

**C. N. HODGES, PLAINTIFF AND APPELLANT, VS. SALVACION LOCSIN ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 37870. October 24, 1933*

Ponente: IMPERIAL, J.

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The plaintiff herein brought this action against the defendants to recover from them the amount of the promissory note executed by them jointly and severally on December 25, 1930, together with interest thereon, and the costs.

The aforesaid plaintiff appealed from the judgment rendered by the trial court absolving the defendants, with the costs, on the ground that the action was premature, inasmuch as the promissory note in question had not yet fallen due.

On October 21, 1930, the plaintiff herein and the defendant spouses, Clemente M. Zulueta and Salvacion Locsin de Zulueta, executed Exhibit 5 by virtue of which the former sold to the latter lot. No. 155 of the cadastral survey of Iloilo, together with the improvements thereon consisting in a house of strong materials, for the sum of P26,000. This amount was to be paid in ten (10) years, that is, on or before October 20, 1940, with interest thereon at the rate of 10 per cent per annum. The parties further stipulated a certain additional sum as a penalty. On October 21, 1930, Salvacion Locsin de Zulueta paid the sum of P2,000 (Exhibit 1) on account of the purchase price and of the interest thereon. On December 3, 1930, she paid the sum of P200 as premium on a fire insurance policy on the house, pursuant to the provision of the contract which specified that it should be paid by the purchaser thereof. On December 30, 1930, the same parties, that is, the plaintiff herein and the Zulueta spouses, executed Exhibit 6 by virtue of which they voluntarily and by mutual consent rescinded, cancelled and set aside the deed of sale (Exhibit 5) executed on October 21, 1930. On December 25, 1930, the defendants jointly and severally executed the promissory note Exhibit A in favor of the plaintiff, whereby they bound themselves to pay on or before December 25, 1935, the sum of P16,417.25 together with interest thereon at the rate of 12 per cent computable and payable annually. It was further agreed in this contract that upon failure to pay the interest on the date set therefor the obligation would become due and payable. The plaintiff herein bases his action on this clause, alleging that inasmuch as the defendants failed to pay the stipulated interest on or before December 25, 1931, the promissory note has fallen due and the full amount is demandable.

The defendants claim that they have paid the sum of P3,160 on account of the purchase price stipulated in the cancelled and rescinded contract of sale as evidenced by Exhibits 1, 2, 3 and 4, and that inasmuch as the aforesaid sale was rescinded, the defendant Zulueta and the plaintiff herein agreed that the amount in question would be applied to the payment of the interest due on the promissory note. This defense was admitted by the trial court and for this reason it held that the action was premature on the ground that the promissory note had not yet fallen due, and absolved the defendants from the complaint.

The plaintiff alleged that he did not enter into any agreement to that effect with the defendant Zulueta and that the only payments made by Salvacion Locsin de Zulueta on account of the deed of sale Exhibit 5 were those

evidenced by Exhibits 1 and 2 amounting to P2,200, inasmuch as Exhibits 3 and 4 refer to different transactions. He claimed that he was entitled to retain the amount of P2,200 under the eighth clause of the aforesaid deed of sale which provided that upon failure of the vendee to comply with the terms thereof, the contract would be rescinded and the partial payment made thereon would be forfeited to the vendor.

Even taking for granted that the only payments made by the defendant Salvacion Locsin de Zulueta on account of the deed of sale were those evidenced by Exhibits 1 and 2, amounting to P2,200, we cannot accept the plaintiff's claim that he is entitled to retain the amount in question on the ground that the eighth clause invoked by the plaintiff is applicable only in case the sale had been rescinded through non-compliance by the purchaser with the terms of the contract, which is not the case herein, inasmuch as the contract had been rescinded by mutual agreement of the parties. Neither can the plaintiff retain the P2,200 by virtue of the terms of the contract of rescission or cancellation on the ground that there is nothing therein conferring such right to him. The only stipulation made in the document in question was that the purchaser was bound to restore to the vendor the property which has been the subject matter of the contract of sale. In the absence of any stipulation regarding the effects of rescission, the general provisions of the Civil Code should govern and the things should be restored to their original status quo. As the purchaser, the defendant Salvacion Locsin de Zulueta should return the property and pay a reasonable rent for the use thereof during the two months and some days, which, at the rate of P200 a month, would amount to around P400. As the vendor, the plaintiff should return what he has received on account of the purchase price, together with legal interest thereon for one year. By making the computation in accordance with the above premises, it appears that the plaintiff should have delivered to the aforementioned purchaser the sum of P1,800 with legal interest thereon for one year. Moreover this amount should further be applied to take care of the greater part of the interest due on the promissory note for one year, that is until December 25, 1931.

Wherefore, we hereby hold that the right of action has been prematurely exercised by the plaintiff because the total amount of the promissory note has not yet fallen due inasmuch as the defendants had made payments which should have been applied to the interest which had fallen due and was demandable.

With the modification hereinbefore stated and with the understanding that the defendants have already paid the plaintiff the said sum of P1,800 with legal interest thereon for one year on account of the interest due on the promissory note, which is the subject matter of the complaint, the judgment appealed from is hereby affirmed in all other respects, with the costs of this suit against the appellant. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, and Hull, JJ., concur.

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