

THE INTERNATIONAL BANKING CORPORATION, PLAINTIFF AND APPELLANT, VS. FRANCISCO MARTINEZ ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 3472. February 29, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

This case and case No. 3471[1] between the same parties were tried at the same time in the court below, and all the evidence received was made applicable to each case. This case, No. 3472, was brought to recover against the defendants, Francisco Martinez, and his guardian, Vicente Ilustre, a judgment for P159,007.81, with interest at the rate of 8 per cent per annum from the presentation of the complaint on February 25, 1905, and for an order directing the sale of the real property described in the complaint to satisfy the amount of such judgment. Judgment was rendered in the court below denying to the plaintiff any relief, and judgment was given against the plaintiff on the defendant's counterclaim for P29,281.93. From that judgment the plaintiff has appealed.

The answer and counterclaim in this case are substantially the same as the answer and counterclaim in case No. 3471. In the decision in that case which is filed herewith we have considered and disposed of such defenses, and we hold in this case as we did in the other case, that the evidence is not sufficient to establish any of the defenses or the counterclaim.

That the defendant Martinez, at the time the action was commenced, was indebted to the plaintiff in at least the sum of P159,607.81 was fully established by the evidence. It remains, therefore, to consider only the nature of the contract upon which this action was brought. That contract is as follows:

"I, Don Francisco Martinez y Garcia, resident of Manila, Province of Manila, Philippine Islands, of age, married, merchant, to all whom these presents may concern, cause to appear:

"That whereas I have received and am debtor at the present time to the International Banking Corporation for the amount of different loans or advances which the said bank has granted to me, with interest at the rate of 8 per cent per annum, to wit: The promissory notes which I have executed on certain dates and which are now in the possession of the bank, amounting to the sum of one hundred and ten thousand pesos, Mexican currency (\$110,000); a loan of thirty thousand pesos (\$30,000), secured by the steamers Don Francisco and Gernana; the amount of a mortgage on the houses in corner of Calles Barcelona and Jaboneros, and in corner of Calles Elcano and Caballeros, both in the barrio of Binondo, within the judicial district of same name, in the sum of thirteen thousand dollars, United States currency, which sum the bank has paid to the company 'El Varadero de Manila' and the sum of nine thousand (\$9,000), the amount covered by public instrument No. 814, of November 20, 1902.

"I have agreed with the said International Banking Corporation, for the payment of said obligations, and in order to expedite the partition of the property of the conjugal partnership of Martinez Ilustre, with my son, Don Pedro Martinez, to the following:

"First. I bind myself to sell, with right of repurchase, to the International Banking Corporation, all the houses which have been adjudicated to me in said partition, the list of which is the following:

* * * * *

"Second. The bank, on its part, binds itself to sell absolutely to my son, Don Pedro Martinez, all the houses, half of which was previously sold and mortgaged as my own property, and to cancel the encumbrances thereon, and which it is my duty to extinguish, delivering them free of such encumbrances to my son, Don Pedro Martinez;

"Third. I also bind myself to sell to the said bank the steamer Germana, releasing the security previously given to the bank upon the half of the steamer Don Francisco which, in her turn, shall be completely released and delivered by the bank to my son, Don Pedro Martinez;

"Fourth. I also bind myself to sell to the bank my interest in the properties situated in the pueblo of Balayan, Province of Batangas, and belonging to the conjugal partnership of Martinez Ilustre, up to the full satisfaction of the liabilities which I have or may have contracted with said bank, and to this end I authorize the bank to intervene in my name in the said partition and to carry out the same extrajudicially with my said son, Pedro Martinez, in a just and equitable manner, including therein whatever money, rights, assets, or shares belonging to me, which sale shall be understood to be for the price that may result from the partition;

"Fifth. The International Bank binds itself to place in current account at my disposal any balance of money which may stand to my credit out of the foregoing obligations, according to the sale prices as agreed upon, or as may be agreed upon for said sales, all of which shall be carried out with the right of repurchase within the period of six months;

"Sixth. For the effects of the repurchase, the bank binds itself to accept, at its maturity, the sum of 4,000 pesos monthly, with which I shall gradually refund the purchase price of said sales during the term stipulated for said repurchase, or during the extensions granted in their respective cases;

"Seventh. The bank shall place at my disposal in current account, the balance of the amounts of said sales, as soon as the titles have been delivered to the bank and properly registered, but not before;

"Eighth. It shall be the duty of the bank to extend every six months the term for the repurchase granted in each case, should the monthly installments of 4,000 pesos, agreed upon, be faithfully paid by me, in order to refund and satisfy the amounts of the same;

"Ninth. For the effects of the above-mentioned payment, I hereby transfer and convey to the bank the right of usufruct which I possess on the third part corresponding to the property assigned to my son, the whole amount of which will be devoted to the payment of said obligation;

"Tenth. If for any reason I should not make the monthly payments of 4,000 pesos, and on that account, at maturity of the repurchase, the same should be held to have expired, and without the right of an extension, to which I would otherwise be entitled, the bank shall refund in case, the sale be perfected, the partial payment received;

"Eleventh. I bind myself to execute the deeds of cancellation, transfer, adjudication, and as many as may be necessary, to comply with and carry into effect what has been above stated and agreed to."

