

**PP. AGUSTINOS RECOLETOS, PLAINTIFFS AND APPELLANTS, VS.
GALO LICHAUCO ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 10934. February 26, 1916*

Ponente: MORELAND, J.

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This is an action brought to foreclose a mortgage. The full amount loaned under the mortgage, with interest, has been paid; and the controversy between the parties arises from that clause of the mortgage which requires the mortgagor, in case the mortgagee should find it necessary to bring an action to foreclose, to pay P5,000 attorney's fees. There is no question raised over the existence of the clause referred to in the contract, nor of the validity or binding force thereof between the parties. The controversy is over the payment of the sum provided for in the clause referred to, the plaintiff alleging and claiming that it has not been paid, while the defendants allege and claim that such proceedings were had between the parties to the action as to have released the defendants from responsibility with respect thereto.

The court found for the defendants and the plaintiffs appealed.

No one questions the fact that the money loaned under the mortgage, with interest, has been fully paid, and a satisfaction of the mortgage executed and delivered. It was paid and the satisfaction piece executed and delivered after an action to foreclose had been begun. The action is now carried on for the sole purpose of collecting the P5,000 attorney's fees.

Fr. Juan Labarga, the general manager of the plaintiffs, testified that after the complaint was filed in the case, Carlos Cuyugan, representing the defendants, came to see him and gave him a check for P15,000 and requested him to dismiss the action; that he then called the attention of Cuyugan to the fact that the lawyer's fees provided for in the mortgage must be paid and that it would be necessary for him to call at the office of Crossfield for that purpose; that Cuyugan hesitated about going to see Crossfield and requested the witness to do so himself as it was very likely that the lawyer would be more moderate in his fees if the witness saw him on the matter than if Cuyugan should do so; that the witness went to see Crossfield pursuant to the request of Cuyugan but not finding him in his office spoke to his partner, O'Brien, telling him what had taken place between him and Cuyugan; that he asked him to dismiss the action and to be as reasonable as possible in his charges; that O'Brien suggested that, as the full amount of the mortgage debt was not yet paid, it would be better, instead of dismissing the complaint, to leave the action pending as it would avoid the expenses of beginning a new action in case the mortgage debt should not ultimately be paid as agreed.

Fr. Labarga further testified that, when the final balance of P15,000 was paid, he executed a satisfaction piece and delivered it to Cuyugan relying on his statement that the defendants would pay the attorney's fees. Thereafter when Lichauco went to Crossfield's office to get his certificate of title, the property having been registered under the Torrens system, delivery of the certificate was refused because the attorney's fees had not yet been paid.

Crossfield testified that Cross field and O'Brien were the attorneys for the plaintiffs in the foreclosure action; that,

about the middle of October, 1914, a messenger came from the defendants informing them that the defendants had paid the mortgage and that they desired the certificate of title; that the witness informed the messenger that he could not deliver the certificate of title but would send it to the plaintiffs for delivery when the mortgage was paid and satisfied; that on the afternoon of the same day, Carlos Cuyugan came to his office, exhibited to him the cancellation of the mortgage and asked for the certificate of title; that Cuyugan told him that the defendants would pay the attorney's fees and asked what they were; that the witness told him that the attorney's fees provided by the mortgage might be considered as including all costs and expenses, and that the P5,000 was all that the defendants would have to pay; that Cuyugan then told him that, if he would deliver the certificate of title the defendants would pay the amount; that witness referred him to Labarga; that later Cuyugan came back and asked the witness to make a statement of the costs and attorney's fees which would have to be paid and stated that the defendants would send the amount to him immediately; that, on the following day, Fr. Labarga returned the certificate of title to his attorneys, saying that he had refused to deliver it to the defendants for the reason that they had not paid the attorney's fees and costs as agreed; that a statement of the sum due for attorney's fees was sent to the defendants, but that no part of it had ever been paid by them. Crossfield further testified that, at the time the firm was employed by the plaintiffs to bring the foreclosure action, they agreed to pay the firm the sum stated in the mortgage, namely, P5,000, for their services in the action and that the services actually performed by them were worth the amount agreed to be paid.

Cuyugan testified that he did not agree with Fr. Labarga to pay attorney's fees in connection with the mortgage foreclosed; that he did not have any conversation with the latter relative to paying such fees and that he was not authorized to agree to pay them. He also denied that he had told Crossfield that he and his codefendants in this case would pay the fees of the attorneys. He stated in his testimony that he went to the office of Crossfield and O'Brien to demand from them the Torrens title and to show them the cancellation of the mortgage, but that he said nothing about the attorney's fees. He asserts that his codefendants never authorized him to obligate them to pay the fees and expenses of the suit nor would he have allowed them to contract such an obligation on behalf of his wife.

The trial court did not pass on the conflicting testimony of these witnesses, but based his decision on another point. He says:

"The court is of the opinion that the execution and delivery of the document of cancellation of the mortgage wipes out the entire indebtedness so far as the defendants are concerned, and that the verbal promise of Carlos Cuyugan, husband of one of the defendants, and as such joined with her as a defendant in this action, if made by him would not be binding upon the defendants so as to make them liable for the payment of the P5,000 stipulated in the mortgage for attorney's fees, costs, and expenses, in the event of suit to recover on said mortgage. This was an amount, over and above the principal indebtedness, which could be waived by the plaintiff in the event of settlement before judgment, and the action of the plaintiff in executing and delivering the document of cancellation of the mortgage was equivalent to a waiver of any other amount claimed under the mortgage."

We cannot agree with the trial court in the resolution of this case. It is undisputed that Cuyugan in his conversations and dealings with Fr. Labarga and Crossfield was acting as a representative of the defendants in the foreclosure action, he himself being one of them and one of the interested parties. The defendants themselves do not question his authority to act for them in the matters which form the burden, according to his own admissions, of his conversations and dealings with Fr. Labarga and Crossfield. They admit that Cuyugan represented them in obtaining the execution and delivery of the cancellation of the mortgage and certificate of title. We are of the opinion from the record that Cuyugan represented them to their knowledge and with their consent in his dealings with respect to the payment of the attorney's fees. But, be that as it may, it is established to our complete

satisfaction that Cuyugan, in order to obtain the cancellation of the mortgage, agreed that the defendants would pay the attorney's fees. Fr. Labarga and Crossfield both testify to that, and all the facts and circumstances of the case strongly support their testimony. That being the case, the defendants cannot receive and keep the benefits of the agreement made by Cuyugan on their behalf and reject the responsibility which the agreement imposed. Whether Cuyugan represented them with regard to the attorney's fees or not, the fact is that he obtained delivery of the cancellation for the benefit of the defendants upon the representation that the defendants, in consideration of the delivery, would pay a certain sum of money which, as a matter of fact and law, they were already bound to pay and which they could have been compelled to pay if the satisfaction piece had not been delivered. If they accept the benefits of that agreement they must accept also the responsibilities. They cannot keep what their agent obtained for them under a certain promise and then repudiate the promise.

The judgment dismissing the action is reversed and the case remanded to the Court of First Instance with instructions to proceed with the action. So ordered.

Arellano, C. J., Trent and Araullo, JJ., concur.

Johnson, J., concurs in the result.

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