

PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLEE, VS. RUFINO IBAÑEZ, ET AL., DEFENDANTS-APPELLANTS.*G.R. No. 14244. March 30, 1960*

Ponente: BENGZON, J.

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In the Manila court of first instance, Philippine National Bank sued defendants to recover several sums of money specified in thirty-one causes of action.

After the hearing, said court found that, in order to guarantee the repayment of loans, drafts and other credits obtained or to be obtained from Philippine National Bank, defendants executed, on May 4, 1946 and March 26, 1947, two deeds of mortgage encumbering real estate located in Manila, Quezon City and Rizal province; and that on various dates, they, or Yu Bon Chiong the principal debtor (the other defendants being solidary co-debtors) became indebted to Philippine National Bank on account of drafts, credits on current account, or letters of credit for certain sums which shall not be detailed here, there being no question in this appeal concerning the amount of liability nor the maturity dates of the corresponding instruments of credit.

The principal issue raised here, which defendants tendered in the trial court is the prematurity of plaintiff's suit for collection. Defendants alleged plaintiff had agreed to postpone recovery of the debts until after the defendant Yu Bon Chiong shall have won his lawsuit against certain insurance companies. The lower court, however, found there was no definite agreement with the Bank as to such postponement. The transcript of the stenographic notes taken at the trial not only confirms this finding but definitely shows that Yu Bon Chiong's request for extension of the time for payment was rejected by the Bank.

In view of the amount received and paid, and the sums overdue in defendants' credit accounts with the Bank, the Manila court ordered defendants to pay plaintiff jointly and severally,

"(a) On the First Cause of Action the amount of P37,898.26 plus a daily interest of P6.25 on the amount of P37,895.82 from December 11, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(b) On the Second Cause of Action, the amount of P9,434.34, plus a daily interest of P1.1461 on the amount of \$4,101.77 from June 1, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(c) On the Third Cause of Action, the amount of P5,744.85, plus a daily interest of P0.9167 on the amount of \$3,280.41 from June 1, 1949 until fully paid plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(d) On the Fourth Cause of Action, the amount of P16,137.98 plus a daily interest of P1.9649 on the amount of \$7,031.60 from June 1, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(e) On the Fifth Cause of Action, the amount of P8,782.31, plus a daily interest of P1.4527 on the amount of \$5,198.58 from June 1, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(f) On the Sixth Cause of Action, the amount of P32,493.91, plus a daily interest of P4.6388 on the amount of P13,831.91 from June 1, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(g) On the Seventh Cause of Action, the amount of P13,724.40 plus a daily interest of P2,6960 on the amount of P16,400.00 from June 1, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(h) On the Eight Cause of Action, the amount of P7,911.78, plus a daily interest of P1,2559 on the amount of \$4,487.14 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(i) On the Ninth Cause of Action, the amount of P4,740.63, plus a daily interest of P0.7720 on the amount of \$2,757.72 from December 30, 1959 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(j) On the Tenth Cause of Action, the amount of P2,288.99, plus a daily interest of P0.3683 on the amount of \$1,314.77 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(k) On the Eleventh Cause of Action, the amount of P1,275.42, plus a daily interest of P0.2050 on the amount of \$730.23 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(l) On the Twelfth Cause of Action, the amount of P1,910.94, plus a daily interest of P0.3034 on the amount of \$1,082.54 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(m) On the Thirteenth Cause of Action, the amount of P34,489.09, plus a daily interest of P5,4943 on the amount of \$19,650.00 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(n) On the Fourteenth Cause of Action, the amount of P3,037.60 plus a daily interest of P0.4899 on the amount of \$1,750.00 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(o) On the Fifteenth Cause of Action, the amount of P5,101.33, plus a daily interest of P0.8192 on the amount of \$2,926.40 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(p) On the Sixteenth Cause of Action, the amount of P10,970.91, plus a daily interest of P1.7632 on the amount of \$6,300.00 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(q) On the Seventeenth Cause of Action, the amount of P4,790.30, plus a daily interest of P0.7694 on the amount of \$2,750.00 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(r) On the Eighteenth Cause of Action, the amount of P3,736.57, plus a daily interest of P0.5947 on the amount of \$2,125.00 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(s) On the Nineteenth Cause of Action, the amount of P3,794.98, plus a daily interest of P0.6017 on the amount of \$2,150.00 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(t) On the Twentieth Cause of Action, the amount of P3,169.11, plus a daily interest of P0.5039 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(u) On the Twenty-First Cause of Action, the amount of P8,650.83, plus a daily interest on the amount of \$4,925.00, of P1.3773 from December 30, 1949 until fully paid plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(v) On the Twenty-Second Cause of Action, the amount of P3,688.42, plus a daily interest of P0.5873 on the amount of \$2,098.47 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(w) On the Twenty-Third Cause of Action, the amount of P1,747.55, plus a daily interest of P0.2780 on the amount of \$991.53 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(x) On the Twenty-Fourth Cause of Action, the amount of P10,089.47, plus a daily interest of P1.6079 on the amount of \$5,750.00 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(y) On the Twenty-Fifth Cause of Action, the amount of P2,083.88 plus a daily interest of P0.3460 on the amount of \$1,234.81 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(z) On the Twenty-Sixth Cause of Action, the amount of P3,007.07 plus a daily interest of P0.4788 on the amount of \$1,710.00 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(aa) On the Twenty-Seventh Cause of Action, the amount of P1,397.98, plus a daily interest of P0.2248 on the amount of \$801.53 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(bb) On the Twenty-Eighth Cause of Action, the amount of P5,175.45, plus a daily interest of P0.8562 on the amount of \$3,058.49 until fully paid from December 30, 1949, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(cc) On the Twenty-Ninth Cause of Action, the amount of P15,076.58, plus a daily interest of P2.4303 on the amount of \$8,685.12 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(dd) On the Thirtieth Cause of Action, the amount of P4,090.69, plus a daily interest of P0.6506 on the amount of \$2,325.00 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

