

PHILIPPINE TRUST CO., PLAINTIFF AND APPELLEE, VS. LUCIO ECHAUS TAN SIUA, DEFENDANT AND APPELLANT.*G.R. No. L-29736. February 28, 1929*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Occidental Negros by the Philippine Trust Co., hereinafter called the bank, for the purpose of foreclosing a mortgage on five parcels of real property belonging to the appellant, Lucio Echaus Tan Siua, given as security for a debt owing to the bank by the Visayan General Supply Co., Inc., hereinafter referred to as the debtor. Upon hearing the cause the trial judge entered judgment declaring the defendant herein to be indebted to the bank in the amount of P53,741.82, with interest at the rate of 10 per cent per annum, to be capitalized monthly, also declaring the defendant to be indebted to the bank in the sum of P4,000 for stipulated attorney's fee, with the requirement that said sums be deposited in court within three months from the date of the judgment, in default of which the mortgaged property to be sold in ordinary course of foreclosure; and with further provision that execution should issue against the defendant for any balance of the aforesaid indebtedness which should not be satisfied from the proceeds of the sale. From this judgment the defendant, Lucio Echaus Tan Siua, appealed.

It appears that by agreement dated May 18, 1923, the plaintiff bank granted to the Visayan General Supply Co., Inc., credit in current account to the extent of P40,000, which credit was, in ordinary course, utilized by the debtor party. Among the stipulations of this contract material to be here noted, we find the following, namely: First, that the Visayan General Supply Co., Inc., should pay interest on the average daily debit balances of its said current account at the rate of 10 per cent per annum, said interest to be computed on the last day of each month, or at such other time as the party of the second part might deem expedient, and the amount thereof debited in said current account; secondly, it was agreed that the debit balance shown in said current account by the books of the bank should be taken and held to be the true and correct amount owing by the debtor; thirdly, the debtor party agreed to furnish such security as the bank might from time to time require for the payment of any sum advanced by the bank to the debtor.

Pursuant, apparently, to the agreement of the debtor to furnish security for said indebtedness, the defendant, Lucio Echaus Tan Siua, on August 2, 1923, mortgaged to the bank the five parcels of land which are the subject of this proceeding for the purpose of securing the aforesaid indebtedness.

From this mortgage we reproduce two provisions which are pertinent to the present controversy, as follows:

"This mortgage is given as security for the payment on demand of a credit in current account in the sum of forty thousand pesos (P40,000), Philippine currency, granted by the mortgagee to the Visayan General Supply Co., Inc., together with interest on the average daily debit balances of said current account at the rate of ten per cent (10%) per annum, payable quarterly, all in accordance with the terms and conditions of a certain agreement for the credit in current account entered into by and between the said Visayan General Supply Company, Inc., under date of May 18, 1923, a copy of which said agreement is attached hereto, marked A, and

made a part hereof.

* * * * *

"The conditions of this obligation are such that if the mortgagor shall well and truly pay, or caused to be paid, any sum or sums that may be due to the mortgagee, by the Visayan General Supply Company, Inc., under and by virtue of the terms of that certain agreement for credit in current account entered into by and between the said Visayan General Supply Company, Inc., and the Philippine Trust Company, under date of May 18, 1923, a copy of said agreement is attached hereto, marked A, and made a part hereof; and shall comply with all the terms and conditions set forth in this mortgage, then this obligation shall be void; otherwise it shall remain in full force and effect."

It will be observed that in the first of the two paragraphs above quoted the credit in current account granted by the bank is described as bearing interest at the rate of 10 per centum per annum, payable "quarterly;" and from this the appellant contends, with some plausibility, that the interest due to the bank cannot be capitalized monthly but only quarterly. On the part of the appellee it is claimed that the word "quarterly" was used in the mortgage by manifest error and that the word "quarterly" should be read "monthly," as stated in the contract of May 18, 1923.

We are of the opinion that the position taken by the appellee on this point is correct and that the error is manifest and apparent from the mortgage itself in relation with the principal contract. The reasons that conduct us to this conclusion are these: First, the mortgage was evidently given pursuant to that clause of the original contract by which the debtor had agreed to furnish security to the bank for any sum for which the debtor might become obligated to the bank under the terms of the original agreement; secondly, the paragraph of the mortgage in which the word "quarterly" is used explicitly states that the obligation to pay interest is "all in accordance with the terms and conditions" of the original agreement; thirdly, the same paragraph of the mortgage makes express reference to the original agreement for the granting of credit in current account by the bank to the debtor and said contract is incorporated in the mortgage by reference; fourthly, in the defeasance clause of the mortgage, which is the second of the two paragraphs above quoted from the mortgage, the debt secured is not described as being one for the payment of interest quarterly, but the original contract is again referred to and incorporated in said clause without specifying how the interest should be paid.

From this accumulation of circumstances the conclusion is irresistible that a mistake was made in using the word "quarterly" in the mortgage as descriptive of the obligation to pay interest on the principal debt; and inasmuch as the original contract is incorporated by reference in the mortgage, the court cannot hesitate to give effect to the mortgage in the sense evidently intended by the parties, that is to say, that the interest on the principal debt must be paid in accordance with the terms of the original contract. Under the original contract it is clear that the interest was to be debited in current account and capitalized monthly.

Error is assigned to the action of the trial court in allowing the stipulated attorney's fee of P4,000. In view of the fact that this fee constitutes less than 7 1/2 per cent of the amount which the court found to be due, we think that the stipulation was reasonable and that the fee was properly incorporated in the judgment.

The last error assigned is directed to that feature of the appealed decision in which the trial court ordered that execution should issue personally against the defendant for any deficiency that might result from the failure of the mortgaged property to bring the full amount of the indebtedness due to the creditor. It is admitted by the appellee that this feature of the judgment must be eliminated, since the defendant did not assume personal liability for the debt but only mortgaged his property in security therefor.

From what has been said it follows that that portion of the dispositive part of the appealed judgment which purports to make the defendant liable for any deficiency must be eliminated. With this modification the judgment appealed from is affirmed, without costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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