

FELICIDAD LEGASPI, PLAINTIFF AND APPELLEE, VS. EL. AHORRO INSULAR, DEFENDANT AND APPELLANT.

CA-G.R. No. 157. March 24, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

This is a review by certiorari of the decision of the Court of Appeals ordering defendant to pay plaintiff the sum of three thousand pesos with interest.

It appears that in September of 1929, plaintiff executed in favor of defendant a mortgage on certain real property belonging to her for the sum of thirty thousand pesos. The document authorized extrajudicial foreclosure. By reason of the default of the mortgagor the property was sold by the defendant at auction without court proceedings in May, 1930. The plaintiff was informed only to pay the indebtedness. However, plaintiff discovered in 1939 that out of the money obtained at the sale the defendant had charged her the amount of three thousand pesos as attorney's fees in connection with the foreclosure. In August 1941 she instituted this action maintaining that defendant had no right to charge her for attorney's fees.

The Court of Appeals found for plaintiff, saying there is no proof that attorneys' services had been rendered.

The defendant-appellant claims here that under the contract the debtor is chargeable with attorney's fees not only when the foreclosure is judicially made but also when it is done out of court. A part of the mortgage contract is cited in support of this claim. But appellee's attorney correctly observes that that contract is not before us in the record. Anyway the Court of Appeals having found that no attorney had intervened in the foreclosure we must respect that finding of fact.

Another question raised in the litigation relates to the matter of prescription. Defendant points out that more than ten years had elapsed from May 1930 to August 1941. But the Court of Appeals stated as a fact that plaintiff came to know of the unauthorized deduction in 1939, and that when she instituted this suit about two years had passed. Consequently plaintiff's cause of action has not prescribed.

The appealed decision being in accordance with law is affirmed. No costs.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Tuason, Montemayor, and Reyes, JJ., concur.

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