

RICARDO NOLAN, PLAINTIFF AND APPELLEE, VS. BASILIO MAJINAY, DEFENDANT AND APPELLANT.*G.R. No. 4721. January 23, 1909*

Ponente: TORRES, J.

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At the city of Iloilo, on the 3d day of May, 1901, Basilio Majinay on the one part, and, on the other, Wenceslao Paris y Sala, the latter representing the Compañia General de Tabacos de Filipinas in Iloilo by a power of attorney duly conferred by the management of said firm in Manila, appeared before Gregorio Yulo y Regalado, a notary public of Iloilo, and executed an instrument of loan secured by mortgage, wherein the first-named party, Majinay, states that deponent, being in need of money for the expenses of sowing, cultivating, care, and other requirements of the hacienda called "Basag," situated within the limits of the town of Saravia, Island of Negros, applies to the agent of the said company for credit to the amount of \$5,000, Mexican currency. Wenceslao Paris y Sala, as agent of the said company, accedes to the request, and, both parties being agreed, they now proceed to execute this contract under the conditions and guaranties stipulated by common accord as follows:

First. The Compañia General de Tabacos opens a credit of \$5,000, Mexican currency, as a loan to Basilio Majinay y Castellano for the sole purpose of meeting the expenses of planting, care, and other requirements, until the first deliveries of the sugar crop of 1901-2, produced on the said hacienda of "Basag."

Second. The Compañia General de Tabacos, by its agent, Paris y Sala, hereupon delivers to Basilio Majinay y Castellano the sum of \$3,000, Mexican currency, on account of the credit of \$5,000 opened in his favor, and the balance of \$2,000 will be paid to Majinay in small installments according to the needs of the hacienda.

Third. That the said sum of \$5,000 shall bear interest at the rate of 9 per cent per annum to run from the date of each payment, and the time for liquidating the credit and the interest is hereby set for June 30, 1902, when this loan shall be fully paid, both the capital and the interest agreed upon, at the rate of 9 per cent per annum; Majinay engages himself to liquidate, if possible, before the said day, in which case, should there be any balance in his favor, the Compañia General de Tabacos shall hold the same at his disposal but shall not pay any interest whatever thereon.

Fourth. The debtor, Basilio Majinay, can in no event demand an increase of the credit granted by the company, nor evade this obligation by alleging lack of means; on the contrary, he formally binds himself to abide by this contract; he will settle without any reserve with the creditor company within the specified time, by delivering the entire crop as the same is harvested on the aforesaid hacienda; (said delivery or deliveries to be made in the Province of Negros, or in this town of Iloilo, as may suit the debtor at the coming harvest, that is, that which may be gathered up to June 30, 1902, from the crop now sown.

Sixth. The debtor, Basilio Majinay, binds himself to deliver to the creditor company by means of its agents in the Island of Negros, or in this town of Iloilo, all the crop that he may raise from the said hacienda of "Basag," calculated to be 2,000 piculs, together with about 1,000 piculs, more or less, from the hacienda "Cadujaan" owned

by him, situated in Cadiz Nuevo, in the said island; under no pretext or excuse shall he divert, sell, or cede to another person the least portion of the sugar that he may harvest.

Seventh. The creditor company binds itself to pay Majinay for each shipment of sugar the market value ruling at the time of such delivery, but if at such time another purchaser should offer a higher price than the company is prepared to give, then the latter, for the good of the interests of Majinay, may sell it to the highest purchaser for account and order of the debtor.

Eighth. The debtor, Majinay, shall have the right to wait for higher prices, but the sugar must be stored in such warehouse as the creditor company may designate, in which case storage and insurance shall be paid to the said company at the rate of 1½ centavos per picul per month; such storage, however, shall only last until June 30, 1902, when all the sugar must be sold, and the accounts and obligations contracted by virtue of this agreement must be liquidated and settled.

Ninth. In any case, the debtor, Basilio Majinay, shall pay the said company a commission of 1 per cent on all sugar delivered, whether in Negros or in Iloilo.

Eleventh. In addition to the credit for \$5,000 opened, the Compañia General de Tabacos binds itself to pay one-third of the value of each shipment of sugar delivered in this market or in the Island of Negros, in order that the debtor, Majinay, may continue to harvest the sugar on the said hacienda.

