

SALVADOR RIVERO, PLAINTIFF AND APPELLEE, VS. INOCENTE RABE, DEFENDANT AND APPELLANT.

G.R. No. 33320. October 04, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

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Inocente Rabe appeals to this court from the decision of the justice of the peace of Vigan, capital of Ilocos Sur, acting as Judge of First Instance, the dispositive part of which reads as follows:

"Wherefore, the administrator of the defendant's estate must pay the administratrix Teodorica Favis one thousand pesos (P1,000), with interest thereon at ten per centum (10%) per annum from the 9th of April, 1919, less three hundred pesos paid on account; one hundred and fifty pesos (P150) as attorney's fee due to plaintiff's counsel, and the costs.

"The defendant administrator, Domingo Ragaza, is hereby granted ninety-days from this date to pay or deposit in the office of the clerk of this Court of First Instance all the amounts mentioned above, and upon failure so to do, this court shall order the sale of the property described in the complaint, in accordance with the law. So ordered."

In support of his appeal, the appellant assigns the following alleged errors as committed by the trial court, to wit:

"1. The lower court erred in ordering defendant to pay ten per cent interest, instead of six per cent per annum to the plaintiff, in accordance with the law and the agreement.

"2. The trial court erred in ordering the defendant to pay the plaintiff one hundred and fifty pesos as attorney's fee, and to defray the costs.

"3. The trial court erred in denying the motion for a new trial."

The following relevant facts are required to decide all the questions of fact and of law raised in this appeal:

On the 9th of April, 1919, Inocente Rabe obtained a thousand-peso loan from the late Salvador Rivero, payable within the year, with interest at the rate fixed by Act No. 2655, giving by way of security four parcels of land belonging to himself, two of them in the barrio of Cabuloan, municipality of Santa Catalina, one in the barrio of Nalasin, and the other in Bantaoay, municipality of San Vicente, Ilocos Sur, all of them being registered pursuant to the Mortgage Law in the register of deeds of said province. Inocente Rabe, the defendant, offered to pay 10 per cent interest, and his heirs after his death still held out the offer, to Salvador Rivero, the plaintiff, and after his death, to his widow, but it was rejected and a demand was made for 12 per centum.

The first question to decide, according to the first assignment of error, is whether, under the mortgage deed, the defendant-appellant is bound to pay 6 per cent annual interest, or 10 per centum as the trial court held.

The appellant contends that as the mortgage contract does not specify the rate of interest to be paid on the loan, he is not obliged to pay more than 6 per centum a year according to section 1, Act No. 2655, which reads:

"Section 1. The rate of interest for the loan or forbearance of any money, goods, or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall be six per centum per annum."

On the other hand the plaintiff-appellee contends that according to the terms of the mortgage deed, the defendant-appellant must pay 12 per centum a year, following section 2 of said Act No. 2655:

"Sec. 2. No person or corporation shall directly or indirectly take or receive in money or other property, real or personal, a higher rate or greater sum or value for the loan or forbearance of money, goods, or credits, where such loan or forbearance is secured in whole or in part by a mortgage upon real estate the title to which is duly registered, or by any document conveying such real estate or an interest therein, than twelve per centum per annum. * * *"

The mortgage deed, Exhibit A, upon which this suit was brought, states the following with regard to interest:

* * * Provided, however, that if I, Inocente Rabe, should pay or cause to be duly paid to Salvador Rivero, or his representative, heirs or privies, the aforesaid amount of one thousand pesos (P1,000), Philippine currency, together with interest at the rate fixed by Act No. 2655 approved by the Government on the 24th day of February, 1916, payable each semester in advance, within one year from the date hereof, this deed shall become null and void; otherwise it shall continue in full force and effect, subject to compulsory fulfillment in the manner provided by law." Now then, which among the several rates of interest fixed in Act No. 2655 did the parties agree upon? Article 1286 of the Civil Code lays down the following rule in the interpretation of contracts:

"Art. 1286. Words which have different meanings shall be understood in that which may be most in accordance with the nature and object of the contract."

The contract between the parties was a loan secured by a mortgage of real estate, the ownership whereof had been duly registered; therefore, when in the deed, the defendant-appellant stated that the loan should earn the interest fixed by Act No. 2655, he could not have had in mind anything else than section 2, of said Act No. 2655, quoted above, for that alone fixed the maximum interest chargeable on loans secured by a mortgage, namely, 12 per cent per annum. The question, then, to be determined is, what is the rate agreed upon by the parties, which is not to exceed 12 per cent per annum?

Section 1 of the law under discussion, quoted above, fixes 6 per centum as the rate of interest to be charged when the rate is not expressly stipulated. Six per cent per annum certainly is favorable to the defendant-appellant, who maintains that is the rate he must pay; but article 1288 of the Civil Code which also enunciates a rule for the interpretation of contracts, in case of ambiguity or obscurity in the terms used, provides;

"Art. 1288. Obscure terms of a contract shall not be so construed as to favor the party who occasioned the obscurity."

This rule has been applied by this court in *H. E. Heacock Co. vs. Macondray & Co.* (42 Phil., 205), and in *Rubio vs. Villanueva* (45 Phil., 842).

If, following the rule and the cases just cited, any ambiguity or obscurity in a contract must be construed against the party causing it, and inasmuch as it is the defendant-appellant who executed the contract in question, and who is therefore responsible for the ambiguity respecting the rate of interest, said ambiguity must be construed against

him.

Article 1282 of the Civil Code provides as follows:

"Art. 1282. In order to judge as to the intention of the contracting parties, attention must be paid principally to their conduct at the time of making the contract and subsequently thereto."

The defendant Inocente Rabe, and his heirs after his death, offered to pay the plaintiff Salvador Rivero, and his widow after his death, 10 per cent interest. This subsequent act also indicates that the rate of interest agreed upon by and between the parties is that fixed in section 2, Act No. 2655, quoted above.

As to the second assignment of error, the amount of P150 as attorney's fee adjudged by the trial court in accordance with the contract, is reasonable and just, considering the amount involved in the litigation and the services of counsel in both instances.

By virtue whereof, the plaintiff-appellee having taken no appeal, the judgment rendered by the court below is hereby affirmed in all other respects, with costs against the appellant. So ordered.

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

DISSENTING

Street and Ostrand, JJ.:

We are of the opinion that the rate of interest to be allowed in this case should be 6 per centum, in accordance with section 1 of Act No. 2655. The rate of 12 per cent, which the court supposes to have been intended by the contracting parties, is not, in our opinion, a rate "fixed by Act No. 2655," because that rate is merely a maximum rate beyond which the parties are not permitted to go in interest bearing contracts secured by mortgages upon real property. The parties to such a contract can fix any rate lower than 12 per cent, but not more. If the agreement had been to pay the maximum rate of interest permissible under Act No. 2655, then the debtor would have been bound to pay at the rate of 12 per cent.

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