

SAMUEL J. WILSON, PLAINTIFF AND APPELLEE, VS. B. H. BERKENKOTTER, DEFENDANT AND APPELLANT.*G. R. No. L-4476. April 20, 1953*

Ponente: MONTEMAYOR, J.

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In April, 1950, plaintiff Samuel J. Wilson, consigned in the Court of First Instance of Manila the sum of P625.51. In his petition he alleged that said amount consigned was the equivalent of P37,530.40 in Japanese currency which defendant B. H. Berkenkotter paid for him in November, 1944, to the Chartered Bank of India, Australia and China; that he had made an offer of payment of P625.51 to the defendant but the latter refused to accept payment without any justifiable cause. He prayed that after due hearing the court declare the consignment as properly made.

Defendant Berkenkotter in his answer alleged that in 1938 he and plaintiff Wilson and one Paul A. Gulick obtained a loan of P90,000 from the Chartered Bank of India, Australia and China with interest at 7 per cent which was later increased to 8 per cent, payable monthly, and that they signed a promissory note wherein they jointly and severally promised to pay said loan to the bank; that during the occupation of the Philippines during the Pacific war the Japanese Military authorities placed the Chartered Bank of India, Australia and China and other enemy banks under liquidation and for that purpose designated the Bank of Taiwan as liquidator of enemy banks; that upon demand by the Bank of Taiwan he (Berkenkotter) paid the sum of P112,591.22 (in military notes) as full payment of the P90,000 loan including interest from December 1, 1941 up to November 4, 1944, the date of payment; that the payment to the bank by him inured to his co-debtors in the amount of P37,530.40 each; that as subrogee of all the rights of the bank, he, in 1949, made a demand on both Wilson and Gulick for the settlement of their shares in said obligation with a certain offer; that while Gulick accepted the offer and paid P18,902, Wilson refused to take advantage thereof and instead tendered the amount of P625.51 as payment of his share in the solidary and joint obligation; that this tender of payment was refused and so he made demand upon Wilson for payment of his share of the P90,000 with interest from December 1, 1941 but Wilson refused to make payment. In his prayer defendant asked that the petition accompanying the consignment be dismissed, and that Wilson be ordered to pay him P30,000 as his share in the original loan with interest of 8 per cent from December, 1941, plus P3,000 as collection expenses as stipulated in the promissory note signed by them, equivalent to 10 per cent of the share of each.

After hearing, the trial court rendered judgment in favor of plaintiff Wilson and against defendant Berkenkotter and ordered the latter to receive from the clerk of court the P625.51 consigned by Wilson as the just and full payment of the indebtedness. From that decision Berkenkotter is appealing to this court on questions of law making the following assignment of errors:

I

The trial court erred in not holding the plaintiff-appellee liable to the defendant-appellant to the full amount of

his one-third share (capital as well as interest) in the solidary obligation (Exhibit 1), which they contracted in 1938 from the Chartered Bank of India, Australia and China, and which solidary obligation was discharged by the payment made by the defendant-appellant to the Japanese liquidator during the Japanese occupation.

II

The trial court erred in holding such payment subject to adjustment under the Ballantyne schedule of values in determining amount to be reimbursed by the plaintiff-appellee as a co-solidary debtor of the defendant appellant.

III

The trial court erred in not sentencing plaintiff-appellee to pay to defendant-appellant as collection expenses provided for in the promissory note, Exhibit "1", the sum of P3,000, which represents 10 per cent of one-third of the principal of the solidary obligation.

IV

The trial court erred in denying defendant-appellant's motion for new trial and to set aside the judgment.

As already stated, the defendant appealed the case to this court on questions of law. He is consequently bound by the findings of fact of the trial court. The plaintiff did not appeal from the decision. He is equally bound by said findings of the trial court. For purposes of reference we reproduce said findings of fact:

"1. That on June 30, 1930, Samuel J. Wilson, plaintiff, B. H. Berkenkotter, defendant, and one Paul A. Gulick jointly and severally signed a promissory note in the amount of P90,000 in favor of the Chartered Bank of India, Australia and China payable on demand with interest thereon at the rate of 7 per cent per annum payable monthly;

"2. That the three debtors agreed by and among themselves to pay the obligation in equal proportions, that is, each one would pay their creditor the amount of P30,000 plus of course, the corresponding interests;

