

F. M. YAP TICO & CO., LTD., PLAINTIFF AND APPELLEE, VS. SEVERO ALEJANO, DEFENDANT AND APPELLANT.*G.R. No. 29660. January 23, 1929*

Ponente: OSTRAND, J.

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The plaintiff is a commercial corporation with its principal office in Iloilo, and the defendant is a sugar planter, residing in the municipality of Ilog, Occidental Negros. In March, 1922, the parties entered into a contract by which the defendant bound himself to consign his sugar to the plaintiff in return for advances of money made on current account. On December 9, 1926, the plaintiff brought the present action to recover the following sums from the defendant upon said current account, namely, (1) P234,596.71, the balance of the current account with interest at 10 per cent per annum; (2) P46,919.34, as attorney's fees; (3) the sum of P1 for each picul of sugar delivered by the defendant to persons other than the plaintiff, and (4) the costs of the action. The defendant in his answer pleaded the general issue and set up four special defenses: (1) That the plaintiff had illegally charged the defendant with compound interest amounting to P27,502.67; (2) that the plaintiff had violated the contract by failing to credit the defendant with the true market price of the sugar consigned to said plaintiff, to the prejudice of the defendant in the sum of P10,734.44; (3) that the plaintiff had charged the defendant with the sum of P30,000 representing the value of three promissory notes which were without consideration and were drawn by the defendant in favor of one Enrique Echauz at the instance of the plaintiff; and (4) that the plaintiff charged the defendant with the sum of P5,514.10, representing commissions at the rate of 1 per cent on sugar consigned to the plaintiff and not sold by said plaintiff to other parties. The defendant also presented a counterclaim for the sum of P50,000 as damages for the failure of the plaintiff to advance sufficient money to the defendant for the production of the latter's sugar.

Upon trial, judgment was rendered in favor of the plaintiff ordering the defendant to pay to the plaintiff the sum of P231,215.57, which represented the amount due the latter with simple interest until December 8, 1926, and interest at per cent per annum on P167,203.24 from December 9, 16, until paid. The court further ordered the defendant pay to the plaintiff the sum of P11,560.77, as attorney's 3, and the sum of P375, representing one-half of the 3 of the public accountant who audited the accounts between the parties. The plaintiff was absolved from the defendant's counterclaim. From that judgment, only the defendant appealed and presents the following assignments error:

(1) The lower court erred in overruling the third special defense of the defendant and in sentencing him to pay the amount of the three promissory notes for P10,000 each, with interest at the rate of 10 per cent per annum, issued in favor of Enrique Echauz, and in not declaring said promissory notes null and void for lack of consideration.

(2) That the court below erred in overruling the fourth special defense of the defendant referring to the so-called mission charged against the defendant at the rate of 1 1/2 per cent of the value of the sugar sold by him to the plaintiff itself and in ordering him to pay to said plaintiff such commission the sum of P5,460.89, with interest.

(3) The court erred in ordering the defendant to pay the plaintiff the sum of P11,560.77 for attorney's fees.

In regard to the first assignment of error, the appellant ends that there was no consideration for the three promissory notes for P10,000 each, executed in favor of Enrique Echauz; that only Echauz and the plaintiff were benefited by the transaction which gave rise to the execution of said notes; and that they were signed by the defendant's attorney in fact, Gregorio Cordova, through coercion on the part of the plaintiff's manager.

It appears that prior to the month of March, 1922, the defendant owed the plaintiff the sum of P400,000; that at time both the plaintiff and the defendant were in financial straits and that in order to relieve the situation, assistance was sought from the Philippine National Bank, and, through the intervention of Enrique Echauz, P300,000 of the plaintiff's credits against Echauz and the defendant were transferred to the bank; that out of the P300,000, the sum of P200,000 was credited to the account of Echauz and only P100,000 to that of the plaintiff; that thereafter Echauz insisted on compensation in the sum of P30,000 for his services in securing the transfer of the credits; and that in order to avoid 'the stoppage of advances by the plaintiff to the defendant, the latter, through his attorney in fact, executed the three promissory notes to cover Echauz' claim for compensation. Echauz endorsed the note to the plaintiff, who charged their amount against the defendant on the latter's current account.

In view of the fact that Echauz was given the benefit of two-thirds of the credits transferred to the bank, the compensation demanded by him for accomplishing the transfer seems rather large, but that the defendant was substantially benefited by the transfer of a part of the plaintiff's credit to the bank can hardly be successfully disputed. His attorney-in-fact, Cordova, was a lawyer by profession, and it does not seem probable that he would have signed the notes unless the defendant had been benefited by the services of Echauz. In these circumstances we cannot hold that the notes were without consideration and therefore invalid. The plaintiff must now be considered a holder of the notes in due course for value and is entitled to collect their amount from their maker.

Under the second assignment of error the defendant argues that inasmuch as the plaintiff purchased outright the defendant's sugar and did not act as a commission merchant in connection with the sale, no commission should have been charged. The plaintiff, on the other hand, contends that the collection of the so-called commission is authorized by the contract entered into by the parties on March 18, 1922. The pertinent provisions of the contract are very poorly drawn and are somewhat obscure, but it is fairly clear that the so-called "commission" is not properly speaking a commission but is intended to cover deterioration or loss in polarization, etc., and that it may be collected whether the sale is made direct to the plaintiff or not. This assignment of error is therefore overruled.

The third assignment of error deals with the allowance of attorney's fees. The contract, hereinbefore referred to, provides that in the event it should be necessary for the plaintiff to resort to the courts for the enforcement of the obligations of the defendant under the contract, the said defendant should pay 20 per cent of his debt to the plaintiff as attorney's fees. The court below reduced the amount of the fees to 5 per cent of the debt. This reduction seems fair, and we find no sufficient reason for further reduction. The defendant has failed to meet his obligations under the aforesaid contract; it thus became necessary for the plaintiff corporation to bring the matter before the courts, and it may therefore enforce the provisions for attorney's fees within reasonable limits. In this jurisdiction there is no difference between a penalty and liquidated damages as far as the legal results are concerned, and contractual provisions for attorney's fees, if not unconscionable, are held valid.

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

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

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