

J. M. PO PAUCO, PLAINTIFF AND APPELLEE, VS. DOLORES SIGUENZA AND MARIANO AGUILAR, DEFENDANTS AND APPELLANTS.*G. R. No. 25249. September 25, 1926*

Ponente: STREET, J.

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The plaintiff in this case is a capitalist and broker of the City of Iloilo who, for a number of years prior to the controversy which gave rise to this lawsuit; had been accustomed to make advances to the defendant Mariano Aguilar to enable him to grow sugar cane upon the hacienda San Agustin, in the municipality of Hinigaran, Province of Occidental Negros. The course of dealing between the two appears to have been that the plaintiff would advance money to the defendant upon credit of the latter's growing crop, while the defendant was expected to repay these loans out of the proceeds of sugar produced on the plantation. The defendant was also required to allow the plaintiff, in the capacity of broker, to market his sugar, for which service the plaintiff received a commission of 2 per centum upon the sales. On July 28, 1921, Mariano Aguilar and his wife, Dolores Siguenza de Aguilar, entered into a written contract with the plaintiff, whereby they mortgaged to him thirty head of carabao, thirty head of other cattle, and the crop of sugar cane then growing upon the hacienda, for the purpose of securing a liquidated prior indebtedness of P61,504.52, plus P13,495.48 of advances which it was agreed that the creditor would, or might, make to assist the mortgagors in cultivating and marketing the crop for the current year. The mortgagors not having complied with the terms of the mortgage within the period of two years from the date thereof, as contemplated in the agreement, the plaintiff instituted the present action in the Court of First Instance of Iloilo for the purpose of foreclosing the chattel mortgage upon the carabao and other cattle described in the schedule attached to the mortgage. Upon hearing the cause the trial court found that the plaintiff had made out a case for relief, but instead of ordering the foreclosure of the mortgage, as asked in the complaint, his Honor declared the contract resolved for noncompliance on the part of the defendants with the stipulations of the contract and gave judgment for the plaintiff to recover from the defendants the sum of P88,274.93, plus the further sum of P8,827.49, pursuant to stipulation for the payment of an attorney's fee of 10 per cent of the indebtedness, and requiring the further payment of interest on the principal amount of P70,100.98, at the rate of 12 per centum per annum from June 12, 1925 (the date of the judgment) until the indebtedness should be satisfied. In view of the fact that the relief granted was not in conformity with the petitory part of the complaint, the court ordered the complaint to be amended; and in accordance with this requirement the plaintiff at once amended by asking in the alternative for the resolution of the contract or the foreclosure of the mortgage. From the judgment entered in the sense of resolution, as above indicated, the defendants appealed.

The assignments of error contained in the brief of the appellants presented in this court raise two questions of a basic nature. These we shall proceed to examine in turn. The appellants' first proposition is that the judgment declaring the resolution of the mortgage, Exhibit A, is in contravention of the express provisions of the contract. To the proper elucidation of this point a brief exposition of some of the more important stipulations in the contract is necessary.

At the time the mortgage was executed it was foreseen that the indebtedness would probably not be paid off from the produce of the hacienda San Agustin during the first year, and it was accordingly stipulated that the mortgage should be renewed from year to year so as to cover the crop of each successive year (art. XVIII of mortgage), and still another stipulation was inserted by which the debtors obligated themselves to deliver to the mortgagee not only the crop already planted upon the hacienda but the crop for the year 1922-1923 (art. VI of mortgage). It was also agreed that after the sugar grown upon the land for the current and succeeding year should have been delivered by the mortgagors to the mortgagee, the latter should sell the sugar, under certain restrictions, and apply two-thirds of the proceeds towards the satisfaction of the mortgage debt, leaving one-third to the mortgagors for expenses (arts. VII, XI of mortgage). The mortgagors further undertook to deliver to the mortgagee annually during the life of the contract the amount of 6,000 piculs of muscovado sugar, or 3,000 piculs of centrifugal sugar (art VII of mortgage). This stipulation appears to have reflected an exaggerated notion of the productive capacity of the hacienda, for the proof shows that even under the most favorable conditions the harvest was not likely to reach the figures mentioned. In fact, from the harvest of 1921-1922, the mortgagors delivered to the plaintiff only 3,024.11 piculs of muscovado sugar of the value of P18,880.63; and the total crop did not reach the limit of 6,000 piculs. Testifying as a witness in his own behalf, the defendant Mariano Aguilar stated that he actually harvested from the farm during that year some 4,087 piculs of muscovado sugar.

