

INTESTATE OF LUTHER YOUNG AND PACITA YOUNG, SPOUSES. PACIFICA JIMENEZ, PETITIONER AND APPELLEE, VS. DR. JOSE BUCOY, ADMINISTRATOR AND APPELLANT.

G.R. No. L-10221. February 28, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

In this intestate of Luther Young and Pacita Young who died in 1954 and 1952 respectively, Pacifica Jimenez presented for payment four promissory notes signed by Pacita for different amounts totalling twenty-one thousand pesos (P21,000).

Acknowledging receipt by Pacita during the Japanese occupation, in the currency then prevailing, the administrator manifested willingness to pay provided adjustment of the sums be made in line with the Ballantyne schedule.

The claimant objected to the adjustment insisting on full payment in accordance with the notes.

Applying doctrines of this Court on the matter, the Hon. Primitivo L. Gonzales, Judge, held that the notes should be paid in the currency prevailing after the war, and that consequently plaintiff was entitled to recover P21,000 plus attorneys fees for the sum of P2,000.

Hence this appeal.

Executed in the month of August 1944, the first promissory note read as follows:

"Received from Miss Pacifica Jimenez the total amount of P10,000) ten thousand pesos payable six months after the war, without interest."

The other three notes were couched in the same terms, except as to amounts and dates.

There can be no serious question that the notes were promises to pay "six months after the war," the amounts mentioned.

But the important question, which obviously compelled the administrator to appeal, is whether the amounts should be paid, peso for peso, or whether a reduction should be made in accordance with the well-known Ballantyne schedule.

This matter of payment of loans contracted during the Japanese occupation has received our attention in many litigations after the liberation. The gist of our adjudications, in so far as material here, is that if the loan could be paid during the Japanese occupation, the Ballantyne schedule should apply with corresponding reduction of the amount.[1] However, if the loan was expressly agreed to be payable only after the war or after liberation, or became payable after those dates, no reduction could be effected, and peso-for-peso payment shall be ordered in Philippine currency.[2]

"The Ballantyne Conversion Table does not apply where the monetary obligation, under the contract, was not payable during the Japanese occupation but until after one year counted from the date of ratification of the Treaty of Peace concluding the Greater East Asia War." (Arellano vs. De Domingo, 101 Phil., 902.)

"When a monetary obligation is contracted during the Japanese occupation, to be discharged after the war, the payment should be made in Philippine Currency." (Kare et al. vs. Imperial et al., 102 Phil., 173.)

Now then, as in the case before us, the debtor undertook to pay "six months after the war," peso for peso payment is indicated.

The Ang Lam[3] case cited by appellant is not controlling, because the loan therein given could have been repaid during the Japanese occupation. Dated December 26, 1944, it was payable within one year. Payment could therefore have been made during January 1945. The notes here in question were payable only after the war.

The appellant administrator calls attention to the fact that the notes contained no express promise to pay a specified amount. We declare the point to be without merit. In accordance with doctrines on the matter, the note hereinabove quoted amounted in effect to "a promise to pay ten thousand pesos six months after the war, without interest." And so of the other notes.

"An acknowledgment may become a promise by the addition of words by which a promise of payment is naturally implied, such as, "payable," "payable " on a given day, "payable" on a given day, payable on demand," "paid . . . when called for," * * *. (10 Corpus Juris Secundum p. 523.)

"To constitute a good promissory note, no precise words of contract are necessary, provided they amount, in legal effect, to a promise to pay. In other words, if over and above the mere acknowledgment of the debt there may be collected from the words used, a promise to pay it, the instrument may be regarded as a promissory note. 1 Daniel, Neg. Inst. 36 et seq.; Byles, Bills, 10, 11, and cases cited. * * *. "Due A. B. \$325, payable on demand," or, "I acknowledge myself to be indebted to A. in \$109, to be paid on demand, for value received," or, "I. O. U. \$85 to be paid on May 5th," are held to be promissory notes, significance being given to words of payment as indicating a promise to pay. 1 Daniel Neg. Inst. sec. 39, and cases cited. (Cowan vs. Hallack, (Colo.) 13 Pacific Reporter 700, 703.)

