

SOFIA GUSTILO, GLORIA GUSTILO, ROMEO GUSTILO, FELISA GUSTILO AND JULIETA GUSTILO, PLAINTIFFS AND APPELLANTS, VS. CONCHITA JAGUNAP AND HER HUSBAND SEVERINO QUIDATO, DEFENDANTS AN...

G.R. No. L-4249. November 20, 1951

Ponente: TUASON, J.

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TUASON, J.:

On July 31, 1936, Conchita Jagunap, married to Severino Quidato, mortgaged two parcels of land to Primitivo Gustilo and Sofia Gustilo, husband and wife, to secure a debt of P1,500. The mortgage was for a term of five years with interest at the rate of 12 percent per year. Sometime in 1944, the mortgage having matured, the mortgagors tendered payment of the debt but the creditors turned it down because it was in Japanese military notes. As a result of this refusal, the mortgagors consigned in court the amount due, in the same notes, pursuant to Art. 1176 of the Civil Code then in force. On May 1, the mortgagees relented, and through their attorney-in-fact withdrew from the clerk of court the amount consigned in full satisfaction of the obligation, and on May 3 executed a document of cancellation of the mortgage. This document was duly entered on the same date in the records of the Register of Deeds and inscribed on the corresponding certificate of title.

Primitivo Gustilo having died on November 20, his widow and children commenced the present action against the mortgagors to collect the same mortgage debt plus interest and attorney's fees. The grounds alleged for the action were. "That during the period of Japanese occupation, the Japanese Military Police or 'Kempetai' compelled the inhabitants of Iloilo Province to accept the Japanese Military notes under penalty of death for refusal to accept the same; that the plaintiff Sofia Gustilo and Primitivo Gustilo acting under threat and intimidation had no other alternative at that time, but much against their will, to receive from the clerk of the Court of First Instance of Iloilo Province the amount of P1,500 in Japanese Military notes deposited by the herein defendants In order to avoid the imminent penalty of death on refusal to accept the depository amount."

When the payment was tendered and consigned by the debtors and accepted by the creditors, the same was due and demandable, and the only currency then in circulation was the Japanese fiat money. Not to pay their debt at that time in the only money then in circulation, the plaintiffs would subject themselves to a lawsuit and possible loss of their property. Certainly, they would have to continue paying a high rate of interest.

Payments of pre-war debts in Japanese war notes have been uniformly held valid and effective to discharge the obligations if the contract did not specify the currency with which the debt was to be satisfied and was silent as to the date of maturity. On the authority of these decisions it was immaterial whether duress or coercion, general or specific, was exerted on the creditors.

Viewed from the equity side of the case, the plaintiffs' action is also untenable. The money they received had value and could have been employed in useful or profitable investments. Very probably it was. They then are estopped from repudiating their action after they have accepted and presumably made use of the money.

The judgment appealed from is affirmed with costs against the appellants.

Paras, C. J., Feria, Bengzon, Reyes, Jugo and Bautista Angelo, JJ., concur.

Pablo, J., concurs in the dispositive part.

Padilla, J., concurs in the result.

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