

ISIDRO S. VILLARUEL, PLAINTIFF AND APPELLEE, VS. ALBINA ALVAYDA AND HER HUSBAND, BUENAVENTURA VICENCIO, DEFENDANTS AND APPELLANTS.

G.R. No. 21995. September 29, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The complaint is upon two causes of action. The first is for the collection of a mortgage credit of P46,000, plus P2,500 for expenses of litigation and attorney's fees; and the second, for the recovery of the sum of P500, alleged to have been borrowed by the defendants from Messrs. Ledesma Brothers for the account of the plaintiff. The plaintiff prays that judgment be rendered against the defendants:

- (a) For the payment of their mortgage debt with interest thereon, after deducting the P1,000 paid on July 30, 1921, and the P3,501.83 paid on the 29th day of August, 1922.
- (b) For the payment of the P2,500 fixed for expenses of litigation and attorney's fees, and the sum of P500 alleged in paragraph VI of the complaint, and the costs of the action.
- (c) Ordering the sale of the property mortgaged, with the improvements thereon, should the amount of the judgment not be satisfied within the period prescribed by the law, the proceeds of the sale to be applied upon the payment of the amounts claimed, with interest thereon and the costs.
- (d) Directing the defendants, in the event that the proceeds of said sale are not sufficient to cover the amounts claimed in the complaint, to pay the plaintiff such balance as, according to the record, they may be personally liable for.

The defendants admit the execution of the deeds of mortgage Exhibits A and B, as well as the payments made on account of the debt, namely, P1,000 on July 30, 1921, and P3,501.83 on August 29, 1922; but they allege as a defense that the contract entered into with the plaintiff is usurious, on account of the latter having collected an interest equivalent to 24 per centum; and as a counterclaim they pray that the plaintiff be compelled to return to them the sum of P13,872, which he had collected from them as interest, plus P3,000 for expenses of litigation and attorney's fees.

His Honor, the judge who tried this case, in a well reasoned decision, disposed of the first cause of action (a) ordering the defendants Albina Alvayda and Buenaventura Vicencio to pay to plaintiff Isidro S. Villaruel jointly the sum of P44,642.93 with interest thereon at 12 per centum from December 26, 1922, the date of the complaint, until full payment; (b) sentencing them also to pay the plaintiff the sum of P2,500 as attorney's fees and expenses of litigation; (c) ordering that these payments be made within the period of three (3) months, and that, if after said period the amount of the judgment was not paid, the property mortgaged described in the deed Exhibit A be sold at public auction, the proceeds of the sale to be applied upon the payment already mentioned. Upon the second cause of action, the defendants were sentenced to pay the plaintiff the sum of P500 with legal interest thereon

from the filing of the complaint until full payment. As to the cross-complaint, the plaintiff was absolved therefrom. As to the counterclaim, the plaintiff was likewise absolved from the same. The defendants were sentenced to pay the costs.

The appellants complain of the trial court not having held the contract in question to be usurious, nor ordered the return to the defendants of the interest paid to the plaintiff, or the payment of the expenses of litigation and attorney's fees.

An explanation of the items stated in Exhibits A and B is found in the following part of the judgment: "It appears from the testimony of the plaintiff and his Exhibit F (which the defendant Buenaventura Vicencio admits having written personally, and which appears to have been delivered by him to the plaintiff), that the amount paid on May 11, 1920, was P30,000, as was also testified to by the defendant Vicencio himself; and in this sum of P30,000 was included the interest for one year at 12 per cent, which is P3,600. It also appears that in August, 1920, the P6,000 was paid by the plaintiff to the defendant, and thus the P39,600 stated in the deed Exhibit A was completed.

