

JUAN DE ROTAECHE, PLAINTIFF AND APPELLANT, VS. “LA URBANA,” MUTUAL BUILDING AND LOAN ASSOCIATION, DEFENDANT AND APPELLEE.

G.R. No. 29077. October 27, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The plaintiff being a common-stock holder of the defendant, applied for and obtained from the same a loan of P7,000 for ten years, executing the proper mortgage deed, acknowledging an indebtedness to defendant of P8,050, of which P7,000 represents the loan obtained, and the P1,050, the 15 per cent premium for the ten years fixed by the board of directors of the defendant.

The plaintiff, however, does not consider himself bound to pay the premium for the whole ten years, but only for one year, that is, the sum of P150. Hence, of the P1,050 which he paid for premiums, he claims the sum of P900 in this action which is the premium for nine years at the rate of 1 1/2 per centum per annum.

As a basis, he contends that while section 181 of the Corporation Law (Act No. 1459) authorizes mutual building and loan societies such as the herein defendant, to deduct the amount of the premium from the loan, nevertheless, Act No. 3291, amending Act No. 2655 (Usury Law) provides that the premium which such societies may collect "shall in no case exceed two per centum per annum, computed in annual payments from the date when the loan was made until the day when the obligation is totally extinguished," maintaining that the phrase "computado por anualidades" contained in the quotation, of which the official English version is "Computed in annual payments" means that the payment of such premiums cannot be for more than one year.

The Court of First Instance of Rizal that tried the case held said deduction of P1,050 made by the defendant from the loan given to the plaintiff, to be perfectly legal and absolved the defendant.

The plaintiff impugns said judgment, basing his appeal on two grounds, which constitute the errors as committed by the lower court, to wit: (a) In holding that Act No. 3291 authorizes mutual building and loan societies to collect the total amount of the premiums in advance; and therefore, (b) in not ordering the defendant to pay plaintiff the P900 claimed.

Section 181 of the Corporation Act (No. 1459), provides as follows:

"The moneys in the hands of the treasurer of the corporation and such sums as may be borrowed by the corporation for the purpose shall be loaned out in open meeting to the stockholders who shall pay the highest premium for such loan, or said moneys may be loaned at such premium as may be fixed from time to time by the board of directors. The premium may be deducted from the amount of the loan or such proportion may be so deducted as may be prescribed in the by-laws. Where only a part of the premium is deducted the balance thereof must be paid to the corporation in such installments as the by-laws shall determine: Provided, however, That the number of installments into which the premium is divided shall be uniform for all loans made by the corporation, and that the time and manner of payment of such installments shall be prescribed in the by-laws."

This section, as may be seen, allows two ways of collecting the premiums: The first by deducting them from the amount of the loan ("the premium may be deducted from the amount of the loan"), and the second, by deducting the proportion prescribed by the by-laws of the association ("or such proportion may be so deducted as may be prescribed in the by-laws"). It was so held by this court in the case of *Lopez and Javelona vs. El Hogar Filipino* (47 Phil., 249.)

Section 1 of Act No. 3291, amending section 2 of Act No. 2655 (Usury Law), in its pertinent part provides:

"Mutual building and loan societies incorporated under Act Numbered Fourteen hundred and fifty-nine, known as the 'Corporation Act' may, however, charge in addition a premium the percentage of which shall be fixed from time to time by their boards of directors but shall in no case exceed two per centum per annum, computed in annual payments from the date when the loan was made until the day when the obligation is totally extinguished."

It is to be noted that of the two ways of collecting the premiums provided in the Corporation Law, Act No. 1459, Act No. 3291 deals only with the second, that is, the case of charging "a premium the percentage of which shall be fixed from time to time by their boards of directors". This last law does not prohibit the first way of collecting the premiums, and therefore, the power conferred by the Corporation Law on such societies of deducting them totally from the amount of the loan, subsists. The only thing in Act No. 3291 that may affect said first way of collecting the premiums is that referring to the rate of the latter, which, according to the last law, must not exceed two per centum per annum.

The phrase "computado por anualidades" or its translation "computed in annual payments" does not mean that premiums cannot be collected for more than one year. It will be noted that the law does not say "collected" or "paid," but "computed." What such expression means is that "computed in annual payments from the date when the loan was made until the day when the obligation is totally extinguished," the rate per cent collected as premium, "shall in no case exceed two per centum per annum." Moreover, said phrase "computado por anualidades" ("Computed in annual payments") has not, and cannot have the effect of prohibiting or abrogating the first way referred to of collecting the premium authorized by the Corporation Law, and is not alluded to either directly or indirectly, expressly or by implication in any part of section 1 of Act No. 3291, except with respect to the limit of the amount of the premium.

Consequently, so long as the premium keeps within these specified bounds, the law still sanctions its total deduction from the loan unless the same is prohibited by the by-laws of the society.

The rate of the premiums in question does not exceed 2 per centum per annum (it is 1 1/2 per centum per annum), and the by-laws of the defendant society permit its total deduction from the loan, according to the stipulation of facts submitted by the parties. Therefore, the defendant acted with the authority conferred on it by the law and its by-laws in deducting the P900 from the loan granted to plaintiff.

The judgment appealed from is affirmed, with the costs against the appellant. So ordered.

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

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