

TOMASA OSORIO, PLAINTIFF AND APPELLANT, VS. ANGELA MONTENEGRO VIUDA DE PAPA, DEFENDANT AND APPELLEE.

G.R. No. 44826. December 02, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

From an adverse decision rendered by the lower court in civil case No. 44109 of the Court of First Instance of Manila, plaintiff appealed and, in this instance, contends that the court committed the following errors:

"I. The lower court erred in not holding that the PAGARE, the instrument Exhibit M is supported by real, good, sufficient and legitimate consideration.

"II. The lower court erred in not holding that the total loan P63,764 stated in Exhibit M has not yet been paid wholly or in part.

"III. The lower court erred in not requiring the defendant to pay to the plaintiff the sum of Sixty-Three Thousand Seven Hundred and Sixty-Four Pesos (P63,764) the amount mentioned in the PAGARE Exhibit M, plus the interest thereon at the legal rate computed from the time of the filing of the complaint until full payment is made."

The questions raised by appellant may be summed up in the following manner: Did appellee obtain from appellant the loan of P63,764 to which Exhibit M refers?

Exhibit M is of the following tenor:

"I have received from Miss Tomasa Osorio the sum of Sixty-Three Thousand Seven Hundred Sixty-Four Pesos (P63,764) as loan, without any interest, to be invested in the construction of my house at 311 Aragon Street, Manila, giving the land and house belonging to me as guarantee for said sum.

"In witness whereof, I sign in Manila this tenth day of December, 1923.

(Sgd.) "ANGELA MONTENEGRO DE PAPA

"Witnesses:

_____ "

It must be first of all noted that although there are lines for the signatures of the witnesses to its execution, no one signed thereon. The same remain blank. Nevertheless, appellee does not deny having subscribed the promissory note in question, but alleges that she signed it "without any just, real or legal consideration"; that she did not

receive a single cent of the amount set forth therein; and that appellant herself had prepared the note for the sole purpose of helping her (appellee) somehow to protect her property in case a suit concerning the ownership of the house at 811 Aragon Street, Manila with which she seemed to be then threatened, should arise between her and her stepdaughter.

Appellant and appellee had been very good friends, had been quite intimate and helped each other with loans to meet individual needs. The only tangible proof submitted at the trial by the appellant to show the existence of the alleged loan, consists in Exhibit M. As a matter of fact, she testified that she delivered the aforesaid sum of P63,764 to appellee not one time but on several and distinct occasions in smaller sums as follows: P4,000 on December 5, 1916; P7,000 on the 20th of the same month and year; P2,612.50 on February 8, 1918; P15,000 on September 17, 1919; P1,500 on December 11 of the same month and year; P15,000 and P5,000 on March 29, and August 3, 1920, respectively; P2,000 on April 21, 1921; P150, P250 and P400 on April 29, May 1, and August 9, 1922, respectively; P1,000 on July 16, 1923; P3,500 and P1,000 on December 11 and 20, 1920, respectively; and P5,000 worth of materials obtained from Ynchausti & Co. Exhibit G, however, which is a loose sheet of paper with which she would corroborate her testimony, saying that she entered therein the various sums she had delivered to the appellee each time that they were obtained from her, is without weight. It does not prove anything and only serves to discredit her, as the lower court observed in its decision in the following terms:

"* * * The book or memorandum Exhibit G must be at least nineteen years old, said document being the same memorandum in which she entered the first loan of P4,000 which she made in favor of defendant on December 5, 1916. The memorandum contains fourteen entries: the first written on December 5, 1916, the last in the year 1923. In spite of such a long interval between the first and the last entry, no difference can be noted in the document either in the pulse or handwriting of the person who made the same, or in the handwriting instrument. The same pulse, or pressure of the hand and the same writing in pencil may be seen from the first to the last entry. That a person who keeps a book or writes regularly in a document for eight long years would be able to preserve the same pencil and be ever in the same frame of mind, would be too much of an accident.
* * * We would add to these observations that it is illogical that the loans which, according to appellant, she made to appellee on December 11 and 20, 1920 should be entered in the said sheet Exhibit G after the alleged loan of P1,000 made on July 16, 1923.

Besides Exhibit G, appellant presented various blank stubs of some of her old checks, saying that the same were those she had issued to the appellee for the purpose of granting the loan set forth in said exhibit; but there appears in other stubs which she also presented, like Exhibits A to A-5, B to B-3 and C to C-2, the great care which she took to note down the names of the persons to whom she had issued the checks of which said exhibits are the stubs. It is certainly strange, quite unusual and unexplainable that appellant, in issuing her checks to cover the alleged loans which she made to appellee, did not act or conduct herself in the same manner she did with regard to the transactions to which Exhibits A to A-5, B to B-3 and C to C-2 refer. While she entered the name of the appellee on the stubs of the checks for such relatively small sums as P1,000, P150 and P250 which she gave to the appellee by that means, she did not do so when she delivered to the latter such sums as those set forth in Exhibit G, namely, P4,000, P7,000, P15,000, P3,500, P5,351.50, etc. If to this is added the fact that, according to Exhibits 1 to 12 of appellee, it is the appellant who owes the former the sum of P3,850 which is precisely the amount to which she had been condemned by judgment of the lower court on appellee's counterclaim, from which she did not appeal or of which she did not complain in her brief, the only conclusion which may be arrived at is that Exhibit M was signed by appellee by agreement between her and the appellant for no purpose other than to help the appellee save her property in case there should be a suit between her and her stepdaughter. That such was the case may be gleaned from Exhibits 1 to 12 of appellee which, with the exception of Exhibit 6, show that it was said appellee who, on the request of appellant, lent the latter the sums set forth in said documents which bear dates much later than the execution of the supposed promissory note Exhibit M.

If it were true that appellee owed appellant the P63,764 which she has been claiming and the appellee had not paid anything on their account from the date of the aforesaid document, instead of asking her in the aforementioned Exhibits 1 to 12, with the exception of Exhibit 6, that she (appellee) lend the amounts therein stated, should have demanded that she be paid, if not the whole, at least a part of the supposed loan.

In view of the foregoing and of the fact that appellant's appeal is without merit, the judgment of the lower court is hereby affirmed, with costs against the appellant. So ordered.

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

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