Twelfth. As security for the faithful compliance with this contract, the debtor, Majinay, hereby assigns and pledges the fruits and crops of the said haciendas "Basag" and "Cadujaan," and forthwith makes free and unconditional delivery of the same to the creditor company (longa manu tradere), transmitting to said company the full ownership thereof until the debtor shall have paid his debt in the form and manner herein stated; in case he fails so to do, the said company is hereby authorized to take possession of said fruits and crops, and either sell or store the same, and to this end, and by virtue of this document, Majinay confers on the company ample, sufficient, and unlimited powers, undertaking to hold as binding everything that the said company may do by virtue thereof, and not to protest in any manner.

Thirteenth. Without prejudice to the agreements contained in the preceding clauses, the debtor, Majinay, especially and particularly mortgages, to the creditor company in order to better guarantee the fulfillment of this contract, four parcels of land, the situation, area, and boundaries of which are described; the said parcels of land form the hacienda called "Basag," whereon there is a sugar mill, a warehouse, and furnaces with their corresponding sugar-boiling pans. The land was acquired by composition with the Government by virtue of the title No. 6090, issued by the direccion general de administracion civil on the 15th of June, 1892, entered at the inspeccion general de montes, on the 18th of said month and year, and registered in the registry of property of Bacolod on the 1st of May, 1893.

In the said instrument it further appears that Basilio Majinay declared that the above described hacienda and its dependencies and buildings are free from all encumbrance; that he is wholly entitled to the fruits thereof; and that prior to this time he has not sold or mortgaged the same to any person whatever. He authorizes the Compañia General de Tabacos, in case of noncompliance with part or the whole of the contract, to institute judicial or extrajudicial proceedings against the mortgaged hacienda, and he forthwith waives all right of action that might hinder any proceedings that the creditor company might institute for the recovery of its credit, or the interest thereon, as above related.

Besides the capital and interest hereinbefore mentioned, the above-described hacienda shall be liable for a mortgage credit of \$1,000, Mexican currency, with which Majinay charges it for the payment of any costs and

charges which the creditor company might incur in the event of having to institute judicial proceedings for recovery. Both parties fix the value of the mortgaged property at the sum of \$2,000, Mexican currency; therefore, they waive their right to ask for a new appraisal and to all actions directed to such a purpose.

It also appears that Majinay acknowledges the receipt of \$5,000, Mexican currency, the total amount of the credit granted him by the Compañia General de Tabacos, and which sum was delivered at the time by Wenceslao Paris for the purposes and in the manner aforesaid in a check, No. 3729, on the Banco Español-Filipino of Manila, etc. This instrument appears as having been recorded in the registry of property on May 14, 1901, according to the note by the registrar, Manuel Lopez, and sealed with the seal of the registry of property of Occidental Negros.

On the 3d of June, 1907, Ricardo Nolan filed a written complaint against Basilio Majinay alleging that on May 3, 1901, the latter had executed in favor of the Compañia General de Tabacos, represented by Wenceslao Paris y Sala, the preceding instrument of loan for the sum of 5,000 pesos with interest thereon at the rate of 9 per cent per annum, in addition to 1,000 pesos for the payment of costs and charges in the event of judicial proceeding being resorted to for the recovery of the said mortgage credit; that on the 30th of June, 1905, the defendant Majinay was indebted to the said company in the sum of P6,059.05 at 9 per cent interest per annum, which amount and the interest thereon have not been paid by the defendant either in whole or in part, notwithstanding the demands made upon him therefor, and in spite of the fact that the creditor company has fulfilled all the obligations stated in the contract; that on October 25, 1905, the head of the company's branch office in Iloilo delivered to Alejandro Montelibano y Ramos, among other credits, that against defendant Majinay for its collection with interest counting from the 1st of July of said year; that on August 3, 1906, another manager of the same branch office of Iloilo, transferred by means of a public instrument to the said Montelibano y Ramos all of the rights and actions pertaining to the creditor company, with the condition that the assignee, Montelibano, was in turn authorized to assign his rights and actions to a third person, which in fact he did in favor of the present plaintiff Nolan by means of a public instrument dated February 20, 1907; defendant Majinay was duly notified of the transfer made by the Compañia General de Tabacos to Montelibano, and of that by the latter to the plaintiff herein, and that no other person has, or pretends to have any title to the mortgaged property. Therefore, in conclusion he prays that judgment be rendered ordering the defendant to pay the plaintiff the sum of P6,059.05, with interest thereon at 9 per cent per annum from the 1st of July, 1905, and P1,000 in addition for costs and charges, and that the defendant be warned that if he should fail to deposit the said amounts in the court at the disposal of the plaintiff on or before the first day of the term of court following the rendition of judgment, the mortgaged property will be sold to comply with the obligation to which the complaint refers, and for any other remedy which might be considered just and equitable.

