

**C.N. HODGES, PLAINTIFF AND APPELLEE, VS. MARIA GAY,
SOUTHERN INVESTMENT CO., INC., ROBERTO LAPERAL, VICTORIA
G. DE LAPERAL, AND SOFRONIO FLORES, DEFENDANTS, ROBERTO
LAPERAL AND ...**

G.R. No. L-2467. September 29, 1950

Ponente: PARAS, J.

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PARAS, J.:

The defendant Maria Gay had an indebtedness, secured by mortgage, to the plaintiff C.N. Hodges in the total sum of P41,663.50, payable on or before June 3, 1942. When the war broke out in December, 1941, the plaintiff, an American citizen, left his residence in the City of Iloilo and evacuated to the mountains of Panay where he remained in hiding until March 20, 1944, when he escaped for the United States, coming back to the Philippines only after liberation. On March 15, 1944, Maria Gay, without the knowledge or consent of the plaintiff, paid the mortgage indebtedness to the office of the Enemy Property Custodian of the Japanese Army which thereupon issued a certificate of cancellation of the mortgage deed in favor of the plaintiff. On April 4, 1944 Maria Gay sold the properties covered by the mortgage to the defendant Southern Investment Co., Inc. for P100,000. The latter, on April 28, 1944, in turn sold said properties to the defendant spouses Roberto Laperal and Victorina G. de Laperal for P250,000. With previous cancellation of the mortgage in favor of the plaintiff and of the corresponding certificates of title, the Register of Deeds of Iloilo issued Transfer Certificates of Title Nos. 82 and 83 in the names of the spouses Roberto Laperal and Victorina G. de Laperal, free from any lien or encumbrance.

On October 19, 1945, the plaintiff instituted the present action in the Court of First Instance of Iloilo, to annul the deeds of sale successively executed by Maria Gay and the Southern Investment Co., Inc., and the Transfer Certificates of Title issued thereunder in the names of Roberto Laperal and Victorina G. de Laperal, and to recover from the defendant Maria Gay her mortgage indebtedness, with interest at one per cent per month, plus attorney's fees in the sum of P7,160, in default of which it is prayed that the mortgage be foreclosed in accordance with law.

The defendants Southern Investment Co., Inc., and the Register of Deeds of Iloilo were declared in default for failure to file an answer to the complaint. After trial, the Court of First Instance of Iloilo rendered, on December 23, 1946, a decision the dispositive part of which reads as follows:

"In view of the foregoing considerations, judgment is hereby rendered:

"(1) Declaring null and void the act of the defendant Register of Deeds for the province of Iloilo in cancelling the annotation of the mortgage executed by the defendant Maria Gay in favor of the plaintiff C.N. Hodges on transfer Certificates of Title Nos. 16561 and 16562, covering lots Nos. 690 and 192 respectively, of the Cadastral Survey of Iloilo;

"(2) Declaring that the sale of the aforesaid properties by the defendant Maria Gay to the defendant Southern Investment Co., Inc. by virtue of the document Exhibit '2-Laperal' dated April 4, 1944, and the sale by the

latter to the defendant spouses Roberto Laperal and Victorina G. de Laperal, by virtue of the document Exhibit '3-Laperal,' dated April 28, 1944, are both subject to the mortgage Exhibit B in favor of the plaintiff C. N. Hodges;

"(3) Ordering the defendant Maria Gay to pay to the plaintiff C. N. Hodges or to this Court within 90 days from the date the debt moratorium is lifted (Executive Order No. 32), the sum of Fifty-Five Thousand, Nine Hundred Seventy Four and 35/100 P55,974.35 Pesos, with interest thereon at the rate of 1 per cent per month from December 17, 1946, plus 10 per cent of the entire amount due by way of attorney's fees, and the costs of this suit;

"(4) In default of such payment, ordering that the properties mortgaged be sold to realize the mortgage debt the attorney's fees, and costs, in accordance with the rules therefore provided."

Upon motion for reconsideration filed by the plaintiff, the trial court issued an order dated February 5, 1947, amending the judgment of December 23, 1946, "so that the amount of P55,974.35 appearing therein as the indebtedness of the defendant Maria Gay to the plaintiff C.N. Hodges as of December 17, 1946, should read P64,493.90."

The case is now before us upon appeal by the defendant Roberto Laperal and Victorina G. de Laperal.

The trial court held that, although the evidence tends to show that the payment made by the defendant Maria Gay to the Enemy Property Custodian of the Japanese Army on March 15, 1944, was voluntary, said fact is not decisive because duress cannot be a defense "if the person or entity by whom it was employed did not have the right or authority to represent the mortgage creditor C. N. Hodges to the extent of confiscating and liquidating his credit, or accepting payment and cancelling the mortgage without his consent."

In the case of *Haw Pia vs. The China Banking Corporation*, decided on April 9, 1948 (Supplement to the Official Gazette, Vol. 45, No. 9, 229, 255) we made the following pronouncement:

"The second question is, we may say, corollary of the first. It having been shown above that the Japanese Military Forces had power to sequester and impound the assets or funds of the China Banking Corporation, and for that purpose to liquidate it by collecting the debts due to said bank from its debtors, and paying its creditors, and therefore to appoint the Bank of Taiwan as liquidator with the consequent authority to make the collection, it follows evidently that the payments by the debtors to the Bank of Taiwan of their debts to the China Banking Corporation have extinguished their obligation to the latter. Said payments were made to a person, the Bank of Taiwan, authorized to receive them in the name of the bank creditor under article 1162, of the Civil Code. Because it is evident the words 'a person authorized to receive it,' as used therein, means not only a person authorized by the same creditor, but also a person authorized by law to do so, such as guardian, executor or administrator of estate of a deceased, and assignee or liquidator of a partnership or corporation, as well as any other who may be authorized to do so by law (Manresa, Civil Code, 4th ed. p. 254)"

This pronouncement is applicable to the case at bar. It is true that in the case of *Haw Pia vs. The China Banking Corporation*, the debtor paid to the Japanese Military Authorities upon demand of the latter, and that in the case at bar, according to the trial court, the defendant Maria Gay paid to the Enemy Property Custodian of the Japanese Army voluntarily. But this distinction is not important, since the decisive consideration is that the Japanese Military Authorities were authorized to receive payment in the name of the plaintiff under article 1162 of the Civil Code. It is noteworthy that the decision in *Haw Pia vs. The China Banking Corporation*, *supra*, was not predicated on the circumstance that the debtor was compelled by the Bank of Taiwan to pay his indebtedness owing to the China Banking Corporation.

Wherefore, the appealed judgment is reversed and the defendants-appellants absolved from the complaint. So ordered, without costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, and Montemayor, JJ., concur.

TUASON, 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; 80 Phil., 604), and in other cases in which this court's decisions were rested on the *Haw Pia vs. China Banking Corporation* principle.

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