

GEO. M. LACK AND J.L. DAVIS, PLAINTIFFS AND APPELLEES, VS. PANTALEONA ALONSO Y SAN LUIS ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 4667. December 18, 1909*

Ponente: TORRES, J.

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By means of an instrument dated July 30, 1904, the International Banking Corporation opened an account with Maximiano Rosales y Concepcion, crediting him with the amount of P25,000. As security for any obligation that might be contracted by virtue of the said credit, Rosales expressly and specifically mortgaged a piece of property owned by him, consisting of a building lot and a house of mixed materials thereon at No. 464 Calle Real, Malate.

Pablo Reyes, in agreement with the manager of said bank, Arthur P. Bullen, and the above-named Rosales, as well as Pantaleona Alonso y San Luis de Rosales, the latter having previously obtained her husband's consent, also in accord with the aforesaid Bullen and Rosales, likewise mortgaged certain property, as follows: Reyes, his undivided half share in a parcel of land and the improvements thereon situated at No. 255 Calle Nozaleda, and Pantaleona Alonso a piece of rural property, or a parcel of land used for growing rice and grass situated in the barrio of Singalong, within the limits of the city of Manila; the location, boundaries, and other particulars with respect to the mortgaged properties are set forth in the said instrument.

By another instrument dated January 17, 1906, executed by Pablo Reyes, the city of Manila, and the said International Bank, a portion of the land described under the letter "B" was ceded to the city of Manila for a street, and in exchange therefor the city agreed to convey to Pablo Reyes other adjoining lands. The International Bank there-upon canceled the mortgage of that portion of the land ceded, and Reyes executed a mortgage in favor of said bank on the land that the city of Manila assigned to him; the realty described in the instrument being thus subject to the said obligation.

By the mortgage deed of July 30, 1904, it was agreed that any sum drawn by Rosales under the contract was to bear interest at the rate of 8 per cent per annum until the day of payment; that the property described under the letter "A" would respond for the payment of the said credit of P25,000 to the extent of P15,000, the undivided one-half of the property described under letter "B" would answer for the sum of P6,500, and that described under letter "C" for the sum of P3,500; that in case judicial proceedings were instituted by the creditor against the mortgaged properties, the latter two, marked "B" and "C," would respond for P300 and P200, respectively, for interest, costs, and charges, and in the event of a foreclosure of the mortgage the three mortgaged properties should be considered as forming one only, so that if any of them did not bring at the sale the price fixed in the instrument, the difference would be made up from the higher price which might be obtained for the other mortgaged properties; that by virtue of the said contract the International Bank paid out on the 17th of March, 1907, for account of Maximiano Rosales, the sum of P6,857.38, without any part of said amount or interest thereon having ever been refunded or paid; that on the 31st of December, 1906, the International Bank, through its

agent, assigned and transferred its credit of P6,857.38 to the plaintiffs herein, George M. Lack and J. L. Davis, with the interest accrued at the rate of 8 per cent per annum, together with the mortgage securing the payment, for which reason the said plaintiffs are the lawful owners of said credit and the mortgage.

The said plaintiffs, Lack and Davis, brought an action to foreclose the mortgage because of the failure to pay the said amount. The case was brought to trial, but the defendant Pantaleona Alonso did not appear, either in her own behalf, or as administratrix of the estate of her late husband, Maximiano Rosales; the other defendant, Reyes, appeared. The trial judge, in view of the allegations of the parties and the evidence offered at the trial of the case, entered judgment on the 14th of August, 1907, sentencing the defendants to pay to the plaintiffs the sum of P6,857.38, with interest thereon at the rate of 8 per cent per annum, from the 17th of March until full payment was made, and in addition thereto the sum of P500 for costs and expenses of the suit, the total payment of said amounts to be paid into the court on or before the first Monday in October of said year, the first day of the term of court sessions; in default of payment the properties affected by said mortgage were ordered sold at public auction in the manner and under the terms provided by law, in order to satisfy the judgment; provided, however, that only such portion of the property as might be necessary to cover the amount due, together with the interest, costs, and charges, should be so sold.

