

E. M. BACHRACH, PLAINTIFF AND APPELLEE, VS. VICENTE GOLINGCO, DEFENDANT AND APPELLANT.

G.R. No. 13660. November 13, 1918

Ponente: STREET, J.

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STREET, J.:

This is a suit for the recovery of a sum of money claimed as a balance due to the plaintiff on a promissory note. From a judgment in favor of the plaintiff for the sum of P8,461, as principal, with interest thereon at the rate of 8 per cent per annum from the 10th day of July, 1916, until paid, and for the further sum of P2,115.25, as a stipulated attorney's fee, the defendant has appealed.

The note in question represents the purchase price of an automobile truck which the plaintiff sold to the defendant at the time the note was executed. As security for the payment of said indebtedness, the plaintiff took a chattel mortgage on the truck; and after the note had matured this chattel mortgage was foreclosed. At the foreclosure sale the plaintiff himself became the purchaser for the sum of P539, which amount was credited upon the indebtedness.

Of the questions raised by the defense only two in our opinion require serious consideration. The first has reference to irregularities in the foreclosure of the chattel mortgage ; the second to the validity of the agreement for 25 per cent as an attorney's fee for collection.

We find that the requirements of section 14 of Act No. 1508 (the Chattel Mortgage Law), were not observed in the sale of the truck. The irregularity consists in the fact the truck was brought by Bachrach from Albay (which was the place of residence of the mortgagor) to the city of Manila and here sold by the sheriff of the city at the instance of the plaintiff. There is no evidence that the mortgagor consented to the removal of the truck to Manila or to the sale that was effected in this city; and it must therefore be held that the sale was improperly accomplished. The statute requires that the mortgaged chattel shall be sold in the municipality where the mortgagor resides, or where the property is situated; and the latter expression has reference to the place where the thing is being kept for use by the mortgagor, not any place where the mortgagee may choose to carry it when he takes it out of the custody of the mortgagor. It is admitted that notice of the sale was not posted anywhere in the municipality of Albay, as required in the section cited; and of course publication there would have been of little or no value when the sale was to be made in Manila.

The effect of this irregularity was, in our opinion, to make the plaintiff liable to the defendant for the full value of the truck at the time the plaintiff thus carried it off to be sold; and of course the burden is on the defendant to prove the amount of the damage to which he was thus subjected. With reference to the condition of the truck when it was sold, we find the following statement in the testimony of Bachrach:

"Q. What was the condition of the truck at the time it was sold?—A. At the time of the sale, everything that wasn't actually built on the truck was removed; tires removed, generator; lamps, dynamo, everything that could be taken off with a monkeywrench was removed. It was in a criminal condition.

"Q. Was the body of the truck, or the chassis, and the motor on at the time you purchased it at the sheriff's sale?—A. No.

"Q. Had it been removed?—A. Yes. We had a telegram from the sheriff of Tabaco, saying that the day he was to load the truck for Manila, he had a protest from Golingco demanding the body, and I telegraphed the sheriff to deliver the body to Golingco, and send the truck."

There is no evidence to contradict Bachrach's testimony on this point; and we are bound to credit him when he states his conclusion that the value of the truck at the time it was sold was the amount he paid for it. In the absence of proof to the contrary this must also be taken to be its value at the time it was brought away from Albay. It results that the defendant has failed to prove that he suffered any damage whatever by the irregular manner in which the sale was conducted.

This brings us to the question of the amount of the attorney's fee allowed by the trial court. It is provided in the note given by the defendant for the purchase price of the truck that, in the event of it becoming necessary to employ counsel to enforce its collection, the maker is to pay an additional twenty-five per cent "as fees for the attorney collecting the same." The trial court gave judgment for the full amount due on the note and for an additional sum of P2,115.25, for attorney's fees. The appellant assigns this as error and argues that the agreement to pay an attorney's fee, in addition to the principal and stipulated interest, is void as usurious and as being grossly excessive.

We are of the opinion that it may lawfully be stipulated in favor of the creditor, whether the obligation be evidenced by promissory note or otherwise, that in the event that it becomes necessary, by reason of the delinquency of the debtor, to employ counsel to enforce payment of the obligation, a reasonable attorney's fee shall be paid by the debtor, in addition to the amount due for principal and interest. The legality of such a stipulation, when annexed to a negotiable instrument is expressly recognized by the Negotiable Instruments Law (Act No. 2031, sec. 2, par. E). Inasmuch as the statutory allowance for attorney's fees, as costs, is notoriously less than the amount which attorneys are entitled to receive from their clients, unless such a stipulation is made and enforced, it follows that a creditor may be compelled to pay, out of the money due him, a considerable sum as the necessary cost of enforcing payment by the delinquent debtor.

