

GUI JONG & CO., PLAINTIFF AND APPELLANT, VS. JOSE RIVERA AND REGINA AVELLAR, DEFENDANTS AND APPELLEES.*G.R. No. 21310. March 06, 1924*

Ponente: STATEMENT March 25, 1920, the defendants executed a mortgage to the plaintiff on all the sugar cane planted and sown during the agricultural years 1920 and 1921 on the hacienda Santa Julia, situated in the municipality of Himamaylan, Occidental Negros, estimated to yield 2,500 piculs of sugar approximately, and upon ten different carabaos, which are specifically described in the mortgage. Also one-half of a parcel of agricultural land in the sitio of Kabigtagan, municipality of Kabankalan, Province of Occidental Negros. containing an area of thirty-two hectares, also specifically described. The mortgage recites that it is executed as security for the payment to the plaintiff of the sum of P8,000, with interest at the rate of 12 per cent per annum in the nature of a loan. Also that: "Fourth. The mortgagor is under obligation to consign to the mortgagee 2,500 piculs of sugar approximately of the crops mortgaged of the year 1920-1921 actually existing on the lands above indicated, which crop shall be 2,500 piculs approximately. "Fifth. The debtor hereby binds himself to sell to the mortgagee all the sugar he may harvest up to the amount of P8,000, with interest thereon; provided, that the purchase to be made by the creditor of said sugar must be on the basis of P1.50 less for each picul than the price the same may have in the Iloilo market on the date or dates of its arrival. "Sixth. All transportation expenses and internal revenue shall be for the account of the mortgagor." It further provides that should the mortgagor violate any of the conditions, he should pay the further sum of P500 as attorney's fees. The mortgage was duly signed, witnessed, acknowledged and filed for record. For a breach of its conditions, the plaintiff commenced this action. Among other things, the complaint alleges that between March 25, 1920, and April 15, 1921, plaintiff furnished the defendants various sums of money and merchandise, on which the defendants agreed to pay interest at the rate of 12 per cent per annum, the full amount of which with interest to April 15, 1921, is P18,166.79. An itemized list of the items is attached to, and made a part of, the complaint. It is then alleged that notwithstanding the provisions of the mortgage, the defendants delivered only 866.20 piculs of sugar on February 14, 1921, the value of which was P6,265.92, for which defendants were duly credited; that there is now due and owing from the defendants to the plaintiff the sum of P11,900.87, with interest from April 15, 1921, at the rate of 12 per cent per annum; that under the terms of the contract, the plaintiff is entitled to recover P500 as attorney's fees, and prays judgment for the respective amounts, "and for such other relief as the court may deem just and equitable." For answer, the defendants made a general denial, and, as a special defense, "allege that the contract and contracts upon which the suit is based are usurious in that the rate of interest is greater than that allowed by law, that is to say, the same is in excess of 12 per cent and also because the contracts called for payment of the alleged debt and loans in crops and there is no provision in said contract and contracts that the said crops should be taken over by the plaintiff at their market value," and they pray that the complaint be dismissed, the contract be declared null and void, and for damages resulting from the attachment upon the property. Upon such issues, the trial court found from the evidence that, under the terms and conditions of the mortgage, the plaintiff had loaned and advanced to the defendant, Jose Rivera, money and merchandise to the value of P18,166.79, upon which the defendant had only paid P6,265.92, the agreed price of the 866.20 piculs of sugar, leaving a balance due and owing plaintiff of P1,900.87. The court also found that all of the loan was usurious, with the exception of P3,500, and rendered judgment for that amount, with interest on P1,500 at the rate of 12 per cent from April 28, 1920, and legal interest on the remaining P2,000 from the date of the filing of the complaint, and absolved the defendant Regina Avellar, upon the theory that it had not been proven that she had anything whatever to do with Exhibits 1 and 2, covering the P3,500 transaction, and denied the right of the plaintiff to recover attorney's fees. From this decision plaintiff appeals, specifying the following assignments of error: "1. The court erred in rendering judgment condemning the defendant Jose Rivera to pay the plaintiff only the sum of P3,500 instead of P11,900.87, the difference between the total amount advanced to the defendants, P18,166.79, and the P6,265.92, value of the 866 piculs of sugar

delivered by the defendants to plaintiff. "2. The court erred in not allowing P500 to plaintiff as attorney's fees. "3. The court erred in deciding that the P1.50 less per picul to be paid by the plaintiff to the defendants was in the form of interest, and consequently usurious. "4. The judgment of the lower court is contrary to the weight of the evidence. "5. The judgment of the lower court is contrary to law. JOHNS, J.

