

HOSPICIO GARCIA AND MACARIA BUENCAMINO, PLAINTIFFS AND APPELLANTS, VS. ESTEFANIA MATIAS AND ALEJANDRO POLICARPIO, DEFENDANTS AND APPELLEES.

G. R. No. 25114. August 25, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

It is alleged in the complaint in the present case that on February 8, 1922, for and in consideration of the sum of P8,010, the defendants sold to the plaintiffs four parcels of land situated in the municipality of San Isidro, Province of Nueva Ecija, on condition that the vendors might repurchase the parcels at the same price on or before November 12, 1922; that on July 6, 1923, the defendants ratified said contract of sale with the right to repurchase and recognized the plaintiffs' absolute and consolidated right of ownership, receiving from the latter an additional amount of P1,280.50 as a further consideration; and that notwithstanding the expiration of the term for the repurchase of the land the defendants refuse to surrender possession. The plaintiffs therefore ask judgment for the possession of the land together with damages in the sum of P8,000.

In their answer the defendants deny generally the allegations of the complaint and set up a "special defense, cross-complaint and counterclaim" in the following terms:

"1. That the sum of P8,010 mentioned in paragraph II of the complaint was never received by the defendants from the plaintiffs.

"2. That the contract mentioned in paragraphs II, III, and VI of the complaint was not one of purchase and sale with right of repurchase, but a renewal of another contract of loan with interest entered into by and between the same parties litigant herein on or about November 12, 1918, on which date the defendants, having received from the plaintiffs the sum of P2,800, which was added P85.16 which the defendants were owing on another account to the plaintiffs and the interest of said sums for two years at a higher rate than that fixed by the law, executed in favor of the plaintiffs a deed wherein it was fictitiously stated that the defendants transferred and sold to plaintiffs the properties described in paragraph II of the complaint with a right to repurchase for the period of two years and the simulated price of P4,035.74.

"3. That the period having expired for the payment of said sum of P4,035.74 and the defendants not being able to pay said sum to plaintiffs, the former were compelled to execute in favor of said plaintiffs another fictitious deed of purchase and sale with right of repurchase of the date of February 3, 1921, and ratified on May 26, 1921, before Mr. Juan F. Gonzales, notary public, in which deed, by virtue of an agreement between the parties to extend to November 12, 1921, the period stipulated in the aforesaid deed of November 12, 1918, upon the condition that the herein defendants should pay higher interest than that authorized, by the law, that is compound interest at the rate of 37 percent per year on the said sum of P2,800, from November 12, 1918, to November 12, 1921, and it was stated that the defendants had received from the plaintiffs the sum of P7,200, as the value of the properties described in said second fictitious contract of purchase and sale with right of repurchase; and that not having been able to pay said sum of P7,200, through insidious machinations of the plaintiffs, the defendants executed in favor of the latter the deed of supposed purchase and sale mentioned in

paragraph II of the complaint, wherein, by virtue of an agreement between the parties to extend until November 12, 1922, the period stipulated in the deed of November 12, 1918, upon the condition that said defendants should pay compound interest at the rate of 30 per cent per annum upon the sum of P2,800, from November 12, 1922, it was stated that the defendants received the sum of P8,010 as the price of the supposed contract of sale mentioned in paragraph II of the complaint.

"4. That the defendants have not received the sum of P1,280.50 mentioned in paragraph V of the complaint, and that said sum is merely the interest of the sum of P8,010 from November 12, 1922, to July 6, 1923.

"5. That the defendants have paid to plaintiffs the sum of P1,992 on account of their debt."

Upon these allegations the defendants ask that they be absolved from the complaint and that judgment be rendered in their favor for usurious interest paid by them in the sum of P1,992 and for the further sum of P2,000 as attorney's fees and for the costs.

After trial the court below declared that all of the contracts between the parties were usurious and void, and rendered judgment in favor of the plaintiffs for the sum of P2,800 with legal interest from November 12, 1918, but ordered them to return to the defendants the sum of P1,992 collected as usurious interest, and to pay in addition thereto the sum of P2,000 for lawyer's fees. From this judgment the plaintiffs appeal.