In view of the fact that the judgment became final, the court below ordered its execution, and on the 27th of December, 1907, the sheriff of Manila sold the mortgaged properties at public auction. The property of the late Rosales was sold for P3,500, that of Pantaleona Alonso for P1,010, and that of Pablo Reyes for P3,050. The sheriff therefore returned the writ of execution on the 8th of January, 1908, and submitted a statement relating the amount of the debt, the interest owing thereon, costs and expenses of the litigation. These amounted altogether to P9,095.72 which sum, deducted from the proceeds of the sale, P9,560, left a balance of P464.28.

On the same date the sheriff reported that as the sale of the property had been approved by the court he applied the proceeds thereof to the payment to the plaintiffs of the sum of P9,095.72 in full satisfaction of the executed judgment, and retained in his possession the balance of P464.28 awaiting further orders from the court.

By a writing dated January 22, 1908, Pablo Reyes, the owner of one of the properties sold, filed a motion setting forth that the sheriff, in executing the judgment, without any reason whatever considered the defendants as being obligated in solidum instead of being under obligation only to pay each one his share of the judgment, as determined in the document Exhibit "A"; that as the petitioner, by reason of the judgment and of the instrument of obligation, Exhibit A, is only obliged to pay a proportional share, to wit, thirteen-fiftieths of the amount of the debt of P6,857.38, the sum, received by Maximiano Rosales from the International Bank, or the total amount of P2,082.92, composed of 1,782.92, and P300 for interest, costs, and expenses; that, deducting these amounts from the P3,050, proceeds of the sale of his property, the balance of P967.08 should be returned to him and the judgment should be considered as complied with so far as he was concerned; therefore, he prayed that the sheriff be ordered to return to him the said sum of P967.08, as the balance of the sale of his property after deducting the share of the judgment which he was obliged to pay, proceeding as to the rest in accordance with the law.

On the 6th of February, 1908, the judge dismissed the motion of the defendant Reyes and ordered that the balance of the proceeds of the sale, P464.28, be distributed prorata among the defendants in proportion to the price obtained at the sale of their respective properties. Pablo Reyes excepted to the foregoing decision and moved for a new trial on the ground that the decision was not supported by the evidence and was contrary to law; said motion was overruled and excepted to by the petitioner, who in due course presented his bill of exceptions which was approved and forwarded to this court.

The other defendant, Pantaleona Alonso, also excepted to the foregoing decision and presented a bill of

exceptions which was likewise approved and submitted to this court; but she has not, however, filed a brief, which latter was done only by the appellant Pablo Reyes.

As long as there exists the obligation contracted by the principal debtor, Maximiano Rosales, to pay Lack and Davis, the assignees of the International Bank, the sum of P6,857.38, in addition to the agreed interest, costs, and charges as provided in the final judgment of August 14, 1907, the property of Pablo Reyes and Pantaleona Alonso, expressly mortgaged for the purpose of securing the payment of said sum, are affected in solidum, and are therefore directly responsible for the discharge of the obligations stipulated in the instrument dated July 30, 1904.

Pablo Reyes and Pantaleona Alonso are third parties, foreign to the principal obligation, who, in order to insure its fulfillment, mortgaged their respective properties, encumbering them in solidum in the same manner as the property of the debtor Maximiano Rosales. (Art. 1857, last paragraph, and art. 1876, Civil Code; arts. 105 and 122, Mortgage Law.)

It was fully proven that Maximiano Rosales was the only person who received the amount which was the subject of the judgment ordering the foreclosure of the said mortgage; and that in order to cover the indebtedness of said Rosales, with the interest thereon, costs, and charges, it was necessary to sell not only the property of the debtor, but also that belonging to the said Reyes and Alonso which was expressly mortgaged to secure payment of the plaintiffs' credit; and to this effect by the proceeds of the sale of the properties subject to said credit, all the liabilities of the said Rosales were liquidated.

