

**LA URBANA, SOCIEDAD MUTUA DE CONSTRUCCION Y PRESTAMOS,
PLAINTIFF AND APPELLEE, VS. MARIA F. VILLA ABRILLE,
DEFENDANT AND APPELLANT.**

G. R. No. 43855. August 06, 1937

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This action was commenced in the Court of First Instance of Davao for the foreclosure of a real estate mortgage which was given as security for the payment of a loan of P40,000 obtained by the appellant from the appellee. Upon the evidence presented by the parties in support of their respective pleadings, the trial court rendered judgment in favor of the plaintiff and appellee for the sum of P42,492.18, with interest at the rate of twelve per cent per annum from December 23, 1933 until the said amount is fully paid. Defendant and appellant was also ordered to pay the plaintiff and appellee the sum of P6,000 as attorney's fees.

In support of this appeal, counsel for the appellant has assigned four errors which we shall presently discuss.

- It is contended for the appellant that the court below erred in overruling the demurrer interposed by her on the ground that the complaint filed by the plaintiff and appellee was ambiguous, unintelligible, and uncertain. We find no merit in this contention. Far from being unintelligible and uncertain, the complaint goes to the extent of giving an itemized statement of the indebtedness covered by the mortgage. It states in a sufficiently clear language the circumstances which constitute the plaintiff's cause of action. (Code of Civil Procedure, see. 90.)

- It is also urged on behalf of the appellant that the principal amount claimed by the plaintiff and appellee comes within the penal sanction of the Usury Law. On the other hand, counsel for the appellee contend that the appellant cannot now invoke the defense of usury in view of the fact that the answer filed by her was not made under oath. This contention seems to be based on the provisions of section 9 of the Usury Law (No. 2655) which reads as follows:

"The person or corporation sued shall file its answer in writing under oath to any complaint brought or filed against said person or corporation before a competent court to recover the money or other personal or real property, seeds or agricultural products, charged or received in violation of the provisions of this Act. The lack of taking an oath to an answer to a complaint will mean the admission of the facts contained in the latter."

It will be noticed upon careful examination that this section does not apply to the present case. It has reference to an answer filed to a complaint brought to recover money or other personal or real property charged or received in violation of the provisions of the Usury Law. In other words, where the victim of usury files an action to recover what has been exacted from him in violation of the Usury Law, the answer to such a complaint must be under oath, otherwise the facts alleged in the complaint will be deemed admitted.

The question of usury is therefore properly raised by the answer, and it becomes necessary to consider whether the charges included in the principal amount awarded by the court below are usurious in character. There can be

no question that the interests expressly stipulated in the contract of mortgage—namely, 10 per cent and 12 per cent, according to whether the terms of the agreement are complied with or not—are within the limits prescribed by law; and with respect to the other charges covered by the agreement, the same are those usually made by building and loan associations and which have received the sanction of the law. (Lopez and Javelona vs. El Hogar Filipino, 47 Phil., 249.)

- The third error assigned by the appellant relates to the admission of the depositions contained in Exhibit K and of Exhibits A and B mentioned in the deposition of Luis Garcia Aldeguer, the secretary of the plaintiff corporation. Exhibit A is the deed of mortgage, while Exhibit B is a statement of the account of the appellant with the appellee. Appellant claims that in the taking of the depositions, the requirements of section 361 of the Code of Civil Procedure were not complied with. The evidence shows, however, that these depositions were taken in the City of Manila before a notary public; that notice was served on the appellant eight days before the time fixed for taking the depositions. The notice was served on the appellant and not on her attorney, since, at the time of the sending of such notice, the plaintiff had no knowledge of the appointment of the latter.

We find that there has been a substantial compliance with the requirements of section 361 of the Code of Civil Procedure, regarding the taking of depositions.

- The fourth assignment of error concerns, the amount of P6,000 awarded by the court below as attorney's fees. While it is true that the decision of the court in this respect is fully in accord with the terms of the mortgage contract, this court has held that the amount stipulated by the parties as attorney's fees may be reduced to what is considered a reasonable amount under the circumstances attending the case. (Bachrach vs. Golingco, 39 Phil., 138; Manila Trading & Supply Co. vs. Tamaraw Plantation Co., 47 Phil., 513.) Considering the circumstances of this case, we think that the amount of P3,000 is a reasonable allowance for attorney's fees.

The judgment appealed from is affirmed with the only modification that the amount of P6,000 therein awarded as attorney's fees be reduced to P3,000. Costs will be taxed against the appellant. So ordered.

Avancena, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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