

TIRSO GARCIA, IN HIS CAPACITY AS RECEIVER OF THE MERCANTILE BANK OF CHINA, PLAINTIFF AND APPELLEE, VS. LIM CHU SING, DEFENDANT AND APPELLANT.

G. R. No. 39427. February 19, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant Lim Chu Sing from the judgment rendered by the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, judgment is rendered sentencing the defendant to pay the sum of P9,105.17 with interest thereon at the rate of six per cent per annum from September 1, 1932, until fully paid, plus the sum of P910.51, as attorney's fees, with the costs of this suit.

"In conformity with the stipulation, this judgment shall be subject to execution after ninety (90) days. So ordered."

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its decision, to wit:

"1. In denying the motion dated December 27, 1932, praying for the inclusion of Lim Cuan Sy, being the principal debtor, as party to this suit.

"2. In holding as improper the compensation of the defendant's debt of P9,106.17, claimed in the complaint, with his credit amounting to P10,000 with the Mercantile Bank of China.

"3. In not ordering that after the compensation the plaintiff-appellee, as receiver of the Mercantile Bank of China, should liquidate the dividends of the defendant-appellant's shares.

"4. In sentencing the defendant-appellant to pay to the plaintiff-appellee the sum of P910.51 as attorney's fees, plus interest at 6 per cent per annum on the sum of P9,105.17, with costs.

"5. In denying the motion for a new trial."

When the case was called for hearing, the parties submitted the following stipulation of facts for the consideration of the trial court, to wit:

"Come now both parties and to this Honorable Court respectfully submit the following stipulation:

"1. The defendant admits the facts alleged in the complaint.

"2. The plaintiff admits the allegations in the answer, particularly with reference to the fact that the defendant is the owner of two hundred shares at a par value of fifty pesos (P50) each, that is (P10,000).

"3. The court may render judgment in accordance with this stipulation, but the same shall be subject to execution after ninety (90) days.

"Wherefore, they respectfully submit this stipulation and pray that judgment be rendered in accordance therewith."

The facts alleged in the complaint and admitted by both parties under the above quoted stipulation of facts are as follows:

On June 20, 1930, the defendant-appellant Lim Chu Sing executed and delivered to the Mercantile Bank of China a promissory note for the sum of P19,605.17 with interest thereon at 6 per cent per annum, payable monthly as follows: P1,000 on July 1, 1930; P500 on August 1, 1930; and P500 on the first of every month thereafter until the amount of the promissory note together with the interest thereon is fully paid (Exhibit A). One of the conditions stipulated in said promissory note is that in case of defendant's default in the payment of any of the monthly installments, as they become due, the entire amount or the unpaid balance thereof together with interest thereon at 6 per cent per annum, shall become due and payable on demand. The defendant had been, making several partial payments thereon, leaving an unpaid balance of P,105.17. However, he defaulted in the payment of several installments by reason of which the unpaid balance of P9,105.17 on the promissory note has ipso facto become due and demandable.

The facts alleged in the answer and admitted by both parties under the same stipulation of facts are as follows:

The debt which is the subject matter of the complaint was not really an indebtedness of the defendant but of Lim Cuan Sy, who had an account with the plaintiff bank in the form of "trust receipts" guaranteed by the defendant as surety and with chattel mortgage securities. The plaintiff bank, without the knowledge and consent of the defendant, foreclosed the chattel mortgage and privately sold the property covered thereby. Inasmuch as Lim Cuan Sy failed to comply with his obligations, the plaintiff required the defendant, as surety, to sign a promissory note for the sum of P19,105.17 payable in the manner hereinbefore stated (Exhibit A). The defendant had been paying the corresponding installments until the debt was reduced to the sum of P9,105.17 claimed in the complaint. The defendant is the owner of shares of stock of the plaintiff Mercantile Bank of China amounting to P10,000. The plaintiff bank is now under liquidation.

On December 27, 1932, the defendant-appellant Lim Chu Sing filed a motion praying for the inclusion of the principal debtor Lim Cuan Sy as party defendant so that he could avail himself of the benefit of the exhaustion of the property of said Lim Cuan Sy. Said motion was denied in open court by the presiding judge without the defendant-appellant having excepted to such order of denial.

The proceeds of the sale of the mortgaged chattels together with other payments made were applied to the amount of the promissory note in question, leaving the balance which the plaintiff now seeks to collect.

The first question to be decided in this appeal is whether or not the court a quo erred in denying the motion for inclusion of a party as defendant, filed by the defendant-appellant.

