

MAXIMA C. DIZON, PLAINTIFF AND APPELLEE, VS. JOSE ARRASTIA, DEFENDANT AND APPELLANT.

G.R. No. L-15383. November 29, 1961

Ponente: DIZON, J.

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DIZON, J.:

In the month of October, 1943 appellant borrowed and received from appellee the sum of P10,000.00. To secure payment thereof he executed on July 1st of the following year the deed of mortgage now in the record as Exhibit C which provided, inter alia, that the loan would become due and demandable after October 23, 1947 and that the mortgagor waived his right to repay the loan before said date.

On October 9, 1944 appellant consigned in the Court of First Instance of Manila (Civil Case No. 2917) the sum of P12,436.00 in payment of the mortgage debt mentioned above, in view of appellee's alleged refusal to accept payment, but the record of the present case does not fully disclose the proceedings had in said case.

It appears that prior to the commencement of the present action for foreclosure, appellee instituted Civil Case No. 4342 in the Court of First Instance of Manila to foreclose the mortgage evidenced by Exhibit C. But because said deed of mortgage was unregistered, the action for its foreclosure was dismissed, without prejudice and only after the court had issued an order directing the appellant to execute another deed of mortgage, in lieu of the deed of mortgage Exhibit C, with all the formalities and conditions required for its registration. Pursuant to said order, appellant executed the deed of mortgage Exhibit D—the foreclosure of which is the subject of the present action—and the same was thereafter duly registered.

Appellant did not deny in the lower court the mortgage debt nor the execution of the deeds of mortgage mentioned heretofore, but claimed that the mortgage debt had been paid or discharged with the consignment of the sum of P12,436.00 on October 9, 1944 (Civil Case No. 2917); that when he signed the original deed of mortgage Exhibit C he was not aware of the condition that he could not repay the loan before October 23, 1947, which condition—he alleged—was oppressive, illegal and against public policy and, finally, that it would be unjust for appellee to collect payment of the full amount of P10,000.00 considering that the loan was made in Japanese military notes.

After trial the lower court rendered the appealed judgment sentencing appellant to pay appellee the sum of P10,000.00, plus the sum of P1,000.00 as attorney's fees, and the costs of suit, within 90 days from notice of judgment, with the understanding that, if said sums were not paid within that period, the property covered by the deed of mortgage Exhibit D would be sold at public auction in accordance with law.

Appellant's main contentions now are that the lower court erred in holding that the loan received by him from appellee became due and demandable on October 23, 1947, and in ordering him to pay the full amount of P10,000.00, Philippine currency, instead of applying the Ballantyne schedule.

We find no merit in both contentions.

Appellant's obligation is clearly set forth in the deeds of mortgage Exhibits C and D, which state, inter alia, that the mortgage debt "will become due and demandable after October 23, 1947; and that it was a special condition of the mortgage that appellant expressly waived his right to pay the mortgage debt before the date aforesaid. In the light of this stipulation, it is obvious that the loan became payable only after October 23, 1947 and appellee could demand payment at any time thereafter, while, on the other hand, appellant had no right to discharge the obligation before that date without the consent of his creditor.

The second question raised by appellant has been decided heretofore by us in *Roño vs. Gomez et al.*, 83 Phil., 258; 47 Off. Gaz., (12) 438 and in *Nicolas vs. Matias*, 97 Phil., 795. In this last case we said the following:

It is thus settled that the contracting parties are free to stipulate on the currency in which their respective obligations shall be settled, and that whenever, pursuant to the terms of an agreement, an obligation assumed during the Japanese occupation is not payable until liberation of the Philippines, the parties to the agreement are deemed to have intended that the amount stated in the contract be paid in such currency as may be legal tender at the time when the obligation becomes due. This is, precisely, the situation obtaining in the case at bar. The deed of mortgage in question provides that the obligation of the mortgagees shall be paid one year after the expiration of five years (5) from June 29, 1944, which is the date of said instrument. In other words, the obligation is not payable until June 29, 1949. Indeed, in the decision of this Court in case *G. E. No. L-1743* we reversed the decision of the Court of Appeals sustaining the theory of the mortgagors upon the ground that the latter were not entitled to accelerate, without the consent of the mortgagees, the date of the maturity of the obligation; that the mortgagees could not be compelled, and were under no obligation, to accept the tender of payment made on July 15, 1944 (except as to the interest for one (1) year) despite the fact that said tender included the interest for five (5) years from June 29, 1944; and that, consequently the consignment effected simultaneously with the institution of civil case No. 156 of the Court of First Instance of Nueva Ecija in August, 1944, was null and void with the exception above mentioned.

"In other words, said decision of this Court has implicitly held, and the doctrine laid down, in the cases above referred to, leaves no choice but to declare as we do, that the obligation involved in the present case must be satisfied, peso for peso, in the Philippine currency."

Wherefore, the decision appealed from is affirmed, with costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and De Leon, JJ., concur.

Padilla, J., dissents for the reasons explained in his previous dissenting opinion.

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