

FULGENCIO L. MARIANO, PLAINTIFF-APPELLANT, VS. REGINO J. DANNUG AND PLACIDA D. DANNUG, DEFENDANTS-APPELLEES.

G.R. No. L-2806. July 20, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

On January 9, 1948, the plaintiff Fulgencio L. Mariano filed in the Court of First Instance of Manila, a complaint to collect a promissory note for the sum of P4,000.00 executed by the defendants in his favor on December 9, 1941.

The defendants moved to dismiss, invoking the moratorium established by Executive Order No. 25, as amended by Executive Order No. 32.

Following the decision of this court in *Ma-ao Sugar Central Co., Inc. v. Barrios* (G.R. No. L-1539), the Hon. Buenaventura Ocampo, Judge, dismissed the case.

Hence this appeal.

First contention of appellant is that the said executive orders were applicable only during the period of emergency, and that such emergency has already passed. The answer to this is Republic Act No. 342 which reaffirms the moratorium orders. Under the provisions of said act, debts contracted during the Japanese-American war are subject to the debt moratorium.

Appellant's second contention is that the suspension decreed by the moratorium should apply only to the execution of whatever final judgment may be obtained in the action, but that it does not prevent the proceedings from being regularly carried out until final decision. That contention has been rejected in *Uy v. Kalaw*, G.R. No. L-1830 (Dec. 31, 1949), wherein we said:

"However, it is the contention of the appellant that the orders merely stop the execution of any judgment that may be obtained against the debtor, but they do not prohibit the hearing of any complaint to establish the creditor's right, especially where the debtor denies liability. The point must be decided against the appellant in view of our decisions in *General v. De Venecia* (44 Off. Gaz., 4913) and in *Ma-ao Sugar Central Co., Inc. v. Hon. Conrado Barrios*, G.R. No. L-1539.

"In the first, the Court, in banc, said:

"It is our view that, upon objection by the debtor, no court may now proceed to hear a complaint that seeks to compel payment of a monetary obligation coming within the purview of the moratorium. And the issuance of a writ of attachment upon such complaint may not, of course, be allowed. Such levy is necessarily one step in the enforcement of the obligation, enforcement which, as stated in the order, is suspended temporarily, pending action by the Government.

"In the second, a division ruled that:

"While the debt moratorium is in force the defendant-petitioner has no obligation yet to pay the plaintiffs, and the latter can not file a suit against him in the courts of justice requiring him to recognize his debts to to the plaintiffs and to pay them (after the moratorium) xxxxxxxxxxxxxxxx. There is no such action to compel defendant to acknowledge or recognize his debt which is not yet payable, distinct and different from the action for recovery or payment of a debt already due and payable, against the debtor who refused to pay it. To allow the plaintiffs' action and grant the relief demanded in the complaint, would be to compel the defendant to pay legal interest on the amount claimed from the filing of the said complaint, as well as the attorney's fees of 10% of the sum due thereon as stipulated, and the costs of the suit, as if the defendant's obligations to the plaintiffs were already payable and he had failed or refused to pay them, x x x x x said Executive Order No. 25 as amended by Executive Order Mo. 32 not only suspends the execution of the judgment that the court may render so far as it orders the payment of debts and other monetary obligations, as stated in the resolution in said case, but also suspends the filing of suit in the courts of justice for the enforcement of the payment of debts and other monetary obligations therein referred to, if timely objection is set up by the defendant debtor.

"It is true that in *Moya v. Barton* (45 Off. 237), we affirmed a judgment that required the defendant to pay rentals for the period from November, 1944, to September, 1945, although we suspended the execution of the payment of rentals accruing up to May 10, 1945. But that position was adopted because the complaint sought to enforce an obligation, part of which was covered by the moratorium order and part was not so covered. The instant case is different, inasmuch as the whole obligation is included within the moratorium decree."

Judgment affirmed, with costs.

Ozaeta, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

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