

CESAR REYES, PETITIONER AND APPELLANT, VS. AGSIPINO ZABALLERO, ET AL., RESPONDENTS AND APPELLEES.*G. R. No. L-3561. May 23, 1951*

Ponente: BENGZON, J.

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During the Japanese occupation the creditor of a prewar debt reluctantly received Japanese military notes tendered in full payment of his credit. After liberation he sued for recovery of the debt, contending that his acceptance of the money was invalidated by duress. This is that suit, coming from the Court of Appeals wherein the payment was held valid and the debt fully discharged.

The creditor-appellant has submitted a brief vigorously ascribing error to the court's holding: (1) that the facts and circumstances of the case are not sufficient to constitute the duress that would invalidate the payment made by the debtor and (2) that the discharge in full with Japanese military notes of the pre-war obligation calling for payments in ten yearly installments in Philippine money or its equivalent in U. S. currency, at the option of the creditor, was properly made.

The case is adequately related by the Court of Appeals as follows:

"This case originated from a loan of P6,500 with interest at 10 per cent per annum payable in advance, made by the plaintiff-appellee, Dr. Cesar Reyes, to the defendants-appellants Zaballero on October 1, 1942. The defendants-appellants secured the payment with a first mortgage on 10 parcels of land, situated in the municipality of Lucena, Quezon Province, more particularly described in the Deed of Mortgage Exhibit A, appearing on pages 6-16 in the Record of Appeals. Paragraph 2 of said Deed of Mortgage is as follows:

" '2. Los deudores hipotecarios se obligan a pagar el capital dentro del termino de diez (10) anos contados desde esta fecha, mediante amortizaciones anuales de sbiscientos cincuenta pesos (P650) en moneda filipina 6 su erjuivalente en moneda de los EE. UU. de America a opcion del acreedor hipotecario, y satisfacer los intereses convenidos * * *."

"The installments due for 1942 and 1943, totalling the sum of P1,300 plus interest were paid in Japanese Military Scrip and the payments were unreservedly accepted. On November 30, 1944, defendant-appellant Exequiel Zaballero offered to pay the third installments and its interest which fell due in October of the same year; but plaintiff-appellee refused to accept on the ground that it was immoral and unjust that the payment be made in Japanese military notes which had considerably devaluated, and that he had an option according to the contract to have the payment made in Philippine or United States currency. After some discussion, and as plaintiff-appellee remained adamant in his refusal, defendant-appellant Exequiel Zaballero announced that the next day, December 1, 1944 he would tender the whole balance of P5,812; which he did by way of complete satisfaction of the entire indebtedness. Plaintiff-appellee, acting upon advice given by his attorneys to whom he had meanwhile resorted for guidance in his plight, received the money and executed on December 1, 1944, the notarial deed of release of the real estate mortgage (Exh. B, Rec. App., pp. 16-19) which was registered in the following day at the office of the Register of Deeds. On the same day, December 1, 1944, that he received payment, the mortgagee, now

plaintiff-appellee, executed an affidavit in secret, without defendants' knowledge, before Notary Public Alfredo Bonus (who also ratified the deed of release) stating that he had accepted under protest and "obligado por las circunstancias actuales", the payment of P5,200 plus interest in the sum of P612, and that he had deposited the whole amount paid by the debtors in the Philippine National Bank in Lucena, as trustee for the said amount. It is uncontroverted that the deposit was made in a special account which remains untouched to this day."

On the point of duress that Court makes the finding,

"The Lower Court also found that the plaintiff-appellee accepted the payment tendered by defendants-appellants because of the menacing attitude of the latter. This finding is not sustained by the preponderance of evidence and there is no proof that the plaintiff creditor was threatened into accepting the payment, except the latter's own testimony that the debtor told him that he ought to know that the Japanese disliked non-acceptance of their money.

"This averment, however, was denied by the appellant Exequiel Zaballero, who made the payment, and it is significant that in his affidavit of protest (Exh. C) the appellee creditor made no mention whatever of any threat on the part of the defendant, merely stating that he was 'obligado por las circunstancias actuales' * * *.

"The testimony of the Notary fails to show that any threat had been made to secure the assent of the appellee. That duress was required is indeed questionable, since the debtor could have judicially consigned the money if the creditor persisted in refusing it. In other words, the appellee decided to accept the payment reluctantly but voluntarily, in the expectation that he could adopt nullifying measures that would preserve his rights and not because of any undue influence exercised by another person * * *".

