

## **ISIDRO S. SANTOS, PLAINTIFF AND APPELLANT, VS. ARTURO P. REYES AND AURELIO P. REYES, DEFENDANTS AND APPELLEES.**

*G. R. No. 42081. June 26, 1937*

Ponente: VILLA-REAL, J.

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### **VILLA-REAL, J.:**

This is an appeal taken by the plaintiff Isidro S. Santos from the judgment of the Court of First Instance of Rizal absolving the defendants Arturo P. Reyes and Aurelio P. Reyes from the complaint filed by the plaintiff and dismissing said complaint with costs to the latter.

The appellant assigns in his brief six alleged errors as committed by the court a quo in its judgment in question, to wit:

"1. In holding that plaintiff-appellant was aware, at the time he acquired the promissory notes in question, Exhibits B and C (negotiable papers), that they had been issued by the makers thereof without any valuable consideration, in spite of the fact that there is absolutely no allegation nor evidence of any sort to that effect.

"2. In finding that plaintiff-appellant did not, before paying for said notes, see the makers thereof or make inquiry about their solvency, and that he did not acquire said notes for valuable consideration, notwithstanding the uncontradicted evidence to the contrary.

"3. In saying that, it is admitted, plaintiff is not a holder in due course, and in holding that plaintiff is not such a holder.

"4. In entertaining defendants' story, and in finding that said notes were issued by the defendants in favor of the original payee for no valuable consideration at all.

"5. In not holding that the defendants are estopped from asserting against the plaintiff that the notes in question were issued for no consideration at all.

"6. In not sentencing the defendants to pay the plaintiff the amount claimed in the complaint, in absolving the defendants from the complaint with costs against the plaintiff, and in denying plaintiff's motion for new trial."

On October 2, 1933, Isidro S. Santos filed a complaint against Arturo P. Reyes and Aurelio P. Reyes, with a petition for preliminary attachment, for the recovery of the proceeds of two promissory notes, the one for the sum of P300 executed by Arturo P. Reyes on April 23, 1931, of which there remains a balance of only P140, and the other for the sum of P1,145 executed jointly and severally by Arturo P. Reyes and Aurelio P. Reyes on said date of April 23, 1931, the date of maturity of the former being April 24, 1931, and that of the latter October 23, 1932, plus legal interest on both sums from the date on which the defendants defaulted, with the costs of the suit.

On November 23, 1933, the defendants, in answer to the complaint, alleged as special defense that the promissory note for the sum of P1,145 is forged, spurious and fictitious, denying under oath the genuineness and due execution thereof.

On February 27, 1934, said defendants amended their answer by amplifying their special defense and alleging, furthermore, that the promissory notes which are the subject matter of the complaint are without cause or consideration.

The following facts have been proven during the trial, some without dispute, and the others by a preponderance of evidence:

Hermogenes Mendoza and the herein defendants, the brothers Arturo P. Reyes and Aurelio P. Reyes, are optometrists by profession and were partners in the business connected with optometry. On December 24, 1928, Hermogenes Mendoza applied for and obtained from the Bureau of Lands a loan in the sum of P300 with interest of 9 per cent. per annum. To secure the payment thereof, he constituted a mortgage on a residential lot having an area of 698 square meters, with the improvements thereon consisting in a house of light materials, situated in the municipality of San Juan del Monte, Province of Rizal, which he had purchased by installment in 1922 for more than P1,000, having completed payment thereof in 1927 (Exhibit 4-Arturo P. Reyes). Mendoza had been paying the interest on the loan, together with the land tax, until November 4, 1931. The mortgage matured on April 23, 1931, but Mendoza succeeded in having the period for payment extended to December 5th of said year. Threatened by the Bureau of Lands with foreclosure of the mortgage, Hermogenes Mendoza approached the defendant Arturo P. Reyes, who had just then arrived from Zamboanga with P280 realized from his business, and requested the latter to help him in order to avoid the foreclosure of said mortgage. On said date, April 23, 1931, Hermogenes Mendoza executed a notarial instrument (Exhibit A) in favor of the herein defendants Arturo P. Reyes and Aurelio P. Reyes, wherein it was made to appear that he sold and transferred the parcel of land in question to said defendants for the sum of P1,745 which the vendor acknowledged to have received from the purchasers. It was likewise made to appear in said document that the land was subject to a mortgage lien in favor of the Bureau of Lands to secure the payment of a debt in the sum of P300, which obligation was assumed by the purchasers as a part of the purchase price. Said deed of sale was not presented to the Bureau of Lands or to the registry of deeds for registration. The defendant Arturo P. Reyes, also on said date, April 23, 1931, issued a promissory note (Exhibit B) in favor of Hermogenes Mendoza, whereby, for value received, he promised to pay the latter, or order, the sum of P300 on or before April 24, 1931. Likewise on the same date, April 23, 1931, the herein defendants Arturo P. Reyes and Aurelio P. Reyes, executed another promissory note (Exhibit C) in favor of said Hermogenes Mendoza, acknowledging that they were indebted to the latter and promising to pay jointly and severally in Maypajo, Caloocan, Rizal, the sum of P1,145 on or before October 23, 1932.

