

ARABAY, INCORPORATED, PLAINTIFF-APPELLEE, VS. JOSE C. AQUINO, DOING BUSINESS UNDER THE NAME AND STYLE OF JOSE C. AQUINO LUMBER AND GENERAL MERCHANDISE, AND JOSE C. AQUINO LUMBER...

G.R. No. L-29033. July 31, 1970

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the judgment on the pleadings rendered by the Court of First Instance of Manila in its Civil Case No. 69700.

The facts of this case are simple and not disputed. On 2 June 1967, the Arabay, Incorporated filed in the Court of First Instance of Manila a complaint against Jose C. Aquino and the Jose C. Aquino Lumber and Plywood Industries, Inc. alleging, among other things, that defendant Aquino, in his personal capacity as owner and general manager of the Jose C. Aquino Lumber and General Merchandise and defendant Jose C. Aquino Lumber & Plywood Industries, Inc., through its president and general manager, Jose C. Aquino, executed a promissory note (dated 1 March 1967) wherein they bound themselves, jointly and severally, to pay to plaintiff the sum of P808,964.19 on installments, on or before the 20th day of every month starting March, 1967 up to June, 1968, with interest on the unpaid amount, at the rate of 10% per annum computed from 1 February 1967 (paragraph 3); that it was further stipulated in the same promissory note that their failure to pay any of the installments shall render the whole outstanding account, together with the interest thereon, due and payable (paragraph 4); that in the event of court action for collection of the account, defendants shall pay an additional amount equivalent to 25% of the total collectible account as attorneys' fees and costs of collection, aside from the costs of suit (paragraph 7). The complaint further recited that defendants defaulted in the payment of the second and subsequent installments, thus leaving an unpaid balance of P753,000.00, exclusive of interests (paragraph 5), and that notwithstanding repeated demands, said defendants had refused and failed to settle their obligation (paragraph 6). Annexed to the complaint was the promissory note signed by Jose C. Aquino, wherein it was declared that as of 31 December 1966, defendants had an out-standing unpaid account with the plaintiff Arabay, Incorporated, for petroleum products purchased on credit, in the total sum of P808,964.19; that defendants promised to settle said account on installments by paying the amount of P55,964.19 for April, 1967; P53,000.00 for May, 1967; and monthly payments of P50,000.00 from May, 1967 to June, 1968. The interests payable thereon based on the diminishing balance was computed at P7,095.80 a month, starting from October, 1967.

Answering the complaint, defendants admitted the allegations of paragraphs 3, 4 and 5 thereof, subject to the affirmative defense set forth in the answer; admitted paragraph 6 with the qualification that "... on demand by plaintiff upon defendants, the latter had sincerely asked for a reduction of the installments of P50,000.00 per month as contained in the promissory note, Annex 'A' of the complaint, considering the unforeseen business reverses suffered by defendants, thus rendering it really impos-sible for them to pay the heavy installment of P50,000.00 a month"; that while admitting "that the promissory note, Annex 'A' to the complaint stipulated an

additional amount equivalent to twenty-five per cent (25%) of the total collectible amount, as and for attorneys' fees and costs of collection", it was contended that "they had heretofore shown a sincere desire to compromise this case by revising the installments stipulated in the promissory note, Annex 'A' to the complaint, and according to the Civil Code, the courts may mitigate the damages; moreover, said 25% is quite exorbitant and unreasonable in view, as has been alleged, of defendants' sincere desire for a compromise". As affirmative defenses, defendants asserted --

"6. That the promissory note, Annex 'A' of the complaint was prepared solely by the plaintiff, defendants having been deprived of the opportunity to check with their records, most of them are in Butuan City; and the said promissory note Annex 'A', was signed by defendants believing that it can be revised in due time, after proper checking of the records by the defendants;

"7. That defendants never had opportunity to revise the correctness of the amount stated in the promissory note, Annex 'A' to the complaint and they have made representations with the plaintiff to have the same done and which they would like that it be done in the spirit of cordial and continued business relations between them;

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"9. That in view of the unforeseen financial and business reverses suffered by defendants, they are more than willing to settle this case amicably with plaintiff with the end in view to revising the monthly installments of P50,000.00 as stipulated in the promissory note, Annex 'A' to the complaint, considering the financial impossibility of defendants to comply with the payment of P50,000.00 installment every month."

It was further alleged that as defendants are willing and ready to compromise the case with plaintiff, the additional amount being claimed as attorneys' fees and costs of collection and interests, which are in the concept of damages, should be reduced and mitigated.

