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[ G.R. No. L-6003. April 26, 1954 ]

**RAMON R. DIZON ET AL., PLAINTIFFS AND APPELLANTS, VS. SIMEON OCAMPO ET AL., DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**REYES, J.:**

This is an action for foreclosure of mortgage.

The complaint alleges in substance that “on or about or previous to November 22, 1948” the defendants borrowed from plaintiffs the sum of P20,000 and secured payment thereof with a mortgage on real property, but that they have failed to comply with the terms of the mortgage and the debt (two years interests excepted) has remained unpaid though already long overdue.

Ordered to specify the date of the transaction, plaintiffs amended their complaint by making it state that the loan was contracted on November 22, 1948, whereupon defendant filed a motion to dismiss alleging that they borrowed no money from plaintiffs on November 22, 1948, though they did borrow from them P35,000 “in worthless Japanese war notes” on August 15, 1944, but as that was during the Japanese occupation, plaintiffs’ action to collect was barred by the debt moratorium law.

At the hearing of this motion, counsel for both parties made certain admissions from which the court deduced that on August 15, 1944, defendants obtained from plaintiffs by “way of loan the sum of P35,000 in Japanese military notes on the security of a chattel mortgage, and that on November 22, 1948 the parties substituted the chattel mortgage with a mortgage on real property but reducing the loan to P20,000,

Philippine currency, and making it payable two years from that date. And holding that an agreement which made a debt contracted during the Japanese occupation payable before the lifting of the debt moratorium was null and void as an open violation of the moratorium law and that the said debt was not demandable until Congress should enact a law lifting the debt moratorium, the court dismissed the complaint with costs.

From this order of dismissal plaintiffs have appealed to this Court, contending that the lower court erred in ordering them, in deference to a motion for a bill of particulars, to specify the exact date when the loan of P20,000 was contracted, in holding that the agreement reducing defendants' debt of P35,000 in Japanese war notes to P20,000, Philippine currency, and making it payable within 2 years was violative of the moratorium law, in holding that the debt is not demandable until the moratorium is lifted, and in not holding that defendants had waived their right to the moratorium.

As to the first error assigned, we see no harm in having a litigant specify in his complaint the date on which the obligation sued upon was contracted. We, therefore, cannot say that the lower court in this case committed a reversible error when it acceded to defendants' motion for particulars in that respect.

With respect to the other errors assigned the ruling complained of is grounded on the law and executive orders on moratorium, and as all of these have been declared void in the case of *Royal L. Rutter vs. Placido J. Esteban*,<sup>[\*]</sup> 49 Off. Gaz. 1807, the said ruling can no longer stand.

Wherefore, the order of dismissal is hereby revoked and the case remanded to the court below for further proceeding. With costs against the appellees.

*Paras, C. J., Pablo, Bengzon, Montemdyor, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.*

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<sup>[\*]</sup> 90 Phil., 415.

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