

INTESTATE ESTATE OF CHARLES A. MCDONOUGH. PEOPLES BANK AND TRUST CO., ADMINISTRATOR AND APPELLEE, VS. PHILIPPINE NATIONAL BANK, CREDITOR AND APPELLANT.

G. R. No. L-3405. April 28, 1951

Ponente: FERIA, J.

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FERIA, J.:

This appeal is taken by the creditor and appellant, Philippine National Bank against the order of the Court of First Instance of Manila dated October 10, 1947, disallowing payment to the creditor Bank of interest due on a sixtyday note, Exhibit "A", dated November 19, 1941, from January 19, 1942, up to the date of payment.

The creditor and appellant filed with the said Court its claim of P3,916.60 as of November 14, 1945, dated February 1, 1946, against the Intestate Estate of Charles A. McDonough in the above entitled case, plus daily interest of P0.658 on P3,000 from November 15, 1945, until paid, due on a sixty-day promissory note dated November 19, 1941, signed jointly and severally by Atty. Charles A. McDonough and H. E. Bennet, for P3,000 payable sixty days after date with interest at the rate of 8 per cent per annum from maturity until paid.

The administrator neither admitted nor denied said claim as he failed to file an answer pursuant to section 10 of Rule 87, Rules of Court, and at the hearing of the claim of the appellant Bank, the administrator did not object to the evidence presented by the creditor and appellant, the promissory note Exhibit "A", and statement of account, Exhibit "B".

The lower Court in its order of October 10, 1947, approved the claim of the creditor and appellant in the amount of P3,000 with interest at the agreed rate of 8 per cent per annum from February, 1945, up to the date of payment, and not from January 20, 1942 to the date of payment, as claimed by the creditor and substantiated by the evidence.

The creditor and appellant filed a motion for reconsideration dated October 29, 1947, based on the ground that the Commonwealth Act No. 672 (An Act to Rehabilitate the Philippine National Bank) allows it to charge interest during the war; that the effect of war on contracts entered into by parties is to suspend its operation, but thereafter, the right of the parties under it may be enforced; and that a promissory note will bear interest after maturity during the war, because the creditor Bank has opened its business during said period. On the other hand, the administrator and appellee opposed said motion for reconsideration on the ground that the deceased Charles A. McDonough, an American citizen, was interned by the Japanese during the latter part of the Japanese occupation of the Philippines; and that it is of common knowledge, of which the courts can take judicial cognizance, that the Japanese during their occupation of the Philippines, confiscated all assets of their enemies (United States citizens and other citizens of their allies) and prohibited them from paying their obligations. And the lower court denied said motion for reconsideration simply on the ground of lack of merit.

The creditor and appellant assigns in his brief four errors committed by the Court a quo, but the most important and the only one which need be considered is the third, that is, that "the lower court erred in disallowing payment

of interest due on the promissory note Exhibit A during the Japanese occupation."

The solution of the assignment of error depends upon the determination of the question whether there was a prohibition for the debtor, the late Charles A. McDonough, a citizen of the United States interned during the Japanese Occupation of the Philippines, to pay his debt to the creditor the Philippine National Bank. If there was such a prohibition interest is not demandable; otherwise, the administrator of the estate of the late debtor must pay the interest on the principal debt during the occupation. Because, as a general rule it may be safely laid down that whenever the law prohibits the payment of the principal, interest during the existence of the prohibition is not demandable (*Heat Brown*, 82 U. S. 128, 131; see also *Ward vs. Smith*, 74 U. S., 207).

It is contended, in support of the order appealed from, that "the Japanese confiscated all the assets of their enemies (United States citizens and other citizens of their allies), and prohibited them from paying their obligations."

There was no confiscation of the assets of their enemy by the Japanese. We have already held, in the case of *Haw Pia vs. China Banking Corporation* (45 Off. Gaz., Supp., [9] 229) and in many cases subsequently decided, that the Japanese Military Authorities or occupant did not confiscate the assets of the enemy alien during the Japanese occupation, but only sequestered or placed under custody their property and froze their assets in the bank in order to prevent their being¹ used in aid of the enemy. The purpose of such sequestration and freezing of properties and assets of the enemy nationals, in the absence of effective measures of control, for confiscation of enemy property is prohibited or outlawed by Section III of the Hague Regulations, was to avoid the use of enemy owned property for financing propaganda, espionage and sabotage, and acquiring stocks of strategic materials and supplies for the enemy.

