

ALEJANDRO IBARRA, PLAINTIFF AND APPELLANT, VS. LEOPOLDO AVEYRO AND EMILIANO PRE, DEFENDANTS AND APPELLEES.*G.R. No. 11306. December 06, 1917*

Ponente: TORRES, J.

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On April 10, 1915, counsel for Alejandro Ibarra filed a complaint with the Court of First Instance of Tarlac against Leopoldo Aveyro and Emiliano Pre, for the purpose of recovering from them jointly and severally the sum of P465 as principal, besides such additional sum as might be found owing in accordance with the penal clause of the contract, at the rate of P5 a day from the date of the maturity of the obligation, which was December 5, 1914, until its complete payment, together with the costs of the trial, inasmuch as, on November 30, 1914, the defendants by means of a promissory note subscribed by both of them, borrowed from the plaintiff the sum of P465 under promise to return it to him on the December 4th following, with the understanding that in a contrary case they should be obliged to pay him P5 for each day of delinquency in the payment of the said principal.

The defendants made a general and specific denial of all the allegations of the complaint, and as a special defense set forth that on March 28, 1914, the defendant Leopoldo Aveyro sold to the plaintiff a piece of land with the right of repurchase, for the sum of P450; that subsequently, this defendant borrowed from the plaintiff the title deed of the land sold, for the purpose of selling the property to another person at a better price, and afterwards returned the deed to the plaintiff as he had been unsuccessful in making such attempted second sale; that on November 30 of the same year the defendant Aveyro, feeling sure that this time he would be able to sell his land to another, borrowed from the plaintiff for the third time said deed of the land, and that then the latter required Aveyro to execute in the plaintiff's favor a promissory note, with the security of a solvent surety, for the same sum for which this defendant had sold the land to the plaintiff, and with the aforementioned penal clause, to be effective in case of delinquency in the payment of said amount should the defendant succeed in selling the property, and with the condition that, if the sale should not be made, the borrowed deed should be returned; that, as the defendant was unable to sell the land, he tried to return the deed to his creditor, requiring of course the return of the promissory note he had given in security for the deed, but that the plaintiff refused to accept the deed and return the promissory note. For all the foregoing reasons the defendants asked to be absolved from the complaint, with the costs against the plaintiff.

After trial and the introduction of evidence by both parties, the court rendered judgment, on August 18, 1915, by ordering Leopoldo Aveyro and Emiliano Pre to pay to the plaintiff jointly and severally the sum of P465 with legal interest thereon from December 5, 1915, until its complete payment; and by holding that the penal clause for the payment of P5 for each day's delinquency in the payment of the principal debt is null and void because it is immoral, pursuant to article 1255 of the Civil Code and to other legal provisions.

From said judgment the appellant appealed to this court and assigned as errors committed by the lower court (1) that he permitted the defendants to introduce evidence tending to annul the plaintiff's promissory note, Exhibit A; (2) that he sustained in his judgment the evidence presented by the defendants; and (3) that he held the penal

clause to be null and void and exempted the defendants from the payment of the amount therein mentioned.

The main issue raised for decision by this court is whether the plaintiff has a right to demand that the defendants pay the penalty specified in the obligation to pay P5 per day from December 5, 1914, until complete reimbursement of the outstanding principal for delinquency in the payment of said principal to the plaintiff.

The promissory note, Exhibit A, found on folio 27 of the record, is as follows:

"P465, Camiling, Tarlac, P. I.

"For value received, in the form of a loan, we bind ourselves jointly and severally to pay to Mr. Alejandro Ibarra or to his order the sum of four hundred and sixty-five pesos, Philippine currency (P465) on the 4th day of December of the present year, 1914. In case of noncompliance we bind ourselves to pay jointly and severally as damages, five pesos a day (P5) beginning from the day of the expiration of the period agreed upon until the date of payment.

"We sign these presents before the witnesses Pio Santos and Matias Sicangco, in Camiling, this 30th day of November, 1914.

(Sgd.) "Leopoldo Aveyro,

(Sgd.) "Emiliano Pre.

"Witnesses:

(Sgd.) "Pio Santos,

(Sgd.) "Matias Sicangco."

