

TOMAS SUNICO, LIQUIDATOR OF CHUIDIAN, BUENAVENTURA & CO., PLAINTIFF AND APPELLEE, VS. MANUEL RAMIREZ, DEFENDANT AND APPELLANT.*G.R. No. 5009. November 26, 1909*

Ponente: CARSON, J.

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On the 29th of October, 1884, Manuel Ramirez, defendant and appellant, and Chuidian Buenaventura & Co., a mercantile association of which plaintiff and appellee is liquidator, and which will hereinafter be referred to as the plaintiff company, jointly executed a notarial instrument, which was duly recorded in the mortgage registry of the city of Manila, wherein Ramirez solemnly acknowledged himself to be indebted to the plaintiff company in the sum of 10,000 pesos, local currency, received by him from the plaintiff company "en calidad de prestamo mutuo" (by way of, or in virtue of the class of loans (Joined in law 1, title 1, partida 5, and known as a simple loan under the provisions of article 1740 of the Civil Code.) In this instrument Ramirez obligated himself to pay the amount of this indebtedness "in the early days" of the year 1885 in sugar at the then market price, together with interest "at the rate of 10 per cent annually" and a certain agreed upon commission on each picul of sugar delivered; and as security for the fulfillment of the obligation thus assumed, Ramirez, in the same instrument, created a lien ("hipoteca" or mortgage under the civil law) upon certain property therein described, in favor of the plaintiff company.

On the 14th of August, 1885; Ramirez and the plaintiff company jointly executed a second notarial instrument, also duly recorded in the mortgage registry, of substantially the same tenor and effect as the former instrument, except that the amount of the indebtedness acknowledged in the second instrument was 10,125.01 7/8 pesos, local currency, being the amount of the original indebtedness together with 125.01 7/9 pesos, additional indebtedness contracted since the execution of the former instrument; and except also that the property upon which the lien was created was amplified by the addition of certain property described in the second instrument, and that the months of February and March of the year 1886 were designated as the date of payment of the indebtedness thus acknowledged and secured.

On the 14th of January, 1908, this action (action hipotecaria) was instituted to foreclose the lien created in these notarial instruments in favor of the plaintiff company and to recover the amount of the unpaid balance of the indebtedness solemnly acknowledged therein.

There is substantially no dispute as to the facts, except that defendant, whose sole defense rests on the alleged prescription of plaintiff's action, denied plaintiff's allegation of certain partial payments made after the date of the second instrument, and insisted that he had made no payment whatever on account of his alleged indebtedness. We are satisfied, however, that the evidence adduced at the trial conclusively establishes the correctness of the books of the plaintiff company in so far as they disclose that defendant Ramirez made remittances on account of his acknowledged indebtedness, amounting to 683.29 pesos in the year 1886; to 166.65 pesos in the year 1887;

and to 342.29 pesos in the year 1888, the last of these remittances having been received by the plaintiff company on October 6 of the latter year; and that no other remittance or payments have been made by defendant on account of his indebtedness since that date.

Counsel for defendant and appellant contended in the court below and insists on appeal that the acknowledged indebtedness had its origin in a mercantile transaction governed by the provisions of the Mercantile Code, and therefore; under the provisions of that code, that the personal, right of action thereon had long prescribed before this action was instituted; and that the lien having been created merely to secure this indebtedness, the right of action to foreclose the lien must be taken to have prescribed at the same time as did the personal action to recover the indebtedness secured thereby.

It should, perhaps, be sufficient answer to appellant's contention that the indebtedness had its origin in a mercantile transaction, to point out the express terms of the solemn notarial instrument acknowledging the indebtedness, wherein the parties themselves expressly declare the nature of the indebtedness to be that of a "prestamo mutuo" (a simple loan), which is one of the transactions governed by the provisions of the Civil Code and the body of laws which it replaced on its promulgation, and not by those of the Mercantile Code. (Arts. 1740, 1753, 1757, Civil Code; arts. 2 and 311 of the Mercantile Code; law 1, title 1, partida 5.) But whatever may have been the true origin of the indebtedness we do not deem it necessary to discuss this particular contention at length, because it is clear from an examination of the facts as above set out that a strictly personal action to recover the amount of the acknowledged indebtedness would have prescribed prior to the date of the filing of the complaint not only by the lapse of the comparatively short period of prescription established in the Mercantile Code, granting that the transaction out of which the debt or obligation arose was a mercantile transaction and governed by the provisions of the Mercantile Code, but also from the lapse of the fifteen-year period of prescription established in the Civil Code, assuming that it was a simple loan (prestamo mutuo) governed by the provisions of that code. (Arts. 1964 and 1939, Civil Code.) So that, for the purposes of this decision, it is not important whether the original indebtedness arose as a result of a transaction governed by the Mercantile or the Civil Code, the real questions being, first, whether recourse could be had to the "accion hipotecaria" (real action to foreclose a lien or mortgage) notwithstanding the fact that the personal action to recover the indebtedness had prescribed at the time when the "accion hipotecaria" was instituted; and, second, whether that action itself (the "accion hipotecaria") had also prescribed at that time.

