

ANGEL JAVELLANA, PLAINTIFF AND APPELLEE, VS. JOSE LIM ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4015. August 24, 1908

Ponente: TORRES, J.

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TORRES, J.:

The attorney for the plaintiff, Angel Javellana, filed a complaint on the 30th of October, 1906, with the Court of First Instance of Iloilo, praying that the defendants, Jose Lim and Ceferino Domingo Lim, be sentenced to jointly and severally pay the sum of P2,686.58, with interest thereon at the rate of 15 per cent per annum from the 20th of January, 1898, until full payment should be made, deducting from the amount of interest due the sum of P1,102.16, and to pay the costs of the proceedings.

Authority from the court having been previously obtained, the complaint was amended on the 10th of January, 1907; it was then alleged, that on the 26th of May, 1897, the defendants executed and subscribed a document in favor of the plaintiff reading as follows:

"We have received from Angel Javellana, as a deposit without interest, the sum of two thousand six hundred and eighty-six pesos and fifty-eight cents of pesos fuertes, which we will return to the said gentleman, jointly and severally, on the 20th of January, 1898.—Jaro, 26th of May, 1897.—Signed: Jose Lim.—Signed: Ceferino Domingo Lim."

That, when the obligation became due, the defendants begged the plaintiff for an extension of time for the payment thereof, binding themselves to pay interest at the rate of 15 per cent on the amount of their indebtedness, to which the plaintiff acceded; that on the 15th of May, 1902, the debtors paid on account of interest due the sum of P1,000 pesos, with the exception of which they had not paid any other sum on account of either capital or interest, notwithstanding the requests made by the plaintiff, who had thereby been subjected to loss and damages.

A demurrer to the original complaint was overruled, and on the 4th of January, 1907, the defendants answered the original complaint before its amendment, setting forth that they acknowledged the facts stated in Nos. 1 and 2 of the complaint; that they admitted the statements of the plaintiff relative, to the payment of P1,102.16 pesos made on, the 15th of November, 1902, not, however, as payment of interest on the amount stated in the foregoing document, but on account of the principal, and denied that there had been any agreement as to an extension of the time for payment and the payment of interest at the rate of 15 per cent per annum as alleged in paragraph 3 of the complaint, and also denied all the other statements contained therein.

As a counterclaim, the defendants alleged that they had paid to the plaintiff sums which, together with the P1,102.16 acknowledged in the complaint, aggregated the total sum of P5,602.16, and that, deducting therefrom the P2,686.58 stated in the document transcribed in the complaint, the plaintiff still owed the defendants P2,915.58; therefore, they asked that judgment be entered absolving them, and sentencing the plaintiff to pay them the sum of P2,915.58 with the costs.

Evidence was adduced by both parties and, upon their exhibits, together with an account book having been made

of record, the court below rendered judgment on the 15th of January, 1907, in favor of the plaintiff for the recovery of the sum of P5,714.44 and costs,

The defendants excepted to the above decision and moved for a new trial. This motion was overruled and was also excepted to by them; the bill of exceptions presented by the appellants having been approved, the same was in due course submitted to this court.

The document of indebtedness inserted in the complaint states that the plaintiff left on deposit with the defendants a given sum of money which they were jointly and severally obliged to return on a certain date fixed in the document; but that, nevertheless when the document appearing as Exhibit 2, written in the Visayan dialect and followed by a translation into Spanish was executed, it was acknowledged, at the date thereof, the 15th of November, 1902, that the amount deposited had not yet been returned to the ' creditor, whereby he was subjected to losses and damages amounting to 830 pesos since the 20th of January, 1898, when the return was again stipulated with the further agreement that the amount deposited should bear interest at the rate of 15 per cent per annum from the aforesaid date of January 20, and that the 1,000 pesos paid to the depositor on the 15th of May, 1900, according to the receipt issued by him to the debtors, would be included, and that the said rate of interest would obtain until the debtors paid the creditor the said amount in full. In this second document the contract between the parties, which is a real loan of money with interest, appears perfectly defined, notwithstanding the fact that in the original document executed by the debtors on the 26th of May, 1897, it is called a deposit; so that when they bound themselves jointly and severally to refund the sum of 2,686.58 pesos to the depositor, Javellana, they did not engage to return the same coins received and of which the amount deposited consisted, and they could have accomplished the return agreed upon by the delivery of a sum equal to the one received by them. For this reason it must be understood that the debtors were lawfully authorized to make use of the amount deposited, which they have done, as subsequently shown when asking for an extension of the time for the return thereof, inasmuch as, acknowledging that they have subjected the lender, their creditor, to losses and damages for not complying with what had been stipulated, and being conscious that they had used, for their own profit and gain, the money that they received apparently as a deposit, they engaged to pay interest to the creditor" from the date named until the time when the refund should be made. Such conduct on the part of the debtors is unquestionable evidence that the transaction entered into between the interested parties was not a deposit, but a real contract of loan.

