

LUENGO & MARTINEZ, PLAINTIFF AND APPELLANT, VS. JOSE MORENO, AS JUDICIAL ADMINISTRATOR OF THE ESTATE OF THE DECEASED GERMAN LOPEZ VIVAR, DEFENDANT AND APPELLEE.

G.R. No. 7956. November 10, 1913

Ponente: TORRES, J.

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TORRES, J.:

Through a bill of exceptions, counsel for the plaintiffs filed this appeal from the judgment rendered on February 14, 1912, by the Honorable Julio Llorente, judge, whereby he absolved the defendant from the complaint, without special finding as to costs.

On August 9, 1911, counsel for the mercantile partnership of Luengo & Martinez, established in this city, brought suit against Jose Moreno, the judicial administrator of the estate of the deceased German Lopez Vivar, a resident of San Isidro, Nueva Ecija. The complaint alleged that, about the month of August, 1892, Luengo Hermanos, a mercantile partnership, of which the said firm of Luengo & Martinez are the successors, granted to and opened for the said Lopez Vivar, now deceased, a credit of P2,500 which the latter, as concessioner, was empowered to use in such extent and manner as might best suit his convenience, he being authorized, whenever he should exhaust the amount of this credit and while he was repaying it, to have such credit renewed for a sum equal to the unpaid balance of the original amount; that this contract was set forth in an instrument executed before a notary public on the date aforementioned; that it was therein further stipulated that if the concessioner, Lopez Vivar, should avail himself of all or a part of the said credit and six months should elapse without his remitting or paying any sum not less than P500 to the creditor firm, the total sum found to be owing the said firm should thereupon become immediately demandable, that, as security for such credit allowed, Lopez Vivar gave a special mortgage, recorded in the property registry, on two rural properties described in the aforementioned instrument, the first of which, containing 42 quiñones, 4 balitas and 1 loan, was made liable for P1,300, and the second, having an area of 92 hectares, 54 ares, and 42 centiares, for P1,200; that Lopez Vivar made use of the said credit and, upon a settlement being made of his account current, a balance was found against him and in favor of the creditor firm, of P2,300.62; that since the said date, March 18th, the debtor had not remitted or paid in any sum; that the latter, was during his lifetime several times requested to pay the said balance, which payment he did not make, notwithstanding his promises so to do, and that he died owing the amount demanded. The complaint prayed that the judge order the said administrator to deposit the aforementioned unpaid balance with the clerk of the court, at the disposal of the creditor firm, before the first day of the term of court immediately following the date of the rendition of judgment; that, should payment thereof not be made, the mortgaged properties be sold to satisfy the said debt of P2,300.62, and the interest thereon, and that the costs of the case be assessed against the plaintiff.

Counsel for the defendant, in his amended answer, made a general and specific denial of each and all of the facts alleged in each and all the paragraphs of the complaint, with the exception of paragraphs 1, 2, 3, 4, 5, and 9 thereof, and in special defense set forth that the sum of P2,500, Philippine currency, which was the amount of the credit allowed by the plaintiffs' predecessors in interest to the deceased German Lopez Vivar, expressly secured

by a mortgage, had already been totally paid; that the balance disclosed in the account current, a copy of which accompanied the complaint, was an obligation of the deceased which had prescribed, inasmuch as it had not been presented as such before the commissioners of appraisal by the plaintiff creditor within the period fixed by the court to hear claims, wherefore the plaintiff firm had lost its right to enforce payment of the amount demanded, as the said period had already elapsed. Defendant's counsel prayed, therefore, in view of the evidence supporting the aforestated allegations, that judgment be rendered by absolving his client from the complaint and sentencing the plaintiff to the costs.

Upon a hearing of the case and submission of evidence by both parties, the judgment before mentioned was rendered.

The main issue in discussion in this suit is whether the debt of P2,300.62 is one of a hypothecary character and whether its payment is still secured by the mortgage on the property described in the instrument of debt.

Before examining the nature and terms of the contract contained in the said instrument, it is appropriate and necessary to quote some of its principal and relevant clauses:

"That as such partner authorized to use the signature of the partnership known as Luengo Hermanos, he grants to Don German Lopez Vivar a credit of P2,500, which the said firm will open for the latter for an unlimited period and which the concessioner may use in such extent and manner as may best suit his convenience, and when he shall have exhausted the total amount of the said credit and while repaying it he shall be entitled to have such credit renewed for a sum equal to the unpaid balance of the original amount.

