

LUCIA GOROSPE AND JUAN M. SEBASTIAN, PLAINTIFFS AND APPELLEES, VS. EPHRAIM G. GOCHANGCO, DEFENDANT AND APPELLANT.*G. R. No. 12735. October 30, 1959*

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

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Certified to us by the Court of Appeals for the reason that only questions of law are therein involved, this appeal was taken from a judgment of the Court of First Instance of Manila, ordering appellant Ephraim C. Gochangco to pay to the spouses Juan M. Sebastian and Lucia Gorospe the sum of P4,741.98, with legal interest from the date of the filing of the complaint until the sum is fully paid, plus the sum of P500.00 as attorney's fees and costs.

It appears that on October 12, 1951, plaintiffs-appellees, the spouses Juan M. Sebastian and Lucia Gorospe, obtained from the defendant-appellant a loan of P15,000.00 at 12 per cent interest per annum, payable within one year from said date. As security for the payment of the loan, plaintiffs-appellees mortgaged in favor of appellant their two lots described under Transfer Certificates of title Nos. 9173 and 24465 of the Office of the Register of Deeds of Manila, including the improvements thereon (Exh. 7; Annex of Answer, Rec App. pp. 15-28}. On October 16, 1952, four days after the loan had become due and demandable, plaintiffs-appellees obtained an additional loan of P2,000.00 to pay the interest due and other charges, at the same time extending the mortgage for a period of six months from October 14, 1952 to April 14, 1953. This time, the loan amounted to P17,000.00 with the same mortgaged properties as security (Exh. 8, Annex 2 of Answer, Rec. App. pp. 29-33).

When the obligation of the mortgagors fell due, they failed to make payment in whole or in part. However, defendant-appellant gave them an extension of time to pay for another six months, from April 5, 1953 to October 16, 1953, with the condition that the interest of P1,020.00 for six months would be added to P17,000.00, so that the mortgage debt amounted to P18,020.00 as of October 16, 1953. Upon failure to pay the obligation on the due date, the mortgaged properties were extra judicially sold at public auction on March 8, 1954 to the mortgagee for P22,978.98, under the provisions of Act 3135.

Claiming that the selling price of the mortgaged properties was more than the obligation incurred, plaintiffs-appellees filed a complaint on March 9, 1955, to recover the excess amount and asking the court to order the appellant to pay the sum of P4,633.82, with monthly interest at 1 per cent from the filing of the complaint, plus the sum of P500.00 as attorney's fees.

At the hearing on October 27, 1955, Lucia Gorospe testified, but for lack of material time, the hearing was postponed to January 19, 1956. On this last mentioned date, however, the parties instead of adducing further evidence, submitted to the court a stipulation of facts.

On the basis of the trial court's evaluation of the oral evidence adduced during the hearing, the stipulation of facts, and the documentary evidence submitted by the parties, a decision was rendered in favor of Lucia Gorospe and Juan M. Sebastian, declaring the mortgagee, Ephraim C. Gochangco, entitled to collect no more than P200.00

attorney's fees, and ordering him to turn over the excess over the debt, interest, costs, and counsel fees. The trial court ruled:

"Considering that the work of said attorney consisted of sending written demand to plaintiff for the payment of their indebtedness to defendant after said indebtedness became due, sending a written communication to the sheriff requesting sale of the properties mortgaged, being present at the auction, sale conducted by the sheriff and receiving from the sheriff the certificate of sale, the court sincerely thinks that the amount of P200.00 is reasonable attorney's fees of the defendant's lawyer." (Rec. app. pp. 92-93)

The decisive issue that should be threshed out in the instant case is whether the trial court had the authority to fix the amount of attorney's fees which the mortgagee could charge the mortgagors, notwithstanding the stipulated amount by the parties in the mortgage contract.

"8. In case of mortgagee should secure the services of a lawyer, to secure his right under this contract, the mortgagors shall pay the attorney's fees of the same, and all other expenses incurred by the mortgagee, together with the legal costs; and the attorney's fees are hereby fixed in an amount equivalent to 20% of the amount claimed by the mortgagee but in no case shall it be less than P200.00, Philippine Currency; * * *." (Appellant's Brief, pp. 28-29)

A stipulation fixing the attorney's fees does not necessarily imply that it must be literally enforced no matter how injurious or oppressive it may be.

From *Bachrach vs. Golingo*, 39 Phil., 138 (rendered in 1918) to *Sison vs. Suntay*, 102 Phil., 769, December 28, 1957, this Court has repeatedly fixed counsel fees on a quantum meruit basis whenever the fees stipulated appear excessive, unconscionable, or unreasonable, because a lawyer is primarily a court officer charged with the duty of assisting the court in administering impartial justice between the parties, and hence, his fees should be subject to judicial control. Nor should it be ignored that sound public policy demands that courts disregard stipulations for counsel fees whenever they appear to be a source of speculative profit at the expense of the debtor or mortgagor.

It is not material that the present action is between debtor and creditor, and not between client and counsel. This Court has previously ruled that:

"We are not unmindful of the fact that the question as to the propriety of the stipulation for attorney's fees does not here arise directly between the creditor in this note and the attorney into whose hands he might place the note for collection. The stipulation is contained in the contract between the creditor and his debtor; and the attorney could not be held bound thereby. Nevertheless we think the same rule applies as if the question had arisen between the attorney and client. As the court had power to fix the fee as between attorney and client, it must necessarily have the right to say whether a stipulation like this, inserted in a promissory note, is valid. A different ruling, as may be readily seen, would make it exceedingly easy to evade the usury laws." *Bachrach vs. Golingo*, supra.)

