

SALUD S. PAPA, PLAINTIFF AND APPELLANT, VS. GERVACIO S. BANAAG, DEFENDANT AND APPELLEE.*G.R. No. L-21442. August 31, 1966*

Ponente: CONCEPCION, J.

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Appeal from a decision of the Court of First Instance of Manila dismissing the complaint herein and sentencing plaintiff to pay to the defendant the sum of P500.00, as attorney's fees, and the costs of this action.

On December 9, 1960, defendant Gervacio S. Banaag secured from plaintiff, Salud S. Papa, a P400.00 loan, payable, with interest thereon, [1] within 60 days, and to guarantee the payment of this obligation, Banaag executed, in favor of Mrs. Papa, a deed - which was duly recorded in the office of the proper register of deeds - of chattel mortgage on a piano belonging to Banaag. Alleging that Banaag had defaulted in the payment of said obligation, sometime in May, 1961, Mrs. Papa asked the sheriff of Quezon City to foreclose the mortgage extra-judicially. Thereupon, Banaag filed Civil Case No. Q-6004 of Rizal against Mrs. Papa and the sheriff to prevent said extra-judicial foreclosure and recover damages, upon the ground that Mrs. Papa had granted him unlimited time within which to pay the loan in question. In her answer to the complaint in said case, Mrs. Papa denied having granted the aforementioned extension of time and set up several counterclaims for damages (P8,000.00 for moral damages, P200.00 for actual expenses and P200.00 for attorney's fees), in addition to the costs, for the malicious filing of the complaint therein. In due course, decision was, on August 27, 1962, rendered in said case No. Q-6004, dismissing the same, without special pronouncement as to costs.

Soon later, or on December 3, 1962, Mrs. Papa instituted the present action (Civil Case No. 52464 of the Court of First Instance of Manila) against Banaag for the recovery of: 1) P456.00, representing the principal and interest allegedly due on the loan above referred to; 2) P4,590.00, for actual and compensatory damages allegedly sustained by the plaintiff in consequence of the filing of case No. Q-6004; 3) P10,000.00 for moral damages resulting from the false imputations made by defendant herein as plaintiff in said case; 4) P1,000.00 for exemplary damages, owing to the alleged bad faith of herein defendant; and 5) P2,000.00, for attorney's fees. Upon being summoned, defendant moved to dismiss the complaint upon the ground of lack of cause of action and release, but, the motion was denied as "not being well founded." Thereupon the defendant filed his answer, admitting some allegations and denying other allegations of the complaint and alleging several special defenses - namely: a) that this action is barred by the decision in case No. Q-6004; b) lack of cause of action; and c) release - and setting up counter-claims for P4,400.00, as moral, exemplary, compensatory and actual damages, and P500.00 as attorney's fees.

When the case was called for hearing on the merits and plaintiff was about to present her evidence, the court inquired about the issues between the parties. Upon being informed of case No. Q-6004 and its dismissal, His Honor the trial Judge ordered both parties to submit their respective memoranda on the issue of *res judicata*. Soon after the filing of said memoranda, the lower court rendered the decision appealed from, dismissing the complaint herein upon the theory that the decision in case No. Q-6004 is "conclusive upon the parties x x x and constitutes

res judicata" and sentencing plaintiff to pay to the defendant the sum of P500.00 as attorney's fees, and the costs. This decision is predicated upon the premise that plaintiff's right to collect the sum lent by her to the defendant, plus interest, and the damages claimed by the former are in the nature of compulsory counterclaims which she was bound to set up in case No. Q-6004, and are, therefore, barred by the decision therein rendered.

Indeed, the main issue in said case No. Q-6004 was whether or not defendant's obligation in favor of plaintiff herein had already matured. Banaag alleged that it had not, because, he claimed, Mrs. Papa had extended indefinitely the date of maturity of said obligation, whereas Mrs. Papa maintained that the obligation was overdue, because she had granted no such extension of time to Banaag. Thus, plaintiff's right to demand payment of the obligation arose out of the transaction which was the very subject-matter of case No. Q-6004, and it partook of the nature of a compulsory counter-claim which, would - in principle - be barred in a subsequent action, under the provisions of Section 4 of Rule 9 of the Revised Rules of Court.

Our Chattel Mortgage law (Sec. 16, Art. No. 1508), however, grants the creditor the right to foreclose the mortgage extra-judicially and the provision of the Rules of Court relative to compulsory counterclaims should not be so construed as to repeal or abrogate this substantive right of the creditor. In other words, despite said provision of the Rules of Court, plaintiff was entitled to invoke and assert this right to an extrajudicial foreclosure. In fact, such right is not denied by defendant herein.

But, then, plaintiff now seeks to enforce her rights judicially. May she still do so, after having chosen to avail of her extrajudicial remedy? In this connection, plaintiff alleges that the extrajudicial foreclosure could not take place, despite the dismissal of Case No. Q-6004, because of the obstinate refusal of defendant herein to surrender the mortgaged piano to the sheriff. In other words, through his acts and omissions, herein defendant, who is a lawyer, succeeded in preventing the extrajudicial foreclosure of the chattel mortgage he had constituted in favor of the plaintiff. Obviously, the defendant should not, and may not, be permitted to limit plaintiff's rights to a mode of redress the effectivity of which he (defendant) had defeated by his own acts and omissions. The relation between the parties may be likened to an alternative obligation - in that defendant's debt may be enforced, either against the mortgaged piano exclusively, or against the general mass of his assets, at the option of the creditor. Since one option has, in effect, been denied or become impossible through the debtor's fault, the creditor may, pursuant to Article 1205 of our Civil Code, claim the subsisting alternative.

Indeed, more than overlooking this angle, the decision appealed from appears to have been based upon a misapprehension of an important fact - His Honor, the trial Judge was under the impression that the chattel mortgage had actually been foreclosed, contrary to the allegations in the complaint which are admitted by defendant herein.

With respect, however, to the second, third and fourth causes of action alleged in said complaint - for actual and compensatory damages, moral damages and exemplary damages, respectively, which plaintiff claims to be entitled to recover by reason of acts performed by the defendant in connection with Case No. Q-6004 - it is clear that said causes of action are necessarily connected with the aforementioned case, and are barred by the same (Section 4, Rule 9 of the Revised Rules of Court).

WHEREFORE, the decision appealed from is hereby affirmed insofar as the second, third and fourth causes of action are concerned, and set aside in all other respects, and the case is, accordingly, remanded to the lower court for further proceedings not inconsistent with the views herein expressed.

IT IS SO ORDERED.

Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.
Regala, J., on leave.

[1] The rate thereof is not stated in the record before us.

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