44 Phil. 739

[G.R. No. 19826. March 31, 1923]

LUCIANO DELGADO, PLAINTIFF AND APPELLANT, VS. EDUARDO ALONSO DUQUE VALGONA, DEFENDANT AND APPELLEE.

D E C I S I O N

STREET, J.:

The parties to this action are residents of the municipality of Goa, in the Province of Camarines Sur, the plaintiff, Luciano Delgado, being a planter of local prominence, while the defendant, Eduardo Alonso Duque Valgona, is a business man and storekeeper in Goa. In November of the year 1917 Alonso purchased twelve parcels of land in the municipality of Goa from one Stickney, who was then about to leave the Philippine Islands, paying the sum of P15,000 therefor. This purchase was apparently made by Alonso as an investment; and at the time of acquiring the property he probably expected, from certain conversations that he had had with Delgado, to be able to sell the property on advantageous terms to the latter. Alonso indeed claims that the property was purchased by him at the instance and request of Delgado, under circumstances that virtually made him the agent of Delgado in the purchase. Be this as it may, the money that was used to buy the land from Stickney was certainly supplied by Alonso, and the property was conveyed by Stickney directly to him. On February 1, 1918, Alonso conveyed the same property to Luciano Delgado; and in order to secure the payment of the purchase money Delgado contemporaneously executed a mortgage in favor of the defendant upon the same land and also upon two other large parcels already owned by the plaintiff situated in the municipality of Tinambac, of the Province of Camarines Sur.

The deed of conveyance by which the defendant transferred to the plaintiff the title to the twelve parcels purchased from Stickney has not been introduced in evidence, but the conveyance by way of mortgage executed by Delgado to secure

the payment of the purchase price is before us; and it is this instrument which supplies the principal basis of controversy. The stipulations of this mortgage, so far as material to be here noted, are contained in clauses A to E, inclusive, of paragraph 2; and in substance they are as follows: (A) The debtor-mortgagor (Delgado) promises to pay to the creditor-mortgagee (Alonso) the sum of P15,000 in a single payment. (B) To secure this sum the debtor creates a mortgage in favor of the creditor on the fourteen parcels of land described in paragraph 1 of the same instrument. (C) So long as the indebtedness subsists the debtor obligates himself for interest in the amount of P2,250, to be paid in two semi-annual instalments of P1,175 each, which, it will be observed, make an amount larger by P100 than the other quantity. (D) The creditor concedes to the debtor the period of twelve years from the date of the instrument within which the latter may make payment of the P15,000 aforesaid. Finally, in clause (E), it is stipulated that, if the debtor should not make payment within twelve years, the creditor may, at the end of that period, enter into possession of the mortgaged property.

A simple calculation shows that the interest agreed to be paid in clause C upon the purchase price of the land which had thus been bought by Delgado was at a rate well above fifteen per centum per annum. This mortgage therefore offends against the provisions of the Usury Law, which limits the rate that can ordinarily be secured by mortgage upon real property to twelve per centum per annum (Act No. 2655-2).

The trial judge found that, back in November, 1917, Delgado had taken over the possession of the twelve parcels directly from Stickney’s overseer. Alonso therefore probably at no time exercised possession over the property; and on February 1, 1919, when Delgado made payment of P2,625 upon interest account, the interest was calculated from December 1, 1917, instead of February 1, 1918. (See receipt, Exhibit A.)

During the year 1919 and thereafter, owing to the financial stringency resulting from the fall in the price of agricultural products, Delgado seems to have been unable to make further payment of interest, and when Alonso began to press him about the matter, recourse to legal advice was had by the former; and on February 3, 1920, this action was instituted by Delgado in the Court of First Instance of Camarines Sur.

By the amended complaint, bearing date of October 21, 1920, the plaintiff seeks to enforce the right of action given in section 6 of Act No. 2655 and thereby to recover from the defendant Alonso the sum of P2,625 paid upon February 1, 1919, by way of interest, together with a reasonable attorney's fee, alleged to be in the amount of P2,500. In the same complaint the plaintiff seeks to obtain a declaration of nullity as to the stipulations contained in clauses A, C, and E of the mortgage.

