

C. N. HODGES, PLAINTIFF AND APPELLANT, VS. CARLOTA SALAS AND PAZ SALAS, DEFENDANTS AND APPELLEES.*G. R. No. 42958. October 21, 1936*

Ponente: IMPERIAL, J.

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The action was brought by the plaintiff to foreclose a certain real estate mortgage constituted by the defendants to secure a loan. The plaintiff appealed from the judgment of the Court of First Instance of Occidental Negros absolving the defendants from the complaint and stating: That of the capital of P28,000 referred to in Exhibit A, the defendants were liable only for the sum of P14,451.71; that the transactions and negotiations specified in Exhibit A as well as the interest charged are usurious; that the sum of P14,778.77 paid by the defendants to the plaintiff should be applied to the payment of the capital of P14,451.71; that the plaintiff must refund the sum of P3,327.06 to the defendants and, lastly, he must pay the costs.

On September 2, 1923, the defendants executed a power of attorney in favor of their brother-in-law Felix S. Yulo to enable him to obtain a loan and secure it with a mortgage on the real property described in transfer certificate of title No. 3335. The power of attorney was registered in the registry of deeds of the Province of Occidental Negros and the pertinent clauses thereof read as follows:

"That we confer upon our brother-in-law Mr. Felix S. Yulo, married, of age and resident of the municipality of Bago, Province of Occidental Negros, P. I., as required by law, a special power of attorney to obtain, in our respective names and representation, a loan in any amount which our said brother-in-law may deem necessary, being empowered, by virtue of the authority conferred in this power of attorney, to constitute a mortgage on a parcel of land absolutely belonging to us, the technical description of which is as follows:

"TRANSFER CERTIFICATE OF TITLE NO. 3335

" 'A parcel of land (lot No. 2464 of the Cadastral Survey of Bago) with the improvements thereon, situated in the municipality of Bago. Bounded on the NE. and NW. by the Lonoy Sapa and lot No. 2465; on the SE. by the Ilabo Sapa; and on the SW. by the Ilabo Sapa, lot No. 2508 and the Sapa Talaptapan. Containing an area of one million nine hundred ninety-four thousand eight hundred and thirty-four square meters (1,994,834), more or less.

"That we confer and grant to our said brother-in-law Mr. Felix S. Yulo power and authority to perform and execute each and every act necessary to the performance of his trust, which acts shall be for all purposes as if we had performed or executed them personally, hereby ratifying and confirming everything that our said brother-in-law Mr. Felix S. Yulo may execute or cause to be executed."

Acting under said power of attorney, Felix S. Yulo, on March 27, 1926, obtained a loan of P28,000 from the plaintiff, binding his principals jointly and severally to pay it within ten (10) years, together with interest thereon at 12 per cent per annum payable annually in advance, to which effect he signed a promissory note for said amount and executed a deed of mortgage of the real property described in transfer certificate of title No. 3335 and

the improvements thereon consisting in concrete buildings. It was stated in the deed that in case the defendants failed to pay the stipulated interest and the taxes on the real property mortgaged and if the plaintiff were compelled to bring an action to recover his credit, said defendants would be obliged to pay 10 per cent more on the unpaid capital, as fees for the plaintiff's attorneys. The mortgage so constituted was registered in the registry of deeds of the Province of Occidental Negros and noted on the back of the transfer certificate of title.

The sum of P28,000 was not delivered to Felix S. Yulo, but by agreement between him and the plaintiff, it was employed as follows:

Interest for one year from March 27, 1926, to March 26, 1927, collected in advance by the plaintiff.

P3,360.00

Paid for the mortgage constituted by Felix S. Yulo, cancelled on the date of the loan.

8,188.29

Paid by Felix S. Yulo on account of the purchase price of the real property bought by him on Ortiz Street.

2,000.00

Check No. 4690 delivered to Felix S. Yulo.

