

**ASIA BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS.
WALTER E. OLSEN & CO., INC., ET AL., DEFENDANTS. WALTER E.
OLSEN, APPELLANT.**

G.R. No. 24488, December 28, 1925

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

About February 6, 1920, the defendant Walter E. Olsen & Co., Inc., obtained a loan of P200,000 from the plaintiff for the purpose of purchasing a piece of land in Tondo. On account of this loan the other defendants and Mr. A. D. Gibbs—all stockholders of the defendant corporation—executed jointly and severally a promissory note for the amount, of P200,000 in favor of the plaintiff. After the land had been purchased, the defendant corporation, Walter E. Olsen & Co., Inc., executed in favor of its codefendants and of Mr. A. D. Gibbs a promissory note for the amount of P200,000 and a mortgage upon the land to secure the payment of the P200,000, or any such part thereof as any of them might be compelled to pay the plaintiff upon the promissory note subscribed by them.

On April 25, 1921, the defendant corporation Walter E. Olsen & Co., Inc., through its president and treasurer, Mr. Walter E. Olsen, one of the defendants, mortgaged the same land to the plaintiff to secure the payment of the loan of P200,000. Due to the fact that this land, as already stated, was mortgaged by the defendant corporation, Walter E. Olsen & Co., Inc., to its codefendants and to Mr. A. D. Gibbs, the mortgage in favor of the plaintiff could not be recorded in the registry inasmuch as it was necessary to cancel first the other mortgage. The loan of P200,000 in favor of the plaintiff has not been paid until this date. These are the facts appearing from the record and the documents accompanying the complaint as a part thereof.

The complaint prays that judgment be rendered against defendants and each and every one of them jointly and severally for the sum of P200,000, with interest at the rate of 9 per cent per annum from November 4, 1920; that the plaintiff be subrogated in the place of the defendants, except Walter E. Olsen & Co., Inc., as to the mortgage of the land made in their favor and that this mortgage be cancelled; and should the amount of P200,000 not be paid to the plaintiff, that the land mortgaged be sold in order to pay the amount of this loan.

All the defendants, except Mr. Walter E. Olsen, subscribed a document wherein they agreed that a judgment be rendered as prayed for in the complaint.

The judgment appealed from dismisses the complaint as to the defendants Walter E. Olsen, John W. Marker, Louis McCall, B. A. Green and Theobald Diehl, sentencing the defendant Walter E. Olsen & Co., Inc., to pay the plaintiff within three months the sum of P200,000, with interest at 9 per cent per annum from November 4, 1920, and ordering, in default of said payment, that the mortgaged land be sold in order to apply its proceeds to the amount of the judgment. The judgment appealed from further orders that the mortgage of the land in favor of the defendants, except Walter E. Olsen & Co., Inc., be cancelled subrogating the plaintiff thereinto. From this judgment Walter E. Olsen appealed.

Appellant alleges that the lower court erred in cancelling the mortgage in favor of the defendants. Appellant

cannot object to this cancellation. As president and treasurer of the defendant corporation, Walter E. Olsen & Co., Inc., he mortgaged this land unto the plaintiff. This mortgage cannot be recorded, and thus acquire full efficacy, without first cancelling the mortgage upon the same land executed in favor of the appellant and of his codefendants. Appellant cannot now refuse to do that which is necessary for the efficacy of the mortgage he made in favor of the plaintiff in behalf of Walter E. Olsen & Co., Inc. On the other hand, the mortgage in favor of the defendants, in view of the judgment rendered, is now useless. It was made solely for the purpose of securing the reimbursement of any amount that they may have had to pay to the plaintiff on account of the loan of P200,000 which they guaranteed. Since they have been absolved from all liability on account of this loan, that mortgage has no longer any purpose.

Another error assigned by the appellant is the fact that the lower court took into consideration the documents attached to the complaint as a part thereof, without having been expressly introduced in evidence. This was no error. In the answer of the defendants there was no denial under oath of the authenticity of these documents. Under section 103 of the Code of Civil Procedure, the authenticity and due execution of these documents must, in that case, be deemed admitted. The effect of this is to relieve the plaintiff from the duty of expressly presenting such documents as evidence. The court, for the proper decision of the case, may and should consider, without the introduction of evidence, the facts admitted by the parties.

The judgment appealed from is affirmed with costs against the appellant. So ordered.

Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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