

DOMINADOR NICOLAS AND OLIMPIA MATIAS, PLAINTIFFS AND APPELLANTS, VS. VICENTA MATIAS, AMADO CORNEJO, JR., JOSE POLICARPIO, AND MATILDE MANUEL, DEFENDANTS AND APPELLEES.[]*G.R. No. L-8093. October 29, 1955*

Ponente: CONCEPCION, J.

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By an instrument dated June 29, 1944, Vicenta Matias Vda. de Cornejo, and her son, Amado Cornejo, Jr., mortgaged to the spouses Dominador Nicolas and Olimpia Matias, four (4) parcels of land, situated in San Roque, municipality of Gapan, Province of Nueva Ecija, to guarantee the payment of the sum of P30,000—then lent by the mortgagees to the mortgagors and received by the latter, in Japanese military notes—one (1) year after the expiration of five (5) years from said date ("pagbabayaran isang [1] taon pagkatapos ng limang [5] taong Simula sa fecha ng kasulatang ito") with interest thereon, at the rate of six per cent (6%) per annum. On July 15, 1944, said mortgagors offered to pay the debt, with interest for five (5) years, but the mortgagees rejected the offer. Whereupon, in August, 1944, the mortgagors deposited judicially the sum of P39,000—representing the principal (P30,000), plus interest for five (5) years, at the stipulated rate—and instituted Civil Case No. 156 of the Court of First Instance of Nueva Ecija, entitled "Vicenta Matias, et al. vs. Dominador Nicolas, et al.," for the purpose of compelling the mortgagees to accept said amount and to discharge the mortgage. Although holding that the mortgagees were not justified in rejecting the tender of payment made by the mortgagors, said court rendered judgment, on August 12, 1946, declaring the consignment invalid for failure of the mortgagors to give previous notice thereof, and sentencing the mortgagors to pay the mortgagees the sum of P2,000—as the equivalent in Philippine currency, pursuant to the Ballantyne schedule, of P30,000 in Japanese military notes—with interest, at the legal rate, from June 29, 1944. On appeal from this judgment, the Court of Appeals, CA—G. R. No. 554-R (L-1195), in a decision promulgated on September 16, 1947, held the consignment valid and the obligation guaranteed by the mortgage fully discharged. The mortgagees, however, brought the case, for review by writ of certiorari, to this Court, which, in a decision promulgated on May 29, 1951[**] (G. R. No. L-1743), held that the mortgagors could not, without the mortgagees' consent, accelerate the date of maturity of the obligation in question, which is payable after the fifth year from June 29, 1944; that the mortgagees cannot be compelled to accept payment prior to the expiration of said fifth year; and that the judicial consignment made by the mortgagors is, consequently, invalid, except as regards the amount corresponding to the interest for one (1) year from June 29, 1944. The dispositive part of our aforementioned decision reads:

"Hence we must of necessity declare, that the offer and consignment were not valid, except for the satisfaction of the interest for the year 1944 which was then due. The appealed decision will thus be modified. Although the defendants have asked for judgment against the plaintiffs 'in the sixth year from 1944' for the amount of the note plus interest, we must decline to render such judgment now, firstly because at the time the case was instituted the mortgage was not yet payable, and secondly because there is the moratorium law. Anyway they will be at liberty to collect that mortgage plus interest when the moratorium is lifted, and in that foreclosure

proceedings the amount of recovery shall be determined. Let judgment be entered accordingly."

Soon thereafter, or on August 22, 1951, the mortgagees instituted the present action for foreclosure of said mortgage. The only issue raised in the lower court was whether the sum of P30,000, lent by the mortgagees in Japanese war notes, should be paid by the mortgagors in Philippine currency, peso for peso, or in accordance with the Ballantyne schedule. The lower court chose the latter alternative and, accordingly, rendered judgment "ordering defendants to pay plaintiffs the amount of P2,000, Philippine currency, with interest at six per cent (6%) a year, from June 29, 1945, up to the date when it is actually paid." The case is now before us on appeal taken by the mortgagees.

