

IRINEO DE GUZMAN, PLAINTIFF AND APPELLANT, VS. PASCUAL BALARAG, DEFENDANT AND APPELLEE.

G.R. No. 4571. October 24, 1908

Ponente: TORRES, J.

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TORRES, J.:

On the 19th of May, 1901, Pascual Balarag executed in the presence of witnesses the document marked "A," written in Tagalog, the translation of which is as follows:

"I, the undersigned, hereby declare that I have borrowed from Don Irineo de Guzman 1,500 pesos,-which amount I have duly received, and have mortgaged to him my iron-roofed, house, with the lot situated in the town of Cabanatuan, and that, owing to my great haste, we have been unable to execute our contract before a notary, mt we will cause the mortgage deed to be drawn up next month; if not so done, I pledge the palay I have stored in the storehouse of Gaudencio Balarag, and also my house and lot.

"In proof whereof, I subscribe this as do also the three witnesses, Don Martin Bantog, Don Pedro Carmen, and Don Prudencio Lopez.—San Isidro, May 19, 1901."

In his written complaint, filed with the Court of First Instance of Nueva Ecija, Irineo de Guzman alleged: That the defendant took from him the sum of 1,500 pesos, agreeing to repay him within such time as should be stipulated in the mortgage deed which was to be drawn up before a notary of said province in the month subsequent to the receipt of said amount, as they had agreed; the foregoing document was temporarily drawn up showing the amount loaned, the return of which is secured by the defendant's house and lot, situated in Cabanatuan; that after the defendant had received the said amount, he refused to execute the mortgage deed as agreed between them, and that nearly two years has elapsed since the defendant bound himself to execute the same; he therefore asked the court to enter judgment ordering the defendant to execute the mortgage deed as agreed, or to return the sum of 1,500 pesos, Mexican currency, with legal interest thereon, and costs.

By a writing dated June 30,1903, the defendant amended his previous answer, setting forth: That he admitted all the facts alleged in the complaint, and that if up to the present time the mortgage deed had not been executed, it was due to the fact that the plaintiff and the defendant had not reached an agreement as to the terms of the instrument; that the complaint does not contain facts of sufficient weight to constitute a cause of action to compel the defendant to return the aforesaid amount of 1,500 pesos, and by way of special defense set up a counterclaim and a cross complaint stating that the plaintiff had received from the defendant 240 pesos on account of the 1,500 pesos; that the said plaintiff had occupied his house and lot in Cabanatuan for one year and nine months up to the present date; that during the said period of time the defendant had suffered damages to the extent of 2,730 pesos; for all of which he asked that the complaint be dismissed, that the counterclaim against the plaintiff be allowed by the court, and that the plaintiff be ordered to pay the 2,730 pesos for the reasons already stated, and that he be further ordered to vacate the house and lot which he occupies; that there be deducted from the 1,500 pesos the sum of 240 pesos paid to the plaintiff on account, and that the latter be ordered to pay the sum of 130 pesos monthly, from the date of the written answer until the day when he vacates the said house and lot, as damages

caused monthly to the defendant owner of the property, and that he be further sentenced to pay the costs.

The court below ordered the defendant to file his cross complaint separate from the answer and counterclaim, and in compliance therewith, on the 3d of August of the same year, Balarag set forth in writing that his cross complaint is based on the fact that the plaintiff has been illegally occupying his house and lot in Cabanatuan for more than one year and ten months up to the date of his petition, to the prejudice of his lawful rights, and he therefore asked the court to order the plaintiff to vacate the said premises.