To this complaint the defendant answered with a general denial; and by way of special defense he alleged that the contract in question had been entered into by him innocently and in total ignorance on his part of the existence of the Usury Law and, further, that he had been maliciously inveigled into said contract by the plaintiff, with full knowledge on the part of the latter of the illegality of the stipulation for usurious interest, and with the design of taking advantage of the Usury Law to the prejudice of the defendant.

The defendant, therefore, on his part, and by way of cross-complaint, prayed the court to set the contract of mortgage aside; but instead of asking for a restoration of the twelve parcels of land, subject of the sale, he asked that the plaintiff be adjudged to pay to him the sum of P15,000, alleged to have been advanced by the defendant to the plaintiff for the purchase of said land from Stickney, after deducting the sum of P2,625, admittedly received in payment of usurious interest.

Upon these pleadings, and upon consideration of the proof, both oral and documentary, the trial judge found that the mortgage in question was in fact usurious, and he therefore declared the same to be void. He further awarded to the plaintiff the sum of P2,625 to be recovered of the defendant by way of restitution of the whole interest Raid, in conformity with section 6 of Act No. 2655, with interest to be calculated upon said sum at the rate of six per centum per annum from the date of the filing of the original complaint. His Honor refused, however, to award any amount to the plaintiff by way of attorney's fee, observing that the plaintiff appeared to have acted with more malice in the transaction than the defendant.

Upon the cross-complaint his Honor gave judgment in favor of the defendant to recover of the plaintiff the sum of P15,000, being the price of the twelve lots

transferred by the defendant to the plaintiff contemporaneously with the execution of the mortgage, together with interest on said sum to be calculated at the lawful rate of six per centum per annum from December 1, 1917. From this judgment both parties appealed, but error has been here assigned in behalf of the plaintiff only.

In our opinion the trial judge did not err in holding that this mortgage is usurious, sirfce it purports on its face to obligate the debtor to pay interest on the mortgage debt at a rate in excess of that allowed by law. The attorney for the defendant, however, takes the position that the obligation of the mortgagor in its entirety, including both his promise to pay the principal of P15,000 within twelve years and the promise to pay interest thereon at the rate of fifteen per centum per annum so long as the debt should continue to subsist, represented in the minds of the contracting parties the price which was agreed upon as the value of the property sold; and from this the conclusion is drawn that the contract does not truly represent a loan or forbearance at an unlawful rate. In support of this proposition decisions are cited from certain courts in the United States to the effect that the seller may fix one price as the cash price of property to be sold and a higher price if sold upon credit; and the circumstance that these prices may differ by an amount exceeding the lawful rate of interest for the period over which credit extends does not make the contract usurious. Upon that proposition we have no criticism to make, and it will suffice in this connection to quote the following passage from an opinion written by Mr. Justice Grier in the Supreme Court of the United States in which he said:

> "But it is manifest that if A propose to sell to B a tract of land for $10,000 in cash, or for $20,000 payable in ten annual instalments, and if B prefers to pay the larger sum to gain time, the contract cannot be called usurious. A vendor may prefer $100 in hand to double the sum in expectancy, and
> a purchaser may prefer the greater price with the longer credit; and one who will not distinguish between things that differ, may say, with apparent truth, that B pays a hundred per cent for forbearance, and may assert that such a contract is usurious; but whatever truth there may be in the premises, the conclusion is manifestly erroneous. Such a contract has none of the

> characteristics of usury; it is not for the loan of money, or forbearance of a debt." (Ruffner *vs*. Hogg, 1 Black [U. S.], 115; 17 L. ed., 38.)

However, the case before us does not exhibit the features indicated in the passage quoted. Here we have a present sale at the cash price of P15,000 and a forbearance in respect to the collection of that sum for an indefinite period within the limits of twelve years, in consideration of an agreement to pay interest at a usurious rate so long as the indebtedness should subsist. It will be noted that credit was not extended for a definite time, and the debtor was left at liberty to pay off the whole debt at any time within the twelve-year limit that he chose.

