

B. J. SERVER, PLAINTIFF-APPELLEE, VS. EPIPANIA CAR, DEFENDANT-APPELLANT.

G. R. No. L-22676. November 23, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On January 22, 1945, Epifania Car obtained from B.J. Server a loan in Japanese currency. She executed a promissory note providing that the loan was to be paid in Philippine currency in the amount of P2,500.00 after the termination of the hostilities of the Greater East Asia War in the Philippines:

"Two years from and after the cessation of hostilities of the Greater East Asia War in the Philippines, for value received, I promise to pay B. JOSEPH SERVER, or order, in the City of Manila, the sum of TWO THOUSAND FIVE HUNDRED PESOS (P2,500.00), Philippine Currency, subject to the following conditions:

"1. That I shall not be obliged to make payment and B. JOSEPH SERVER shall not be obliged to receive payment except until after the termination of hostilities of the Greater East Asia War in the Philippines;

"2. That I shall pay an interest on the principal at the rate of SIX (6%) PER CENT per annum from and after the termination of hostilities of the Greater East Asia War in the Philippines;

"3. That in case of failure on my part to pay on time that is, within two years from and after the termination of hostilities of the Greater East Asia War in the Philippines, I shall pay an additional sum equivalent to twenty (20%) per cent on the principal, owing as penalty for attorney's fees and costs of collection whether incurred or not.

"(SGD) EFIPANIA CAR"

As the parties stipulated in this case, the hostilities of the afore-stated war terminated on September 8, 1951 (Stip. of Facts, par. 1, R.A., p. 35; Amended Complaint, par. 2, R.A. p. 22), which is the date when the formal treaty of peace was signed in San Francisco, California, U.S.A. (Quiogue v. Bautista, G.R. No. L-13159, February 28, 1962).

As security for the payment of the obligation, the debtor mortgaged a parcel of land situated in Barrio Ogob, Municipality of Malinao, Province of Albay. Since then, no payment has been made. And Server did not reply to Epifania Car's offer sometime in 1953 to pay according to the Ballantyne Scale of Values.

Server filed his amended complaint on December 8, 1955 before the Court of First Instance of Albay for the recovery of P2,500.00 with 6% interest per annum from February 5, 1945, with further 20% of the indebtedness as attorney's fees and in case of non-payment, for the fore closure of the mortgage. Epifania Car filed an amended answer with counterclaim denying having breached the contract and setting up good faith in offering to pay according to the Ballantyne Scale of Values considering that she received merely Japanese money.

On November 8, 1963, the Court of First Instance of Albay declared that by the terms of the promissory note, and

in line with the decisions of the Supreme Court, payment should be in Philippine currency on a peso-to-peso basis.

Defendant was ordered to pay Server P,500.00 with 6% interest from September 8, 1951 plus 20% of the indebtedness due as attorney's fees, and the court further ordered, in case of failure of payment, the foreclosure sale of the mortgaged land. Defendant thereupon appealed to Us, submitting a question purely of law, bearing upon the determination of the mode of payment of the monetary obligation.

The point in controversy has been settled by Us in several previous rulings. And in *Aguilar v. Miranda*,^{[[1]]} We consolidated the rule regarding payment of monetary obligations incurred during the Japanese occupation. For convenience it is here delineated as follows:

First.- "if a monetary obligation was contracted during the Japanese occupation and is payable within a specified period which covers partly said occupation and partly after liberation such that its payment may be made at any time before the termination of the war, the repayment should be made in Philippine currency convertible under the Ballantyne Scale of Values and not entirely at the time of payment."

Second.- "If the indebtedness was expressly agreed upon to be paid within a period the maturity of which falls after the war or after the liberation, unless there is a clear agreement to the contrary, the repayment can not be made under the Ballantyne schedule but should be made in accordance with the currency then prevailing at the time of payment."

This second part of the rule was applied in *Vda. de Generosa v. Court of Appeals*, G.R. No. L-19563, December 24, 1964, and in *Quiogue v. Bautista*, G.R. No. L-13159, February 28, 1962.

There in the *Quiogue* case We said that "it is a well-settled rule in this jurisdiction that where the obligation incurred during the Japanese occupation was made payable after a fixed period, the maturity falling after liberation, the promissor must pay in Philippine currency the same amount stated in the obligation, that is, the obligation must be settled peso-for-peso in Philippine currency."

It is expressly provided in the promissory note signed by the defendant that payment be "after the termination of hostilities of the Greater East Asia War in the Philippines," obviously referring to the hostilities between the United States and Japan. The payment of 6% interest per annum and the 20% of the indebtedness as attorney's fees and costs of collection in case of non-payment is also provided in the promissory note. And these provisions are referred to in the mortgage deed as binding. Rightly, therefore, did the court a quo follow the above-stated stipulations of the contract, which are valid, and rule that the obligation should be paid peso-for-peso in present Philippine currency.

Appellant, invoking the principle that, no one should be enriched at the expense of another, advances the theory that since she received Japanese currency, payment in present Philippine currency would be unfair and against morals and public policy. Such contention is not tenable. For as We said in *Dizon v. Arrastia*, L-15383, November 29, 1961:

"Contracting parties are free to stipulate on the currency in which their respective obligations shall be settled and whenever, pursuant to the terms of an agreement, an obligation assumed during the Japanese occupation is not payable until liberation of the Philippines, the parties to the agreement are deemed to have intended that the amount stated in the contract be paid in such currency as may be legal tender at the time when the obligation becomes due."

WHEREFORE, the judgment appealed from is hereby affirmed, with costs against appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] G.R. No. L-16510, November 29, 1961.

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