"3. That after the Philippines had been occupied by the Japanese Forces, the Bank of Taiwan became the liquidator of all enemy banks, among which was the Chartered Bank of India, Australia and China;

"4. That defendant B. H. Berkenkotter, upon demand by the Taiwan Bank paid the promissory note referred to above, plus the corresponding interests which amounted in all, principal and interests to P112,591.22;

"5. That after liberation, B. H. Berkenkotter demanded payment from his co-debtors of their corresponding shares in the obligation contracted by them jointly and severally with the Chartered Bank of India, Australia and China;

"6. That for reasons of personal consideration B. H. Berkenkotter accepted payment from Paul A. Gulick only in the amount of P18,902;

"7. That plaintiff Samuel J. Wilson refused to pay to B. H. Berkenkotter the full amount of P37,530.40 in Philippine currency, and

"8. That because of the refusal of B. H. Berkenkotter to receive from the plaintiff the amount of P625.51 which is the equivalent value as of November, 1944 of the P37,530.40 in Japanese military notes, said plaintiff consigned with this court the said amount of P625.51."

In several cases involving the application of the Balantyne schedule this court has held that said schedule is applicable to obligations contracted during the Japanese occupation where said obligations are made payable on

demand or during said Japanese occupation but not after the war or at a specified date or period which may indicate that the parties were speculating on the continuation or cessation of the war at the time of payment. If the obligation on the part of Wilson to pay Berkenkotter the amount paid by the latter to wipe out their debt to the bank was created during the occupation, then the Balantyne schedule is applicable; but if said obligation was created before the war, particularly on the date when plaintiff and defendant signed the promissory note in favor of the bank, then the Ballantyne schedule may not be applied.

Counsel for the appellant contends that said obligation was created in 1938 because by signing the promissory note Wilson impliedly undertook to pay anyone of his co-debtors who might pay off the whole debt. He also claims that by paying the entire loan in 1944 to the bank, appellant became a subrogee of said bank and the entire credit was transmitted to him with all the rights inherent therein either against the debtor or against third persons (article 1212, Civil Code). The amici curiae who appeared in this case and who support appellant's contention, hold the theory that the obligation of Wilson in favor of Berkenkotter was created in 1938 and has continued since then but that its payment was not demandable until 1944 when appellant made payment. They give the example of one issuing a promissory note payable after 30 days; the obligation to pay is created at the date of the issuance of the note but the obligation to pay is not demandable until after the expiration of 30 days. We regret to disagree to the contention of counsel for appellant and the amici curiae. The obligation in favor of appellant to pay to him what he paid in favor of Wilson was created in November, 1944 and not before. Before said payment was made Wilson was under no obligation whatsoever to pay appellant any amount. True, as a solidary obligor or debtor under the law, he would be under obligation to pay any of his solidary co-debtors who may be required by the creditor to pay and who actually pays the latter the entire loan. But that obligation on the part of Wilson is contingent and conditional. If Berkenkotter had not paid the entire loan to the bank Wilson would never have been under any obligation to pay him for his share of the loan. This is quite different from the example of the promissory note just mentioned where the obligation to pay the amount of the note is created at the time of the issuance thereof because sooner or later the promisor has to make payment. In other words, the obligation is real and existing, not conditional or contingent. Counsel for appellant himself says in his brief, pp. 17-18, "It is the extinction or discharge of the solidary obligation by the payment made which gives birth to that right in favor of the paying co-debtor, and which correlatively imposes on the other co-debtors the duty to pay him their shares in the discharged obligation." We agree with him that the right in favor of appellant and the corresponding duty on the part of Wilson were born when payment was made in November, 1944 and the solidary obligation was extinguished.

When appellant paid the entire loan plus interests in November, 1944, the whole obligation was extinguished. The solidary co-debtors were no longer under any obligation to the bank but a new obligation was created in favor of the appellant and against the appellee. That is why the appellant to enforce his claim against the appellee has based his claim not on the obligation created in 1938 in favor of the bank by virtue of the promissory note signed by the three co-debtors, but on his having paid the entire loan. The present is not a real case of subrogation as contended by appellant because as Manresa says, in a case like the present the original obligation is extinguished and a new one is created.

"Es de notar que no hay verdadera subrogacion en el caso de que pague uno de los codeudores solidarios, puesto que entonces, segun el articulo 1145 (por el cual y sus concordantes se rige el supuesto), queda extinguida la obligacion, si bien el codeudor que pago y puede repetir contra los demas su reclamacion, invocara como base y titulo el pago, en vez de la novacion." (8 Manresa, 4th ed., p. 404.)