In explanation of his short deliveries from the harvest of 1921-1922, Aguilar says that it was a bad-crop year, owing to destructive storms and floods. This explanation may be accepted as explanatory of the failure of the hacienda to produce the full 6,000 piculs of sugar which the defendants had agreed to deliver during that year; but this did not relieve them from the obligation to deliver the entire produce of the farm during that year. As we have already seen, Aguilar retained in said season more than 1,000 piculs. This was an act of bad faith, in direct violation of the stipulations of the mortgage, and this breach of the contract affords in our opinion a sufficient basis for the resolution of the contract which was decreed by the trial court. From the language used in the appealed decision, it might seem that his Honor considered the defendants in default in the fact that they had not delivered for the year mentioned the total stipulated amount of sugar (6,000 piculs), but this is not quite accurate. The default was in the failure of the defendants to deliver the full amount of sugar resulting from the harvest. Under article 1124 of the Civil Code, the right of one of the obligors in a contract to insist upon a resolution upon the failure of the other obligor to comply with what is incumbent upon him is implied in every contract; and it is not necessary that there should be inserted in the contract any stipulation expressly allowing resolution.

But there are certain provisions in the contract which are relied upon by the defendants as negating the right of the plaintiff to obtain a resolution of the contract. Thus, in clause IX, it is agreed that, if the debtors should not be able to pay the entire indebtedness in the period of two years specified in the contract, then the mortgagee would extend the contract for another year upon the same conditions and terms as are expressed in the contract itself. Again, in clause XXII, it is stipulated that, if the mortgagee should fail to consign to the mortgagors any portion of the sugar which the mortgagors had agreed to deliver, the latter would pay the mortgagee a commission of 2 per centum upon the value of the sugar necessary to complete the 6,000 piculs.

We are of the opinion that neither of these clauses has the effect of suppressing the right of the plaintiff to insist upon resolution. These provisions contemplate the case where the creditor elects to insist upon performance, and they cannot be taken to affect a right of resolution when the creditor sees fit to insist upon resolution,—an alternative which is expressly reserved to the creditor in the second paragraph of article 1124 of the Civil Code even after he has requested fulfilment. It is also insisted for the defendants that article XXIV in the mortgage is inconsistent with the right of resolution, since said article provides especially that the mortgage should be cancelled upon compliance with its conditions. But this clause is nothing more than the ordinary resolutory clause commonly found in mortgages providing that it shall be of no effect upon payment of the secured debt. The

insertion of this clause in the contract certainly is in no wise inconsistent with the exercise of the right of resolution to which reference is made in the article cited.

The second proposition advanced for the appellants is to the effect that the plaintiff himself had violated the contract by refusing to make advances to the defendants for their agricultural needs during the agricultural years 1922-1923 and 1923-1924. As a consequence of this alleged default on the part of the plaintiff, the defendants were compelled, so it is claimed, to seek financial assistance from other sources. As a consequence, it is argued that the plaintiff is not entitled to insist upon the strict fulfilment of the obligations incumbent upon the defendants. The contention is in our opinion not sustained by the terms of the contract or by the facts appearing in evidence. There is no stipulation in the mortgage for other advances to be made by the plaintiff than those therein specified amounting to about P14,000. The plaintiff in fact did advance to the defendants somewhat over P18,000, a sum considerably in excess of the advances which the plaintiff had obligated himself to make. It further appears that as the time approached for the planting of the crop for the agricultural year 1923-1924, an interview between Aguilar and the plaintiff was held in which the latter agreed to furnish the defendants with some P26,000 for agricultural outlay by the defendants for said year. Pursuant to this agreement the plaintiff advanced some P1,500, after which he found that the defendant Aguilar had already mortgaged the crop for that year to the Philippine National Bank, for advances to be received from it. In view of this discovery the plaintiff withdrew from his commitment with respect to the making of advances for the year mentioned and the special contract that had been made for that year was abrogated by mutual consent. At the same time Aguilar returned the P1,500 then lately advanced to him by the plaintiff.