"That if the concessioner, Lopez Vivar, shall avail himself of all or a part of the said credit of P2,500 and six months shall elapse without his remitting any sum not less than P500, the total sum found to be owing by him to the said firm shall thereupon become due, and the obligation of payment effective, for all the legal purposes of this contract which shall be fulfilled in this city of Manila.

"Don German Lopez Vivar, in turn, stipulates: That he accepts this instrument in each and all of its parts and binds himself in the most solemn manner to pay such amount as in future he may be found to be owing the firm of Luengo Hermanos by reason of the credit allowed him, and further agrees to comply with and abide by all the stipulations hereinbefore contained; and, as additional security for his compliance with the said obligation, he specially and expressly mortgages in favor of the said firm two rural properties belonging to him and hereinafter described.

"That the two said properties are mortgaged for the said P2,500, the amount of the credit opened for and allowed Don German Lopez Vivar, the first of which shall be liable for P1,300, and the second, for P1,200, and both of them shall remain so encumbered as long as the present contract subsists and until the firm of Luengo Hermanos shall execute the proper instrument of settlement of accounts and acquittance; and that the said Vivar shall, besides, be personally and solely liable for all costs and expenses that may originate from any failure on his part to comply with the provisions of this instrument."

The credit allowed for an indefinite period of time appears to be limited solely to the amount of P2,500, a sum specifically secured by a mortgage on two properties belonging to the debtor; however, by reason of the importance of the business between the latter and the creditor firm, the value of the merchandise and money obtained and received from the said firm caused the debt to fluctuate and at times to reach an amount much in excess of the credit originally allowed, as appears from the account, Exhibit A, presented at the trial by the plaintiff without objection whatsoever; and, as a result of the payments made by the debtor up to March 18, 1899, there stood against him on that date only the balance demanded in the complaint.

It is held in the judgment of the trial court that the mortgage debt has already been paid, inasmuch as, according to the account exhibited against the debtor, German Lopez Vivar, there existed on March 19, 1898, a balance owing

by him of P4,855, and deducting therefrom P2,500, which only were secured by mortgage, the remainder, P2,355.63 constitutes a simple debt, and that of the same nature are all the sums and the value of the merchandise received by Lopez Vivar after the said date, which additional amounts, together with the P2,355.63, aggregate the sum of P4,066.52, the latter having made remittances to the value of P4,265.90. In our opinion, there exists but one single debt originated by the mercantile dealings had between the deceased German Lopez Vivar and the plaintiff firm; and, although the debtor, perhaps with the consent of the creditor company, took merchandise and cash much in excess of the value of the credit secured by the mortgage, nevertheless it may not be affirmed on any reasonable ground that there exist two debts, notwithstanding that if at the debtor's death his debt had amounted to much more than P2,500, an action for foreclosure of mortgage could only have been brought for the collection of this sum, and not for a greater one, the amount of the excess of which is not secured by the mortgage of the said real estate. In accordance with the provisions of section 260 of the Code of Civil Procedure, the creditor is entitled to the payment of these P2,500.

Paragraph 5 of those hereinabove quoted, which were copied from the instrument aforesaid, sets forth among other provisions that the encumbrance on the two mortgaged properties shall subsist as long as the contract executed between the parties shall remain in force and until the creditor firm shall execute the proper instrument of settlement of accounts and acquittance; and as, in paragraph 1, it was agreed that when the total amount of the credit allowed should be exhausted and while the debtor was repaying it, he should be entitled to have such credit renewed for a sum equal to the unpaid balance of the original amount, P2,500, it is unquestionable that, even though at any given time the sum of P2,500 fixed as the amount of the allowance may have been covered by the remittances and partial payments made by the debtor to whom such credit was extended, the value of the subsequent merchandise and sums obtained and received by the debtor, in accordance with the agreement, virtually novated or was comprised within the credit allowed which is understood to have been renewed, and is likewise secured by the mortgage of the debtor's property. Such new debts cannot be considered as foreign to and distinct from those that the debtor, Lopez Vivar, originally owed upon his first making use of the credit allowed him, inasmuch as, by reason of the stipulations made, the credit allowance is understood to have been renewed each time that the debtor so required. The account exhibited by the plaintiffs shows the kind of operations had between them and the debtor, Lopez Vivar, which consisted in the latter's getting merchandise and money from the creditor firm to whom he would make remittances and payments on account of the credit used by him. The debt incurred has but one source of origin.

