

AQUILES M. SAJO, PLAINTIFF AND APPELLANT, VS. MERCEDES GUSTILO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 24255. December 16, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

Both parties appeal from the following decision and judgment:

"The plaintiff in this case called Aquiles M. Sajo is suing the defendants Mercedes Gustilo, Leopoldo Jereza and Antonia Gustilo for the payment of a promissory note dated January 4, 1922, for the sum of twenty-eight thousand pesos, and quoted in the complaint filed herein, asking at the same time for the foreclosure of a mortgage in connection with said promissory note for the reason that the said note was not paid by any of the said defendants.

"The defendants in this case filed an answer which reads as follows:

"ANSWER

"Come now the defendants and answering the complaint presented in this case allege:

"1. That they admit the first paragraph of the complaint and also admit having executed in Manapla on the 4th day of January, 1922, the receipt copied in the second paragraph of the complaint.

"2. That to guarantee the registry and inscription of the mortgage executed by Mercedes Gustilo for the hacienda Mercedes in favor of the fictitious person who appears as mortgage creditor in that document executed in Manapla on the 4th of January, 1922, Antonia Gustilo signed the receipt inserted in the second paragraph of the complaint.

"3. That said document of mortgage is recorded in the registry of deeds of Occidental Negros, and according to what Herminio Maravilla induced Antonia Gustilo to believe, before she signed the receipt inserted in the second paragraph of the complaint, said Antonia Gustilo would be exempt from the effects thereof after the inscription of the mortgage in the registry of property.

"4. That the delivery of the receipt inserted in the second paragraph of the complaint by Herminio Maravilla to Jose Maravilla and by the latter to the herein plaintiff is without consideration and fictitious and null and void.

"5. That the real party in interest in this case, who is the real party plaintiff, is Herminio Maravilla, and therefore there is a defect, of parties litigant, and the said Jose Maravilla and Herminio Maravilla should be included as parties plaintiffs.

"6. That Herminio Maravilla had assumed liability for the amount of the receipt inserted in the second paragraph of the complaint, and for a consideration had considered it as paid, cancelled and null and void.

"7. That the true and correct amount of the receipt inserted in the second paragraph of the complaint is P23,000, the balance being usurious interests.

"Wherefore, we pray that it be declared that there is a defect of parties litigant in this case; that the contract of loan evidenced by the receipt inserted in the second paragraph of the complaint be declared usurious and null; that Antonia Gustilo be declared relieved from all responsibility on account of the receipt aforesaid; that the defendants be absolved from the complaint with the costs of the proceedings in their favor; and that they be granted any other remedy in accordance to which they may be entitled although not prayed for in the complaint.

"Bacolod, Occidental Negros, March 23, 1923.

(Sgd.)

"ENRIQUE C. LOCSIN

"Attorney for defendants

"SWORN STATEMENT

"I, Leopoldo Jereza, after having been legally sworn, depose: That I have read and understood the facts alleged in the answer and that they are true according to my direct and personal knowledge of said facts.

(Sgd.) "LEOPOLDO JEREZA

"Signed and sworn to before me this 28th day of March, 1923, A. D. The affiant exhibited his cedula No. F-1126117, issued in Manapla on January 24, 1923.

(Sgd.)

"PRIMITIVO BACHOCO

"Justice of the Peace, Manapla

"Reg. No. 57

"Page No. 56

"Book No. 2

"Received copy today:

"Attorney for the plaintiff

"I, Simplicio Tiberio, after having been legally sworn, depose: That Mr. A. P. Seva is absent from Bacolod and has his office closed and that I sent copy of this answer by registered mail to said Mr. A. P. Seva, as appears on post-office receipt No. 827002 hereto attached.

"Signed and sworn to before me this 4th day of April, 1923, A. D. The affiant exhibited to me his cedula No. F-1082290, issued in Bacolod on March 23, 1923.

"The defendants further filed a supplementary pleading asking that the plaintiff be further adjudged to pay the attorney's fees in this case.

