

ENGRACIO DE ASIS, PLAINTIFF-APPELLANT, VS. JOSE V. AGDAMAD ET AL., DEFENDANTS-APPELLEES.*G. R. No. L-3709. October 25, 1951*

Ponente: PARAS, C.J.

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On August 19, 1949, the plaintiff filed an action in the Court of First Instance of Manila to recover from the defendants a loan of P10,000.00, secured by a mortgage, and evidenced by a promissory note executed by the defendants on August 15, 1944, providing that the loan was payable on or before August 15, 1947, with interest at seven per cent per annum, compounded and payable semi-annually, and that, in case of non-payment on the date of maturity, the sum of P1,000.00 would be paid by the defendants for costs, attorney's fees and other collection expenses. The defendants admitted the existence of the loan, but invoked the Debt Moratorium and expressed their willingness to pay the debt in an amount adjusted under the Ballantyne scale of values. After trial, judgment was rendered against the defendants for the sum of P400.00, without interest and attorney's fees. The court applied the Ballantyne scale which fixes twenty five pesos in Japanese war notes as the equivalent of one Philippine peso in August, 1944. From the judgment of the Court of First Instance of Manila, the plaintiff has appealed.

Contrary to appellant's principal contention, the trial court correctly applied the Ballantyne scale. The stipulation of the parties being that the loan was payable on or before August 15, 1947, the same could be paid at any time during the Japanese military occupation. Appellees' failure to do so is not a justification for requiring them to pay the full amount of the loan in the currency on the date of payment. In *Hilado vs. De la Costa*, 46 O. G. 5472,[1] we allowed only recovery under the Ballantyne scale for "contracts stipulating for payments presumably in Japanese war notes." In *Soriano vs. Abalos*, 47 O. G. 168[2] we held: "Petitioner is not liable to pay now in Philippine Currency the same value of pesos in Japanese war notes to which he was sentenced in December, 1944. He is liable only to pay the equivalent which may be determined by means of the Ballantyne scale of values."

The cases of *Roño vs. Gomez*, 46 O. G., Supp. 11, 339[3] and *Gomez vs. Tabia*, 47 O. G. 641[4] invoked by the appellant, are not in point, because the obligations therein involved were payable after the liberation. The rules laid down by Mr. Justice Feria in his concurring opinion in the *Gomez vs. Tabia* case, also cited by the appellant, far from aiding his side, fully support the appealed judgment, because Mr. Justice Feria stated that "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 a 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) [payment according to the Ballantyne scale of values] 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 it would not, as above stated, make him liable 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."

We note that the trial court adopted the value of the Japanese war notes in Philippine pesos in August, 1944, and

not in the month Immediately preceding the I liberation when the war notes were almost worthless, and this action of the trial court was decidedly in favor of the appellant. In view whereof, we are inclined to overrule appellant's insistence in recovering interest.

The claim for stipulated attorney's fees cannot also be allowed. The appellees properly set up the defense of moratorium, and although the trial court failed to rule thereon and no appeal was taken by the defendants, because the latter are willing to pay the amount of the judgment at any time, they cannot be said to have failed to pay their indebtedness on time, in view of said moratorium.

Feria, Pablo, Bengzon, Tuason, Reyes, Jugo and Bautista Angelo, JJ., concur.

[1] 83 Phil., 471.

[2] 84 Phil., 206.

[3] 83 Phil., 890.

[4] 84 Phil., 269.

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