As confirmation of non confiscation of the enemy property by the Japanese, we have found as facts in the above mentioned case of *Haw Pia vs. China Banking Corporation* that, out of about P34,000,000 collected from the debtors of the enemy bank by the liquidator Bank of Taiwan, the latter paid to the depositors or creditors of the said banks about P34,000,000. The collection of the aforementioned sum from the enemy bank's debtors, as well as the payment of withdrawals by the depositors, were regularly entered into the books of all the enemy banks in the Philippines in order that they could easily determine the respective amounts and the persons who had made the payments. This enabled all said banks to reopen and continue their business and declare dividends shortly after liberation, which would have been impossible had their assets been confiscated by the Japanese Military occupant.

The Japanese Military Administration did not prohibit the enemy nationals from paying their overdue debts or obligations. On the contrary, the Director General of the Military Administration in his instructions dated June 30, 1942, No. 28 to Mr. Jose Yulo, then Chief Justice of the Supreme Court, and No. 42 to Mr. Jose P. Laurel, then Commissioner of Justice of the Philippine Government, about the procedure to be followed by the Courts in connection with "civil cases in which American, British or any other enemy subjects or hostile aliens are parties and which were pending in Philippine judicial courts at the outbreak of the war or such like cases as may be brought to said courts hereafter," ordered that "the trial and determination of all pending¹ cases shall be suspended and no new cases shall be accepted for filing except when approved by the Director General of the Japanese Military Administration upon application of the party or parties." These instructions show that there was no such prohibition for the enemy aliens to pay their matured debts subject to the approval of the Japanese, for, otherwise, such Instructions should not have been given, because it would have been useless to approve the filing of suit against American, British or any other enemy subjects, if the latter were prohibited to pay their debts even if sentenced to do so by the Courts. Under said Instructions, the deceased Charles A. McDonough could have been sued and sentenced by the Courts to pay his debt with interests, or said debtor could have voluntarily paid his debt in order to avoid the suit, with the approval or consent which should have been granted upon application

of the proper party or parties, because the Philippine National Bank was not considered as an enemy bank, but a bank of the Philippine Government then an ally of the Japanese Empire, and for that reason it was allowed to open and operate during the Japanese Occupation. The fact that the creditor and appellant did not bring an action against the late debtors with the approval of the Japanese Military Administration to collect the debtor's debt, might be due to causes other than the alleged confiscation of the assets of the late Charles A. McDonough, because there was no such confiscation as already stated. If the debtor's properties and assets were confiscated by the Japanese, there would be no property which may be administered now by the appellee.

In view of the foregoing, the order appealed from is modified and the administrator of the estate of the late Charles A. McDonough is ordered to pay the appellant, Philippine National Bank, the sum of P3,000 with interest at the rate stipulated of 8 per cent per annum from January 9, 1942, to the date of payment, and the costs in this instance, on the ground that there was no prohibition during the Japanese occupation for the late Charles A. McDonough to pay his obligations contracted with the appellant, and not because of the provisions of the Commonwealth Act No. 672. So ordered.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, JJ., concur.

DISSENTING

PADILLA, J., with whom concurs TUASON, J.,

I dissent. Commonwealth Act No. 672 authorized and directed the Philippine National Bank to resume its business upon approval of the Act. Nowhere in the Act may be found the authority to charge and collect interest on pre-war loans accruing during the period of occupation of the Philippines by the enemy—the Imperial Japanese Army.

The instructions cited by the majority have no bearing on the question submitted for decision. There was no case pending in court brought by the appellant bank against Charles A. McDonough at the outbreak of the war; nor did the appellant bank during the occupation of the Philippines by the Imperial Japanese Army bring an action against Charles A. McDonough, with the approval of the Director General of the Japanese Military Administration upon its application. The majority states that the appellant bank could have sued Charles A. McDonough, with the approval and upon the application referred to above. The fact is that he was not sued and the appellant bank did not even try to apply for such approval. Perhaps, the appellant bank realized that the judgment it might secure against the debtor could not be satisfied, for he was a citizen of the United States of America—an enemy of the Empire of Japan—and his assets, if any, were confiscated. The majority says that the debtor could have paid his debt voluntarily to avoid being sued, with the aforesaid application and approval. This alternative is not contemplated in the instructions referred to by the majority. The instructions had reference to pending cases and new actions which might be brought by or against enemy citizens or subjects. But even if an enemy alien were willing to pay his debt, or even if he were sued for the collection of his debt under the conditions referred to in the instructions, he was not in a position to do so or to satisfy the judgment which might have been rendered against him because of his internment as enemy alien. Being an enemy alien, Charles A. McDonough could have no transactions or dealings with the appellant bank. How could he be required to pay interest accruing during the period of the country's occupation by the Imperial Japanese Army when he could not have been compelled or allowed to pay the principal? How could he have been forced or permitted to pay the principal when his assets were confiscated by the Imperial Japanese Army of occupation?