This case in our opinion more properly falls within the rule stated in 39 Cyc., page 927, to the effect that: "* * * Where the sale is made on a cash basis and for a cash price and the vendor forbears to require the cash payment agreed upon in consideration of the vendee's promising to pay at a future day a sum greater than such agreed cash value with lawful interest, in such case there is a forbearance to collect an existing debt, and the excessive charge therefor is usurious."

The mortgage in question being clearly usurious, the trial judge committed no error in declaring that instrument void; and this, notwithstanding the fact that the plaintiff limited his prayer for relief to those features of the mortgage which were unfavorable to himself, without asking that the whole contract be annulled. It was not erroneous for the court, upon being appealed to for relief against the unlawful contract, to eradicate the evil root and branch, and more particularly as the defendant had also asked that the mortgage be annulled.

Under the conditions above stated it was also inevitable that the plaintiff should be permitted to recover the interest paid by him to the extent of P2,625 upon this usurious contract, this right of action being expressly recognized in section 6 of the Usury Law.

Whether the plaintiff was entitled to have something awarded to him in the character of attorney's fee in connection with this recovery is a point which requires some consideration. As to this the statute in effect says that any

person who has paid upon any usurious contract a higher rate than is allowed by law, may recover the whole interest paid "with costs and attorney's fees in such sum as may be allowed by the court." This1 language undoubtedly recognizes a discretion in the court in respect to fixing the amount of the fees, but it is not so clear that the court has a discretion to deny the allowance altogether. On the contrary, we incline to the view that when the right of action to recover interest paid upon a usurious contract is established, a reasonable attorney's fee should be allowed as a matter of course, the same as costs are awarded. The purpose of the law is to encourage persons who have suffered from contracts of this character to come into court and vindicate their rights, and the imposition upon the usurer of the obligation to pay the attorney's fee will serve at once as an encouragement to the oppressed and as a wholesome deterrent to the taking of usurious interest.

In the case before us the trial judge considered that he was justified in disallowing the attorney's fee on the ground that the plaintiff had acted with more malice than the defendant in respect to the making of the contract in question. Upon examining the proof bearing on this point, we are of the opinion that this imputation is not altogether warranted. We are quite prepared to believe the defendant when he says that he entered into the contract in total ignorance of the law against usury and it is not improbable that the plaintiff, stimulated by the desire to purchase the property, had suggested the terms upon which he was willing to take it; but it is not proved that he had the Usury Law in mind at the time or maliciously intended to entrap the defendant into the making of this contract and then to take advantage of that Law. Both parties were, in our opinion, victims, at once of their own ignorance and of economic practices inherited from the past; and ignorance of the provisions of the Usury Law does not relieve either from the legal consequences of the contract into which they voluntarily entered.

Upon due consideration of the amount involved and the character and extent of the litigation that has resulted, we are of the opinion that the plaintiff should be allowed the sum of P1,000 as his reasonable attorney's fees in this court and the court of origin in connection with the cause of action founded on section 6 of Act No. 2655.

Upon the second branch of the case, arising upon the defendant's

cross-complaint, we are of the opinion that the trial judge erred in giving judgment in favor of the defendant against the plaintiff for the sum of P15,000, the agreed price of the property purchased by the latter. It is obvious that the transfer of the land to the plaintiff and the contemporaneous act of mortgaging it (with two additional parcels) to the defendant should be viewed in equity as a single transaction. The true consideration for the mortgage was therefore the land, not its price. It follows that if restitution was to be ordered at all, the thing to be restored was the land. The appealed judgment must, therefore, be reversed in so far as it requires the plaintiff to pay the sum of P15,000 to the defendant.

The question whether it is now proper for this court, upon the state of facts before it, to order the restitution of the land must be answered in the affirmative, upon the ground that the plaintiff, having seen fit to appeal to the court for relief from a usurious contract, will be required to do equity by placing his adversary so far as practicable in his former condition.

