

FERNANDO CASTRO, PLAINTIFF AND APPELLANT, VS. SATURNINO BUENAFE ET ALS, DEFENDANTS AND APPELLEES.

G. R. No. 34818. December 16, 1931

Ponente: OSTRAND, J.

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OSTRAND, J.:

This action was brought in the Court of First Instance of Capiz for the collection of the amount of P4,000.00 by virtue of a promissory note signed by Saturnino Buenafe, Aniano Cunada, Abundio Buenafe, and Nicolas Borci. Abundio died on May 18, 1927, and the present action was brought on July 20, 1928, against his wife, Rosario Alcantara, as administratrix of his estate, and also against Saturnino Buenafe, Nicolas Borci, and Ani ano Cunada.

On April 26, 1921, the plaintiff, Fernando Castro, agreed to sell his Dodge-Brothers automobile to Saturnino Buenaffe, Aniano Cunada, Nicolas Borci, and Abundio Buenafe. The buyers executed a promissory note, secured by a chattel mortgage, in favor of Fernando Castro for P4,000.00, payable on September 50, 1921. At the request of the buyers, Fernando Castro indorsed the license of the said automobile in favor of Paz Buenafe, sister of Abundio, for fear that it would be attached by the creditors of Abundio, if the same was registered in his name. The promissory note became due, and demand for payment was repeatedly made both by Fernando and by his mother, but no payment against the account has been made. This gave rise to the present complaint.

The defendants denied generally and specifically each and every allegation of the complaint, and set forth by way of special defense (a) that the P4,000 alleged in the complaint was the selling price of an automobile in a tentative sale between the parties which was not realized; and (b) that Rosario Alcantara, in her capacity as administratrix of the estate of her husband, Abundio, should not be a party defendant in this case but that any claim against the estate of Abundio Buenafe should have been filed in the case of the intestate proceedings of the said deceased.

Upon trial the court below dismissed the complaint with costs against plaintiff. From this judgment the plaintiff appealed to this court.

We do not believe that the promissory note has ever been paid either in part or in full, nor do we believe that there has ever been an arrangement between the parties for the return of the automobile, because in either case, both the promissory note and the chattel mortgage should have been cancelled. We are of the opinion and so hold that the plaintiff is entitled to the collection of the amount of the promissory note.

However, Rosario Alcantara, administratrix of the estate of her husband, Abundio Buenafe, should not have been included as a party defendant in this case, as any claim against the estate of her husband should have been presented in the intestate proceedings of the said deceased. The case must therefore be dismissed with respect to her.

In regard to the other three defendants, the appealed judgment is reversed, and it is hereby ordered that they jointly and severally pay to the plaintiff the sum of P4,000.00, with legal interest from July 23, 1928, until paid. No costs will be allowed.

Ten days after the promulgation of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

It is so ordered.

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

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