

RICARDO NOLAN, PLAINTIFF AND APPELLEE, VS. CRISTETA GONZAGA, PERSONALLY AND AS THE ADMINISTRATRIX OF THE ESTATE OF EMILIO ESCAY, DECEASED, DEFENDANT AND APPELLANT.

G.R. No. 4863. July 20, 1910

Ponente: TORRES, J.

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TORRES, J.:

On September 7, 1907, Ricardo Nolan filed an amended complaint in the Court of First Instance of Occidental Negros against Emilio Escay and Cristeta Gonzaga, alleging that by means of an instrument ratified on the 6th of June, 1903, the defendant Escay acknowledged that he was owing the Compania General de Tabacos de Filipinas the sum of P22,086.43, with interest at 9 per cent per annum, and he bound himself to pay it, together with the interest, on or before the 1st day of March, 1905; that in order to guarantee the payment of the said sum and the interest due thereon, the defendant debtor executed a lien on the hacienda called Lanoglanog, now known by the name of Teresa, and on all the buildings, machinery, and other appurtenances thereof, and, further, on a house of strong materials, the property of defendant's wife, Cristeta Gonzaga, who conferred upon her husband power for this purpose; that the instrument above referred to set forth the location of the said house and the area, the metes and bounds of the land; that the said Hacienda Teresa is situated in the pueblo of Saravia and has the area and boundaries mentioned in the complaint; that on the 30th of June, 1905, the defendant Escay, while still living, was owing the said company the sum of P29,824.43, with interest at 9 per cent per annum from the said date; that on the 25th of October of that year, Luis G. Espoy, the head of the Iloilo branch of the aforementioned company, delivered to Alejandro Montelibano y Ramos, among other credits, that of the defendant Escay, for collection; that, on the 3d of August, 1906, Vicente Muntadas, the head of the said Iloilo branch, transferred to the said Montelibano y Ramos, by a public instrument, all the rights and actions that pertained to the Compania General de Tabacos with respect to the said debt which the defendant Escay still owed, together with the interest thereon from June 30, 1905; that by an instrument of the 20th of February, 1907, Montelibano y Ramos transferred to the plaintiff Nolan all his rights in the said credit against the defendant Escay, who was duly notified of the transfer made by the company of his debt in favor of Montelibano y Ramos and of the transfer effected by the latter in favor of the plaintiff Nolan; that, notwithstanding the demands, which several times were made to Escay for the payment of his debt, he had not paid the same in whole or in part, nor the interest thereon; that, one day in May, 1907, Emilio Escay died, and by an order issued by the judge of the Tenth District, on the 14th of August following, his widow, Cristeta Gonzaga, was appointed administratrix of his intestate estate, she having been duly sworn for the purpose on the 2d of September of the same year; that to the amended complaint is attached as a part thereof Exhibit 1, a copy of the public instrument of June 6, 1903, executed by the deceased Escay during his lifetime in favor of the said Compañia General de Tabacos; and that a copy of the present complaint has been filed with the land registry office of the province; and therefore this court is prayed to render a decision against Cristeta Gonzaga, personally and as the administratrix of the intestate estate of the deceased Escay, by ordering her to pay to the plaintiff the sum of P29,824.43, with interest thereon at the rate of 9 per cent per annum from the 30th of

June, 1905, until its complete payment, and to pay the costs of the suit, and that, in case of insolvency, the sheriff proceed to sell the property given as security, or the part thereof that it be necessary to sell; and to provide any other just and adequate remedy.

