

**GREGORIA ARANZANSO, PLAINTIFF AND APPELLANT, VS.
GREGORIO MARTINEZ, DEFENDANT AND APPELLEE.***G. R. No. L-3468. April 25, 1951*

Ponente: PARAS, C.J.

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On July 22, 1949, the plaintiff filed in the Court of First Instance of Manila an action for the purpose of recovering from the defendant a debt of P15,000, alleged to be evidenced by a promissory note executed by the defendant on August 16, 1939. Under the note, the indebtedness is payable when the price of copra is good, but if the plaintiff needs the money, the defendant is to find means for paying the plaintiff. The complaint alleges that the indebtedness is payable on demand, and that the note was in 1941 presented to the defendant for payment. The defendant filed a motion to dismiss, alleging that the court has no jurisdiction over the subject matter of the suit and that the complaint states no cause of action. In discussing these grounds, the defendant alleges that he had filed with the United States Philippine War Damage Commission a claim for damages which was still pending action and that, in view of the debt moratorium provided in Republic Act No. 342, the obligation evidenced by the promissory note in question is not yet due and demandable. After hearing, the Court of First Instance of Manila issued an order dismissing the complaint without prejudice, from which the plaintiff has appealed.

Section 2 of Republic Act No. 342 provides that "all debts and other monetary obligations payable by private parties within the Philippines originally incurred or contracted before December 8, 1941, and still remaining unpaid, any provision or provisions in the contract creating the same or in any subsequent agreement affecting such obligation to the contrary notwithstanding, shall not be due and demandable for a period of eight (8) years from and after settlement of the war damage claim of the debtor by the United States Philippine War Damage Commission, without prejudice, however, to any voluntary agreement which the interested parties may enter after the approval of this Act for the settlement of said obligations."

The obligation of the appellee alleged in the complaint having been contracted on August 16, 1939, or before December 8, 1941, it is logically covered by the debt moratorium. We have heretofore sustained dismissals, upon motions of the defendants, grounded on the debt moratorium. (General vs. De Venecia, et al., 78 Phil, 780; 44 Off. Gaz., 4912; Ma-ao Sugar Central Co., Inc. vs. Barrios, et al., 79 Phil., 666, 45 Off. Gaz., 2444; Uy vs. Kalaw Katigbak, December 3, 1949; G. R. No. L-1830; Mariano vs. Dannug, July 20, 1950, G. R. No. L-2806.)

There is no merit in the contention of appellant that, since appellee's motion to dismiss alleges that the complaint does not state a cause of action, the lower court should not have considered the fact that the appellee is a war damage claimant because it is not alleged in the complaint. The motion to dismiss specifically invokes the debt moratorium, and in order for it to prosper under Republic Act No. 342, the appellee, without denying the allegations of the complaint, had to allege and prove that he had filed a claim with the War Damage Commission. (Intestate Estate of Dairo vs. Patubo, 83 Phil., 605; 46 Off. Gaz., [Supp. No. 11], 58; Community Investment and Finance Corporation vs. Reyes, Sept. 19, 1950, G. R. No. L-2111.)

Contrary to the position of appellant, it is not necessary, so as to entitle a debtor to the benefits of the debt moratorium, that a war damage claim be actually paid and settled. While "settlement of the war damage claim of the debtor" marks the starting point of the 8-year moratorium period, it does not exclude from the beneficent scope of the law a debtor whose claim is still pending and not disallowed, because the latter is as much a war sufferer as the former intended to be protected by Republic Act No. 342.

Appellant's suggestion that the promissory note in a question was novated in August, 1948, in that the appellee promised to pay in 1950 and to put up securities, deserves no serious consideration. The complaint is based on the note executed on August 16, 1939, and makes no motion whatsoever of the alleged novation. The suggestion, made for the first time in appellant's opposition to the motion to dismiss, is obviously an afterthought.

The appealed order is affirmed, with costs of both instances against the appellant. So ordered.

Feria, Pablo, Bengzon, Padilla, Jugo and Bautista Angelo JJ., concur.

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