

THE BACHRACH MOTOR CO., INC., PLAINTIFF AND APPELLEE, VS. LEE TAY AND LEE CHAY, INC., DEFENDANT AND APPELLANT.

G.R. No. L-3885. December 17, 1951

Ponente: JUGO, J.

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JUGO, J.:

The Court of First Instance of Manila rendered judgment against the defendant Lee Tay and Lee Chay, Inc. to pay the plaintiff Bachrach Motor Co., Inc., the sum of P2,861.24, with interest at 12 per cent per annum from October 6, 1948, until fully paid, plus the sum of P715.31, representing 25 per cent of the amount due, as attorney's fees, and costs.

The case was submitted to the Court of First Instance on the following agreed statement of facts:

"1. That the plaintiff, The Bachrach Motor Co., Inc., is a domestic corporation, organized and existing in accordance with the laws of the Philippines, with its principal office and place of business in the City of Manila, Philippines, and that the capital stock of the same is owned and held by Filipino and American citizens;

"2. That the defendant, Lee Tay and Lee Chay, Inc., is likewise a domestic corporation organized and existing in accordance with the laws of the Philippines, with its principal office and place of business in the City of Manila, Philippines, and that the capital stock of the same is owned and held by Chinese nationals;

"3. That on October 11, 1941, in the City of Manila, Philippines, the defendant duly made, executed and delivered to the plaintiff a promissory note in the sum of P3,472, payable in monthly installments, the first installment being payable on November 11, 1941, and the last installment on February 12, 1943; that a true and correct copy of said promissory note is attached to this stipulation as Appendix 'A' and made an integral part hereof; that said promissory note represented the unpaid balance of one White chassis, Model 704-R, Serial No. 217787, Motor No. 13713, purchased by the defendant from the plaintiff; that there is now due and owing from the defendant in favor of the plaintiff on the said promissory note, as of October 6, 1948, the sum of P2,861.24, plus interest thereon at the stipulated rate of 12 per cent per annum, from said date until fully paid, and plus attorney's fees which the parties hereto have stipulated to be in the amount equivalent to 25 per cent of the amount due, or in the amount of P715.31;

"4. That shortly after the outbreak of the war on December 8, 1941, the same truck was among the other trucks of, the defendant that were commandeered by the USAFFE;

"5. That neither the plaintiff nor the defendant has filed official claim for the said truck to the United States Government, and have not received any compensation for the same from the United States Government;

"6. That the defendant has not filed any claim for war damage and as a consequence does not expect to receive any war damage payment from the United States Philippine War Damage Commission;

"7. That the parties desire to submit to this Honorable Court for consideration and resolution the following questions, to wit:

- (a) Whether plaintiff is entitled to payment of interests during the period of Japanese occupation, that is to say, from January 2, 1942 up to February 3, 1945;
- (b) Whether plaintiff is entitled to the stipulated attorney's fees? If so, to what extent.
- (c) Whether the commandeering of the truck referred to in paragraphs 3 and 4 above, exempts the defendant from the payment of the obligation represented by the promissory note, Appendix 'A', and
- (d) Whether the law providing for a moratorium for the payment of pre-war obligation is applicable to this case for the benefit of the defendant.

"Manila, Philippines, November 4, 1949.

"Quijano & Alidio

"By: (Sgd.) J. G. Quijano

"Atty. for the Defendant

"Rooms 320-322 Natividad Bldg.

"Escolta, Manila, Phil.

"(Sgd.) Arnaldo J. Guzman

"Atty. for the Plaintiff

"% Bachrach Motor Inc.,

"Port Area, Manila, Phil."

The defendant appealed directly to this Court, there being no questions of fact but only of law.

The defendant-appellant makes the following contentions:

- (1) That during the Japanese occupation the principal obligation, with the interest due thereon, was extinguished or at least the accrual of the interest was suspended;
- (2) That he is not liable to pay attorney's fees;
- (3) That the commandeering or seizure of the truck by the United States Armed Forces of the Far East USAFFE relieved the appellant from paying the balance of its price to the plaintiff; and
- (4) That the payment of the obligation is suspended by the Moratorium Proclamation.

There is no principle of law by virtue of which the obligation was extinguished during the Japanese occupation. However, the appellant claims that at least the accrual of the interest was stopped; that is, the indebtedness did not bear interest during the Japanese occupation. This question is purely academic, for as seen from paragraph 3 of the agreed statement of facts, the plaintiff appellee was generous enough to demand interest only from October 6, 1948, very much after the termination of the Japanese occupation.

With regard to the attorney's fees amounting to 25 per cent of the obligation, this Court, in the use of its discretion, reduces it to 10 per cent, or P286.12.

As to the theory that the seizure of the truck by the (USAFFE) relieved the appellant from paying the balance of its value to the plaintiff, it is enough to say that, in the first place, the truck became the property of the appellant when it was delivered to him by the appellee, and consequently, the appellant should suffer the loss; and, in the second place, the appellant could have filed a claim with the United States Government and he would have been paid. His negligent omission cannot be imputed to the appellee. The appellant says that it should have been the appellee who should have filed the claim; the appellee could not have done so, because it was no longer the owner

of the vehicle.

With reference to the Moratorium Proclamation which, the appellant claims, bars the collection of the obligation, it is enough to say that the Moratorium has been lifted as to obligation incurred before the war, except as to those who have filed claims with the United States Philippine War Damage Commission, which has not been done by the appellant. The moratorium cannot, therefore, be invoked by him.

In view of the foregoing, the judgment appealed from is affirmed, but the attorney's fees is reduced to 10 per cent, or P286.12. With costs against the appellant.

It is so ordered.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, and Bautista Angelo, JJ., concur.

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