

**ALEJANDRO ANDRES AND HERMINIA PICHAY, PETITIONERS, VS.
THE COURT OF APPEALS, ROSARIO MATA, FLORENCIO CASTRO,
TOMAS CASTRO, JR., ELMER CASTRO, OLIVER CASTRO, CLARITA
CASTRO, AND ...***G.R. No. L-1773. December 29, 1949*

Ponente: MONTEMAYOR, J.

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On September 22, 1938, by means of a deed of sale (Exhibit A), Tomas Castro conveyed lot No. 9318, with a house thereon, situated in the municipality of Laoag, Ilocos Norte, for the sum of P5,500 to Alejandro Andres and Herminia Pichay, with a clause to the effect that the vendor reserved the right to redeem the property by paying back the sales price in not less than four years and not more than six years after the expiration of said period of four years. By April, 1944, Tomas had already died but in that month and year, his widow Rosario Mata offered the sum of P5,500 in Japanese military notes to the vendees for the repurchase of the property, but said vendees rejected the offer or tender of payment on the ground that the value of the money offered was very much less than that of the money which they had paid for the property in 1938. To force repurchase, Rosario brought an action (in her name and that of her children had by Tomas Castro against the vendees to compel them to reconvey the property to her and her children at the same time depositing and consigning in court the said sum of P5,500. Judgment was rendered in favor of the plaintiffs, Rosario and her children, in the following terms:

"Por todas estas consideraciones, el Juzgado dicto sentencia a favor de los demandantes, ordenando a los demandados Alejandro Andres y Herminia Pichay a devolver el solar que se describe en la escritura de compraventa con pacto de retro (Exh. A) a los demandantes y que otorguen un documento de retroventa a favor de los demandantes, y una vez otorgada dicha escritura de retroventa dichos demandados podran recibir del Tesorero Provincial de Ilocos Norte la suma de P5,500 depositada por los demandantes en poder del Eseribano de este Juzgado bajo el recibo oficial No. J-0672621 y depositada a su vez por el Eseribano de este Juzgado bajo el recibo oficial No. 1-49410 en la Tesoreria Provincial de esta provincia; y al pago de las costas del presente juicio."

Alejandro and Herminia appealed to the Court of Appeals which tribunal affirmed the judgment of the lower court. The defendants-appellants, now petitioners in this case by way of certiorari have asked this Court to review the decision of the Court of Appeals.

The main issue involved in this case is the legality of the tender of payment. Petitioners claim that the Japanese military notes in 1944 were not legal tender, and that because of their greatly depreciated value, to compel petitioners to accept said notes as the repurchase price, would be a great injustice to them.

The reason why this appeal by certiorari was given due course by this Court was that at that time, there had not yet been any ruling as regards the legality of payment during the Japanese military occupation of debts and obligations with the said Japanese war notes. However, on April 9, 1948, a decision of this Court in the case of

Haw Pia vs. China Banking Corporation (45 Off. Gaz., No. 9 Supplement, p. 229),[1] was promulgated wherein it was ruled that payment of debts and obligations with the war notes issued by the Japanese occupation forces was valid.

There are other cases decided by this Court, based on the Haw Pia case holding that during the Japanese occupation the Japanese war notes were legal tender. (Notor vs. Martinez,[2] G. R. No. L-1892, promulgated August 16, 1949, and cases cited there.)

It is therefore clear that the respondents made a valid tender of the repurchase price of the property in question and consequently, the Court of Appeals committed no error in affirming the judgment of the lower court.

The petitioners also question the validity and regularity of the consignment in court made by respondents of the sum of P5,500. Suffice it to say on this point that after the rejection by the petitioners of the valid tender made by the respondents, the latter filed the corresponding complaint in court accompanying the filing of the suit with the consignment of the money in court and alleging and mentioning said consignment in the complaint. This was sufficient notice to the petitioners of the consignment so that if they wanted to receive that money from the court in return for a reconveyance of the property in question, they could have done so. Not only this, but the judgment of the lower court directed the herein petitioners, defendants in that case to execute the reconveyance of the lot after which, they could receive the money consigned in court.