"This case was originally heard before the then Honorable Judge Eduardo Gutierrez David and was finally tried before the undersigned. The plaintiff was represented by attorney A. P. Seva, Esq., and the defendants by attorney Enrique C. Locsin, Esq. After the final hearing of the case, the attorney for the defendants was allowed 15 days time to file his written brief and the plaintiff was also allowed the same period of time to answer the brief of the defendants. It appearing that up to this date, the attorney for the plaintiff has not filed any brief in support of his contention although a considerable length of time had already elapsed, the court will have to conclude that the said plaintiff has impliedly renounced the filing of any brief in this case.

"After the court has carefully studied the evidence taken before the then Honorable Judge Gutierrez David in connection with the evidence subsequently presented in this case, finds that the following facts have been established: That the Exhibit A which is a promissory note was signed by Mercedes Gustilo and her husband Leopoldo Jereza on the 4th of January, 1922, in the municipality of Manapla, Province of Occidental Negros, and was subsequently signed by Antonia Gustilo; that said Exhibit A was executed in favor of Jose Maravilla and was supported by a deed of mortgage marked as Exhibit B signed by Leopoldo Jereza and his wife Mercedes Gustilo only; that Jose Maravilla by means of Exhibit C transferred and assigned said promissory note (Exhibit A) and mortgage (Exhibit B) in favor of Aquiles M. Sajo, plaintiff herein, on the 16th of August, 1922; and that the defendants herein failed to comply with the terms of the said promissory note and so the plaintiff herein instituted the present action.

"With regard to the evidence presented by the defendants in this case, the court found also that the following facts have been conclusively established. That the original sum of P23,000 received by the defendants in this case was obtained by them from one Herminio Maravilla as is supported by Exhibit 1 presented by the defendants in this case and executed by the said defendants on November 24, 1920, and ratified before a notary public ex-officio, Anastacio Villanueva, on the same date; that the said document recites that the defendants received the sum of twenty-five thousand pesos when in fact the amount of money received by said defendants is only twenty-three thousand pesos, because the sum of two thousand pesos was retained by said Herminio Maravilla as a payment of an usurious interest which could not be very well inserted in the said document; that the defendants having failed to pay the said sum of twenty-five thousand pesos, a promissory note (Exhibit A) was executed by the said defendants in favor of Jose Maravilla, a nephew of said Herminio Maravilla, for the sum of twenty-eight thousand pesos, which promissory note is quoted in plaintiff's complaint and was supported by a deed of mortgage as already stated above; that said Herminio Maravilla, being indebted to Julio Javellana for P400,000, and fearing what might subsequently take place, had the said promissory note and deed of mortgage (Exhibits A and B) placed in the name of Jose Maravilla and subsequently transferred by said Jose Maravilla to the plaintiff herein.

"It was further established in this case that Antonia Gustilo signed the said Exhibit A, because Leopoldo Jereza and Mercedes Gustilo were required to furnish more security for the loan. The court cannot believe the contention of Antonia Gustilo that she did not understand Exhibit A, or that she believed it to be the original contract which she signed sometime ago.

"Several witnesses have testified in this case that the original sum received by Leopoldo Jereza and his wife Mercedes Gustilo was twenty-five thousand pesos and that the two thousand pesos which is claimed by Herminio Maravilla and his employee to have been delivered to Leopoldo Jereza and his wife Mercedes Gustilo to make the original amount P25,000, cannot be believed by the court. The preponderance of evidence in this regard is so overwhelming against the claim of the plaintiff that the court will have to give due credit in favor of the defendants, that the original sum was only P23,000 and that the rest of the amount is for the usurious interest thereon and cannot be recovered by the plaintiff. Furthermore the two checks which were issued by Herminio Maravilla amount only to twenty-three thousand pesos and the testimonies of said Herminio Maravilla and his aforesaid employee do not appear to be reasonable to the court.

