

**ROSENDO R. LLAMAS ET AL., PLAINTIFFS AND APPELLEES, VS.
GONZALO ABAYA ET AL., DEFENDANTS. JOAQUIN A. ELEAZAR,
APPELLANT.**

G. R. No. 41421. August 31, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

In civil case No. 5872 of the Court of First Instance of Laguna between the same parties, judgment was rendered giving preference to the entire credit of the plaintiffs and declaring it preferential to that of the defendant Eleazar, and ordering Gonzalo Abaya to pay to the Llamas brothers the sum of P14,457.38, as principal, with accrued interest thereon at 12 per cent per annum until November 30, 1931, plus compound interest on said sum from December 1, 1931, until fully paid, also P1,500 as attorney's fees, with costs; and directing, in case of failure of the debtor within ninety (90) days to deposit said amount or to pay it to the plaintiffs, that the mortgaged property be sold in conformity with the law.

Eleazar appealed from that part of the judgment which gave preference to the entire credit of the plaintiffs, claiming that said preference was only for the amount of P5,933.30.

On appeal (G. R. No. 37824)[1] this court entered judgment as follows:

"In view of the foregoing, said part of the appealed judgment is reversed and it is declared that the preference enjoyed by the plaintiffs-appellees is only for the amount of P5,933.30, with the stipulated interest thereon and the penalty, with the costs of this instance against said appellees. So ordered."

On November 28, 1932, prior to the promulgation of the above decision of this court, Joaquin Eleazar wrote the letter Exhibit A to the plaintiffs tendering payment of the sum of P5,933.30 with the accrued interest thereon, and stating therein that he formally made the offer in order to avoid payment of the stipulated interest subsequent to the date of his letter. The plaintiffs ignored said letter.

On December 18, 1933, after the decision of this court had been promulgated, Joaquin Eleazar deposited said sum of P5,933.30 with the clerk of court, at the disposal of the plaintiffs. On the following day the plaintiffs filed a motion alleging that their credit to date amounted to P12,066.60 and praying that a writ of execution for said amount be issued and that in the meantime they be authorized to receive from the clerk of court the amount deposited by Eleazar. The court granted the latter relief and the plaintiffs received said sum of money from the clerk of court. Joaquin Eleazar opposed the motion for the issuance of a writ of execution for the sum stated therein and in his written opposition maintained that he was bound to pay interest only up to November 28, 1932, the date on which he made a formal tender of payment of the principal and accrued interest up to that date, and that it was possible that subsequent to the date of their acquisition of the mortgage, Abaya might have made payment to them on account of the stipulated interest, for which reason he prayed that said plaintiffs be required to specify what interest they had actually received from Abaya from said date.

After the hearing of said motion, the court entered its resolution dated January 24, 1934, declaring that the stipulated interest to which the plaintiffs are entitled is at the rate of 9 per cent per annum from March 6, 1929, the date on which they acquired the mortgage from the Philippine National Bank, up to December 18, 1933, the date on which Eleazar deposited the sum of P5,933.30 with the clerk of court; that said interest is compound and should be computed semi-annually in accordance with the contract; that the principal and interest so computed should bear interest at the said rate from December 19, 1933, until fully paid, and that the plaintiffs are likewise entitled to collect, by way of penalty, 10 per cent of the principal and compound interest thereon, until fully paid.

The foregoing resolution was properly excepted to and from it this appeal was taken.

The defendant Eleazar contends that the plaintiffs are entitled to collect interest at 9 per cent per annum only up to November 28, 1932, the date on which he made a written tender of payment of the principal and interest thereon which might result from a liquidation; that the court should have required the plaintiffs to furnish the information requested by him relative to the interest that Abaya might have paid subsequent to the date on which they acquired the mortgage from the Philippine National Bank, and that the stipulated penalty should consist in only 10 per cent of the principal and accrued interest thereon up to the date of the filing of the complaint.

The stipulated interest should accrue, and be payable, up to the date on which the principal is paid. The reason for this is that the written tender of payment did not have the effect of suspending the interest and its accumulation in accordance with the provisions of article 1176 of the Civil Code. Neither did the tender of payment produce the effects stated in section 347 of the Code of Civil Procedure, it appearing that Eleazar on that occasion failed to tender any definite sum by way of interest or penalty representing attorney's fees.

The defendant's contention that he was entitled to a liquidation of the interest in order to determine the amount which Abaya had paid in that concept to the plaintiffs from the date on which they acquired the mortgage, is unfounded. He already had the information which he sought to obtain a long time ago, in view of the fact that it had already been alleged in the complaint that Abaya had failed to pay accrued interest from January 1, 1930, to November 30, 1931. In the dispositive part of the court's decision entered on April 26, 1932, it was likewise ordered that Abaya should pay the interest which he failed to pay up to November 30, 1931, plus accrued interest from December 1st of said year, until fully paid. Therefore, from these data, Eleazar should have already known that Abaya had failed to pay any sum by way of stipulated interest from January 1, 1930.

As regards attorney's fees, there is nothing in the record in support of Eleazar's contention. The meaning of the phrase "then unpaid" cannot be confined, as claimed, to the principal and compound interest thereon accruing up to the date of the filing of the complaint. The verbal adjective "unpaid", used therein, refers to the principal and unpaid interest thereon and cannot be so construed as to limit the penalty to the date on which the action was brought.

Wherefore, finding that the appealed resolution is in accordance with law, the same is affirmed in all its parts, with the costs of this instance against the appellant. So ordered.

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

[1] Promulgated October 20, 1933, 58 Phil., 964.

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