According to the provisions of section 141 of the Code of Civil Procedure, "* * * Rulings of the court upon minor matters, such as adjournments, postponements of trials, the extension of time for filing pleadings or motions, and other matters addressed to the discretion of the court in the performance of its duty, shall not be subject to exception. But exception may be taken to any other ruling, order, or judgment of the court made during the pendency of the action in the Court of First Instance." "An 'exception' has been defined as an objection taken to the decision of the trial court upon a matter of law, and is a notice that the party taking it preserves for the consideration of the appellate court a ruling deemed erroneous. (8 Am. Enc. P. and P., 157.)" *Garcia de Lara vs. Gonzalez de Lara*, 2 Phil., 294, 295.) " 'Errors in a judgment or decree will not be noticed on appeal in the absence of objections and exceptions taken below, and they should be sufficiently specific to direct the attention of the court to the alleged defects.' (8 Enc. PI and Pr., 289.)" (*Garcia de Lara vs. Gonzalez de Lara*, 2 Phil., 297.)

Inasmuch as an exception is an objection taken to the decision of the trial court upon a matter of law and is a notice that the party taking it will submit for the consideration of the appellate court the ruling deemed erroneous, failure to interpose it deprived the appellant of the right to raise the question whether or not the court a quo committed the alleged error attributed to it in its ruling which had not been excepted to by the said appellant. The inclusion in, or exclusion from an action of a certain party is a question of law. The herein defendant-appellant, not having excepted to the order of the Court of First Instance of Manila denying his motion for the inclusion of Lim Cuan Sy as party defendant, is estopped from raising such question upon appeal (*Roman Catholic Bishop of Lipa vs. Municipality of San Jose*, 27 Phil., 571; *Vergara vs. Laciapag*, 28 Phil., 439; *Andrews vs. Morente Rosario*, 9 Phil., 634).

The second question to be decided is whether or not it is proper to compensate the defendant-appellant's indebtedness of P9,105.17, which is claimed in the complaint, with the sum of P10,000 representing the value of his shares of stock with the plaintiff entity, the Mercantile Bank of China.

According to the weight of authority, a share of stock or the certificate thereof is not an indebtedness to the owner nor evidence of indebtedness and, therefore, it is not a credit (14 *Corpus Juris*, p. 388, sec. 511). Stockholders, as such, are not creditors of the corporation (14 *Corpus Juris*, p. 848, sec. 1289). It is the prevailing doctrine of the American courts, repeatedly asserted in the broadest terms, that the capital stock of a corporation is a trust fund to be used more particularly for the security of creditors of the corporation, who presumably deal with it on the credit of its capital stock (14 *Corpus Juris*, p. 383, sec. 505). Therefore, the defendant-appellant Lim Chu Sing not being a creditor of the Mercantile Bank of China, although the latter is a creditor of the former, there is no sufficient ground to justify a compensation (art. 1195, Civil Code; *Acuna Co Chongco vs. Dievas*, 12 Phil., 250).

The third question to be decided in this appeal is whether or not the court a quo erred in sentencing the said defendant-appellant to pay the sum of P910.51 as attorney's fees in addition to interest at 6 per cent per annum on the amount sought in the complaint.

The pertinent clause of the promissory note Exhibit A reads as follows: "In case of default of any of the above installments, the total amount of the balance still unpaid of this note will become due and payable on demand plus interest thereon at the rate of 6 per cent per annum from date of this note until payment is made. And I further agree to pay an additional sum equivalent to 10 per cent of the said note to cover cost and attorney's fees for collection."

The stipulation relative to the payment of interest at the rate of 6 per cent per annum on the unpaid balance of the promissory note Exhibit A refers to the capital and the 10 per cent stipulated for costs and attorney's fees cannot be considered as interest but an indemnity for damages occasioned by the collection of the indebtedness through judicial process. Therefore the two rates in question cannot be combined and considered usurious interest.

With reference to the costs, the 10 per cent stipulated in the promissory note is for costs and attorney's fees which may be incurred in the collection of the indebtedness through judicial process. Therefore, the defendant-appellant should not again be made to pay for them (*Bank of the Philippine Islands vs. Yulo*, 31 Phil., 476).

In view of the foregoing, this court is of the opinion and so holds: (1) That failure to file an exception to a ruling rendered in open court denying a motion for the inclusion of a party as defendant deprives the petitioner, upon appeal, of the right to raise the question whether such denial was proper or improper; (2) that the shares of a banking corporation do not constitute an indebtedness of the corporation to the stockholder and, therefore, the latter is not a creditor of the former for such shares; (3) that the indebtedness of a shareholder to a banking corporation cannot be compensated with the amount of his shares therein, there being no relation of creditor and debtor with respect to such shares; and (4) that the percentage stipulated in a contract, for costs and attorney's fees

for the collection of an indebtedness, includes judicial costs.

Wherefore, with the sole modification that the costs be eliminated from the appealed judgment, the same is hereby affirmed, without special pronouncement as to costs of this instance. So ordered.

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

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