"The contention of the defendants that Herminio Maravilla simulated the transfer in favor of Jose Maravilla and subsequently transferred by the latter to the plaintiff herein Aquiles M. Sajo appears supported by

documentary and circumstantial evidence in this case. The deed marked Exhibit 1 is in favor of Herminio Maravilla. Jose Maravilla and Aquiles M. Sajo were proven in this case to be quite young and without much money or capital. In fact Aquiles M. Sajo was a newly returned student from Manila and has only been borrowing money from his relatives. From the whole evidence in this case, it really appears that Herminio Maravilla is behind the affair, and that his nephew Maravilla and Aquiles M. Sajo are nothing but his tools in the said transactions. Herminio Maravilla while testifying in this court stated as follows:

" 'Q. Is it true that by means of fraud you caused Antonia Gustilo to sign Exhibit A?—A. No, sir. That and this transaction were made at their own request and in accordance with their wishes, because they wanted that the time of the mortgage be extended one more year; but in those days the price of sugar had dropped, as also the prices of land whereas the amount of the loan had increased to P28,000. So I told Don Leopoldo that that could not be done with the same security, but if the security was increased I would have no objection in waiting.

" 'Q. Did they give additional security?—A. Yes.

" 'Q. What did it consist of?—A. He told me if you want real property we have no more, but if you want I will look for a signature and then he brought me the signature of Dona Antonia Gustilo.

" 'Q. Who did?—A. He himself. He came to my house telling me that he had secured the signature of Doña Antonia Gustilo, and it was about two or three days after that he returned to my house.

" 'Q. Did you not induce Antonia Gustilo to sign this document making her believe that it was the same as the previous document signed by her, telling her that after signing it her mortgage would become liberated?—A. I would not deceive anybody; that was a promissory note; she did not sign in the mortgage document.'

"It clearly appears from the aforesaid testimony, Herminio Maravilla's connection in this case. Moreover, the deputy sheriff, Mr. Pareñas, was clearly informed that Aquiles M. Sajo is not the real plaintiff in this case, and so the required fees were not paid by Sajo. This contention of the defendants is further corroborated by the fact that neither Jose Maravilla nor Aquiles M. Sajo had required the defendants herein for the payment of the said promissory note, Exhibit A, and that the only one who made the demand for payment was Herminio Maravilla in his own behalf. It is, therefore, clear that Herminio Maravilla may have also been made plaintiff herein.

"At the hearing of this case, the defendants offered in open court to the plaintiff Aquiles M. Sajo and to Herminio Maravilla the payment of the original sum of P23,000 as a final settlement of the case, but the said offer was rejected by the attorney for the plaintiff herein.

"Although it appears that Herminio Maravilla may have been made also one of the plaintiffs herein, it further appears impliedly from the circumstances herein that said Herminio Maravilla recognizes the right of the plaintiff in this case to sue as an assignee of the action in his favor and it appearing from Exhibit C that the plaintiff herein has acquired the right to sue without any objection from said Herminio Maravilla, who appeared as one of the witnesses in favor of the plaintiff in this case, the court is of the opinion that a judgment in this case for the legitimate debt of the defendants herein may be adjudged in favor of the said plaintiff for the purpose of avoiding a multiplicity of suits. Furthermore, the action of the defendants herein in offering to the said plaintiff in open court, the payment of the sum of P23,000, impliedly recognized the right of the said plaintiff to recover the said amount. And it has already been held by the Supreme Court that a debtor should not enrich himself by not paying the capital of the loan and that the creditor has the right to sue for its recovery. (See Official Gazette—Feb. 5, 1924.)

"With regard to the contention of the defendants that the plaintiff should be charged with the attorney's fees in this case, the court believes that the defendants are not entitled to recover same, because strictly speaking up to the present time they have not actually paid the usurious interest which they have agreed to pay, and they did not even

pay the real amount of money obtained by them from Herminio Maravilla nor a portion of same, and for that reason the present suit for the recovery of the same has been filed.

