

GREGORIO ARANETA, INC., PLAINTIFF AND APPELLANT, VS. PAZ TUASON DE PATERNO AND JOSE VIDAL. DEFENDANTS AND APPELLEES.

G.R. No. L-7377. January 31, 1956

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal from a decision of the Court of First Instance of Manila, upon a rehearing held in compliance with our decision, dated August 22, 1952, in case G. R. No. L-2886, entitled "Gregorio Araneta, Inc. vs. Paz Tuason Vda. de Paterno and Jose Vidal." The main facts are set forth in our aforementioned decision, from which we , quote:

"This is a three-cornered contest between the purchaser, the seller, and the mortgagee of certain portions (approximately 40,703 square-meters) of a big block of residential land in the district of Santa Mesa, Manila. The plaintiff, which is the purchaser, and the mortgagee elevated this appeal. Though not an appellant, the seller and mortgagor has made assignments of error in her brief, some to strengthen the judgment and others for the purpose of new trial.

"The case is extremely complicated and multiple issues were raised.

"The salient facts in so far as they are not controverted are these. Paz Tuason de Paterno is the registered owner of the aforesaid land which was subdivided into city lots. Most of these lots were occupied by lessees who had contracts of lease which were to expire on December 31, 1953, and carried a stipulation to the effect that in the event the owner and lessor should decide to sell the property, the lessees were to be given priority over other buyers if they should desire to buy their leaseholds, all things being equal. Smaller lots were occupied by tenants without a formal contract.

"In 1940 and 1941 Paz Tuason obtained from Jose Vidal several loans totalling P90,098 and constituted a first mortgage on the aforesaid property to secure the debt. In January and April, 1943, she obtained additional loans of P30,000 and P20,000 upon the occasions the previous contract of mortgage was renewed and the amounts received were consolidated. In the first novated contract the time of payment was 'fixed at two years and in the second and last at four years. New conditions not relevant here were also incorporated into the new contracts.

"There was, besides, a separate written agreement entitled 'Penalidad del Documento de Novacion de Esta Fecha' which, unlike the principal contracts, was not registered. The tenor of this separate agreement, all copies, of which were alleged to have been destroyed or lost, was in dispute and became the subject of conflicting evidence. The lower court did not make categorical findings on this point, however, and it will be our task to do so at the appropriate place in this decision.

"In 1943 Paz Tuason decided to sell the entire property for the net amount of P400,000 and entered into negotiations with Gregorio Araneta Inc. for this purpose. The result of the negotiations was the execution on October 19, 1943, of a contract called 'Promesa de Compra y Venta' and identified as Exhibit 1. This contract

provided that subject to the preferred right of the lessees and that of Jose Vidal as mortgagee, Paz Tuason would sell to Gregorio Araneta, Inc. and the latter would buy for the said amount of P400,000 the entire estate under these terms.

"El precio sera pagado como sigue: un 40 por ciento juntamente con la carta de aceptacion del arrendatario, un 20 por ciento del precio al otorgarse la escritura de compromiso de venta, y el remanente 40 por ciento al otorgarse la escritura de venta definitiva, la cual sera otorgada despues de que se hubiese cancelado la hipoteca a favor de Jose Vidal que pesa sobre dichos lotes. La comision del 5 por ciento que corresponde a Jose Araneta sera pagada al otorgarse la escritura de compromiso de venta.

'Paz Tuason se obliga a entregar mediante un propio las cartas que dirigira a este efecto a los arrendatarios, de conformidad con el formulario adjunto, que se marca como Apendice A.

'Expirado el plazo arriba mencionado, Paz Tuason otorgara las' escrituras correspondientes de venta a los arrendatarios que hayan decidido comprar sus respectivos lotes.

'9. Los alquileres correspondientes a este ano se prorrataran entre la vendedora y el comprador, correspondiendo el comprador los alquileres correspondientes a Noviembre y Diciembre de este ano, y asimismo sera por cuenta del comprador el amillaramiento correspondiente a dichos meses.

'10 Paz Tuason, reconoce haber recibido en este acto de Gregorio Araneta, Inc., la suma de Ciento Noventa Mil Pesos (P190,000) como adelanto del precio de venta que Gregorio Araneta, Inc., tuviere que pagar a Paz Tuason.

