

HONGKONG & SHANGHAI BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS. LUIS PEREZ SAMANILLO, INC., AND REGISTER OF DEEDS OF MANILA, DEFENDANTS AND APPELLANTS.

G.R. No. L-1345. November 10, 1948

Ponente: FERIA, J.

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FERIA, J.:

The plaintiff, a foreign corporation licensed to do business in the Philippines, through its attorneys, , Perkins & Ponce Enrile, filed on August 14, 1945, against the defendant corporation organized under the laws of this country, an action to recover from the defendant the sum of P1,414,770.36 and the interest thereon alleged to be due from the letter to the former, and to have the deed of cancellation of the mortgage on defendant's properties to secure the defendant's debt, executed by the Bank of Taiwan, Ltd., appointed by the Japanese Army of occupation as liquidator of the plaintiff, on August 31, 1944, annulled and rendered of no effect ab initio, on the ground that said cancellation was executed without consideration.

The parties at the date of the trial submitted to the lower court an agreed statement of facts for decision. According to the agreement, the defendant had secured from the plaintiff a credit by way of overdraft in current account, the debit balance of which amounted on January 1, 1942, to the sum of P1,414,770.36, payable on demand, and secured by first mortgage upon five (5) parcels of land together with all the buildings and improvement thereon, situated in the City of Manila, Philippines, and covered by Certificates of Titles Nos. 51415, 51416 and 51478 of the Register of Deeds of the City of Manila; that the Bank of Taiwan, Ltd., appointed as liquidator of the plaintiff corporation by the Director General of the Japanese Military Administration, had repeatedly required the defendant to pay the above mentioned indebtedness to the plaintiff; that as the office of Enemy Property Custodian of the Imperial Japanese Army did not approve the sale of the properties mortgaged by the defendant, in order to satisfy its obligation to the said plaintiff, the former had to sell its Hacienda Panubigan located at Villahermoso, Negros Oriental, with an area of 19,051,734 square meters, for P1,800,000.00 to Juan P. Pellecer & Co., with the approval of the Enemy property Custodian of the Imperial Japanese Army in the Philippines, in order to pay the Bank of Taiwan, Ltd. the amount due from said defendant to the plaintiff, and that the said Bank of Taiwan upon receiving the payment, executed a deed of cancellation of the mortgage of the said properties, which was recorded in the Register of Deeds and noted in the corresponding Certificates of Title.

The Court of First Instance rendered judgment in favor of the plaintiff and against the defendant, declaring that the defendant is indebted to the plaintiff bank in the sum of P1,414,770.36, Philippine currency, with interest at the rate of 8% computed monthly from January 1, 1942, up to the complete payment thereof, plus an amount equivalent to 10% of the debt with interest as attorney's fees, costs and expenses of the suit; ordering the defendant to pay said amount as soon as the moratorium provided for in Executive Order No. 32, series of 1945, issued by the President of the Philippines, has been lifted; declaring null and "without effect the deed of cancellation of the mortgage executed by the Bank of Taiwan, and ordering the other defendant Register of Deeds of Manila to annotate or register in the Certificates of Title of the properties mortgaged, the nullification of the

said cancellation of mortgage and annotation thereof.

The defendant appealed from the judgment of the lower court and the case is now before this Court on appeal.

The facts of this case are similar to those in the case of *Haw Pia vs. China Banking Corporation*, G.R. No. L-554, and the questions raised are the same as those involved in said *Haw Pia* case. In the case of *Haw Pia vs. China Banking Corporation*, this Court held that the payment made in Japanese war notes by the defendant *Haw Pia* to the Bank of Taiwan, Ltd., to satisfy his indebtedness to the plaintiff *China Banking Corporation* which was being liquidated by order of Japanese Military Administration that appointed the said *Taiwan Bank, Ltd.*, as liquidator of the so called enemy banks, was valid and released the defendant *Haw Pia* from his obligation to the plaintiff *China Bank*.

In view of the decision rendered by this Court, and on the strength of said ruling laid down, in the said case of *Haw Pia vs. China Banking Corporation*, we reverse the judgment appealed from and dismiss the plaintiff's action against the defendant with costs against the appellee.

So ordered.

Paras, Pablo, Perfecto, Bengzon, and Briones, JJ., concur.

DISSENTING

TUASON, J.:

I dissent from this decision on the same grounds stated in the dissenting opinion of Mr. Justice Hilado, now retired, in *Haw Pia vs. China Banking Corporation et al.*, G.R. No. L-554 in which Mr. Justice Padilla and I joined.

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