The appellate court declared, in short, that Cesar Reyes received the money on December 1, 1944 without any duress, without any protest, albeit reluctantly, executed the notarial document of release of the mortgage and immediately thereafter: (a) swore to an affidavit, in secret, without the debtors' knowledge, declaring that "compelled by the present circumstances" he had accepted the payment under protest, and (b) deposited the amount in the Philippine National Bank in a special account, as trustee.

Under the facts above related we do not see how the payment may be invalidated on the ground of duress.

The finding of the Court of Appeals on such factual issue is final. And from the facts declared by it we cannot, as a question of law, conclude that there was duress.

According to the Civil Code, there is duress or intimidation when one of the contracting parties is inspired by a rational and well-grounded fear of suffering an imminent and serious injury to his person or property, or to the person or property of his spouse, descendants or ascendants. (Art 1267, Civil Code.)

Describing how or why he was afraid to reject the tendered payment, appellant testified that after he had declined to receive payment, "the debtors told him that he ought to know that the Japanese disliked non-acceptance of their money" and that, as he remained adamant, the appellees induced Attorney Bonus to counsel appellant to accept the payment reminding him of "antecedents"—other cases that had reached the Provincial Fiscal's office of persons who refused to accept the Japanese military notes.

However the Court of Appeals discredited appellant's testimony on the first point. And as to the alleged advice by Attorney Bonus the Court of Appeals said nothing about it, and we are not free to look into the record to uncover new facts contradicting those found by the appellate court.

Appellant's statement in the affidavit that he received the money "obligado por las circunstancias actuales" besides being self-serving and not binding upon the adverse party, is too indefinite to justify a finding of duress, for it may refer to the circumstance that Japanese "fiat" money was then the current money and that payments of

debts were then being made with it despite its very depreciated valuation.

As it is, the important thing is that the creditor, Cesar Reyes received the money, and executed the release. What he did afterwards without the knowledge or consent of the debtors is entirely of no consequence. For that matter, he could have burned the Japanese notes, or thrown them into the sea, without in the least obliterating the legal effect of his receipt of the money.

Had the creditor interposed a downright refusal, the debtors could have made a valid consignment of the money and thus get a discharge. The creditor should not therefore, by means of the secret protest do indirectly what he could not do directly. At this juncture we are confronted with appellant's argument that the consignment could not discharge the whole indebtedness, especially in so far as the installments not yet due, because the debtor had no right to accelerate payment. There is indeed something to that contention. The creditor was entitled to interest upon the other annual installments and yet the Usury Law prohibits collection of interest in advance for more than one year. [1] However that issue not having been raised in the lower court, the debtors had no opportunity to prove that the term had been established for their exclusive benefit. Anyway the equitable consideration should not be overlooked that if the creditor had rejected the money, it could have been utilized by the debtors for other valuable or useful purposes. The money kept by the creditor is now utterly valueless.

We have to admit that the creditor accepted the money grudgingly or reluctantly. But this court has already ruled that mere reluctance does not detract from the voluntariness of one's acts.

"There must, then, be a distinction to be made between a case where a person gives his consent reluctantly and even against his good sense and judgment, and where he, in reality, gives no consent at all, as where he executes a contract or performs an act against his will under a pressure which he cannot resist. It is clear that one acts as voluntarily and independently in the eye of the law when he acts reluctantly and with hesitation as when he acts spontaneously and joyously. Legally speaking he acts as voluntarily and freely when he acts wholly against his better sense and judgment as when he acts in conformity with them. Between the two acts there is no difference in law * * *" (Vales vs. Villa, 35 Phil, 789.)

Concurring with the Court of Appeals, as we must, on the finding that the payment was voluntarily accepted, we deem it unnecessary to go into the alleged option of the creditor to select United States currency, because such voluntary acceptance was in effect a waiver of the option. Besides, our recent ruling in *Tambunting de Legarda vs. Desbarats Mialhe, etc.*, (88 Phil., 637) sufficiently answers appellant's argument premised on such option.

The appealed decision is affirmed, with costs.

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

[1] Usury Law, sections 5 and 6 as amended by Act 3998.

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