

BIAN HIN & CO., INC., PLAINTIFF AND APPELLEE, VS. TAN BOMPING, DEFENDANT AND APPELLANT.

G.R. No. 24450. December 23, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

It appears from the evidence that on September 6, 1921, the defendant executed the following document (Exhibit d) in favor of Julian Miranda & Co., the plaintiff's predecessors in interest:

"I, Tan Bomping, married to Julia Solis, both residents of the municipality of Jimenez, Province of Misamis, Philippine Islands, by these presents say that my account with the firm 'Julian Miranda & Co.,' doing business in the same municipality of Jimenez and with a store established in the Rizal Street of the same municipality, having been liquidated, it appears that I owe to said mercantile partnership the sum of P11,000 for cash and goods taken from said store. And being at the present time engaged in commerce, I will pay said amount by installments within the period of five years from today, September 6, 1921.

"And to guarantee the payment of the aforesaid amount of P11,000, I mortgage all of my properties movable and immovable together with those of my said wife Julia Solis, present and future, including my semimovable properties.

"In witness hereof, I signed by these presents together with my wife Julia Solis, in the municipality of Jimenez, Misamis, this 6th day of September, 1921, A. D.

(Sgd.)

"TAN BOMPING

"JULIA SOLIS

"(Acknowledged both by Tan Bomping and by Julia Solis before Notary.)"

The document was prepared by the justice of the peace of the municipality of Jimenez, Misamis, who assured the parties that it was a sufficient mortgage deed of all the property of the defendant, but it was subsequently found that for lack of a sufficient description of said property, the document could not be admitted to record in the office of the register of deeds, and the defendant having failed to pay his debt, this action was brought on November 15, 1923, to compel a reformation of the document so as to make it a valid mortgage admissible to record.

In his complaint the plaintiff alleges that the plaintiff is a mercantile partnership, duly incorporated under the laws of the Philippine Islands, with domicile in the municipality of Jimenez, Misamis, and is the successor of the firm of Julian Miranda & Co.; that the defendant owes to Julian Miranda & Co., now substituted by the plaintiff, the sum of P11,000 in accordance with the document hereinbefore quoted; that in the execution of said document, it was the intention of both parties, and so specifically agreed between them, that in order to guarantee the payment of said debt of the defendant in favor of Julian Miranda & Co., said defendant mortgaged in favor of the company the nine parcels of land described in the complaint; that owing to the lack of skill and sufficient legal knowledge

on the part of the person who drafted and prepared said document, it suffers from defects which prevent it from being enforced before the courts of justice; that the defendant has no other property from which the plaintiff can satisfy its claim in the amount of P11,000 against the defendant and that the plaintiff has been informed and so believes that the defendant, in order to defraud the plaintiff and prevent the collection of his debt to the plaintiff, is about to sell and transfer to third persons all of his properties. The plaintiff therefore prays that the court order the defendant to execute in favor of the plaintiff a good and valid mortgage deed of the properties described in the complaint to guarantee the payment of the aforementioned debt of P11,000.

In answer to the complaint the defendant entered a general denial and set up a counterclaim against the plaintiff for P12,000, as damages for unlawful arrest and imprisonment under section 412 of the Code of Civil Procedure.

The trial court rendered a judgment ordering the defendant to execute a good and sufficient mortgage in favor of the plaintiff to secure the sum of P11,000. It also found that the defendant's counterclaim was not sustained by the evidence and absolved the plaintiff from the same. From this judgment the defendant appeals and makes the following assignments of error:

"I. The lower court erred in declaring that the stipulation between Julian Miranda & Co. and the defendant is a contract of mortgage of the property movable and immovable of the defendant to guarantee and secure the payment of the debt of P11,000, which the defendant owes to the plaintiff and that Exhibit D does not state properly said agreement.

"II. The lower court also erred in sentencing the defendant and appellant to execute in favor of the plaintiff and appellee, in lieu of Exhibit D, a good, valid and specific mortgage deed of all his properties described in the complaint, and to pay the costs.

"III. The lower court likewise erred in denying the defendant's counterclaim."

A reading of the document itself, in connection with the testimony presented, is the best refutation of the first assignment of error and leaves no doubt as to the intention of the parties to create a mortgage. This being so, the second assignment is also without merit. In its present form the document evidences an equitable mortgage valid as between the parties, but for lack of a detailed description of the lands mortgaged, it cannot be recorded and thus made effective against third parties. The defect is merely formal and it is settled beyond discussion that under such circumstances, the party who executed the document may be compelled to reform it or to execute another document sufficient to carry out the intent of the agreement. Articles 1278 and 1279 of the Civil Code read as follows:

"Art. 1278. Contracts shall be binding, whatever may be the form in which they may have been entered into, provided that the essential conditions required for their validity exist.

"Art. 1279. Should the law require the execution of an instrument or any other special formality in order to make the obligations of a contract effective, the contracting parties may compel each other to comply with such formality from the moment in which consent has been given, and the other requirements for the validity of the contract exist."

Applying the articles quoted, this court said in the case of *Cuyugan vs. Santos* (34 Phil., 100):

"* * * The lack of the formal requisites prescribed by the Code in order that such contracts may become effective to bind or convey the property, such as their execution in public instruments and the like, does not invalidate them as personal obligations, as 'either party may compel the other to comply with such formalities' from the moment the valid personal obligation has been entered into. (Article 1279 of the Civil Code.)" (See also *Rodriguez vs. Pamintuan and De Jesus*, 37 Phil., 876, 880-882; *Gutierrez Repide vs. Afzelius and Afzelius*, 39 Phil., 190.)

As to the third assignment of error we agree with the trial court that the evidence is not sufficient to enable the court to determine the amount of the damages sustained by the appellant by reason of his imprisonment. The Civil Law does not recognize nominal damages (*Algarra vs. Sandejas*, 27 Phil., 284; *Tan Te vs. Bell*, 27 Phil., 354) and the general rule in this jurisdiction is that, in regard to damages to an established business, satisfactory evidence of the amount of business transacted before and after the injury complained of must be submitted before damages can be awarded (*Tan Ti vs. Alvear*, 26 Phil., 566; *Algarra vs. Sandejas*, 27 Phil., 284; *Tan Te vs. Bell*, 27 Phil., 354). In this case we have only the bare statement of the defendant that he estimated his damages at P12,000. That is merely an expression of opinion and is not sufficient.

For the reasons stated, the judgment appealed from must be affirmed. To prevent misunderstanding, it may however be noted that a mortgage executed by the husband alone, without special authorization from the wife, is of no effect as to her paraphernal property.

Judgment affirmed with costs. So ordered.

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

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