Thereupon, plaintiff filed a motion for judgment on the pleadings, on the ground that the answer failed to tender an issue or otherwise admitted the material allegations of the complaint. This was opposed by the defendants, who also prayed for the suspension of the proceedings to enable the parties to come to a compromise. In its order of 18 September 1967, the court held in abeyance the resolution of plaintiff's motion for judgment on the pleadings and defendants were granted 30 days within which to effect a compromise with the plaintiff. At defendants' instance, the period was further extended to 31 December 1967.

On 2 January 1968, defendants informed the court that the parties had failed to reach an amicable settlement of the case; thus, on the same day, the court granted plaintiff's motion; promulgated a judgment on the pleadings in its favor, and ordered defendants to pay to the former the sum of P753,000.00, with interest thereon at 10% per annum computed from 1 February 1967 until it is fully paid, plus the amount of P20,000.00 as reasonable attorneys' fees and costs of collection, and costs of the suit. Hence, this appeal by the defendants.

Assailing the correctness of the aforesaid decision, defendants-appellants now maintain that the rendering of judgment on the pleadings was improper, because contrary to the ruling of the court below, their answer tendered an issue. It is claimed that by plaintiff's moving for judgment on the pleadings, said party in fact admitted that defendants have good and valid grounds "to request for further negotiations insofar as payment of the note is concerned"; that defendants signed the promissory note without checking their own records in the belief that the note could be revised in due time during the negotiations or talks with the plaintiff; and that defendants had asked for a reduction of the installments of P50,000.00

There is no merit in this appeal. It may be emphasized that the action filed in the court below was for collection of a sum of money on the basis of, and as evidenced by, a promissory note signed by defendants-appellants. In their

answer, said defendants did not deny the existence of the indebtedness, or of the due execution of the promissory note, nor of their failure to pay the second and subsequent installments, thus making the entire obligation due and demandable, pursuant to the terms of the said promissory note. In fact, the correctness of the amount demanded by the plaintiff was not even contested. That appellants may have good and valid ground to request the appellee for a revision of the terms of the obligation admittedly due and demandable, or that they may have signed the promissory note without consulting and checking their records are all beside the point, and their recital in the answer did not raise a contentious issue therein. For it is not claimed that such request for revision of the manner of payment was granted by the plaintiff-appellee or that the latter was obligated to grant the request, in order that it may constitute a defense against the enforceability of the promissory note, or that the non-checking of their records resulted in fraud or error that could have affected the due execution and validity of the instrument. Defendants' belief that the terms of the promissory note could be changed at some future time, not for the purpose of correcting any inaccuracy therein but merely to make its terms less burdensome to them, did not and would not constitute an allegation of defect or flaw in the due execution thereof. Similarly, the fact that payment of the monthly installments of P50,000.00, which appellants voluntarily undertook to make, would be difficult to fulfill, does not bar the collectibility of the obligation. As we have had occasion to state before, the inability of the debtor to raise the necessary amount is no defense against the collectibility of the indebtedness, for a debtor can not delay payment of a due obligation just to suit his convenience, the creditor not being an underwriter of his business unless so stipulated.[1] Appellants, having admitted the facts of the existence of the indebtedness, its exigibility, and its non-payment, without tendering any valid and genuine issue against them in their answer, the rendering of judgment on the pleadings was certainly appropriate.[2]

Neither do we find as unreasonable the award to plaintiff of P20,000.00 as attorneys' fees and costs of collection. Under the terms of the promissory note, the validity of which has not been overcome, appellants are obliged to pay an amount equivalent to 25% of the outstanding obligation in case of court action. The sum of P20,000.00 awarded by the court below is even much less than that agreed upon. Besides, the allowance of attorneys' fees by way of liquidated damages is a matter within the sound discretion of the trial court (Article 2208, Civil Code), and no abuse of such discretion has been committed here, considering the amount involved in the case and the fact that the P20,000.00 includes also the costs for collection of the unpaid account.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, with treble costs against the appellants.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

[1] *Apelario vs. Inez Chavez & Co., Ltd.*, L-17721, 16 October 1961, 3 SCRA 226.

[2] *Raagas vs. Traya*, L-20081, 25 February 1968, 22 SCRA 839; *Fabella vs. Provincial Sheriff of Rizal*, 94 Phil. 35; *Apelario vs. Inez Chavez & Co., Ltd.*, *supra*.

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