'La cantidad que Paz Tuason reciben este acto sera aplicada por ella a saldar su deuda con Jose Vidal, los amillaramientos, sobre el terreno cuyo pago ya han vencido y solo el saldo que quedare sera utilizado por Paz Tuason para otros fines.

'11. Una vez determinado los lotes que Paz Tuason. podra vender a Gregorio Araneta, Inc., Paz Tuason otorgara una escritura de venta definitiva sobre dichos lotes a favor de Gregorio Araneta, Inc.

'Gregorio Araneta, Inc., pagara el precio de venta como sigue: 90 por ciento del mismo al otorgarse la escritura de venta definitiva descontandose de la cantidad que entonces se tenga que pagar el adelanto de P190,000 que se entrega por virtud de esta escritura. El 10 por ciento remanente se pagara a Paz Tuason, una vez que se haya cancelado la hipoteca que pesa actualmente sobre el terreno.

'No obstante lo dispuesto en el parrafo 8, cualquier arrendatario que decida comprar el lote que ocupa con contrato de arrendamiento podra optar por pedir el otorgamiento inmediato a su favor de la escritura de venta definitiva pagando en el acto el 50 por ciento del precio (ademas del 40 por ciento que debio incluir en su carta de aceptacion) y el remanente de 10 por ciento inmediatamente despues de cancelarse la hipoteca que pesa sobre el terreno.

'12. Si la mencionada cantidad de P190,000 excediera del 90 por ciento de la cantidad que Gregorio Araneta, Inc., tuviere que pagar como precio de venta de los lotes que Paz Tuason pudiere vender a dicho comprador, el saldo sera de las cantidades que reciba de los arrendatarios como precio de venta.'

"In furtherance of this promise to buy and sell, letters were sent the lessees giving them until August 31, 1943, an option to buy the lots they occupied at the price and terms stated in said letters. Most of the tenants who held contracts of lease took advantage of the opportunity thus extended and after making the stipulated payments were given their deeds of conveyance. These sales, as far as the record would show, have been respected by the seller.

"With the elimination of the lots sold or to be sold to the tenants there remained unencumbered except for the mortgage to Jose Vidal, Lots 1, 8-16 and IS which have an aggregate area of 14,810.20 square meters; and on

December 2, 1943, Paz Tuason and Gregorio Araneta, Inc., executed with, regard to these lots an absolute deed of sale, the terms of which, except in two respects, were similar to those of the sales to the lessees. This deed, copy of which is attached to the plaintiff's complaint as Exhibit A, provided, among other things, as follows:

'The aforesaid lots are being sold by the Vendor to the Vendee separately at the prices mentioned in paragraph (6) of the aforesaid contract entitled 'Promesa de Compra y Venta,' making a total sum of One Hundred Thirty-Nine Thousand Eighty-Three Pesos and Thirty-two centavos (P139,083.32), ninety (90%) per cent of which amount, i.e., the sum of One Hundred Twenty-five Thousand One Hundred Seventy-four Pesos and Ninety-nine centavos (P125,174.99), the Vendor acknowledges to have received by virtue of the advance of One Hundred Ninety Thousand

"The aforesaid sum of P190,000 was delivered by the Vendee to the Vendor by virtue of four checks issued by the Vendee against the Bank of the Philippine Islands, as follows:

'No. C-286445 in favor of Paz Tuason de Paterno

P13,476.62

'No. C-286444 in favor of the City Treasurer, Manila

3,373.38

'No. C-286443 in favor of Jose Vidal

30,000.00

'No C-286442 in favor of Jose Vidal

143,150.00

Total

P190,000.00

'The return of the sum of P64,825.01 was made by the Vendor to the Vendee in a liquidation which reads as follows:

"Homos recibido de Da. Paz Tuazon de Paterno la cantidad de Sesenta y Ouatro mil Ochocientos Venticinco Pesos y un Centimo (P64,825.01) en concepto de devolucion que nos hace del exceso de lo pagado a ella de P190,000.00

'Menos el 90% de P139,083.32, importe de los lotes que vamos a comprar

125,174.90

'Exceso.....

