

JULIAN SALGADO, PLAINTIFF AND APPELLANT, VS. SIMEON RAMOS, AS DIRECTOR OF LANDS, DEFENDANT AND APPELLEE.

G. R. No. 43075. September 08, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiff Julian Salgado from the judgment of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, upon this latter consideration, the defendant is absolved from the complaint in this case, without costs. So ordered."

In support of his appeal, the appellant assigns as the only alleged error committed by the court a quo in its said judgment its having held that the provisions of Act No. 3083, defining the conditions under which the Government of the Philippine Islands may be sued, are applicable to the present case.

The following pertinent facts, which are undisputed, are necessary for the resolution of the legal question raised in this appeal, to wit:

On June 17, 1919, the plaintiff Julian Salgado applied for and obtained a loan in the sum of P46,500 from the funds known as the "San Lazaro Estate Funds", created by Act No. 2360, as amended, payable within the period of three years, with interest thereon at 7 per cent per annum. Said loan was secured by real estate mortgage. The corresponding deed was executed by Basilio Salgado, in his capacity as attorney in fact of the plaintiff Julian Salgado, as mortgagor, and by Cayetano Lukban, in his capacity as Director of Lands, in representation of the Government of the Philippine Islands, as mortgagee, and it was approved by the then Secretary of Agriculture and Natural Resources, Honorable Galicano Apacible. Inasmuch as the plaintiff's debt had not been fully paid upon the expiration of the period of three years stipulated for the payment thereof, he obtained an extension of said period from June 27, 1922. Said extension was not recorded in any instrument. From June 27, 1919, to June 27, 1922, the plaintiff had been paying the stipulated interest at 7 per cent per annum, but from June 27, 1922, to June 1, 1928, he paid without protest interest at 9 per cent per annum, as required by the defendant Director of Lands, by virtue of the authority conferred upon him by the then Secretary of Agriculture and Natural Resources (Exhibit 13). On August 4, 1933, said plaintiff Julian Salgado claimed the refund of the sum of P3,251.15, alleging that he had paid it in excess of the original rate of interest of 7 per cent, pursuant to said requirement, in violation of the original contract of loan, Exhibits A and B. As the defendant Director of Lands had not acceded to the plaintiff's claim, the latter brought this action without first having presented his said claim to the Insular Auditor.

As his first proposition, the appellant contends that the present action does not constitute a moneyed claim against the Government of the Philippine Islands, in accordance with Act No. 3083, on the ground that said defendant, in charging interest at 9 per cent, when the stipulated interest was only 7 per cent, acted without legal authority and the money so collected by him does not belong to said Government. Therefore the Government cannot be responsible for his said act.

As stated in the statement of facts, the charging of interest at 9 per cent was authorized by the then Secretary of Agriculture and Natural Resources. Said increase was in accordance with the regulation promulgated by said department head (Exhibit 13), pursuant to the authority conferred upon him by section 79 (B) of Act No. 2711, as amended by Act No. 2803. If the Director of Lands was authorized by the corresponding department head to increase the rate of interest, the fact that the increase thereof to 9 per cent had been made, whether in violation or not of the contract of loan secured by mortgage, entered into between the plaintiff and the defendant, would not exempt the Government of the Philippine Islands from civil responsibility for the acts of its agent, performed within the scope of his authority. If the charging of 9 per cent interest were illegal, the Government of the Philippine Islands to whose coffers the money so charged went, would be the one to refund it. Consequently, while the claim is actually made against the Director of Lands, it is juridically against the Government of the Philippine Islands of which the Director of Lands is a mere agent, in accordance with the provisions of article 1727 of the Civil Code.

As his second proposition, the plaintiff contends that the recovery of what has been improperly paid (*cobro de lo indebido*), provided for in article 1895 of the Civil Code on which he bases his claim, is not included within the terms of section 1 of said Act No. 3083, which reads as follows:

"SECTION 1. Subject to the provisions of this Act, the Government of the Philippine Islands hereby consents and submits to be sued upon any moneyed claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties."

In the case of *Leung Ben vs. O'Brien* (38 Phil., 182), this court has held that quasi-contracts, as a source of obligations, as well as those emanating from law (art. 1089, Civil Code), partake of the juridical nature of implied contracts. However, even if this were not so, inasmuch as the interest alleged to have been excessively charged by the Director of Lands has been turned over to the Insular Treasury, it cannot be restored without the consent of the Insular Government. Consequently, the Government is a party interested in the claim, and as such it cannot be sued without first having complied with the condition established in the above-cited Act No. 3083, that is, without first having presented the claim to the Insular Auditor and the latter did not decide the same within two months from the date of its presentation. This condition has been ratified by the Constitution of the Philippines in providing in its Article X, section 3, that when the aggrieved party is a private person or entity, an appeal from the decision of the Auditor-General may be taken directly to a court of record in the manner provided by law.

For the foregoing considerations, this court is of the opinion and so holds: (1) That the Insular Government, as principal, is the really interested party to an action brought to recover from the Director of Lands interest allegedly charged in excess by said official in the performance of his duties; and (2) that the presentation of the claim to the Insular Auditor and the disapproval thereof are indispensable requisites for the competent courts to acquire jurisdiction over the Government of the Philippine Islands in actions involving moneyed claims.

Wherefore, not finding any error in the appealed judgment, it is affirmed in all its parts, with costs to the appellant. So ordered.

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

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