In other words, appellant does not as claimed by his counsel step into the shoes of the bank. He cannot enforce the original obligation created in 1938. The bank could collect the whole amount of the loan from anyone of the solidary co-debtors, and in fact did from one of them. This, the appellant may not do just because he paid the

entire loan. According to article 1145 of the Civil Code, payment by one of the solidary debtors entitles him to claim with interest on the amount advanced, and this is what the appellant is doing, only that he wants to collect the whole amount paid by him for Wilson in genuine Philippine currency instead of the equivalent thereof under the Ballantyne schedule. Moreover, on grounds of equity appellant may not be allowed to collect from the appellee more than the real value of what he paid for him specially when the difference between the military notes and the genuine Philippine currency in November, 1944, was so great.

In conclusion, we find and hold that the obligation in favor of the appellant to pay to him the share of the appellee in the original loan was created during the Japanese occupation, particularly in November, 1944, and so comes under the ruling of this court regarding the application of the Ballantyne schedule. Finding no reversible error in the decision appealed from, the same is hereby affirmed. No costs.

Paras, C. J., Pablo, Bengzon, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

PADILLA, J:

I concur in the result. I do not agree to the statement in the opinion that "when appellant paid the entire loan plus interest in November, 1944, the whole obligation was extinguished." I am of the opinion that the payment made to the Bank of Taiwan, Ltd., of a pre-war obligation or debt is invalid as far as the Chartered Bank of India, Australia and China is concerned, for the reasons stated in my opinion in the case of *La Orden de PP. Benedictinos vs. Philippine Trust Co.*,[*] 47 Off. Gaz., 2894, 2897.

CONCURRING AND DISSENTING:

FERIA, J.,

On June 30, 1938, a promissory note was signed by appellee Samuel J. Wilson, B. H. Berkenkotter and Paul A. Gullick, as joint and solidary debtors in favor of the Chartered Bank of India, Australia and China in the sum of P90,000 Philippine Commonwealth currency payable on demand, with interest at the rate of 7 per cent per annum, payable monthly.

On November 4, 1944, upon demand by the Bank of Taiwan, the defendant Berkenkotter paid said bank the whole indebtedness evidenced by the above mentioned promissory note, in Japanese military notes. And in April, 1950, plaintiff Samuel J. Wilson, consigned in the Court of First Instance of Manila the sum of P625.51, and in his petition he alleged that said amount consigned was the equivalent of P37,530.40 in Japanese currency which defendant B. H. Berkenkotter paid for him in November 1944, to the Chartered Bank of India, Australia and China; that he had made an offer of payment of P625.51 to the defendant but the latter refused to accept payment without any justifiable cause. He prayed that after due hearing the court declare the consignment as properly made.

After hearing, the trial court rendered judgment in favor of plaintiff Wilson and against defendant Berkenkotter and ordered the latter to receive from the Clerk of Court the P625.51 consigned by Wilson as the just and full payment of the indebtedness. From that decision Berkenkotter appealed to this court, and assigned, among others, the following assignment of error:

"The trial court erred in holding such payment subject to adjustment under the Ballantyne schedule of values in determining the amount to be reimbursed by the plaintiff-appellee as a co-solidary debtor of the defendant-appellant."

The amici curiae in the present case, Attorneys Ozaeta and Lichauco, contend that the Ballantyne schedule of values cannot be applied in determining the amount the plaintiff must pay to the defendant-appellant, because said schedule is applicable only in obligation to pay money contracted or created during the Japanese occupation, and the obligation in question was created before the Japanese occupation. In their memorandum, said amici curiae state the following in support of their opinion.

"* * * We have carefully examined the pertinent cases, from Hilado vs. De la Costa, 46 Off. Gaz., 5472 to De Asis vs. Agdamag et al., G. R. No. L-3709, promulgated October 25, 1951. From said decisions and Justice Feria's concurring opinion in Gomez vs. Tabia, 47 Off. Gaz., 641, wherein he set forth certain rules for the guidance of the courts and members of the bar, it is quite apparent that the overruling considerations in the cases where revaluation of obligations has been allowed by the court are the following:

"(1) Obligation must arise from contract entered into during the occupation.-The inescapable fact invariably present in all the cases where revaluation has been allowed is that the monetary obligation arose from a contract which entered into by the parties during the period of enemy occupation. In other words, revaluation or adjustment of obligations has been confined and restricted to wartime (or occupation-time, to be exact) contracts. This must be so for there is no conceivable legal nor moral justification to revalue pre-war monetary obligations still outstanding after the occupation. This will become all the more plain from the next conjunctive condition patent from the decisions.