Article 1767 of the Civil Code provides that—

"The depositary can not make use of the thing deposited without the express permission of the depositor.

"Otherwise he shall be liable for losses and damages."

Article 1768 also provides that—

"When the depositary has permission to make use of the thing deposited, the contract loses the character of a deposit and becomes a loan or bailment.

"The permission shall not be presumed, and its existence must be proven."

When on one of the latter days of January, 1898, Jose Lim went to the office of the creditor asking for an extension of one year, in view of the fact that money was scarce, and because neither himself nor the other defendant were able to return the amount deposited, for which reason he agreed to pay interest at the rate of 15 per cent per annum, it was because, as a matter of fact, he did not have in his possession the amount deposited, he having made use of the same in his business and for his own profit; and the creditor, by granting them the extension, evidently confirmed the express permission previously given them to use and dispose of the amount

stated as having been deposited, which, in accordance with the terms of the law, must be considered as given them on loan, to all intents and purposes gratuitously, until the 20th of January, 1898, and from that date with interest at 15 per cent per annum until its full payment, deducting from the total amount of interest the sum of 1,000 pesos, in accordance with the provisions of article 1173 of the Civil Code.

Notwithstanding the fact that it does not appear that Jose Lim signed the document (Exhibit 2) executed in the presence of three witnesses on the 15th of November, 1902, by Ceferino Domingo Lim on behalf of himself and the former, nevertheless, the said document has not been contested as false, either by a criminal or by a civil proceeding, nor has any doubt been cast upon the authenticity of the signatures of the witnesses who attested the execution of the same; and from the evidence in the case one is sufficiently convinced that the said Jose Lim was perfectly aware of and had authorized his joint codebtor to liquidate the interest, to pay the sum of 1,000 pesos, on account thereof, and to execute the aforesaid document No. 2. A true ratification of the original document of deposit was thus made, and not the least proof is shown in the record that Jose Lim had ever paid the whole or any part of the capital stated in the original document, Exhibit 1.

If the amount, together with interest claimed in the complaint, less 1,000 pesos appears as fully established, such is not the case with the defendants' counterclaim, for P5,602.16, because the existence and certainty of said indebtedness imputed to the plaintiff has not been proven, and the defendants, who call themselves creditors for the said amount, have not proven in a satisfactory manner that the plaintiff had received partial payments on account of the same; the latter alleges with good reason, that they should produce the receipts which he may have issued, and which he did issue whenever they paid him any money on account. The plaintiff's allegation that the two amounts of 400 and 1,200 pesos, referred to in documents marked "C" and "D" offered in evidence by the defendants, had been received from Ceferino Domingo Lim on account of other debts of his, has not been contradicted, and the fact that in the original complaint the sum of 1,102.10 pesos, was expressed in lieu of 1,000 pesos, the only payment made on account of interest on the amount deposited according to documents No. 2 and letter "B" above referred to, was due to a mistake.

Moreover, for the reasons above set forth it may, as a matter of course, be inferred that there was no renewal of the contract of deposit converted into a loan, because, as has already been stated, the defendants received said amount by virtue of a real loan contract under the name of a deposit, since the so-called bailees were forthwith authorized to dispose of the amount deposited. This they have done, as has been clearly shown.

The original joint obligation contracted by the defendant debtors still exists, and it has not been shown or proven in the proceedings that the creditor had released Jose Lim from complying with his obligation in order that he should not be sued for or sentenced to pay the amount of capital and interest together with his codebtor, Ceferino Domingo Lim, because the record offers satisfactory evidence against the pretension of Jose Lim, and it further appears that document No. 2 was executed by the other debtor, Ceferino Domingo Lim, for himself and on behalf of Jose Lim; and it has also been proven that Jose Lim, being fully aware that his debt had not yet been settled, took steps to secure an extension of the time for payment, and consented to pay interest in return for the concession requested from the creditor.

In view of the foregoing, and adopting the findings in the judgment appealed from, it is our opinion that the same should be and is hereby affirmed with the costs of this instance against the appellant, provided that the interest agreed upon shall be paid until the complete liquidation of the debt. So ordered.

Arellano, C. J., Carson, Willard, and Tracey, JJ., concur.

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