Under the laws and codes of Spain a comparatively long period of prescription was expressly provided for the "accion hipotecaria" (real action to foreclose a lien or mortgage), and different and more limited periods of prescription were provided for the various personal actions to enforce the fulfillment of those obligations, civil and mercantile, which are usually secured by the execution and registry of instruments creating liens or mortgages. But the mere lapse of the period within which a personal action to recover a debt or enforce an obligation prescribes does not extinguish or discharge the debt or obligation. It merely takes away the remedy by a personal action when the debtor sees fit to claim the privilege secured him by the statute; so that even after the lapse of the prescriptive period, if the debt has not in fact been paid and the statute is not expressly pleaded, the debt will sustain a judgment in a personal action. (Aldeguer et al. vs. Hoskyn, 2 Phil. Rep., 500; Domingo vs. Osorio, 7 Phil. Rep., 405; Maxilom vs. Tabotabo, 9 Phil. Rep., 390.) And since the debt is not discharged or extinguished by the lapse of the comparatively short periods within which the personal actions prescribe, and the lawmaker has provided the "accion hipotecaria" (real action to foreclose) as one made for the recovery of an unpaid indebtedness secured by a lien or mortgage on real estate, no satisfactory reason can be suggested why the "accion hipotecaria" (real action to foreclose) may not be instituted to recover any debt secured by a duly recorded lien or mortgage, notwithstanding the lapse of the prescriptive period for a personal action to recover the debt, so long as the debt has not in fact been paid and this action itself has not prescribed.

In England and the United States a similar doctrine based upon essentially the same reasoning has generally prevailed in the absence of statutes expressly providing that the right to foreclose a mortgage is barred when the personal action to recover the mortgage debt is barred; or of statutes which, either expressly or in effect, provide for the same prescriptive period for suits in equity to foreclose a mortgage and actions on specialties as for actions on simple contracts generally. (Jones on Mortgages, 6th ed., vol., 2, 1204-1206, and cases there cited, more especially that of Lord vs. Morris, 18 Cal., 482, wherein the doctrine is discussed at length by Chief Justice Field.)

Having decided that the accion hipotecaria (action to foreclose the lien or mortgage) is not barred by the lapse of the prescriptive period for a personal action to recover the debt, it remains to determine whether in the case at bar the accion hipotecaria has or has not prescribed by the lapse of the prescriptive period expressly provided by law for that action.

Article 1939 of the Civil Code is as follows:

"Prescription, which began to run before the publication of this code, shall be governed by the prior laws; but if, after this code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if according to said prior laws a longer period of time may be required."

The action to foreclose the mortgage in the case at bar accrued at the earliest on the 1st day of April, 1886, the date when the obligation secured became due and payable, as appears from the above set out statement of the contents of the mortgage instruments. (We say at the earliest, because for the purposes of this opinion it is not necessary, and we do not undertake to decide whether the partial payments on interest in 1886, 1887, and 1888 suspended the running of the period of prescription for the real action to foreclose the mortgage accion hipotecaria.) Hence, under the provisions of the above-cited article of the code, the prescriptive period of the law in force in these Islands before the code became operative must determine the time when the action to foreclose the lien in question prescribes, unless it appears that the action would prescribe in a shorter time, if counting from the time when the code went into effect, we apply the new and shorter prescriptive period provided in the code for such actions. (Pineda vs. Gasataya, 5 Phil. Rep., 139; Garcia et al. vs. Diamson, 8 Phil. Rep., 414.)

The prescriptive period, under the legislation in existence prior to the promulgation of the code, for actions to foreclose a mortgage or lien on real estate was thirty years, as appears from the following citation from La Novisima Recopilacion (Ley 63 de Toro, 5, Tit. 8, Lib. 11).

"The action to foreclose a mortgage shall prescribe at the expiration of ten years, and the personal action and execution thereon shall prescribe at the expiration of twenty years, and not less; but where the obligation is not secured by mortgage, or, where the obligation is both personal and real, the indebtedness shall prescribe at the expiration of thirty years, and not less; this shall be observed notwithstanding the law of King Alfonso, our ancestor, who provided that the personal action shall prescribe at the expiration of ten years."

