

FRANCISCA ROMASANTA, PLAINTIFF AND APPELLEE, VS. FELIX SANCHEZ, DEFENDANT AND APPELLANT.

G.R. No. L-15125. April 29, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff brought this action against defendant before the Court of First Instance of Rizal to recover the sum of P35,000.00, plus the sum of P3,500.00 as attorney's fees, and in default of payment, to have the mortgage executed by defendant foreclosed in accordance with law.

Defendant, in his answer, set up the defense that even if the obligation which plaintiff seeks to recover was actually incurred, he, however, is entitled to not more than P500.00, Philippine currency, under the Ballantyne schedule, considering that in December, 1944, when the loan was obtained, the value of the Japanese currency in relation to the Philippine peso was 70 to 1.

The case having been submitted on a stipulation of facts, the trial court rendered judgment ordering defendant to pay plaintiff the sum of P35,000.00, Philippine currency, without interest, plus the sum of P1,000.00 as attorney's fees, with the admonition that, in default of payment within 90 days from date of notice, the property mortgaged shall be sold at public auction in accordance with law.

Defendant having appealed to the Court of Appeals, the case was certified to us because it only raises the legal issue of whether, considering the time and the circumstances under which the loan was contracted, appellant may settle the obligation in conformity with the Ballantyne schedule.

There is no dispute that on December 29, 1944, defendant received from plaintiff the sum of P35,000.00 in Japanese war notes as a loan and that to guarantee its payment defendant executed a real estate mortgage in favor of plaintiff wherein one of the conditions stipulated, particularly that which refers to the manner of payment of the loan, is as follows:

"(a) That the said loan of P30,000.00 will not earn interest; that the mortgagor bound himself not to redeem during the war the property mortgaged, so that the term of one (1) year to redeem, should be counted from the date of the termination of the war and the peace actually restored in the Philippines, and the new civil government is already functioning; that the loan should be paid with Philippine Currency of the new civil government established in the Philippines." (Translation of condition one (1) appearing in said "Deed of Mortgage" Annex "A" of the complaint.

As it would appear, under the agreement of the parties, defendant could not redeem or pay the loan during the war but only within the term of one year to be counted from the date of the termination of the war, when peace has actually been restored in the Philippines, and after a new civil government has been established, in which case the loan shall be paid in the currency to be issued by the new government. This case, evidently, comes within the purview of our decision in the case of *Berg vs. Theus*, 96 Phil., 102, wherein we made the following pronouncement:

Invoking equity, defendant insists that he should be allowed to settle his obligation in conformity with the Ballantyne schedule. Equity demands, however, that he live up to the terms of his contract, which clearly contemplates payment of P80,000.00 in genuine Philippine Currency, not only because his promissory notes specifically provide that payment shall be made in Philippine Treasury Certificate' but also, because under the terms of the deed of mortgage, payment of said promissory notes shall not be demandable, prior to the declaration of the armistice between Japan and the United States." (*Italics supplied*)

Appellant, however, contends that in view of the facts and circumstances prevailing in the Philippines at the time the obligation was contracted and the fact that there was no clear and express understanding between the parties as to the currency in which the loan was to be paid by the debtor to the creditor when said loan becomes due and payable, it is but fair that he be allowed to pay obligation in accordance with the Ballantyne schedule. This contention is untenable, for it runs counter to the clear and express terms contained in the deed of mortgage executed by him in favor of plaintiff. There is no pretense that this document does not represent the real intention of the parties.

In this connection, we find it fitting to quote what we have said in a similar case where we stressed that when the parties stipulate that the payment of a loan may not be made within a fixed period after the termination of the war they enter into a speculative transaction and as such they must suffer the consequences. The following is what we said:

This is not the first time that this question has been raised. On two previous occasions this Court had been called upon to rule on a similar question and has decided that when the creditor and the debtor have agreed on a term within which the payment of the obligation should be paid in the currency in which payment should be made, that stipulation should be given force and effect unless it appears contrary to law, moral or public order. Thus, in one case this Court said: 'One who borrowed P4,000 in Japanese military notes on October 5, 1944, to be paid one year after, in currency then prevailing, was ordered by the Supreme Court to pay said sum after October 5, 1945, that is, after liberation, in Philippine currency (*Roño vs. Gomez, et al.*, 83 Phil., 890; 46 Off. Gaz. [11] 839). In another case, wherein the parties executed a deed of sale with pacto de retro of a parcel of land for the sum of P5,000 in Japanese military notes agreeing that within 80 days after the expiration of one year from June 24, 1944, the aforementioned land may be redeemed *sa ganito ding halaga*, (at the same price) the Court held that the phrase *sa ganito ding halaga* meant the same price of P5,000 in the currency prevailing at the time of redemption and not the equivalent in the Philippine currency of P5,000 in Japanese war notes'. The Court further said, 'The parties herein gambled and speculated on the date of the termination of the war and the liberation of the Philippines by America. This can be gleaned from the stipulation about redemption, particularly that portion to the effect that redemption could be effected not before the expiration of one year from June 24, 1944. This kind of agreement, is permitted by law. We find nothing immoral or unlawful in it' (*Gomez vs. Tabia*, 84 Phil., 269; 47 Off. Gaz., 641)." (*De Leon vs. Santiago Syjuco, Inc.*, 90 Phil., 311.)

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Bengzon, Montemayor, Labrador, Concepcion, Endencia, and Gutierrez David, JJ., concur.
Paras, C.J., Padilla and Barrera, JJ., took no part.

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