P64,825.01

'Cheque EIF No. D-442988 de Simplicio del Eosario

21,984.20

'Cheque PNB No. 177863-K de L. E. Dumas

21,688.60

'Cheque PNB No. 267682-K de Alfonso Sycip

20,000.00

'Cheque PNB No. 83940 de Josefina de Pabalan

4,847.45

'Billetes recibidos de Alfonso Sycip

42.96

P68,563.21 'Menos las comisiones de 5% recibidas de
Josefina de Pabalan P538.60

'L. E. Dumas 1,084.43

'Angela S. Tuaso.....1,621.94

3,244.97

P65,318.24

'Menos cheque BIF No. C-288642 a favor de D. Paz Tuason de Paterno que le entregamos como exceso

493.23

P64,825.01

Manila. Noviembre 2, 1943.

'GREGORIO ARANETA, INCORPORATED

'Por:

(Fdo.) ' JOSE ARANETA

" Presidente

'Recibido cheque No. C-288642 BIF-P493.23

'Por:

(Fdo.) 'M. J. GONZALEZ'

'In view of the foregoing liquidation, the Vendor acknowledges fully and unconditionally, having received the sum of P125,174.99 of the present legal currency and hereby expressly declares that she will not hold the Vendee responsible for any loss that she might suffer due to the fact that two of the cheeks paid to her by the

Vendee were issued in favor of Jose Vidal and the latter has, up to the present time, not yet collected the same.

'The ten (10%) per cent balance of the purchase price not yet paid in. the total sum of P13,908.33 will be paid by the Vendee to the Vendor when the existing; mortgage over the property sold by the Vendor to the Vendee is duly cancelled in the office of the Register of Deeds, or sooner at the option of the Vendee.

'This Deed of Sale is executed by the Vendor free from all liens and encumbrances, with the only exception of the 'existing lease contracts on parcels Nos. 1, 10, 11, and 16, which lease contracts will expire on December 31, 1953, with the understanding, however, that this sale is being executed free from any option or right on the part of the lessees to purchase the lots respectively leased by them.

'It is therefore clearly understood that the Vendor will pay the existing mortgage on her property in favor of Jose Vidal.

'The liquidation of the amounts respectively due between the Vendor and the Vendee in connection with the rents and real estate taxes as stipulated in paragraph (9) of the contract entitled 'Promesa de Compra y Venta' will be adjusted between the parties in a separate document.

'Should any of the aforesaid lessees of lots Nos. 2, 3, 4, 5, 6, 7, 9 and 17 fail to carry out their respective obligations under the option to purchase exercised by them so that the rights of the lessee to purchase the respective property leased by him is cancelled, the Vendor shall be bound to sell the same to the herein Vendee, Gregorio Araneta, Incorporated, in conformity with the terms and conditions provided in the aforesaid contract of 'Promesa de Compra y Venta'

'The documentary stamps to be affixed to this deed will be for the account of the Vendor while the expenses for the registration of this document will be for the account of the Vendee.

'The remaining area of the property of the Vendor subject to Transfer Certificate of Title Nos. 60471 and 60472, are lots Nos. 2, 3, 4, 5, 6, 7, 9, and 17, all of the Consolidation of lots Nos. 20 and 117 of plan 11-4755, G.L.R.O. Record No. 768.'

"Before the execution of the above deed, that is, on October 20, 1943, the day immediately following the signing of the agreement to buy and sell, Paz Tuason had offered to Vidal the check for P143,150 mentioned in Exhibit A, in full settlement of her mortgage obligation, but the mortgagee had refused to receive that check or to cancel the Mortgage, contending that by the separate agreement before mentioned payment of the mortgage was not to be effected totally or partially before the end of four years from April, 1943,

"Because of this refusal of Vidal's, Paz Tuason, through Atty. Alfonso Ponce Enrile, commenced an action against the mortgagee in October or the early part of November, 1943. The record of that case was destroyed and no copy of the complaint was presented in evidence. Attached to the complaint or deposited with the clerk of court by Attorney Ponce Enrile simultaneously "with the docketing of the suit were the check for P143,150 previously turned down by Vidal, another certified check for P12,932.61, also drawn by Gregorio Araneta, Inc., in favor of Vidal, and one ordinary check for P30,000 issued by Paz Tuason. These three checks were supposed to cover the whole indebtedness to Vidal including the principal and interest up to that time and the penalty provided in the separate agreement.