The document Exhibit 1, which accompanies the complaint, is the instrument executed on the 6th of June, 1903, before the notary Gregorio Yulp, by Emilio Escay y Hernandez and Eduardo Cedrun, as the representative in Iloilo of the Compañia General de Tabacos, and it appears therein that, according to an instrument of the 30th of June, 1902, the said company granted to Emilio Escay a loan of 8,000 pesos, Mexican currency, wherewith to pay the expenses of the Hacienda Lanoglanog, belonging to him and situated within the district of Saravia, Island of Negros, which loan was made for a period of two years from the said date, with interest at 9 per cent per annum, and that as a guaranty and security for compliance with the obligation the debtor, Escay, mortgaged to the said company the said Hacienda Lanoglanog, subsequently called the Teresa, of 179 hectares in area, bounded as described therein, the same being provided with a warehouse of strong materials, a steam engine of 9 horsepower, a furnace and other appurtenances for the making of sugar; that, according to the settlement had on the 21st of March, it was found that Escay owed the creditor company the sum of P15,086.43; that notwithstanding this debt, the Compañia General de Tabacos granted another new credit of 7,000 pesos to the same party, Escay, in order that he might continue the work of grinding, on his aforesaid hacienda, which sum was to be delivered to him in installments in the months and for the purposes expressed in the instrument and, added to the previous sum of 15,086.43 pesos, made a total of P22,086.43, the debtor being allowed, by regular deliveries of sugar in Iloilo, P1.50 for each picul of sugar; that the debtor Escay agreed to deliver to the creditor company the entire crop of the years 1903 and 1904 that should be produced on his hacienda, estimated at 5,000 piculs of sugar, without his selling or assigning to anyone else or deducting therefrom the smallest portion for any consideration or under any pretext; that the deliveries of the sugar were to be made until the 1st of March, 1905, fixed as the date when the entire crop should be ground, the company reserving the right to place an agent on the hacienda, at the expense of the debtor Escay, whenever it should so consider proper; that the amounts received, as well as those the debtor should receive up to the total of the credit allowed, should draw interest at the rate of 9 per cent per annum, from the date of their receipt, the aforesaid 1st of March, 1905, being fixed as the date for the settlement of the payments of capital and interest; that it was agreed that, if the sugar of the crop of 1903-4 should be insufficient to balance the accounts of the debtor, the crop of 1904-5 should be delivered to the creditor company in the same manner and under the same conditions, the date for the complete payment and settlement of the capital and interest in such case to be extended; that, among other conditions and in all cases, Escay should allow the company 1% per cent as commission on the total amount of the sugar delivered; that as security and for the purpose of an exact compliance with the engagements contained in the said instrument, the debtor Escay deeded, conveyed, and sold to the creditor company all the fruits and crops of his hacienda, delivering them by traditio manu longa and transferring full dominion over them until the debt should be satisfied; that in case of failure to pay the same on the conditions expressed, the creditor company could, if it so wished, take possession of the said fruits and crops, sell them or store them, for which purpose the debtor Escay conferred ample and sufficient power, without limitation whatever, in favor of the creditor company, binding himself to hold as proper and final whatever proceedings might be taken by the latter by virtue of this instrument; that, notwithstanding all the foregoing, the debtor Escay had agreed to sell under pacto de retro, as a guaranty for the due fulfilment of the obligation assumed by him, the Hacienda Lanoglanog, now called the Teresa, of which he was the owner, together with all the buildings, machinery, and other appurtenances existing thereon, and a house constructed of stone and wood with a zinc roof, belonging to his wife, Cristeta Gonzaga, and situated in the town of Bacolod, for the sum of P22,086.43, on condition that if, during the term stipulated or before the 1st of March, 1905, he should pay all the said sum, with the interest due thereon, to the creditor company, with the deliveries of sugar agreed upon, the latter would execute to him an instrument of reversion of the said hacienda and house; but if the said

term, to terminate on the 1st of March, 1905, should elapse and the debtor Escay should be unable to avail himself of his right of redemption, then this sale should assume the character of one absolutely and irrevocably consummated and the company should be considered to have acquired all the rights pertaining to it in connection with the said properties; that it was also stipulated between both parties that, if the company should take possession of the properties sold for any reason whatever, at any time, that it should collect the principal and interest owing by Escay, the latter or his heirs should recover the absolute ownership of the said properties, the debtor binding himself, in his own name and in that of his wife, who, for this purpose, had conferred power on him by an instrument executed in Bacolod, June 1, 1903, to guarantee the company the peaceful possession of the property.

On the 25th of November, 1907, the defendant Cristeta Gonzaga filed, with the permission of the court, an amended answer, setting forth that she admitted the facts alleged in paragraphs 1, 2, 3, 5, 6, 7, 8, and 10 of the amended complaint; that she denied the facts alleged in paragraphs 4 and 9 of the same, and reserved her answer with regard to the exactness of the copy of the said instrument, Exhibit 1, until she should have compared it with its original; that as a special defense she alleged that in the instrument of acknowledgment of the debt, executed on June 6, 1903, before the notary Yulo, the following condition was stipulated between the parties: It is agreed by both contracting parties that should the Compania General de Tabacos, for any reason whatever, take possession of the properties sold, as soon as the latter shall have collected the principal and interest owing it by the said Escay, it shall return to him or to his heirs the ownership of the properties concerned; and, therefore, the defendant prayed the court to absolve her from the complaint, with the costs in her favor.

The case having come to trial and the parol evidence having been adduced by both parties, the exhibits being made a part of the record, the judge, on January 30, 1908, rendered judgment in the case, sentencing the defendant personally and as the administratrix of the intestate estate of her deceased husband, Emilio Escay, to pay to the plaintiff the sum of P29,824.43 and the interest thereon at the rate of 9 per cent per annum from the 1st of July, 1906, until paid, and the costs. Against this judgment the defendant party took exception and prayed for a new trial, on the ground that the said judgment was manifestly contrary to the weight of the evidence, which petition was denied by the court, on February 8, 1908, and exception taken thereto by the appellant, who duly filed the corresponding bill of exceptions which was approved and transmitted to the office of the clerk of this court.