It appears from the evidence presented by the defendants that on the 15th day of June, 1903, when this document was executed, the bank already had acquired an interest in almost all the property described therein. At the time it acquired such interest, the defendant Martinez owned one half thereof, and his son, Pedro, the other half. On the 13th of June, 1903, Francisco Martinez and his son agreed upon a division of the property, which partition was approved by the Court of First Instance of Manila. It is evident that this document was executed for the purpose,

among others, of making the claim which the bank had to an undivided half of the property of Francisco Martinez, a claim upon all the property which fell to Francisco Martinez in the partition.

The plaintiff considered that the document was in effect a mortgage upon the real estate described therein, and asked to have such real estate sold to satisfy the debts secured thereby; that is, the amount due the bank aforesaid. We do not agree with this construction of the instrument. That it is not a mortgage is very clear. It is a promise to sell real estate upon certain terms, and contemplates a subsequent contract of sale which should contain the terms stated in this document. It was evidently intended that whenever that final contract of sale was made it should contain a clause giving to Francisco Martinez the right to repurchase the property within six months, not from the date of the document in question that is to say, the 15th of June, 1903-but from the date when the final contract of sale with the right to repurchase was executed, and the obligation on the part of Martinez to pay 4,000 a month did not arise on the 15th day of June, 1903, but it was intended that it should arise whenever the final contract of sale with the right of repurchase was made. That this was the understanding of the bank is clearly shown, as claimed by the defendants, in the document of the 12th of February, 1904, which was executed by the plaintiff and by the defendant Francisco Martinez. That document was void because at that time Francisco Martinez was under guardianship, but it clearly indicates the view which the bank had of the nature of the contract of the 15th of June, 1903. To our minds, it states substantially the real obligations which Martinez incurred by this contract, obligations which he can now through his guardian be compelled to perform. The fact that the plaintiff has taken an erroneous view of the nature of this contract can not deprive it of the right to such relief as the facts proven show it is entitled to. The contract is set out in the complaint and it is not suggested that that complaint does not contain facts sufficient to constitute a good cause of action for the specific performance of the contract, except that it is claimed that such complaint is deficient because there is no allegation of any demand on Martinez for the execution of the contract of sale. Being under guardianship, it is apparent that a demand would have been unavailing. No demand was therefore necessary. The fact that the plaintiff did not specifically ask for the relief to which we hold it is entitled is not material. (Sec. 126, Code of Civil Procedure.)

Of the debt set out in the complaint in this case, no part thereof has been paid, but the evidence shows that the plaintiff has been in possession of certain real property described in the complaint and has received rent therefor.

We do not understand that it was admitted at the trial that the plaintiff took possession of this property after the guardian was appointed. There is evidence tending to show that such possession was taken before that date. The net amount collected should be applied in reduction of the sum of P159,607.81 which, according to the evidence, the defendants owe to the plaintiff. When the case is remanded, the defendant should have an opportunity to question the expenses claimed to have been met by the plaintiff in connection with its possession of these buildings, which it has deducted from the gross amount received.

After a consideration of the whole case, we hold that the plaintiff is entitled to a judgment in the court below, with costs, declaring that Francisco Martinez is justly indebted to it in the sum of P159,007.81 less such sum as that court may decide should be credited to Martinez for the net receipts from the real estate in question in this case, with interest on the balance from February 25, 1905, at 8 per cent per annum; and ordering that Francisco Martinez, and Vicente Ilustre as guardian of Francisco Martinez, execute and deliver to the plaintiff, within a time to be fixed by the court, such a contract as is contemplated by the contract of June 15, 1903, which should be substantially in the form of the instrument above referred to of date February 12, 1904, omitting therefrom, however, the steamer Germana. The judgment should contain a provision that whatever may be realized from the sale of the Germana under the judgment in case No. 3471 shall be considered as a partial payment when realized upon the amount found due in this action.

The judgment of the court below is reversed, and the case is remanded with instructions to that court to enter

judgment for the plaintiff in accordance with the views hereinbefore expressed. No costs will be allowed to either party in this court So ordered.,

Arellano, C.J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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