

B. J. SERVER, PETITIONER, VS. RICARDO SIKAT, RESPONDENT.

G.R. No. L-24695. October 26, 1968

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

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

Petition to review the decision of the Court of Appeals, in CA-G.R. No. 28440-R, which reversed that of the Court of First Instance of Manila (in its Civil Case No. 25997).

There is no dispute as to the following facts:

On 16 January 1945, Ricardo Sikat obtained from B.J. Server a loan of P120,000.00 in Japanese Occupation money. To secure payment of this loan, Sikat constituted a mortgage on two parcels of land in favor of Server and, with Jose de Luna Gonzales, executed a promissory note which reads as follows:

"We, the undersigned, jointly and severally promise to pay to Mr. B.J. Server, or order, Six Thousand Pesos (P6,000.00) with interest thereon at the rate of six Per Centum (6%) per annum, in the legal Philippine Currency circulating in the Philip-pines at the time of payment, within two (2) years counted from and after the termination of the hosti-lities in the Philippines between United States of America and the Empire of Japan. As security for the payment of said sum together with its interests, a real estate mortgage has been executed on this date by Mr. Ricardo Sikat on certain parcels of land and improvements thereon embraced in Transfer Certificate of Title No. 42974 of the Register of Deeds for the City of Manila, in favor of Mr. B.J. Server."

On 15 October 1947, Server reminded Sikat, by letter, of the loan, and on 7 December 1953 formally demanded payment thereof. As the latter allegedly refused to pay the indebtedness, Server commenced proceedings for collection of the loan and foreclosure of mortgage in the Court of First Instance of Manila (Civil Case No. 25997). It was plaintiff's allegation that defendant had failed to pay the loan of P6,000.00 although it had already become due and payable two years after the cessation of the hostilities in the Philippines between the United States and Japan .

Answering the amended complaint, defendant Ricardo Sikat disputed the due execution of the mortgage contract and the promissory note which were the bases of plaintiff's action. It was claimed, among other things, that the docu-ments were executed against his will and that they do not express the true in-tention of the parties; that defendant tried to settle the indebtedness, which was only P60,000.00 in Japanese military notes, by offering to pay the market value of said notes at the time the obligation was contracted, or its equivalent in ac-cordance with the Ballantyne schedule, but plaintiff refused to accept the offer. As special defense, defendant also charged that the loan is usurious, because it compels him to pay P6,000.00, Philippine currency, for P60,000.00 in Jap-anese military notes, which is only equivalent to P60.00.

After hearing, judgment was rendered for the plaintiff. The trial court, finding defendant's evidence to be insufficient to overcome the probative value of the stipulations embodied in the mortgage contract and the promissory note, rejected defendant's claim that the parties had agreed verbally that the loan was payable during

the Japanese occupation. The allegation of usury was also denied, on the ground that the provision in the contract that the loan was to be paid in the currency circulating after the war is neither immoral nor unlawful. Consequently, and enforcing the terms of the written agreement, the court ordered (1) the defendant to pay to plaintiff the sum of P6,000.00 with legal interest thereon, from 16 January 1945 until the same is fully paid, plus attorney's fees in an amount equivalent to 10% of the indebtedness due; (2) that in the event of defendant's failure to pay the foregoing amounts within the period prescribed in Section 2 of Rule 70, the properties subject of the mortgage be sold at public auction; (3) the defendant to pay the deficiency if the proceeds of the sale would be insufficient to satisfy the obligation; and (4) the defendant to pay the costs.

On Appeal by defendant, the Court of Appeals reversed the above decision of the trial court upon the finding that the oral agreement, that the loan may be paid during the Japanese occupation, has been sufficiently established. Thus, defendant was ordered to pay to plaintiff the sum of P1,000.00 (the value of P120,000.00 Japanese military notes in January, 1945), with legal interest thereon from 16 January 1945, and attorneys' fees equivalent to 10% of the indebtedness due, payable in 90 days from the finality of the decision, with provision for the sale at public auction of the mortgaged property upon defendant's default in the payments. This is the decision subject of the present petition for review.

