

PEDRO DE JESUS, BANK COMMISSIONER IN HIS CAPACITY AS LIQUIDATOR AND RECEIVER OF THE MERCANTILE BANK OF CHINA, PLAINTIFF AND APPELLEE, VS. GONZALO C. GO QUIOLAY, DEFENDANT AND AP...

G.R. No. 45569. March 31, 1938

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the defendant from the decision of the Court of First Instance of Manila, dated February 24, 1937, reversing the order of November 22, 1936, which dismissed the complaint and cross-complaint, and restoring the decision rendered in the case on November 27, 1936, whereby the aforesaid defendant was sentenced to pay to the plaintiff the sum of P114,211.92, the interest thereon at 10 per cent per annum from November 1, 1933, the additional sum of P8,148.72 as attorney's fees, and the costs.

The plaintiff Bank Commissioner, in his capacity as liquidator and receiver of the Mercantile Bank of China, brought the action to foreclose the real estate mortgage executed by the defendant in favor of the said bank to guarantee his indebtedness which, on October 31, 1933, date of the liquidation attached to the complaint as "Annex D", amounted to P174,212.22. In his amended answer the defendant denied generally and specifically the allegations of the complaint and interposed a cross-complaint wherein he asked that the deed of conveyance of the properties mortgaged to the bank for the sum of P60,000, to be deducted from his aggregate indebtedness, executed by the parties on March 7, 1935, Exhibit B, be declared null and void on the ground that it does not reflect the true intention of the parties, and that the deed of conveyance of the same properties in payment of all his indebtedness, Exhibit A, executed in July, 1934, be declared valid and binding.

During the pendency of this case in the court and before the trial thereof, the defendant proposed that the plaintiff accept the conveyance of the mortgaged properties which he intended to make in favor of the bank, in payment of all his indebtedness to date, and that after the conveyance is approved by the court the foreclosure suit, civil case No. 45482, be dismissed. The deed was prepared and submitted to the plaintiff for approval, but the latter did not give his conformity thereto and refused to sign it on the ground that the agreement was that the conveyance of the properties was to be in payment, on account of the defendant's indebtedness, of the amount of sixty thousand pesos only, plus the sum of two thousand pesos as attorney's fees. The proposed deed was presented by the defendant as a part of his evidence and was marked Exhibit A. Subsequently, on March 7, 1935, the same parties signed the final deed of conveyance which was marked Exhibit B. The relevant parts of this deed determinative of the questions raised on this appeal read as follows:

"And whereas, the said Party of the First Part after the institution of said action for foreclosure is willing to transfer, convey and assign, in part settlement of his indebtedness to the Party of the Second Part, all his right, title and interest in and to the properties hereinabove described, and the Party of the Second Part, by virtue of the power conferred by section 175 of the Code of Civil Procedure, is willing to accept the assignment, transfer and conveyance of the interests of the said Party of the First Part in and to the herein-above described parcels

of real estate in part settlement of his indebtedness to the Mercantile Bank of China.

"Therefore, the parties hereto agree and stipulate as follows:

"1. That in consideration of the above and in further consideration of the cash payment hereinafter provided for, the Party of the First Part transfers, conveys and assigns to the Party of the Second Part all his right, title and interest in and to the parcels of real estate situated in the City of Manila and in the Municipality of Pasay, Province of Rizal, hereinabove described, free from all liens and incumbrances whatsoever, by virtue of this transfer, conveyance and assignment of the Mercantile Bank of China, the Party of the Second Part shall have full title in and to the hereinabove described properties in the full extent of the interest of the Party of the First Part therein.

"2. As a further partial settlement of the indebtedness of the Party of the First Part to the Party of the Second Part the Party of the First Part hereby undertakes and agrees to pay to the Party of the Second Part the sum of Two Thousand Pesos (P2,000), Philippine Currency, for attorney's fees in connection with the action of foreclosure filed by the Party of the Second Part against the Party of the First Part known as case No. 45482 of the Court of First Instance of the City of Manila entitled 'Tirso Garcia, Bank Commissioner, in his capacity as Liquidator and Receiver of the Mercantile Bank of China, plaintiff, versus Gonzalo C. Go Quiolay, defendant'; in addition and as part of the partial settlement of the indebtedness of the Party of the First Part to the Party of the Second Part, the Party of the First Part does hereby transfer, convey and assign to the Party of the Second Part, its successors, and assigns, all his right, title and interest in and to the following parcels of land situated in the Municipality of Pasay, Province of Rizal, and described in Transfer Certificate of Title No. 26964 issued by the Register of Deeds for the Province of Rizal, as follows:

* * * * *

"4. In consideration of the above transfer, conveyance and assignment of the Party of the First Part to the Party of the Second Part of all his interest to the real estate properties hereinabove described and in further consideration of the payments to be made in cash by the Party of the First Part at the time of the signing of this document, the Party of the Second Part hereby releases the Party of the First Part from obligations and further liability to the Party of the Second Part only up to an aggregate amount of P60,000, Philippine Currency, the Party of the First Part waiving his rights to make designation of the application of said payment.

"5. The parties hereunto mutually agree that upon registration in the respective offices of the Register of Deeds of Manila and the Province of Rizal of the conveyance and transfer of the interest of the Party of the First Part in the hereinabove described parcels of real estate and that upon payment of the amounts in cash herein provided, they shall petition the Court of First Instance of Manila to dismiss Case No. 45482 hereinabove referred to.

