

GIL GONZALES, PETITIONER, VS. LA PREVISORA FILIPINA, MUTUAL BUILDING AND LOAN ASSOCIATION, AND JOSE D. MENDOZA, RESPONDENTS.

G.R. No. 48699, March 30, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

On or before July 31, 1931, Jose D. Mendoza applied to La Previsora Filipina, Mutual Building and Loan Association, for a loan of P9,000 to be invested in the construction of a house of strong materials and other improvements on his lot situate on Fraternidad street, Pandacan, Manila, with an area of 251.6 square meters and covered by transfer certificate of title No. 38244. Inasmuch as the loan value of said lot together with the proposed improvements thereon was appraised by the said building and loan association at P5,200 only, Mendoza was required to put up an additional security to cover the deficiency of P3,800. To meet that requirement Mendoza approached his friend Gil Gonzales, who consented to mortgage his land and building situate on Tayuman street, Santa Cruz, Manila, with an area of 229 square meters and covered by transfer certificate of title No. 23695, as collateral security for the loan applied for by Mendoza. The contract of loan and mortgage signed by the parties, upon the interpretation of which the present case hinges, reads in part as follows:

"Este contrato celebrado en la Ciudad de Manila, Islas Filipinas, entre 'La Previsora Filipina', Sociedad Mutua de Construccion y Prestamos, incorporada bajo las leyes de las Islas Filipinas, de una parte; y Jose de Mendoza (filipino) casado con Benilda Bonus; y Gil Gonzales (filipino) casado con Segundina Tuason de Manila, Islas Filipinas, mayor de edad, domiciliado en No. 45 Jesus, Pandacan, Manila, Is. Fil., y accionista de la misma Sociedad, de otra parte,

"Atestigua:

"Por cuanto, Jose D. Mendoza y Gil Gonzales conociendo las condiciones y estando impuesto de la forma en que 'La Previsora Filipina' opera en sus prestamos bajo el plan de la Triple transaction, y encontrando esta forma de operar altamente beneficiosa y ventajosa para el accionista prestatario, desea hacer constar, como por la presente lo hace, su conformidad y a probation de la misma; y

"Por cuanto, Jose D. Mendoza y Gil Gonzales haciendo uso del privilegio y derecho que la Sociedad arriba nombrada concede a sus accionistas ha solicitado de la misma un prestamo de nueve mil pesos (P9,000), moneda filipina, con la garantia hipotecaria que mas adelante se consignara y mediante la pignoracion de las acciones de la Serie 'E' de la misma Sociedad que suscribe en este acto y que ira pagando en la forma convenida y que aparece consignada en el Certificado de dichas acciones; y

"Por cuanto, el objeto para el cual dichos Jose D. Mendoza y Gil Gonzales ha solicitado el prestamo es:

"Para construir la casa en el solar de Pandacan objeto de esta hipoteca, y el resto para construir un muro de contention y el cerco de piedra alrededor del solar y un garage — y

"Por cuanto, 'La Previsora Filipina', Sociedad Mutua de Construction y Prestamos, ha accedido a conceder a

dichos Jose D. Mendoza y Gil Gonzales el prestamo solicitado, de nueve mil pesos (P9,000), moneda filipina, segun acuerdo adoptado por la Junta Directiva en su sesion de fecha 25 de Julio de 1931, en el cual tambien se autoriza a Don Miguel Romualdez, en su concepto de Presidente de dicha Sociedad para formalizar la operacion del prestamo hipotecario y otorgar en nombre de la Sociedad esta escritura de prestamo;

"Por tanto, las partes aqui contratantes, a saber: 'La Previsora Filipina', Sociedad Mutua de Construction y Prestamos, incorporada bajo las leyes de las Islas Filipinas, representada en este acto por su Presidente Don Miguel Romualdez, el cual de aqui en adelante se llamara 'La Sociedad', de una parte; y Jose D. Mendoza y Gil Gonzales, accionista de esta Sociedad, a quien de aqui en adelante se llamara 'Accionista Prestatario', de otra parte, han convenido y otorgado el presente contrato de prestamo sujeto a las siguientes