Respondent maintained that the promissory note notwithstanding, the parties also agreed, orally and on the same occasion when the contract was executed, that the loan may be paid during the Japanese occupation, subject to certain adjustment. The trial court, while it allowed defendant's (herein respondent) witness to testify on this alleged verbal agreement, nevertheless overruled the contention on the ground that the same had not been duly established, and gave effect to the terms of the written contract. The Court of Appeals, on the other hand, made a contrary finding, and ordered that the loan be paid in accordance with the Ballantyne schedule.

Clearly, the issue to be resolved in this proceeding is whether or not there is proof to support the conclusion of the Court of Appeals about the existence of that verbal agreement between the parties. This is essentially a question of fact.

The Court of Appeals (Decision, pages 3-7) reasoned as follows:

"..... Upon a careful consideration of the evidence and the circumstances that surrounded the transaction in question, we are persuaded that plaintiff agreed that the loan could be paid by defendant during the occupation subject to adjustment. So that while the promissory note, Exhibit A, states that payment is to be made "within two (2) years counted from and after the termination of the hostilities in the Philippines between the United States of America and the Empire of Japan", the evidence likewise reveal that plaintiff and defendant had a contemporaneous oral understanding that the loan could be paid during the occupation in Japanese money, subject to adjustment.

"We do not agree with the trial court that the evidence on the verbal agreement between the parties is not sufficient to show that payment may be made during the occupation.

"Plaintiff himself testified on cross-examination thus:

"Q. Now, Mr. Server, I am showing to you this document which has already been previously marked as Exhibit A, will you please read said document and tell this honorable court whether you have the same provision in that document Exhibit 1, that no payment may be made before Jan. 1, 1946?

"A. There is no provision like that, sir.

"Q. Because of this lack of provision, Mr. Server, payment could have been made on this loan before Jan. 1, 1956 (1946?), is that right?

"A. If I (he?) had wanted to, yes, I will be forced to accept payment. (page 129, t.s.n., Aquilizan)

"There appears to be a controversy as to whether the pronoun 'I' or 'he' was used by the plaintiff in the first part of his statement. Considering the antecedent questions and answers, the testimony of Benito Serrano, who was a witness to the mortgage instrument (Exhibit B) and the transaction itself, as well as the affidavits of stenographer Florencio U. Aquilizan (page 206, R. A.) and Pacifico Ma. Castro (p. 209, R.A.), we are convinced that plaintiff used the word 'he' and not 'I' as transcribed by the stenographer. Indeed, the subsequent clause 'I will be forced to accept payment,' is both a logical, not to mention grammatical, corollary to the antecedent clause 'If he had wanted to'. If the witness used the pronoun 'I', there would have been no need to say he will be 'forced to accept payment'. The clause 'If I had wanted to' connotes a discretion on the part of plaintiff, an act within his control - to grant or not to grant. We have here an obvious error in transcribing the stenographic notes. In the same page of the transcript, it is significant that the stenographer wrote the year '1956' when obviously the correct year is 1946 (p. 129, t.s.n., id.) The subsequent question and the objections as well as the trial court's remark, strongly support the fact that plaintiff used the word 'he' referring to defendant, and this was so understood by his counsel and the trial court, thus:

"Q. And because of this lack of provision in this promissory note by the defendant he could have paid the loan even 2, 3, 4 or 5 days before - (interrupted) -

"Atty. Sison: If your honor please, I would object to the question as it would interpret the terms of Exhibit A. The terms mentioned in Exhibit A are clear and there is no need to interpret them.

"Atty. Lugtu: If your honor please, this is material to the case.

"Atty. Sison: The question has been answered, your honor.

