

LA YEBANA COMPANY, PLAINTIFF AND APPELLEE, VS. TIMOTEO SEVILLA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 4123. November 10, 1907*

Ponente: CARSON, J.

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The complaint filed in this action alleges that on February 23, 1907, the defendant Timoteo Sevilla was indebted to the plaintiff in the sum of P4,363.42; that on that day the defendant admitted this indebtedness and promised to pay the same; and that, although demand had been made for payment, neither the amount due nor any part thereof had been paid at the time of the filing of the complaint.

The defendant Sevilla in his answer admitted the truth of the allegations of the complaint, but alleged by way of special defense that, while it was true he had promised to pay the debt, the plaintiff had agreed to accept payment either at the rate of P500 weekly until the entire amount was paid or from time to time in such sums as he, Sevilla, might be able to collect or recover from the owners of certain stores in the Province of Bataan who had received on credit goods furnished Sevilla on commission.

Counsel for the plaintiff thereupon prayed for judgment upon the pleadings; and the trial court, without taking evidence as to the truth of the allegations of the defendant, gave judgment against Sevilla and in favor of the plaintiff for the sum of P4,362.42, with interest at the rate of 6 per cent from the date of the filing of the complaint. In support of this judgment the trial judge holds in his opinion "that the special defense set up by the defendant Sevilla, in so far as it consists of allegations of facts, alleges the existence of an agreement by virtue of which Sevilla had the right to pay his indebtedness in weekly installments of P500," and that, the complaint having been filed on the 21st day of March, 1907, "it is evident that, admitting the truth of the allegations set up by the defense, the debt in controversy has become due and payable."

The trial court seems to have overlooked the fact that the answer of the defendant Sevilla alleges not only that it was agreed that the debt might be paid in weekly installments of P500 each but that the complainant also agreed to accept payment in such sums as Sevilla should from time to time collect or recover from the owners of certain stores in the Province of Bataan who had received on credit goods furnished Sevilla on commission. There is nothing in the pleadings to show that Sevilla collected or recovered anything from these persons between the date of the alleged agreement and the date of the filing of the complaint; and, if it be true that he had the alternative right to pay his indebtedness from time to time as he collected or recovered funds from his debtors in Bataan, the only amount which was due and payable at the time of the filing of the complaint, was such amount as might appear to have been recovered from these debtors prior to that date.

It must be admitted that the language wherein it is alleged that the defendant had the alternative right to pay his indebtedness in the manner and form above stated admits of various constructions; and it may be that the agreement touching the payment, from time to time, of such sums as Sevilla recovered from his debtors was in effect an agreement that he would pay over all the amounts thus collected notwithstanding that they should exceed

the sum of P500 weekly, as provided in the first part of the alleged agreement. But, however this may be, the effect of a motion by the plaintiff for a judgment on the pleadings is to admit the truth of the defendant's relevant allegations, and we do not think that in such cases judgment for the plaintiff should be rendered on a particular construction of the language of the pleadings, favorable to the plaintiff, when such judgment could not be entered on another construction to which the language used in the pleadings is equally susceptible. In the case at bar we think the usual and ordinary construction of the language used in setting out the alleged agreement as to the form of payment gave to Sevilla the alternative right either to pay at the rate of P500 weekly or to pay from time to time all money recovered from his debtors in Bataan.

But we would be compelled to reverse the judgment upon the mere allegation of the defense of the existence of an agreement, by virtue of which Sevilla had the right to pay his indebtedness in weekly installments of P500, without an allegation as to an alternative mode of payment. It appears from the pleadings that the alleged agreement as to the mode of payment of the admitted indebtedness was entered into on the 23d day of February, 1907. The complaint was filed on the 21st day of March, 1907, so that not quite four weeks had elapsed from the date of the alleged agreement to the date of the filing of the complaint. Where a debt is payable in installments, recovery can be had only for those installments due and payable when the action was commenced, in the absence of any stipulation to the contrary in the contract. (*La Compañía General de Tabacos vs. Araza*, 7 Phil. Rep., 455; *Artadi y Compañía vs. Chu Baco*, [1]5 Off. Gaz., 711.) It is evident, therefore) that, since it does not appear from the pleadings that it was expressly stipulated that upon the failure to pay any one of the weekly installments the whole debt should thereupon become at once due and payable, the most that could be recovered would be the sum of P500, being the weekly installments of P500 for the three full weeks which had elapsed from the date of the agreement to the date of the filing of the complaint. The judgment appealed from should be, and is hereby, reversed without costs in this instance to either party. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

Willard, J., concurs in the result.

[1] 8 Phil. Rep., 677.

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