Such a stipulation is not void as usurious, even when added to a contract for the payment of the highest rate of interest permissible. The purpose of such a stipulation is not to increase in any respect the benefits ultimately to accrue to the creditor. It is true that such a stipulation may be made for the purpose of concealing usury; but that is a matter of proof to be determined in each case upon the evidence.

We cite, with approval, the ruling of the supreme court of Georgia upon this question, as follows:

"A contract to pay attorney's fees for collecting, in addition to principal and interest, is not, on its face, usurious; nor does it become usurious by reducing the debt to judgment, and including in the judgment ten per cent for attorney's fees.

"The law * * * recognizes the validity of such a stipulation, and it meets the justice of the case very frequently for the debtor to pay for the collection rather than the creditor * * * We do not mean to intimate that usury might not be covered up by such a stipulation, that it might not be a disguise, or contrivance for the concealment of usury; but there is no such indication in this case. There is no evidence that it was not a bona fide stipulation to cover the contingency of having to incur expense in collecting this debt." (National Bank of Athens vs. Danforth, 80 Ga., 55.)

But the principle that it may be lawfully stipulated that the legal expense involved in the collection of a debt shall be defrayed by the debtor does not imply that such stipulations must be enforced in accordance with their terms,

no matter how injurious or oppressive they may be. The lawful purpose to be accomplished by such a stipulation is to permit the creditor to receive the whole amount due him under his contract without the deduction of the expenses caused by the delinquency of the debtor. It should not be permitted for him to convert such a stipulation into a source of speculative profit at the expense of the debtor.

Contracts for attorney's services in this jurisdiction stand upon an entirely different footing from contracts for the payment of compensation for any other services. By the express provision of section 29 of the Code of Civil Procedure, an attorney is not entitled in the absence of express contract to recover more than a reasonable compensation for his services; and even where an express contract is made the court can ignore it and limit the recovery to reasonable compensation if the amount of the stipulated fee is found by the court to be unreasonable. This is a very different rule from that announced in section 1091 of the Civil Code with reference to the obligation of contracts in general, where it is said that such obligation has the force of law between the contracting parties. Had the plaintiff herein made an express contract to pay his attorney an uncontingent fee of P2,115.25, for the services to be rendered in reducing the note here in suit to judgment, it would not have been enforceable against him had he seen fit to oppose it, as such a fee is obviously far greater than is necessary to remunerate the attorney for the work involved and is therefore unreasonable. In order to enable the court to ignore an express contract for an attorney's fees, it is not necessary to show, as in other contracts, that it is contrary to morality or public policy (art. 1255, Civil Code). It is enough that it is unreasonable or unconscionable.

We are not unmindful of the fact that the question as to the propriety of the stipulation for attorney's fee 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 directly between attorney and client. As the court has power to fix the fee as between the attorney and the 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. As stated at the beginning of this discussion, the lawful purpose to be accomplished by such stipulation is to permit the creditor to receive the amount due without the deduction of the expenses caused by the delinquency of the debtor. It must not be used as a cloak for an exorbitant exaction.

We are therefore of the opinion that we are authorized to reduce the amount in question to a sum which will enable the plaintiff to pay a reasonable compensation to his attorney; and we think that P800 is sufficient for this purpose. It is possible that, as a matter of fact, the plaintiff may have contracted with his attorney for the performances of the services to be rendered him in this matter for a sum less than P800, and had it been so made to appear, we would have reduced the amount recoverable, under this particular clause of the note, to the corresponding sum. No evidence having been adduced upon this point, however, we are compelled to exercise our discretion and make use of our professional knowledge as to the reasonable compensation to which an attorney would be entitled for the performance of such services as those which the plaintiff in this case has had occasion to require from his counsel.

Wherefore it is ordered that the plaintiff have and recover of the defendant the sum of P8,461, with interest thereon at the rate of 8 per centum per annum, from the tenth day of July, 1916, until paid, and for the further sum of P800 as attorney's fees, and for the statutory costs of both instances, exclusive of the statutory allowance for attorney's fees. So ordered.

Torres, Johnson, Araullo, Malcolm, and Fisher, JJ., concur.

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