(ee) On the Thirtieth Cause of Action, the amount of P8,037.39, plus a daily interest of P1.3298 on the amount of \$4,750.25 from December 30, 1949 until fully paid, plus an amount equivalent to 7% of the total amount due as attorney's fees, and the costs of suit;

Said court likewise ordered that upon defendants' failure to pay the amounts stated within ninety days, the mortgaged properties shall be sold at public auction by the sheriff, the proceeds to be applied to the satisfaction of the judgment.

Without questioning the different amounts of credit, the appellants argue as a secondary issue, that 7% attorneys' fees is excessive, because it would require them to pay about P21,000.00 to the attorney who handled the case who was an employee of the Bank itself, apart from the fact that the trial involved no hard work, it having lasted about nine hours in three sessions, and the issue being a simple one — whether or not an extension had been granted.

In reply, the Bank points to appellants' written agreement to pay 10% attorneys' fees should collection be enforced by suit; it further avers the trial court acted quite liberally in reducing such fees to 7%. Bearing in mind the circumstances above mentioned, we think a 5% fee should be enough, in this matter, we modify the court's decision.

It should be stated, at this juncture, that this appeal was at first transmitted to the Court of Appeals. But having realized that the amount in litigation exceeded P200,000.00, said court forwarded it to us. While the record was there, Uy Liam Chin alias Ong Ho, one of the defendants, requested for suspension of this case, alleging he had filed in the Manila court of first instance an action (Civil Case No. 33231) to annul the mortgage and to free himself from liability therefor because his signature had been forged, and alleging further that he had not been summoned and had not appeared herein through counsel. The Court of Appeals denied the request. Here Ong Ho reiterates this suspension request. Like the appellate court, we see no good reason to stop disposition of this appeal, the presumption being that the attorney who appeared for all the defendants was duly authorized. (Rule 127, sec. 21.)

At any rate, Ong Ho may repeat this request in the lower court before execution of the judgment, should he have won a favorable verdict in said Civil Case No. 33251 or should he be able to convince the lower court of the truth of his allegations. The said court might, in its discretion, suspend execution as against him, considering that the responsibility of the defendants is joint and several, and that the plaintiff may, if it so desires, levy execution on the other defendants in the meantime.

Modified as to the attorneys' fees, the appealed judgment is affirmed. So ordered.

Montemayor, Bautista Angelo, Labrador, Reyes, J.B.L., and Barrera, JJ., concur.

Padilla, Concepcion, Endencia, and Gutierrez David, JJ., took no part.

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