"Bases

"I.—'La Sociedad' entrega en este acto al 'Accionista Prestatario' y este declara haber recibido de 'La Sociedad' en calidad de prestamo la cantidad de nueve mil pesos (P9,000), moneda filipina, por el tiempo y bajo las condiciones que a continuacion se establecen;

"* * * * *

"IX.—Para garantizar el fiel y puntual cumplimiento de todas las obligaciones sin perjuicio de la responsabilidad personal que contrae en virtud de la presente escritura, el 'Accionista Prestatario' por la presente cede y traspasa en calidad de primera hipoteca a favor de 'La Sociedad' el inmueble de su propiedad que a continuacion se describe, a saber:

" 'Certificado de Trans ferencia de titulo No. 38244

" 'A parcel of land (Lot No. 1 of Block No. 1017 of the Cadastral Survey of the City of Manila), with the buildings and improvements thereon; situated on the NW. line of Calle Fraternidad, District of Pandacan. Bounded on the NE. by lot No. 2 of Block No. 1017; on the SE. by Calle Fraternidad; on the SW. by Callejon Tercius; and on the W. by the Estero de Pandacan. * * * Containing an area of two hundred and fifty-one square meters and sixty square decimeters (251.60), more or less.'

"Como garantia colateral queda tambien pignorado a favor de la Sociedad 'La Previsora Filipina' el terreno del Sr. Gil Gonzales que se describe a continuacion:

"'Certificado de Transferencia de titulo No. 23695

" 'Un terreno, situado en la Calle Tayuman, Distrito de Santa Cruz, compuesto del Lote No. 13-B, Block No. 2259 de la Propiedad subdividida del Gobierno de las Islas Filipinas, conocida con el nombre de "Hacienda de San Lazaro", segun el piano que obra unido al Expediente No. 235, Record No. 11546 de la Oficina General del Registro de Terrenos, copia del cual piano se halla archivada con el No. 45. Dicho lote mide una extension superficial de doscientos veinte-nueve (229.00) metros cuadrados, y sus linderos constan en el citado piano.'

"Sobre dicho terreno se halla levantada una casa de materiales fuertes con techo de hierro galvanizado.

"Entendiendose, sin embargo, que cuando la deuda se haya quedado reducida a P5,200, entonces la Sociedad 'La Previsora Filipina' podra cancelar el gravamen que pesa sobre la finca descrita que constituye como garantia colateral y de la propiedad del Sr. Gil Gonzales."

"* * * * *

(Exhibit A-I.)

The money loaned by the Association under said contract was duly invested in the construction of the building and other improvements on the lot of Mendoza, and it was the latter alone who made payments on account of the

principal and interest of said loan; but Mendoza's payments were far from sufficient to cover the monthly instalments stipulated in the contract, for which reason La Previsora Filipina, on July 22, 1937, foreclosed the mortgage extrajudicially and bought the mortgaged premises of Mendoza's and Gonzales' for the lump sum of P12,245.98, representing the amount then due on said mortgage.

Upon learning of the extra judicial sale of his property, and before the expiration of the one-year period of redemption, Gil Gonzales offered to pay La Previsora Filipina the sum of P3,800 and, in view of the latter's refusal to accept it, deposited the amount with the Clerk of the Court of First Instance of Manila on July 20, 1938.

The present action was commenced by Gil Gonzales on June 6, 1938 (a) to annul and set aside the extrajudicial sale of his property, (b) to declare that his property should only respond for the sum of P3,800, and (c) to order the defendant corporation to receive the said sum.

The trial court held that the plaintiff Gil Gonzales was a mere guarantor to the extent of P3,800, and found that, after deducting Mendoza's payments, Gonzales' liability to the defendant corporation amounted to only P650, which should be satisfied out of the P3,800 deposited by him, and declare the extrajudicial sale null and void insofar as it affected Gonzales' property.

