

101 Phil. 902

[G. R. No. L-8679. July 26, 1957]

JUAN M. ARELLANO, PLAINTIFF AND APPELLANT, VS. MACARIA TINIO DE DOMINGO, ASSISTED BY HER HUSBAND, FRAN CISCO O. DOMINGO, DEFENDANTS AND APPELLEES.

D E C I S I O N

PARAS, C.J.:

The plaintiff-appellant sold a parcel of land situated in the District of Malate, City of Manila, to the defendants-appellees' for the sum of P150,000, and the transaction was evidenced by a deed of sale with mortgage executed on December 18, 1943, providing, among other conditions. as follows:

“That it is hereby agreed that of the purchase price of one hundred AND FIFTY THOUSAND PESOS (P150,000.00), the sum of ONE hundred thousand pesos (P100,000.00) shall be paid by the PARTY OF THE SECOND PART TO THE PARTY OF THE FIRST PART upon the signing of this deed, the receipt “whereof is hereby acknowledge by the PARTY OP THE FIRST PART, and the balance of FIFTY THOUSAND PESOS (P50,000.(IO) shall be paid in the manner specified below:

“That to secure the payment of the said amount of fifty thou- SA.ND PESOS (50,000,00), the PARTY OF THE SECOND PART has transferred and conveyed, and by these presents does hereby transfer and convey by way oi first mortgage, in favor of THE PARTY OF THE FIRST PART, his heirs, executors, administrators, assigns, and sucesors in interests, the parcel of land above described, free from all liens, charges and encumbrances, subject to the following terms and conditions:

“That no payment on the balance of fifty thousand pesos (P50,000.00) shall be

made and no interest shall accrue thereon until after one year counted from the date of ratification of the Treaty of Peace concluding the present Greater East Asia War; and that thereafter, interest at the rate of eight per cent (8%) per annum shall be paid monthly, payment to be made within the first five (5) days of the month to which the interest corresponds.

“That the whole amount of FIFTY thousand pesos (P50,000.00) shall be fully paid within a period of three (3) years counted from the date of the expiration of one year after the ratification of the Treaty of Peace concluding¹ the present Greater East Asia War, during which period payments on the principal may be made by the party of the second part, together with the interest that may have become due and payable.”

* * * * *

“That the conditions of this mortgage are such that if the party of the second part, her heirs, executors, administrators, assigns, and successors in interest shall well and truly perform the full obligation as stated in this deed according to the terms thereof, then this obligation shall be null and void; otherwise, it shall remain in full force and effect and shall be subject to foreclosure, whether judicially or extra-judicially at the option of the PARTY OF THE FIRST PART.”

It is noteworthy that no payment on the balance of P50,000.00 was to be made and no interest was to accrue thereon until after one year from the date of the ratification of the Treaty of Peace concluding the Greater East Asia War; that thereafter interest at eight per cent per annum, should be paid monthly within the first five days of the corresponding month; and that the whole amount of P50,000.00 should be paid within three years counted from the expiration of one year after the ratification of the Treaty of Peace concluding the Greater East Asia War.

Contending that the parties had in mind the factual termination of the Greater East Asia War which occurred on September 2, 1945 when the treaty of surrender of the Japanese Imperial Forces to the Allied Forces was signed at Tokyo Bay, and in view of appellees' failure to pay the balance of P50,000.00 with stipulated interest thereon, notwithstanding the expiration of more than four years after September 2, 1945, the appellant instituted on December 12, 1953, in the Court of First Instance of Manila the present action against

the appellees, for the collection of said balance and interest, plus agreed attorney's fees, and for the foreclosure of the mortgage.

After the court had denied a motion to dismiss filed by the appellees, the latter filed an answer setting up the principal defenses that they were not as yet under obligation to pay either the balance of P50,000.00 or any interest thereon, because the Treaty of Peace concluding the Greater East Asia War has not been ratified by the Philippines; and that in any event the appellees should be made to pay in accordance with the Ballantyne Table of Conversion of the Japanese military notes to Philippine currency.

After trial the court rendered a decision holding that the action was premature and accordingly dismissing the complaint without pronouncement as to costs. The plaintiffs have appealed.

