

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. JOSE TONGOY ET AL., DEFENDANTS. PACIFIC COMMERCIAL CO., APPELLANT.*G.R. No. 42274. July 31, 1935*

Ponente: GODDARD, J.

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On March 15, 1918, the defendant Jose Tongoy for himself and as attorney in fact of Francisco Tongoy, Ana Tongoy, Teresa Tongoy and Jose Sonora as guardian of the minors Mercedes, Juan, Jesus and Trinidad, surnamed Sonora, executed a promissory note for P11,000 in favor of the plaintiff bank and to secure the payment of said note and the interest thereon executed, on April 17, 1918, a mortgage on a parcel of land described in certificate of title No. 2947 of the office of the register of deeds of Occidental Negros. A one-fifth undivided interest in this parcel of land belonged respectively to the Sonora minors and to each of the other four above named persons.

The Pacific Commercial Co., defendant-appellant, bought at public auction, on February 29, 1928, the interest of the defendant, Jose Tongoy, in the above mentioned parcel of land, subject, naturally, to the mortgage in favor of the plaintiff bank. Upon the failure of Jose Tongoy to repurchase, the title to his one-fifth interest became vested in the Pacific Commercial Co.

After a liquidation of his accounts with the plaintiff bank Jose Tongoy, on December 31, 1930, executed two promissory notes in favor of that entity, one for the amount of T37,656.19, with interest at 8 per cent per annum, and the other for the amount of P21,263.82 without interest, consolidating in these notes his own unpaid personal and separate indebtedness to the bank and the unpaid capital and interest of the note for P11,000, above mentioned, secured by the mortgage of April 17, 1918.

In its first amended complaint, in which the Pacific Commercial Co. was included as a defendant in view of its purchase of the interest of Jose Tongoy in the mortgaged property, the plaintiff sought to foreclose its mortgage of April 17, 1918, and to recover the total amount of the two above mentioned notes. Upon learning that Jose Sonora had refused to ratify these notes on the ground that his children were of legal age on December 31, 1931, when said notes were executed, the bank again amended its complaint and prayed that judgment be entered in its favor and against all of the defendants Tongoy and Sonora, jointly and severally, for the sum of P22,575.35, the amount due on the promissory note of P11,000, with interest at 8 per cent per annum from October 16, 1933, until that sum is fully paid; that a judgment be entered against Jose Tongoy alone for the sum of P41,585.72 with interest at 8 per cent per annum from October 16, 1933, until that sum is fully paid and in case the amount of P22,575.35, with interest, is not paid or deposited in the office of the clerk of the court within three months from the date of the decision that the mortgaged property be sold and the sum so realized be applied to the payment of the amount due under the mortgage. The trial court entered judgment in accordance with this prayer.

The only question raised by the appellant's four assignments of error is whether or not the promissory note for P11,000 was novated by the execution of the two promissory notes of December 31, 1930. If it was it follows that

the mortgage to secure its payment was extinguished and consequently the appellant company is the owner of the one-Hfth undivided interest of Jose Tongoy in the land in question free from the encumbrance in favor of the plaintiff bank. The trial court held adversely to the contention of the Pacific Commercial Co., hence this appeal.

It is true that the plaintiff bank based its first amended complaint on the two promissory notes dated December 31, 1930; but it is equally true that the five children of Jose Sonora denied that Jose Tongoy had authority to execute the two later notes in their name, after they became of age, in view of the fact that the execution of the power of attorney in favor of Jose Tongoy by their father took place while they were still minors. They also refused to ratify these two notes and therefore the bank was justified in filing its second amended complaint. Upon this point the trial court correctly found that:

"La obligacion cuyo pago esta garantizado por la hipoteca Exhibit C no ha sido novada por el otorgamiento de los pagares exhibits AyB porque los coherederos de Jos& Tongoy se negaron a confirmar la novaci6"n que trato de hacer Jose Tongoy en su nombre y representacion e insistieron que solo debian al Banco Nacional Filipino la cantidad que fiparece en el documento de hipoteca Exhibit C y cuyo estado de cuenta se detalla en el documento Exhibit E copiado arriba."

This court held that "In every novation there are four essential requisites: First, a previous valid obligation; second, the agreement of all the parties to the new contract; third, the extinguishment of the old contract; and fourth, the validity of the new one." (Tiu Siuco vs. Habana, 45 Phil., 707, 712.)

In this case there was a failure of some of the parties of the old contract to agree to the new one and consequently the former contract, the promissory note for P11,000, was not extinguished.

The judgment of the trial court is affirmed with costs in this instance against the defendant-appellant.

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

Judgment affirmed.

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