

BERNARDO P. TIMBOL, PLAINTIFF AND APPELLANT VS. JOHN MARTIN, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. L-3469. April 20, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

In August, 1949, in the court of first instance of Manila, Bernardo P. Timbol sued the defendant spouses to recover the value of eight promissory notes, six executed on different dates in 1944 and two in January 1945. The first two were payable in April and July 1945, but the rest were due "sixty days after the declaration of peace in the Philippines."

Having alleged in his complaint that the defendants were intending to dispose of their properties in the Philippines and thereafter return to America, the plaintiff obtained a writ of preliminary attachment.

Invoking the moratorium orders, Republic Act No. 342 and several decisions of this Court, the defendants moved for dismissal of the complaint. The point was thoroughly argued in memoranda submitted by counsel on both sides. The court dismissed the case. Hence this appeal.

Conceding that the obligations in question fall within the scope of the moratorium law, the appellant argues in support of this petition for review that as the benefits of the law may be waived, the defendants should be deemed to have made such waiver under article 1129 of the Civil Code which partly reads:

"The debtor shall forfeit all right to the benefit of the term—

- If, after contracting the obligation, it should appear that he is insolvent, unless he gives security for the debt * * *."

Main premise of plaintiff's argument is the proposition that the period for the performance of defendants' obligation in the different promissory notes, or the "terms" thereof were superseded by the Moratorium Law, which in itself is a "term". This term for defendants,—plaintiff contends—has been lost to them, in accordance with the aforesaid article 1129 of the Civil Code, for the reason that they became insolvent.

We believe that the theory of waiver or forfeiture may not be properly sustained. Firstly, article 1129 obviously contemplates a period fixed by the contracting parties. The moratorium law was not so fixed. It was not even foreseen by the parties at the time they entered into the contract.

Secondly, under article 1129 of the Civil Code the insolvency must be one occurring after the term was fixed. Here there is no proof that defendants became insolvent after the promulgation of the moratorium orders.

Thirdly, the insolvency of the debtor could not rightly be pleaded in avoidance of the moratorium, because the general inability of debtors to satisfy their obligations, their temporary insolvency so to speak, was precisely the *raison d'être* for the suspension of collection suits. And it would be plain inconsistency to declare that the debtor's financial difficulties deprive him automatically of the benefits of the moratory statute.

The above views render it unnecessary to consider defendants' additional contention that six of the promissory notes are payable only "sixty days after the declaration of peace in the Philippines", inasmuch as we adjudge that, owing to the provisions of the moratorium law this litigation may not proceed to judgment.

The decision will be affirmed. Of course the dismissal of the case will be without prejudice. Costs against the appellant.

Paras, C. J., Feria, Pablo, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

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