3,391.71

Check No. 4597 in the name of Rafael Santos, paid to him to cancel the mortgage constituted by the defendants

9,200.00

Check No. 4598 delivered to Felix S. Yulo

1,860.00

Total

28,000.00

The defendants failed to pay at maturity the interest stipulated, which should have been paid one year in advance. All the sums paid by them on account of accrued interest up to March 27, 1934, on which the complaint was filed, together with the corresponding exhibits, are as follows:

Data

Amount

Exhibit 1 April 6, 1927

P1,500.00

Exhibit 2 May 2, 1927

600.00

Exhibit 4 August 30, 1927

336.00

Exhibit 7 June 4, 1928

3,360.00

Exhibit 8 May 15, 1929

67.20

Exhibit 9 June 19, 1929

67.20

Exhibit 10 July 25, 1929

33.60

Exhibit 11 August 26, 1929

33.60

Exhibit 12 October 7, 1929

392.56

Exhibit 13 October 7, 1929

30.00

Exhibit 14 November 9, 1929

29.67

Exhibit 15 November 9, 1929

938.95

Exhibit 16 February 8, 1930

61.04

Exhibit 17 February 8, 1930

936.46

Exhibit 18 No date.

498.75

Exhibit 19 February 10, 1931

498.75

Exhibit 20 August 20, 1931

498.75

Exhibit 21 July 7, 1932

498.75

Exhibit 22 July 29, 1932

500.00

Exhibit 23 September 23, 1932.

600.00

Exhibit 24 December 17, 1932

997.50

Exhibit 25 No date

1,000.00

Exhibit 26 January 23, 1934

500.00

Total

14,778.77

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To the foregoing amount must be added the sum of 60 deducted by the plaintiff upon granting the loan, as interest for one year, thereby making the total amount of interest paid by the defendants and received by the plaintiff P18,138.77.

The foregoing are facts inferred from the evidence and are not controverted by the parties, with the exception of the existence of the promissory note, the registration of the mortgage deed and the notation thereof on the back of the certificate of title.

I. The action brought by the plaintiff was for the foreclosure of a mortgage in accordance with the provisions of sections 254 to 261 of the Code of Civil Procedure. It was not expressly alleged in the complaint that the mortgage deed had been registered in accordance with Act No. 496, which was the law applicable in the case of the real property registered under the Torrens system. A copy of the mortgage deed was attached to the complaint and made a part thereof, but said copy did not show that the original had been duly registered. In paragraph 3 of the complaint, however, it was alleged that the mortgage deed had been noted on the back of transfer certificate of title No. 3335 by the register of deeds of the Province of Occidental Negros, in accordance with the provisions of the Mortgage Law. This specific allegation is equivalent to a statement that the mortgage deed had been duly registered.

At the trial of the case, the attorney for the plaintiff did not present the mortgage deed showing the registration thereof in the registry, or the owner's transfer certificate of title. In their stead the plaintiff testified that the mortgage had been duly registered in the registry of deeds of Occidental Negros and had been noted on the back

of the transfer certificate of title. The oral evidence was admitted without any objection on the part of the attorney for the defendants. In the appealed decision the court held that the plaintiff had failed to substantiate his foreclosure suit and, not having presented competent evidence, the action arising from his evidence was merely a personal action for the recovery of a certain sum of money. The plaintiff excepted to this conclusion and assigns it in his brief as the first error of law committed by the court.

Section 284 of the Code of Civil Procedure requires the contents of a writing to be proven by the writing itself, except in cases therein specified. Section 313, No. 6, provides that official or public documents must be proven by presenting the original or a copy certified by the legal keeper thereof. According to this, the plaintiff was obliged to present the original or a certified copy of the mortgage deed showing the registration thereof, as well as the owner's transfer certificate of title. Both would have been the best evidence to prove the registration of the mortgage and the notation thereof on the back of the title. Had the defendants objected to the oral evidence offered, there is no doubt that it would have been rejected as incompetent. But it is universally accepted that when secondary or incompetent evidence is presented and accepted without any objection on the part of the other party, the latter is bound thereby and the court is obliged to grant it the probatory value it deserves. (*City of Manila vs. Cabangis*, 10 Phil., 151; *Bersabal vs. Bernal*, 13 Phil., 463; *Kuenzle & Streiff vs. Jiongco*, 22 Phil., 110; *U. S. vs. Choa Tong*, 22 Phil., 562; *U. S. vs. Ong Shiu*, 28 Phil., 242; *De Leon vs. Director of Prisons*, 31 Phil., 60; *U. S. vs. Hernandez*, 31 Phil., 342; 23 C. J., 39, section 1783, and the cases therein cited; 10 R. C. L., 1008, paragraph 197, and the cases therein cited.)

