

[G. R. No. L-10871. June 27, 1958]

FELIPE R. HIDALGO, ET AL., PLAINTIFFS AND APPELLEES, VS. HEIRS OF D. TUAZON, INC., DEFENDANT AND APPELLANT.

D E C I S I O N

BAUTISTA ANGELO, J.:

Plaintiffs brought this action in the Court of First Instance of Manila praying that the defendant be ordered to execute a document releasing them from their obligation and cancelling the mortgage executed by them to secure its payment and to return to them the owner's certificates of title covering the land from which the mortgage was constituted. The defendant in its answer alleged that what was agreed upon between the parties was that, notwithstanding the express provisions of the mortgage, said loan shall not be paid except in genuine Philippine currency after the cessation of hostilities between the United States and Japan, and that when in the month of December, 1944 the plaintiffs sent the defendant two drafts, one for P101,673.50 drawn on the Bank of Taiwan and the other for P101,505 drawn on the Philippine National Bank for the purpose of paying the loan, the same were rejected by defendant's president for the reason that: (1) they were not legal tender, (2) even if they were so, the obligation which was purported to be paid by the same had not become due, (3) the obligation sought to be paid was joint and several and could not be split by the joint and several obligors without the consent of the obligee, and (4) the banks upon whom said drafts were purportedly drawn had been closed and did not have any funds with which to meet the same. Defendant set up a cross-complaint praying that plaintiffs be ordered to pay the loan of P101,000, with interest and damages, and that, upon their failure to do so, the mortgage be ordered foreclosed in accordance with law.

After trial, the court rendered judgment ordering defendant to execute in favor of plaintiffs a deed releasing the latter from their obligation of P101,000, plus interest, and cancelling the mortgage executed by plaintiffs to guarantee the payment of the obligation, without pronouncement as to costs. The cross-complaint of defendant was dismissed. On appeal

taken by defendant, the Court of Appeals certified the case to this Court on the ground that the amount involved comes under its exclusive jurisdiction.

On August 31, 1943, plaintiffs entered into a contract with defendant whereby the former acknowledged having received a loan of P101,000 from the latter payable under the terms stipulated therein and to guarantee the payment of said loan, plaintiffs constituted a mortgage on four parcels of land belonging to them which are covered by certificates of title of the land records of the City of Manila. The terms of payment stipulated in the contract are:

“6. *Termino*—Que nos obligamos mancomunada y solidariamente a pagar y devolver la expresada suma de ciento y un mil pesos (P101,000) en el termino de diez (10) años, contados desde la fecha de esta escritura; pero, si expirado ese termino de DIEZ (10) años, las presentes hostilidades entre America y el Japon no hubiesen cesado aun, en ese caso el termino para hacer el pago de dicho prestame sera hasta que la paz entre las citadas dos naciones queda firmada: queda, sin embargo, especialmente convenido que podremos pagar total o parcialmente nuestro citado debito de P101,000 en cualquier tiempo y aun antes de la expiracion del termino de este contrato, siempre y cuando que ese pago se efectue con sujecion a las condiciones siguientes:

(a) Si ese pago total o parcial se hiciera antes del caso de las presentes hostilidades entre America y el Japon, la condicion es que, ese pago total o parcial se ha de realizar con un recargo o aumento de ciento por ciento (100%) de su imparte:

(b) Si ese pago total o parcial se hiciera despues de firmada la paz entre las citadas dos naciones, la condicion es que se tendra que dar aviso por escrito a HEIRS OF D. TUAZON, INC. con treinta (30) dias de anticipacion.”

On December 6, 1944, plaintiff Eduardo Paz E. Hidalgo sent a letter to Jose M. Tuazon, president of defendant corporation, enclosing a check for the sum of P101,673.50 drawn on the Bank of Taiwan payable to the Heirs of D. Tuason, Inc. representing payment of his share in the obligation. The letter was received by Tuason who on December 26, 1944 replied stating that he could not accept the check for the reason that that mode of payment was contrary to their agreement. On December 29, 1944, plaintiff Felipe R. Hidalgo in turn

deposited with the Philippine National Bank in Manila the amount of P101,505 in cash and on the same date sent a letter to Jose M. Tuason who was then residing in Baguio City enclosing a check for the same amount payable to the Heirs of D. Tuason, Inc. drawn on the Philippine National Bank, Baguio, Mt. Province, which letter was actually delivered on December 30, 1944 by one Jose Sias to Nicasio A. Tuason, brother of Jose, for the reason that the latter was not at home, and said Nicasio A. Tuason actually received the letter and the draft and acknowledged receipt thereof in a blank receipt already prepared for the purpose. From this date on apparently no further action was taken, and when liberation came plaintiffs instituted the present action.