"But the action against Vidal never came on for trial and the record and the checks were destroyed during the war operations in January or February, 1945; and neither was the case reconstituted afterward. This failure of the suit for the cancellation of Vidal's mortgage, coupled with the destruction of the checks tendered to the mortgagee, the nullification of the bank deposit on which those checks had been drawn, and the tremendous rise of real estate value following the termination of the war, gave occasion to the breaking off of the schemes outlined in Exhibits 1 and A; Paz Tuason after liberation repudiated them for the reasons to be hereafter set forth.

"The instant action Was the offshoot, begun by Gregorio Araneta, Inc., to compel Paz Tuasors to deliver to the plaintiff a clear title to the lots described in Exhibit A free from all liens and encumbrances, and a deed of cancellation of the mortgage to Vidal. Vidal came into the case in virtue "of a summon issued by order of the court, and filed a cross-claim against Paz Tuason to foreclose his mortgage,

"It should be stated at the the outset that all the parties are in agreement that Vidal's loans are still outstanding. Pas Tuason's counsel concede that the tender of payment to Vidal was legally defective and did not operate to discharge the mortgage, while the plaintiff is apparently uninterested in this feature of the case considering the matter one largely between the mortgagor and the mortgagee, although to a certain degree this notion is incorrect. At any rate, the points of discord between Paz Tuason and Vidal concern only the accrual of interest on the loans, Vidal's claim to attorney fees and the application of the debt moratorium law which the debtor now invokes. These matters will be taken up in the discussion of the controversy between Paz Tuason and Jose Vidal." 49 Off. Gaz., pp. 47-52.)

Briefly, the issues then raised were: (1) whether the deed of sale, Exhibit A, was valid or not; (2) who shall bear the loss in connection with the certified checks of the plaintiff, for P143,150.00 and P12,932.61, payable to Jose Vidal, which were not collected by the latter; and (3) whether said Vidal was entitled to a judgment of the foreclosure. We decided the first and third issues in the affirmative, and held that plaintiff Gregorio Araneta, Inc., shall bear the loss resulting from the non-collection of said checks. The dispositive part of our aforementioned decision reads:

"The. contract of sale Exhibit A was valid and enforceable, but the loss of the checks for P143,150 and P12,932.61 and invalidation of the corresponding deposit is to be borne by the buyer, Gregorio Araneta, Inc. The value of these checks as well as the several payments made by Paz Tuason to Gregorio Araneta, Inc. shall be deducted from the sum of P190,000 which the buyer advanced to the seller on the execution of Exhibit 1.

"The buyer shall be entitled to the rents on the land which was the subject of the sale, rents which may have been collected by Paz Tuason after the date of the sale.

"Paz Tuason shall pay Jose Vidal the amount of the mortgage and the stipulated interest up to October 20, 1943, plus the penalty of P30,000, provided that the loans obtained during the Japanese occupation shall be reduced according to the Ballantyne scale of payment, and provided that the date basis of the computation as to penalty is the date of the filing of the suit against Vidal.

"Paz Tuason shall pay the amount that shall have been found due under the contracts of mortgage within 90 days from the time the court's judgment upon the liquidation shall have become final, otherwise the property mortgaged shall be ordered sold as provided by law.

Vidal's mortgage is superior to the purchaser's right under Exhibit A, which is hereby declared subject to said mortgage. Should Gregorio Araneta, Inc. be forced to pay the mortgage, it will be subrogated to the right of the mortgagee.

"This case will be remanded to the court of origin with instruction to hold a rehearing for the purpose of liquidation as herein provided. The court also shall hear and decide all other controversies relative to the liquidation which may have been overlooked in this decision, in a manner not inconsistent with the above findings and judgment.

"The mortgagor is not entitled to suspension of payment under the debt moratorium law or orders. Among other reasons: the bulk of the debt was a pre-war obligation and the moratorium as to such obligations has been abrogated unless the debtor has suffered war damages and has filed claim for them; there is no allegation or proof that she has. In the second place, the debtor herself caused her creditor to be brought into this case which resulted in the filing of the cross-claim to foreclose the mortgage. In the third place, prompt settlement of the

mortgage is necessary to the settlement of the dispute and liquidation between Gregorio Araneta Inc. and Paz Tuason. If for no other reason, Paz Tuason would do well to forego the benefits of the moratorium law.

