

CU UNJIENG E HIJOS, PLAINTIFF AND APPELLEE, VS. THE MABALACAT SUGAR CO. ET AL., DEFENDANTS. THE MABALACAT SUGAR CO., APPELLANT.

G.R. No. 32644. October 04, 1930

Ponente: STREET, J.

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STREET, J.:

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This action was instituted in the Court of First Instance of Pampanga by Cu Unjieng e Hijos, for the purpose of recovering from the Mabalacat Sugar Company an indebtedness amounting to more than P163,000, with interest, and to foreclose a mortgage given by the debtor to secure the same, as well as to recover stipulated attorney's fee and the sum of P1,206, paid by the plaintiff for insurance upon the mortgaged property, with incidental relief. In the complaint Siuliong & Co., Inc., was joined as defendant, as a surety of the Mabalacat Sugar Company, and as having a third mortgage on the mortgaged property. The Philippine National Bank was also joined by reason of its interest as second mortgagee of the land covered by the mortgage to the plaintiff. After the cause had been brought to issue by the answers of the several defendants, the cause was heard and judgment rendered, the dispositive portion of the decision being as follows:

"Tor las consideraciones expuestas, el Juzgado condena a The Mabalacat Sugar Company a pagar a la demandante la suma de P163,534.73, con sus intereses de 12 por ciento al aho, compuestos mensualmente desde el 1.º de maya de 1929. Tambien se le condena a pagar a dicha demandante la suma de P2,412 ppr las primas de seguros abonadas por esta, con sus intereses de 12 por ciento al ano, compuestos tambien mensualmente desde el 15 de mayo de 1928, mas la de P7,500 por honorarios de abogados y las costas del juieio. Y si esta deuda no se pagare dentro del plazo de tres mieses, se ejecutaran los bienes hipotecados de acuerdo con la ley.

"Si del producto de la venta hubiese algun remanente, este se destinara al pago del crMito del Banco Nacional, o sea de P32,704.69, con sus intereses de 9 poir ciento al ano desde el 7 de junio de 1929, sin perjuicio de la orden de ejecueidn que pudiera expedirse en el asunto No. 26435 del Juzgado de Primera Instancia de Manila.

"Se condena ademas a The Mabalacat Sugar Company al pago de la suma de P3,205.78 reclamada por Siuliong & Co., con sus intereses de 9 por ciento al ano desde el 29 de julio de 1926 hasta su completo pago, ordenandola quo rinda cuentas del azucar por ella producido y pague la comisi6n correspondiente bajo la base de 5 por ciento de su valor, descontandose, desde luego, las cantidades ya pagadas.

"Se absuelve de la demanda de Cu Unjieng,e Hijos a Siuliong & Co., Inc."

From this judgment the defendant, the Mabalacat Sugar Company, appealed.

The first point assigned as error has relation to the question whether the action was prematurely started. In this connection we note that the mortgage executed by the Mabalacat Sugar Company contains, in paragraph 5, a provision to the effect that non-compliance on the part of the mortgage debtor with any of the obligations assumed in virtue of this contract will cause the entire debt to become due and give occasion for the foreclosure of the mortgage. The debtor party failed to comply with the obligation, imposed upon it in the mortgage, to pay the mortgage debt in the stipulated installments at the time specified in the contract. It results that the creditor was justified in treating the entire mortgage debt as having been accelerated by such failure of the debtor in paying the installments.

It appears, however, that on or about October 20, 1928, the mortgage creditor, Cu Unjieng e Hijos, agreed to extend the time for payment of the mortgage indebtedness until June 30, 1929, with certain interim payments to be made upon specified dates prior to the contemplated final liquidation of the whole indebtedness. But the debtor party failed to make the interim payments due on February 25, 1929, March 25, 1929, and April 25, 1929, and failed altogether to pay the balance due, according to the terms of this extension, on June 30, 1929. Notwithstanding the failure of the debtor to comply with the terms of this extension, it is insisted for the appellant that this agreement for the extension of the time of payment had the effect of abrogating the stipulation of the original contract with respect to the acceleration of the maturity of the debt by non-compliance with the terms of the mortgage. As the trial court pointed out, this contention is untenable. The agreement to extend the time of payment was voluntary and without consideration so far as the creditor is concerned ; and the failure of the debtor to comply with the terms of the extension justified the creditor in treating it as of no effect. The first error is therefore without merit.