Another argument of appellant is that as the deceased Luther Young did not sign these notes, his estate is not liable for the same. This defense, however, was not interposed in the lower court. There the only issue related to the amount to be paid, considering that the money had been received in Japanese money. It is now unfair to put up this new defense, because had it been raised in the court below, appellees could have proved, what they now allege, that Pacita contracted the obligation to support and maintain herself, her son and her husband (then concentrated at Santo Tomas University) during the hard days of the occupation.

It is now settled practice that on appeal a change of theory is not permitted.

"In order that a question may be raised on appeal, it is essential that it be within the issues made by the parties in their pleadings. Consequently, then a party deliberately adopts a certain theory, and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal because, to permit him to do so, would be unfair to the adverse party." (Rules of Court by Koran-1957 Ed. Vol. I p. 715 citing Agoncillo vs. Javier, 38 Phil., 424; American Express Company vs. Natividad, 46 Phil. 207; San Agustin vs. Barrios, 68 Phil. 475, 480; Toribio vs. Dacasa, 55 Phil. 461.)

Appellant's last assignment of error concerns attorneys fees. He says there was no reason for making this an exception to the general rule that attorney's fees are not recoverable in the absence of stipulation.

Under the new Civil Code, attorney's fees and expenses of litigation may be awarded in this case if "defendant acted in gross and evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim" or

"where the court deems it just and equitable that attorney's fees be recovered" (Art. 2208 Civil Code). These are if applicable—some of the exceptions to the general rule that in the absence of stipulation no attorney's fees shall be awarded.

The trial court did not explain why it ordered payment of counsel fees. Needless to say, it is desirable that the decision should state the reason why such award is made, bearing in mind that it must necessarily rest on an exceptional situation. Unless of course the text of the decision plainly shows the case to fall into one of the exceptions, for instance "in actions for legal support," "when exemplary damages are awarded," etc. In the case at bar, defendant could not obviously be held to have "acted in gross and evident bad faith." He did not deny the debt, and merely pleaded for adjustment, invoking decisions he thought to be controlling. If the trial judge considered it "just and equitable" to require payment of attorney's fees because the defense—adjustment under Ballantyne schedule—proved to be untenable in view of this Court's applicable rulings, it would be error to uphold his view. Otherwise, every time a defendant loses, attorney's fees would follow as a matter of course. Under the article above cited, even a clearly untenable defense would tie no ground for awarding attorney's fees unless it amounted to "gross and evident bad faith."

Plaintiff's attorneys attempt to sustain the award on the ground of defendant's refusal to accept his offer, before the suit, to take P5,000.00 in full settlement of her claim. We do not think this is tenable, defendant's attitude being merely a consequence of his line of defense, which though erroneous does not amount to "gross and evident bad faith." For one thing, there is a point raised by defendant, which so far as we are informed, has not been directly passed upon in this jurisdiction: the notes contained no express promise to pay a definite amount.

There being no circumstance making it reasonable and just to require defendant to pay attorney's fees, the last assignment of error must be upheld.

Wherefore, in view of the foregoing consideration, the appealed decision is affirmed, except as to the attorney's fees which are hereby disapproved. So ordered.

Montemayor, Reyes, A., Baustista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

[1]Asis vs. Agdamag, 90 Phil., 249; Soriano vs. Abalos, 84 Phil., 206; 47 Off. Gaz., 168; Ang Lam vs. Pergrina, 92 Phil., 506

[2]Roño vs. Gomez, 83 Phil., 890, 40 Off. Gaz., p 339; Gomez vs. Tabia, 84 Phil., 269; 47 Off. Gaz., p. 6414; Garcia vs. De los Santos. 93 Phil., 683, 49 Off. Gaz., [11], 4830; Arevalo vs. Barreto, 89 Phil., 633.

[3]92 Phil., 506

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