So that, applying the legislation in existence anterior to the promulgation of the code, the action to foreclose the mortgage in question would prescribe thirty "years after the 1st day of April, 1886, when the cause of action accrued, that is to say, on the 1st day of April, 1916. Under the provisions of the Civil Code, actions to foreclose liens or mortgages (acciones hipotecarias) prescribe in twenty years. (Art. 1964, Civil Code; art. 134, Mortgage Law.) Counting twenty years from the date when the code became operative, we have the 8th of December, 1909, as the date when the action would prescribe applying its provisions. And since this latter date is prior to the date of prescription under the former legislation, this must be taken as the date upon which the action in question would prescribe if the running of the prescriptive period were not interrupted. (Pineda vs. Gasataya, 5 Phil. Rep., 139; Garcia et al. vs. Diamson, 8 Phil. Rep., 414.)

This action was instituted on the 14th of January, 1908, and, as appears above, the right of action to foreclose the

lien in question not having prescribed on that date, plaintiff was clearly entitled to a judicial declaration of the amount of the indebtedness secured thereby at the time of the institution of the action and to have the necessary orders issue for foreclosure of his lien.

As will readily be seen from the above statement of facts proven and admitted, the payments or remittances made by the defendant in the years 1886, 1887, and 1888 on account of the indebtedness were not sufficient to cover the interest accruing in those years, respectively, so that the original indebtedness, secured by the mortgage instrument of 10,125.01 $\frac{7}{8}$ pesos, local currency, was still due and unpaid at the time when this action was instituted, together with simple interest at the rate of 10 per cent thereon, as agreed in the mortgage instrument, less 1,192.23 pesos, the sum total of the payments made on account of the indebtedness and applied, or which ought to have been applied, to extinguish accrued interest in the years 1886, 1887, and 1888. (Art. 1173, Civil Code.)

The trial judge, while properly holding that plaintiff's right of action to foreclose the lien had not prescribed, seems to have overlooked the fact that in ascertaining the amount of the indebtedness secured by the lien and still unpaid we must look to the terms of the instrument itself, and that no other indebtedness than that secured in the instrument, whether existing prior to its execution or arising thereafter, should be included in the order for payment out of the proceeds of the sale of the property upon which the lien was created. He found that the balance which the books of the plaintiff showed to be due by the defendant on the 19th day of November, 1888, not long after the receipt of the last remittance made on account of the indebtedness, was 15,365.68 pesos, local currency, and declared that this amount, together with P30,099.44, Philippine currency, interest thereon, was the amount secured by the instrument creating the lien, to recover which he directed the foreclosure of the lien. An examination of the books, however, clearly discloses that this balance was obtained by adding to the principal sum due and secured in the mortgage instrument itself compound interest and various other new and additional items of account not had in contemplation at the time when the mortgage instrument was executed, and it is evident, therefore, that the trial judge erred not only in including in his statement of the mortgage indebtedness items not contemplated in the mortgage instrument, but in allowing in the absence of an express agreement between the parties interest compounded semiannually on the original indebtedness down to the date when the balance in question was struck, and further in allowing simple interest upon this interest from that date until paid. In the absence of express agreement between the parties, interest upon interest can never be recovered save only in the cases, mentioned in article 1109 of the Civil Code, which permits the recovery of legal interest on accrued interest from the time when it has been made the subject of judicial demand, this provision, nevertheless, being limited to contracts originating since the code went into effect. (Sentencia, supreme court of Spain, 3d June, 1901; arts. 1109 and 1755, Civil Code.)

The foreclosure order of the trial court should therefore be modified by substituting for so much thereof as declares the amount of the mortgage indebtedness to be 15,365.59 pesos, local currency, together with interest thereon at the rate of 10 per cent from the 19th day of November, 1888, a declaration that the amount of the mortgage indebtedness still due and unpaid is 10,125.01 $\frac{7}{8}$ pesos, together with interest thereon at the rate of 10 per cent until paid from the 1st day of April, 1888, less 1,192.23 pesos, the amount of payments made and applied to interest in the years 1886, 1887, and 1888.

As to the right of the plaintiff under the special circumstances of this case to a decree against the defendant, under the provisions of section 260 of the Code of Civil Procedure, in the event that the property sold should not be sufficient to extinguish the indebtedness, we expressly reserve our opinion, that question not having been formally submitted upon this appeal.

Twenty days from date let judgment be entered, without costs to either party, directing the court below to enter a

modified judgment in accordance with the principles laid down herein, and ten days thereafter let the record be remanded to the court wherein it originated. So ordered.

Arellano, C. J., Torres, Johnson, Moreland, and Elliott, JJ., concur.

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