For the purpose of setting forth in the record other conditions and details not contained in the promissory note Exhibit A, expressive of the contract made by and between the plaintiff and the defendants, counsel for the latter adduced evidence consisting of the defendant Aveyro's affidavit—a probatory proceeding authorized by section 285, No. 1, of the Code of Civil Procedure—tending to prove his allegation, while on the other hand, plaintiff's counsel made no objection, neither did the plaintiff impugn nor contradict the testimony given by Aveyro in connection with said contract; wherefore the trial court, taking due account of the merits of the evidence adduced and proven by the litigants, decided the case in conformity with the law and did not incur the errors assigned to the judgment rendered.

In fact, the record shows it to have been fully proven that about March, 1914, the defendant Leopoldo Aveyro sold under pacto de retro or right of repurchase, though he said that he mortgaged, to the plaintiff a piece of land belonging to this defendant, 23 hectares in area, for P300, the proper deed being executed and the title of the land so sold to the plaintiff being delivered to the purchaser. Twice said defendant borrowed this title deed from the plaintiff, under receipt, in order to look for another purchaser who might give a higher price for the land. The first time that he obtained the loan of the deed, on September 12, 1914, it was set forth in the document Exhibit 2, sworn to before the justice of the peace, that he bound himself with two other persons jointly and severally to deliver to the plaintiff the sum of P450 in case the land should be sold (to any one except the plaintiff) and that, in a contrary case, they would return said title deed to the plaintiff within 45 days. On the 15th of the same month of the same year, the defendants Aveyro, Estanislao de los Reyes, and Emiliano Pre again borrowed said deed from the plaintiff under the previous conditions (Exhibit 1), these receipts were returned to the debtor Aveyro each time he returned to the plaintiff the title deed of the land sold under right of repurchase. But the third time that Aveyro borrowed the deed a special agreement was stipulated, in pursuance of which said promissory note, Exhibit A, of November 30, 1914, was executed, and on this occasion the plaintiff Ibarra returned to Aveyro, in exchange for

the promissory note, the deed of sale of the land executed in March of that year.

The defendant Aveyro testified that, as he had not found a purchaser for his land, he endeavored to return to his creditor the title deed of the property, but that the latter refused to receive it.

The defendant Leopoldo Aveyro, explaining how he came to owe the plaintiff Ibarra P465, stated that P300 was the price of the sale, which he received from the latter in March, 1914, P150, the interest on this principal; and P15, the amount of the plaintiff's traveling expenses in coming to Manila to get the title to the land; and that the clause relative to the payment to the plaintiff of P5 per day after the maturity of the obligation, should the debt still be unpaid, was for delinquency in the payment.

The defendant accepted the plaintiff's requirement, because, had he not done so, he would not have succeeded in obtaining the loan of the title deed of his land, which he needed that he might show it to a prospective purchaser of the property, and on this account he assented to the claim that his debt to the plaintiff amounted to P465. It is to be noted that the statement made by the defendant Aveyro in respect to the payment of the principal and interest to the plaintiff after the sale of the property should have been made, or after the return of the title deed, if the sale should not be made, are in complete accord with the conditions imposed upon him by the plaintiff on the first two occasions when the title of the land was loaned to him, as shown by exhibits 1 and 2; and that Aveyro did not realize that by the return to him of the instrument of purchase and sale in exchange for this promissory note, Exhibit A, this latter document would substitute the former as evidence of his debt, of if he was then aware of it and notwithstanding assented thereto, it was because he was firmly convinced that he would succeed in selling the real estate within the five days exactly fixed in the document Exhibit A as the term of the loan of the deed.

At all events, from the plaintiff's evidence as a whole and from the defendant's testimony, unrebutted by the contrary party, it is concluded that the promissory note aforementioned, Exhibit A, was executed to attest the obligation to pay the sum of P465, which is decomposed in the following manner: P300 as principal borrowed from the plaintiff in March, 1914; P150 as interest on that amount from March to November; and, finally, P15 as the plaintiff's traveling expenses; and that said obligation contains a penal clause providing for the payment of P5 per day in case of noncompliance.