Inasmuch as the registration of the mortgage and the notation thereof on the back of the transfer certificate of title have been established by the oral evidence above-stated, the court was without authority to conclude that the action was personal in character and, consequently, the first assignment of error is well founded.

II. The court held that the loan and the mortgage were usurious and illegal for two reasons: First, because the plaintiff charged compound interest notwithstanding the fact that it had not been stipulated, and second, because the plaintiff charged interest yearly in advance in accordance with the agreement. These conclusions are the subject matter of the plaintiff's second assignment of error.

The plaintiff categorically denied having charged compound interest, stating in his brief that all the interest charged by him should be applied to the interest unpaid by the defendants. We have examined Exhibits 8 to 17 of the defendants, which are the evidence offered to establish the fact that compound interest had been charged, and we have, without any difficulty, arrived at the conclusion that the plaintiff has really charged said unauthorized and unstipulated interest. If there is any doubt on this fact, it is dispelled by Exhibit 10, in the handwriting of the plaintiff himself, wherein it appears that the sum of P33.60 was charged by him on account of interest on unpaid interest. But the fact of charging illegal interest, although it exceeds the maximum limit of interest that may be charged, does not make the loan or the mortgage usurious because the transactions took place subsequent to the execution of said contracts and the latter do not appear to be void ab initio (66 C. J., pages 243, 244, section 194). Said interest should be applied first to the payment of the stipulated and unpaid interest and, later, to that of the capital. (*Aguilar vs. Rubiato and Gonzalez Vila*, 40 Phil., 570; *Go Chioco vs. Martinez*, 45 Phil., 256; *Gui Jong & Co. vs. Rivera and Avellar*, 45 Phil., 778; *Lopez and Javelona vs. El Hogar Filipino*, 47 Phil., 249; *Sajo vs. Gustilo*, 48 Phil., 451.)

The plaintiff admits having charged in advance the interest corresponding to the first year. The mortgage deed contains the stipulation that the defendants should pay in advance the stipulated interest corresponding to each year. The court declared the contract usurious for this reason, basing its opinion upon some American authorities holding the same point of view. This court cannot adopt said doctrine in this jurisdiction. Section 5 of Act No. 2655, as amended by section 3 of Act No. 3291, expressly permits a creditor to charge in advance interest

corresponding to not more than one year, whatever the duration of the loan. What is prohibited is the charging in advance of interest/ for more than one year. Section 6 reiterates said rule in exempting a creditor found guilty of usury from the obligation to return the interest and commissions collected by him in advance, provided said interest and commissions are not for a period of more than one year and the rate of interest does not exceed the maximum limit fixed by law. This court concludes, therefore, that the second assignment of error is well founded in the sense that both the loan and the mortgage are not usurious or illegal.

III. In his third assignment of error, the plaintiff contends that the court should have declared the action for usury interposed by the defendants in their cross-complaint barred by the statute of limitations, in accordance with the provision of section 6 of Act No. 2655, as amended by section 4 of Act No. 3291. It is true that according to the evidence more than two years have already elapsed from the time the defendants paid and the plaintiff received the usurious interest to the registration of the cross-complaint, but the plaintiff cannot successfully invoke the defense of prescription because he failed to allege it in his reply to the cross-complaint. In order that prescription may constitute a valid defense and it may be considered on appeal, it must be specifically pleaded in the answer and proven with the same degree of certainty with which an essential allegation in a civil action is established. Otherwise it will not be taken into consideration, much less if it is alleged for the first time on appeal. (*Aldeguer vs. Hoskyn*, 2 Phil, 500; *Domingo vs. Gsorio*, 7 Phil., 405; *Marzon vs. Udtujan*, 20 Phil., 232; *Pelaez vs. Abreu*, 26 Phil., 415; *Gorporacion de PP. Agustinos Recoletos vs. Crisostomo*, 32 Phil., 427; *Karagdag vs. Barado*, 33 Phil, 529.)

IV. The defendants proved that their attorney's fees were contracted at P3,000. The evidence has not been contradicted. The amount so fixed is not unreasonable or unconscionable. In the fourth assignment of error, the plaintiff questions that part of the judgment ordering him to pay said fees. He contends that he is not responsible for the payment thereof because neither the loan nor the mortgage is usurious. However, this court has already stated that the plaintiff violated the Usury Law in charging compound interest notwithstanding the fact that it has not been so stipulated and that adding these sums to the stipulated interest the average thereof exceeds the maximum rate of interest that may be charged for the loan which has been the subject matter of the transaction. This violation falls under the precept of section 6 of the Usury Law and the plaintiff is obliged to pay the fees of the attorney for the defendants. This court holds that the fourth assignment of error is unfounded.

