

[WITH AMENDED DECISION OF SEPTEMBER 26, 1962]*G. R. No. L-17165. July 31, 1962*

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/872fcf796b89/>**LABRADOR, J.:**

On July 8, 1959, Catalina Carreon, with the consent of her husband Zacarias Rivera, mortgaged to the defendant Asia Mercantile Corporation Lot No. 551 of the Piedad estate subdivision for P50,000.00, payable within a period of thirty days with interest at the rate of 12% per annum. Paragraph 4, of the contract provides that upon failure of the mortgagor to pay the indebtedness and the interest when due, the mortgage shall become due and demandable, and without necessity of demand the mortgagee may immediately foreclose, the mortgage, judicially or extra judicially, and for this purpose the mortgagor appoints the mortgagee as his attorney-in-fact to sell the properties and to sign all documents and perform any act requisite and necessary to accomplish said purpose. It was further expressly agreed that in case of foreclosure the mortgagor binds himself to pay the mortgagee 30% of the sum owing and unpaid as attorney's fees and liquidated damages, exclusive of costs and expenses of the sale.

On the same date another mortgage was executed by plaintiffs Emma R. Geniza, Aurelio Geniza and Lorenzo Rivera over two parcels of registered land for the sum of P50,000.00, and with the same conditions as the mortgage executed by the spouses Catalina Carreon and Zacarias Rivera. Copies of the contracts of mortgage are annexed to the complaint in this case as Annex "A" and Annex "B" The mortgagors in both mortgage contracts defaulted in the payment of their respective obligations. The mortgage executed by Catalina Carreon Rivera and Zacarias Rivera was foreclosed extra-judicially and the proceeds of the sale of the land amounting to P68,567.57 was disposed of by the mortgagee as follows:

Proceeds of Sale. (TCT No. 7464) P68,567.57

Less:

Amount of Loan.....

P50,000.00

12% Interest.....

2,000.00

5% Attorney's fees and liquidated

damages

2,500.00

Total obligation..... P55,000.00

Excess Becoverable..... 13,567.57

Plaintiffs brought this action to obtain a judicial declaration that the stipulation in the deeds of mortgage fixing the amount of 30% as attorney's fees and liquidated damages is excessive, unconscionable and iniquitous and that the same, should be reduced to P200.00. The complainants also asked for P5,000.00 as attorney's fees for bringing this action. The defendants set up the defense that the complaint states no cause of action; that the mortgage executed by Emma R. Geniza and Aurelio Geniza has not yet been foreclosed; that the mortgagors are estopped from alleging that the stipulation regarding liquidated damages and attorney's fees is excessive and unreasonable.

The case having been tried in the Court of First Instance of Quezon City, Hon. Nicasio Yatco, presiding, rendered judgment dismissing the action of plaintiffs Emma Geniza and Aurelio Geniza as premature, and ordering the defendant Asia Mercantile Corporation to return to plaintiff Catalina C. Rivera the sum of P13,567.57 which represents the excess of the total obligations of the mortgagor based on the following computation:

Proceeds of Sale. (TCT No. 7464) P68,567.57

Less:

Amount of Loan.....

P50,000.00

12% Interest.....

2,000.00

5% Attorney's fees and liquidated

damages

2,500.00

Total obligation..... P55,000.00

Excess Becoverable..... 13,567.57

It is against the above judgment that the plaintiffs have prosecuted the appeal to this Court, claiming that the lower court erred in not reducing the liquidated damages and the attorney's fees to not more than P500.00 and in not declaring the stipulation exacting attorney's fees and liquidated damages as a usurious stipulation, by reason of which plaintiffs (appellants herein) should be entitled to attorney's fees amounting to P5,000.00.