On the 12th of August of the same year the plaintiff, in reply to the special defense of the defendant, amended his previous complaint, adding that he had not received any amount whatever on account of the amount loaned to the defendant except the sum of 60 pesos as rent for the said house for the month of May, 1901, paid by an American who occupied the same, and a trifling amount as rent for the ground floor of the house and the lot from the month of November, 1902, to the present time; that the plaintiff is occupying the house and lot by virtue of a mutual agreement between them, as acknowledged by the defendant, inasmuch as the latter ceded to the plaintiff the usufruct of the property as profit or interest on the amount loaned, that is to say, the defendant granted him the free use (*dominio util*) of the property as profit on the 1,500 pesos loaned, and by the direct control over the property the defendant guaranteed the return of the amount taken; that the defendant has suffered no damages through the occupancy of the house for the time that the plaintiff has had the usufruct thereof; therefore the plaintiff insisted upon that for which he had previously asked in his complaint, that the defendant be sentenced to return the loan, or otherwise to execute the instrument agreed upon, and any other remedy that the court might consider just.

Evidence was adduced by both parties to the suit and was made of record. On the 20th of November, 1907, the court below entered judgment dismissing the complaint and sentencing the plaintiff to pay to the defendant the resulting balance of P625, and further ordered the plaintiff to vacate the house and lot and return them to the defendant; to pay to the latter such rental as he continued to collect for the ground floor of the house, at the rate of P20 per month, and the sum of P10 per month from the middle of October, 1907, as rent for the upper floor of the house, until such time as he should vacate it, with the costs against the plaintiff.

As soon as the plaintiff was informed of the above judgment he excepted thereto and moved for a new trial; said motion was overruled, the petitioner excepted, and in consequence of the appeal interposed the corresponding bill of exceptions was presented. Notwithstanding the opposition by the defendant to the admission of said bill of exceptions, the court overruled the motion and ordered the plaintiff to furnish bond to the extent of P1,250 to secure the rights of the defendant until the house should be vacated by the plaintiff. The bond, was furnished, and approved by the court below on the 18th of January of this year. (Folio 109 of the record.)

From the document set forth in the first paragraph of this decision, it is concluded that the contract entered into between the contending parties is that of a loan without interest, under promise to record it in a public instrument and with mortgage security; the promise was not fulfilled because, according to the debtor, he and his creditor were unable to come to an understanding regarding the terms of the public instrument that was to have been executed.

Notwithstanding the testimony of the plaintiff's witnesses, Filomeno and Bernabe Guzman, and the document Exhibit B, the statement of the plaintiff, Guzman, that the contract entered into with the defendant, Balarag, was one of sale with *pacto de retro* (right of redemption), can not prevail against the express agreement between the contracting parties as set forth in the aforesaid document. The authenticity of the said document having been acknowledged before the court, and it not appearing that the same was impugned or contested as being false in either criminal or civil proceedings, no legal reason whatever exists for one of the contracting parties to withdraw

from the agreement. The said agreement was set out in a document, the value of which is not lessened by the testimony of the witnesses, one of whom, Filomeno de Quzman, is a brother to the plaintiff, nor by the declaration of the same witness contained in document Exhibit B sent to the municipal secretary for the purposes of the land tax.

Article 1283 of the Civil Code reads:

"However general the contract may be, there should not be understood as included therein things and cases different from those with regard to which the persons interested intended to contract."

It is not lawful to give to an obligation a meaning or scope which does not appear from the terms of the contract, and which can not be deduced from the intention of the parties according to the doctrine established, in conformity with the Civil Code, by the supreme court of Spain in the decision of July 1, 1896.

Moreover, section 285 of the Code of Civil Procedure provides that "when the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, * * *"

The plaintiff, Guzman, declared that under a verbal agreement between himself and the defendant debtor, he, as the creditor, should take charge of the collection of the rentals of the property, the mortgage of which was promised, and apply them to the payment of interest on the sum loaned; such a statement is positively denied by the debtor, who further alleged that when he borrowed the 1,500 pesos, no interest thereon was stipulated, and that upon authorizing his creditor, Guzman, to collect the rentals of his property it was conditioned upon applying such rents as were collected to pay his debt; and since it does not appear as having been stipulated that the amount loaned should earn interest, nor proven that an agreement existed between the parties that the rentals of the property, collected by the creditor, should be understood to be interest on the money loaned, the allegations of the debtor Balarag, that the rents of his property, collected with his consent by his said creditor, should be applied toward the settlement of his indebtedness, must be believed.

