

C. N. HODGES, PETITIONER, VS. ELPIDIO JAVELLANA AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. L-17247. April 28, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by certiorari, taken by petitioner C. N. Hodges, from a decision of the Court of Appeals, the dispositive part of which is as follows:

"IN VIEW OF THE FOREGOING, the defendant is required to pay the plaintiff the amount of P9,575.52 under the first cause of action; the amount of P18,199.44 under the second cause of action and the amount of P4,372.00 under the third cause of action; with interests at 6% per annum from the filing of this claim; attorney's fees at the rate of 5% of the total indebtedness, with the exclusion of the interests, and with these modifications, the decision appealed from is hereby affirmed, without further costs."

The main facts are not disputed. This is an ordinary action for the recovery of several sums of money under three (3) causes of action. The first is based upon a promisory note of respondent Elpidio Javellana in favor of petitioner, dated June 11, 1936, for P16,000, payable on or before June 11, 1937, with interest at the rate of one (1%) per cent per month until paid, and guaranteed by a real estate mortgage. The second is predicated upon a sale of ice machineries, made by petitioner to respondent on January 6, 1937, for the aggregate price of P17,500.00, on account of which P220 was then paid, the balance to be paid in 72 monthly instalments of P240 each, with interest at the rate above mentioned, and guaranteed by a chattel mortgage on said ice machineries. The third arose from a sale of ice plant machinery, soft drink machinery, ice drop equipment and furniture and fixtures, made on April 27, 1939, by petitioner to respondent, at a total cost of P8,000, of which P2,000 was paid on said date, the balance to be paid in monthly instalments of P100 each, with interest at the rate adverted to above, and guaranteed by a deed of chattel mortgage on said machineries, equipment, furniture and fixtures, as well as on respondent's right on a certificate of public convenience to operate an ice plant. The deeds evidencing said three (3) transactions provided, also, that unpaid interest shall be added to the capital and bear interest at like rate.

According to the complaint, filed on June 6, 1953, as amended on September 18, 1953: (1) the balance of the obligation covered by the first cause of action amounted, on September 22, 1940, when the last payment on account of said obligation was made, to P8,060.20, which, including interest up to September 18, 1953, aggregated P35,118.27; (2) the balance of the obligation upon which the second cause of action is based amounted, on August 5, 1940, when the last payment on account of said obligation was effected, to P15,120, which, including interest up to April 6, 1953, aggregated P38,107.44; and (3) the balance of the obligation to which the third cause of action referred amounted, on June 26, 1941, when the last payment on account of said obligation was effected, to P4,000.00, which including interest up to April 6, 1953, aggregated P9,654.33. Petitioner prayed, therefore, for judgment in the sums of P35,118.27, P38,107.44 and P9,653.33, with interest thereon at the rate adverted to above, plus' 10% of the first and last amounts, by way of attorney's fees and costs, in addition to a decree of foreclosure of the corresponding mortgages, in case of default in the payment of said

amounts.

Defendant filed an answer admitting some allegations of the complaint, denying other obligations thereof and setting up several affirmative defenses, all of which were overruled by the Court of First Instance of Iloilo, which rendered judgment as prayed by the petitioner. Respondent appealed to the Court of Appeals, claiming that:

- "The trial court erred in admitting and in considering Exhibit F.
- "The trial court erred in not holding that the first and second causes of action of the plaintiff had already prescribed.
- "The trial court erred in compounding the interest claimed in the amended complaint.
- "The trial court erred in not dismissing the complaint with costs against the plaintiff, except the third cause of action."

After appropriate proceedings, the Court of Appeals rendered a decision rejecting the first and second assignments of error. In connection with the third assignment of error said court held:

"The court below allowed the plaintiff to recover interest on the different sums as originally agreed upon. We do not believe this to be fair. The very document marked as Exh. F shows that the properties for which the defendant was indebted to the plaintiff were all destroyed in 1942 as a result of the war. Because of the war Hodges himself had to flee this country which means that he could not have done any business at all with the money that Javellana should have paid to him on account of his indebtedness. Under such circumstances, it seems revolting to conscience that he should be permitted to recover any interests before the filing of this action."

Hence, the Court of Appeals reduced the award in favor of petitioner to the amounts stated at the beginning of this decision, representing the amounts due under the first and the second causes of action as of April 16, 1942, when the corresponding mortgaged properties were destroyed, and the sum due under the third cause of action as of April 5, 1942, date of destruction of the mortgaged property involved therein. Petitioner herein maintains that the Court of Appeals erred in fully relieving respondent of the obligation to pay interest because: (a) in his assignments of error before said court, respondent merely assailed the collection of compounded interest; and (b) the regular interest, as well as the compounded interest, having been stipulated in valid contracts between the parties, said court should have required respondent to pay both.

With respect to the first ground, it should be noted that, although respondent had not specifically impugned petitioner's right to collect the regular interest, this issue was embraced in respondent's claim in the Court of Appeals to the effect that petitioner was entitled to recover nothing at all under the first and second causes of action—that is to say, neither his capital, nor ordinary interest nor compounded interest.

At any rate, as regards the second ground, we must distinguish between the interest due during the occupation of the Philippines by the Japanese, and the interest accruing after liberation. Insofar as the period of occupation of the Philippines is concerned, the action taken by the Court of Appeals is in line with our decision in *Warner Barnes & Co. Ltd. vs. Yasay*, 108 Phil. 29; 60 Off. Gaz. 3109; in which we declared.

"Considering, however, that no bad faith is imputed to the debtors: that payment could not be made during the war years, even if the debtor had so desired, because the creditor was a British company and an enemy vis-a-vis the belligerent occupant off the Islands at the time; that the creditor was indirectly benefited by the debtor's inaction, thereby avoiding payment in military script; and that both under Article 1172 of the new Civil Code and Article 1103 of the old Code, the Courts have power to regulate or moderate the liability arising from negligence of a debtor, we think it equitable to reduce the interest by eliminating that which

accrued during the war years, as well as to limit the attorney's fees to 10% of the total amount of the judgment, this case presenting no unusual difficulty."

With reference to the regular interest accruing after liberation, we find no legal authority to disregard the pertinent stipulations in the contracts between the parties. The provisions thereof relative to the compounding of interest partake, however, of the nature of a penal clause (*Laureano vs. Kilayco*, 32 Phil., 198), pertinent to which is Article 1154 of the Civil Code of Spain, which provides:

"The judge shall equitably mitigate the penalty if the principal obligation should have been partly or irregularly performed by the debtor."

As far as the present case is concerned, this legal provision is substantially identical to Article 1229 of the Civil Code of the Philippines, reading:

"The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable".

In the light of the circumstances surrounding the case at bar, we hold that although respondent was properly exempted from the payment of compounded interest, he should pay the stipulated interest of 12% per annum, but only since liberation (*Treasurer of the Philippines vs. Rodis*, 40. Phil., 852; *Lambert vs. Fox*, 26 Phil., 588; *Insular Gov't. vs. Bingham*, 13 Phil., 588; *Gov't. of the P.I. vs. Amechazurra*, 10 Phil., 637).

Wherefore, with the only modification that the sums of P9,575.52, P18,199.44 and P4,372 appearing in the dispositive part of the decision of the Court of Appeals shall bear interest, although only from and after the liberation of the Island of Panay, at the rate of 12% per annum, which shall not be compounded, said decision is hereby affirmed in all other respects, without special pronouncement as to costs. It is so ordered.

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

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