or upon the adoption of the Ballantyne proposal by the legislature; and that what the parties had in mind was that they should wait for the final action of the Government on the matter inasmuch as it would provide for a way, such as with respect to the rates or equivalent of the Japanese war notes in terms of Philippine Peso, to carry out the revaluation, and a guide for them to determine as to what they should do with the interests. This is not incompatible with, and is not excluded by, the reservation in general terms, contained in the release of mortgage, of the rights or privileges which may be conferred or granted by future legislation, executive order or proclamation in favor of creditors with respect to payments of pre-war obligations made during the Japanese occupation, and that was the way the parties understood such reservation.

That some of the post liberation receipts and the release of mortgage were prepared by Shotwell is of no importance, there being no showing purposely they were made not to clearly express the true intent of the parties. On the contrary, as Shotwell declared, they were deemed to be clear enough at that time as the reason, and motive behind, and the circumstances surrounding, their execution, which made the parties' intent plain to

them, were still fresh and undisputed in their minds.

On the other hand, the testimony of Go Lang, defendant's lone witness on the matter, leaves much to be desired in point of credibility. His evasive and inconsistent answers and his feigned incredible ignorance of the existence of the Ballantyne proposal, which was given general publicity in the Manila newspapers and has become of common knowledge and was of paramount importance to him being partner and general manager of defendant which paid in Japanese war notes pre-war obligations in big amounts, detract much from his veracity

Therefore, the fact that no law has been enacted on the matter has not affected the right of the creditor herein to the revaluation of the 1944 payments and to the collection of the unsatisfied interests from October, 1943"

We are unable to accept petitioner's contention that the above finding and conclusion are based on a misapprehension and misinterpretation of the relevant documents and circumstances prevailing at the time the payments were made.

All the receipts covering the 1944 as well as the post liberation payments were qualified, the qualification being expressed therein in substantially the same way. Exhibit DD of April 17, 1944 acknowledges the receipt of the sum of P5,000.00 "a cuenta del importe del credito impotetario" in favor of William J. Rohde. The other receipts covering 1944 payments (Exh. Z, AA, and C) do not state that the payments were to be applied entirely to the principal obligation. To the contrary, they contained the significant reference to the amount of the principal as amounting to P85,000.00, the same not having been reduced at any time in anyone of said receipts, which would have been the case if the payment evidenced by Exhibit DD and the others that followed were entirely applied to the satisfaction of the principal obligation. We agree with both the trial court and the Court of Appeals that these receipts viewed together show that the intention of the parties was to apply the payments made to the account of the mortgage credit owing from Gotamco to William J. Rohde, which mortgage credit consisted, of course, of the unpaid balance of the loan together with the unpaid interests.

The receipts covering post-liberation payments were also qualified. So was the Deed of Release of Mortgage. Exhibits DD, EE, FF and GG as well as Exhibit HH show no unqualified application of the payments respectively evidenced by each of them to the principal obligation. Instead, they show that they were made and accepted subject to a final re-computation and final liquidation.

It is obvious from the above documents, however, that they are not entirely as clear as they could have been made. This is the reason why, in our opinion, it was justified for the Court of Appeals to determine their real meaning or the intent of the parties in the light of the attendant facts and circumstances. After doing so, the court arrived at the conclusion and held that the agreement to revalue the payments in question was not intended to be subject to the enactment of any particular law on revaluation of the Japanese military notes in relation to the peso of the Philippine genuine currency, nor upon the formal adoption of the Ballantyne Schedule by the Legislative Branch of the government. In view of all the facts disclosed by the record, it is our opinion that the Court of Appeals did not err in applying the Ballantyne Scale in re-evaluating the payments made by Gotamco, said scale having been applied also by this Court in several cases even in the absence of evidence concerning any definite agreement between the parties as to how and at what rate the revaluation of payments should be made.

Petitioner Gotamco also invokes the provisions of Article 1110 of the old Civil Code in support of its contention that respondents are now barred from claiming the questioned interests due to the absence of a reservation with respect thereto in the pertinent receipts and in the release of mortgage.

We find this contention, as did the Court of Appeals, to be untenable, for the reason that the legal provision relied upon applies only to a case where the whole amount of the obligation is deemed cancelled or paid with the amount receipted for. That situation does not obtain in the present case where the receipts, including the release of

mortgage Exhibit HH, show that the amounts receipted for did not definitely close Gotamco's account with its creditor but rather let it open for further re-computation and liquidation.

Lastly, petitioner claims that the Court of Appeals erred in not ruling that its claim for attorney's fees is meritorious. In view of what has been stated heretofore, it is not necessary to deal with this point in detail.

WHEREFORE, the appealed decision is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Fernando, Techankee, Barredo, Villamor and Makasiar JJ., concur.

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