The majority states that the solution of the question raised by the appeal depends upon the determination "whether

there was a prohibition for the debtor, the late Charles A. McDonough, a citizen of the United States interned during the Japanese occupation of the Philippines, to pay his debt to the creditor, the Philippine National Bank. If there was such a prohibition interest is not demandable; otherwise, the administrator of the estate of the late debtor must pay the interest on the principal debt during the occupation. Because as a general rule it may be safely laid down that whenever the law prohibits the payment of the principal, interest during the existence of the prohibition is not demandable (*Heath vs. Brown*, 82 U. S.f 128, 131; see also *Ward vs. Smith*, 74 U. S. 207)."

If, as stated by the majority, Charles A. McDonough, a citizen of the United States, was "interned during the Japanese occupation of the Philippines;" and if he could neither use his funds nor dispose of his property, even if he had any, to pay his obligation or debt to the appellant bank because he was interned during the occupation of the Philippines by the Imperial Japanese Army and, therefore, was prevented from doing so, what prohibition would the majority require in order to make a pronouncement that there was such a prohibition from or against paying his obligation or debt to the appellant bank? Does the majority mean that it was necessary for the invader or the Imperial Japanese Army of occupation to announce by proclamation that enemy aliens were prohibited from paying their debts?

In support of its pronouncement that there was no such prohibition and confiscation of the assets of enemy aliens, the majority cites the reopening of the banks, the resumption of their business, and the declaration of dividends shortly after liberation, all of which, according to it, would have been impossible had their assets been confiscated by the Imperial Japanese Army of occupation. This statement or pronouncement—not supported by any evidence—ignores or at least overlooks Commonwealth Act 726 which appropriated the sum of ten million pesos, out of any funds in the National Treasury not otherwise appropriated, to constitute a special fund, which shall be designated "Financial Institution Rehabilitation Fund," to be used to purchase preferred shares of stocks of banks organized and now existing under and by virtue of the laws of the Philippines.

Finally, the majority advances the proposition that if the debtor's property and assets were confiscated by the Imperial Japanese Army of occupation, there would be no property which may now be administered by the appellee. Again, this proposition overlooks the undeniable fact that the property of enemy aliens, in spite of confiscation, had tjeen left by the invader when he was forced to leave the country, driven away by the overwhelming armed forces of liberation. There is no evidence to show the kind of property which is being administered in this special proceedings as belonging to the estate of the late Charles A. McDonough. The only evidence presented in this case consists of the promissory note (Exhibit A), the statement showing the amount due, made up of two items, to wit: P3,000, the principal, and P1,374.25, the interest at 8 per cent from 19 January 1942 to 10 October 1947 (Exhibit B), and the testimony of Estanislao S. Huelva, loan and discount clerk of the appellant bank, who identified the promissory note (Exhibit A) and the statement of account (Exhibit B).

It having been shown that during the occupation of the country by the Imperial Japanese Army there was physical, financial and legal impossibility on the part of the debtor to pay the loan evidenced by the promissory note signed by him, arising from the fact that he was interned as enemy alien during said occupation, which amounted to more than an express prohibition by the said Army from paying his debt, the question posed by the majority must have to be answered in the affirmative and, therefore, the interest on such pre-war loan granted by the appellant bank accruing during the period of enemy occupation should not, under the law and equity, be paid.

As regards the question passed upon in the case of *Haw Pia vs. China Banking Corporation*, (45 Off. Gaz.. Supp., [9], 229), and in cases subsequently decided, I reiterate my view pertinent to the point expressed in my opinion rendered in *La Orden de PP. Benedictinos de Filipinas vs. Philippine Trust Company*, (47 Off. Gaz., 2894).

The order appealed from should be affirmed.

RESOLUTION

November 27, 1951

FERIA, J.:

This is a motion for reconsideration based on two grounds.

The motion based on the first ground is really a motion for reconsideration, because the movant asks therein that the question raised in the court below and in this Court on appeal and which was decided against the movant, be considered anew. But it deserves no serious consideration for the simple reason that, as we have already shown in the decision, there was no law ordinance or order issued by the Japanese Military authorities prohibiting debtors, like the late Charles A. McDonough, to pay their obligation to the appellant Philippine National Bank, which was not an enemy bank; contrary to the appellee's contention. If the Bank appellant did not choose to secure the approval by the Japanese Military Authorities to appellant's action against the deceased, it was because the bank did not deem it necessary to do so for the debtor was solvent. It was for the latter to have secured the approval of the Japanese Military Authorities if he wanted to pay his obligation and avoid paying the interests thereon.