The only question that arises is whether, by the terms "after the ratification of the Treaty of Peace concluding the present Greater East Asia War," the parties contemplated the factual termination of the Greater East Asia War on September 2, 1945 upon the formal signing of the treaty of surrender of the Japanese Imperial Forces to the Allied Forces at Tokyo Bay (as contended by the appellant), or the actual ratification by the Philippines of the Treaty of Peace concluding the Greater East Asia War, which has not yet taken place (as contended by the appellees).

We agree to appellees' observation that the mortgage contract expressly mentions "ratification" of the Treaty of Peace concluding the Greater East Asia War; but we cannot accept the further view that the required ratification should be by the Philippines. It is significant that the contract used the term "ratification" in a general sense, without reference to any specific country. Upon the other hand, as the Treaty of Peace was expressly described as "concluding the present Greater East Asia War," not a war between the Philippines and Japan, said ratification should be only by a majority of the signatory powers. Indeed, Article 23(a) of the Treaty of Peace provides that "the present Treaty shall be ratified by the states which sign it, including Japan, and will come into force for all the States which have then ratified it, when instruments of ratification have been deposited by a majority, including the United States of America as the principal occupying Power, of the following States, namely, Australia, Canada, Ceylon, New Zealand, Pakistan, the Republic of the Philippines, the United Kingdom of Great Britain and Northern Ireland, and the United States of America."

The participating countries, namely, Japan, Australia, Canada, Cession, France, New Zealand, Pakistan, United Kingdom of Great Britain and Northern Ireland, and the United States of America, constituting the majority and all concerned with the Greater East Asia War, had already ratified the Treaty of Peace. The United States of America, (which together with Ceylon, last ratified the Treaty) deposited its instrument of ratification on April 28, 1952 when, in accordance with the aforesaid article 23(a), the Treaty came into force. Said date should, in our opinion, be the starting point of the period stipulated in the mortgage contract. As already pointed out in *Mercado vs. Punsalan*, G. R. No. L-8366, April 27, 1956, the Greater East Asia War meant "the general war between Japan and the Allied Powers, not the hostilities between the Philippines and Japan in particular, for at the time the mortgage in question was signed, the Philippines was yet under American sovereignty and was involved in the war only because it was a dependency of the United States."

Accordingly, the obligation of the appellees to pay the balance of P50,000.00 matured on April 29, 1956, and their obligation to pay the stipulated interest commenced on April 29, 1953. Although on December 12, 1953, when the present action was filed, the period within which the balance of P50,000.00 should be paid had not expired, the appellees were already in default in the payment of interest. It must be remembered that in the letter of February 5, 1953 (Exhibit 2) the appellant reminded the appellee, Macaria Tinio de Domingo, that "the time is about due for you to make a decision with regard to this matter and to let me know about it, so that I can make the necessary plan accordingly." Even the trial court considered said letter as a demand not "honored by the vendees" and which prompted the appellant to institute "present action for the collection of P50,000.00 and damages to foreclose the mortgage on that sum." Appellees' default as to the stipulated interest of course authorized the foreclosure of the mortgage on the entire obligation, because the agreement was that if the appellees "shall well and truly perform the *full obligation as stated in this deed according to the terms thereof*, then this obligation shall be null and void; otherwise, it shall remain in full force and effect and *shall be subject to foreclosure*." At any rate, appellees' principal obligation has also now matured.

Appellees' defense that they should pay the balance of P50,000.00 in accordance with the Ballantyne Conversion Table is without merit, since the obligation, under the mortgage contract, was not payable during the Japanese occupation.

Wherefore, the appealed decision is reversed and the defendants-appellees are hereby sentenced to pay to the appellant the sum of P50,000, with interest at the rate of eight

percent per annum from April 29, 1953, plus ten per cent of the total amount thus due and payable, as attorney's fees, expenses and costs; it being understood that, upon failure of the appellees to pay within ninety days after notice of this decision, the mortgaged property shall be sold at public auction and the proceeds disposed of in pursuance of section 4 of Rule 70 of the Rules of Court.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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