

VENANCIO QUEBLAR, PLAINTIFF AND APPELLANT, VS. LEONAEDO GARDUÑO AND ANICIA MARTINEZ, DEFENDANTS AND APPELLANTS.

G. R. No. 43012. January 16, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

These are cross-appeals taken by the plaintiff Venancio Queblar and by the defendants Leonardo Garduño and Anicia Martinez from the judgment of the Court of First Instance of Cavite, the dispositive part of which reads as follows:

"Wherefore, judgment is rendered ordering the defend- ant Leonardo Garduilo to pay to the plaintiff the sum of P7,750 with legal interest thereon from May 4,1933, when the complaint in this case was filed, until fully paid, with costs, and upon his failure to do so within one hundred twenty (120) days from this date, the court will order the sale of the mortgaged estate so that the proceeds thereof may be applied to the payment of the amount of this judgment.

"The plaintiff is absolved from the cross-complaint, and so also is the cross-defendant Amalia Arcega."

In support of their appeal, the plaintiff assigns two alleged errors and the defendants ten as committed by the court a quo in its said judgment, all of which will be discussed in the course of this decision.

The first question to be decided in this appeal, which is raised by the defendants in their brief, is whether or not the true amount obtained by the defendants from Feliciano Basa and Amalia Arcega was P2,100 or P8,400.

The defendant Leonardo Garduño claims that, his brother-in-law Isidro Martinez having proposed to him the purchase of a house on Marquez de Comillas Street, Manila, for the sum of P22,700, hoping that after six months he could resell it for not less than P35,000, he negotiated and obtained a loan of P17,600 from the Postal Savings Bank; that he had a savings of P3,000 and needed only P2,100 to complete the amount necessary to acquire said estate; that he explained to the Basa spouses the prospective transaction and succeeded in obtaining the sum of P2,100 from the latter; that the spouses Basa having known that he was to gain P12,600 in the resale, they asked for one-half of the profits, or P6,300 instead of demanding interest; that as he needed their money, he agreed, and the sum of P8,400 was stated in the deed of loan Exhibit A, instead of P2,100; that he acquired the estate but he failed to resell it under the aforesaid advantageous conditions by reason of the death of his brother-in-law Isidro Martinez who was to negotiate the resale; that in view of this failure, Leonardo Gardune requested his creditors, the spouses Feliciano Basa and Amalia Arcega, to reduce his indebtedness but said spouses refused to accede to his request, and nothing more was done as he had to go to Capiz to take charge of the Court of First Instance of said province.

Amalia Arcega denied all the testimony of the defendant Leonardo Garduño and stated that the amount loaned to said defendant and his wife was P8,400 appearing in the deed of loan Exhibit A; that they charged him no interest because the defendant and her husband were very good friends and the former used to take the latter from his house for a drive in the defendant's automobile.

It is incomprehensible that the defendant Leonardo Garduno, who was then a Judge of the Court of First Instance, should agree to assume a debt of P8,400 if he had really received only P2,100. With the expected profit of P12,600 from a resale of the estate he wanted to purchase, he could pay even double the sum of P2,100, giving his creditors one hundred per cent profit, without the necessity of paying forty-two monthly installments of P200 to settle his debt. The theory of the defendant-appellant is so strange and unbelievable even in ordinary cases wherein the borrower is not a judge of first instance. Furthermore, if the P6,300 added to the P2,100 were really one-half of the profit which Leonardo Garduno hoped to realize from the resale, and if he agreed to have the sum of P8,400 stated in the deed of loan on condition that the estate could be sold and said profit realized, as said resale and, consequently, the profit had not been realized, the condition disappeared and upon refusal of the spouses Basa to reduce the loan to its true amount of P2,100, he could have resorted to the courts to ask for its reduction to its true limit. As he did not do so, the presumption is that the P8,400 appearing in the deed of loan Exhibit A is the true amount obtained by the defendant Leonardo Garduno from the Basa spouses.

Having arrived at this conclusion, we believe it unnecessary to pass upon the other assignments of alleged error relied upon by the defendant-appellant Leonardo Garduno.

Turning our attention to the alleged errors assigned by the plaintiff-appellant who acquired the rights of the spouses Feliciano Basa and Amalia Arcega to the loan contained in the deed Exhibit A, we have in the first place the question whether the payment of interest by reason of default should begin from the month of March, 1926, when the defendant-appellant failed to pay the stipulated installments, or from May 4, 1933, when the complaint in this case was filed.

Although it is really stipulated in the deed Exhibit A that failure to pay any of the monthly installments fixed therein would mature the entire obligation, however, it is not stated herein that the mortgagors would thereafter be in default, as required by paragraph 1 of article 1100 of the Civil Code. There being no such statement of default, the herein defendant-appellant was in default only when judicially required to comply with the obligation through the filing of the corresponding complaint on May 4, 1933. (Art. 1100, Civil Code; *Compania General de Tabacos vs. Araza*, 7 Phil., 455.)

The court a quo, therefore, did not err in adjudicating interest to the plaintiff from May 4, 1933.

With respect to the amount claimed for attorney's fees, it has been stated in the contract Exhibit A that the mortgage constituted was "also to secure the payment of another reasonable amount as attorney's fees in case of litigation and of the costs and the corresponding expenses." Therefore, there is a stipulation for the payment of reasonable attorney's fees in case of litigation. Taking into consideration the amount involved in the litigation and the nature of the latter, we are of the opinion that five per cent of the debt is a reasonable rate for the payment of attorney's fees in the case at bar.

For the foregoing considerations, we are of the opinion and so hold that altho a contract of loan stipulates that failure to pay any of the installments therein stipulated would mature the entire obligation, without expressly stating that the debtor shall thereafter be in default, there is no justification to so hold and to adjudicate interest from the date of said non-fulfillment, but from the time a judicial or extrajudicial demand for payment is made of him (art 1100, Civil Code; *Compania General de Tabacos vs. Araza*, supra).

Wherefore, with the sole modification that five per cent of the unpaid debt of P7,750 is also awarded to the plaintiff-appellant, the appealed judgment is affirmed in all other respects, with costs to the defendant-appellant. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

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