

**COMMUNITY INVESTMENT AND FINANCE CORPORATION,
PLAINTIFF AND APPELLANT, VS. EUTTQUIANO GARCIA, DEFENDANT
AND APPELLEE.**

G. R. No. L-2338. February 27, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from an order of the Court of First Instance of Manila dismissing the complaint filed by the plaintiff against the defendant, without special pronouncement as to costs. The appeal was taken to this Court because it involves only questions of law.

On April 25, 1947, plaintiff corporation filed an action with the Court of First Instance of Manila to compel the defendant to pay the balance of the prices of certain shares of stocks which the latter bought from it in 1936, with the corresponding interests and attorney's fees, and also to compel the defendant to accept the alleged shares. On May 20, 1947, defendant filed a motion to dismiss on the ground that the cause of action alleged in the complaint was already barred by the statute of limitations. This motion was denied. On October 20, 1947, defendant filed his answer specifically denying all the material allegations of the complaint and setting up some affirmative defenses concerning violation by the plaintiff of the 24-hour option contracts given to the defendant in 1936 and reiterating his defense that plaintiff's action was already barred by the statute of limitations. On March 9, 1948, defendant filed another motion to dismiss alleging, among others, that the monetary obligations which plaintiff seeks to enforce are covered by the Moratorium law so that, even granting without admitting, that the allegations of the complaint are true, plaintiff had no cause of action against the defendant. And on March 31, 1948, the trial court issued an order dismissing the complaint as follows:

"In view of the ruling of the Supreme Court in the case of Ma-ao Sugar Central Co., Inc. vs. Judge Barrios, et al., G. R. No. L-1539, the court finds the motion to dismiss well-taken, and hereby dismissed the plaintiff's complaint without special pronouncement as to costs.

"So ordered.

"Manila, Philippines, March 31, 1948.

"RAFAEL DINGLASAN

"Judge"

On April 27, 1948, plaintiff gave notice of its intention to appeal, stating therein that it was appealing purely on questions of law.

* * * * *

While counsel for plaintiff-appellant assigns as principal error the dismissal of the complaint by the lower court for lack of cause of action under the authority of *Ma-ao Sugar Central Co., Inc., vs. Barrios* (45 Off. Gaz., 2444), he however raises several issues which because of their importance will be presently taken up as they are presented by him in his brief. Thus, counsel submits that the dismissal of the case is improper because "(1) the appellant has a valid cause of action against the appellee, out of which had arisen its right to sue the appellee as far back as September, 1938; (2) Executive Order No. 32 only affected the appellant's remedial right or right of action but not the cause of action itself; (3) like the statute of limitations, failure of the appellee to plead the defense of moratorium in his first motion to dismiss or in his answer constituted a waiver of that defense; and (4) the ruling of this court in the case of *Ma-ao Sugar Central Co., Inc., vs. Judge Barrios, et al.*, is not controlling in this case."

As regards the first point, there is no doubt that the plaintiff has a cause of action against the defendant within the meaning of the law and the authorities. That is, plaintiff has a right to collect the balance of the prices of the shares of stock sold to the defendant, with the corresponding interests and attorney's fees incident to the litigation, and the defendant has the corresponding obligation to pay said balance on its date of maturity, and the defendant committed an omission when he defaulted in the payment of the obligation. These are the elements that constitute a cause of action in contemplation of law. If these elements are present, there is cause of action, and the right of the plaintiff to relief is inescapable. The complaint cannot and should not be dismissed. It appears, however, that while the defendant defaulted in the payment of his obligation to the plaintiff, the enforcement of such payment has been halted by Executive Order No. 25 as amended by Executive Order No. 32, which declare a moratorium on all monetary obligations payable within the Philippines pending action by the Commonwealth government. By virtue of this moratorium injunction, the cause of action of plaintiff has thereby been impaired in the sense that the action has been temporarily stayed. This conclusion is obvious. If payment of the obligation cannot be enforced, the debtor does not assume any correlative responsibility, and so one of the essential elements constituting a cause of action is lacking. We have taken notice of the authorities cited by counsel in an effort to bring about some technical differences between a cause of action and a right of action. But we are of the opinion that whatever the difference may be, it is of no consequence here, considering the interpretation given by this Court to a cause of action based on the moratorium law. Notwithstanding the import of the authorities cited by counsel, we still believe that the interpretation given by this Court in the *Ma-ao Sugar Central* case is correct, and we hereby adhere to it, specially the following portion which has a direct bearing on this case:

"The ground for the motion to dismiss filed by the petitioner is that the complaint of the respondents does not state facts sufficient to constitute a cause of action, because the plaintiffs have no to demand the payment of defendant's alleged debts until after the termination or legal cessation of the moratorium provided in Executive Order No. 25, as amended by Executive Order No. 32, * * *.

