

**COMMUNITY INVESTMENT AND FINANCE CORPORATION,
PLAINTIFF-APPELLANT, HERMENEGILDO B. REYES,
DEFENDANT-APPELLEE.**

G.R. No. L-2111. September 19, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

This action was commenced by the plaintiff on February 10, 1947, in the Court of First Instance of Manila to compel the defendant to accept delivery of 20,000 shares of Universal Exploration, 10,000 shares of Itogon Mining Company, and 50,000 shares of Crown Mines, which said defendant is alleged to have obligated himself to buy from and pay for to the plaintiff at an agreed purchase price specified in the complaint, in the months of March and April, 1937, and to recover from said defendant the unpaid balance of said purchase price, aggregating P28,994.48. After the defendant had answered the complaint, setting up special defenses and a counter-claim, the case was called for trial, whereupon counsel for the defendant moved orally in open court for the dismissal of the complaint on the ground that the debt sought to be recovered by the plaintiff from the defendant was covered by the debt moratorium provided by Executive Order No. 25, as amended by Executive Order No. 32. Said motion for dismissal was granted by the trial court, following the decision of this court in *Ma-ao Sugar Central vs. Barrios et al.*, G.R. No. L-1539, 45 O.G. 2444, promulgated December 3, 1947.

Appellant's assignments of error are, that the lower court erred: (1) in holding that the appellant's action was prematurely filed; and (2) in dismissing the complaint, instead of rendering judgment for the appellant.

Appellant's first assignment of error has been adversely decided by this court not only in the case of *Ma-ao Sugar Central vs. Barrios et al.*, *supra*, but also in the case of *General vs. De Venecia*, G.R. No. L-894, 44 O.G. 4912, promulgated July 30, 1947, wherein this court said: "It is our view that, upon objection by the debtor, no court may now proceed to hear a complaint that seeks to compel payment of a monetary obligation coming within the purview of the moratorium." (See also *Uy vs. Kalaw Katigbak*, G.R. L-1830, December 31, 1949, and *Mariano vs. Dannug*, G.R. No. L-2806, July 20, 1950.)

Appellant's second assignment of error is predicated on the erroneous theory that appellee's verbal motion to dismiss was equivalent to a motion for judgment on the pleadings. We find no basis in the record to support such contention. According to the order of dismissal, the motion was based on the ground that the complaint did not state facts sufficient to constitute a cause of action because of the provisions of Executive Order No. 25, as amended by Executive Order No. 32, on debt moratorium which was still in force. The motion was in order and the trial court did not err in granting it.

We note, however, that during the pendency of this appeal, i.e., on July 26, 1948, Congress enacted Republic Act No. 342, entitled "An Act to Provide for the Lifting of the Debt Moratorium as Regards Prewar Obligations Subject to Certain Conditions and for other Purposes." Section 3 of said Act, insofar as pertinent here, reads as follows:

"Sec. 3. Title III, Debt Moratorium, Executive Order No. 25 dated November 13, 1944 as amended by Executive Order No. 32 dated March 10, 1945, is hereby further amended by lifting the moratorium therein declared in so far as it affects prewar obligations, except that as regards those prewar obligations referred to in Section 2 hereof, the lifting of said moratorium shall be subject to the conditions provided in said section. . . ."

Section 2 of said Act above referred to reads as follows:

"Sec. 2. , All debts and other monetary obligations payable by private parties within the Philippines originally incurred or contracted before December 8, 1941, and still remaining unpaid, any provision or provisions in the contract creating the same or in any subsequent agreement affecting such obligation to the contrary notwithstanding, shall not be due and demandable for a period of eight (8) years from and after settlement of the war damage claim of the debtor by the United States Philippine War Damage Commission, without prejudice, however, to any voluntary agreement which the interested parties may enter into after the approval of this Act for the settlement of said obligations."

The debts sued upon by the plaintiff in this case come within the purview of sections 2 and 3 of Republic Act No. 342 above quoted. By virtue thereof, it is now necessary for the defendant to prove that he has presented a war damage claim with the United States Philippine War ;Damage Commission, in order to avail himself of the debt moratorium, for in the absence of such war damage claim prewar obligations are now enforceable. (Intestate Estate of Dairo vs. Patubo, G.R. No. L-1769, May 13, 1949.)

To avoid multiplicity of suits, the order of dismissal is hereby set aside and the case is ordered remanded to the court below for further proceedings so that the defendant may adduce proof of having presented a war damage claim, in the absence of which the case shall proceed to trial on the merits. No finding as to costs in this instance.

Moran, C.J., Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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