Article 1214 of the Civil Code provides that "proof of obligations devolves upon the persons claiming their fulfillment, and that their extinction upon those opposing it," and section 297 of the Code of Civil Procedure provides that each party must prove his own affirmative allegations.

If the debtor Pascual Balarag is only under the obligation to pay the creditor, Guzman, the 1,500 pesos received as a loan, without interest, upon permitting the latter to collect the rent of property owned by the debtor and keep the amounts so collected, it must be assumed that it was in order to provide for the refund of the debt arising from the loan. It is not possible to apply the money except in settlement of the debt, unless the allegations of the debtor be disproven; the record does not contain any proof of the contrary allegation to the effect that it was stipulated that the rent collected should be applied to the payment of interest, and the allegation of the defendant debtor is all the more convincing and irrefutable, inasmuch as it has not in any way been demonstrated that interest on the loan was stipulated.

Article 1755 of the Civil Code expressly provides that "interest shall only be owed when it has been expressly stipulated." It has already been said that, from the said document of indebtedness it does not appear as agreed between the parties that interest was to be paid on the 1,500 pesos paid to the defendant, and the denial of the defendant debtor that interest was stipulated is confirmed by the petition contained in the complaint, that the return of the money lent be ordered with legal interest thereon.

The trial judge considered as proven that the plaintiff had received: (1) in June, 1901, the sum of 60 pesos as rent

for the house, paid by the tenants Newman and William, who left the same on the following month, and 3 pesos more as rent for a store adjoining the house and erected in the yard; (2) the sum of 132 pesos as rent for one-half of the ground floor of the said house for eleven months, from January to November, 1902, at the rate of 12 pesos a month; (3) from December of that year to the 31st of October, 1907, the plaintiff received as rent for the whole of the ground floor of the house of the defendant, at the rate of 20 pesos a month, the sum of P1,180; (4) the plaintiff Guzman, taking advantage of his position as creditor, took possession of the house, without the knowledge or consent of the defendant owner, toward the middle of July, 1901, and disposed of the property together with its grounds, permitting his brother Pilomeno to occupy the upper floor and continuing to do so until the middle of October, 1907, and leased the ground floor and the small houses that were on the said lot; and (5) that for the occupation of the upper floor the court below considered that the plaintiff should pay as an equitable rent

10 pesos a month, or 750 pesos, the amount of rent due for seventy-five months.

In brief, the plaintiff is responsible for the sums received by him and for the occupation of the house as follows:

The rent paid by Newman and William.....

P60.00

Rent of a store.....

3.00

Rent of one-half of the ground floor for 11 months at the rate of
12 pesos per month.....

132.00

Rent of the whole ground floor for 59 months at the rate of 20
pesos per month.....

1,180.00

Rent of the upper floor of the house for 75 months at 10 pesos a
month.....

750.00

Total

2,125.00

Deducting from the above the amount claimed in the complaint.....

1,500.00

Balance.....

625.00

The evidence in support of the conclusions of fact established by the judge below in the judgment appealed from does not appear to have been overcome by the testimony adduced by the plaintiff at the trial; therefore, it is proper to conclude that the consideration given by the trial judge to the evidence submitted by both parties is in accordance with the law.

Claim is made by the plaintiff for payment of legal interest on the money loaned; we do not believe, however, that he is entitled to interest for the reason that, if the debtor received the 1,500 pesos in May, 1901, the plaintiff in turn collected the rents of the property, occupied the upper floor from July of the same year, and in October, 1907, he had recovered his money with an excess of P625, which he must restore to the owner of the house, the lot, and its appurtenances, and the latter on his part can not be permitted to collect interest.

Therefore, accepting the conclusions contained in the judgment appealed from, it is our opinion that the same should be and is hereby affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Mapa, Carson, and Tracey, JJ., concur.

Willard, J., dissents.

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