

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANGELA MONTENEGRO AND RAMON R. PAPA, DEFENDANTS AND APPELLANTS.

G.R. No. 28815. March 24, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

This action is brought to foreclose a mortgage executed in favor of the Postal Savings Bank by the defendant Angela Montenegro with the consent of her husband, the defendant Ramon Papa. Though duly served with summons, the defendants failed to appear, and on December 14, 1926, they were declared in default, and the case was set down for hearing on the 24th of the same month. On December 21st, the Attorney-General filed a motion asking that the trial of the case be continued until January 10, 1927, on the ground that the defendants had promised to settle the case to the satisfaction of the plaintiff on or before that date.

The motion for a continuance was granted, and the case was set down for trial on January 14, 1927, and the hearing was had on that day in the absence of the defendants, and after receiving the plaintiff's evidence, the court rendered a decision ordering the foreclosure of the mortgage. On February 23, 1927, the defendants filed a motion for the reopening of the case on the ground that certain representatives of the Postal Savings Bank, whose names were not stated in the motion, had given the defendants to understand that the bank would accept another mortgage in substitution for the original one and that the defendants therefore did not think it necessary to appear in the present case. The defendants also stated that they had a valid and legitimate defense, but did not state the facts upon which the defense was based. The motion was verified by the oath of the defendants but was not accompanied by an affidavit of merit. It was denied on March 9.

On March 19, 1927, the defendants filed an exception to the decision of January 14 and the order of March 9, and moved that a new trial be granted on the ground that the decision was contrary to the law and to the weight of the evidence. On March 29, the defendants filed another motion for the reopening of the case in which they, among other things, stated that they had a legal, just, and valid defense but could not reveal that defense without prejudicing their interest. The motion was verified by the oath of the defendant Angela Montenegro but was not accompanied by a certificate of merit. At the time of the filing of this motion, the judge who tried the case was absent on leave, and the hearing of the motion was postponed until the return of the judge four months later when he promptly denied the motion.

On October 4, 1927, the defendants filed a bill of exceptions, but certain amendments were necessary and it was not finally approved until November 5, 1927.

Both the assignments of error and the arguments of counsel before this court relate merely to the propriety of the denial of the motions for a new trial, and the validity of the mortgage is not questioned. As stated in the brief of the defendants-appellants: "This is not an attempt to disclaim the existence of the mortgage indebtedness. Defendants are too honest to do anything of the kind. As a matter of fact, the validity of the mortgage has been

expressly recognized. Have its terms as to the payment of interest semi-annually and of the premium been broken? Plaintiff says yes; defendants say no. They claim they have a perfectly valid defense. Perhaps they have; again they may not."

As far as we can gather from the record, the defendants attribute their alleged misfortune to misleading or fraudulent representations made by officials or employees of the bank. The rule is general, and has been consistently followed by this court, that "a motion for a new trial on the ground of fraud in procuring a judgment by default is properly overruled, unless it is made to appear both that the fraud alleged actually existed and that the defendant has a good defense to the action" (quoted from syllabus in the case of Behn, Meyer & Co. vs. Arnalot Hermanos, 7 Phil., 742). The uniformly recognized practise is to support such motions with one or more affidavits setting forth in full the facts upon which the defense rests. The observation of this practise is very important; cases are not reopened unless some useful purpose can be served, and in order to act with assurance in such matters, the court must be put in possession of the necessary facts so as to be able to pass intelligently upon the merits of the motion for the reopening. In the present case such facts, if any existed, were deliberately withheld (see motion of March 29, 1927) and the court below was left entirely in the dark as to the validity of the defendants alleged defense. The motions in question were therefore properly denied.

As the rules of law here stated are elementary and cannot have been unknown to the very intelligent counsel for the defense and as it is obvious that this appeal has been taken simply for the purpose of delaying the payment of the mortgage debt and therefore is frivolous, this court is of the opinion that triple costs should be imposed upon the defendant Angela Montenegro.

The orders appealed from are affirmed with triple costs in this instance against the defendant Angela Montenegro. So ordered.

Avanceña, C. J., Johnson, Villamor, Johns, and Romualdez, JJ., concur.

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