On the 3d of June, 1907, the defendant answered the complaint and denied each and every one of the facts therein stated with the exception of those set forth in paragraphs 2 and 3, which he admitted to be in harmony with the interpretation that should be given to contracts; as special defense he alleged that during the term fixed in the contract the defendant complied faithfully with the obligation to deliver sugar to the Compañia General de Tabacos; that notwithstanding the fact that he requested a liquidation of accounts in order to comply with the stipulation in clause 8 of the contract, the creditor company had not liquidated the accounts and canceled the obligations on the 30th of June, 1902, and accounts subsequent to that date should be the subject of another action, and by reason of the said liquidation and cancellation not having been made on the said 30th of June, 1902, the defendant suffered prejudice; therefore, reserving his right to claim therefor, he asked that the complaint be dismissed and that the plaintiff be compelled to liquidate accounts up to the 30th of June, the date on which the contract ended, and that the plaintiff be sentenced to pay the costs and other expenses occasioned the defendant by the complaint.

On the same day (July 3) the plaintiff presented a writing in which he denied all and each of the facts alleged by the defendant in his special defense as contained in his answer to the complaint above referred to.

The case was brought up for trial, evidence was adduced by both parties, the testimony of their witnesses was taken, and the documents exhibited by them were made of record. After hearing the evidence the court authorized the presentation of additional proofs; this ruling was objected to by the defendant, but his objection was overruled, to which overruling the defendant again excepted. Thereupon the plaintiff offered additional evidence, and the defendant also presented counterproofs. On the 30th of January, 1908, the court below rendered judgment and sentenced the defendant to pay the plaintiff the sum of P6,059.05, with interest thereon at the rate of 9 per cent per annum from July 1, 1905, and interest at 6 per cent per annum on the overdue and unpaid amount of interest, together with P1,000 more for costs and charges, warning the defendant that unless he deposited the said amounts with the clerk of the court on or before the first day of the following regular term, the mortgaged property described in the mortgage instrument which appears as Exhibit 3 of the plaintiff would be sold. Against the said judgment the defendant excepted and moved for a new trial on the ground that the conclusions therein were manifestly and openly contrary to the weight of the evidence; his motion was overruled, to which overruling the petitioner excepted. It also appears that upon the request of the plaintiff the court below ordered the deposit of the mortgaged property because there was danger that the products of the haciendas "Basag" and "Cadujaan" would be lost or would disappear; to said order the defendant excepted and presented the corresponding bill of exceptions which having been approved, was submitted to this court.

The questions set up in this litigation by reason of the appeal now pending are; First, has it been proven that a liquidation of accounts was made between the contracting parties, to the resulting balance of which the debtor agreed? Second, it being stipulated in the contract of May 3, 1901, that all the accounts and indebtedness of the debtor would be liquidated on the 30th of June, 1902, the date when the obligation became due, could the Compañia General de Tabacos liquidate the interest and capitalize it every six months during the time that the loan contract was in force, notwithstanding the agreement contained in the said instrument? Third, outside of the 5,000 pesos loaned, and supposing that the business relations between the debtor and creditor continued subsequent to the 30th of June, 1902, would any balance due by the defendant as a result earn interest at the rate of 9 per cent as agreed between the contracting parties with respect to the said 5,000 pesos?

The evidence adduced at the trial, particularly the documentary proofs, does not show in a satisfactory manner that any liquidation of the proceeds of the sugar delivered by the defendant in payment of his debt to the creditor company was made on the 30th of June, 1902, as agreed in the said document of indebtedness, nor does it appear that there existed a balance as the result of a liquidation to which the debtor had agreed.

Both parties have admitted that during the term of the contract, up to the 9th of June, 1902, the debtor, as had been agreed upon, had delivered various amounts of sugar on account of his indebtedness, and in order that it clearly appear whether or not his debt of 5,000 pesos was settled on the 30th of June, 1902, it becomes necessary for the creditor to make up an itemized account, in accordance with clause 8 of the contract, which the debtor, who alleges with some show of proof that he has fulfilled the contract, has a perfect right to demand; and for these reasons the first question should be answered in the negative.