In reducing the 30 per cent attorney's fees and liquidated damages from 30 per cent to 5 per cent, the judge below appears to be fully justified. As the loan was for a period of thirty days only, damages amounting to 30 per cent of the loan of P50,000.00 would appear to be iniquitous and subject to reduction in accordance with the provisions of Articles 1227 and 1229 of the Civil Code of the Philippines. We do not agree with counsel for plaintiffs-appellants that the contract was a usurious contract there being no allegation of fact that the mortgagee's intention was to exact a usurious interest, nor evidence to that effect. Neither is there any allegation or claim that the mortgage is contra bonos mores, so that we may assume that he demanded the insertion of the iniquitous clause or 30% damages to cover a usurious deal. Under these, circumstances we cannot sustain the claim of the plaintiffs-appellants that the agreement was a usurious one; so that we hold that the trial court was fully justified in considering the provision only as an iniquitous clause subject to reduction.

We also find the reduced liquidated damages and attorney's fees to be fair and we find no reason for disturbing the discretion of the court below in this respect.

Wherefore, the judgment appealed from is hereby affirmed, with costs against the plaintiffs-appellants. So ordered.

Bengzon, C. J., Padilla, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

AMENDED DECISION

Sept. 26, 1962

LABRADOR, J.:

The original decision rendered by Us in the above entitled case refers to a first decision rendered by the Court of First Instance of Quezon City, Hon Nicasio Yatco, presiding, dated March 30, 1960. It so happened, however, that the above decision was amended by said court on May 18, 1960, but upon our study of the record of the case the amended decision was overlooked. The original decision of the court of first instance refers to the mortgage contract, Exhibit "A", while the amended decision refers to both contracts of mortgage, Exhibits "A" and "E", executed on the same date. The appeal was made against the amended decision and involves identical questions on the foreclosure of the two mortgages above mentioned. In view of the fact that We overlooked the amended decision, especially as regards the second contract of mortgage, it has become necessary to render this amended decision on both of the contracts of mortgage already referred to.

On July 8, 1959, Catalina Carreon, with the consent of her husband Zacarias Rivera, mortgaged to the defendant Asia Mercantile Corporation Lot No. 551 of the Piedad estate subdivision for P50,000.00, payable within a period of thirty days with interest at the rate of 12% per annum. Paragraph 4 of the contract provides that upon failure of the mortgagor to pay the indebtedness and the interest when due, the mortgage shall become due and demandable,

and without necessity of demand the mortgagee may immediately foreclose the mortgage, judicially or extra-judicially, and for this purpose the mortgagor appoints the mortgagee as his attorney-in-fact to sell the properties and to sign all documents and perform any act requisite and necessary to accomplish said purpose. It was further expressly agreed that in case of foreclosure the mortgagor binds himself to pay the mortgagee 30% of the sum owing and unpaid as attorney's fees and liquidated damages, exclusive of costs and expenses of the sale.

On the same date another mortgage was executed by plaintiffs Emma R. Geniza, Aurelio Geniza and Lorenzo Rivera over two parcels of registered land for the sum of P50,000.00, and with the same conditions as the mortgage executed by the spouses Catalina Carreon and Zacarias Rivera. Copies of the contracts of mortgage are annexed to the complaint in this case as Annex "A" and Annex "B" The mortgagors in both mortgage contracts defaulted in the payment of their respective obligations. The mortgage executed by Catalina Carreon Rivera and Zacarias Rivera was foreclosed extra-judicially and the proceeds of the sale of the land amounting to P68,567.57 was disposed of by the mortgagee as follows:

- "1. P50,000.00—as mortgage loan.
2. P2,500.00—as the 12% interest on the loan as of December 7, 1957 plus daily interest thereafter until the obligation is legally terminated.
3. P15,000.00—as Attorney's fees any liquidated damages.
4. The fees and expenses of foreclosure and sale."

Plaintiffs brought this action to obtain a judicial declaration that the stipulation in the deeds of mortgage fixing the amount of 30% as attorney's fees and liquidated damages is excessive, unconscionable and iniquitous and that the same should be reduced to P200.00. The complainants also asked for P5,000.00 as attorney's fees for bringing this action. The defendants set up the defense that the complaint states no cause of action; that the mortgage executed by Emma R. Geniza and Aurelio Geniza has not yet been foreclosed; that the mortgagors are estopped from alleging that the stipulation regarding liquidated damages and attorney's fees is excessive and unreasonable.

