

JOSE D. VILLEGAS AND IRENE SANTOS, PLAINTIFFS AND APPELLANTS, VS. NAPOLEON ZAPANTA AND FELIX O. ZORILLA, DEFENDANTS AND APPELLEES.

G.R. No. 11056. December 26, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

In August, 1949, Irene Santos and her husband Jose D. Villegas, filed in the court of first instance of Manila, a suit against Napoleon Zapanta and Felix O. Zorrilla, to recover from both, jointly and severally, a debt of P59,000.00 (plus interest and damages) which had been contracted by the first in August, 1947. Zorrilla was made defendant upon allegations that despite being the lawyer of plaintiffs, he had colluded with and actively helped his co-defendant to induce them to believe the latter to be a prosperous lumberman having sufficient properties, had prepared the chattel mortgage to secure the repayment of the loan, and then purposely failed to register it, thereby defrauding plaintiffs and causing the loss of their money with other consequential damages.

Acknowledging the indebtedness, but denying any fraudulent designs, Zapanta said he had failed to comply with his obligation to plaintiffs due to circumstances beyond his control.

Zorrilla answered that he merely introduced Zapanta to plaintiffs repeating to them the information he had about Zapanta's financial standing and prospects. He admitted having prepared the documents evidencing the loan to Zapanta, but denied having acted in the matter as plaintiffs' legal counsel. He also denied having undertaken the work of registering the mortgage deed. He himself, he added, had suffered damages in connection with other transactions in which he had guaranteed the performance of Zapanta's undertaking to deliver lumber to specified merchants.

Before the hearing, Zorrilla died. Pursuant to sec. 17, Rule 3, at the request of plaintiffs, the court decreed that he be substituted by his four children, even as it appointed his widow, Felisa Vda. de Zorrilla, as their guardian ad litem.

Irene Santos also died. In due course, she was substituted by her surviving husband, who thereby became the sole plaintiff.

After receiving the evidence and considering the issues, the Judge in his decision, required Zapanta to pay the debt, plus interest, plus damages; Zorrilla's children were absolved from liability. Zapanta did not appeal; the plaintiff appealed at the proper time; and he insists on the right to recover from the Zorrilla representatives. As stated in his memorandum in the court below, the plaintiff's cause of action against Felix O. Zorrilla "is based on his fraudulent connivance with Napoleon Zapanta in inducing the plaintiffs by means of deceit and misrepresentations, and by taking advantage of his close association with them, as well as the ignorance, old age and credulity of the latter, to extend a loan to Napoleon Zapanta, and thereafter failing to take the necessary steps to protect their interest resulting in a great financial loss to the plaintiffs."

This appeal, as may be gleaned from the briefs and the record, presents several interesting questions. Some of them are the following: First, supposing Zorrilla did really urge plaintiffs to lend the money and made false representations, could he be sued jointly with the debtor; the only one who had signed the promissory note? Should not plaintiffs first sue the debtor and exhaust all his properties before claiming reimbursement from Zorrilla? All that plaintiffs proved was that Zapanta did not pay, and that the mortgaged chattels had been seized by other creditors. (P. 8 appellants' brief) They did not prove that Zapanta had no other property subject to execution. Second, were plaintiffs, especially Irene Santos, induced to make the loan solely by the representations and the personal influence of Zorrilla, or did she agree to lend her money in view of the handsome returns offered to her in the form of interest at 6 per cent plus royalties which could amount to P60,000.00? [1] Third, are these "royalties" mere interest—usurious interest? If so, may the lenders rightfully complain as they do, of losses caused to them "in a manner, which if not contrary to law, is, to say the least, contrary to morals, good customs and/or public policy"?[2]

However, these and other questions need not be answered. As already stated, Zorrilla died before the trial in the court of first instance; and sec. 21 of Rule 3, specifically provides:

"Sec. 21. Where claim does not survive.—When the action is for the recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules." (Italics ours.)

This claim against Zorrilla is merely one for money or debt, and according to the clear terms of the foregoing section, it should have been dismissed upon his death, to be submitted in or after the corresponding estate proceedings.[3] This simple and mandatory solution accounts for the above sketchy presentation of the facts and issues involved.

Accordingly, the decision dismissing the case against the representatives of Zorrilla is hereby affirmed, without prejudice to plaintiffs' right, if any, to reiterate this claim should proceedings to liquidate Felix O. Zorrilla's estate be instituted subsequently. Costs against appellant.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

Judgment affirmed without prejudice

[1] Zapanta agreed to give Irene Santos "a royalty" of one peso per-cubic meter of round logs to be exported—not exceeding P60,000.00. (And there were ready for exportation 75,000 cubic meters.) (Exh. E.)

[2] Page 52—appellants' brief.

[3] Pabico vs. Jaranilla, 60 Phil. 247.

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