

**INTESTATE ESTATE OF THE DECEASED VICTORINA
ZABALLERO-MILLAR. ESTER ZABALLERO-TADY,
ADMINISTRATRIX-APPELLANT, VS. RURAL BANK OF LUCENA, INC.,
CLAIMANT-APPELLEE.**

G.R. No. 18089. December 17, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Victorina Zaballero and Angelina Pansacolo executed a promissory note in favor of Rural Bank of Lucena, Inc., which reads:

"PROMISSORY NOTE"

October 30, 1957

"—ONE (1) YEAR—after date, for value received, I/We promise to pay jointly and severally to the order of the RURAL BANK OF LUCENA, INC. at its office located in Lucena, Quezon, Philippines the sum of TEN THOUSAND PESOS ONLY (P10,000.00), Philippine Currency, with interest at the rate of FIVE (5%) per cent per annum, from date hereof, until paid, according to the following payment schedule:

DATE INSTALLMENT AMOUNT

"In case of default of any of the installments the entire balance unpaid shall immediately become due and payable.

"In case of judicial execution of this obligation or any part of it, the debtors waive all their rights under the provisions of Rule 39, Section 12, of the Rules of Court.

"In the event this note is placed in the hands of an attorney for collection, the makers and indorsers shall pay ten (10%) per cent of the amount due on the note as attorney's fees.

"DEMAND AND DISHONOR WAIVED. Holder may accept partial payment reserving his right of recourse against each and all indorser.

s/ Angelina Pansacolo

t/ ANGELINA PANSACOLO

Signature or thumbmark of Borrower

Address: Lucena, Quezon

s/ Victorina Zaballero

t/ VICTORINA ZABALLERO (PB)

Address: Lucena, Quezon

After Victorina Zaballero died in March of 1958, the Court of First Instance of Quezon appointed her husband, Fabian Millar, administrator of her estate. Subsequently, Millar died, and Ester Zaballero-Tady, on petition of the heirs, was named administratrix by the same court.

On June 12, 1958 the settlement court ordered all creditors of the estate to file their claims with said court. Pursuant thereto the Rural Bank of Lucena, Inc., on September 17, 1958, filed its claim for P10,000 under the note which was not yet due. The principal debt was acknowledged by the administratrix but not the 12% interest and 10% attorney's fees charged by the bank in its statement of accounts dated January 31, 1959. The Rural Bank reduced the interest charge to 5% as provided in the note but insisted on charging 10% as attorney's fees.

Considering that the dispute was only as regards attorney's fees, the administratrix, to forestall the running of interest, on March 25, 1960 made tender of payment, requesting subsequent consignment, of the debt plus 5% interest, and offered P200 as compromise on attorney's fees.

The tender of payment and offer of compromise not having been accepted, the Court of First Instance ruled on May 20, 1960 "that the collection of the amount of indebtedness has been placed in the hands of Atty. Alfredo Bonus," and ordered the administratrix to pay the Rural Bank P10,000 with interest at 5% per annum from the date of the promissory note until paid, plus 10% of the amount as attorney's fees.

However, while the record on appeal was before the trial court for approval, the Rural Bank decided to accept only the tender of payment covering the principal plus the 5% interest accumulated up to March 25, 1960.

This has therefore limited the appeal before Us to the consideration of the dispute on the attorney's fees. And the question is whether or not a claim against the estate of a deceased, based on a promissory note not yet due, equivalent to an action for collection under the terms of the note.

The situation contemplated by the phrase "in the event this note is placed in the hands of an attorney for collection" where the 10% attorney's fees may be paid, is one wherein the note becomes due and demandable and the debtor has refused to pay, or in case where demand is waived, the debtor neglected to pay. For only then is there reason to place the note in the hands of an attorney "for collection".

At the time of the filing of the claim—September 17, 1958, the note was not yet due, its maturity date being October 30, 1958; hence, not demandable. Such a claim had to be made in pursuance to the court order dated June 12, 1958 implementing Sections 1, 2, 3, 4 & 5, Rule 87 of the old Rules of Court (now Sections 1, 2, 3, 4.& 5 of Rule 86) regarding creditors' claims on the estate of a deceased person. This claim under the Rules, was merely to inform the estate of a contingent obligation that must be settled before distribution of the deceased's property to the heirs. Any creditor may under the Rules file such a claim. If an attorney filed it for the Rural Bank, it was not out of necessity but merely because the bank, undoubtedly retaining a legal counsel, would naturally assign the matter to the counsel as routine.

A similar case may not be found in our precedents, but in the United States, in *Shenandoah National Bank v. Marsh*,^[1] where a promissory note also provided "for 10 percent attorney's fees if placed in attorney's hands for collection," the words "for collection", as used in the note was held to convey the same meaning as the words "to collect" which in turn, when applied to indebtedness, was defined as "that which may lawfully be done by the holder of the obligation to secure its payment or liquidation after its maturity." Under such a provision, it was held that attorney's fees or collection fees could not be claimed for securing the services of an attorney to demand payment thereof before it was due.

Neither can it be argued that when the note matured, and was not paid, the claim was converted to a collection suit, justifying subsequent recovery of attorney's fees. As afore-stated, the principal debt was acknowledged. But

since the debtor died, the debt could not be paid except in the proper course of the settlement of the estate as provided by law, and only upon orders of the court. It may not therefore be properly argued that the debtor, or upon his death, his estate, had been in default.

WHEREFORE, the appealed order is hereby modified by eliminating the award of attorney's fees under the note. Costs against appellee.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] 56 N.W. 458, 459, 89 Iowa 273, 48 Am. St. Rep. 381.

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