

ENRIQUE A. GARCIA, PLAINTIFF AND APPELLEE, VS. NATIVIDAD DE LOS SANTOS, ASSISTED BY HER HUSBAND MAXIMINO VASQUEZ, SEVERINO DE LOS SANTOS, PEDRO DE LOS SANTOS, RAMON DE LOS SANTO...*G. R. No. L-5054. August 31, 1953*

Ponente: REYES, J.

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This is an action for foreclosure of mortgage.

It appears that on September 9, 1944, defendants executed in favor of plaintiff a promissory note for P10,000, Philippine currency, payable "four years after date," with interest at 10 per cent per annum, and as security for the note, they also constituted a mortgage on a piece of land in the City of Manila, with the stipulation "that payment of the interests as well as the aforesaid obligation shall be made in full whatever legal tender and currency is prevailing and in use at the time such interests or the obligation becomes due and payable." As the note was not paid when it fell due, with the exception of the sum of P500 delivered by defendants to plaintiff in 1946, the latter brought the present action for foreclosures, and judgment having been rendered in his favor for the sum due, plus P600 for attorney's fee and costs, defendants have appealed to this Court, assigning several errors. But such of these as have to do with the question of moratorium have become moot and untenable in view of our decision in the case of *Rutter vs. Esteban* [*] (49 Off. Gaz., (5) 1087) invalidating the law and executive orders on moratorium. There only remains for determination the question of whether defendant's debt should now be paid in present-day currency peso for peso or only its equivalent according to the Ballantyne scale of values.

The question is not new, the same having been already decided in the case of *Cristobal Roño vs. Jose L. Gomez et al.*[1] (46 Off. Gaz., Supp. to No. 11, p. 339), which appears to be on all fours with the one at bar. In that case, action was brought on October 15, 1945 on a promise made on October 5, 1944, "to pay one year after date the sum of P4,000 * * * in currency that will be prevailing by the end of the stipulated period of one year," and this Court there held that the promissor "must pay 4,000 pesos in Philippine currency" and "may not discharge his debt by paying only the equivalent of the Japanese currency he had received in 1944." It should be noted that in that case, as well as in the present, the note was made payable at a fixed period after date and payment was to be in the currency prevailing at the end of that period, that is, at the maturity of the note. The ratio decidendi is given in the report of that case and need not be repeated here.

Appellants, however, claim that the promissory note here in question should be construed as permitting payment at any time within four years after its date, and that giving it that interpretation, it could have been paid during the Japanese occupation, and in accordance with the concurring opinion of Mr. Justice Feria in the case of *Jose L. Gomez vs. Miguela Tabia*[2] (47 Off. Gaz., 641), the obligation could be discharged after liberation by payment of its equivalent in Philippine currency at the rate fixed in the Ballantyne schedule. But this interpretation is contrary to the clear and express language of the instrument, which enjoins payment "four years after date," a

period presumed to be established for the benefit of both creditor and debtor (Art. 1127 of the old Civil Code; Art. 1196 of the new) and may not—in the absence of a showing that it was established for the benefit of the debtor alone—be shortened at the mere will of the latter by allowing him to pay the debt before the lapse of the stated period without the consent of the creditor. The provision in the mortgage that its duration shall not exceed four years from date does not necessarily argue that the promissory note secured by it could be paid at any time during those four years even without consent of the promisee. The provision may have been inserted to forestall any attempt to make the mortgaged property answerable for any extension of the note.

The case of *De Asis vs. Agdamag et al.* (90 Phil., 249), cited by appellants is not in point, because there the loan was payable "on or before" a specified date. Neither may appellants invoke the case of *Colmenar vs. Cosca* (76 Phil. 857), which concerns the right of the vendor a retro to repurchase five years from the date of the instrument, with the provision that the property sold would automatically belong to the vendee should the right not be exercised within that period. In the latter case it is obvious that the intention was not to allow the repurchase only after the expiration of the five years since that would amount to a denial of that right.

In view of the foregoing, the judgment appealed from is affirmed, with costs against the applicants.

Bengzon, Padilla, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

PARAS, C. J.:

I dissent for the same reasons stated in my opinion in the case of *Roño vs. Gomez*, 83 Phil., 890.

[*] *Supra*, p. 68.

[1] 83 Phil., 890.

[2] 84 Phil., 269.

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