

SILVERIO F. GARCIA, PLAINTIFF AND APPELLEE, VS. JOSE A. DE ARAMBURO AND ELVIRA VEGUILLAS DE ARAMBURO, DEFENDANTS AND APPELLANTS.

G. R. No. 39425. February 10, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendants Jose A. de Aramburo and Elvira Veguillas de Aramburo from the judgment rendered by the Court of First Instance of Albay, the dispositive part of which reads as follows:

"Wherefore, the court incorporates in this decision the judgment rendered on December 27, 1932, wherein it stated the following:

" 'The court renders judgment ordering the defendants to pay to the plaintiff, within 90 days from the date this judgment becomes final, the sum of P16,000 with interest thereon at the rate of 12 per cent per annum corresponding to the years 1930, 1931 and 1932, until fully paid, said defendants being entitled to deduct the sum of P930 therefrom. Upon their failure to pay, it is hereby ordered that the mortgaged property be sold at public auction and the proceeds thereof applied to the payment of the costs and expenses of this suit, and of the amount claimed together with interest thereon, with half of the costs. So ordered.' "

In support of their appeal, the appellants assign the following alleged errors as committed by the trial court in its decision, to wit:

"1. The trial court erred in permitting the plaintiff-appellee to present evidence for the purpose of denying the allegation of usury contained in the defendant's cross-complaint, notwithstanding the fact that said plaintiff failed to file his written answer under oath to said cross-complaint.

"2. The trial court erred in not holding that the loan of P16,000 granted by the plaintiff to the defendants is usurious and, therefore, null and void.

"3. The trial court erred in not ordering the plaintiff-appellee to refund the entire interest and to pay the costs of the suit together with the fees of the attorneys for the defendants.

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

The necessary and pertinent facts proven by a preponderance of evidence during the trial are as follows:

On December 3, 1929, the herein defendants-appellants, Jose A. de Aramburo and Elvira Veguillas de Aramburo, accompanied by their attorney, the deceased Adolfo Olbes, applied for and obtained from the herein plaintiff-appellee Silverio F. Garcia a loan of P16,000, with mortgage security, public instrument Exhibit A having been executed to that effect. It was agreed by and between the mortgagee and the mortgagors that the latter should pay interest thereon in advance at the rate of 12 per cent per annum and that the term of the contract would be one year, extensible from year to year for five years if the mortgagors paid the interest corresponding to the first year in advance. Inasmuch as the document had to be registered first in the office of the register of deeds of

Albay, the defendants-appellants could not receive the money until the following day, December 4, 1929. Said mortgagee and mortgagors likewise agreed that the latter should pay the sum of P20 for the inspection of the mortgaged property and other incidental expenses, all of which amounted to P25. This amount, together with the sum of P1,920 representing interest at the rate of 12 per cent per annum, was to be deducted from the loan of P16,000.

On December 4, 1929, the herein plaintiff-appellee Silverio F. Garcia, before going abroad for the purpose of continuing his studies in medicine, issued the check Exhibit X for the sum of P15,055 instead of for P14,055, as it should be, after deducting therefrom the aforesaid interest and expenses, which check he delivered to the defendants-appellants.

The first question to decide in this appeal is whether or not the loan of P16,000 granted by the plaintiff-appellee to the defendants-appellants is usurious.

The said defendants-appellants claim that they paid the sum of P1,920 in cash as advance interest on the loan of P16,000; that upon issuing the check in question, the plaintiff-appellee deducted therefrom the sum of P945, which represented an additional interest of 6 per cent per annum, thus reducing the amount of said check to P15,055, and that said defendants-appellants had to pay the further sum of P15 (Exhibit I). On the other hand, the plaintiff-appellee claims that, pursuant to the stipulation, he deducted from said loan of P16,000 the interest of 12 per cent per annum corresponding to the first year, that is, the sum of P1,920 plus the additional sum of P25 representing the expenses for inspection and drawing of the deed, leaving a balance of P14,055. However, in his haste to get to Manila to catch his boat for Europe, he wrote the sum of P15,055 on the check Exhibit X instead of P14,055, that is P1,000 more than what he should have given to the defendants-appellants, after deducting said interest for one year.

Neither of the two contentions seems logical. With respect to the contention of the defendants-appellants, it is unusual for a person, who obtains money from another in the form of a loan and agrees to pay interest thereon in advance, to have on hand or to be required to have on hand, money to pay said interest instead of deducting it from the loan, whether said loan be delivered in cash or by check, particularly when the amount of the interest is of sufficient consideration as in the present case, inasmuch as it is presumed that the debtor, in borrowing money, has no funds. Furthermore, the interest of 6 per cent which said defendants-appellants claim to have been deducted by the plaintiff-appellee from the sum of P16,000, after the latter had received, in advance, cash representing the interest thereon for one year at the rate of 12 per cent, does not tally with the balance necessary to raise the amount of the check to exactly P16,000, said balance being P945 and therefore lacks P15 to make it P960, which is the interest on P16,000 at the rate of 6 per cent per annum.

With respect to the contention of the plaintiff-appellee, it is incredible that he would commit the mistake of issuing the check Exhibit X for the sum of P15,055 instead of P14,055.

The second question to decide is whether or not the existence of usury was admitted by reason of the plaintiff-appellee's failure to deny under oath the allegations of the defendants-appellants' cross-complaint to the effect that the former charged them an interest in excess of 12 per cent.

Although it is true that such omission implies an admission (*Lo Bun Chay vs. Paulino*, 54 Phil., 144), such admission can have no other effect but the reduction of the alleged usurious interest to the legal rate and the refund of the excess. In this case, the only sum which the plaintiff-appellee should have to refund would be P960 which the defendants-appellants claim to have paid in excess. However, it appears that the plaintiff-appellee does not intend to collect from the defendants-appellants more than 12 per cent interest per annum.

Wherefore, finding no error in the judgment appealed from, it is hereby affirmed in toto, with the costs against the appellants. So ordered.

Malcolm, Hull, Imperial, and Diaz, JJ., concur.

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