The case having been tried in the Court of First Instance of Quezon City, fton, Nicasio Yatco, presiding, rendered judgment dismissing the action of plaintiffs Emma Geniza and Aurelio Geniza as premature, and ordering the defendant Asia Mercantile Corporation to return to plaintiff Catalina C. Rivera the sum of P13,567.57 which represents the excess of the total obligations of the mortgagor based on the following computation:

Proceeds of Sale (TCT No. 7464)

P68,567.57

Less:

Amount of Loan

60,000.00

12% Interest.....

2,000.00

5% Attorney's fees and liquidated

damages

2,500.00

Total Obligation P55,000.00

Excess Recoverable 13,567.57

A motion for reconsideration having been presented to the effect that the parcels of land subject of the mortgage in Exhibit "A" were foreclosed on March 22, 1960 and sold to the defendant Henry Sy for P51,965.80, the court on May 18, 1960 rendered an amended decision the dispositive parts of which read as follows:

"WHEREFORE, judgment is hereby rendered one in favor of the plaintiffs and against the defendants by ordering the reduction of the stipulated 30% attorney's fees and liquidated damages to 5% in the mortgage contracts entered into by them (Exhs. A and E); ordering the defendant Henry Sy to return to plaintiffs Aurelio Geniza; Emma Geniza and Lorenzo Rivera the sum of P5,277.30 representing the excess of the public sales of said plaintiffs' mortgaged properties (TCT No. 39230, TCT No. T-22028-and TCT No. 20384) in the total amount of P60,277.30 over the obligations of same plaintiffs in the amount of P55,000.00 based on the following computation:

Proceeds of Sales (TGT No. 39230, TCT No.

22028 and TCT No. 20384..... P60,277.80

Less:

Amount of Loan.....

P50,000.00

12% Interest.....

2,500.00

5% Attorney's fees and liquidated

damages.....

2,500.00

P55,000.00

Total Obligations.....

Excess Recoverable

5,277.30

ordering the defendant Asia Mercantile Corporation to return to plaintiff Catalina C. Rivera the sum of P13,567.57 representing the excess of the public sale of said plaintiff's mortgaged land (TCT No. 7464) in the amount of P68,567.57 over the total obligations of same plaintiff in the amount of P55,000.00 based also on the following computation:

Proceeds of Sale (TCT No. 7464) P 68,167.57

Less:

Amount of Loan.....

P50,000.00

12% Interest

2,500.00

5% Attorney's fees and liquidated

damages

2,500.00

Total Obligations P55,000.00

Excess Recoverable P13,567.57

without pronouncement as to costs.

"So ordered.

It is against the above judgment that the plaintiffs have prosecuted the appeal to this Court, claiming that the lower court erred in not reducing the liquidated damages and the attorney's fees to not more than P500.00 and in not declaring the stipulation exacting attorney's fees and liquidated damages as a usurious stipulation, by reason of which plaintiffs (appellants herein) should be entitled to attorney's fees amounting to P5,000.00.

In reducing the 30% attorney's fees and liquidated damages to 5%, the judge below appears to be fully justified. As the loans were for a period of thirty days only, damages amounting to 30 per cent of the loans of P50,000.00 each would appear to be iniquitous and subject to reduction in accordance with the provisions of Articles 1227 and 1229 of the Civil Code of the Philippines. We do not agree with counsel for plaintiffs-appellants that the contract was a usurious contract there being no allegation of fact that the mortgagee's intention was to exact a usurious interest, nor evidence to that effect. Neither is there any allegation or claim that the mortgage is contra bonos mores, so that we may assume that he demanded the insertion of the iniquitous clause or 30 per cent damages to cover a usurious deal. Under these circumstances we cannot sustain the claim of the plaintiffs-appellants that the agreement was a usurious one; so that we hold that the trial court was fully justified in considering the provision only as an iniquitous clause subject to reduction.

We also find the reduced liquidated damages and attorney's fees to be fair and we find no reason for disturbing the discretion of the court below in this respect.

Wherefore, the judgment appealed from is hereby affirmed, with costs against the plaintiffs-appellants. So ordered.

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

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.