The claim that plaintiffs-appellees are now estopped to assail the legality of the attorney's fees in question on the ground of untimely protest can not be seriously entertained. The records show that before the expiration of the period for redemption on March 8, 1955, plaintiffs-appellees on February 28, 1955, wrote the defendant-appellant protesting against the amount of attorney's fees, stating among other things, that "such fees are not only excessive, exorbitant, oppressive, unjust and against the law, but also there was no need for you (Gochangco) to engage the services of a lawyer in the sale at public auction of the property." (Exh. 6, Rec. App. p. 38). This protest was on time, and undoubtedly, to sanction the exorbitant charge of attorney's fees would not be a sound public policy. Besides, as between the parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or against public policy. (*Eugenio, et al. vs. Perdido, et al.*, 97 Phil., 41),

We do believe, however, that in fixing the counsel fees, the trial court erred in considering solely the lawyer's external acts of sending letters of demand, requesting the sheriff to proceed with the sale, and receiving the corresponding certification, without taking into account the study made of the case, simply as it was. We conclude that a fair allowance should entitle the creditor to collect P500.00 for counsel fees.

The next point to be determined is the amount of the excess in the selling price of the mortgaged properties. For this purpose, we have to consider the following items :

Original obligations of the plaintiffs-appellee

P15,000.00

Additional obligation

2,000.00

Interest of P17,000.00 at the rate of 12% a,

year for 6 months from April 15, to Oct.

16, 1953.

1,020.00

Total principal as of Oct 16, 1953

P18,020.00

Proceeds of the sale at public auction on March 8, 1954

22,978.98

Interest on P18,020.00 for 4 months and 22

days from Oct. 16, 1953 to March 8, 1954

at 12% a year

P852.95

Attorney's fee

500.00

Filing" fee, sheriff's office

6.00

Sheriff's fee

11.00

Total obligation as of March 45, 1954

P19,389.95

Surplus or excess

P3,389.03

It is argued that, in effect, there is no excess in the selling price because the surplus should be governed by the rules on dation in payment. This argument is untenable. The application of the proceeds from the sale of mortgaged property to the mortgagor's obligation is an act of payment, not payment by dation, and is governed by the provisions of Sec. 4, Rule 70 of the Rules of Court. Under said section, it is appellant Gochangco's duty to return such surplus to the plaintiffs-appellees who, as mortgagors, were the persons entitled to it. (See *Caparas vs. Yatco, et al.*, 89 Phil., 10).

To this surplus should now be added the P500.00 awarded by the lower court as attorney's fees for the plaintiffs-appellees, and which are here uncontested.

The claim of appellant for P630.70 interest from October 16, 1953 to January 31, 1954, under his eighth assignment of error, is misleading, because this amount is already included in the P852.95 interest from October 16, 1953 to March 8, 1954 on the sum of P18,020.00 at the rate of 12 per cent per annum. The insurance premiums and taxes claimed by appellant were likewise paid from the P2,000.00 additional loan. (Paragraph 18, Stipulation of Facts, Rec. App. pp. 87-88). The amount of P120.00 for the publication of the notice of sale was properly disallowed because it was not supported by the evidence on record. Anent the registration fee of P63.00 for recording the certificate of sale, it is incumbent on the purchaser to pay it, as it is for his benefit, and it is not covered by the mortgage contract or mentioned in the Stipulation of Facts. As regards the sheriff's fees of P11.00 and the filing fee of P6.00 (P17.00), they should be disallowed because they were already taken into account and deducted from the excess selling price.

There is no merit in the counterclaim of appellant that the rents collected by plaintiffs-appellees from the tenants during the period of redemption totalling P1, 168.00 should be deducted from the recoverable sum that may be due to the appellees. The governing rule is found in Sees. 29 and 30, Rule 39 of the Rules of Court. Construing said sections in a number of cases, this Court has held that where the judgment debtor is in possession of the property sold, he is entitled to remain in possession and to collect rents and profits of the same during the period of redemption. (*Riosa vs. Verzosa*, 26 Phil., 86; *Velasco vs. Rosenberg's Inc.*, 32 Phil., 72; *Powell vs. Philippine National Bank*, 54 Phil., 54) It is to be noted that the appellant himself admitted and so stated in his counterclaim that "the plaintiffs (mortgagors) remained in the material and actual possession of the said properties during the period of one year redemption from March 8, 1954 up to March 9, 1955 and until June 10, 1955 when plaintiffs were actually ejected therefrom, and during said period rendered and collected the rents on the house which were rented by said plaintiffs * * *." (Rec. App. pp. 67-68) In view of such an admission, we have no other alternative than to uphold the right of appellees over the fruits (civil and natural) of the property during the time that they were in possession within the redemption period.

Wherefore, modified as above indicated with respect to the attorney's fees and interest on the indebtedness, the decision appealed from is affirmed. Costs against defendant-appellant. So ordered.

Paras, C. J., Padilla, Montemayor, Bautisia Angelo, Labrador, Endencia, Barrera, and Gutierrez David JJ., concur.

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