

[G.R. No. 2344. February 10, 1906]

**GONZALO TUASON, PLAINTIFF AND APPELLEE, VS. DOLORES OROZCO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

On November 19, 1888, Juan de Vargas y Amaya, the defendant's husband, executed a power of attorney to Enrique Grupe, authorizing him, among other things, to dispose of all his property, and particularly of a certain house and lot known as No. 24 Oalle Nueva, Malate, in the city of Manila, for the price at which it was actually sold. He was also authorized to mortgage the house for the purpose of securing the payment of any amount advanced to his wife, Dolores Orozco de Rivero, who, inasmuch as the property had been acquired with funds belonging to the conjugal partnership, was a necessary party to its sale or incumbrance.

On the 21st of January, 1890, Enrique Grupe and Dolores Orozco de Rivera obtained a loan from the plaintiff secured by a mortgage on the property referred to in the power of attorney. In the caption of the instrument evidencing the debt it is stated that Grupe and Dolores Orozco appeared as the parties of the first part and Gonzalo Tuason, the plaintiff, as the party of the second part; that Grupe acted for himself and also in behalf of Juan Vargas by virtue of the power granted him by the latter, and that Dolores Orozco appeared merely for the purpose of complying with the requirement contained in the power of attorney. In the body of the instrument the following appears:

“1. Enrique Grupe acknowledges to have this day received from Gonzalo Tuason as a loan, after deducting therefrom the interest agreed upon, the sum of 3,500 pesos in cash, to his entire satisfaction, which sum he promises to pay within one year from the date hereof.

"2. Grupe also declares that of the 3,500 pesos, he has delivered to Dolores Orozco the sum of 2,200 pesos, having retained the remaining 1,300 pesos for use in his business; that notwithstanding this distribution of the amount borrowed, he assumes liability for the whole sum of 3,500 pesos, which he promises to repay in current gold or silver coin, without discount, in this city on the date of the maturity of the loan, he otherwise to be liable for all expenses incurred and damages suffered by his creditor by reason of his failure to comply with any or all of the conditions stipulated herein, and to pay further interest at the rate of 1 per cent per month from the date of default until the debt is fully paid.

"3. Grupe pledges as special security for the payment of the debt 13 shares of stock in the 'Compañia de los Tranvias de Filipinas,' which shares he has delivered to his creditor duly indorsed so that the latter in case of his insolvency may dispose of the same without any further formalities.

"4. To secure the payment of the 2,200 pesos delivered to Dolores Orozco as aforesaid he specially mortgages the house and lot No. 24, Calle Nueva, Malate, in the city of Manila (the same house referred to in the power of attorney executed by Vargas to Grupe).

"5. Dolores Orozco states that, in accordance with the requirement contained in the power of attorney executed by Vargas to Grupe, she appears for the purpose of confirming the mortgage created upon the property in question.

"6. Gonzalo Tuason does hereby accept all rights and actions accruing to him under this contract."

This instrument was duly recorded in the Registry of Property, and it appears therefrom that Enrique Grupe, as attorney in fact for Vargas, received from the plaintiff a loan of 2,200 pesos and delivered the same to the defendant ; that to secure its payment he mortgaged the property of his principal with defendant's consent as required in the power of attorney. He also received 1,300 pesos.

This amount he borrowed for his own use. The recovery of this sum not being involved in this action, it will not be necessary to refer to it in this decision. The complaint refers only to the 2,200 pesos delivered to the defendant under the terms of the agreement.

The defendant denies having received this sum, but her denial can not overcome the proof to the contrary contained in the agreement. She was one of the parties to that instrument and signed it. This necessarily implies an admission on her part that the statements in the agreement relating to her are true. She executed another act which corroborates the delivery to her of the money in question—that is, her personal intervention in the execution of the mortgage and her statement in the deed that the mortgage had been created with her knowledge and consent. The lien was created precisely upon the assumption that she had received that amount and for the purpose of securing its payment.

In addition to this the defendant wrote a letter on October 23, 1903, to the attorneys for the plaintiff promising to pay the debt on or before the 5th day of November following. The defendant admits the authenticity of this letter, which is a further evidence of the fact that she had received the amount in question. Thirteen years had elapsed since she signed the mortgage deed. During all this time she never denied having received the money. On the contrary, she promised to settle within a short time. The only explanation that we can find for this is that she actually received the money as set forth in the instrument. The fact that the defendant received the money from her husband's agent and not from the creditor does not affect the validity of the mortgage in view of the conditions contained in the power of attorney under which the mortgage was created. Nowhere does it appear in this power that the money was to be delivered to her by the creditor himself and not through the agent or any other person. The important thing was that she should have received the money. This we think is fully established by the record. This being an action for the recovery of the debt referred to, the court below properly admitted the instrument executed January 21, 1890, evidencing the debt.