"In view of all the foregoing considerations, the court hereby adjudges Mercedes Gustilo, Leopoldo Jereza and Antonia Gustilo to jointly and severally pay to plaintiff herein the amount of P23,000, with legal interest thereon from the filing of the complaint which is March 2, 1923, until fully paid, and also to pay the costs of this action.

"In default of payment of this judgment for the period of three months hereof, the property subject of the mortgage marked Exhibit B shall be sold to realize the mortgage debt and costs and disposed of in accordance with law.

"It is so ordered.

"Bacolod, Occidental Negros, February 24, 1925.

(Sgd.)

"DELFIN JARANILLA

"Judge, Twenty-second Judicial District"

An examination of the evidence of record shows the findings of the trial judge to conform to the proven facts. The subtle arguments of skilled counsel have failed to disclose any prejudicial error in the judgment. These statements should be sufficient to dispose of the appeals. However, for the satisfaction of the parties and their attorneys, we will resolve all the assignments of error.

PLAINTIFF'S APPEAL

Assignment of error No. I.—Whether defense of usury properly interposed and alleged by the defendants.—After the complaint was filed by the attorney for the plaintiff, the three defendants consisting of Mercedes Gustilo and her husband, Leopoldo Jereza, and Antonia Gustilo, presented an answer signed by a lawyer as "Attorney for the Defendants." The oath following was subscribed by Leopoldo Jereza—only. It is now argued by the plaintiff-appellant that this was in contravention of section 9 of the Usury Law, Act No. 2655 as amended, providing "The person or corporation sued shall file its answer in writing under oath to any complaint brought or filed against said person or corporation before a competent court to recover the money or other personal or real property, seeds or agricultural products, charged or received in violation of the provisions of this Act. The lack of taking an oath to an answer to a complaint will mean the admission of the facts contained in the latter."

It will be noted that while the law provides both affirmatively and negatively for the taking of an oath to an answer to a complaint, the law says nothing as to whether all of the defendants must subscribe to the oath or whether the verification of one is sufficient. In this instance, the oath was accomplished by the husband without joining the wife. The better practice would be for the answer to be sworn to by the wife as well as by the husband. It would likewise be the better practice for the plaintiff, after the answer setting up usury as a defense is filed, in his replication or otherwise to raise the point of irregularity in defendants' answer. Where this is done, it is easy for the defendants to so amend as to meet the situation. Here since the answer is verified by the husband, and since the plaintiff did not by any means contest the sufficiency of the verification in the lower court, it would be highly technical at this stage of the proceedings to throw the case out of court on such a specious excuse. (Collard vs. Smith [1860], 13 N. J. Eq., 43; Vanderveer vs. Holcomb [1866], 17 N. J. Eq., 547; Hartley vs. James, 18 Abb. Pr. [N. Y.], 229.)

Assignment of error No. II.—Whether the spouses Leopoldo Jereza and Mercedes Gustilo received of Herminio

Maravilla P23,000 with P2,000 usurious interest added to make up P25,000, or whether the said husband and wife received P25,000.—The documents on their faces call for twenty-five thousand pesos (P25,000). These documents have in their favor all the sanctity with which the law surrounds them. The plaintiff's contention is thus supported by the instruments, and, in addition, by the oral testimony of Herminio Maravilla, the real party in interest, and his cashier, Miguel Aldea.

