

**LA URBANA, MUTUAL BUILDING AND LOAN ASSOCIATION,
PLAINTIFF AND APPELLEE, VS. AIMEE SARGENT VIUDA DE ALEGRE,
JUDICIAL ADMINISTRATRIX OF THE INTESTATE ESTATE OF THE
DECEASED, JUAN...**

G. R. No. 39746. March 28, 1934

Ponente: HULL, J.

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HULL, J.:

Plaintiff brought suit in the Court of First Instance of Sorsogon seeking the foreclosure of three mortgages executed by the late Juan B. Alegre during his lifetime.

After trial judgment was given plaintiff according to the face of the three mortgages, and the defendant brings this appeal and makes the following assignments of error:

"I. The trial court erred in not adjudging that the mortgage contracts set out in the complaint could not be foreclosed for the reason that they had been novated and superseded by defendant's offer to consolidate the same as shown in Exhibit 1 and plaintiff's acceptance of that offer as contained in Exhibit 2.

"II. The trial court erred in not declaring that there was in this case, at least, an executory contract to novate the contracts sued upon, as a result of plaintiff's acceptance of the offer contained in Exhibit 1, which plaintiff was bound to fulfill and carry to execution.

"III. The trial court erred in not declaring that inasmuch as the new contract of consolidation as set out in Exhibits 1 and 2 was all benefit to the estate of the deceased Juan B. Alegre, the probate court would have approved said contract when executed, and that in spite of the fact that the same was not submitted for such approval the said agreement is valid and subsisting as between plaintiff and defendant under the maxim that 'equity regards that as done' which ought to be done.

"IV. The trial court erred in rendering judgment against the defendant and in favor of the plaintiff foreclosing the mortgages described in the complaint.

"V. The trial court erred in awarding attorney's fees in the sum of P30,407 to counsel for the plaintiff."

Although the deceased was reputed to be wealthy and left a large estate, it was so involved that payments on the mortgages became delinquent. The administratrix asked for delay and submitted a proposition to plaintiff to consolidate the mortgages and accrued interest into a new mortgage, and instead of the ten year period of the former mortgages that the period of the new mortgage be twenty years. The board of directors of La Urbana agreed to the proposition and the secretary in a letter expressed that agreement, but required that certain conditions be met. One of these conditions was the consent of the probate court to the proposed contract. Prior to the administratrix's meeting the conditions set forth in the letter of the secretary, plaintiff withdrew from the proposed contract and the defense in this case is based upon the idea that plaintiff could not withdraw from the proposed acceptance of the offer of the administratrix. This contention of the plaintiff was denied by the lower

court nor does it appeal to us. Without the approval of the probate court the estate could not be bound, and the mutuality of a contract does not exist where one party is without authority to enter into the proposed contract.

The third assignment of error, in its full assumption that the probate court would have approved the proposed contract, is not founded in fact. There are various provisions both in the Civil Code and the Code of Civil Procedure that indicate the disapproval of the legislature of prolonged administration of the estate. Experience verifies the wisdom of such provisions, as it would be a very rich estate that could stand probate administration for twenty years and still be solvent. Instead of a probability that a probate court would approve of such a contract, it is believed that any conservative probate judge would not authorize such a contract as was proposed between the parties. Under the circumstances of this case there was no novation of the mortgages as the transactions looking to such an eventuality had not passed out of the realm of negotiations when plaintiff withdrew from them and relied upon the original mortgages. This plaintiff had a right to do.

The contracts of mortgage provide for the assessment of a stated percentage as attorney's fees in case of litigation. Appellant complains of the award of attorney's fees as fixed in the contracts. The lower court, conversant with the difficulties and expense attorneys for plaintiff have been put to, the amount involved in the litigation and the character thereof as well as the standing of the attorneys in question, all of which items enter into the valuation of proper attorney's fees, declined to modify the contracts, and this¹ action of the lower court is made the basis of the fifth assignment of error. The arguments advanced by appellant asking this court to intervene and modify the action of the trial court fail to convince us that we should do so.

The judgment appealed from is therefore affirmed, with costs against the appellant.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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