

**MARIANO NEPOMUCENO AND AGUEDA G. DE NEPOMUCENO,
PLAINTIFFS AND APPELLANTS, VS. EDILBERTO A. NARCISO AND
MAURA SUAREZ, DEFENDANTS AND APPELLEES.**

G.R. No. L-1328. September 09, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

On November 14, 1938, appellant Mariano Nepomuceno executed a mortgage in favor of the appellees on a parcel of land situated in the municipality of Angeles, Province of Pampanga, to secure the payment within the period of seven years from the date of the mortgage of the sum of P24,000 together with interest thereon at the rate of 8 per cent per annum.

On September 30, 1943, that is to say, more than two years before the maturity of said mortgage, the parties executed a notarial document entitled "Partial Novation of Contract" whereby they modified the terms of said mortgage as follows:

"(1) From December 8, 1941, to January 1, 1944, the interest on the mortgage shall be at 6 per cent per annum, unpaid interest also paying interest at the same rate.

"(2) From January 1, 1944, up to the end of the war, the mortgage debt shall likewise bear interest at 6 per cent. Unpaid interest during this period shall however not bear any interest.

"(3) At the end of the war the interest shall again become 8 per cent in accordance with the original contract of mortgage.

"(4) While the war goes on, the mortgagor, his administrators or assigns, cannot redeem the property mortgaged.

"(5) When the mortgage lapses on November 14, 1945, the mortgage may continue for another ten years if the mortgagor so chooses, but during this period he may pay only one half of the capital."

On July 21, 1944, the mortgagor Mariano Nepomuceno and his wife Agueda G. de Nepomuceno filed their complaint in this case against the mortgagees, which complaint, as amended on September 7, 1944, alleged the execution of the contract of mortgage and its partial novation as above indicated, and

"7. That as per Annex B, No. 4, it is provided that the mortgagor cannot redeem the property mortgaged while the war goes on; and that notwithstanding the said provision the herein plaintiffs-mortgagors are now willing to pay the amount of the indebtedness together with the corresponding interest due thereon;

"8. That on July 19, 1944, the mortgagors-plaintiffs went to the house of the mortgagees-defendants to tender payment of the balance of the mortgage debt with their corresponding interest, but said spouses defendants refused and still refuse to accept payment;

"9. That because of this refusal of the defendants to accept tender of payment on the mortgage consideration,

the plaintiffs suffered and still suffer damages in the amount of P5,000;

"10. That the plaintiffs are now and have deposited with the Clerk of Court of First Instance of Pampanga the amount of P22,356 for the payment of the mortgage debt and the interest due thereon;

"Wherefore, it is most respectfully prayed that this Honorable Court will issue an order in the following tenor:

"(a) Ordering defendants to accept tender of payment from the plaintiffs;

"(b) Ordering defendants to execute the corresponding deed of release of mortgage;

"(c) Ordering defendants to pay damages in the amount of P5,000; and

"(d) Ordering defendants to pay the amount of P3,000 as attorney's fees and the costs of suit and any other remedy just and equitable in the premises."

After the trial the court sustained the defense that the complaint had been prematurely presented and dismissed it with costs.

Appellants contend that the stipulation in the contract of September 30, 1943, that "while the war goes on the mortgagor, his administrators or assigns cannot redeem the property mortgaged," is against public policy and therefore null and void. They cite and rely on article 1255 of the Civil Code, which provides:

"ART. 1255.—The contracting parties may establish any pacts, clauses, and conditions they may deem advisable, provided they are not contrary to law, morals, or public order."

They argue that "it would certainly be against public policy and a restraint on the freedom of commerce to compel a debtor not to release his property from a lien—even if he wanted to by the payment of the indebtedness—while the war goes on, which was undoubtedly of a very uncertain duration."

The first two paragraphs of article 1125 of the Civil Code provide:

"ART. 1125.—Obligations for the performance of which a day certain has been fixed shall be demandable only when the day arrives.

"A day certain is understood to be one which must necessarily arrive, even though its date be unknown."

Article 1127 says:

"Art. 1127. Whenever a term for the performance of an obligation is fixed, it is presumed to have been established for the benefit of the creditor and that of the debtor, unless from its tenor or from other circumstances it should appear that the term was established for the benefit of one or the other."

It will be noted that the original contract of mortgage provided for interest at 8 per cent per annum and that the principal together with the interest was payable within the period of seven years from November 14, 1938. But by mutual agreement of the parties that term was modified on September 30, 1943, by reducing the interest to 6 per cent per annum from December 8, 1941, until the end of the war and by stipulating that the mortgagor shall not pay off the mortgage while the war went on.

We find nothing immoral or violative of public order in that stipulation. The mortgagees apparently did not want to have their prewar credit paid with Japanese military notes, and the mortgagor voluntarily agreed not to do so in consideration of the reduction of the rate of interest.

It was a perfectly equitable and valid transaction, in conformity with the provisions of the Civil Code hereinabove quoted.

Appellants were bound by said contract and appellees were not obligated to receive the payment before it was due. Hence the latter had reason not to accept the tender of payment made to them by the former.

The judgment is affirmed, with costs against the appellants.

Moran, C.J., Paras, Feria, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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