The so-called motion for reconsideration based on the second ground is not really a motion for reconsideration, for to reconsider a decision is to consider and decide anew a question previously raised, submitted to and decided by the Court. The movant had never before submitted or invited the attention of this Court to the applicability of Republic Act No. 401 on which the so-called motion for reconsideration is based, and for that reason we have not passed upon that question in our decision. It is true that when said Act was approved on June 28, 1949, the present case was already pending on appeal in this Court, and appellee's brief had been filed seven months before that date; but this case was set for hearing, argued and submitted for decision in April, 1950, and it was decided on April 28, 1951. So although the appellee was not bound to make any assignment of error of the lower court in his brief in support of the decision appealed from, it was incumbent upon the appellee[*] to point out in his brief, or amended brief if necessary, or invite the attention of this Court to the provisions of said Republic Act No. 401 if it were applicable and favorable to the appellee. Undoubtedly, the reason for the appellee's failure to do so is that said Republic Act, which condones unpaid interests accrued from January 1, 1942, to December 31, 1945, aside from not being applicable to the present case, is against the theory advanced in the appellee's brief. If it was necessary to enact said Act in order to condone the payment of interests accruing during the Japanese occupation, it was because the payment of such interests was demandable. Condonation of interest presupposes obligation to pay it.

This Court cannot apply Republic Act No. 401 to the present case even if the appellee had invited our attention to it, because no evidence was produced by both parties except the promisory note and the claim of the appellant bank against the late Charles A. McDonough for the payment thereof together with interest. There is nothing in the record to show that the late Charles A. McDonough "was unable to pay his obligation which became due and demandable, or interests which should have been paid during the period from January 1st, 1943, December 31st, 1945, because of the refusal of the creditor to accept payment (a); because the debtor was prevented from doing so by his imprisonment or detention by the enemy resulting in his inability to pursue his normal work (b); or because of penury caused by the ravages of the war, financial restrictions imposed by whatever authority, or loss of his ordinary sources of income or control over them as a result thereof (c), "as provided in Section 2 of Republic Act No. 401. It is obvious that is not applicable, Subsection (d) of said Section 2, which provide for condonation when the debtor was unable to pay because the assets of the creditor were under the control of the enemy and or administered through the so-called Enemy Alien Property Custodian or other enemy instrumentality, inasmuch as

the assets of the creditor Philippine National Bank were not under such control. Besides, according to Section 1 of said Act, the purpose of the law or the policy of the State in extending the condonation of interests contemplated in Republic Act No. 401, is "the rehabilitation of those who have suffered the ravages of war * * * in order to afford opportunities to debtors of the Government or Government-owned or controlled corporations to rehabilitate themselves, and to enable them to pay their pre-war obligations under the terms and conditions beneficial to them."

If the attorneys for the appellee believe that the late Charles A. McDonough was unable or had no money to pay his obligation or interests which should have been paid during the period of from January 1, 1942, to December 31, 1945, which amounted in all to less than four thousand (P4,000) pesos, caused by some of the causes enumerated in Section 2, Subsection (c), or because he could not freely pursue his normal work or law practice under Subsection (b) of Republic Act No. 401, on which the dissenter relies, without showing that the late McDonough had then no money or property to pay his debt or the interests thereon to the Bank, and that the condonation of said obligation and interests of about nine hundred (P900) pesos accrued during the said period of time would rehabilitate the late Charles A. McDonough, who is already dead since the year 1945, they might have filed or may file a motion for new trial on the ground of newly discovered evidence, before the judgment of this Court has become final, under Section 1, Rule 55, in connection with Section 1, Rule 58, of Rules of Court. The newly discovered evidence would be the approval of Republic Act No. 401 of June 29, 1949, and the evidence which should show that the present case comes under said Section 2, of Republic Act No. 401.[*]

In the hearing of the motion for reconsideration the attorney for the creditor assailed the constitutionality of Republic Act No. 401, set up for the first time in the motion for reconsideration of the decision of this Court of appeal, and in order that said question may be considered and decided in connection with Act 401 by this Court, it should be set up in the new trial if a motion for new trial is filed in time and granted in the present case. But if the motion is denied there would be no need for considering and passing upon that question.

Motion for reconsideration is therefore denied.

Pablo, Bengzon, Reyes and Bautista Angelo, JJ., concur.

[*] *Relativo vs. Castro, et al.*, 76 Phil., 563, 43 Off. Gaz., (No. 1) 108, 111 citing *Lucero vs. De Guzman*, 45 Phil., 852.

[*] *U.S. vs. Repollo, et al.*, 2 Phil., 195.

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