

**MONTE DE PIEDAD Y CAJA DE AHORROS DE MANILA, PLAINTIFF
AND APPELLEE, VS. MARIA PAZ MARCIANA GUIDOTE, JORGE B.
DELGADO, TEODORO R. YANGCO, PHILIPPINE NATIONAL BANK, AND
BANK OF T...**

G.R. No. 44260. November 02, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

The defendant Teodoro R. Yangco appealed from the judgment rendered by the Court of First Instance of Manila, which subordinates his credit against the defendant spouses Maria Paz Marciana Guidote and Jorge B. Delgado to those of the plaintiff against the same defendants, attacking said judgment as being the result of the error of having considered certain mortgages constituted by said spouses in favor of the plaintiff more preferred, by their nature, than his credit.

The alleged credit of the defendant consists of the following sums: P7,425 plus interest thereon at 10 per cent per annum from March 24, 1932, and P700. The alleged credits of the plaintiff are as follows: (a) P63,000 plus interest thereon at 10 per cent per annum from December 15, 1933; (b) P5,235 plus interest thereon at the legal rate from December 6, 1933, and (c) P1,500, plus the costs of the trial.

The evidence afforded this court by the records and by the stipulation of the parties, appellant and appellee, with respect to certain facts which they wish to be taken into consideration, shows that the appellee's credit, which was originally P220,000, is now only as indicated in the foregoing paragraph. All of said credit was secured by four mortgages, the first of which had been constituted on September 15, 1930, the second on October 23, 1930, the third on November 8, 1930, and the last on January 22, 1931. The four mortgages were duly registered in the office of the register of deeds of Manila, and noted further at the back of the certificates of title covering the real properties described in the complaint. The evidence likewise shows that the credit of the defendant Teodoro R. Yangco originally amounted to P20,000, but by reason of payments which the spouses Maria Paz Marciana Guidote and Jorge B. Delgado had been making to him during and prior to the first half of the year 1932, the only amount now remaining unpaid by them is P7,425 with interest thereon at 10 per cent per annum from March 24, 1932, and the sum of P700. If Teodoro R. Yangco has this credit, it is certainly by virtue of a judgment obtained by him against the defendant spouses on September 13, 1932, in civil case No. 41688 of the Court of First Instance of Manila, entitled "Teodoro R. Yangco, plaintiff, vs. Jorge B. Delgado and Paz Guidote de Delgado, defendants" (Exhibits G and G-1).

Contrary to what Teodoro R. Yangco now states in his brief, the action then brought by him against said spouses in the above-cited case was for the recovery of the proceeds of a promissory note for P8,500, the same note fully quoted by him in his complaint, which reads as follows:

"P8500.00

MANILA, Sept. 23, 1931

"For value received, we, jointly and severally, promise to pay within one hundred twenty days (120) to the order of Mr. Teodoro R. Yangco, proprietor of Bazaar 'Siglo XX', at his office in the City of Manila, the principal sum of eight thousand five hundred pesos (P8,500) Philippine currency, with interest thereon at the rate of ten per cent (10%) per annum.

"If it should be necessary to bring suit to enforce payment of this note, there shall be paid, in addition to the aggregate principal sum and interest, a sum equivalent to fifteen per cent of the total amount then due for attorney's fees and costs of collection, in addition to the legal costs provided for in the Code of Civil Procedure. We furthermore expressly submit to the jurisdiction of the Courts of the City of Manila any legal action arising out of this promissory note, without in any way divesting jurisdiction from any other court or courts.

(Sgd.)

"JORGE B. DELGADO

"PAZ GUIDOTE DE DELGADO"

The lower court, finding that the defendants in the abovesaid case, who are the same defendants Maria Paz Marciana Guidote and Jorge B. Delgado, had paid only a small part of their debt, ordered them both to pay to the appellant Teodoro R. Yangco the balance of his credit against them, that is, the sum of P7,425 with interest thereon at 10 per cent per annum from March 24, 1932, plus the penal sum of P700, which are exactly the same sums constituting the credit now claimed and contended by said appellant to be, by their nature, more preferred than those of the appellee, which are secured, as already stated, by four mortgages the validity of which is beyond dispute and very much prior not only to the judgment rendered in his favor in said case (civil case No. 41688), but also to the execution of the unpaid promissory note which gave rise to his right of action.

If this court were to decide the question by taking into consideration only the facts stated heretofore, its resolution could be no other than to hold that the lower court did not commit the error attributed to it by the appellant, because such resolution is supported by article 1923 of the Civil Code. It happens, however, that in the stipulation of facts submitted by the parties, it is stated that the credit of the defendant-appellant Teodoro R. Yangco is for construction materials, such as iron sheets, articles for the bathroom, water-closets, paint, etc., taken from him by the spouses Maria Paz Marciana Guidote and Jorge B. Delgado in and before September, 1931. This may be true but, after all, the appellant's situation remains unaltered. The appellant, upon being satisfied with bringing his action for the recovery of the proceeds of the promissory note executed in his favor, and in agreeing beforehand to accept said promissory note which, by itself alone, already altered the relation of vendor and purchasers then existing between him and the defendant spouses, respectively, clearly waived the right which, otherwise, he would have had under article 1922 of the Civil Code. This article to which he now resorts, is certainly not applicable to his case because in order to be so, following the doctrine laid down in the case of *Unson vs. Urquijo, Zuloaga & Escubi* (50 Phil., 160), it is necessary that the properties sold by him be still in the possession of the purchasers. It appears, however, that some of the properties in question, if not all of them, are no longer in their possession, inasmuch as the houses in which they had been used were sold to Sy Uy on December 15, 1931

(Exhibit E), and to the spouses Alberto B. Padilla and Natividad Angeles on March 9, 1932 (Exhibit F). Furthermore, it is necessary to show, and this has not been done, that said properties continue to retain their original form and substance and are, until now, easily identifiable.

For all the foregoing reasons, the appeal is hereby declared unfounded, and the appealed judgment is affirmed in toto, with the costs to the appellant. So ordered.

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

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