,"There shall be no special judgment as to costs of either instance." (49 Off. Gaz. pp. 65-66.)

Upon subsequent denial of two motions for reconsideration of said decision, the records were remanded to the Court of First Instance of Manila for a rehearing, after which said court rendered a decision the pertinent part of which follows:

"(a) The plaintiff, Gregorio Araneta, Inc., is ordered to pay the defendant, Paz Tuason, the sum of P165,526.67;

"(b) The defendant, Paz Tuason, is, likewise, ordered to pay Jose Vidal the sum of P155,938.42 within ninety (90) days from the entry of this judgment; and in default thereof, the property mortgaged shall be sold at public auction in accordance with the existing law; and

"(c) Without pronouncement as to costs." (Joint Record on Appeal, pp. 35-36.)

Plaintiff Gregorio Araneta, Inc. and defendant Paz Tuason appealed from this decision, but, later on, said defendant withdrew her appeal, leaving plaintiff as the only appellant.

The questions raised by the latter in its present appeal are: (a) whether the aforementioned sums of P143,150.00 and P12,932.61 should be paid in the Philippine currency, peso for peso, or in its equivalent under the Ballantyne scale; (b) whether, in addition thereto, plaintiff should pay defendant Paz Tuason, the equivalent, under said scale, of the sum of P16,999.31 in Japanese war notes; and (c) what is the amount due to Jose Vidal from Paz Tuason.

(1) Plaintiff maintains that, being payable during the occupation, said sums of P143,150.00 and P12,932.61 should now be satisfied in its equivalent in Philippine currency, pursuant to the Ballantyne scale, as of the date when due. On the other hand, Paz Tuason alleges, and the decision appealed from held, that payment should be made, peso for peso, in Philippine currency, said amounts being intended for the satisfaction of the credit of Jose Vidal, which matured and became payable after liberation. We believe that plaintiff's contention is well taken and that the theory of defendant Paz Tuason, adopted by the lower court, is untenable because;

(a) Plaintiff's obligation matured during the occupation. The promise to sell, Exhibit 1, provided that payment would be made as follows:

"11. Una vez determinado los lotes que Paz Tuason podra vender a Gregorio Araneta, Inc., Paz Tuason otorgara una escritura de venta definitiva sobre dichos lotes a favor de Gregorio Araneta, Inc. "Gregorio Araneta, Inc., pagara el precio de venta como sigue: 90 por ciento del mismo al otorgarse la escritura de venta definitiva descontandose de la cantidad que entonces se tenga que pagar el adelanto de P190,000 que se entrega en virtud de esta escritura 10 por ciento remanente se pagara a Paz Tuason, una vez se haya cancelado la hipoteca que pesa actualmente sobre el terreno." (49 Off. Gaz., p. 48.)

The deed of sale, Exhibit A, executed on December 2, 1943 stipulated:

"The aforesaid lots are being sold by the Vendor to the Vendee separately at the prices mentioned in paragraph (6) of the aforesaid contract entitled 'Promesa de Compra y Venta,' making a total sum of One Hundred Thirty-Nine Thousand Eighty-three Pesos and Thirty-two centavos (P139,083.32), ninety (90%) per cent of which amount, i.e., the sum of One Hundred Twenty-five Thousand One Hundred Seventy-four Pesos and Ninety-nine centavos (P125,174.99), the Vendor acknowledges to have received by virtue of the advance of One Hundred Ninety Thousand (P190,000) Pesos made by the Vendee to the Vendor upon the execution of the aforesaid contract entitled 'Promesa de Compra y Venta'. The balance of Sixty-four Thousand Eight Hundred Twenty-five Pesos and One centavo (P64,825.01) between the sum of P190,000 advanced to the Vendor and

the aforesaid sum of P125,174.99, has been returned, by the Vendor to the Vendee, which amount the Vendee acknowledges to have received by these presents. (49 Off. Gaz., p. 29; italics supplied.)