V. In the fifth assignment of error, the plaintiff alleges that the judgment is erroneous for not having declared that the defendants ratified all the obligations contracted by their attorney in fact. In the sixth assignment of error he contends that an error was likewise committed in not declaring that by virtue of the authority conferred by the defendants, agent Yulo was authorized to borrow money and invest it as he wished, without being obliged to apply it necessarily for the benefit of his principals. In the seventh assignment of error the plaintiff alleges that the court erred in fixing the capital, which the defendants are obliged to pay him by virtue of the power of attorney executed by them, at only P14,451.71. In the eighth and last assignment of error, he insists that the court should have ordered the defendants to pay the entire capital owed, with interest thereon in accordance with the mortgage deed, together with 10 per cent thereof as attorney's fees, the action having been instituted due to non-feasance on the part of the defendants.

These four assignments of error refer to the interpretation and scope of the power of attorney and to the computation of the capital and the interest to be paid by the defendants and, finally, to whether or not the latter are obliged to pay the fees of the attorney for the plaintiff. For this reason, this court passes upon them jointly.

The pertinent clauses of the power of attorney from which may be determined the intention of the principals in authorizing their agent to obtain a loan, securing it with their real property, were quoted at the beginning. The terms thereof are limited; the agent was thereby authorized only to borrow any amount of money which he

deemed necessary. There is nothing, however, to indicate that the defendants had likewise authorized him to convert the money obtained by him to his personal use. With respect to a power of attorney of special character, it cannot be interpreted as also authorizing the agent to dispose of the money as he pleased, particularly when it does not appear that such was the intention of the principals, and in applying part of the funds to pay his personal obligations, he exceeded his authority (art. 1714, Civil Code; *Bank of the Philippine Islands vs. De Coster*, 47 Phil., 594 and 49 Phil., 574). In cases like the present one, it should be understood that the agent was obliged to turn over the money to the principals or, at least, place it at their disposal. In the case of *Manila Trading & Supply Co. vs. Uy Tiepo* (G. R. No. 30339, March 2, 1929, not reported), referring to a power of attorney to borrow any amount of money in cash and to guarantee the payment thereof by the mortgage of certain property belonging to the principals, this court held that the agent exceeded his authority in guaranteeing his personal account for automobile parts by the mortgage, not having been specially authorized to do so. This court then said:

"Inasmuch as Jose S. Uy Tiepo, as agent of Daniel Ramos and Emilio Villarosa, was only authorized to 'borrow any amount of cash, and to guaranty the payment of the sums of money so borrowed by the mortgage of the property stated in the power of attorney, he exceeded the authority conferred upon him in mortgaging his principal's property to secure the payment of his personal debt for automobile parts, and the guaranties so made are null and void, the principals in question not being responsible for said obligations."

The plaintiff contends that the agent's act of employing part of the loan to pay his personal debts was ratified by the defendants in their letter to him dated August 21, 1927 (Exhibit E). This court has carefully read the contents of said document and has found nothing implying ratification or approval of the agent's act. In it the defendants confined themselves to stating that they would notify their agent of the maturity of the obligation contracted by him. They said nothing about whether or not their agent was authorized to use the funds obtained by him in the payment of his personal obligations.

In view of the foregoing, this court concludes that the fifth and sixth assignments of error are unfounded.

In the seventh assignment of error, the plaintiff insists that the defendants should answer for the entire loan plus the stipulated interest thereon. This court has already stated the manner in which the agent employed the loan, according to the plaintiff. Of the loan of P28,000, the agent applied the sum of P10,188.29 to the payment of his personal debt to the plaintiff. The balance of P17,811.71 constitutes the capital which the defendants are obliged to pay by virtue of the power conferred upon their agent and the mortgage deed.