It is also insinuated in the brief of the petitioners that assuming that the Japanese war notes were legal tender, in view of their depreciated value, the amount of P5,500 tendered by the respondents should be evaluated according to the Ballantyne Schedule after which the respondents should be ordered to pay to the petitioners the equivalent of said war notes in genuine Philippine currency. Had the respondents confined themselves to making the offer or tender of the amount of P5,500 without consigning the same in court, the result might have been that said respondents by said tender, retained or preserved their right to repurchase the property but that they might now be required to pay in genuine Philippine currency the equivalent of the amount then tendered. However, inasmuch as they consigned the money in court and gave the petitioners the right and the choice to receive said amount, said respondents had done all that was incumbent upon them to do and the petitioners have no one to blame but themselves for the consequences now that the Japanese war notes have not only continued to depreciate in value since April 1944, but have now become worthless.

In view of the foregoing, the decision of the Court of Appeals is hereby affirmed. Considering that at the time these certiorari proceedings were initiated there was as yet no ruling by this Court as to the validity of tender of payment with Japanese war notes during the occupation of debts and obligations, and presuming that the petitioners herein have filed this appeal in good faith, we make no pronouncement as to costs.

Moran, C.J., Ozaeta, Paras, Bengzon, Reyes, and Torres, JJ., concur.

TUASON, J.:

I concur in the result.

[1] 80 Phil., 602.

[2] 47 Off. Gaz., 656.

DISIDENTE

PABLO, M.:

Disiento.

La clausula de retracto es del tenor siguiente:

"Las condiciones de esta venta son tales que yo el vendedor, mis herederos, sucesores y cesionarios, no podremos redimir esta propiedad durante los primeros cuatro años y si dentro de los otros seis años siguientes devolvieremos la expresada suma de cinco mil quinientos pesos (P5,500) y los otros gastos que durante este periodo de diez años desde el otorgamiento de esta escritura se ocasionaran, los compradores, sus herederos, sucesores y cesionarios nos otorgaran escritura de retroventa pero si transcurre dicho plazo sin haber nosotros utilizado el derecho de redencion adquirira la presente el caracter de absoluta e irrevocablemente consumada, pero en el entretanto solo podran los compradores disponer de la finca conforme a las limitaciones prescritas por la ley. Que del precio de compra corresponde a Herminia Pichay la suma de cuatro mil pesos y al Sr. Alejandro Andres la suma de mil quinientos pesos."

De acuerdo con este convenio, los vendedores deben devolver a cambio del terreno o de la finca cinco mil quinientos pesos (P5,500), moneda filipina, y no cinco mil quinientos pesos en papel moneda japonesa. Cuando los demandantes consignaron en la escribania del juzgado la cantidad de 5,500 de esta clase de moneda, no habian cumplido el termino expreso del convenio. Por tanto, los demandados no estafoan obligados a recibir la consignacion; pues, el articulo 1176 delCodigo Civil dice que "si el acreedor a quien se hiciere el of recimiento de pago se negare sin razon a admitirlo, el deudor quedara libre de responsabilidad mediante la consignacion de la cosa debida." Y el parrafo segundo del articulo siguiente dice que "La consignacion sera ineficaz si no se ajusta estrictamente a las disposiciones que regulan el pago." El pago, segun el convenio, debe hacerse en moneda filipin|.

Tengase en cuenta que, al tiempo de la consignacion, no habia ninguna orden legal que prohibiese el uso de la moneda filipina. La proclama de 10 de Enero de 1942 del General en jefe de las fuerzas japonesas es del tenor siguiente :

"The currencies which shall be sanctioned by the authorities of the Japanese Army to circulate in the Philippine Islands shall be the peso military notes which are issued by the Imperial Japanese Government, and the Philippine peso currency, which is already in circulation.

"The circulation of the Yen Paper money (paper money issued by the Japanese Imperial Government, Yen notes issued by the Bank of Japan, Yen notes issued by the Bank of Chosen, Yen notes issued by the Bank of Taiwan, and the military notes other than Peso military notes), piastre currency (notes issued by the Bank of Indo-China), and all other currencies of foreign countries shall be prohibited.