The assignments of error relate principally to questions of fact, in regard to which the findings of the court below are in the main sufficiently supported by the evidence. The defendant Alejandro Policarpio in his testimony gives a very full explanation of the various transactions had between the parties, and while it is true that his calculations in regard to the interest alleged to have been charged by the plaintiffs do not entirely tally with the final results, the discrepancies are not of sufficient importance to materially affect the credibility of the testimony as to the character of the aforesaid transactions.

The documents Exhibits 1, D, A and B tend to discredit the plaintiffs' contention. Exhibit 1 is dated November 12, 1918, and is a deed of sale with pacto de retro of the land in question for the term of two years from the date of the document, the purchase price being P4,035.74. In the last paragraph of the document it is provided that the sum of P594.39 is to be repaid by the vendor on the 12th day of November, 1919, and that the balance of the purchase price, P3,441.35, must be repaid on the 12th day of November, 1920, in order to effect the repurchase. Exhibit D is a deed of sale of the same land executed by the defendants in favor of the plaintiffs on February 3, 1921, with the right to repurchase the same within a year from November 12, 1920. The consideration named is P7,200.

Exhibit A is also a deed of sale of the same land, with the right to repurchase, executed by the defendants in favor of the plaintiffs on February 8, 1922, in consideration of the sum of P8,010, the term for the repurchase being one year from November 12, 1922. Exhibit B bears the date of July 6, 1923, and recites that the plaintiffs have paid to the defendants the sum of P1,280.50 as an increase of the purchase price of P8,010 named in the deed of February 8, 1922, Exhibit A.

The plaintiffs' contention is that Exhibit 1 was executed in consideration of a loan of P4,000 in cash plus the sum of P35.74 for certain merchandise received by the defendants and that no interest was charged. This does not seem probable in view of the fact that the defendants were left in the possession of the land and apparently enjoyed the products thereof. The defendants' assertion that the loan was only for P2,800 and that the P594.39 to be paid on November 12, 1919, represented the first year's interest seems in these circumstances more plausible. Plaintiffs further maintain that the defendants effected the repurchase of land before the expiration of the term in Exhibit 1 and that Exhibit D was executed in consideration of a new loan of P7,200, separate and distinct from the original loan. But, if so, why did the term for the repurchase under Exhibit D relate back to November 12, 1920, the date

of the expiration of the term for the right to repurchase under Exhibit 1? As already stated, Exhibit D bears the date of February 3, 1921, and was not acknowledged before notary until May 26, 1921.

The defendants allege in their cross-complaint, and have attempted to prove, that they in the early part of 1922 paid to the plaintiffs the sum of P1,992 on account of the debt and for usurious interest thereon. When carefully analyzed, their evidence as to such payment is not convincing, and the plaintiffs' contention that such payments as were made to them relate to other and different transactions, seems more reasonable. The defendant Alejandro Policarpio appears to be an intelligent man and if the payments were made as stated by him, it is highly improbable that he, at the time of the execution of Exhibit A, some months afterwards, would have failed to claim credit for said payments and to have the amount deducted from the debt of P8,010 which he acknowledged in said exhibit.

The defendants' claim for allowance of attorney's fees is founded on section 6 of the Usury Law (Act No. 2655 as amended by Act No. 2992), which provides that any person or corporation who shall have paid or delivered a higher rate of interest than that authorized by law "may recover the whole interest paid or delivered with costs and attorney's fees in such sum as may be allowed by the court in an action against the person or corporation who took or received it, if such action is brought within two years after such payment or delivery." As we cannot find that any actual payment of interest has been made, and as it is well settled that usurious interest not actually paid but simply added to the capital from time to time, cannot be regarded as "taken or received" by the lender within the meaning of sections 2, 3, 4 and 6 of the Usury Act, it follows that this is not a case for a special allowance of attorney's fees. (People vs. Hodges, 46 Phil., 502; Brown vs. Marion Nat. Bank, 169 U. S., 416; Haseltine vs. Central Nat. Bank, 183 U. S., 132.)

For the reasons stated the judgment appealed from is modified by absolving the plaintiffs from the defendants' counterclaim for the return of the sum of P1,992 and for the payment of the further sum of P2,000 for attorney's fees. The judgment in favor of the plaintiffs and against the defendants for the sum of P800 with legal interest from the 12th day of November, 1918, is affirmed, without costs in either instance. So ordered.

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

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