Furthermore, the liquidation will necessarily show whether the defendant still owes in part or in whole the 5,000 pesos secured by the mortgage of the hacienda "Basag," or whether said mortgage debt has already been settled; this detail is of importance in order to determine whether the resulting debt can be the object of an action for foreclosure, or simply of an ordinary action, because although the procedure is analogous in both actions, a wide difference exists between a judgment rendered in an action for foreclosure, and that entered in an ordinary action.

With regard to the second question the answer must also be in the negative, inasmuch as if what was agreed between the contracting parties is the law that secures their respective rights and obligations, and if in the said contract they stipulated that all their accounts and the debts of the defendant would be liquidated on the 30th of June, 1902, the Compañia General de Tabacos, the creditor, had no right to compute interest every six months and add it to the capital; it was not authorized so to do by the written contract.

It was not agreed upon between the parties that at the expiration of every six months, interest at 9 per cent per annum would be capitalized and added to the 5,000 pesos, so that it might in turn earn 9 per cent interest, together with the said capital; the creditor company had therefore no right to make up the said half yearly liquidation of interest, for the reason that article 1755 Of the Civil Code provides that interest shall only be owed when it has been expressly stipulated, and said legal provision would be violated if compound interest be permitted, that is to say, that without a written agreement, interest may be compounded before the obligation becomes due, in order that the net amount of interest may in turn earn the same rate of interest without the consent of the debtor, inasmuch as interest due shall only earn legal interest from the time it is judicially demanded, even if the obligation should be silent on this point. (Art. 1109, Civil Code.)

The first and highest court in Spain, in applying these provisions of the code, has established in its decisions of January 18, 1873, and December 16, 1887, the rule that the law of March 14, 1856, far from authorizing the charging of interest on interest, provides that during the term of the contract, interest due but not paid can not bear interest; however, net unpaid interest may be capitalized, and new interest may be stipulated on the increased amount of capital, but such an agreement shall be null and void unless in writing.

With respect to the third question, it must be borne in mind that by the public instrument above alluded to, the amount loaned is limited to 5,000 pesos, which shall bear interest at the rate of 9 per cent per annum.

Given the terms of the contract with relation to these points, and in view of the fact that no interest was stipulated on other sums subsequently loaned to the defendant by reason of, or in consequence of the business carried on between him and the Compañia General de Tabacos from June 30, 1902, to October, 1905, it is not lawful that other amounts which the debtor, Basilio Majinay, might owe outside of the said 5,000 pesos should bear the interest of 9 per cent agreed upon on the last-named sum, since at the time when such other amounts were loaned it does not appear that any interest was agreed upon between the contracting parties, either orally or in writing, as has been already stated.

The creditor company is entitled to the interest mentioned in article 1108 of the Civil Code with respect to such amounts as were loaned outside of the said written contract; but not to the 9 per cent interest per annum because such a pretension, as has been shown, is contrary to law, and furthermore, because the literal sense of the clauses of a contract must be observed when its terms are clear and leave no room for doubt of the intent of the contracting parties; whatever may be the generality of its terms, it is not lawful to consider that other things and cases different from what the parties in interest intended to contract for are therein comprised. (Arts. 1281 and 1283, Civil Code.)

For the considerations above set forth, and especially in view of the absence of the liquidation which should have been made on the 30th of June, 1902, there are no provisions in the law by which, according to what has been alleged and proven in this case, a proper decision may be entered in this litigation; hence, in compliance with the provisions of section 496 of the Code of Civil Procedure, and notwithstanding the force and efficiency of the aforesaid public instrument of indebtedness, it is proper that a new trial be held in order that a liquidation may be made in legal form between the parties in this suit, and that another judgment may be entered in accordance with the weight of the evidence and the merits of the case, taking into account the terms of the written contract, the

amount that is therein secured by mortgage, and the interest that said amount should bear as being the only one which may be the subject of proceedings for foreclosure.

Therefore, the judgment appealed from is hereby set aside or reversed, and the judge of the Court of First Instance shall proceed in accordance with the law and the terms of this decision.

Mapa, Carson, Willard, and Tracey, JJ., concur.

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