In fact, the check for P143,150.00 was part of the sum of ₱90,000.00 advanced by plaintiff to Paz Tuason on October 19, 1943, simultaneously with the execution of Exhibit 1. The other check, for P12,932.61, was part of the sum of P13,908.33, paid by plaintiff to Paz Tuason, on February 12, 1944, as balance of the price stipulated in Exhibit A. Inasmuch as the obligations represented by said checks fell due and became payable during the occupation, the amounts therein given should now be paid, pursuant to 'a long line of decisions of this Court, in its equivalent in Philippine currency, as fixed in the Ballantyne scale. (See *De la Cruz vs. Del Rosario*, G. R. No. L-4859, decided on July 24, 1951; *Arevalo vs. Barreto*, 89 Phil., 633; *Wilson vs. Berkenkotter*, 92 Phil., 918)

(b) The argument of Paz Tuason to the effect that the credit of Vidal matured after liberation and, as a consequence, should be fully satisfied in Philippine currency, might have been good only against herself as Vidal's debtor. [*] It may not be availed of against plaintiff herein, which has no juridical relation whatsoever with Vidal. Plaintiff's obligations spring exclusively from its contract with Paz Tuason,. Exhibit A, to which Vidal was not a party. Plaintiff never assumed the obligations of Paz Tuason under the deed of mortgage executed by her in favor of Jose Vidal. What is more, her contract with the plaintiff, specifically provided that she—not plaintiff— would settle her obligation with Vidal. Thus, Exhibit 1 declares

"La cantidad quo Paz Tuazon recibe en este acto sera aplicada por ella a saldar su deuda on Jose Vidal, los amillaramientos, sobre el terreno cuyo pago ya han vencido y solo el saldo que quedare sera utilizado por Pas Tuason para otros fines." (49 Off. Gaz. p. 48; italics supplied.)

Similarly, it is stipulated in Exhibit A:

"It is therefore clearly understood that the Vendor will pay the existing mortgage on her property in favor of Jose Vidal." (Ibid., p. 51; italics supplied.)

Indeed, Exhibit A was executed after the filing of the complaint of Paz Tuason against Jose Vidal, on account of his refusal to receive, among others, the two (2) checks in question, tendered by her in payment of the debt secured by the mortgage in favor of Vidal. It was expressly agreed upon in said Exhibit A:

"* * * The Vendor acknowledges fully and unconditionally, having received the sum of P125,174.99 of the present legal currency and hereby expressly declares that she will not hold the Vendee responsible for any loss that she might suffer due to the fact that two of the checks paid to her by the Vendee were issued in favor of Jose Vidal and the latter has, up to the present time, not yet collected the same. (Italics supplied.)

Thus, she clearly assumed the risk "for any loss" that might result from the failure and refusal of Jose Vidal to receive and collect said checks, and, moreover, relieved the plaintiff from any responsibility in connection therewith.

The certified checks in question were issued on October 19, 1943, and on February 12, 1944, respectively. The life-time of both was ninety (90) days, which expired in January and May, 1944, respectively. At that time plaintiff should have, according to our first decision, issued new checks, or deposited the corresponding amounts, in favor of either Jose Vidal or Paz Tuason. Inasmuch as in January and May, 1944, each peso, Philippine currency, was equivalent to four pesos and twelve pesos, respectively, in Japanese war notes, pursuant to the Ballantyne scale, it results that said checks for P143,150.00 and for P12,932.61 in Japanese war notes represent P35,787.50 and ₱1,077.71, respectively, or the aggregate sum of P36,863.22, in Philippine currency, which plaintiff should now pay defendant Paz Tuason.

(2) On the second question, the decision appealed from had the following to say:

"It is admitted by Gregorio Araneta, Inc. and Paz Tuason that the amount of P47,825.70 was paid by the former to the latter between October 19, 1943 and February 12, 1944. Likewise, it is admitted that the amount of P64,825.01, representing the alleged excess of the original purchase price of P190,000.00 was paid by Paz Tuason to Gregorio Araneta, Inc. on November 2, 1943. The overpayment, therefore, was P16,999.31, which is the difference between P64,825.01 and P47,825.70. The value of the amount of P16,999.31 if converted into Philippine currency according to the Ballantyne Scale as of November 2, 1943 would be P9,444.06." (Joint Record on Appeal, pp. 27-28.)

