THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. JOSE MARIA DE LA VINA, ADMINISTRATOR OF THE TESTATE ESTATE OF DIEGO DE LA VINA, DECEASED, DEFENDANT AND APPELLANT.

G.R. No. 21640. August 28, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

It is alleged in the complaint:

(a) That on July 15, 1919, the defendant Diego de la Vina, through his attorney-in-fact Jose Maria de la Vina, obtained and received from the plaintiff an agricultural loan of P160,000, Philippine currency, as evidenced by a promissory note executed by him for the purpose, which is as follows:

> "P160,000.00
>
> Manila, P. I., July 15, 1919.
>
> "On or before the 15th day of July, 1919, for value received, I promise to pay to the Philippine National Bank at its office in Manila, Philippine Islands, the sum of one hundred sixty thousand pesos (P160,000) with interest thereon, payable semiannually, at the rate of eight (8%) per centum per annum, from date until paid, and with interest at the same rate on all annual installments overdue and unpaid. Annual payments of principal and interest to be made as per attached amortization schedule.
>
> (Sgd.) "DIEGO DE LA VINA
>
> "By Dr. JOSE MA. DE LA VINA
>
> "His attorney-in-fact"

(b) That to secure the payment of the aforesaid loan of P160,000 with interest thereon, Diego de la Vina, through his attorney-in-fact Jose Maria de la Vina, executed a special and voluntary mortgage upon the property described in paragraph IV of the complaint. This mortgage was recorded in the registry of property of the Province of Oriental Negros, Philippine Islands, a copy of which is attached to the complaint and made a part thereof, marked Exhibit A.

(c) That according to the deed of mortgage Exhibit A, the deceased Diego de la Vina is under the obligation to pay to plaintiff the aforesaid sum of P160,000, with interest thereon, in ten yearly installments, subsequent to the

year in which the notes set out in paragraph V of the complaint for P24,017.60 were executed payable each on or before the 15th day of July of each year.

(d) That in violation of the terms of the deed of mortgage above-mentioned, the defendant has not paid to plaintiff any of the said ten installments, with the exception of the sum of P12,008.80 which said defendant paid on January 21, 1921, on account of the first installment corresponding to the year 1920.

(e) That the amounts owing from Diego de la Vina to plaintiff secured by the aforesaid mortgage Exhibit A, and computed up to November 30, 1922, are as follows:

Principal

P160,000.00

Paid a/c January 21, 1921

10,961.60

Balance

149,038.40

Interest due July 15, 1920

P13,056.00

Paid a/c January 21, 1921

1,047.20

12,008.80

Interest on 160,000 from 7/15/20 to 1/21/21 @ 8%

6,755.56

Interest on 149,038.40 from 1/21/21 to 7/15/21 @ 8%

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5,795.93

Interest on 13,056.00 from 7/15/20 to 1/21/21 @ 8%

551.25

Interest on 12,008.80 from 1/21/21 to 7/15/21 @ 8%

466.97

Interest on 149,038.40 from 7/15/21 to 7/15/22 @ 8%

12,088.65

Interest on 25,578.51 from 7/15/21 to 7/15/22 @ 8%

2,074.69

Interest on 149,038.40 from 7/15/22 to 11/30/22 @ 8%

4,570.49

Interest on 39,741.85 from 7/15/22 to 11/30/22 @ 8%

1,218.74

Total amount due Nov. 30, 1922

194,569.48

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Daily interest on P188,780.25

41.96

(f) That by virtue of the fifth clause of the contract of mortgage Exhibit A, the mortgage obligation contracted by the deceased Diego de la Vina in favor of the plaintiff has already become due and therefore the mortgage may be foreclosed.

Wherefore the plaintiff prays that the defendant be sentenced to pay the sum of one hundred ninety-four thousand five hundred sixty-nine pesos and forty-eight centavos, Philippine currency, with interest thereon at the rate of 8 per centum per annum from December 1, 1922, until full payment, with the costs of the action; that in case the judgment is not satisfied within the period fixed by the law, the mortgaged property be sold and the proceeds of the sale applied on the payment of the amounts claimed in the complaint and the costs of the suit; that in case the proceeds of the sale of the mortgaged property are not sufficient to cover the whole amount claimed with interest thereon and the costs of the action, a writ of execution be issued against any other property of the estate of Diego de la Vina not exempt from execution until the balance is completely paid.

The deed of mortgage is attached to the complaint as Exhibit A.

The administrator of the estate of Diego de la Vina, deceased, filed a general denial of the allegation of the .complaint, and as a special defense alleged: " (a) That plaintiff in this action has prosecuted its claim before the commission appointed to consider claims against the estate of Diego de la Vina, deceased, in special proceeding No. 85 of this judicial district; on the 20th day of June, 1920, the commission in session allowed the claim of the plaintiff, and so reported to this court on the 8th day of January, 1921; (b) the plaintiff is estopped under section 708 of the Code of Civil Procedure by reason of having abandoned its security) from the remedy prayed for in the complaint in this case."

And he prayed for the dismissal of the complaint with the costs against the plaintiff.

