

SABINA ZARAGOZA, ASSISTED BY HER HUSBAND JOAQUIN GONZALES, PLAINTIFF-APPELLANT, VS. ANASTACIO ALAGAR AND PAULINA BALTAZAR, DEFENDANTS-APPELLEES.

G.R. No. L-7883. November 19, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The facts in this case are not disputed. As a matter of fact, the appeal from the decision of the trial court was taken directly to us, involving as it does, only questions of law. On December 27, 1944, the spouses Anastacio Alagar and Paulina Baltazar, residents of Bacoor, Cavite, being indebted to appellant Sabina Zaragoza married to Joaquin Gonzales in the sum of P7,500.00, admitted to be in Japanese War Notes, executed a deed of mortgage to secure the payment of the loan. The manner and the time for payment are contained in the paragraph of the deed of mortgage reproduce below:

"That the condition of this mortgage is that we promise to pay the said amount of SEVEN THOUSAND FIVE HUNDRED (P7,500.00) PESOS unto the said SABINA ZARAGOZA her heirs and assigns six (6) months immediately following the cessation of the present war in the Philippines in legal tender to be existing and prevailing at that time in the Philippines. And if the war in the Philippines will not be terminated within one year from this date, then the said mortgage amount will bear interest at 12% per annum. And in case we fail to pay the whole amount of P7,500.00 to said Sabina Zaragoza her heirs and assigns within the stipulated period above-mentioned, this mortgage will become due and enforceable in accordance with law."

After Liberation appellant made repeated demands on the mortgagors for the payment of the full amount of the debt in Philippine currency, but the debtors refused to make payment alleging that according to the Ballentyne Schedule, the equivalent of P7,500.00 borrowed by them in Japanese Military War Notes is only about P83.00, Philippine currency, but that they were willing to pay P500.00. So, appellants brought this action in the Court of First Instance of Cavite not to foreclose the mortgage for the reason that the deed was not registered but only for the payment of the loan with interests, plus costs. The trial court, interpreting the paragraph of the deed of mortgage above-quoted, held that although the stipulation was that the P7,500.00 was made payable within six (6) months following the cessation of the war "in legal tender to be existing and prevailing at that time in the Philippines", said clause may not be construed to be an stipulation that the obligation be payable in genuine Philippine currency, for the possibility existed that after the last war was terminated the Japanese could have been victorious in the war. Furthermore, the trial court took "judicial cognizance" of the fact that Japanese Military War Notes on December 27, 1944, were practically worthless, and said that "it is certainly against conscience to permit that the amount of P7,500.00, which defendants had borrowed from plaintiff Sabrina Zaragoza, for the former's survival be now paid in Philippine currency" x x x. For the above reason given by the trial court, the latter rendered judgment sentencing defendants to pay only P500.00 in Philippine currency. Sabrina Zaragoza appealed from that decision.

The present contract of mortgage, particularly the paragraph we have quoted, contains the same speculative or

aleatory feature of the contracts involved in several cases heretofore decided by us, principally the case of Gomez vs. Tabia, 47 O.G. No. 2, p. 641 and the case of Roño vs. Gomez, et al., 46 O.G. No. 11, Supplement, p. 339. On the basis of said cases, we find and hold that inasmuch as defendants-appellees in the present case have undertaken to pay the amount of the debt after the war and in the legal tender prevailing at the time, which is the Philippine peso, they are bound to make good their undertaking however onerous or burdensome and even unfair said obligation turned out to be. Defendants-appellees just lost in their gamble. Had the result of the war been otherwise and Japan had won, defendants would undoubtedly have paid off their obligation in the same Japanese Military War Notes, perhaps more depreciated than they were in December, 1944. However, in order to minimize the loss to them we are willing to overlook the element of interests, including that of costs.

Reversing the decision appealed from, the defendants-appellees are hereby sentenced to pay the plaintiff-appellant the sum of P7,500.00 in Philippine currency, with legal interest from the date the decision become final. No costs.

Bengzon, Reyes, Jugo, Bautista Agnelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Paras, C.J., dissents for the same reasons stated in his opinion in the cases cited by the majority.

Padilla, J., see dissent.

DISSENTING OPINION

PADILLA, J., dissenting:

I dissent. On 27 December 1944, the Japanese war notes had very little value. The purchasing power of P7,500 in Japanese war notes at the time of the loan was practically nil. The judgment appealed from ordering the defendants to pay the plaintiff P500 is more than sufficient to return to the latter the little value of the loan obtained by the former in December 1944.

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