Plaintiff contends that no overpayment had been made by defendant Paz Tuason. In fact, the finding of the lower court on this point is based upon the difference between the sum of P64,825.01, refunded by her to plaintiff on December 2, 1943, and the aggregate sum of P47,825.70, actually collected by her from the plaintiff from October 19, 1943 to February 12, 1944. The lower court, thus, seemingly, assumed that plaintiff was bound to fully reimburse the aforesaid sum of P64,825.01 to Paz Tuason. This assumption is, however, devoid of any justification. Said P64,825.01 was the sum overpaid, or over, deposited by the plaintiff to Paz Tuason, for the former had advanced P190,000.00 to the latter on October 19, 1943, when Paz Tuason made the Promise to Sell, Exhibit 1, and on December 2, 1943, it appeared, upon the execution of Exhibit A, that Paz Tuason was entitled to collect only P125,174.99, representing ninety per cent (90%) of P139,083.32, the agreed price of the land thereby sold by her to the plaintiff, who had a right to recover said amount of P64,825.01, without any obligation to refund the same or any part thereof.

The sum of P47,825.10 actually collected by Paz Tuason from the plaintiff, from October 19, 1943 to February 12, 1944, was absolutely independent thereof. It is the aggregate of two payments made by the plaintiff, one on October 19, 1943, and another on February 12, 1944. The first was part of the advance payment of P190,000, Which consisted of a check for P143,150.00, payable to Vidal, and three checks aggregating P46,850.00. The second was part of the sum of P13,908.33 paid by the plaintiff on February 12, 1944, as balance of the purchase price of P139,083.32 stipulated in Exhibit A, after deducting the sum of P125,174.99 paid on December 2, 1943. The payment effected on February 12, 1944 consisted of a check for P12,932.63—one of those involved in the present appeal and the aggregate sum of P975.70, representing documentary stamps and other expenses set forth in Exhibit M. This second payment is completely unrelated to the P190,000.00 advanced by plaintiff on October 19, 1943 and the P64,825.01 refunded by Paz Tuason on December 2, 1943.

Again, said P190,000.00 were paid to Paz Tuason as follows:

One (1) check payable to Jose Vidal	P143,150.00
Three (3) checks aggregating	46,850.00
Total	P190,000.00

The check for P143,150.00 was not, and could not be collected for the reasons adverted to above. Hence, of the sum of P190,000.00 thus advanced by plaintiff, Paz Tuason actually collected only the sum of P46,850.00. Upon the execution of Exhibit A on December 2, 1943, she refunded, however, P64,825.01, which exceeds by P17,975.01 what she had actually collected prior thereto. However, she will now collect the equivalent of the check for P143,150.00, despite the fact that, under Exhibit A, she is entitled to not more than P125,174.99. Thus she will eventually receive the equivalent of P17,975.01—or "exactly the amount of the excess disbursement above mentioned—over and above said sum of P125,174.99. In other words, upon collection of the equivalent of said check for P143,150.00, she will be fully compensated for the loss (not overpayment) sustained by her when she refunded P64,825.01 on December 2, 1943.

(3) The decision appealed from declares that the obligation of Paz Tuason, in favor of Jose Vidal, amounts to P155,958.42, computed as follows:

'Capital outstanding P135,238.09

Interest at the rate of 9%

per annum, from July 21 to October 20, 1953

3,042.84

Additional interest payments 30.43

Penalty 17,647.00

Total

P155,958.42"

(Joint record on Appeal, p. 6.)

In determining the capital outstanding, it would appear that the lower court ascertained the equivalent, in Philippine currency, pursuant to the Ballantyne scale, of the sums of P30,000.00 and P20,000.00 loaned to Paz Tuason in January and April 1943, and then added thereto the P90,098.00 borrowed by her before the war. Thereafter, the Court computed the interest due on the resulting aggregate sum of P135,238.09, at the rate of 9% per annum, amounting to P3,042.84, as well as the compounded interest, at the rate of 1% a month, amounting to P30.43, from July 21 to October 20, 1943. Adding to these sums the equivalent of the penalty stipulated in the contract, there resulted a grand total of P155,598.42.