* * * * *

"While the debt moratorium is in force, the defendant-petitioner has no obligation yet to pay the plaintiffs, and the latter can not file a suit against him in the courts of justice requiring him to recognize his debts to the plaintiffs, and to pay him (after the moratorium) not only the amount of the indebtedness, but the legal interest thereon from the filing of the complaint, the attorney's fees of ten per centum of the amount due, and the costs of the suits. There is no such action to compel the defendant to acknowledge or recognize his debt which is not yet payable, distinct and different from the action for recovery or payment of a debt already due and payable, against the debtor who refuses to pay it. To allow the plaintiffs' action and grant the relief demanded in the complaint would be to compel the defendant to pay legal interest on the amount claimed from the filing of the said complaint, as well as the attorney's fees of 10 per cent of the sum due thereon as stipulated, and the costs of the suit, as if the defendant's obligation to the plaintiff were already payable and he had failed and refused to pay them. Why should the defendant be required to bear the expenses incidental to a suit before he has violated

the plaintiffs' right? How could plaintiffs assume that defendant will not pay his debts when they become payable, and for what reason they have filed this action against defendant? Why should not the contrary be presumed, that is, that the debtor will pay his obligation at the proper time, in order to prevent a suit, preserve its credit, and avoid the expenses incident to a suit, and the payment of legal interest on the amount due and attorney's fees.

"In the case of *Henares vs. Cordova* (C. R. No. L-1536), a petition for prohibition was filed by the petitioner alleging that the lower court had no jurisdiction over the subject matter, which is the collection of an alleged indebtedness unenforceable under the debt moratorium, and this Court denied the petition on the ground that Executive Order No. 25, as amended by Executive Order No. 32, did not have the effect of divesting the lower court of its jurisdiction to try and hear the case. We did not deem it necessary then to express our opinion on the sufficiency of the complaint, but now we do for the guidance of the courts and legal practitioners, and state that said Executive Order No. 25 as amended by Executive Order No. 32 not only suspends the execution of the judgment that the court may render so far as it orders the payment of debts and other monetary obligations, as stated in the resolution in said case, but also suspends the filing of suit in the courts of justice for the enforcement of the payment of debts and other monetary obligations therein referred to, if timely objection is set up by the defendant debtor. It is to be borne in mind that the debt moratorium is a right granted by law to the debtors, and as such right it may be waived because its waiver does not affect the public interest or the rights of third parties." (See also *General vs. De Venecia*, 44 Off. Gaz., 4912, July 30, 1947; *Uy vs. Kalaw Katigbak*, L-1830, December 31, 1949; and *Mariano vs. Dannug*, L- 2806, July 20, 1950.)

In the above-quoted case, we expressly stated that Executive Order No. 25 as amended by Executive Order No. 32, not only suspends the execution of the judgment that the court may render to enforce the payment of debts and other monetary obligations, but also the filing of suit in the courts of justice if timely objection is set up by the debtor. And having the defendant set up the defense of moratorium in due time, the lower court has no other alternative than to dismiss the complaint.

Counsel for plaintiff, however, claims that the defendant has not raised the defense of moratorium on time because he has raised it for the first time in the second motion to dismiss which he filed after he had already filed his answer to the complaint. And having failed to raise it in the first motion to dismiss, or in his answer, he is deemed to have waived his right to do so as insinuated in the *Ma-ao Sugar Central* case.

We find no merit in this contention. In the first place, there is no rule or law prohibiting the defendant from filing a motion to dismiss after an answer had been filed. On the contrary, section 10, Rule 9, expressly authorizes the filing of such motion at any stage of the proceeding when said motion is based upon plaintiff's failure to state a cause of action. The following authorities bear this out.