"Atty. Lugtu: If your honor, please, I believe the question is only a follow-up of the last answer of the witness;

"Court: There is no more question about that. The repetition of the question is unnecessary. (pages 129-131, t.s.n., Aquilizan)"

Petitioner-appellant strenuously objects that, in not cleaving to the plain text of the transcript, the Court of Appeals went beyond its lawful authority. We see no reversible error in the refusal of the Court of Appeals to accept the literal tenor of the stenographic transcript recording the answer of petitioner Server to the query whether defendant could have paid the loan before 1 January 1946. As transcribed, the answer is: "If I had wanted to, yes, I will be forced to accept payment". In the performance of its fact finding function, the Court of Appeals had authority to determine what was the real answer, for Server's transcribed reply was senseless, absurd and auto-contradictory. After considering the circumstances and the evidence of the stenographer, of the witness, Serrano, and of one of the attorneys, the Court of Appeals reached the conclusion that the true answer had been "If he (Sikat) had wanted to, yes, I will be forced to accept payment", which is a logical and coherent answer and fitted the circumstances of the case. It is true that this power of construction may be abused and must be used with extreme caution, but the construction of ambiguities in a transcript of stenographic notes does, not differ in essence from the interpretation of ambiguous and doubtful terms of written instruments, and in the case before us, we find that no abuse was committed.

An alternative construction suggests itself to the mind, and it is that the later part of Server's answer is but a correction of the first portion thereof: "If I had wanted to --- yes, I will be forced to accept payment", the starting words being a lapsus that the witness later realized and rectified. The result is identical to that reached by the Court of Appeals, but fits closer to the words on record.

At any rate, Server's answer, if taken literally, is unintelligible and can in no way overcome the evidence of

respondent-appellee and of his witness, Serrano.

It is well to observe that even without the oral agreement relied upon by appellee and upheld by the Court of Appeals, the conclusion would be in no way altered. For the terms of the promissory note of 16 January 1945 provided for satisfaction of the loan "within two (2) years counted from and after the termination of hostilities in the Philippines between the United States of America and the Empire of Japan". Normally, the word "within" connotes or signifies "before" or "not later than" (the end of the second year after the termination of hostilities) and does not mean "not earlier". Such being the case, the debtor had the right to repay the loan at any time after 15th January 1945 until expiration of the second year after hostilities had ended; he could, therefore, have insisted in repaying it in occupation currency during the remaining days of the occupation (Gomez vs. Tabia, concurring opinion, 84 Phil. 276) -

"(d) If the parties had stipulated that the obligation shall be payable within a certain period of time, that is, at any time within that period, and the whole or a part of the period coincides with the Japanese occupation and, therefore, the debtor might have paid his obligation in Japanese war notes during the occupation, the above-stated rule (a) shall be applied; because the debtor had the right to pay his obligation in Japanese war notes at the time it became payable, and his mere failure to pay it would not, as above stated, make him liable to pay, as damages or penalty, the difference between the value of the Japanese war notes at the time the obligation became payable and of the Philippine currency at the date of the payment." (cas. cit.)

Rule "a" referred to in the above quotation runs as follows (84 Phil. 275-276):

"(a) An obligation incurred or payable during the occupation shall be revalued on the basis of the relative value of the Japanese military notes in Philippine currency at the date the obligation was payable, according to Ballantine sliding scale of value in the absence of evidence to the contrary. Because to compel the debtor to pay his obligation in Philippine currency at the rate of one Philippine peso for each peso due in Japanese military notes would be to make him pay, as damages or penalty for the delay in making the payment, the difference in value between the Japanese military notes at the time the obligation was incurred and the Philippine currency at the time of the payment,"

As the debtor thus had the privilege to repay the loan during the remaining days of January, 1945, and could do so in Japanese fiat money (the same being the legal currency at the time), the indebtedness should be revalued (as was done by the Court of Appeals) conformably to the Ballantyne schedule of comparative values of Japanese notes and Commonwealth Currency. This Court has, so ruled in numerous cases: De Asis vs. Agdamag, 90 Phil. 249; Ang Lam vs. Peregrina, 92 Phil. 507; Wilson vs. Berkenkotter, 92 Phil. 918; Samson vs. Aguila, 94 Phil. 403; Golez vs. Camara, 93 Phil. 1081, 1087; Valero vs. Sycip, 103 Phil. 1151.

WHEREFORE, the decision under appeal is affirmed. Costs against appellant Server.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur. Zaldivar, J., on leave, did not take part.

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