Loans of various sums and sales of diverse merchandise on trust were made by the creditor firm to Lopez Vivar, now deceased, under promise on his part to reimburse and pay for the same in installments of not less than P500 for an undetermined period, and with the express condition that, for the very reason of the debtor's being authorized to Continue using the unexhausted balance of the credit granted him, the mortgage on his property should, in exchange, subsist as security for any balance that might lie against him as a result of the mercantile operations had between the interested parties.

Upon the death of the debtor, fortunately it was found that he owed a less amount than that of the credit allowed in the contract contained in the aforesaid legal instrument, and consequently it would be neither just nor proper to discuss here whether this amount is secured by the mortgage.

If, in accordance with the contract, the mortgage was to remain in force as security for any sum that Lopez Vivar should be found to owe, until the execution of the instrument of settlement of accounts and acquittance, which was not shown to have been executed, then it is incontrovertible that the sum demanded is still secured by the mortgage on the debtor's property, and an action for foreclosure lies against the said property and the estate of the deceased Lopez Vivar for the collection of the debt which the latter left unpaid at his death.

This debt does not appear to have been paid yet, and that it was not is fully proven by the account Exhibit A and the instrument of debt Exhibit B, presented without objection, opposition or contradiction on the part of the defendant administrator, and also by the corroborative testimony of two witnesses who affirmed the existence and certainty of the debt which German Lopez Vivar left at his death. In this connection it is to be noted that a few days before the debtor died, payment of the said sum was demanded of him by the witness Joaquin Navarro, to whom Lopez Vivar replied that his debt to the plaintiffs was secured by the mortgage on his property—a statement which implies an acknowledgment of the legitimacy and certainty of the debt demanded, the existence of which is, besides, corroborated by the circumstance that the aforesaid instrument of debt, containing the mortgage therein mentioned, does not appear to have been canceled; furthermore, the defendant administrator has not in any manner proved that the balance of P2,300.62 has been paid by him or was paid by German Lopez Vivar during the latter's lifetime.

If the action brought by the plaintiff is hypothecary, for the collection of a debt secured by a mortgage, it is unquestionable that, pursuant to the provisions of section 708 of the Code of Civil Procedure, the plaintiff firm was not obliged to present its claim before the committee of appraisal of the estate of the deceased debtor, and in demanding the collection of its credit by means of the action mentioned, it availed itself of the right granted it by section 708 of the Code of Civil Procedure to bring the present suit for the collection of the said debt or, in default of its payment, for the sale of the mortgaged property.

The obligation that existed on the part of German Lopez Vivar during his lifetime, toward Luengo & Martinez, consisted in the payment of the said sum of P2,300.62, the balance of the accounts had between them through mercantile transactions based on one and the same contract; and as both the debtor and his estate became delinquent by their failure, to pay the sum which the deceased owed the plaintiff firm, the former's estate must indemnify the said creditors for the losses and damages occasioned them by Vivar's failure to fulfill his obligation. There being no stipulation to the contrary, such indemnity consists in the payment of the legal interest at the rate of 6 per cent per annum—for no agreement was made in this matter—from the 19th of March, 1899, the date following that of the balance found in the said account, Exhibit A, since it is a question of a net sum demandable from the date aforementioned. (Art. 1108, Civil Code, and sec. 510, Code of Civil Procedure.)

For the foregoing reasons, the judgment appealed from must be reversed and the record remanded to the Court of First Instance of Nueva Ecija, with a certified copy of this decision, in order that the judge thereof may proceed in conformity with the law and the petition made in the complaint presented by counsel for Luengo & Martinez, on August 9, 1911. So ordered.

Arellano, C. J., Johnson, Carson, and Trent, JJ., concur,
Moreland, J., concurs in the result.

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