

LORENZO LERMA, PLAINTIFF AND APPELLEE, VS. VICTORIANO L. REYES AND ADELA ENRIQUEZ, DEFENDANTS AND APPELLANTS.*G.R. No. 12081. May 30, 1958*

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

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On August 21, 1952, defendants-appellants Victoriano L. Reyes and Adela Enriquez mortgaged to plaintiff-appellee Lorenzo Lerma a parcel of land and the improvements thereon located at R. Hidalgo Street, Quiapo, Manila, described in Transfer Certificate of Title No. 77930 of the Office of the Register of Deeds for the City of Manila, for the sum of P70,000, with interest at the rate of 12 per cent per annum, the interests for the months of August, September, and October, 1952, payable at the execution of the contract, and the succeeding monthly interests on the first day of every month, the mortgage to expire on August 1, 1953, unless extended to another year if the mortgagors would have complied with all its provisions (Exh. "A"). The mortgage contract was duly registered in the Office of the Register of Deeds.

Defendants-appellants paid the interests for the months of August 1, 1952 to June 1953 and thereafter failed to pay further interests or the principal loan. Whereupon, plaintiff-appellee filed this action on May 6, 1954 in the Court of First Instance of Manila for the payment of the mortgage debt of P70,000, the accrued interests of 7,700, the fire insurance premiums on the mortgaged property of P937.50, or a total of P78,637.50, plus attorney's fees in the amount of P7,000 and costs, and upon failure of defendants to pay these amounts, for the foreclosure of the property mortgaged. Defendants-appellants answered admitting the loan and the mortgage but claiming the defense that plaintiff had given them an indefinite extension of time to pay the loan by allowing them to look for purchasers for the mortgaged property and promising not to file any action in court while they were looking for buyers; and asked for the dismissal of the complaint and the payment of damages allegedly suffered because of the premature filing of the action.

After trial, the lower court found that although plaintiff had given defendants an extension of time to pay the interests due for the months of May to September, 1953, he did not extend the period for the payment of the principal loan of P70,000, with the effect that the capital and the accrued interests became due one year from August 1, 1952; and that assuming that defendants had been given the opportunity to look for buyers for the mortgaged property, they could still do so within three months after judgment is rendered and before the property is sold at foreclosure sale. Consequently, the court ordered defendants to pay plaintiff the sum of P70,000, with interests at 12 per cent per annum from July 1, 1953 until full payment, as well as the sum of P2,000 as attorney's fees and costs; and the foreclosure of the mortgaged property in case defendants failed to satisfy the judgment within 90 days. In another order, the court also required defendants to pay plaintiff the amount of P937.50 representing insurance premiums paid by the latter on the mortgaged property, having found that defendants had agreed to reimburse plaintiff for the same. From this judgment and order, defendants appealed to the Court of Appeals, which forwarded the case to us because the amount involved is beyond its jurisdiction.

Defendants-appellants urge:

(1) that the mortgage contract had been extended to another year or up to August 1, 1954, so that plaintiff-appellee's action was premature; and

(2) that the lower court erred in not allowing them to amend their answer so as to allege payment of usurious interest.

Under their first argument, appellants point to the following document signed and delivered to them by plaintiff-appellee :

"October 19, 1953

"TO WHOM IT MAY CONCERN:

This is to certify that Mr. Victoriano L. Reyes secured a mortgage loan to his property located at 1074 E. Hidalgo Street, Quiapo-Manila from the undersigned in the amount of P70,000.00 at the rate of twelve (12%) per cent per annum on August, 1952.

That Mr. Reyes has been paying continuously his interest obligation since the above date of contract.

That the interest due for the months of May to September, 1953, has been used by Mr. Reyes and at my instance and permission for the necessary improvements of his property under mortgage and for the operation of his business as well." (Exh. "1").

and claim that as the deed of mortgage Exh. "A" stipulates that its term of one year could be extended for another year, the fact that appellee, by the above document, gave them an indefinite extension of time to pay the interests on the loan in question for the months of May to September, 1953, and did not file the action for foreclosure at the expiration of one year from August 1, 1952, implied that payment of the principal loan had likewise been extended for another year, or up to August 1, 1954.

The above claim is patently without merit. Under the terms of the above document Exh. "1", all that was excused was the time for the payment of the interests that became due for the months of May to September, 1953. The implication of this extension is simply that the mortgage had waived his right to demand foreclosure for failure of appellants to pay the monthly interests as they fell due from May to September, 1953. No extension of the term for the payment of the principal loan was given, as appellant Victoriano Reyes himself admitted in the court below (t.s.n. December 13, 1954, p. 13), hence, the loan matured and became demandable, under the terms of the mortgage deed, on August 1, 1953, and the mortgagee could have filed foreclosure proceedings on that date or any time thereafter to collect the principal loan as well as all accrued interests thereon. The fact that appellee postponed his action and did not file it upon the maturity of the loan on August 1, 1953 does not mean, again, that he had extended the term or period of the mortgage for another year. The mere failure on the part of the creditor to demand payment after the debt has become due does not constitute an extension of the term of the obligation (Art. 2079, New Civil Code; *Hongkong & Shanghai Bank vs. Aldecoa*, 30 Phil., 255), for novation must be express (Art. 1292, *supra*) and can not merely be inferred or implied from the creditor's silence, leniency, or inaction (*Banco Español vs. Donaldson*, 5 Phil., 418, 423; *Shannon and Shannon vs. Phil. Lumber and Transportation Co.*, 61 Phil., 872).

And even assuming that the term of the mortgage had indeed been extended for another year, still plaintiff-appellee had the right to institute foreclosure proceedings before the expiration of the extended period, since appellants admittedly had completely failed to pay the monthly interests from November, 1953 up to the filing of the action on May 6, 1954, and under the terms of the deed of mortgage Exh. "A", "the failure of the mortgagors to comply with any condition of this real estate mortgage, especially the nonpayment of the interests within six months from any due date, shall cause the obligation to become immediately demandable and

foreclosure proceed, mgs may then be instituted by the mortgagee herein".

Coming now to appellants' second argument, it appears that they asked permission to amend their answer so as to include therein the allegation of payment of usurious interest only after plaintiff had already presented his evidence and rested his case. The lower court did not " abuse its discretion when it refused to allow the proposed amendment, because to do so would have had the effect of unnecessarily prolonging the trial, there being no reason why the defense of usury was not pleaded in the original answer. Besides, the suggested amendment consists merely in the supposed payment by appellants of interest to plaintiff for three months in advance. Even if the answer had been amended and appellants had proved the truth of this allegation, plaintiff would still have not acted in violation of the Usury Law, which allows collection of interest for one year in advance as long as it does not exceed the lawful rates fixed therein (section 6, Act 2655, as amended). No reversible error was, therefore, committed by the trial court when it denied appellants' motion to amend their answer.

Wherefore, the decision appealed from is affirmed, with costs against appellants Victoriano L. Reyes and Adela Enriquez. So ordered.

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

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