

L. B. ROBINSON, PLAINTIFF AND APPELLEE, VS. CARMEN SACKERMANN DE MACLEOD, DEFENDANT AND APPELLANT; THE POSTAL SAVINGS BANK OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.

G.R. No. 22506. November 25, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

In mortgage foreclosure proceedings instituted in the Court of First Instance of Manila, the Postal Savings Bank of the Philippine Islands secured judgment against Carmen Sackermann de Macleod on its first mortgage of certain property belonging to the defendant, for P22,459.25, made up of T20,0Q0 capital, 2,393.36 accrued interest, and ?65.89 premiums, with interest on the gross amount at seven per cent per annum beginning with the date of the judgment and continuing until payment, with costs. L. B. Robinson likewise was given judgment on his second mortgage, on the same property of the defendant, for P6,000, with interest at twelve per cent per annum beginning with October 28,1922, and continuing until payment, with costs. On appeal, the defendant asks for a modification of the first mentioned judgment, in that part which relates to the payment of interest, and for a complete reversal of the last mentioned judgment on the ground of usury.

The computation of interest occasionally presents intricate situations. Legal provisions on the subject of interest on interest are found in the Civil Code, article 1109, in the Usury Law (Act No. 2655), section 5, and in the Code of Civil Procedure, section 510, as well as in the Code of Commerce, article 317, which we do not here consider. Compound interest is allowed from the date when interest, although not expressly reserved, is judicially demanded.

Article 1109 of the Civil Code and section 5 of the Usury Law have been interpreted by Mr. Justice Avancefia, speaking for this Court in the case of Bachrach Garage and Taxicab Co. vs. Golingco ([1919], 39 Phil., 912, 919), as follows: " * * * Article 1109 of the Civil Code only permits accrued interests to" earn legal interest from the time they have been judicially claimed. Section 5 of Act No. 2655 also prohibits accrued interests to earn interest, except when there has been an agreement or when they have been judicially claimed. * * * Section 5 of the above-cited Act No. 2655 only permits an interest of 6 per cent on accrued interests from the time they are judicially claimed." (See further Inchausti & Co. vs. Yulo [1914], 34 Phil., 978; Government of the Philippine Islands vs. Schenkel and Gonzales [1922], 43 Phil., 616; and II Kincaid, *Codigo Civil Anotado*, pp. 776-778.) Section 510 of the Code of Civil Procedure does not apply to a case where the obligation sued on bears interest. (Pepperell vs. Taylor [1906], 5 Phil., 536.)

The interest stipulated in the first mortgage was seven per cent per annum, payable semiannually. The mortgage contained no provision for compound interest. The judgment accordingly should have been for P20,000 with interest at seven per cent per annum from May 16, 1923, when the crosscomplaint was filed, and for the interest, P816.67, up to May 16, 1923, plus P65.89 premiums or P882.56, with interest at six per cent per annum from

May 16, 1923. Beyond this, to sanction interest on interest computed at semiannual or other periods of time, it is not practicable to go.

The judgment of the trial court as to the second mortgage, with special reference to the pleadings, is correct. The defense of usury was not raised by the defendant in the trial court. Usury, as a defense, must be set up in the answer to entitle it to consideration. (Act No. 2655, sec. 9; *Atlantic, Tennessee and Ohio Railroad Co. vs. Carolina National Bank of Columbia* [1874], 86 U. S., 548.) Further, if need be, the court would be justified in ruling that, while the interest specified in the Usury Law' designates the permissible rate for mortgage loans as not higher than twelve per cent, this provision does not require interest to be computed at yearly intervals only. (27 R. C. L., p. 229; *Meyer & Stucken vs. City of Muscatine* [1864]. 1 Wall., 384; 46 Am. St. Rep., 189, note.)

The judgment as to the Postal Savings Bank mortgage shall be modified in the sense that the defendant Carmen Sackermann de Macleod shall pay to the Postal Savings Bank of the Philippine Islands the sum of P20,000 with interest at seven per cent per annum from May 16, 1923, until payment, and P882.56 with interest at six per cent per annum from May 16, 1923, until payment. The judgment as to the Robinson mortgage shall be affirmed in all respects. Without special pronouncement as to costs in this instance, it is so ordered.

Johnson, Street, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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