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"Sixth. All transportation expenses and internal revenue shall be for the account of the mortgagor." It further provides that should the mortgagor violate any of the conditions, he should pay the further sum of P500 as attorney's fees. The mortgage was duly signed, witnessed, acknowledged and filed for record.

For a breach of its conditions, the plaintiff commenced this action. Among other things, the complaint alleges that between March 25, 1920, and April 15, 1921, plaintiff furnished the defendants various sums of money and merchandise, on which the defendants agreed to pay interest at the rate of 12 per cent per annum, the full amount of which with interest to April 15, 1921, is P18,166.79. An itemized list of the items is attached to, and made a part of, the complaint. It is then alleged that notwithstanding the provisions of the mortgage, the defendants delivered only 866.20 piculs of sugar on February 14, 1921, the value of which was P6,265.92, for which defendants were duly credited; that there is now due and owing from the defendants to the plaintiff the sum of P11,900.87, with interest from April 15, 1921, at the rate of 12 per cent per annum; that under the terms of the contract, the plaintiff is entitled to recover P500 as attorney's fees, and prays judgment for the respective amounts, "and for such other relief as the court may deem just and equitable."

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Upon such issues, the trial court found from the evidence that, under the terms and conditions of the mortgage, the

plaintiff had loaned and advanced to the defendant, Jose Rivera, money and merchandise to the value of P18,166.79, upon which the defendant had only paid P6,265.92, the agreed price of the 866.20 piculs of sugar, leaving a balance due and owing plaintiff of P1,900.87. The court also found that all of the loan was usurious, with the exception of P3,500, and rendered judgment for that amount, with interest on P1,500 at the rate of 12 per cent from April 28, 1920, and legal interest on the remaining P2,000 from the date of the filing of the complaint, and absolved the defendant Regina Avellar, upon the theory that it had not been proven that she had anything whatever to do with Exhibits 1 and 2, covering the P3,500 transaction, and denied the right of the plaintiff to recover attorney's fees. From this decision plaintiff appeals, specifying the following assignments of error:

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"2. The court erred in not allowing P500 to plaintiff as attorney's fees.

"3. The court erred in deciding that the P1.50 less per picul to be paid by the plaintiff to the defendants was in the form of interest, and consequently usurious.

"4. The judgment of the lower court is contrary to the weight of the evidence.

"5. The judgment of the lower court is contrary to law.

JOHNS, J.:

It will be noted that the appellant does not make any assignment of error as to the decision of the court in absolving the defendant Regina Avellar. Neither is it discussed in its brief.

The mortgage was executed to secure the amount of the original loan of P8,000, and the trial court found as a fact that all other amounts were advanced and loaned to the defendant Jose Rivera upon the same conditions as those stated in the mortgage. It specifically provides that the P8,000 shall draw interest at the rate of 12 per cent per annum, and that the estimated crop of 2,500 piculs of sugar shall be assigned to the mortgagee, and that the proceeds of sale shall be applied in satisfaction of the debt. It further recites "that the purchase to be made by the creditor of said sugar must be on the basis of P1.50 less for each picul than the price the same may have in the Iloilo market on the date or dates of its arrival." In other words, that Jose Rivera bound himself to deliver to the plaintiff the amount of the crop estimated to be 2,500 piculs, and to sell it to plaintiff at P1.50 less than the market price of sugar.