The trial court, in a well-reasoned decision, sentenced the defendant, executor in the testamentary proceeding for the settlement of the estate of the deceased Diego de la Vina, to pay the sum of P184,569.48, Philippine currency, with interest thereon at the rate of 8 per centum per annum from December 1, 1922, until the execution oi; the judgment and the costs and ordered that the aforesaid sum of one hundred eighty-four thousand five hundred sixty-nine pesos and forty-eight centavos (P184,569.48), be paid into the court below on January 2, 1923, and in case of failure to make such payment, the land with the building and improvements thereon, be sold in accordance with the deed of mortgage Exhibit A in order that said obligation might be paid with the proceeds of the sale.

From this judgment the administrator of the estate of Diego de la Vina appealed. In his brief he assigns error to the action of the trial court in not holding that the plaintiff is estopped from foreclosing the mortgage by virtue of the order of the lower court approving the report of the committee on claims in the proceeding for the settlement of the estate of Diego de la Vina. In other words, the contention of the plaintiff, and this is the decisive issue in the case, is that the appellee bank, having presented its claim to the committee on claims in the said proceeding, is now estopped from bringing this action.

True that according to section 708 of the Code of Civil Procedure a mortgage creditor may present his claim to the committee on claims, or may, at his election, realize upon the security he may have by an action against the executor or administrator; but said creditor cannot exercise his right successively by presenting his claim to the committee first, and then suing the executor or administrator. And this is so because the policy of the law is to avoid multiplicity of litigations. (Osorio vs. San Agustin, 25 Phil., 404; Luengo & Martinez vs. Moreno, 26 Phil.,

Ill; Veloso vs. Heredia, 33 Phil., 306.)

But in the instant case the plaintiff bank did not present its claim to the committee in the proceeding for the settlement of the estate of Diego de la Vina. Exhibit J is a letter of the president of the plaintiff National Bank to the committee on claims in the aforesaid proceeding, wherein, at the instance of the administrator himself of the estate, he requested them, in view of the fact that the maturity of the first annual installment of P24,017.60, upon the loan of P160,000 obtained from the bank by said deceased Diego de la Vina, was coming near, that the necessary measures be taken for the payment of said amount in due time, that is to say, on July 15, 1920. Said Exhibit J appears dated in Manila on the 21st day of June, 1920. Exhibit L is a letter, dated in Cebu on June 26 of the same year, from the attorney of the estate of Diego de la Vina to the president of the Bank, wherein mention is made of the annual payment of P24,000 demandable July 15, 1920; and wherein the attorney of the estate asked for an information as to whether the bank was willing to prosecute its claim under the provisions of section 708 of the Code of Civil Procedure. In answer to said letter the president of the Bank wrote Exhibit M on June 30, 1920, wherein it was expressly stated that the bank was not willing to prosecute its claim against the estate under the provisions of section 708 of Act No. 190.

And, indeed, the National Bank could not prosecute its claim for the, payment of the obligation, which was not then demandable. Nor could it claim payment of the whole of its credit, for the reason that then the installments had not become due, nor was there any violation whatsoever on the part of the debtor that could render the stipulated installments to become due. (Limpangco vs. Mercado, 10 Phil., 508.)

If the committee on claims in the proceeding for the settlement of the estate of Diego de la Vina understood the letter of June 20, 1920, as a claim of the bank for the payment of its credit of P160,000, with interest thereon, and approved the payment of said sum, as stated in the minutes of January 8, 1921, said committee acted officiously, and its ruling can in no way affect the rights of the plaintiff bank.

Without the necessity of entering into a discussion of the other errors assigned by the appellant, we find that the appellee bank, not having presented its claim to the committee on claims in the proceeding for the settlement of the estate of the deceased Diego de la Vina, has the perfect right to bring this action.

Counsel for appellee bank calls our attention to a clerical error in the dispositive part of the judgment appealed from, with reference to the amount due from the defendant, which error was discovered only after the case was brought to this court, and upon the authority of the doctrine laid down by some courts of the United States, prays that the necessary correction be made by this court, so that the judgment will conform to the facts found by the trial court. In the case of Belford vs. Woodward, the Supreme Court of Illinois held:

"Any clerical mistake in the amount for which a judg- ment is entered in the Appellate Court may be corrected in the Supreme Court, where there is sufficient in the record and on the face of the judgment itself to show the correct amount." (29 L. R. A., 593.)

The same doctrine was announced in the following cases: Dickey vs. Gibson (113 Cal., 26; 45 Pac, 15; 54 A. S. R., 321); Bank of Cadiz vs. Slemmons (34 Ohio St., 142; 32 Am. Rep., 364; 15 R. C. L., 681).

The trial court having held that the defendant has not paid to the Philippine National Bank any of the ten installments, stipulated, with the exception of the sum of P12,008.80 which was paid on January 21, 1921, on account of the first installment corresponding to the year 1920; and that the defendant owed the plaintiff creditor on November 30, 1922, the sum of £194,569.48 plus P41.96 as interest per day; it seems to us clear that it could not have rendered a judgment against the defendant for only Marshall-Wells Co. vs. Henry W. Elser & Co. the sum of P184,569.48. So that taking into account the facts appearing from the record and the same decision

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rendered by the trial court, and the appellant not having made any objection to this petition to amend, we think that there is here a clerical error (lapsus calami), which must be corrected in justice to the parties litigant.

It being understood that the dispositive part of the judgment appealed from is modified in the sense that the defendant is sentenced to pay the plaintiff the sum of P194,569.48, the same is hereby affirmed in all other respects with the costs against the plaintiff. So ordered.

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

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