Before passing to the final phase of our discussion, attention should be directed to the fact that the original complaint in this case was filed after the expiration of the period of two years fixed for the payment of the mortgage debt; but as we have already seen, the mortgagee agreed, in clause IX, that if the mortgagors should be unable to pay all the debt by the termination of said period, he would extend the contract for another year. The action was instituted before this third year had passed. Upon this it is insisted for the appellants that the action was prematurely brought.

It is undoubtedly true that the stipulation above referred to would have been a serious and perhaps insuperable obstacle to the maintenance of the action to foreclose; but as the case was finally dealt with, the resolution of the contract was decreed. Of course in this aspect the defense of the prematurity of the action is not available, as resolution can be at once had upon the occurrence of the breach giving rise to the right to resolve.

From what has been said it results that the trial judge committed no fundamental error in granting a resolution upon the facts appearing before him; and it only remains to consider whether the different elements of the appealed judgment are compatible with the fundamental character of the relief which the court undertook to grant. Upon this point an analysis of the dispositive part of said decision will show that important errors were made in the solution of the problem before the court. In this connection it will be noted that the contract contains a stipulation for the payment by the debtors of interest at 12 per centum per annum upon the entire indebtedness. The mortgage also contains a stipulation for the payment of a 10 per centum attorney's fee, apart from legal costs, in case the debtors should default in the payment of the debt and it should become necessary for the mortgagee to employ an attorney. The trial judge allowed full interest at stipulated rate, as well as the stipulated attorney's fee.

The allowance of these items was of course fundamentally inconsistent with the notion of resolution. When a contract is resolved, rescinded, or annulled, it is the duty of the court to require the parties to surrender that which they have severally received and to place each as far as practicable in his original situation; and when a resolution is granted, it has the effect of abrogating the contract in all its parts. The party seeking resolution cannot have performance as to part and resolution as to the remainder. It results that when the contract in question was

resolved, the plaintiff could no longer rely upon the stipulations with respect to the payment of interest and attorney's fee; and the sole duty incumbent upon the defendants is to restore what they have received from the plaintiff, with legal interest from the date when the benefits accruing to them were respectively conferred (*Salas Rodriguez vs. Leuterio*, 47 Phil., 818).

Applying the rule above announced to the case before us, the rights of the litigants may be defined as follows: The plaintiff is entitled to recover from the defendants the original indebtedness, as liquidated upon July 28, 1921, in the amount of P61,504.52, with interest thereon at the rate of 6 per centum from said date until said indebtedness shall have been satisfied. The plaintiff is also entitled to recover the additional amounts of money advanced by him to the defendants since July 28, 1921, with lawful interest upon the various advancements from the respective dates when made and until said indebtedness shall have been paid. The plaintiff is also entitled to recover from the defendants the amounts due him for merchandise, supplies, and other items of account, with lawful interest thereon from the dates when such obligations were incurred until the indebtedness shall have been satisfied. The defendants, on the other hand, are entitled to credit for the amount of P2,691, the proceeds of property belonging to the defendants which was attached and sold at the instance of the plaintiff soon after the action was instituted. The defendants are also entitled to credit for the sum of P18,880.63, the value of 3,024.11 piculs of muscovado sugar which they delivered to the plaintiff from the harvest of 1921-1922. The two items last above-mentioned should be deducted as partial payments upon the indebtedness as it existed upon the dates when said items respectively came to the hands of the plaintiff; or what amounts to the same thing, interest may be allowed upon said items from those dates, and the total deducted from the capital upon the date of final liquidation.

The statements of account submitted by the plaintiff in the form of exhibits in this action are not in conformity with the rule above stated, inasmuch as compound interest has been charged at the rate of 12 per centum per annum, and the interest charges are so involved in the account that it is not practicable or possible for this court upon the record before us to state an exact balance.

It will therefore be necessary to return the record to the lower court for a liquidation of the account; and if the parties should be able to agree in the lower court upon a balance in harmony with the conclusions above stated, judgment in favor of the plaintiff shall be entered therefor. If, however, they should be unable to agree upon a balance, the plaintiff shall be required to submit a statement of account along the lines indicated, with liberty to the defendants to submit their exceptions to the same; and upon hearing the matter, the court will state a balance and enter judgment in favor of the plaintiff, requiring the defendants to pay the same.

Therefore, affirming the appealed judgment in the part consistent herewith and reversing the same in the parts inconsistent, the cause is hereby remanded to the court of origin, for further proceedings in conformity with this opinion. So ordered, without express pronouncement as to costs.

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

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