

25 Phil. 661

[G.R. No. 7442. February 27, 1913]

**ANDREA SALVADOR, PLAINTIFF AND APPELLANT, VS. BASILIO PALENCIA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

On August 23, 1907, Juan Palencia and Basilio Palencia signed a notarial instrument in favor of Eugenio Pardiñas, wherein they admitted that they owed the latter the sum of P5,250, promised to pay the debt jointly and severally within three years, with interest at 25 per cent, and, as security for such payment, mortgaged certain property. On December 9, 1907, Pardiñas died, and in the division made of his estate among his widow and other heirs, this mortgage fell to his widow, Andrea Salvador. The debt not having been satisfied, with the exception of P673,40, paid as interest, Andrea Salvador brought the present suit, January 31, 1911. These facts are admitted.

In the same notarial instrument of August 23, 1907, Juan Palencia and Basilio Palencia obligated themselves, in case of noncompliance with the contract and the institution of a judicial action, to pay all the expenses that might be occasioned Pardiñas "for attorney's fees, court costs, and any loss and damage." This fact is also admitted.

Andrea Salvador's complaint is directed against Basilio Palencia, for his own share of the indebtedness as well as Juan Palencia's, of whose intestate estate he is the duly appointed administrator. This fact is likewise admitted.

The petitions in the complaint are: (1) That the defendant pay *in solidum* the principal debt of P5,250 Philippine currency; (2) that the defendant pay *in solidum* the interest stipulated at the rate of 25 per cent a year, reckoning from August 23, 1907, until date of payment, annually liquidated, with due allowance for the P673.40 paid on account at different times; (3) that he pay *in solidum*, for losses and damages, P100 Philippine currency, and, in addition thereto, 20 per cent of the sum of principal and interest due up to the date of

payment of the mortgage, as fees and expenses of the plaintiff's attorney; (4) that, in default of payment of these amounts, the property mortgaged be sold; and (5) that he pay the costs of the suit.

The defendant admits the instrument of mortgage, with the exception of the inserted word *annual* which appears therein in connection with the stipulated 25 per cent interest, alleging as a defense that this word was not in the instrument and was subsequently added. The plaintiff admitted this, but asserted that it had been added with the knowledge and consent of the debtors, the Palencias.

The main issue raised, even in this appeal, is whether the defendant owed, on his own account and on that of the intestate estate represented by him, an annual interest at 25 per cent, or interest at 25 per cent payable at one time at the maturity of the debt.

The Court of First Instance of Albay decided that issue by holding: (1) That the insertion was made subsequent to the execution of the instrument of mortgage, but with the knowledge and consent of the defendant Basilio Palencia, who is liable to the plaintiff for the payment of the interest demanded at the rate of 25 per cent a year; and (2) that there was not sufficient evidence of record to prove that the deceased Juan Palencia gave his consent to such alteration in the contract, and that his intestate estate should not, therefore, be held liable for payment of interest at the rate of 25 per cent a year.

This second conclusion is in no manner impugned in the plaintiff's brief on appeal, whereby it is inferred that she acquiesces in that the intestate estate of Juan Palencia ought to pay only once interest at 25 per cent on the principal of P5,250.

The defendant appealed from the first conclusion, for the reason that he had denied at the trial that he consented to such an insertion, and furthermore because the plaintiff was not explicit on this point. However, and although the reason for such conclusion was not set forth in the judgment appealed from, two receipts signed by the plaintiff appear to have been presented in evidence by the defendant (Exhibits 1 and 2), which prove that Juan Palencia, on June 18, 1908, the year after the debt was contracted, paid P313 "on *account* of the interest *due* on his unpaid bill with this firm," and that on September 13, 1909, he likewise paid "P300 on *account* of the interest *due* on his unpaid debt." Said sums for interest due could hardly have been paid during those two years succeeding the date of the contract, if it were not to fall due until the termination of the contract on August 23, 1910. When they paid it on account in June, 1908, and September, 1909, it must have been due

annually, and not only once. The opinion of the trial court as expressed in his second conclusion is, consequently, in accord with sound judgment and with the law of contracts. Consideration of his first conclusion is omitted, since it was not impugned in this appeal.

The findings of the judgment on this issue are: That the defendants, Basilio Palencia and the intestate estate of Juan Palencia, pay, jointly and severally, P5,250 Philippine currency; that they pay interest thereon at the rate of 25 per cent, provided that with regard to the share of the intestate estate of Juan Palencia, such interest be computed from August 23, 1907, up to the same date in 1910, and from this last date, at the rate of 6 per cent per annum, until date of payment; and, with respect to Basilio Palencia's share, that the said 25 per cent interest be computed annually from said date of August 23, 1907; and that deduction be made in favor of both defendants of the P673.40 paid on account.

The assignment of error made by the plaintiff, in her appeal, is that the trial court did not sentence the defendants to the payment of legal interest on the interest agreed upon and due January 31, 1911, the date when the original complaint in this case was filed.

We sustain this assignment of error. "Interest due shall earn legal interest from the time it is judicially demanded, even if the obligation should have been silent on this point." (Civil Code, art. 1109.)