"* * * * *

"It should thus be very evident that the rules advocated by Justice Feria were intended to cover only monetary obligations founded or arising from (1) contracts entered, and (2) executory judgment rendered, during the occupation. The trial court, however, committed the error of concluding that the rule means that any obligations incurred or payable during the enemy occupation may be paid with its equivalent value in Philippine currency. It should be clear from the language employed by Justice Feria that, in order that an obligation may be revalued, it must, among other things, have been contracted during the occupation, i.e., it must be one arising from a contract entered into during the occupation. Thus, a prewar obligation which became payable during the occupation but which remained unpaid is not subject to adjustment because it was not contracted during the occupation."

And the decision of the majority, misled by the foregoing argument of the amici curiae, held the following:

"In several causes involving the application of the Ballantyne schedule this court has held that said schedule is applicable to obligations contracted during the Japanese occupation where said obligation are made payable on demand or during said Japanese occupation but not after the war or at a specified date or period which may indicate that the parties were speculating on the continuation or cessation of the war at the time of payment. If the obligation on the part of Wilson to pay Berkenkotter the amount paid by the latter to wipe out their debt to the Bank was created during the occupation, then the Ballantyne schedule is applicable; but if said obligation was created before the war, particularly on the date when plaintiff and defendant signed the promissory note in favor of the Bank, then the Ballantyne schedule may not be applied" (page 5.)

* * * * *

"In conclusion, we find and hold that the obligation in favor of the appellant to pay to him the share of the appellee in the original loan was created during the Japanese occupation, particularly in November, 1944, and so comes under the ruling of this court regarding the application of the Ballantyne schedule. Finding no reversible error in the decision appealed from, the same is hereby affirmed. No costs." (page 8.)

The above quoted conclusion of the majority, based on the opinion or argument of the amici curiae to the effect that, according to the decisions of this court and especially the concurring opinion of the undersigned in the case of Gomez vs. Tabia,[1] 47 Off. Gaz., 641, adopted with approval by this court in the case of De Asis vs.

Agdamag,[2] G. R. No. L-3709, promulgated on October 25, 1951, the Ballantyne schedule is applicable only to monetary obligation created and payable during, and not those created before the Japanese occupation. The contention or argument of the amici curiae and the conclusion of the majority is not correct, for in our concurring opinion we held the following, quoted on page 7 of the very memorandum of the amici curiae:

"An obligation incurred or payable during the occupation shall be revalued on the basis of the relative value of the Japanese military notes in Philippine currency at the date of the obligation was payable, according to Ballantyne sliding scale of value in the absence of evidence to the contrary. Because to compel the debtor to pay his obligation in Philippine currency at the rate of one Philippine peso for each peso due in Japanese military notes would be to make him pay, as damages or penalty for the delay in making the payment, the difference in values between the Japanese military notes at the time the obligation was incurred and the Philippine currency, at the time of the payment."

According to the above quoted opinion, monetary obligations which shall be revalued according to Ballantyne schedule if paid after the occupation, are those payable during the Japanese occupation, irrespective of whether they were created or constituted before or during said occupation. What determines the applicability of the Ballantyne schedule is not the time of its creation or constitution but its enforceability or demandability. In the same case of Gomez vs. Tabia, the monetary obligation was incurred during the occupation, but the Ballantyne scale was not applied because the amount was payable in the currency prevailing at the time of redemption, after the occupation.

However, I concur in the conclusion of the majority that the obligation of Wilson to pay to Berkenkotter his share in the obligation paid by the former to the bank, arose and was payable from the time the latter paid the whole obligation due from them to the bank on November 4, 1944.

In view of the foregoing, we are of the opinion that the decision appealed from must be affirmed for the Ballantyne schedule is applicable, not because the obligation of the palintiff to pay the defendant his share in the obligation was created during the Japanese occupation, but because it was payable during the said occupation.

[*] 85 Phil., 217.

[1] 84 Phil., 269.

[2] 90 Phil., 249.

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