

**TESTATE ESTATE OF THE LATE ISABEL DE ROHDE THRU THE
EXECUTOR ANSELMO H. SHOTWELL, PLAINTIFF AND APPELLEE, VS.
INTESTATE ESTATE OF THE LATE MANUEL URQUICO,
REPRESENTED BY AMALIA ...**

G.R. No. L-6833. October 10, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal by the defendants from the decision of the Court of First Instance of Tarlac dated April 18, 1953. Because of the amount involved the appeal was brought directly to this Tribunal. There is no dispute as to the following facts. To secure the payment of the sum of P77,500 which he owed William J. Rohde, Manuel Urquico executed on October 25, 1927 a mortgage (Exhibit A) on his properties covered by Transfer Certificates of Title Nos. 126 and 1275. The loan bore interest at 10 % per annum. The mortgage was inscribed on the corresponding transfer certificates of title. Because of partial payments made on account thereafter a document (Exhibit B) was executed by Urquico on August 26, 1938, whereby the debt was reduced to P71,743, payable in four years and the interest was likewise reduced to 8 per cent per annum, with the condition that in case of foreclosure the mortgagor would pay for attorney's fees an additional amount equivalent to 10 per cent of the balance due. Because of the reduction in the amount of the debt, the properties covered by transfer certificate of title No. 1275 were released and only those covered by transfer certificate of title No. 126 remained to answer for the debt and document (Exhibit B) was registered and inscribed on said certificate. The owner's duplicate copy of this certificate of title was delivered, by the mortgagor to the mortgagee in whose possession it remained continuously until it was produced as evidence in court. After the execution of the second mortgage (Exhibit B) Urquico made several payments on account of the interests between 1938 and 1941 amounting to about P7,500.

On May 1, 1944 Urquico sold the mortgage property covered by transfer certificate of title No. 126 and another property covered by transfer certificate of title No. 486, to the defendants Lucila Cruz, Jose Perez, Margarita Prodon, and Graciana de Llamado married to Crispin Llamado it being stipulated that the vendees assumed the mortgage indebtedness in favor of Rohde, which obligation was then estimated to be about P90,000 with the corresponding unpaid interest thereof. This deed of sale (Exhibit 2) was entered in the Day Book of the Register of Deeds of Tarlac on May 12, 1944. From here on, the facts are rather controversial.

According to the evidence for the defendants (vendees) in April, 1944 mortgagor Urquico went to see mortgagee Rohde in order to pay the mortgage debt but the latter refused to accept payment. Although Rohde was an American citizen he was not interned presumably because of his advanced age. After the visit of Urquico, "Rohde sent for his son-in-law Anselmo H. Shotwell married to his daughter Inma and entrusted to him all his papers including the mortgage documents, with instructions that under no condition should he surrender the same to anyone; neither was he to accept payment from anyone in connection with the mortgage. About the last week of April, 1944 Urquico went to see Shotwell for the purpose of borrowing the owner's duplicate transfer certificate of title No. 126 because he said he was thinking of selling the property covered by said title but Showtell

answered that his father-in-law (Rohde) would not agree to such a sale inasmuch as his interest would be adversely affected thereby, and that he being an enemy alien at the time he was in no position to defend his interests. Then, as we have already stated, on May 1, 1944, Urquico sold the property under transfer certificate of title No. 126, and because of the refusal of Shotwell to deliver the owner's duplicate certificate of title entrusted to him by his father-in-law, the deed of sale (Exhibit 2) was not annotated on said owner's duplicate certificate of title; but as already said, it was duly entered in the Day Book of the office of the Register of Deeds of Tarlac.

According to Crispin Llamado, husband of one of the defendants-vendees, a week or two after the bombing of Manila by the Americans on September 21, 1944, he went to Shotwell and asked him if he was willing to accept payment of the debt owing to Rohde and covered by the mortgage but Shotwell claiming that he was a mere depositary of the papers of his father-in-law, said that he had no authority to do anything, much less accept payment. He also said that the Japanese war notes had by then greatly depreciated in value. Due to this refusal to accept payment of the mortgage debt, and because the vendees had assumed the mortgage obligation, they thought of making a judicial consignation of the amount of the debt and of filing a suit against the mortgagee but they also realized that said mortgagee was an American citizen and there was then a prohibition against bringing actions against enemy aliens without previous permission from the occupation government; so, they sent a letter to Executive Secretary Emilio Abello asking for permission to file the corresponding action against Rohde. On October 3, 1944, Executive Secretary Abello denied the request but told the vendees that they may pay the mortgage indebtedness to the Enemy Property Custodian of the Imperial Japanese Forces who will issue in their favor the corresponding certificate of payment, and that upon the registration of said certificate of payment, the mortgage lien will be cancelled by the Register of Deeds of Tarlac. On October 28, 1944, according to Crispin Llamado he went to the office of the Enemy Property Custodian of the Imperial Japanese Forces, and paid the mortgage indebtedness there which indebtedness computed on the basis of P71,000 plus the corresponding interest amounted to around P97,000. The office of the Enemy Property Custodian issued the corresponding certificate of payment in Japanese characters (Exhibit 4-a) with an official English translation thereof, certified copy of which is Exhibit 4. Later this official translation was examined and certified correct by Romualdo Taccad and Yasumasa Shimada, Official court interpreters-translators of the National War Crimes Office, Hdq, National Defense Forces (Exhibit 4-c). On November 17, 1944, the certificate of payment (Exhibits 4, 4-a) and the deed of sale of May 1, 1944 (Exhibit 2) were registered in the office of the Register of Deeds of Tarlac and annotated on the transfer certificate of title No. 126, and the latter certificate was then cancelled and Transfer Certificate of Title No. 20666 was issued to the vendees. Because the document concerning the mortgage in favor of Rhode, including the owner's duplicate certificate of title No. 126 were delivered to him and had always been in his possession and that of his son-in-law Shotwell, said owner's duplicate certificate was not submitted to the office of the Register of Deeds, as a result of which, there appears no annotation on it of the sale of the land to the defendants as well as the release of the mortgage based on the certificate of payment issued by the Enemy Property Custodian (Japanese).