Inasmuch as the period for the payment of the mortgage debt had expired without having been paid, the mortgagee Director of Lands instituted civil case No. 5325 in the Court of First Instance of Rizal against Hermogenes Mendoza alone—in whose name the mortgaged property continued to be registered in the Bureau of Lands—for the foreclosure of the mortgage. Judgment was rendered against said Hermogenes Mendoza on June 13, 1933 (Exhibit 4-Arturo P. Reyes).

On September 4, 1933, as Hermogenes Mendoza was in difficulty and needed money urgently, he executed a document (Exhibit D) whereby in consideration of the sum of P1,000, he transferred to the herein plaintiff-appellant Isidro S. Santos all his rights, interest and participation in said promissory notes Exhibits B and C.

From the year 1931, every time the Bureau of Lands required Mendoza to pay his debt of P300, the latter always informed the defendants of said demands. Said defendants advised him to consult Attorney Onofre Mendoza of the legal division of the Bureau of Lands in order to make arrangements for the payment of the debt in question. In making the defendants sign the documents Exhibits B and C, Hermogenes Mendoza assured them that his only purpose was to present said documents to one Vicente Syquia so that the latter might be convinced to buy the land

at a high price, the profit to be divided later among themselves. Arturo P. Reyes paid P160 (Exhibit F) to Hermogenes Mendoza on account of the promissory note Exhibit B and, upon request of the latter, he paid the sum of P9.83 to the Bureau of Lands on May 5, 1931, as evidenced by the receipt Exhibit 1, to avoid the sale at public auction of the land in question by said bureau.

It is inferred from the above-stated facts that there was a combination between Hermogenes Mendoza and the defendants for the purpose of enabling the former to sell his land at a price higher than what he had paid therefor, the profit to be divided among themselves. Were this true, neither the deed of sale Exhibit A, executed by Hermogenes Mendoza in favor of the brothers Arturo P. Reyes and Aurelio P. Reyes whereby the former sold to the latter his land mortgaged to the Bureau of Lands, nor the promissory notes executed by said Reyes brothers in favor of Hermogenes Mendoza, had valuable consideration and therefore, they were fictitious. Had the sale been real and true, the defendants, to secure the right acquired by them by virtue of the deed of sale Exhibit A executed by Hermogenes Mendoza in their favor, would have compelled said Hermogenes Mendoza to register the deed of sale in the registry of deeds and in the Bureau of Lands, or they would have been interested in having it done, knowing as they did that the land sold to them was mortgaged to said bureau, which lien they had assumed. Their lack of diligence in protecting their rights and the fact that it was the alleged vendor Hermogenes Mendoza who was attending to the demands of the Bureau of Lands for the payment of interest and requesting that the foreclosure of the mortgage be not carried out or, at least, that the period for payment be extended, notwithstanding the fact that the land appeared to have been sold to the defendants, show that the above-stated understanding existed between Hermogenes Mendoza and the defendants. However, instead of selling the land, Hermogenes Mendoza negotiated and transferred the promissory notes executed by the defendants for the purpose of inducing those who were interested in the land to buy it.

The fact that Arturo P. Reyes paid P160 to Hermogenes Mendoza on account of the promissory note Exhibit B does not of itself show that said promissory note was executed for a consideration, there being, as already stated, an understanding between them to make it appear that the land was worth more so that a higher price could be obtained at the sale thereof.

As to the question whether or not the plaintiff Isidro S. Santos is a bona fide holder in due course of the promissory notes under consideration, he himself admits that when said documents were transferred to him, payment thereof was already one year overdue, and he was aware of it. In spite of this, he bought said promissory notes without first inquiring into the solvency of the makers thereof, the herein defendants, contenting himself with the idea that they were known to him. The promissory notes have not been endorsed to him by the holder Hermogenes Mendoza. Said plaintiff-appellant claims to have asked the defendants, on one occasion when, according to him, he was in the latter's office for the purpose of, having his eyeglasses repaired about the month of July or August, 1933, whether or not said defendants were indebted to Mendoza, and they answered in the affirmative. The plaintiff's testimony on this point has been denied by the defendants who testified that said plaintiff once dropped in at their store, merely inquiring about the price of eyeglasses and then left. There is no doubt that as the plaintiff had purchased the two promissory notes in question without the necessary endorsement on the part of the holder after payment thereof had already been one year overdue, and without having made inquiries about the solvency of their makers, he cannot be considered a holder in due course in accordance with the provisions of section 52 of the Negotiable Instruments Law (Act No. 2031), and the defendants have a perfect right to set up, as they have done so against him, the defense that said promissory notes lack valuable consideration and are fictitious, which defense they could have set up had the original holder Hermogenes Menploza demanded payment of them (8 Corpus Juris, 473, 477).

Wherefore, finding the appealed judgment to be in accordance with the evidence and the law, it is affirmed in

toto, with costs to the appellant. So ordered.

Avancena, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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