The appellant claims that the instrument is evidence of a debt personally incurred by Enrique Grupe for his own benefit, and not incurred for the benefit of his principal, Vargas, as alleged in the complaint. As a matter of fact, Grupe, by the terms of the agreement, bound himself personally to pay the debt. The appellant's contention, however, can not be sustained. The agreement, so far as that amount is concerned, was signed by Grupe as attorney in fact for Vargas. Pursuant to instructions contained in the power of attorney the money was delivered to Varga's wife, the defendant in this case. To secure the payment of the debt, Varga's property was mortgaged. His wife took part in the execution of the mortgage as required in the power of attorney. A debt thus incurred by the agent is binding directly upon the principal, provided the former acted, as in the present case, within the scope of his authority. (Art. 1727 of the Civil Code.) The fact that the agent has also bound himself to pay the debt does not relieve from liability the principal for whose benefit Bthe

debt was incurred. The individual liability of the agent constitutes in the present case a further security in favor of the creditor and does not affect or preclude the liability of the principal. In the present case the latter's liability was further guaranteed by a mortgage upon his property. The law does not provide that the agent can not bind himself personally to the fulfillment of an obligation incurred by him in the name and on behalf of his principal. On the contrary, it provides that such act on the part of an agent would be valid. (Art. 1725 of the Civil Code.) The above mortgage being valid and having been duly recorded in the Register of Property, directly subjects the property thus encumbered, whoever its possessor may be, to the fulfillment of the obligation for the security of which it was created. (Art. 1876 of the Civil Code and art. 105 of the Mortgage Law.) This presents another phase of the question. Under the view we have taken of the case it is practically of no importance, whether or not Enrique Grupe bound himself personally to pay the debt in question. Be this as it may and assuming that Vargas, though principal in the agency, was not the principal debtor, the right in rent arising from the mortgage would have justified the creditor in bringing his action directly against the property encumbered had he chosen to foreclose the mortgage rather than to sue Grupe, the alleged principal debtor. This would be true irrespective of the personal liability incurred by Grupe. The result would be practically the same even though it were admitted that appellant's contention is correct.

The appellant also alleges that Enrique Grupe pledged to the plaintiff thirteen shares of stock in the "Compañia de los Tranvias de Filipinas" to secure the payment of the entire debt, and contends that it must be shown what has become of these shares, the value of which might be amply sufficient to pay the debt, before proceeding to foreclose the mortgage. This contention can not be sustained in the face of the law above quoted to the effect that a mortgage directly subjects the property encumbered, whoever its possessor may be, to the fulfillment of the obligation for the security of which it was created. Moreover it was incumbent upon the appellant to show that the debt had been paid with those shares. Payment is not presumed but must be proved. It is a defense which the defendant may interpose. It was therefore her duty to show this fact affirmatively. She failed, however, to do so. The appellant's final contention is that in order to render judgment against the mortgaged property^ it would be necessary that the minor children of Juan de Vargas be made parties defendant in this action, they having an interest in the property. Under article 154 of the Civil Code, which was in force at the time of the death of Vargas, the defendant had the parental authority over her children and consequently the legal representation of their persons and property. (Arts. 155 and 159 of the Civil Code.) It can not be said, therefore, that they were not properly represented at the trial. Furthermore

this action was brought against the defendant in her capacity as administratrix of the estate of the deceased Vargas. She did not deny in her answer that she was such administratrix. Vargas having incurred this debt during his marriage, the same should not be paid out of property belonging to the defendant exclusively but from that pertaining to the conjugal partnership. This fact should be borne in mind in case the proceeds of the mortgaged property be not sufficient to pay the debt and interest thereon. The judgment of the court below should be modified in so far as it holds the defendant personally liable for the payment of the debt.

The judgment thus modified is affirmed and the defendant is hereby ordered to pay to the plaintiff the sum of 2,200 pesos as principal, together with interest thereon from the 21st day of January, 1891, until the debt shall have been fully discharged. The appellant shall pay the costs of this appeal.

After the expiration of ten days let judgment be entered in accordance herewith and let the case be remanded to the court below for execution. So ordered.

Arellano, C. J., Johnson, Carson, and Willard, JJ., concur.