"Consideration of motion to dismiss after filing of answer.— A motion to dismiss for failure to state a claim may be made after the answer has been filed." (I, Moran, Rules of Court 3d ed., 156; *Watts-Wagner Co., Inc., vs. General Motors Corp.*, 9 Fed. Rules Service, p. 12 b. 31—1; U. S. Dist. Ct., S. D. N. Y., Dec. 19, 1945.)

In the second place, under section 10, Rule 9, the "defense of failure to state a cause of action" may be alleged in a later pleading. The following authorities also bear this out:

"No waiver of defense of failure to state a claim by failure to plead it in answer.—A motion to dismiss for failure to state a claim may be made at any time and the defense is not waived because not pleaded in the answer. It is not necessary to plead such a defense in the answer." (I, Moran, Rules of Court, 3d ed., 146; *McLauhlín vs. Curtis Publishing Co.*, 7 Fed. Rules Service, p. 139; U. S. Dist. Ct. S. D. N. Y., August 4, 1943.)

"An exception based on the lack of a right of action can be submitted during any stage of the case." (*Abriera vs. Orin*, 8 Phil., 193.)

And in a recent case decided by this Court on May 28, 1948, it was held:

"Similarly, the objection that the defendants' reply to the plaintiffs' answer to the motion for dismissal introduces new grounds of dismissal is not borne out by the context of the said answer. The alleged new grounds are but an enlargement of the argument in support of the motion to dismiss without going beyond the basic proposition of lack of a sufficient cause of action. Moreover, the defense of failure to state a cause of action is excepted from the rule that defenses and objections not pleaded in the motion to dismiss or in the answer are deemed waived. Such defense may be alleged in a later pleading, if one be admissible, or by motion for judgment on the pleadings or at the trial on the merits. (Moran's Commentaries on Rules of Court, Vol. 1, p. 263.)" (De Jesus vs. Manglapus, 45 Off. Gaz., 5443.)

But there is another reason why the motion to dismiss setting up the defense of moratorium was filed only after the filing of the answer on October 20, 1947. This special reason is the recent decision of this Court promulgated on December 3, 1947, in the case of Ma-ao Sugar Central Co., Inc. vs. Barrios, (45 Off. Gaz., 2444)[*], wherein it was laid down that the moratorium order suspends the filing of suit in the courts of justice as regards the enforcement of monetary obligations. It should be noted that the answer was filed on October 20, 1947. Because of this supervening event there was certainly need of filing the second motion to dismiss in order to implement the decision of this Court, which is decisive of the right of action of the plaintiff. This step finds sanction in the following authorities.

"Defense of failure to state a claim not waived.—A motion to dismiss for failure to state a claim may be made at any time and a defendant is not precluded from making such a motion by the fact that he had made a previous motion to dismiss, the grounds for the second motion being based on facts occurring since the disposition of the first motion." (I, Moran, Rules of Court, 3d ed., 177; Land vs. Prudhomme Oil Co., Inc., 7 Fed. Rules Service, p-221; U. S. Dist. Ct., W. D. La., Feb. 23, 1944; 3 F. D. R. 377.)

The foregoing considerations prove conclusively that the issues and arguments advanced by counsel for the appellant in his brief are not well taken and must fall on their own weight. The action taken by the lower court is therefore justified.

But there is another point that should not be overlooked in the consideration of this case. It refers to the approval of Republic Act No. 342 on July 26, 1948, by Congress after this case was appealed to this Court, which lifts the ban of moratorium, except only with regard to war sufferers or victims. In other words, presently there is no moratorium order which may have the effect of suspending the enforcement of monetary obligations except only when the obligation is due from a war sufferer, in which case his alleged obligation shall not be due and demandable for a period of eight years from and after settlement of his war damage claim. While it is claimed by appellee in his brief that he is a war sufferer, there is nothing, however, in the record to show this fact except an affidavit which had been attached to the record over the objection of appellant. Appellant has asked that all matters pertaining to appellee's claim that he is a war sufferer be stricken out from the record for lack of competent evidence.