This computation is assailed by the plaintiff as erroneous upon the following grounds: (a) Inasmuch as, upon receipt of each additional loan during the occupation, the prewar contracts between Paz Tuason and Jose Vidal were novated by subsequent contracts, executed in 1943, renewing the original mortgage, consolidating the amounts borrowed by her, and inserting new conditions, the loans to Paz Tuason must be treated as if fully made during the occupation and the lower court should have applied, therefore, the Ballantyne scale, not only to the sums of P30,000.00 or P20,000.00 disbursed by Jose Vidal in January and April 1943, but also, to his prewar credit of P90,098.00; (b) After computing the interest on the sum of P140,000.00—representing the aggregate capital of the debt of Paz Tuason—at the rate of 9% a year, the lower court should have determined the equivalent, in Philippine currency, under the Ballantyne scale, of the amount due, by way of interest, 'after each 30 days, from July 21 to October 20, 1943; (c) The lower court should have, likewise, applied the Ballantyne scale to be compounded interest. For these reasons, plaintiff maintains that Paz Tuason should pay Jose Vidal, in Philippine currency, not more than the following:'

Capital

P130,952.20

Aggregate interest

1,992.81

Penalty

17,647.20

Total

P150,592.21

It should be noted, however, that Paz Tuason has not appealed from the decision of the lower court sentencing her to pay P155,958.42 to Jose Vidal; that said decision in favor of Jose Vidal and against Paz Tuason (not against plaintiff) is already final and executory; that plaintiff is not a party to the contract between Paz Tuason and Jose Vidal; that, although plaintiff would be subrogated into the rights of Vidal, should the former pay the obligation of Paz Tuason, no such payment has, as yet, been made; that plaintiff is not a party in the cross-claim filed by Jose Vidal against Paz Tuason for foreclosure of mortgage; and that plaintiff's cause of action against Paz Tuason, for performance of her contractual obligation under Exhibit A, is independent of the cause of action of Jose Vidal against Paz Tuason, for foreclosure of the mortgage constituted by the latter in favor of Vidal. Obviously, therefore, plaintiff has no legal standing to seek a review of the findings of the lower court relative to the liquidation of the accounts between Paz Tuason and Jose Vidal.

At any rate, the main criticism of the plaintiff against this part of the decision appealed from refers to the failure of the lower court to apply the Ballantyne scale to the sum of P90,098.00, borrowed before the war. However, in doing what it did, said court merely complied with our decision of August 22, 1952, the pertinent part of which "says:

"Paz Tuason shall pay Jose Vidal the amount of the mortgage and the stipulated interest up to October 20, 1943, plus the penalty of P30,000.00; provided that the loans obtained during the Japanese occupation shall be reduced according to the Ballantyne scale of payment, and provided that the date basis of the computation as the penalty is the date of the filing of the suit against Vidal." (*Italics supplied.*)

More specifically, the provision therein to the effect that "the loans obtained during the Japanese occupation" shall be reduced according to the Ballantyne scale of payment, indicates that this court had no intention to apply said scale to the amounts borrowed by Paz Tuason before the war. Indeed, if the theory of novation, upon which plaintiff's pretense is based, had been accepted, the entire obligation of Paz Tuason in favor of Jose Vidal would have been deemed contracted during the occupation, and said decision would have directed the application of the Ballantyne scale, not merely to the "loans obtained during the Japanese occupation", but to the whole obligation of Paz Tuason, regardless of the time when contracted.

In view of the foregoing, with the modification that plaintiff Gregorio Araneta, Inc., shall pay defendant Paz Tuason the sums of P35,787.50 and P1,077.71, in Philippine currency, instead of the sums of P143,150.00, P12,932.61 ;and P9,444.06, as decreed in the decision appealed from, the same is hereby affirmed, in all other respects, without special pronouncements as to costs. It is so ordered.

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

[*] This is not altogether legally accurate, even as regards Paz Tuason, for our decision of August 22, 1952, directs the application of the Ballantyne scale to the loans obtained by her during the Japanese occupation. Consequently, if her contention were sustained, she would collect from plaintiff, peso for peso, but would pay her debt to Vidal with the benefit, partly, of the Ballantyne scale.

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