The Court of Appeals, reversing the judgment of the trial court, held that Gil Gonzales was a coborrower and was jointly and severally liable with Mendoza for the full amount of the loan; but, in equity and justice, it conceded to Gonzales the right to redeem his property from La Previsora Filipina by paying to the latter the sum of P4,691.49, applying on account thereof the sum of P3,800 which Gonzales had deposited with the clerk of court. The said sum of P4,691.49 was arrived at by the Court of Appeals by deducting the sum of P9,000, for which La Previsora Filipina sold Mendoza's property to Mr. Pio Pedrosa during the pendency of this action, from the total amount due under the contract in question including the expenses incurred by La Previsora Filipina for repairs, insurance, and taxes on the property of Mendoza before it was sold to Pedrosa. From that judgment Gil Gonzales has appealed to this Court by certiorari.

As we have already intimated, the case hinges on the interpretation of the contract of loan and mortgage executed by the parties. The Court of Appeals considered the terms of said contract as "clear and explicit." It also considered entirely immaterial the fact that the loan of P9,000 was invested in the construction of the house and other improvements on Mendoza's exclusive property, as well as the fact that the only one who made payments on account of the indebtedness was Mendoza. It held that the fact that Gonzales' property was included in the mortgage expressly as a collateral security only and with the stipulation that once the indebtedness was reduced to P5,200 La Previsora Filipina could cancel the incumbrance thereon, cannot be invoked in favor of Gonzales, first, because the latter is a co-borrower of Mendoza with a solidary liability as to the loan in question and, second, because the cancelation of the incumbrance on Gonzales' property upon the reduction of the debt of P5,200 was discretionary and not obligatory on the respondent corporation. We disagree with the Court of Appeals upon these considerations.

First. It does not clearly and unequivocally appear from the contract in question that Gil Gonzales is a coborrower of Mendoza; nor is there any express stipulation therein that Gonzales is jointly and severally liable with Mendoza for the entire amount of the loan. It seems that the Court of Appeals deduced Gonzales' solidary liability from the assumption that he was a coborrower. That is untenable because even if Mendoza and Gonzales were coborrowers they would not be bound in solido in the absence of an express stipulation to that effect. (Articles 1137 and 1138, Civil Code.) But, as we have said, it does not clearly appear that Gonzales was a coborrower. It is true that Gonzales signed the loan application as well as the contract of mortgage together with Mendoza without stating that he was a mere guarantor or surety of the latter. But, as the trial court observed, the respondent mutual

building and loan association is allowed by law to grant loans only to its stockholders in order "to encourage industry, frugality, and home building among its stockholders" (sections 171- 190, Corporation Law) ; and the loan in question was applied for and granted expressly for the purpose of constructing a house and other improvements on the land belonging exclusively to Mendoza. It is noteworthy that altho Gonzales appears together with Mendoza in said contract as one of the contracting parties, the stockholder-borrower (accionista prestatario) is referred to in singular thruout said contract. In clause IX of the contract the stockholder-borrower cedes and transfers by way of first mortgage in favor of the Association the property belonging to him and described in transfer certificate of title No. 38244; and that was Mendoza's land in Pandacan on which the building and other improvements were to be constructed with the borrowed money. In the same clause Gonzales is specifically referred to not as a stockholder-borrower but simply as Mr. Gil Gonzales who by way of collateral security "pledges" in favor of the Association his land described in transfer certificate of title No. 23695, situate on Tayuman street, on which there is a building of strong materials, with the express proviso that once the indebtedness is reduced to P5,200 the Association may cancel the incumbrance thereon. It seems apparent to us than only one stockholder-borrower was contemplated in said contract, and that one could not be other than Mendoza because it was originally at his instance and for his exclusive benefit that the loan in question was granted; it was on the land belonging exclusively to him that the building constructed with the borrowed money was erected; and it was he alone who made payments on account of said loan.

Second. Articles 1281, 1282, and 1288 of the Civil Code are applicable to this situation. Said articles read as follows :

"Art. 1281.—If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its wording shall be followed.

"If the words appear to be contrary to the evident intention of the contracting parties, the intention shall prevail.

"Art. 1282.—In order to judge as to the intention of the contracting parties, attention must be paid principally to their conduct at the time of making the contract and subsequently thereto.

"Art. 1288.—Obscure terms of a contract shall not be so construed as to favor the party who occasioned the obscurity."

