

INTERSTATE ESTATE OF CHARLES A. MCDONOUGH, PEOPLES BANK AND TRUST CO. ADMINISTRATOR AND APPELLEE VS. PHILIPPINE NATIONAL BANK, CREDITOR AND APPELLANT.

G. R. No. L-3405. November 27, 1951

Ponente: FERIA, J.

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FERIA, J.:

This is a motion for reconsideration based on two grounds.

The motion based on the first ground is really a motion for reconsideration, because the movant asks therein that the question raised in the court below and in this Court on appeal and which was decided against the movant, be considered anew. But it deserves no serious consideration for the simple reason that, as we have already shown in the decision, there was no law, ordinance or order issued by the Japanese Military Authorities prohibiting debtors, like the late Charles A. McDonough, to pay their obligation to the appellant Philippine National Bank, which was not an enemy bank; contrary to the appellee's contention. If the Bank appellant did not chose to secure the approval by the Japanese Military Authorities to appellant's action against the deceased, it was because the bank did not deem it necessary to do so for the debtor was solvent. It was for the latter to have secured the approval of the Japanese Military Authorities if he wanted to pay his obligation and avoid paying the interests thereon.

The so-called motion for reconsideration based on the second ground is not really a motion for reconsideration, for to reconsider a decision is to consider and decide anew a question previously raised, submitted to and decided by the Court. The movant had never before submitted or invited the attention of this Court to the applicability of Republic Act No. 401 on which the so-called motion for reconsideration is based, and for that reason we have not passed upon that question in our decision. It is true that when said Act was approved on June 26, 1949, the present case was already pending on appeal in this Court, and appellee's brief had been filed seven months before that date; but this case was set for hearing, argued and submitted for decision in April, 1950, and it was decided on April 26, 1951. So although the appellee was not bound to make any assignment of error of the lower court in his brief in support of the decision appealed from, it was incumbent upon the appellee[*] to point out in his brief, or amended brief if necessary, or invite the attention of this Court to the provisions of said Republic Act No. 401 if it were applicable and favorable to the appellee. Undoubtedly, the reason for the appellee's failure to do so is that said Republic Act, "which condones unpaid interests accrued from January 1, 1942, to December 31, 1945, aside from not being applicable to the present case, is against the theory advanced in-the appellee's brief. If it was necessary to enact said Act in order to condone the payment of interests accruing during the Japanese occupation, it was because the payment of such interests was demandable. Condonation of interest presupposes obligation to pay it.

This Court cannot apply Republic Act No. 401. to the present case even if the appellee had invited our attention to it, because no evidence was produced by both parties except the promissory note and the claim of the appellant bank against the late Charles A. McDonough for the payment thereof together with interest. There is nothing in

the record to show that the late Charles A. McDonough "was unable to pay his obligation which became due and demandable, or interests which should have been paid during the period from Jan. 1st, 1943, to December 31st, 1945, because of the refusal of the creditor to accept payment (a); because the debtor was prevented from doing so by his imprisonment or detention by the enemy resulting in his inability to pursue his normal work (b); or because of penury caused by the ravages of the war, financial restrictions imposed by whatever authority, or loss of his ordinary sources of income or control over them as a result thereof (c), "as provided in Section 2 of Republic Act No. 401. It is obvious that is not applicable Subsection (d) of said Section 2, -which provide for condonation when the debtor was unable to pay because the assets of the creditor were under the control of the enemy and or administered through the so-called Enemy Alien Property Custodian or other enemy instrumentality inasmuch as the assets of the creditor Philippine National Bank "were not under such, control. Besides, according to Section 1 of said Act, the purpose of the law or the policy of the State in extending the condonation of interests contemplated in Republic Act No. 401, is "the rehabilitation of those "who have suffered the ravages of war * * * in order to afford opportunities to debtors of the Government or Government-owned or controlled corporations to rehabilitate themselves, and to enable them to pay their pre-war obligations under the terms and conditions beneficial to them."

If the attorneys for the appellee believe that the late Charles A. McDonough was unable or had no money to pay or interests his obligation which should have been paid during the period of from January 1, 1942, to December 31, 1945, which amounted in all to less than four thousand (P4,000) pesos, because of penury caused by some of the causes enumerated in Section 2, Subsection (e), or because he could not freely pursue his normal work or law practice under Subsection (b) of Republic Act No. 401, on which the dissenter relies, without showing that the late McDonough had then no money or property to pay his debt or the interest thereon to the Bank, and that the condonation of said obligation and interests of about nine hundred (P900) pesos accrued during the said period of time would rehabilitate the late Charles A. McDonough, who is already dead since the year 1945, they might have filed or may file a motion for new trial on the ground of newly discovered evidence, before the Judgment of this Court has become final, under Section 1, Rule 55, in connection with Section 1, Rule 58, of Rules of Court. The newly discovered evidence would be the approval of Republic Act No. 401 of June 29, 1949, and the evidence which should show that the present case comes under said Section 2, of Republic Act No. 401.[*]

In the hearing of the motion for reconsideration the attorney for the creditor assailed the constitutionality of Republic Act No. 401, set up for the first time in the motion for reconsideration of the decision of this Court on appeal, and in order that said question may be considered and decided in connection with Act 401 by this Court, it should be set up in the new trial if a motion for new trial is filed in time and granted in the present case, But if the motion is denied there would be no need for considering and passing upon that question.

Motion for reconsideration is therefore denied.

Pablo, Bengzon, Reyes and Bautista Angelo, JJ., concur.

[*] *Relativo vs. Castro, et al.*, 43 Off. Gaz. (No.1) 106, 111 citing *Lucero vs. de Guzman*, 45 Phil. 652.

[*] *U. S. vs. Repollo, et al.*, 2 Phil., 195.

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