

ASIA BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS. M. J. MCCUENE ET AL., DEFENDANTS. A. W. YEARSLEY, DEFENDANT-APPELLANT.

G.R. No. 27020. September 19, 1927

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

Plaintiff alleges that it is a New York corporation duly licensed to transact business in the Philippine Islands. That the defendant McCuene is a resident of the City of Manila. That the defendant Yearsley is a resident of the municipality of Caloocan, and that together they are doing business as copartners under the firm name and style of "Subway Sales Co." That on February 13, 1923, defendants jointly and severally executed to E. E. Elser a certain promissory note in the sum of P338.43 with interest at the rate of 9 per cent per annum, which note was, before maturity and for value, endorsed and delivered by the said E. E. Elser to the plaintiff who ever since has been and now is the owner and holder thereof. Like allegations are made on nine other promissory notes executed at the same time and for the same amount, each payable one month apart, which are separately pleaded in that many other causes of action. As to the notes described in the first and tenth causes of action, it is further alleged that, if the notes are not paid in accordance with their terms, the defendants will pay the further sum of 10 per cent of the principal as costs of collection.

For amended answer and cross-complaint, the defendant Yearsley made a general and specific denial, and as a counterclaim alleged that on June 10, 1921, he was indebted to the plaintiff in the sum of P20,338.89, and was seriously ill, and on that date he executed a chattel mortgage on all of his property which was valued at P84,964.20, to secure the payment of his debt. That he was forced to insure the property for P20,000 for the use and benefit of the plaintiff. That on August 31, 1921, the plaintiff took the actual custody of all of the wines and liquors belonging to the defendant, the value of which was P20,602. That on December 22, 1921, while he was still seriously sick, the plaintiff demanded further security, and that he executed an additional chattel mortgage on sales stock which the plaintiff had taken possession of, to the value of P20,602, upon which the plaintiff also demanded that he should pay for the insurance. That with his business thus tied up and his sales stock in plaintiff's custody, the defendant gradually reduced his indebtedness to plaintiff to a principal sum of P14,945.76 with accrued interest amounting to the further sum of P607.89. That in this situation, plaintiff by duress and threats compelled the defendant and his wife to furnish additional security for the payment of the balance due. That by reason thereof, the defendant mortgaged to the plaintiff a stock of merchandise which he held on consignment, which mortgage was duly signed by his wife along with certain other personal property which the defendant had purchased from E. E. Elser, which was the consideration for the notes described in the complaint, all of which was taken by the plaintiff to secure the debt in question. That while holding all of this property, the plaintiff arbitrarily made it impossible for the defendant to turn his stock into cash or to pay the plaintiff, and that by reason of such conduct, he claims a loss in the amount of P10,000. That upon executing the mortgage of October 31, 1923, it was

agreed that an adjustment would be made, thus reducing the interest charge and the cost of the insurance. But this was never done. That the value of the merchandise actually taken by the plaintiff and covered by the mortgage of October 31, 1923, was P12,037.73. That on November 21, 1923, plaintiff made to the defendant a flat offer of P3,000 accompanied by a threat for all of the property, which offer was never accepted. That prior thereto, the plaintiff had agreed, in consideration of the execution of this last mortgage, that it was not to foreclose on any of the mortgages before December 31, 1923. That the threat in question was a deliberate breach of plaintiff's own contract designed to take advantage of defendant's illness, and that he never accepted the offer. That on December 10, 1923, defendant and his wife went to the office of the plaintiff to pay P7,000 on account. That later he received a receipt for P10,000, and on December 27, 1923, the defendant paid the further sum of P2,000. That on January 9, 1924, the defendant made a written demand to the plaintiff for a settlement and the surrender of his mortgages and the property, and tendered plaintiff the amount then due and owing. That on February 27, 1924, the defendant paid to the attorney for the plaintiff P900 and demanded the return of his securities. That on March 10, 1924, the plaintiff returned to the defendant the insurance policy covering defendant's sales stock which plaintiff was arbitrarily holding in Rosenthal's warehouse, and on March 13, 1924, plaintiff acknowledged the receipt in full of all of the obligations of the defendant, and on March 15, 1924, it surrendered all of the securities which it held of the defendant's property. Defendant prays that he be absolved from plaintiff's complaint, and for judgment in his favor and against the plaintiff in the sum of P13,385.56, with interest at 6 per cent per annum from November 24, 1925, together with costs.

For answer the plaintiff made a general and specific denial of all of the material allegations of defendant's counterclaim.

Upon such issues the evidence was taken, and the lower court rendered judgment for the plaintiff as prayed for in its complaint. Upon appeal the defendant contends that the court erred in not awarding to him a judgment for P10,000 to cover the losses which he sustained by the arbitrary conduct of the plaintiff, and in not giving him judgment for P9,037.73, the difference between the value of the merchandise covered by the chattel mortgage and the amount credited to him by the bank, and in not awarding to him interest at 6 per cent per annum on those two items from November 24, 1925, and in not rendering judgment in his favor for the gross amount of those items, less the amount of the notes described in the complaint.

JOHNS, J.:

In legal effect, at the trial the defendant admits the execution of the notes as alleged in plaintiff's complaint. He also admits the execution of the chattel mortgages to the plaintiff described in his answer. The real defense is that, by the arbitrary actions and conduct of the plaintiff in demanding and receiving the chattel mortgages, and in the sale and disposal of the property therein described, the defendant was and is damaged to the amount of something over P19,000; yet, it appears by his own answer and by his own testimony that there was a full and complete settlement and accounting between the plaintiff and the defendant of all of the matters of which he now complains. In other words, the defendant ratified and approved all of the alleged acts of the plaintiff upon which his alleged claim is based. The lower court found that there was no merit in the defense. Suffice it to say that in the ordinary course of business, plaintiff did nothing more than to secure an existing debt which it held against the defendant, and there is no evidence to sustain the allegations made in defendant's answer.

The judgment of the lower court is affirmed, with costs. So ordered.

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

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