It is asserted in appellant's brief that the lower court, in passing judgment in this case, incurred the following errors:

- The lower court erred in finding that Emilio Escay owed the Compañia General de Tabacos de Filipinas, on June 20, 1905, the net sum of P29,824.43.
- The lower court erred in stating that it had been proved that the deceased Escay, while still living, received a demand for the payment of the said balance of P29,824.43, and that he gave no heed whatever thereto.
- The lower court erred in finding that Exhibit 1 sets forth stipulations which clearly show that the credit was a mortgage one.
- The lower court erred in deciding, when interpreting the substance of the contract, that the parties to this suit are convinced that the amount claimed is a mortgage debt, and that the contract, Exhibit 1, is a mortgage credit against Escay, and not a sale under pacto de retro.
- The lower court erred in finding that the covenant alleged by the defendant in the special defense contained in her answer, is a conditional covenant which gave to the creditor the right to take and keep possession of the properties during the term allowed for the payment of the debt, and never could be understood to be a perpetual

covenant.

Apparently, it is shown by the statements set forth in the judgment appealed from and by the terms of the sentence contained therein, that the court, in harmony with the tenor of the complaint, was of the opinion that the complaint claimed payment of a mortgage credit by virtue of the stipulations of an instrument of the date of June 6, 1903.

It is true that, judging from the statements made by the debtor Emilio Escay in the said instrument, the latter received as a loan from the Compania General de Tabacos various sums aggregating P22,086.43, bearing interest at 9 per cent per annum; but it is no less true that the said debtor, to insure the fulfillment of the engagement to pay his debt with the sugar that he might succeed in producing on his Hacienda Lanoglanog or Teresa during the years 1903, 1904, and 1905, had to deed over and convey by sale to his creditor all the fruits and crops of the said hacienda, authorizing the latter, in case of nonpayment, to take possession of the said fruits and crops, to dispose of them and to sell them, and he also agreed to sell to the creditor company the said hacienda under pacto de retro, together with its buildings, machinery, and other appurtenances existing thereon, and the house owned by his wife, Cristeta Gonzaga, situated in the town of Bacolod, for the aforesaid sum received as a loan, the company binding itself to resell to him the said properties if the debtor should be able to pay his debt with sugar; otherwise the sale was to be absolute and irrevocable.

It was also stipulated between the contracting parties that should the company take possession, for any reason whatever, of the properties sold, once it had collected the principal and interest due, the ownership of the said properties should revert to the debtor Escay or to his heirs.

With the exception of these stipulations and the clause guaranteeing possession, the aforesaid instrument expresses no special contract of mortgage of the said properties, nor any agreement nor even a statement reproducing or maintaining, in the said instrument of 1903, the mortgage contracted in the previous instrument of June, 1902, for this latter concerns a loan of P8,000, and the mere reference made in the former to this credit, secured by a mortgage on the said hacienda, and the fact of such loan being included, on account of its not having been paid, in a larger one which is the subject of the said subsequent instrument of 1903, is not sufficient to show the existence of a mortgage, without the manifest will of the interested parties, when what was expressly stipulated afterwards is a sale with right of repurchase.

On the foregoing hypothesis, it is unquestionably evident that the plaintiff party, the cessionary of the rights of the Compañia General de Tabacos, is not entitled to prosecute an action for the collection of a mortgage credit on realty, under the authority of the provisions of articles 254 et seq. of the Code of Civil Procedure and by virtue of a contract of mortgage based on, articles 1874 et seq. of the Civil Code and articles 138 et seq. of the Mortgage Law.

The sum loaned to the debtor was converted into the selling price of the properties specified in the said instrument, according to the stipulations therein made between the contracting parties, and the term agreed upon for the repurchase has much more than elapsed; and although the debtor remained in possession of the said properties sold, notwithstanding his not having duly repurchased them, the creditor has not thereby lost his right thereto, provided he exercises it in due time, by virtue of the contract contained in the said instrument of June 6, 1903. (Arts. 1507, 1509, 1518, Civil Code.)

The defendant appellant acknowledges the fact and the legitimacy of the sale with right of repurchase aforementioned, and he has not alleged any ground whatever by virtue of which the said contract of sale may be considered dissolved and without legal effect and the return of its price demanded; wherefore the suit filed by the plaintiff Ricardo Nolan is from all points of view improper, and therefore the judgment appealed from can not be sustained, the court below having incurred errors 3 and 4 of those alleged by the appellant, as hereinbefore shown.

In view of the nature and fundamental basis of this decision, it is not necessary to discuss the propriety or impropriety of the other errors attributed to the judgment.

Wherefore, it is proper in our opinion, in reversing the judgment appealed from, to absolve, as we do hereby absolve, from the said complaint the defendant Cristeta Gonzaga, personally and as the administratrix of the estate of her deceased husband Emilio Escay, without special finding as to the costs in both instances, and to the plaintiff is reserved his rights pursuant to the agreement contained in the instrument aforesaid, and he may exercise the same, should he deem proper so to do, in conformity with the law.

Arellano, C. J., Johnson, Moreland, and Trent, JJ., concur.

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