We believe and so hold that this claim of appellant is well taken. Appellee's claim that he is a war sufferer is a matter that should be established by competent evidence. This matter is important because it would determine if this case should be decided under the old moratorium orders, or under Republic Act No. 342, and in the absence of sufficient evidence this Court cannot proceed to intelligently pass upon the correlative rights of the parties brought about by the approval of the new law. The affidavit attached by the appellee to the record is not a competent evidence and has been objected to by appellant. The only alternative, therefore, is for this Court to remand this case to the court a quo for the presentation of the necessary evidence. (See Community Investment and Finance Corporation vs. Reyes, G. R. No. L-2111, September 19, 1950.) To decide this case merely on the

affidavit submitted by appellee is unfair and would be contrary to the rules of evidence. (U. S. vs. Magsino, 2 Phil., 710; U. S. vs. Escondo, 25 Phil., 579.)

Wherefore, the Court hereby orders that this case be remanded to the court a quo, for the presentation of the necessary evidence, in view of the approval of Republic Act No. 342. The court should proceed with the trial on the merits if it should find that the defendant is not a war sufferer or has not filed a war damage claim. So ordered.

Moran, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes and Jugo, JJ., concur.

[*] 79 Phil., 666.

CONCURRING

TUASON, J.,

I reserve my vote on the questions formulated by counsel for the plaintiff and restated on page 3 of the decision. I concur in the decision with reference to the application of Republic Act No. 342.

DISSENTING

FERIA, J.,

The plaintiff's action for recovery of P36,760.40 against the defendant, plus interests and fifteen (15%) per centum of the latter's debt for attorney's fees and costs in case of suit, was filed with the Court of First Instance of Manila on April 25, 1947. The defense of moratorium under Executive Order No. 25, as amended by Executive Order No. 32, then in force, was set up by the defendant, and the lower court, in view thereof and the ruling of this Supreme Court in the case of Ma-ao Sugar Central Co. vs. Barrios,[*] (45 Off. Gaz., 2444), dismissed the plaintiff's action, from which dismissal the plaintiff appealed.

It is obvious that the Republic Act No. 342 approved on July 26, 1948, after the appealed order of the Court of First Instance of Manila was rendered on March 31, 1948, dismissing the plaintiff's complaint, can not be taken into consideration by this court in deciding the present appeal, for the simple reason that under the law and Rules of Court there is no legal way by which we may, *motu proprio*, take into consideration and apply said Republic Act to the present case, in order to reverse or modify the resolution or order appealed from. Because section 5, Rule 53, in connection with section 1, Rule 58 of the Rules of Court, which refers to judgment by the Supreme Court in cases appealed from the Court of First Instance, provides that "no error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the court at its option may notice plain errors not specified, and also clerical errors." And in the present case, the appellant has neither assigned as erroneous nor argued in his brief the failure on the part of the court below to take into consideration the provision of the said Republic Act, for this was not in force at that time.

Even if the appellant had stated in his assignment of error and argued in his brief that the lower court erred in not applying the Republic Act No. 342 to the present case, we can not take into consideration the provisions thereof in deciding this case on appeal; because "As a general rule, at least so far as actions at law are concerned, and where no supplemental pleadings are filed, the rights of the parties are determined as of the time of the beginning of the

action. Plaintiff must therefore recover, if at all, according to the status of his rights at the time of the commencement of the action, and not at some earlier time nor by some change in the law following accrual of the right of action; and ordinarily the same rule applies with regard to the rights and defenses of defendant." (1 C. J. S., 1389.)

But a case must be determined in the light of the law, not in effect at the time of the judgment of the lower court, but as it exists at the time of the decision of the appellate court, where the statute changing the law is intended to be retroactive and apply to pending litigations. "But both reason and the weight of authority point to the view that the case must be determined in the light of the law as it exists at the time of the decision by the appellate court, where the statute changing the law is intended to be retroactive and apply to pending litigation, or is retroactive in its effects; and this is true though it may result in the reversal of a judgment which was correct at the time it was rendered by the trial court." (3 Am. Jur., 668-669.) In the case of Santos vs. Alvarez (44 Off. Gaz.. 4259)[*], we have so held and applied Commonwealth Act No. 689, as amended by Republic Act No. 66, to the action for ejectment pending at the time it was promulgated.