"6. The parties hereto further mutually agree that this agreement shall not become elective until after the same shall have been approved by the Court of First Instance of Manila having cognizance of Civil Case No. 40704 entitled 'IN RE LIQUIDATION OF THE MECANTILE BANK OF CHINA.'

"In witness whereof, the parties hereto have hereunto signed these presents in the City of Manila, Philippine Islands, this 7th day of March, 1935.

"In the presence of:

(Sgd.) "Jose de la Cruz

"S. G. Santiago

(Sgd.) "Gonzalo C. Go Quiolay

"Tirso Garcia

"Bank Commissioner

"In his capacity as Liquidator

and Receiver of the Mercantile

Bank of China"

The defendant addresses five errors to the appealed judgment, but in our opinion all that need be resolved in this appeal is (1) whether the document Exhibit A is valid; (2) whether the deed Exhibit B is valid and represents the true intention of the signatory parties, and (3) the legal effect of this latter document.

- It is undoubted that, at the instance of the defendant, the plaintiff agreed to compromise the case pending between them, namely, the foreclosure suit brought by the latter, civil case No. 45482, by the former's conveyance of all his mortgaged properties and other credits against other persons, in payment, not of his entire indebtedness which then amounted to P175,609.36, but only of the amount of P60,000. The defendant insists that the plaintiff accepted his proposition that the conveyance be in payment of his whole indebtedness, but the evidence shows otherwise, hence, Exhibit A was not signed either by the plaintiff or by the defendant himself. We hold, therefore, that the document Exhibit A is invalid and does not bind the plaintiff.

- It appears that on the rejection by the plaintiff of the proposed deed, Exhibit A, the deed, Exhibit B, was drafted and both parties signed and ratified it before a notary public. We find no basis either in defendant's contention that he did not know its contents when he signed it, or in his assertion that he was then under the belief that it was the same Exhibit A or that it contained the same stipulations as the latter. We are convinced that the defendant gave his consent to Exhibit B with knowledge of its contents and that it was an amendment of the former document which was rejected by the plaintiff. We conclude that Exhibit B expresses the true intention of the parties and is entirely binding upon them.

- In the second clause of the deed of conveyance, Exhibit B, it was agreed that the defendant shall pay to the plaintiff the sum of P2,000 as attorney's fees; in the fourth clause it was stipulated that the properties and credits conveyed to the plaintiff was in payment of P60,000 on account of his indebtedness; in the fifth clause the parties agreed that upon the registration of the conveyance in the offices of the registers of deeds of the City of Manila and of the Province of Rizal, and upon the payment by the defendant of the amount of money stated in the second clause, any of them may ask for the dismissal of the present action, civil case No. 45482 of the Court of First Instance of Manila; and in the sixth clause the same parties stipulated that the compromise and conveyance shall be in full force as soon as the deed executed for the purpose is approved by the Court of First Instance of Manila which has cognizance of civil case No. 40704, entitled "In re Liquidation of Mercantile Bank of China. "

Pursuant to these stipulations, the dismissal of the case depended upon three conditions precedent approval by the

court of the deed of compromise and conveyance; payment by the defendant of the sum of P2,000, and registration of the deed of compromise and conveyance in the offices of the registers of deeds of Manila and of Rizal. The plaintiff obtained the court's approval of the deed, and registered the same in the offices of the registers of deeds of Manila and of Rizal, and the defendant, in turn, paid to the plaintiff the sum of P1,000 on account of the P2,000. It appears, therefore, that, with the exception of the payment of P1,000 balance of the P2,000, all the conditions agreed upon by the parties have been complied with. This being a compromise, stipulated by the parties to put an end to the action brought by the plaintiff in the present case, the same has the force of res judicata as to them (articles 1809, 1816, Civil Code), and if the defendant should comply with the obligation voluntarily assumed by him to pay the P1,000 which is the balance of the P2,000 stipulated in clause 2, he would be entitled to ask for the dismissal of the case because in that event all the conditions on which it depended will have been realized (article 1114, Civil Code).

- The defendant insinuates in his brief that the plaintiff has not established that he failed to pay the P2,000 mentioned in clause 2. This contention is untenable. The plaintiff concedes that the defendant paid P1,000 on account of the P2,000. The authentic proof of the defendant's obligation to pay this sum is Exhibit B which, as above stated, has been signed by the defendant with full knowledge of the facts. If it is defendant's contention that he has paid more than that admitted by the plaintiff, it was incumbent on him to prove such payment. Not having done so, the plaintiff is not under a duty to establish such fact which, at bottom, constitutes his defense.

- In the deed of compromise and conveyance, the parties have kept silent on the balance of the defendant's indebtedness after deducting the sum of P60,000 which is the value given to the properties and credits ceded to the plaintiff. To avoid erroneous interpretations, we wish to state that in this decision nothing is adjudged or resolved with respect to the said balance against the defendant; nor do we resolve anything as to the legal effect which the compromise and this decision might have on the aforesaid balance against the defendant.

In view of the foregoing, the appealed judgment is reversed, the cross-complaint of the defendant is dismissed, and it is ordered that should the defendant pay to the plaintiff, within thirty days from notice of this decision, the sum of P1,000, he shall be entitled to ask for the dismissal of the present action, civil case No. 45482 of the Court of First Instance of Manila, without special pronouncement as to the costs in this instance. So ordered.

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

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