

**CO CHIN LENG, PLAINTIFF AND APPELLEE VS. EUGENIO MINTU,
REPRESENTED BY PERPETUA BUHAIN MINTU, ADMINISTRATRIX OF
THE ESTATE OF EUGENIO MINTU, DEFENDANT AND APPELLANT.**

G.R. No. L-13075. December 29, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

In his amended complaint filed in the Court of First Instance of Manila, the plaintiff sought to recover the sum of P35,000 excluding interests and costs (pp. 14, 20, record on appeal). The defendant set UP the defense of payment and a counterclaim of P14,000 as damages. Judgment was rendered in favor of the plaintiff for the sum of P30,000 with interest thereon at the rate of 5% per annum from 8 April 1955 until paid and for costs. The defendant has appealed. In her assignment of errors, mixed questions of law and fact are raised, to wit:

The trial court erred in not declaring the mortgage obligation of Joaquin V. Bass to Co Chin Leng as already paid thru tender and consignment made by Eugenio Mintu, in behalf of Bass, to Co Chin Leng of P100,574.69 Japanese notes.

Corollary to the first error, and with all due respect to the trial court, its rejection of defendant's defense of payment was based on erroneous findings.

That the trial court erred in declaring the obligation guaranteed by the lands owned by Dr. Manlapaz and Eugenio Mintu to be a joint obligation, where each is liable for one-half the obligation, and in ordering Mintu's administratrix to pay Co Chin Leng P30,000, Philippine currency, as representing the "balance" of Bass' loan of P70,000 in Japanese notes.

That the trial court erred in not finding and declaring that the mortgage obligation was discharged and satisfied (for the second time) by the acceptance and receipt by Co Chin Leng of P40,000 in Philippine currency as "amicable settlement" from Dr. Manlapaz and the Centro Escolar University, substitutes of mortgagor Bass in a mortgage loan of P70,000 Japanese notes.

Corollary to the fourth error, the trial court erred in not holding the amicable settlement of P40,000 between the parties in civil case No. 18167 of Manila and the final dismissal of this case without appeal as a final settlement and remission of the mortgage debt.

In concluding that Mintu's administratrix pay Co Chin Leng P30,000, Philippine, currency, as alleged balance of Bass' mortgage debt of P70,000 in Japanese notes, the trial court refused to apply the Ballantyne scale allegedly because its application here was neither just nor equitable, adducing reasons therefor which we respectfully aver to be erroneous. (*Italics supplied.*)

The appeal taken by the defendant is certified to the Court of Appeals, pursuant to the provisions of Section 31, in connection with section 29, and section 17, sub-paragraph 5 of paragraph 3, Republic Act No. 296, as amended by Republic Act No. 2613.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Appeal certified to the Court of Appeals.

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