The law upon this point has been lately considered by the Supreme Court of Rhode Island, under a statute in all material respects like that now in force in this country. It there appeared that a bill in equity had been filed, praying that a note made by the plaintiff to the defendant for money loaned should be declared usurious and void and be surrendered to the plaintiff, and that a mortgage executed by the plaintiff as security for the payment of said note should be canceled and that the defendant should be restrained from alienating said note and from foreclosing the mortgage. Upon demurrer it was held that relief would not be granted upon the facts stated in the bill without repayment, or a tender of repayment of the capital. In discussing the law pertinent to the case, the court, among other things, said:

> "The provisions of the Rhode Island statute with reference to usury are drastic. Chapter 434, Public Laws 1909, amended by chapter 838, Public Laws 1912. The violation of the act is punishable as a misdemeanor, every contract made in violation of it is void, and the borrower may recover in an action at law, not only the interest, but any portion of the principal paid by him upon such usurious contract. The complainant's solicitor has presented to us a very comprehensive and able argument in support of his contention that equity should

> recognize the view of public policy emphatically expressed in the legislative act, and should cancel the usurious and void contract. This argument would have more persuasive force if the question were a new one. The settled and nearly universal practice of courts of equity is opposed to the complainant's contention. The statutes of different states have various provisions directed towards the prevention of the extortion and oppression of usury. Whatever may be
> the method adopted by the legislature, however, although the legislative provision may go to the limit of our statute and declare the contract void and unenforceable, nevertheless courts of equity, in the absence of statute specifically constraining them to act differently, have insisted upon the equitable principle that he 'who seeks equity must do equity,' and have required the borrower, before he can be given the relief of cancellation of the contract, to perform the moral obligation resting upon him, and pay or offer to pay the principal of the loan with legal interest." (Moncrief *vs*. Palmer, 114 Atl., 181; 17 A. L. R., 119.)

The doctrine of that case we consider applicable here; and without expressing any opinion upon the broader question whether capital lent upon a usurious contract can be recovered in an aggressive action by the creditor, we are content to hold that when the debtor in a usurious contract sees fit, or finds it necessary to apply to the court for equitable relief, he will, as a condition to the granting of such relief, be required to restore what he received from the other party. In the present case both parties are before the court in the attitude of suppliants, each asking for relief from the contract in question; and in order to avoid the possibility of further litigation, as well as to secure complete justice, an order will be entered requiring the plaintiff, as a condition of the satisfaction of the judgment in his favor, to reconvey to the defendant the same twelve parcels acquired by the plaintiff from the defendant.

In his answer to the defendant's cross-complaint, the plaintiff stated a claim based on a receipt for P1,937.10, given by the defendant for a sum of money lent to him by the plaintiff on October 1, 1918. At the trial his Honor refused to admit proof tending to establish this claim, on the ground that it had not been stated in the complaint, and he intimated that it might be made the

subject of an independent action.

We do not think that this ruling constitutes reversible error, if error in any sense; and the plaintiff must, as suggested by the trial judge, be content with his remedy by separate action, if recourse to judicial measures should be necessary. If desirous of incorporating this claim into the present litigation, the plaintiff should have amended his complaint (sec. 104, Code of Civ. Proc.) and though the trial judge might perhaps in a liberal spirit have treated the plaintiff's answer to the cross-complaint as an amendment to the original complaint on this point, his attention does not appear to have been called to this aspect of the matter, and he should not be put in error in having excluded the evidence relative to said claim.

In the light of what has been said, it becomes necessary to affirm the judgment in so far as it decrees the nullity of the mortgage (Exhibit B) and in so far as it awards to the plaintiff the sum of P2,625, to be recovered of the defendant, with interest at six per centum per annum from February 3, 1920, until paid. In addition to the foregoing the plaintiff will recover of the defendant the sum of P1,000, in the character of attorney's fees, as already explained. The judgment will be reversed in so far as it awards to the defendant the sum of P15,000 to be recovered from the plaintiff with interest at six per centum per annum from December 1, 1917, until paid. The plaintiff will, however, be required, upon satisfaction of the judgment for the sums awarded to him, to reconvey to the defendant the twelve parcels which were the subject of the sale. No special pronouncement will be made as to costs. So ordered.

Araullo,
C.J., Malcolm, Avanceña, Ostrand, Johns, and *Romualdez, JJ.,*
concur.

Date created: September 27, 2018