

FELISA R. PAEZ, ET AL., PLAINTIFFS AND APPELLANTS, VS. FRANCISCO MAGNO, DEFENDANT AND APPELLEE.

G.R. No. L-793. April 27, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

On October 1943, plaintiffs and appellants borrowed from defendant and appellee P4,000 In Japanese Military notes, with the promise to pay within a period of five years. As a security, a parcel of land was mortgaged in favor of the creditor. On September 1944 payment of this debt was offered and tendered, but was rejected by the creditor. For that reason, an action was filed on November 18, 1945 asking that the obligation be declared as already paid and the deed of mortgage be cancelled. Defendant filed a motion to dismiss upon the ground that plaintiffs have no cause of action, there being no allegation that the thing due was consigned in court, as provided by law. The motion was granted, hence, this appeal by the plaintiffs.

The order of dismissal is correct. Article 1176 of the Civil Code provides that "if a creditor to whom tender of payment has been made should refuse without reason to accept it, the debtor may relieve himself of the liability by the deposit (consignacion) of the thing due," According to article 1177, "in order that the deposit (consignacion) of the thing due may release the obligor, previous notice thereof must be given to the persons interested in the performances of the obligation." And the consignation shall be made, according to Article 1178, "by delivery to a judicial authority of the things due, accompanied by proof of tender, when required, and of notice of the deposit in other cases."

In the complaint, there is no allegation that the amount of debt was consigned in court after tender of payment had been made and rejected. Therefore, the debtor is not relieved of his liability.

The rule regarding payment of redemption prices is invoked. True that consignation of the redemption price is not necessary in order that the vendor may compel the vendee to allow the repurchase within the time provided by law or by contract. (Rosales vs. Reyes and Ordoveza, 25 Phil., 495.) We have held that in such cases a mere tender of payment is enough, if made on time, as a basis for action against the vendee to compel him to resell. But that tender does not in itself relieve the vendor from his obligation to pay the price when redemption is allowed by the court. In other words, tender of payment is sufficient to compel redemption, but is not in itself a payment that relieves the vendor from his liability to pay the redemption price.

From all the foregoing, the order appealed from is affirmed, with costs against plaintiffs and appellants.

Paras, Feria, Pablo, Perfecto, Bengzon, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

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