In connection with the stipulated interest, it appears that the capital of P17,811.71 bore interest at 12 per cent per annum from March 27, 1926, to September 30, 1936, equivalent to P22,460.56. All the interest paid by the defendants to the plaintiff, including that which is considered as usurious, amounts to P18,138.77, so that they are still indebted in said concept in the sum of P4,321.79. Adding this sum to the capital of P17,811.71, makes a total of P22,133.50, from which the sum of P3,000 constituting the fees of the attorney for the defendants must be deducted, leaving a net balance of P19,133.50 which is all that the defendants must pay to the plaintiff up to said date.

The foregoing disposes of the seventh assignment of error.

In the mortgage deed the defendants bound themselves to pay the fees of the attorney for the plaintiff in case they failed to comply with the terms thereof or pay the land tax, or the plaintiff were to resort to the courts to foreclose the mortgage. Said fees were fixed at 10 per cent of the capital which the defendants might owe. This penalty, according to what has been stated heretofore, amounts to 91,121.17 which would have to be added to the total amount to be paid to the plaintiff by the defendants. The court, having declared the contracts usurious, did not order the defendants to pay the penalty and for this reason the plaintiff assigns the omission as the eighth and last

assignment of alleged error. Inasmuch as the fees agreed upon are neither excessive nor unreasonable, this court finds no good reason to disapprove it, particularly because the defendants were also granted a larger amount in the same concept.

In view of the conclusions arrived at, the motion for a new trial filed by the attorneys for the plaintiff on March 12, 1935, is denied, and the amendments to the complaint proposed by them in their pleading of March 20 of said year are admitted.

For all the foregoing reasons, the appealed judgment is modified and the defendants are ordered to pay jointly and severally to the plaintiff the sums of P19,133.50 and P1,781.17. Within three months they shall make payment of said two sums of money or deposit them with the clerk of court, at the disposal of the plaintiff, upon failure to do which the real property mortgaged with the improvements thereon shall be sold at public auction and the proceeds thereof applied to the payment of the two sums of money above-stated; without special pronouncement as to the costs of this instance. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Laurel, JJ., concur.

RESOLUTION UPON MOTION FOR RECONSIDERATION

December 29, 1986

IMPERIAL, J.:

The motion for reconsideration presented by the appellees is based upon three grounds: (1) That the capital for which they must answer to the appellant should be only P16,422.39, not P17,811.71 as stated in the decision; (2) that the computation of the payments made is incorrect, and (3) that the oral evidence relative to the registration of the mortgage is insufficient.

I. It is claimed that as the true capital for which the appellees were held responsible amounts only to P16,422.39, excluding the sum of P3,360 paid in advance as interest corresponding to the first year, this latter sum should not be paid in its entirety by the appellees but only that part thereof in proportion to the capital owed. The contention is without any foundation because, as was already stated in the decision, the agent was expressly authorized to borrow and receive the total amount of P28,000. On the other hand, as it was stipulated that the interest should be paid annually in advance, it is evident and just that the entire sum of P3,360 representing said interest be paid by the appellees who contracted the debt through an agent. The fact that after the contract had been consummated and the interest for the first year paid, the agent, exceeding his authority, unduly used part of the funds intrusted to him, does not relieve the appellees of their obligation to answer for the entire interest for the first year. For this reason, this court declares that the first ground is unfounded.

II. In the computation of the interest paid by the appellees and of that which they should pay to the appellant by virtue of the terms of the contract, this court proceeded to determine the time that elapsed from the date the contract became effective and debited to the appellees the interest at the rate agreed upon, deducting therefrom what they had paid in said concept, including the interest paid by them for the first year because the computation commenced from the date fixed in the contract, which is March 27, 1926. The difference represents the interest unpaid by the appellees up to September 30, 1936, considered by this court as the date on which the appellees' account with the appellant was finally liquidated and closed, and added to the capital they represent the amount appearing in the decision. This court sees no error of accounting in this computation.

III. The appellees insist that the oral evidence upon which this court based its opinion in declaring that the

mortgage deed is registered, is insufficient. What has been said in the decision on this point is so clear and understandable that this court believes itself relieved from the obligation of reproducing it. There is no merit in the last ground of the motion.

In answering the appellees' motion for reconsideration, the appellant likewise seeks reconsideration of the decision, alleging that he is entitled to a larger amount. Without going into details, because this court deems it unnecessary, it is held that the appellant is not entitled to ask for reconsideration of the decision on the ground that his petition to that effect has been filed too late, after the decision in question became final with respect to him.

The appellees' motion for reconsideration is denied.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Laurel, JJ., concur.

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