The second error is directed to the propriety of the interest charges made by the plaintiff in estimating the amount of the indebtedness. In this. connection we note that under the second clause of the mortgage, interest should be calculated upon the indebtedness at the rate of 12 per cent per annum. In the same clause, but in a separate paragraph, there is another provision with respect to the payment of interest expressed in Spanish in the following words:

"Los intereses seran pagados mensualmente a fin de cada mes, computados teniendo en cuenta el capital del prStamo aiin no pagado."

Translated into English this provision reads substantially as follows:

"Interest, to be computed upon the still unpaid capital of the loan, shall be paid monthly, at the end of each month."

It is well settled that, under article 1109 of the Civil Code, as well as under section 5 of the Usury Law (Act No. 2655), the parties may stipulate that interest shall be compounded; and rests for the computation of compound interest can certainly be made monthly, as well as quarterly, semiannually, or annually. But in the absence of express stipulation for the accumulation of compound interest, no interest can be collected upon interest until the debt is judicially claimed, and then the rate at which interest upon accrued interest must be computed is fixed at 6 per cent per annum.

In the present case, however, the language which we have quoted above does not justify the charging of interest upon interest, so far as interest on the capital is concerned. The provision quoted merely requires the debt or to pay interest monthly at the end of each month, such interest to be computed upon the capital of the loan not already paid. Clearly this provision does not justify the charging of compound interest upon the interest accruing upon the capital monthly. It is true that in subsections (a), (b) and (c) of article IV of the mortgage, it is stipulated that the interest can be thus computed upon sums which the creditor would have to pay out (a) to maintain

insurance upon the mortgaged property, (6) to pay the land tax upon the same property, and (c) upon disbursements that might be made by the mortgagee to maintain the property in good condition. But the chief thing is that interest cannot be thus accumulated on unpaid interest accruing upon the capital of the debt.

The trial court was of the opinion that interest could be so charged, because of the Exhibit 1 of the Mabalacat Sugar Company, which the court considered as an interpretation by the parties to the contract and a recognition by the debtor of the propriety of compounding the interest earned by the capital. But the exhibit referred to is merely a receipt showing that the sum of P256.28 was, on March 19, 1928, paid by the debtor to the plaintiff as interest upon interest. But where interest is improperly charged, at an unlawful rate, the mere voluntary payment of it to the creditor by the debtor is not binding. Such payment, in the case before us, was usurious, being in excess of 12 per cent which is allowed to be charged, under section 2 of the Usury Law, when a debt is secured by mortgage upon real property. The Exhibit 1 therefore adds no support to the contention of the plaintiff that interest upon interest can be accumulated in the manner adopted by the creditor in this case. The point here ruled is in exact conformity with the decision of this court in *Bachrach Garage and Taxicab Co. vs. Golingo* (39 Phil., 912), where this court held that interest cannot be allowed in the absence of stipulation, or in default thereof, except when the debt is judicially claimed; and when the debt is judicially claimed, the interest upon the interest can only be computed at the rate of 6 per cent per annum.

It results that the appellant's second assignment of error is well taken, and the compound interest must be eliminated from the judgment. With respect to the amount improperly charged, we accept the estimate submitted by the president and manager of the Mabalacat Sugar Company, who says that the amount improperly included in the computation made by the plaintiff's bookkeeper is P879.84, in addition to the amount of P256.28 covered by Exhibit 1 of the Mabalacat Sugar Company. But the plaintiff creditor had the right to charge interest, in the manner adopted by it, upon insurance premiums which it had paid out; and if any discrepancy of importance is discoverable by the plaintiff in the result here reached, it will be at liberty to submit a revised computation in this court, upon motion for reconsideration, wherein interest shall be computed in accordance with this opinion, that is to say, that no accumulation of interest will be permitted at monthly intervals, as regards the capital of the debt, but such unpaid interest shall draw interest at the rate of 6 per cent from the date of the institution of the action.

In the third assignment of error the appellant complains, as excessive, of the attorney's fees allowed by the court in accordance with stipulation in the mortgage. The allowance made on the principal debt was around 4 per cent, and about the same upon the fee allowed to the bank. Under the circumstances we think the debtor has no just cause for complaint upon this score.

The fourth assignment of error complains of the failure of the trial court to permit an amendment to be filed by the debtor to its answer, the application therefor having been made on the day when the cause had been set for trial, with notice that the period was non-extendible. The point was a matter in the discretion of the court, and no abuse of discretion is shown.

From what has been stated, it follows that the appealed judgment must be modified by deducting the sum of P1,136.12 from the principal debt, so that the amount of said indebtedness shall be P162,398.61, with interest at 12 per cent per annum, from May 1, 1929. In other respects the judgment will be affirmed, and it is so ordered, with costs against the appellant.

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

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