It is unquestionable that prior to the execution of the promissory note, Exhibit A, there was made by and between the plaintiff Ibarra and the defendant Aveyro a contract of sale with pacto de retro or right of repurchase of a piece of land, at the price of P300, and that, before the expiration of the period for the redemption, the purchaser Ibarra consented to allow the vendor Aveyro to sell his land to another person at a better price, on condition that, once the sale to such third party should be made, the vendor should forthwith pay to the original purchaser, the plaintiff, the price of the sale in suspense under pacto de retro; and as the owner of the land did not succeed in finding another new purchaser who would give him more than the said P300, the plaintiff Ibarra got the vendor and owner of the property to execute in his behalf said promissory note Exhibit A, expressive of the price of the land which the vendor was owing him for its redemption, in addition to P150 as interest and another sum of P15. In view of the failure of the vendor-owner of the land finally to sell his property to another person, the purchaser Ibarra chose to require the fulfillment of the obligation contained in the promissory note, waived his rights derived from the contract of sale under pacto de retro, refused to accept the title of the land which the vendor Aveyro had borrowed from and returned to him, and also refused to accept the document setting forth the sale under pacto de retro—which procedure on the part of Ibarra tends to show that he considered this contract cancelled and rescinded, and, having chosen the new contract of loan set forth in the promissory note Exhibit A, for failure of payment he brought suit in demand for the fulfillment of this obligation and the enforcement of the penal clause therein contained.

The refusal on the part of the plaintiff to receive the title deed to the land sold and the return of the document expressive of the sale with right of repurchase, are facts that were affirmed by the defendant Aveyro at the hearing of the case in the presence of the plaintiff's counsel, and the record does not show that they were denied with protest, nor assailed as untrue. Therefore, said deed of sale with right of repurchase, which was destroyed by the vendor, may very properly be left out of consideration entirely in so far as any bearing it might have on the decision of this suit, which decision should be confined to a determination of the principal and the accessory obligation involved in said promissory note.

Notwithstanding the negative answer made by the defendants, it cannot be denied that Leopoldo Aveyro and his joint surety Erailiano Pre are owing the plaintiff the sum of P465, and therefore the judgment whereby the trial court held that they were obligated jointly and severally to pay said sum to the plaintiff, Alejandro Ibarra, is concordant with the law and the evidence.

With respect to the accessory obligation to pay to the creditor in the manner stipulated, in case of noncompliance with the principal obligation, the sum of P5 for each day that should elapse from the 5th of December, 1914, until the date of payment, it suffices our purpose to state that the record does not disclose due proof as to what amount of damages were suffered during the period from December 5, 1914, to April 10, 1915, on which latter date the complaint was filed. The obligors who subscribed said promissory note bound themselves to pay P5 per day as damages, and, in order that this court may decide in favor of the plaintiff, it is indispensable that the record contain a specification of such damages and their amount, since, in the sum mentioned in the promissory note, there is included that of P150, as interest, comprised and included in the principal obligation.

If it be considered that the obligation contracted by means of the promissory note Exhibit A implies fulfillment of the penal clause by virtue of which and for default in the payment of the debt, the principal obligor and his surety have incurred the penalty to pay P5 for each day of failure in the compliance with said principal obligation, such cash penalty, on the date of the filing of the complaint, that is, after five months, at the rate of P5 per day, amounts to P623, and, as stated in the judgment appealed from, for one year, to the considerable sum of P1,825.

Article 1255 of the Civil Code recognizes and sanctions liberty to contract, but adds that the agreements, clauses, and conditions stipulated shall not be in contravention of law, morals, or public order. The obligation on the part of the debtors to pay P5 per day, as a penalty, from the date agreed upon until that of payment, was, in the judgment appealed from, qualified as immoral, and there will not be found in the laws, in any principle of justice, or in general, in the human conscience, any reason whatever which can justify such a penalty as appropriate and equitable or as one that may be sustained within the sphere of public or private morals.

In said promissory note the debtors bound themselves to pay P465 to their creditor within five days, in the belief that Aveyro could make the payment during this short period with the price from the sale of his land, but, as this sale was not made in the end, he had no money with which to cover his liability; and it cannot be presumed that said debtor and his surety voluntarily wished to assume the engagement to pay P5 for each day they should fail to comply with their obligation, and without doubt their failure of fulfillment was due to their erroneous belief that within five days they would have the money available for the payment, which they did not, to their great disappointment.

Notwithstanding the imprudence and temerity shown by the defendants by their execution of a ruinous engagement, assumed, as it appears, knowingly and voluntarily, morality, and justice cannot consent to and sanction a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man; and therefore, as all acts performed against the provisions of law are null and void, and as the penal clause referred to, notwithstanding its being an ostensible violation of morals, was inserted in said promissory note, and

as there is no law that expressly authorizes it, we must conclude that the contracting party favored by said penal clause totally lacks all right of action to enforce its fulfillment.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, said judgment should be, as it is hereby, affirmed, with the costs against the appellant. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, Street, and Malcolm, JJ., concur.

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