

BAER SENIOR & CO'S SUCCESSORS, PLAINTIFFS AND APPELLEES, VS. FRANCISCO MENDOZA, DEFENDANT AND APPELLANT.

G.R. No. 5778. January 07, 1911

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Baer Senior & Co's. Successors demand of Francisco Mendoza the balance of an account-current against him, amounting to P3,656.66

Of this sum Francisco Mendoza was willing to pay the principal, but not the interest. This interest, according to the agreement in the records, amounts to P829.38, which, deducted from P3,656.66, leaves P2,827.28, or the principal which the defendant admits that he owes. But as the plaintiffs agreed with the defendant that they would deduct P500 on account of losses by fire which the latter had suffered, the P2,827.28 must be reduced to P2,327.28. Furthermore, as it was stipulated that the defendant was to collect three per cent on the actual principal due, that is, P2,327.28, which three per cent amounts to P69.81, this sum deducted from P2,327.28 leaves P2,257.47, and this is the amount which the defendant is willing to pay.

The Court of First Instance of the city of Manila, which tried this case, sentenced the defendant to pay to the plaintiffs P2,742.47, with legal interest thereon at the rate of 6 per cent per annum from March 30, 1909, the date of the filing of the complaint, until complete payment, and the costs.

The defendant appealed, and his bill of exceptions having been forwarded with right to a review of the evidence, he made the two following assignments of error:

- The trial court erred in holding that the deduction of P500, made by the plaintiffs, was conditional on the defendant's paying interest on the remainder or balance ascertained to be due on January 1, 1907; and
- By not holding that Exhibit A was conclusive and decisive proof that such deduction was not conditional, but pure and simple.

Exhibit A is a letter addressed by the plaintiffs to the defendant on May 8, 1908, in which there is a paragraph which reads as follows:

"We received a copy of the letter which you addressed to Mr. Krafft under date of January 2, and with reference to your statement that we do not wish to acknowledge the sum of P500, the liability for which Mr. Krafft assumed, in the matter of the "Alhambra," we have to say that we are now willing to acknowledge it. On the other hand, we must collect interest on the balance of your account from January 1, 1907, according to the verbal agreement and the letters exchanged between you and this factory."

At the foot of this letter appears the defendant's answer, as follows:

"I have received your communication and in reply thereto must state that I am surprised at the language of your

letter, because you speak of interest, a thing which did not enter into any of our contracts. My credit in your firm, which Mr. Krafft granted me, as proved by a notarial document, was an unconditional credit for the cigarettes which I took and am selling in this market, and was not for money bearing interest, for you yourself know that I sold to the storekeepers on the same conditions, and I do not understand why an agent should pay interest on the amount of the goods taken by him. I, therefore, refer the matter to you in order that you may consider the same justly and in an impartial manner."

The conclusion of the judgment, as regards the interest, is that the defendant ought not to pay, it, and that the sum of P829,38 should be deducted from P3,656.66, the amount demanded. The plaintiffs assented to this part of the judgment.

The conclusion relative to the three per cent commission, is that it should be paid to the defendant and that the amount thereof, F84.81, should be deducted from the sum sued for. The plaintiffs also assented to this part of the judgment. Consequently, the latter agreed with the finding that the defendant should pay them P2,742.47. But the defendant was not willing to accept this amount, because, upon the support of the plaintiffs' Exhibit A, he claimed that a reduction should be made therefrom of the P500 allowed by Mr. Krafft, a deduction finally recognized and accepted by the plaintiffs.

The deduction of the P500, recognized and accepted by the plaintiffs in their letter, Exhibit A, can not be interpreted either in letter or in spirit as being conditional, that is, that the plaintiffs accepted the specific deduction made by Mr. Krafft, on condition of collecting interest on the balance owing. What they said, after a complete and finished grammatical sentence, was that on the other hand they would collect interest according to verbal contract and letters exchanged, a claim rejected by the defendant, for there was no verbal agreement nor any letter whatever relative to this particular, nor was any proof of such agreement or letters adduced at the trial.

It is logical that the P500 allowed, also be deducted and should not appear as a part of the balance due.

Therefore, with the understanding that the amount which the defendant must pay to the plaintiffs is P2,242.47, the judgment appealed from is in all other respects affirmed. So ordered.

Torres, Moreland, and Trent, JJ., concur.

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