In construing the contract in question with complete detachment from the antecedent circumstances and with absolute disregard of the conduct of the parties at the time of making the contract and subsequently thereto—in brushing aside the important fact that the respondent mutual building and loan association is authorized by law to loan money only to its stockholders to encourage home building, and that it was Mendoza alone who built a home with the money borrowed from the respondent, and in disregarding the fact that Gonzales never paid and was never required to pay a single centavo on account of the shares of stock of the Association supposedly subscribed for by him together with Mendoza, the latter alone having made such payments —the Court of Appeals did not follow as it should have followed the provisions of articles 1281 and 1282 above quoted. Neither did it follow article 1288, it being undisputed that the contract in question was prepared by the respondent and that the use in singular of the words "accionista prestatario" and the inclusion of the property of Gonzales as mere collateral security to be released once the indebtedness was reduced to P5,200, made said contract obscure, to say the least, insofar as it purported to bind Gonzales as a co- borrower and co-stockholder of the Association.

The proviso contained in clause IX of said contract to the effect that once the indebtedness is reduced to P5,200 the Association may cancel the incumbrance on the prop- erty of Gonzales, was not correctly interpreted by the Court of Appeals, in our opinion. It is true that the word "may" (podra) ordinarily indicates potestative condition,

but it may and should be read as "shall" when the apparent intention of the parties demands such construction. In the instant case the nature of Gonzales' intervention in the transaction demands such construction of the proviso in question. Said proviso would be not only superfluous to the respondent Association but illusory to the petitioner if it be construed in the potestative sense given to it by the Court of Appeals. The mortgagee does not need permission from the mortgagor to cancel the mortgage, if he wants to, at any time before the obligation is fully satisfied; that is to the mortgagor's advantage and the mortgagee's inherent power. To construe the proviso in question as a mere authorization from Gonzales to the Association to cancel the mortgage on Gonzales' property once the indebtedness was reduced to P5,200, is to say that by such important stipulation the Association merely intended a gesture of supererogation and Gonzales, a means of self-delusion. Obviously, such stipulation in favor of petitioner would not have been made if he were a coborrower obligated to the same extent as Mendoza was.

Interpreting the contract in question in the light of its antecedents and of the coetaneous and subsequent conduct of the parties, in relation to the following: (a) the use thruout the whole document of the singular term "accionista prestatario", (b) the inclusion of Gonzales' property in said contract as a mere collateral security, and (c) the stipulation that once the indebtedness is reduced to P5,200 the incumbrance thereon may (shall) be released, we find that the petitioner was not bound thereunder as a co-stockholder and coborrower with Mendoza, but that he merely agreed to put up his own property as a collateral security for the payment of Mendoza's obligation to the extent of P3,800. It is of no consequence whether his liability for that amount is joint or solidary with Mendoza, for we find that he has fully discharged that liability by tendering to the Association the said sum of P3,800 and by depositing it with the clerk of court upon the Association's refusal to accept the payment.

The reduction found by the trial court of Gonzales' obligation from P3,800 to P650 was based on Gonzales' testimony to the effect that there was an unwritten agreement between the parties that Mendoza's payments were to be applied first to the P3,800 for which Gonzales' property responded. That testimony was not given credence by the Court of Appeals; and, as this phase of the case involves a question of fact and not an interpretation of the written contract, we cannot review it.

The judgment of the Court of Appeals is hereby modified in the sense that instead of P4,691.49 awarded by the Court of Appeals to the respondent La Previsora Filipina, the latter is hereby declared entitled to only the sum of P3,800 deposited with the clerk of court by the petitioner, who is hereby relieved of any further obligation towards the said respondent. Said judgment is affirmed insofar as it declares void the final deed of sale exhibit 10 and orders the register of deeds of the city of Manila to cancel transfer certificate of title No. 54098 in the name of La Previsora Filipina and to issue a new one in the name of Gil Gonzales.

The respondent La Previsora Filipina shall pay the costs in the three instances. So ordered,

Yulo, C. J., Moran, Bocobo, and Lopez-Vito,[1] JJ., concur.

[1] Justice Lopez-Vito of the Court of Appeals took part in this case by special designation.

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