In *Cruz vs. Del Rosario* (G. R. No. L-4859) decided on July 24, 1951, it was held:

"In passing upon the petitioner's first assignment of error, which was the only one that deserved consideration, and dismissing the petition for certiorari, we have cited in our minute resolution the cases already decided by this Court as applicable to the present, not because they are similar in fact and law to this case as the attorneys for the petitioner erroneously believe, but because the doctrine laid down in those cases is squarely applicable to the present. That is, if according to the stipulation of the parties, the money to be paid by the debtor to the creditor, or by the vendor with pacto to the creditor to redeem the property mortgaged, or sold, shall be due and payable after liberation as agreed upon by the parties in the present case, it shall be paid in legal tender or Philippine currency at par value or at the rate of one Philippine peso for each peso in Japanese military notes; but if it shall be due and payable before liberation it shall be paid after the liberation in Philippine currency in accordance with the Ballantyne schedule. Besides, according to the facts found by the Court of Appeals which we cannot disturb in the present case, in fixing the amount of P5,000 to be paid by a vendor with pacto de retro to the vendee or by the debtor to his creditor after liberation, the parties had stipulated that the debtor or vendor, who had received P70,000 in Japanese military notes, shall pay the said sum of P5,000 Philippine currency within a certain period after liberation." (Underscoring supplied.)

This ruling was reiterated in *Arevalo vs. Barreto* (89 Phil., 633) decided on July 31, 1951, in the following language:

"After a consideration of the question raised in the second assignment of error of the appellant, we are of the opinion, and so hold, that the lower court erred in evaluating the repurchase price of the property sold and the value of the promissory note, at P516.70 Philippine currency. The parties have stipulated or agreed that the right to repurchase the property for P12,000 Philippine currency 'shall only commence from January 1, 1947, and shall end on January 10, 1948,' and the promissory note for P4,000 Philippine currency 'shall be paid on or after October 31, 1946.' As the said amounts were to become due after liberation, they shall be paid in Philippine currency according to a long line of decisions rendered by this Court. Besides, in the present case, the agreement of the parties was, not only that said amounts be paid after liberation, but they had stipulated that of the 60,000 pesos in Japanese military notes, the vendee shall pay P12,000 in Philippine currency for the repurchase of the property, and of the 20,000 in Japanese military notes received by the plaintiff from the defendant as a loan, the former shall pay the latter P4,000 in Philippine currency, after liberation." (Italics supplied.)

To the same effect was the conclusion reached in the case of *Wilson vs. Berkenkotter* (49 Off. Gaz., p. 1401), in which we said:

"In several cases involving the application of the Ballantyne schedule, this Court has held that said schedule is applicable to obligations contracted during the Japanese occupation where said obligations are made payable on demand or during said Japanese occupation, but not after the war or at a specified date or period which may indicate that the parties were speculating on the continuation or cessation of the war at time of payment. If the obligation on the part of Wilson to pay Berkenkotter the amount paid by the latter to wipe out their debt to the Bank was created during the occupation, then the Ballantyne schedule is applicable; but if said obligation was

created before the war, particularly on date when plaintiff and defendant signed the promissory note in favor of the Bank, then the Ballantyne schedule may not be applied." (*Italics supplied.*)

The foregoing view has been consistently applied by this Court in a number of other cases, among which the following may be mentioned: *Ilusorio vs. Busuego*, 84 Phil., 630; *Roño vs. Gomez*, 46 Off. Gaz., Supp. No. 11, 339; *Gomez vs. Tabia*, 47 Off. Gaz., 641, *Ponce de Leon vs. Syjuco*, 90 Phil., 311; *Garcia vs. De los Santos*, 49 Off. Gaz., 4830. What is more, the strong dissents written in some of the cases cited indicated that adherence to said view was effected upon thorough consideration of the different aspects thereof, that said doctrine is now in the nature of *stare decisis* and that the issue is now close as regards this Court.

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 after 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 (5) years 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. R. 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 was implicitly held, and the doctrine laid down in the cases above referred to, leave us no choice but to declare, as we do, that the obligation involved in the present case must be satisfied, peso for peso, in Philippine currency.

Wherefore, the defendants-appellees are hereby sentenced to pay to the plaintiffs-appellants, either directly or through the Clerk of the lower court, within ninety (90) days from the date on which this decision shall become final, the sum of P30,000, in Philippine currency, with interest thereon at the rate of six per centum (6%) a year, from June 29, 1945. In default of such payment, let the mortgage in question be foreclosed in the manner provided by law and the rules of court.

With costs against the defendants-appellees. So ordered.

Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Reyes, J. B. L., JJ., concur.

[*] See, resolution of Feb. 11, 1956 in Vol. 98.

[**] 89 Phil., 126.

DISSENTING OPINION

PADILLA, J., dissenting.

I dissent for the same reasons stated in my dissent in the case of Jose Ponce de Leon vs. Santiago Syjuco, Inc., 90 Phil., 311.

DISSENTING OPINION

PARAS, C. J., dissenting.

I dissent for the reasons stated in my dissent in the cases of Ilusorio vs. Busuego, 84 Phil., 630 and De Leon vs. Syjuco, 90 Phil., 311.

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