Rohde died on July 16, 1945, and after an extra judicial partition of his estate the mortgage credit in question was adjudicated to his widow Isabel Salgado de Rohde (Exhibit J). It is claimed by the appellee that Rohde and his wife Isabel and their daughter and son-in-law had absolutely no knowledge of the release of the mortgage and that it was only when Shotwell about the latter part of 1945 when he went to Tarlac to find out what had happened to the properties mortgaged to his father-in-law that he saw for the first time in the office of the Register of Deeds the notation on the original Transfer Certificate of Title No. 126 regarding the sale of the property and its mortgage release. After that alleged discovery of the release of the mortgage Isabel filed an adverse claim with the Register of Deeds of Tarlac which was inscribed on Transfer Certificate of Title No. 20666, the new transfer certificate of title issued to the vendees, and on February 23, 1946 she filed a complaint which initiated these

proceedings praying for judgment: (1) declaring that whatever payment had been made by defendant to the Imperial Japanese Army is null and void; (2) declaring that the supposed certification of payment issued by the Japanese Army is also null and void; (3) declaring that the inscription on Transfer Certificate of Title No. 126 of the Deed of Sale in favor of defendants is also void insofar as the mortgage credit of Rohde and of plaintiff are concerned; (4) declaring that Transfer Certificate of Title No. 20666 is of no effect; (5) ordering defendant Urquico to pay the plaintiff the mortgage indebtedness plus interest, attorney's fees and costs; (6) ordering that in case defendant failed to pay the mortgage credit within the period specified, the properties be sold at public auction; and (7) other remedies which law and equity may grant.

Urquico as defendant in the case disclaimed any liability on the mortgage because the mortgage obligation was assumed by his vendees and for his protection he filed a third party complaint against said vendees. The defendants-vendees claim payment of the mortgage indebtedness as proven by the certificate of payment issued by the Enemy Property Custodian. After hearing, the trial court rendered judgment, declaring the payment of the mortgage debt at the office of the Enemy Property Custodian of the Japanese Imperial Forces and the certificate of payment issued by is as well as its registration in the office of the Register of Deeds as not valid and as ineffective to extinguish the mortgage debt, and that said mortgage debt was still subsisting; that the sale executed by Urquico in favor of the defendants-vendees and the new transfer certificate of title No. 20666 were invalid, but subject to the mortgage and it ordered the Register of Deeds of Tarlac to transcribe on Transfer Certificate of Title No. 20666 the annotation appearing on Transfer Certificate of Title No. 126 concerning the mortgage in favor of Rohde. The trial court further ordered the defendants to jointly and severally pay or deposit in court within 90 days the following sums: P71,743.00 for the unpaid principal; P32,676.08 for unpaid interest, plus legal interest on the said sum from August 26, 1945 until complete payment; the stipulated interest of 8 per cent per annum on the principal of P71,743 from August 26, 1945 and 10 per cent of the above-mentioned amount for attorney's fees and the costs of the suit. The trial court further ordered the Sheriff to sell the mortgaged properties together with the improvements thereon should defendants fail to pay or make the deposit of the several amounts above-mentioned within a period of 90 days. The defendants, except the testate estate of Manuel Urquico who in the meantime had died was further ordered to render an accounting of the products of the properties mortgaged from February, 1946 up to the execution of the judgment, and the value of such products to cover any portion of the amounts above-mentioned that may not be covered by the proceeds of the sale. From this judgment the intestate estate of Urquico represented by the administratrix, a daughter of his, and one of the defendants-vendees, Graciana de Llamado, who having died, in the meantime, is represented by her husband Crispin Llamado, including their children, and the other vendees appealed that decision and directly to us because of the amount involved.