Thus, in view of the character of the obligation, in solidum, by which the two properties of the aforesaid Reyes and Alonso were bound, the creditors made proper use of their right in bringing an action for the foreclosure of the mortgage against Rosales and two owners of the properties that did not pertain to the principal debtor, on the ground that all are attachable, and jointly responsible under the terms of the loan.

However, after paying the debt, with interest, cost, and charges for collection, the obligation secured by the mortgage was extinguished (arts. 1156 and 1157, Civil Code); consequently, if said obligation, with relation to the creditors was a joint one, after the liabilities contracted in their favor were settled, this character disappeared from the relations between the obligated debtor and the owners of the properties. (Arts. 1838, 1839, 1844, and 1847, Civil Code.)

When the mortgaged property was sold, any surplus remaining after paying the creditor and the costs and expenses of the proceedings should have been returned to the mortgage debtor or to the person entitled to receive it. (Sees. 258 and 453, Code of Civil Procedure.)

Maximiano Rosales was the only one who, according to the documentary evidence, received the sum of P6,857.38. This amount not being repaid, he and the said Pablo Reyes and Pantaleona Alonso were sued, and their mortgaged properties were sold at public auction.

Considering therefore that Rosales was the principal debtor and the only one who benefited by the said sum, the responsibility which under the agreement rested upon his property was greater, and the contract was fulfilled according to said agreement, and an execution was levied upon the properties of the two persons foreign to the obligation contracted by him, who simply guaranteed it by means of their own properties. It is therefore only just that the distribution of the surplus of the proceeds of the sale of the mortgaged properties be restricted to the said Reyes and Alonso, inasmuch as in view of the nature of the obligation secured by the properties of these latter, the proceeds of the sale of Rosales' property should have been entirely applied to cover his various liabilities, and, on this ground, the surplus of the proceeds of the properties given as security by the two other parties should be

returned pro rata to them, and in proportion to the respective prices obtained at the sale; neither Rosales nor his heirs are entitled to any portion whatever of such surplus, because, notwithstanding the fact that the three properties were jointly bound to the payment of all the liabilities of the debtor Rosales, it is only just that his indebtedness should be first paid out of the entire proceeds of the sale of his property, and the outstanding balance should then be paid with the proceeds of the sale of the properties pledged as security by Reyes and Alonso, the third parties, who had nothing at all to do with the loan but only with the payment thereof in case the property of the debtor was insufficient. Thus the judge ordered, at the end of the judgment, that only such property as might be necessary to pay the debt, interest, costs, and expenses should be sold.

It is impossible to conceive how it could be lawful for a debtor who has not satisfied with his own property the whole of his obligations, and who has occasioned the sale of property belonging to third parties, and part of the value of the latter has been assigned to meet his liabilities, could still be entitled to participate in the surplus of the proceeds of the sale of property given as security for his indebtedness by such third persons, who did not profit by the loan out of which said obligation arose.

It should further be borne in mind that if, under article 1838 of the Civil Code Reyes and Alonso have an unquestionable right to demand proportional indemnization from the heirs of the deceased Rosales, with respect to the sums paid to the creditors from the proceeds of the sale of their respective properties, yet against the said right neither the said heirs, nor Rosales if living, would be entitled to claim any portion of the said surplus, because in addition to Rosales having profited by all the money advanced by the bank, his heirs would then profit by the money of Reyes and Alonso; such a proceeding would be opposed to all ideas of justice.

In view of the foregoing, and considering that all the questions set up in the several errors assigned to the judgment appealed from have been herein resolved, it is our opinion that the said judgment should be affirmed, and it is hereby affirmed with the costs against the appellants: Provided, however, That the pro rata distribution of the sum of P464.28, surplus from the sale, shall be made between Pablo Reyes and Pantaleona Alonso only, in the proportion stated in the judgment; no participation in said sum is allowed to the heirs of the deceased debtor, that portion of the judgment, in so far as it concedes to the heirs of Rosales the right to participate in the said funds, being reversed. So ordered.

Mapa, Johnson, Carson, and Moreland, JJ., concur.

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