

PHILIPPINE ENGINEERING CO., PLAINTIFF AND APPELLANT, VS. B. A. GREEN, DEFENDANT AND APPELLANT.

G.R. No. 24486. December 16, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

The plaintiff and the defendant both appeal from a judgment of the Court of First Instance of Manila which condemned the defendant to pay to the plaintiff the sum of P23,319.93, together with P3,309.49 to cover the back interest until September 24, 1924, with interest at 10 per cent per annum on the capital beginning with September 25, 1924, and with 5 per cent of the capital for attorney's fees and judicial costs.

DEFENDANT'S APPEAL

The answer of the defendant interposed one special defense only, viz. that the action was prematurely brought. This same point is again raised in this court in defendant's first assignment of error. The defense of usury is not now available since not pleaded in the lower court. (Usury Law, Act No. 2655 as amended, sec. 9; Robinson vs. Sackermann de Macleod and Postal Savings Bank [1924], 46 Phil., 539.)

The promissory note matured on July 1, 1923. On October 6, 1923, Attorneys Araneta and Zaragoza made formal demand on Mr. Green for the payment of the note (Exhibit 7). Thereafter, however, the defendant was permitted to make partial payments aggregating P9,188.46. The last payment on the debt was made on January 16, 1924. It is further emphasized by the defendant that while the vice-president and general manager of the Philippine Engineering Co. by a communication dated September 10, 1924, addressed to Mr. Green gave the latter until September 30, 1924, to make remittance in full settlement of the account (Exhibit 8), the complaint was filed on September 24, 1925. However, as appears from another letter of the vice-president and general manager of the Philippine Engineering Co. dated September 18, 1924, the previous letter of the 10th instant was cancelled.

It cannot be fairly said, therefore, that the action was prematurely brought. The complaint was not filed until fourteen months after the maturity of the obligation, and not until eight months after the last partial payment. The delay was more nearly akin to leniency than otherwise.

It is also claimed that the time of payment of the note was extended by a verbal understanding. It is well settled that the time of payment of a bill or note may be extended by an oral agreement, but that an agreement to extend the time of payment in order to be valid must be for a definite time. (8 C. J., 425-429.) Here we have only the defendant's statement as to the purported agreement for an indefinite period of grace, with one now dead. Such proof falls far short of satisfying the rules of evidence.

PLAINTIFF'S APPEAL

The plaintiff assigns as error the failure of the trial judge to allow the sum of P3,250.84, provided in the note, for expenses and attorney's fees. A number of decisions have sanctioned stipulations for attorney's fees in negotiable instruments where the stipulations have not been found to be unconscionable or unreasonable. (*Bachrach vs. Golingco* [1918], 39 Phil., 138; *Bachrach Garage and Taxicab Co. vs. Golingco* [1919], 39 Phil., 912; *Laureano vs. Kilayco and Lizares de Kilayco* [1915], 32 Phil., 194; *Warrington vs. De la Rama* [1923], 46 Phil., 881.) The apparent object was here to fix the collection fees at approximately 10 per cent of the face of the loan. Inasmuch as the debt has been considerably reduced to P23,319.93, it would only be fair to reduce the attorney's fees in the same proportion. Instead of 5 per cent allowed by the trial judge and instead of the sum of P3,250.84 claimed by the plaintiff, we are willing to concede to the plaintiff 10 per cent of P23,319.93, or P2,332.

The plaintiff further assigns as error the allowance by the trial court to the plaintiff of the sum of P3,309.49 for accumulated interest when the amount should have been P3,315.87. Just why the trial judge was induced to make a deduction of about six pesos in the total granted for interest, is not quite clear. Just why the manager of the Philippine Engineering Co. in Exhibit 8-1 only claimed P2,835.91 for interest when in Exhibit C the same company claimed P3,315.87, is also not quite clear. However, it does appear from the record that Exhibit C was admitted without objection on the part of counsel for the defendant. The amount for interest should, therefore, be fixed at P3,315.87. This sum should bear legal interest from September 25, 1924, the day following the filing of the complaint. (Civil Code, art. 1109; Usury Law, sec. 5; *Robinson vs. Sackermann de Macleod and Postal Savings Bank*, *supra*; *China Banking Corporation vs. Lichauco* [1924], 46 Phil., 460.)

Counsel finally attacks the judgment because it does not allow costs to the plaintiff. Attention is invited to the clause of the note by which the debtor agrees to pay the costs taxable under the Code of Civil Procedure. Not for this reason particularly, but because the plaintiff has had to carry the burden of litigation should it have been allowed its court costs.

The judgment appealed from shall be modified so that it reads as follows: The defendant B. A. Green is condemned to pay the plaintiff the sum of P23,319.93, with P3,315.87 for accrued interest until September 24, 1924; with interest at 10 per cent per annum on the capital beginning with September 25, 1924, and continuing until payment, and with legal interest on the accrued interest beginning with September 25, 1924, and continuing until payment; with P2,332 for attorney's fees for collection; and with costs against the defendant. It is so ordered without special pronouncement as to costs in this instance.

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

Ostrand, J., concurring in part: I concur in the decision of the court except in so far as it increases the allowance for attorney's fees fixed by the trial court.

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