If the transaction had been carried out as agreed upon between the parties, the plaintiff would not only have received 12 per cent interest on the amount of his loan, but in addition he would have received the further sum of P3,750, the difference between the market price of the sugar and the price which plaintiff was to pay for it. The plaintiff contends that he was to be paid the P1.50 per picul for his commission and expenses in the handling and sale of the sugar. But the mortgage will not bear that construction. It does not contain any provision of that nature. It is very apparent that the promise of Jose Rivera to sell the sugar to plaintiff for "P1.50 less than the market price, in addition to interest at 12 per cent per annum, was one of the inducements for the making of the loan.

We agree with the trial court that the mortgage upon its face should be construed as a usurious transaction. It found that the total amount of plaintiff's claim was P18,166.79. But as pointed out in the appellees' brief, that amount includes interest on the loan up to the filing of the complaint, or P1,394.34. Hence, it follows that, exclusive of interest, the actual amount loaned to the defendant was P16,772.45. Deducting from this P6,265.92, the value of the sugar delivered to plaintiff, it leaves a balance due and owing of P10,506.53, which, exclusive of

interest, is the amount which the trial court found was due and owing from Jose Rivera to the plaintiff. As a matter of fact, there is no dispute about the amount. In legal effect, the defendant admits that amount to be correct, but contends that because the transaction was usurious, it was void and, therefore, he is released from all liability, and that plaintiff is not entitled to recover anything.

In other words, in legal effect, Jose Rivera admits that he got that amount of money and that he owes it to the plaintiff, but because the transaction was usurious, that he is released from the debt, and plaintiff cannot enforce his claim. That position is not tenable. If the defendant had paid the debt and had complied with his contract, he would then be in a position to recover any usurious interest which he paid. But, here, the defendant breached the contract and only delivered about one-third of the amount of sugar which he agreed to deliver, and the court finds as a fact that, exclusive of interest, there is now due and owing the plaintiff the sum of P10,506.53.

Upon what theory can the defendant breach his own contract and rely upon its enforcement? Upon what legal principle can he deny liability upon a contract which he repudiated and failed to perform? How and in what manner has the defendant paid the amount of the original loan, which he admits having received? Upon what legal or equitable principle can he defeat the payment of the amount of the original loan for the reason that he failed and neglected to perform his own contract? By no fiction or rule of law would the fact that the interest was usurious and was never paid by the defendant operate as a payment or satisfaction of the original loan.

In any event, he should pay the plaintiff the amount which he justly owes him. That question was squarely met and decided in the case of *Aguilar vs. Rubiato and Gonzalez Vila* (40 Phil., 570), which upon legal principle was followed in *Delgado vs. Alonso Duque Valgona*, decided by this court on March 31, 1923, and reported in the *Philippine Reports*, vol. 44, page 739, and which was cited and approved in *Go Chioco vs. Martinez*, decided by this court on October 17, 1923, p. 256, ante, where the syllabus says:

"2. USURIOUS LOAN; ACTION TO RECOVER PRINCIPAL.— Under Act No. 2655, all usurious loan is void, but this does not mean that the debtor may keep the principal received by him as loan, thus unjustly enriching himself to the damage of the creditor, but that the creditor has no right of action for the recovery of the stipulated interest, although he may sue for the recovery of the principal loaned."

That is this case. Upon that decision the plaintiff is entitled to judgment for the full amount of its claim against the defendant Jose Rivera.

The judgment of the lower court is reversed, and one will be entered here in favor of the plaintiff and against the defendant, Jose Rivera, for the sum of P10,506.53, with interest on P1,500 of that amount at the rate of 12 per cent per annum from the 28th day of April, 1920, and with interest upon the balance of that amount from April 19, 1921, the supposed date of the filing of the original complaint, at the rate of 6 per cent per annum, and with costs in this and the lower court, but without attorney's fees.

It further appearing that an attachment was issued and levied upon the property of the defendant to secure plaintiff's claim, it is further ordered that the property so attached be sold to satisfy the judgment. So ordered.

Johnson, Street, Malcolm, Avancena, Ostrand, and Romualdez, JJ., concur.

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