In conformity with this provision of the law, the interest of 25 per cent, on the part of Juan Palencia, stipulated by him, as was held by the trial judge, in the manner it appears to have been originally in the notarial instrument, without the addition of the word *annual*, is due only once *from* August 23, 1907, as held in the judgment, and not up to August 23, 1910, but up to the time of the institution of the action by filing of the complaint, which is when the intestate estate appears to have become delinquent, there being no proof of any extrajudicial demand. (Civil Code, art. 1100.) And from the date of the complaint the total of the interest due at the rate of 25 per cent shall earn 6 per cent interest until the date of its actual payment.

In the settlement of Basilio Palencia's debt, he shall be charged the stipulated interest of 25 per cent per annum from August 23, 1907, up to the presentation of the complaint, and from this date the total of this stipulated interest shall draw legal interest at 6 per cent until the date of its actual payment.

Another finding of the judgment appealed from is that Basilio Palencia and the intestate estate of Juan Palencia both pay *in solidum* 20 per cent of the principal and respective

interest, as fees for the plaintiff's attorney, and also the costs of the case.

The plaintiff and the defendant have both appealed from this finding of the judgment, the former as insufficient, and the latter as improper because premature. "Improper and premature," says the defendant, "because it is a penal clause of strict interpretation and until a settlement shall have been had of the expenses incurred, the 20 per cent ought not to be deducted therefrom." "Insufficient," alleges the plaintiff, "because the judgment allows the said 20 per cent only on the principal and respective interest," that is, the stipulated, without including the legal, interest.

The facts proved are the following: (1) Juan and Basilio Palencia stated in the instrument of August 23, 1907: "In case of our noncompliance with our previous contract, *should* Pardiñas have to resort to the courts of law, all the expenses occasioned him thereby, both attorney's fees and court costs, will be paid by us * * *." (Exhibit A.)

(2) The instrument marked Exhibit C appears to have been executed on November 15, 1910, to this effect:

"Be it known by these presents: That we, Andrea Salvador, widow of Pardiñas, as the party of the first part, * * * and Leoncio Imperial, attorney * * *, as the party of the second part, have stipulated and covenanted a contract of hire of services, under the following conditions: * * * (3) In payment of professional services for the collection of the debt referred to in the preceding paragraphs, whether they terminate in the Court of First Instance of Albay, upon appeal to the Supreme Court of the Philippine Islands or by a private and friendly settlement, the creditor, Dona Andrea Salvador, will pay and deliver to the attorney, Leoncio Imperial, a sum equal to twenty per cent (20%) of the total amount, including principal and interest, collected from the debtors; * * * (5) the fees agreed upon shall be paid by Doña Andrea Salvador to the attorney, Leoncio Imperial, just as soon as the collection of the debt is effected in any of the ways stated."

In this covenant of *quota litis* between the plaintiff and her attorney, the former is obligated to pay to the latter only what *is collected* from the debtors, including principal and interest, and to pay it as soon as the collection of the debt shall have been made, whether effected judicially, extra-judicially, or by friendly arrangement. Howsoever what the debtors owe be collected, and just as soon as such collection is made, the plaintiff must hand over 20 per

cent of the amount she collects and as soon as she collects it. But the defendants, should a friendly and extrajudicial settlement be effected, would not have to pay to the plaintiff the 20 per cent of the amount she might have in such manner collected and paid to her attorney, for they are only obligated to pay 20 per cent of the expenses that might be incurred by collection through the courts.

In view of these facts we find: (1) That the complaint in this action was duly drawn up for this 20 per cent stipulated in the contract and is not fundamentally premature; (2) that to the finding of the trial judge, that the defendants must pay the said 20 per cent “on the principal and respective interest,” it should be added that such interest means both the stipulated and the *legal*; (3) that it is premature and improper to hold absolutely that the defendants must pay the 20 per cent as fees for the plaintiff’s attorney, but only the 20 per cent on what the plaintiff collects, and when she collects it, as expenditures actually made by her for her attorney’s fees; for if really the proper finding must be made in the judgment itself with respect to this part of the contract, it ought to be done only in the way stipulated by the parties, to wit, 20 per cent of the expenses for an attorney that might be incurred by bringing suit, and such expenses are to be understood 20 per cent of the sum which the plaintiff might recover in the suit—that is, 20 per cent of what she might collect in the execution of the judgment. If, though the credit on account of principal, stipulated and legal interest, should amount to 15, the plaintiff should recover only 10, or actually in the execution of the judgment should collect only 10, the defendants would be obligated to pay only 20 per cent of 10, and not of 15, which appears to be the way the finding¹ to pay 20 per cent of the attorney’s fees ought to be understood.

We therefore decide that the defendants, Basilio Palencia and the intestate estate of Juan Palencia; shall pay jointly and severally to the plaintiff, Andrea Salvador, P5,250 Philippine currency, as principal, with the interest agreed upon of 25 per cent per annum from the date of the contract to that of the complaint, in so far as regards the liability of Basilio Palencia; and once only, up to the date of the complaint with respect to the liability of the intestate estate of the deceased Juan Palencia, with deduction of P673.40; and furthermore, that the defendants, or either of them, shall pay the 6 per cent legal interest on the total of the interest agreed upon as concerns their liability respectively, from the date of the complaint until its actual and complete payment, as well as 20 per cent of the amount actually expended by the plaintiff as fees for her attorney and the costs of the first instance, no special finding being made as to those of the second; whereby the judgment appealed from is affirmed in so far as it agrees with this decision, and is reversed in so far as it does not.

Torres, Mapa, Johnson, and Trent, JJ., concur.

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