In the present case, there cannot be any doubt that Republic Act No. 342 is, by its spirit and letter, prospective and can not be given a retroactive effect, and, therefore, the law applicable for the determination of the plaintiff's appeal is not said act, but Executive Order No. 25 as amended by Executive Order No. 32, which was in effect when the judgment of the lower court was rendered. "A sound canon of statutory construction is that a statute operates prospectively only and never retroactively, unless the legislative intent to the contrary is made manifest either by express terms of the statute or by necessary implication. Following the lead of the United States Supreme Court and putting the rule more strongly, a statute ought not to receive a construction making it act retroactively, unless the words used are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. No court will hold a statute to be retroactive when the legislature has not said so." (Segovia vs. Noel, 47 Phil., 543, 546.)

To set aside the order appealed from and remand the present case to the court a quo with instruction to proceed with the trial thereof on the merits if the defendant is not a war sufferer or has not filed a war damage claim, and decide this case on the complaint filed by the plaintiff on April 25, 1947, in accordance with the decision of the majority would be, not only to give retroactive effect to Republic Act No. 342, which clearly does not and can not have such effect as above shown, but to subvert the most elementary rules of procedure and practice just for the sake of a speedy disposition of the case regardless of its injurious effect on the defendant and the government itself, and to follow a clearly erroneous precedent (the case of Community Investment and Finance Corporation vs. Reyes, G. R. No. L-2111) in which the Republic Act No. 342 was also applied retrospectively on the pretext of avoiding multiplicity of suits according to the decision in said case. Because there is multiplicity of suits when two or more complaints, springing out of the same cause of action, are filed by the plaintiff against the defendant; and there is no multiplicity of suits when an action is dismissed because the right of action of the plaintiff did not exist at the time of the filing of his complaint, and he has to file another suit after the accrual of his right of action as in the present case.

The present action was prematurely instituted, because though the plaintiff's cause of action accrued before the Executive Orders Nos. 25 and 32 on Moratorium came into effect, the "enforcement of payment of all the debts and other monetary obligations was temporarily suspended pending action by the Commonwealth Government," before the plaintiff's complaint was filed. Therefore, it is evident that the plaintiff had no right of action when he filed the suit against the defendant in this case, because the latter could not then be compelled to pay his debt, and the court a quo was right in dismissing plaintiff's action or complaint. And the plaintiff could not, even by a supplemental complaint based on the lifting of the moratorium by said Republic Act No. 342, cure the defect or

lack of right of action on his part at the time he filed his complaint. Construing section 105 of the Code of Civil Procedure, from which section 5, Rule 17 of the Rules of Court was substantially taken, this Supreme Court held the following:

"Section 105 of the Code of Civil Procedure provides that supplementary pleadings may be filed setting up facts which occurred after the commencement of an action, but when no right of action exists at the filing of the original complaint this defect can not be cured by the presentation of a supplementary complaint alleging the existence of facts which occurred after the filing of the original complaint. If no right existed at the time the action was commenced the suit can not be maintained, although such right of action may have accrued thereafter." (Limpangco vs. Mercado, 10 Phil., 508, 510-511.)

Furthermore, if the order appealed is not affirmed or the plaintiff's complaint in this case is not dismissed, without prejudice to his right to file afterwards an action against the defendant to recover his claim if the defendant was not a war sufferer and has not filed his claim with the War Damage Commission, the defendant would have the opportunity to pay his debt before the new action is filed and thus save for himself the obligation to pay the attorney's fees and costs claimed in the complaint of the plaintiff in this case. But to proceed with the complaint or action already instituted by the plaintiff against the defendant, the plaintiff will necessarily be entitled to recover the attorney's fees he claims for having filed a suit to recover defendant's debt.

And finally, the procedure adopted in the present case by the majority in not affirming the order of dismissal of the case by the lower court will deprive the appellee of the costs in this instance, which he is entitled to recover from the plaintiff for defending or supporting the order appealed from, which is perfectly right and correct, and will also deprive the Government of the docket fees which the plaintiff is bound to pay if he desires to file a new complaint in view of the subsequent promulgations of the above-mentioned Republic Act No. 342.

In view of all the foregoing, we are sorry to dissent from the majority and hold that the order of the Court of First Instance dismissing the plaintiff's complaint must be affirmed with costs in this instant against the plaintiff. If the defendant is bound to pay and refuses or fails to pay his monetary obligation to the plaintiff under the Republic Act No. 342, he may file another action against the defendant and pay the corresponding docket fees.

[*] 79 Phil., 666.

[*] 78 Phil., 603.

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