"However, as for the U.S. dollar currency, the circulation shall be approved at the rate of two pesos (P2) per one dollar (\$1), for the time being.

"Not only the payer of the above-mentioned currencies, which are prohibited to circulate as the means of payment of all transactions, but also the receiver of such currencies shall be punished in accordance with the provisions of the martial law.

"As to the treatment of the possession in the market of the above-mentioned currencies and the U.S. dollar currency which are prohibited to circulate shall be regulated later on.

"Commander in Chief of the Imperial Japanese Forces."

No solamente no se prohibio la circulacion legal de la moneda filipina sino que se sanciono su uso. El primer parrafo de la proclama no da lugar a duda alguna. Es clara. Si estaban en curso legal durante la ocupacion japonesa la moneda filipina y la moneda japonesa expedida por el ejercito de ocupacion, entonces los demandados tenian perfectisimo derecho de obligar que los demandantes paguen con moneda filipina legitima, de acuerdo con el convenio de recompra, y no con la moneda japonesa. El hecho de que la moneda japonesa era una de las monedas circulantes o de curso legal entonces, no es razon para que se les obligue a los demandados a recibir la cantidad consignada, pues segun el convenio, la recompra debe hacerse con moneda filipina. Los demandados tenian derecho a exigir el cumplimiento del contrato que es ley entre las partes (Art. 1090,Codigo Civil), tanto mas cuanto que al tiempo del otorgamiento de la escritura de venta ni siquiera paso por la imaginacion de los contratantes que habia de circular alguna vez la moneda japonesa. Lo que se prohibio es la circulacion de los billetes de emergencia del Banco Nacional Filipino expedidos en Visaya y Mindanao segun la proclama de 7 de Mayo de 1942 que dice asi:

"PROCLAMATION BY THE COMMANDER IN CHIEF OF THE IMPERIAL JAPANESE FORCES CONCERNING PROHIBITION OF CIRCULATION OF PHILIPPINE NATIONAL BANK EMERGENCY NOTES.

"Since January, 1942, the Phil-American Army ordered the different branches or agencies of the Philippine National Bank in the Visayan Provinces to issue Philippine National Bank Emergency Circulation Notes for the purpose of using them in the purchase of military supplies and of creating economic confusion and disturbance. For this reason, the circulation of said emergency notes is declared illegal and their acceptance, absolutely prohibited. Inasmuch as these emergency notes were issued for the use of the enemy and considering the nature thereof and the purpose for which they were issued, it is hereby proclaimed that these notes are enemy military notes and consequently, they are declared as having no monetary value whatsoever.

"Commander in Chief of the Imperial Japanese Forces."

El articulo 1170 del Codigo Civil claramente dispone que "el pago de las deudas de dinero debera hacerse en la especie pactada, y, no siendo posible entregar la especie, en la moneda de plata u oro que tenga curso legal." Como no habia prohibicion en el uso de la moneda pactada—moneda filipina—los demandantes debieron haber pagado con dicha moneda y no con la moneda japonesa. Bajo ningun concepto, pues, estaban obligados los demandados a recibir el dinero consignado con que los demandantes querian recomprar la finca. Obligar a los demandados hoy a otorgar escritura de retroventa por papel moneda que no han querido recibir en 1944 y que ya no vale nada, es exigirles a desprenderse por nada de lo que han comprado con P5,500 en legitima moneda filipina. Estaria esta sentencia justificada si los demandados estuviesen legalmente obligados a recibir la consignacion en abril de 1944. No puedo sancionar una injusticia.

CONCURRING

PADILLA, J.:

I concur in this dissent. In addition to the reasons given therein, I incorporate herein those advanced by me in G.R. No. L-867, Del Rosario et al., vs. Sandico et al.,[1] and G. R. No. L-2020, La Orden de Padres Benedictinos de Filipinas vs. The Philippine Trust Company.[2]

[1] 85 Phil., 170.

[2] 85 Phil., 217.

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