The holding of the trial court that the alleged payment of the mortgaged debt to the Enemy Property Custodian of the Japanese Army did not extinguish the obligation is premised on the theory that even following the doctrine laid down in the case of *Haw Pia vs. China Banking Corporation*, 45 Off. Gaz., No. 9, Supp., 229, there was no valid payment, because while in the *Haw Pia* case there was a sequestration of the properties and assets of the enemy alien creditors and the debtors therein were ordered by the Japanese Army to pay their debts to the creditor aliens, in the present case the property and assets of Rohde, particularly the mortgage credit were never sequestered because the issuance of the certificate of payment by the Enemy Property Custodian did not constitute an overt act of sequestration assuming that such payment was received from the defendant, and that further the alleged payment of the mortgaged debt was voluntary without any demand or pressure by the Japanese Imperial Forces. The trial court entertained grave doubts as to the alleged payment to the Enemy Property Custodian because Crispin Llamado who was said to have made such payment could not tell the court the exact amount which he paid the place or building where he claimed to have made the payment to the Enemy Property

Custodian and the particular official thereof who issued the certificate of payment. The court added that the signature on the said certificate of payment is illegible, to say nothing of the correctness of the translation into English of the Japanese characters appearing on said certificate.

On this matter of payment we are inclined to disagree with the lower court and to accept the version given by Crispin Llamado. Because of the interval between the time of payment in 1944 and the time when he testified in court, it was natural that he could not give the exact amount that he paid. Neither could he identify the particular official in the office of the Enemy Property Custodian who received the payment and who issued him the certificate of payment. As to the building where he made the payment he could not pinpoint it, saying that it was either the Agriculture Building or one located on a street beyond the Philippine General Hospital, because the office of the Enemy Property Custodian was transferred from one building to the other. We should bear in mind that this was during the enemy occupation and at a time when American pilots were bombing Manila. As a matter of fact, according to Llamado there was an air raid at the time, and this may have added to his confusion. But as to his knowledge of the office where he should make the payment, it is unreasonable to doubt. Llamado is a highly educated man and well-versed in governmental matters. At the time he testified in court he was Undersecretary of Finance and naturally, his knowledge of financial matters, accounts, including, payments of obligations is above the average. As to the certificate of payment, two disinterested and impartial witnesses employed by the War Crimes Office, one a Filipino and the other a Japanese, certified to the correctness of the translation of the Japanese characters which were to the effect that the mortgage indebtedness was duly paid.

As regards the validity of payment made to the Enemy Property Custodian we need not go into a detailed discussion of that legal point. The recent case of *Hodges vs. Gay, et al.*,⁴⁸ Off. Gaz. No. I, p. 136, is directly in point. The facts are briefly as follows: Defendant Gay had a mortgage indebtedness of P41,663.50 to C. N. Hodges payable on or before June 3, 1942. When the war broke out Hodges left his residence in Iloilo and evacuated to the mountains of Panay until March 20, 1944 when he escaped to the United States, returning to the Philippines only after Liberation. In the meantime, on March 15, 1944, without the knowledge and consent of Hodges, Gay paid the indebtedness to the Office of the Enemy Property Custodian with Japanese military notes whereupon a certificate of cancellation was issued in favor of the defendant. The property mortgaged was later sold to other parties. On October 19, 1945, Hodges filed an action in Iloilo to annul the deed of sale of the property mortgaged to him and to recover the amount of the indebtedness from Gay. The trial court decided in his favor. On appeal to this Tribunal we held that applying the doctrine laid down in the case of *Haw Pia vs. China Banking Corporation*, supra, the payment made by Gay to the Enemy Property Custodian was valid and extinguished the mortgage debt and that the voluntary payment made to the Enemy Property Custodian was immaterial since the decisive consideration was that the Japanese military authorities through the Enemy Property Custodian were authorized to receive payment in the name of Hodges under Article 1162 of the Civil Code.

On the basis of our decision in that case of *Hodges vs. Gay*, supra, we have to reverse the decision of the trial court. We repeat that inasmuch as the Enemy Property Custodian was an entity authorized by law to receive payment of an indebtedness due to enemy aliens, under Article 1162 of the Civil Code, the payment was valid and bound the creditor.

In view of the foregoing, the decision appealed from is reversed, and the complaint is dismissed. No costs.

For the purposes of clarification and to avoid any possible misunderstanding as to the status of the original mortgage of October 25, 1927 (Exhibit A), which was automatically cancelled and substituted by the second deed of mortgage dated August 26, 1938, the Register of Deeds of Tarlac is hereby authorized and ordered to cancel the annotation of Exhibit A on both original and owner's duplicate Transfer Certificate of Title No. 126, as well as the annotation of said Exhibit A on the Transfer Certificate of Title 20666, original and duplicate.

Bengzon, Acting C. J., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

DISSENTING OPINION

PADILLA, J., dissenting.

I dissent from the majority opinion on the grounds stated in the dissents in *Haw Pia vs. China Banking Corporation*, 45 Off. Gaz., Supp. No. 9, p. 229; *Del Rosario vs. Sandico*, 47 Off. Gaz. 2866; and *La Orden de PP. Benedictinos vs. Philippine Trust Co.*, 47 Off. Gaz. 2894.

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