

GO LETING & SONS, ETC., PLAINTIFF-APPELLEE, VS. LEYTE LAND TRANSPORTATION CO., ETC., ET AL., DEFENDANTS-APPELLANTS.

G.R. No. L-8887. May 28, 1958

Ponente: PARAS, C.J.

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PARAS, C.J.:

On April 2, 1954, the appellee filed an action against the appellants for the recovery of the sum or P15,902.83 representing the balance of on account of appellant Leyte Land Transportation Company with the former which reached a total of P34,566.73. Appellant Simeona K. Price was included as an alleged surety of appellant company in the Sales and Security Agreement executed between it and the appellee. Appellant Price executed a mortgage on a registered real property.

The appellants, in their answer, admitted all the allegations of the complaint except the allegations that appellant Price was a surety and that the balance was P15,902.83. They alleged that Price was a mere guarantor and that the whole indebtedness was more than covered by the sale of the mortgaged property at public auction because, assessed value of P19,140.00, it could have sold for P30,000.00. They further interposed the following special defenses: (1) that the indebtedness is more than covered by market value of the mortgaged property; (2) that appellant Price had no liability under the contract, greater than the value of said property; (3) that there was a novation of the contract by reason of appellee's failure to institute an action after the lapse of 60 days and of the increase of the indebtedness of appellant company to P22,308.00; (4) that mortgage was not yet due and could not be foreclosed at the time of the sale at public auction, in view of the agreement that said mortgage was for a period of five years. The counterclaim set up by the appellants for the cancellation of the public sale was based substantially on the same facts alleged in their special defenses.

The appellee, on May 10, 1954, replied that the sum P8,375.00, the purchase price at the public auction, was reasonable; that the mortgage was immediately subject to foreclosure under paragraph 4 of the agreement; and that appellants did not protest at the sale made.

By reason of the admissions of the appellants in their answer, the appellee, on May 19, 1954, filed a motion for summary judgment which, over appellants' opposition, was granted by the lower court. On June 12, 1954, a decision was rendered ordering the appellants to pay to the appellee, jointly and severally, the sum of P15,902.82, with legal interest from April 2, 1954, and until said amount is fully paid; the sum of P1,509.02 as attorney's fees; and the costs.

Appellants' assignments of error and the arguments thereunder may be compressed into the proposition that the summary judgment is improper by reason of allegations in the pleadings which raise issues of fact, particularly with respect to the liability of appellant Price, the value of the property sold, the premature foreclosure of the mortgage, and the novation of the obligation.

The contract entered into between the parties (the Sales and Security Agreement which embodies a mortgage on

the property covered by Transfer Certificate of Title No. T-716) was attached to and made an integral part of appellee's complaint. Said written agreement, which is the best evidence of the liability assumed by appellant Price, expressly designates her as "SURETY".

As regards the alleged inadequacy of the price realized from the sale at public auction, we find that the same is not so shocking to the conscience as to warrant the cancellation of the sale which was carried out with the formalities of the law. It is to be observed that the appellee had even tried to be considerate to the appellants who were in fact given ample opportunity to sell the property at a higher price.

The claim that novation had taken place because of the failure of the appellee to sue appellant company after the lapse of 60 days, and because the latter had obtained a credit in excess of P20,000.00 fixed in the contract, is without merit. From paragraph 7 of the agreement it is clear that the appellee had reserved the right to require fulfillment of appellants' obligation even if he granted some indulgences, like extensions of time.

There is also no merit in the contention regarding the increased indebtedness in breach of the agreement, because Annexes "A" and "B" of the motion for summary judgment show that the sum of P34,566.73 represented the total purchases of appellant company from 1952 to 1953; that P13,248.31 had already been paid before the foreclosure sale which was made in pursuance of the contract; that the outstanding debt at the time of the sale was only P21,308.42 including 12% interest per annum.

Appellants' allegation that the foreclosure was premature is likewise untenable due to the inclusion of an acceleration clause in the agreement.

Where, as in this case, the appellants had expressly admitted the material allegations of the complaint, without in their answer tendering any genuine issue of fact, summary judgment was in order. As pointed out by the appellee, appellants' counterclaim was based merely on the allegations referred to under the special defenses.

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

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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