"Subsequent to the deed Exhibit A the defendant Vicencio became indebted to the plaintiff in several amounts, which are set out in detail in Exhibit F as follows:

"Interest at 12 per cent on 1P6,000 from August,
1920, to May, 1921

P540.00

Paid in cash (January 13th)

580.00

Paid in cash (May 12th, 1921)

20.00

Commission on sale

84.28

Cash

50.00

Total

1,274.28

"At the maturity of the deed Exhibit A in May, 1921, as the defendants asked for an extension of one year and an increase of the credit, a liquidation was made between the plaintiff and the defendant, and capitalizing all the sums due on the date, the following result was obtained:

"Amount of the deed Exhibit A

P39,600.00

Amounts subsequently due

1,274.28

40,874.28

Interest upon this sum at 12 per cent from May,
1921, to May, 1922

4,905.01

They made a total of

45,779.29

And to make it a round number there was added

220.71

To make exactly

46,000.00

which is the amount stated in the document Exhibit B, renewing the document Exhibit A.

"With respect to the P220.71, the plaintiff advanced to the defendant the sum of P218, as stated in Exhibit F, and the plaintiff testified, without contradiction, that he paid the remaining P2.71 to the defendant Vicencio.

"As to the sum of P46,000 stated in the deed of mortgage Exhibit B after charging the proper interest and deducting the amounts paid by the said defendant, namely, P1,000 on July 31, 1921, and P3,501.83 on August 29, 1922 (as appears in Exhibits F and C, in paragraph V of the complaint, in the amended answer of the defendants and in Exhibit E), with the reciprocal interest accruing upon these sums, it results that in December 26, 1922, the

date of the complaint, there was a debit balance of P44,642.93. This constitutes the first cause of action of the complaint.

"With reference to the second cause of action, it appears from Exhibit C that on September 1, 1922, the defendant took the sum of P500 on account, the interest of which does not appear to have been the subject of any stipulation.

"It also appears proven that in clause C of Exhibit B the sum of F2,500 was fixed as attorney's fees and expenses of litigation should proceeding be instituted for the foreclosure of the mortgage."

After studying the record, we are convinced that the findings of the trial court are supported by the evidence. The contention of the appellants that the appellee has collected from them double interest upon the principal sum of P30,000 is groundless. According to the contract Exhibit A, the principal of P30,000 should draw interest at the rate of 12 per centum per annum (from May 11, 1920, to the same date of May, 1921), that is, P3,600, which amount was by agreement of the parties included in Exhibit A, like the P6,000 that the defendants may have subsequently received, which they in fact received in the month of August, 1920. But it does not appear that upon the original principal of P30,000 a new interest was ever charged at the time of the liquidation of accounts that the contracting parties made on May 11, 1921, for the extension of the period and the renewal of the mortgage Exhibit B, where the sum of P46,000 is stated.

To obtain this last amount, the sum of P3,600 was taken into account, which is the interest of the original principal of P30,000 at 12 per centum and which instead of being paid by the debtors was made a part of the principal debt then due. And we do not believe that there has been any illegality in it, for, as was held in *Government of the Philippine Islands vs. Schenkel and Gonzales* (43 Phil., 616), the interest due constitutes, from the moment it is due, a new principal by agreement of the parties and the interest it earned should not be considered as accruing upon the original debt.

In support of the contention of the appellants, Exhibit 1 was introduced, dated May 31, 1921, written and signed by the appellee, regarding the sum of P5,520, the amount of the interest of the principal of P46,000 stated in Exhibit B.

The trial court found it proven that the plaintiff executed and signed Exhibit 1 in order to prevent the defendants from again being charged with the interest of the principal of P46,000 in the event of the death of said plaintiff and of his heirs, ignorant of the transaction, trying to enforce the stipulation in the deed Exhibit B. We see in this no error whatsoever justifying the reversal of the judgment appealed from. If it were true that the defendants paid the plaintiff on May 31, 1921, the sum of P5,520, as interest on the principal of P46,000, it cannot be conceived how the defendant Vicencio, who drew the document Exhibit F containing the liquidation, on July 31, 1921, that is to say, two months after Exhibit 1, has failed to include therein the respectable sum of P5,520.

The judgment appealed from, being in accordance with law, must be, as is hereby, affirmed with the costs against the appellants. So ordered.

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

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