It is the rule that he who alleges usury as a defense to an obligation must establish it by clear and satisfactory evidence. The later cases reflecting the more liberal views now prevailing with regard to the taking of interest, consider that usury, like other facts in civil cases, needs only a preponderance of the evidence to be established. With these principles concerning the proof of usury in mind, we find the allegation here supported by the testimony of the three defendants Antonia Gustilo, Leopoldo Jereza, and Mercedes Gustilo. This evidence made such an impression on the trial judge that he termed the preponderance of the evidence in this regard as "overwhelmingly against the claim of the plaintiff." Two details speak eloquently on behalf of this finding. The first is the simulated transfers from Herminio Maravilla to Jose Maravilla, his nephew, to Aquiles M. Sajo, a young man, to defeat the rights of the creditors in other actions, thus permitting of no sympathy for the nominal plaintiff and the real plaintiff. And the second and more important detail is that two checks—one for eleven thousand pesos (P11,000) and the other for twelve thousand pesos (P12,000)—were drawn on November 25, 1920, thus evidencing a consideration to the amount of twenty-three thousand pesos (P23,000). Excepting the assertions of the plaintiff and his witness, no other evidence exists that two thousand pesos (P2,000) in cash was turned over to the defendants. Certainly no receipt for the money was taken. Under such conditions, we feel that the defendants have carried the burden of their defense by a clear preponderance of the evidence. (*Houghton vs. Burden* [1912], 228 U. S., 161; *Pusser, vs. Thompson* [1909], 132 Ga., 280; *Abbott vs. Stone* [1898], 172 Ill., 634; *France vs. Munro* [1908], 132 Iowa, 1; *Poppleton vs. Nelson* [1885], 12 Ore., 349.)

Assignment of error No. III.—Whether interest on P23,000 should be allowed at the rate of 12 per cent per annum, or at the rate of 6 per cent per annum, and whether the plaintiff should be allowed 10 per cent on P23,000 by way of damages.—The Usury Law, as construed by this court, permits the creditor to recover the principal but not the stipulated usurious interest. This could well be taken to mean a forfeiture of the right to any interest so as not to arrive at a contradiction in terms. Nevertheless the court has fallen into the habit in cases of this character of allowing the creditor the legal rate of interest on the judgment from the date of the filing of the complaint. The right to damages falls with the denial of the plaintiff's right to usurious interest. (*Go Chioco vs. Martinez* [1923], 45 Phil., 256; *Gui Jong & Co. vs. Rivera and Avellar* [1924], 45 Phil., 778.)

DEFENDANTS' APPEAL

Assignment of error No. I.—Whether Antonia Gustilo should be condemned jointly and severally with Leopoldo Jereza and Mercedes Gustilo to pay the judgment.—Antonia Gustilo signed Exhibit A, the promissory note sued on, as a maker. She is bound by her action.

Assignment of error No. II.—Whether legal interest should be allowed on the judgment, and if so, for what period of time.—As has previously been pointed out, it is the practice of the court in usury cases to permit the creditor to secure legal interest on his judgment. Counsel for the defense insists nevertheless that even if this be so, legal interest should not be granted subsequent to his offer to pay the plaintiff the sum of twenty-three thousand pesos (P23,000). As we read the record, however, the action of counsel in court was merely in the nature of a gesture and was at most an offer to compromise which was not accepted by counsel for the plaintiff. There is nothing, therefore, taking the facts out of the general rule.

Assignment of error No. III.—Whether certain questions of the plaintiff should have been permitted.—Whatever the

ruling of the trial judge, it does not constitute reversible error.

Assignment of error No. IV.—Whether the defendants should be adjudged to pay the costs and whether the defendants should recover attorney's fees from the plaintiff.—The determination of costs was discretionary with the trial judge. As the defendants had not really paid any usurious interest and as the honors of the battle were about even, no mistake was made in the ruling of the trial judge concerning attorney's fees.

Assignment of error No. V.—Whether the ruling of the trial judge permitting verbal evidence to be presented by the plaintiff relating to the usurious character of the loan was proper, notwithstanding no answer to the defense was presented under oath.—Like some of the arguments for the plaintiff, this is an argument technical in character. The defendants having set up the defense of usury and having offered oral testimony to vary the terms of a written instrument, could not very well complain if the plaintiff was given the right of rebuttal.

For all the foregoing, the judgment appealed from is affirmed without special pronouncement as to costs in this instance.

Avanceña, C. J., Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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