

**FLORENCIO GONZALEZ DIEZ, PLAINTIFF AND APPELLEE, VS.
ROMARICO AGCAOILE ET AL., DEFENDANTS. ANGEL A. ANSALDO,
APPELLANT.**

G.R. No. 28609, October 31, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

To secure a loan of P16,000, Romarico Agcaoili executed a first and special mortgage in favor of the plaintiff on an urban property belonging to him, evidenced in a public instrument which was registered in the registry of deeds under the provisions of Act No. 496.

Said debtor having defaulted, paying on account only P500 on May 22, 1925, the plaintiff brought this action for the collection of the balance of the credit and the fulfillment of the other obligations stipulated, with due and unpaid interest at 12 per cent, plus the corresponding legal interest, and the sum of P1,600 as penalty.

Teodoro R. Yangco and Angel A. Ansaldo were made parties defendants, the first for having subsequently acquired at public auction the interest and participation of the defendant Agcaoili in the mortgaged property; and the second, that is, Angel A. Ansaldo, for having, in turn, acquired from the defendant Yangco such interest and participation in said property.

The case having been heard, the Court of First Instance of Manila rendered the following judgment:

"In view of the premises, the court believes it just and proper to sentence, as it hereby does sentences the defendant Romarico Agcaoili or Angel A. Ansaldo, who has acquired his rights, to pay plaintiff the sum of P15,500 with interest at 12 per cent per annum from February 1, 1927; plus the sum of P775 with interest at 6 per cent per annum from January 29, 1927; plus the sum of P1,600 as penalty, with the costs of the action.

"Should these payments not be made within the period of three months from the date of the notification of this judgment to said two defendants, let the mortgaged property be sold in accordance with law, the proceeds thereof to be applied to the payment of such sums.

"So ordered."

Defendant Ansaldo impugns such judgment as erroneous.

"1. Because, contrary to law, the trial court by such judgment granted the plaintiff a remedy against the appellant which is not in accord with the action brought herein, nor supported by the evidence.

"2. Because, in granting said remedy against the appellant and according to the terms of the judgment, the plaintiff is permitted, against all reason and justice, to require the appellant to comply with the obligation which Agcaoili personally contracted, without the appellant's taking any part therein, notwithstanding the fact that the plaintiff himself alleged in his complaint (paragraph IX) that, with respect to the property mortgaged by Agcaoili, the appellant acquired only those rights by the sheriff of Manila to defendant Yangco. And,

"3. Because said judgment fails to take into account the fact that the registration of the conditions and dates of payment of the credit had the effect of proper notification to those who, being third persons with respect thereto, as the appellant was, might acquire a right in the property securing said credit.

Counsel for the plaintiff-appellee admits the existence of the first two errors, stating on pages 1 and 2 of his brief:

"Since the action instituted by the plaintiff-appellee is an action in rem, for the collection of a mortgage credit, we admit that the lower court erred in sentencing the appellant to pay said credit, and in this sense find the first two assignments of error in appellant's brief to have been well taken."

The question being simmered down to the third assignment of error, we note that the appellant insists that the mortgaged property only answered for P14,500 inasmuch as, considering the periods stipulated for the payment of the credit, by January 29, 1927, two payments of P500 each should have been made, the defendant-appellant being warranted in so presuming by the scope and effect which, under section 51 of Act No. 496, are given to the notification of the terms and stipulations of the mortgage in question registered under the provisions of said Act.

The notification referred to in said section 51 of Act No. 496 has no such scope. The fulfillment or non-fulfillment of obligations contracted, does not depend on the degree of diligence on the part of the creditor, but rather on the will and resources of the debtor. The fact that an obligation was registered in the registry does not justify the presumption of its fulfillment to the point of precluding, by the mere lapse of the periods, the collection of the unpaid debts, because, the very existence of the mortgage shows that there was not an absolute certainty of the fulfillment of the agreement, and hence the security. And the registration of the latter gave notice to all the world that the parties considering the violation of the obligation as a possibility, and therefore that its fulfillment was not wholly certain, deemed it necessary to execute the mortgage in order to be able to lay hands on it upon the nonfulfillment by either party, foreseen as a contingency which might occur.

The judgment appealed from is hereby modified, absolving appellant Angel A. Ansaldo from all personal liability for the sums of money claimed by the plaintiff, or for part thereof, limiting such liability to defendant Romarico Agcaoili, and affirmed in all other respects, without express pronouncement as to costs in this instance. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, and Villa-Real, JJ., concur.

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