The terms under which the obligation may be paid by the debtors have been quoted elsewhere in this decision. It appears therein that the debtors may pay totally or partially their indebtedness at any time before the expiration of the term of the contract subject however to the following conditions: (1) if payment is made before the termination of the hostilities between America and Japan, the indebtedness should be paid with an increase of 100%; and (2) if payment is made thereafter, thirty days notice in advance should be given to defendant corporation. These terms are clear and admit of no ambiguity. The parties seemed to have speculated on the incidence of war and on the fluctuation of the Japanese currency. Apparently, defendant had imposed the condition of 100% increase in the payment of the indebtedness in the expectation that the same would be enough to deter plaintiffs from paying the loan before the termination of the war. That expectation betrayed defendant. It did not materialize, and so it now tried to advance the theory that their agreement was to pay the loan in genuine Philippine currency and after the termination of the hostilities. The lower court was correct in not giving credence to this pretense of defendant.

We believe, however, that the tender of payment made by plaintiffs of their indebtedness through drafts drawn on local banks did not have the effect of payment in contemplation of law that would release them from their obligation. With regard to the draft tendered by plaintiff Eduardo Paz E. Hidalgo to defendant on December 6, 1944, which was rejected by Jose M. Tuason as president of defendant corporation on the ground that the same was not in accordance with their agreement, the same did not ripen into payment because of such rejection. The remedy of Hidalgo was to make a consignation thereof as required by law and give notice thereof to defendant. Such was not done and so the tender of payment became ineffective.

With regard to the draft which plaintiff Felipe R. Hidalgo tendered to Jose M. Tuason on

December 29, 1944, it is true that the same was accepted by Nicasio A. Tuason in behalf of his brother Jose who was the legal representative of the defendant and there is nothing to show that the draft was rejected or returned. However, such tender cannot also have the effect of payment that would extinguish the debtor's liability for under the law payment made in check or draft has the effect of payment *only when actually cashed* (Article 1170, old Civil Code). There is no showing that the draft has been cashed. Nor is there a showing that it was impaired thru the fault of defendant (Article 1170, *Idem.*). Verily it was not considering that at that time the liberation forces were already hovering around the Island of Luzon. We therefore conclude that plaintiff are still indebted to defendant for the amount they had taken from it, or its equivalent, and unless they pay the same they cannot ask for the cancellation of their mortgage.

Considering however that under the terms of their agreement plaintiffs were allowed to pay the indebtedness either wholly or partially even before the termination of hostilities between America and Japan, we are of the opinion that they can only be made to pay the same subject to conversion under the Ballantyne scale of values pursuant to a long line of decisions rendered by this Court. Thus, in one case we held that "The Ballantyne schedule is applicable to obligations contracted during the Japanese occupation where said obligations are made payable on demand or during the said occupation but not after the war or at a specified date or period which may indicate that the parties were speculating on the continuation or cessation of the war at the time the obligation was payable." (Wilson vs. Berkenkotter, 98 Phil., 918, 49 Official Gazette. No. 4, 1401)^[1] The conversion should be made taking as basis the month of December, 1944 when plaintiffs tendered payment of their obligation.

Wherefore, the decision appealed from is modified as follows: ordering plaintiffs to pay defendant the sum of P202,000.00 converted into the Philippine currency under the Ballantyne scale of values taking as basis the month of December, 1944, and once payment is effected, defendant should execute a deed of release of the indebtedness and of the mortgage executed by plaintiffs as security of the obligation. No pronouncement as to costs.

Bengzon, Montemayor, Reyes, J. B. L., Endencia and Felix, JJ., concur.

Paras, C. J., and Reyes A. J., concur in the result.

^[1] See also De la Cruz vs. Del Rosario, G. R. No. L-4859, decided on July 24, 1951; Arevalo

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vs. Barretto, 89 Phil., 633; Gregorio Araneta, Inc. vs. Paz Tuason de Paterno, et al., 98 Phil., 309.

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