

VALENTINA HERNANDEZ, PLAINTIFF AND APPELLEE, VS. DOMINGO ANTONIO, DEFENDANT AND APPELLANT.

G.R. No. 5636. August 29, 1910

Ponente: TRENT, J.

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TRENT, J.:

On June 10, 1908, Valentina Hernandez filed a complaint in the Court of First Instance of the city of Manila against Domingo Antonio in which she alleged that the said Domingo Antonio did on the 17th day of May, 1907, borrow from her the sum of P1,000; that on the 12th day of June, of the same year, he made and signed a note or receipt in her favor for this amount; that the defendant agreed, as appears in said note or receipt, to return the P1,000 at the expiration of one year; and that the said defendant has failed and refused to return the said P1,000, or any part of the same, notwithstanding the fact that she has frequently demanded the return of the said money.

On the 20th of June, 1908, the defendant demurred to this complaint.. The demurrer was overruled but no exception taken. In his answer the defendant alleged that the plaintiff, on the 17th day of May, 1905, asked him to admit her as a co-partner with him in a certain business known as the "Funeraria Filipina" (undertaking establishment) ; that he granted this request of the plaintiff after having obtained the intervention and consent of her husband, Gregorio Francisco; that the said Gregorio Francisco turned over to him the P1,000 in question, which represented the plaintiff's interest in said business; that he made and signed a receipt for this amount, in which he stated the purposes for which the same was received; and that on the 17th day of May, 1907, at the request of the plaintiff, he modified or changed the said receipt so as to make it appear in the same that he did borrow this money from the plaintiff.

The trial court rendered judgment, on the 30th of March, 1909, in favor of the plaintiff for the sum of P846, with interest at the rate of 6 per cent per annum from the 17th day of May, 1908, and for the costs. The defendant appealed, and now insists that the plaintiff has no right to recover in this action until after a liquidation or settlement of the undertaking business, in which the P1,000 represents the plaintiff's interest, has been made.

The note or receipt which forms the basis of this action is as follows:

"Received from Valentina Hernandez de Francisco the sum of one thousand pesos, Philippine currency, which will be returned to her within one year from the 17th of May, last, as per agreement.

"Manila, June 12, 1907.

(Sgd.) "DOMINGO ANTONIO.

"NOTE. - To guarantee the performance of the above agreement I hereby pledge my account in participation which I have in the 'Funeraria Filipina.'

(Sgd.) "D. ANTONIO."

On the back of the above receipt appears the following memorandum:

"This receipt cancels the former one evidencing the interest which I had in the share which said party (plaintiff) has in his (defendant's) business.

(Sgd.) "G. FRANCISCO."

The defendant admits having signed the above note or receipt in which he specifically stated that he received from the plaintiff the sum of P1,000, agreeing to return the same at a specified time. No mention is made in this note of any previous contract or agreement between the plaintiff and the defendant. It is true that the husband of the plaintiff made and signed the memorandum on the back of this note, but such memorandum can not in any way change the contractual relations between the plaintiff and the defendant. The plaintiff's husband was not present at the time this note was executed and the money turned over to the defendant, neither was the plaintiff present at the time her husband signed the memorandum on the back of said note.

The plaintiff testified positively that she loaned the defendant this P1,000 in cash out of her own private funds. The defendant corroborates in one essential feature the testimony of the plaintiff in his letter dated June 1, 1908, in which he asked for an extension of time within which to satisfy this debt, saying that on the 17th of August he would pay the same. In fact he did pay the sum of P154 on this debt after executing the note.

The plaintiff in this case had a right to maintain this action under the provisions of paragraph 1, section 115 of the Code of Civil Procedure, inasmuch as the proof shows that the P1,000 loaned to the defendant was her exclusive property and her husband had no interest in the same. The defendant having borrowed this money from the plaintiff without the intervention of her husband, on account of his having no interest in the same, can not now claim that the plaintiff can not maintain an action to recover this loan. He accepted the money knowing that it belonged to the plaintiff. In order to make this loan it was not necessary, under these facts, for the plaintiff to obtain the consent of her husband, neither is it necessary for her husband to be joined with her in this action.

The terms of this contract of loan are clear and leave no doubt as to the intention of the contracting parties. The literal sense of its stipulations must be observed. (Art. 1281, Civil Code; *Azarraga vs. Rodriguez*, 9 Phil. Rep., 637.)

The defendant in this note or receipt made no attempt to express any other meaning than that of a plain simple loan with a specific promise to return same, and the law presumes that he meant what he said. (*Clark vs. Lillie*, 39 Vt., 405.)

The judgment appealed from is, therefore, affirmed, with costs against the appellant.

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

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