

## MODESTO VALERO, PLAINTIFF AND APPELLANT, VS. FRANCISCO SYCIP, DEFENDANT AND APPELLEE.

*G.R. No. L-11119. May 23, 1958*

Ponente: REYES, J.B.L., J.

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### REYES, J.B.L., J.:

On August 1, 1944, defendant-appellee Francisco Sycip received from Dr. D. Sanciango the sum of P250,000 in Japanese military notes, and as evidence of the loan, the former signed and delivered to the latter the following promissory note:

"Value received, I promise to pay in or about the 1st day of August, Nineteen hundred and forty-five (1945), Dr. D. Sanciango the sum of Two Hundred and Fifty Thousand Pesos (P250,000.00) in Philippine Currency that the laws then authorize a debtor to tender and require creditor to receive, with interests at the rate of Eighteen Thousand Pesos (P18,000) yearly, payable in advance every three (3) months hereafter.

Should I choose aid decide to pay this ay indebtedness to Dr. D. Sanciango within one year from the date of this instrument, then I agree to pay said Dr. D. Sanciango the sub of Three Hundred Thousand (P300,000.00) Pesos in Philippine Currency of legal tender at the time. I also agree to pay Dr. D. Sanciango, at his request, by way of loan an additional amount not exceeding Five Thousand Pesos (P5,000.00) monthly.

Manila, Philippines, 1st of August, 1944." (Exh."A") On July 19, 1954, Dr. D. Sanciango assigned the above note to plain tiff-appellant Modesto Valero, who, on the basis thereof, filed th« present action in the Court of First Instance of Manila against defendant-appellee Francisco Sycip for the payment of P250,000, plus interest at the rate of P18,000 a year beginning August 1, 1944, P5,000 attorney's fees, and coats.

In his first answer, defendant-appellee interposed the defenses that the note provides for the payment of usurious interest and that the loan in question having been contracted on August 1, 1944 when the value of Japanese military notes had greatly depreciated, it would be unconscionable to require payment of the sane amount in genuine Philippine currency. Later, with the permission of the Court, defendant filed an amended answer therein it was alleged as an additional special defense "that the intention of the parties at the tine the note was effected (August it 1944) was not to pay in genuine Philippine currency on the basis of one to one as plaintiff would now have it appear".

After trial, the lower court rendered judgment holding that the loan in question should be payable in accordance with the Ballantyne Scale of Values, and ordered defendant to pay plaintiff "the sum of P10,000.00 in actual currency, with interest thereon at P720.00 a year from August 1, 1944, until fall payment, and costs of this action". From this judgment, plaintiff appealed to this Court, insisting that defendant should be made to pay the full amount of P250,000 plus annual interest of 145,000 in genuine Philippine currency, which was the legal tender existing on or about August 1, 1945.

We see no error in the judgment appealed from. The rule is already settled that where a debtor could have paid his obligation at any time during the Japanese occupation, payment after liberation must be adjusted in accordance

with the Ballantyne schedule (*De Asis vs. Agdamag*, G.R. L-3709, Oct. 25, 1951; *Ang Lam vs. Peregrina*, G.R. L-4871, Jan. 26, 1953; *Wilson vs. Berkenkotter*, G.R. L-4476, April 20, 1953, 49 O.G. No. 4, 1401; *Samson vs. Andal de Aguila*, G. R. L-5932, Feb. 25, 1954). While the first paragraph of the promissory note Exh. "A" provides for payment in or about the first day of August, 1945, its second paragraph, however, gives the debtor the option to pay his indebtedness at any time within one year after its date, August 1, 1944. It is thus clear that the note could have been paid during the Japanese occupation; hence, the lower court correctly adjusted the amount payable by defendant-appellee in accordance with the Ballantyne scale of values.

Appellant claims that defendant-appellee's obligation to pay under the note Exh. "A" is alternative, and his failure to avail himself of the opportunity to pay his loan during the Japanese occupation subjected him to the provisions of the first paragraph of the note, pursuant to which he must discharge the full amount of his debt in genuine Philippine currency, as it was the currency prevailing "in or about the 1st of August, Nineteen hundred and forty-five". The argument is untenable. First, because the obligation is not in the alternative but facultative, since the option to pay within the first year was a privilege granted to the debtor, not a duty imposed upon him. Second, the mere failure of the defendant to pay his debt during the occupation, as he was authorized to do under the second paragraph of the note, does not change the fact that he had the option to pay, and could have paid, during that period. While the creditor, herein appellant, could not have demanded payment of the note before August 1, 1945, such circumstance did not preclude the defendant from settling his obligation at any time after August 1, 1944, in Japanese war notes, if he had wanted to.

Nor does the failure of defendant-appellee to discharge his debt during the occupation obligate him to settle its full amount in genuine Philippine currency, the legal tender at the time of payment, as contended by appellant. For as pointed out by Mr. Justice Peria in his concurring opinion in the case of *Gomez vs. Tabia*, 47 O.G. 641, cited with approval by this Court in subsequent cases, the debtor's mere failure to accomplish payment during the Japanese occupation did not make him liable to pay, as damage or penalty, the difference between the value of the Japanese war notes at the time the obligation became payable and of the Philippine currency at the time of payment. To sustain appellant's position would have exactly the effect of imposing such penalty upon appellee for not having discharged his debt during the occupation as authorized by the second paragraph of the note Exh. "A". Such penalty becomes the more inequitable when it is taken into account that the debtor's privilege to pay in military script up to August 1, 1945, was cut short upon liberation, in early 1945, through no fault of the debtor.

Lastly, appellant avers that this case falls under the rule of par. (e) of the concurring opinion of Mr. Justice Feria in the *Gomez vs. Tabia* case, *supra*, to the effect that where the parties had stipulated for payment after a certain period had elapsed and not earlier, and such period elapsed after the liberation of the Philippines, the obligation shall be discharged at the rate of one genuine Philippine peso for one Japanese peso "because in such case the implied agreement of the parties in accordance with law would be that the obligation shall be paid in legal tender at the time it becomes payable, that is, \* \* \* in Philippine currency if after the liberation". This doctrine does not, however, apply in the present case, for under the note in question, the parties did not stipulate that it shall be paid only on August 1, 1945 and not earlier. On the contrary, the defendant was, as previously stated, given the option to discharge the obligation after August 1, 1944, or during the Japanese occupation. The rule applicable to his obligation is, therefore, paragraph—

(d) of the sane opinion of Justice Feria, to wit:

"(d) If the parties had stipulated that the obligation shall be payable within a certain period of time, that is, at any time within that period, and the whole or part of the period coincides with the Japanese occupation and, therefore, the debtor might have paid his obligation in Japanese war notes during the occupation, the above-stated rule (a) shall be applied; because the debtor had the right to pay his obligation in Japanese war

notes at the time it became payable, and his mere failure to pay, as damages or penalty, the difference between the value of the Japanese war notes at the time the obligation became payable and of the Philippine currency at the date of the payment."

the rule (a) referred to being—

"(a) An obligation incurred or payable during the occupation shall be revalued on the basis of the relative value of the Japanese military notes in Philippine currency at the date the obligation was payable, according to Ballantyne sliding scale of value in the absence of evidence to the contrary. \* \* \*"

WHEREFORE, the decision appealed from is affirmed, with costs against appellant Modesto Valero.

So Ordered.

Paris, C.J. Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ.concur

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