

VICTORIA DESBARATS MIAILHE, PETITIONER, VS. JOSE VIVENCIO RAMIREZ, ET AL., RESPONDENTS.

G.R. No. L-3976. June 10, 1953

Ponente: JUGO, J.

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JUGO, J.:

Victoria Desbarats Mialhe filed a complaint for foreclosure of mortgage against Jose Vivencio Ramirez, Rita Esperanza Ramirez, Jorge Pedro Ramirez, Jose Eugenio Ramirez, Belen Tomasa Ramirez, Ramos Anastacio Ramirez and Angela M. Butte for the sum of TWO HUNDRED THOUSAND PESOS (P200,000) with interest at the rate of 6% per annum from March 10, 1945, up to the time of payment, plus interest upon accrued interests and attorney's fees of 2% on the total amount due, alleging, among other things, that Executive Order No. 25, dated November 18, 1944 as amended by Executive Order No. 32 dated March 10, 1945, and Republic Act No. 342, approved July 26, 1948, providing for a moratorium on all debts and other monetary obligations are null and void for being unconstitutional, and praying that said Republic Act and Executive Orders be declared unconstitutional and null and void and that judgment be rendered for the sums above-stated against the herein defendants.

The defendants filed a motion for dismissal on the ground that the complaint did not state a cause of action in that the debt alleged therein was not due and payable by reason of the moratorium established by the above-mentioned Republic Act and Executive Orders. The Court of First Instance of Manila issued an order dated May 13, 1950, granting the motion for dismissal. The plaintiff appealed to this Court.

It is no longer necessary to consider the questions raised with regard to the moratorium for the reason that in the case of *Royal L. Rutter vs. Placido J. Esteban*, G. R. No. L-3708, promulgated on May 18, 1953, and several other cases this Court has declared that said Republic Act and Executive Orders establishing moratorium are unconstitutional and, therefore, null and void.

IN VIEW OF THE FOREGOING, the order of dismissal entered by the court below is hereby reversed and set aside, and this case is ordered returned to said court for further proceedings in accordance with this opinion, without pronouncement as to costs in this instance.

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

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