

## MARIA JOSEFA DE LA PAZ FABIE AND JOSE CARANDANG, PETITIONERS, VS. THE COURT OF APPEALS AND NARCISO MORDENO, RESPONDENTS.

*G.R. No. L-6386. March 29, 1955*

Ponente: BENGZON, J.

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### BENGZON, J.:

Owing to the alleged refusal of the Court of Appeals to follow our applicable decisions, due course was given to this petition for review on certiorari.

The facts and issues are simple: During the Japanese occupation plaintiff Maria Josefa de la Paz Fabie delivered to defendant Narciso Mordeno a piece of realty in Pasay, Rizal, by virtue of a written contract entitled "Agreement of Sale with Right to Repurchase." Therein the vendor reserved the right to repurchase the property within the period of "three months from and after the termination of the war at present raging \* \* \* ." On April 8, 1946 Maria Josefa offered to repay the money she had received on account of the sale, but defendants refused to accept, claiming her time to repurchase had already passed.

Wherefore a complaint was filed on May 24, 1947 in the Court of First Instance of Rizal for the return of the premises upon payment of the amount received by Josefa. Plaintiffs (husband and wife) based their demand upon two propositions: first, the contract was a mortgage, and they were ready to redeem; second, even if it were a pacto de retro sale, she had exercised her option within the appointed time.

The Court of First Instance gave judgment for plaintiffs upholding their right to repurchase, for the equivalent amount of P375.00, adjusted to the Ballantyne scale. Defendant took the matter to the Court of Appeals; and a division therein reversed the adjudication, expressing the opinion that the compact was a true pacto de retro, the redemption period of which had already expired when Josefa tendered payment in April 1946, inasmuch as the war had terminated on February 27, 1945 when General McArthur turned over the Government of these Islands to President Osmeña in Malacañan Palace, or at the latest, on September 2, 1945, when the document of formal surrender was signed by Japanese representatives on board the U. S. battleship "Missouri" at Tokyo Bay.

Requested to apply *General vs. Venecia*,<sup>[1]</sup> 178 Phil., 780. 44 Off. Gaz., 4912 wherein we ruled that in July 1947 a promissory note had not yet matured because it was payable "within six months after peace has been declared."

The Court of Appeals declined, making a distinction between "termination of war" and "proclamation of peace," and quoting authorities to the effect that war terminates when hostilities cease.

The General case, involved a constant referring expressly to declaration of peace; and it is not clearly erroneous to deny its application where parties to another contract (as in this litigation) refer to termination of war, without express reference to "peace". However, *Raquiza vs. Bradford*,<sup>[2]</sup> 178 Phil., 780. 41 Off. Gaz., No. 7, p. 262 which was cited in *General vs. Venecia*, clearly stated that in September 13, 1945 the war had not yet terminated, because war, in the legal sense continues until, and terminates at the time of, some formal proclamation of peace

by an authority competent to proclaim it. That view was reaffirmed in *Yamashita vs. Styer*,<sup>[3]</sup> 178 Phil., 780. 42 Off. Gaz., 664 and in *Untal vs. Chief of Staff*, 47 Off. Gaz., 1147. Such holding is amply sustained by additional authorities quoted in petitioners' brief.

The Court of Appeals copied several decisions to sustain its view that, as to private contracts, war ends "when hostilities cease." These are some such pronouncements:

"There is a line of decisions which hold that war does not end with the cessation of hostilities but continues until peace treaties are signed and ratified or peace is formally proclaimed. The existence of war and restoration of peace, according to these authorities, are political questions determined by the legislative and executive departments and such determination is conclusive and binding on the courts. See *Palmer vs. Pokorney*, 217 Mich. 284, 186 N.W. 505; *Meier vs. Schmidt*, 150 Neb. 383, 24 N.W. 2d 400, 403, 404; *Industrial Commission of Ohio vs. Rotar* 124 Ohio St. 418, 179 N.E. 135; *Waller vs. United States Ct. Cl.*, 78 F. Supp. 816, and citations; *Woods vs. Cloyd W. Miller Co.*, 333 U.S. 138, 68 S. Ct. 421, 92 L. Ed. 596, and citations; 56 Am. Jur., War, section 13; 67 C. J., War, sections 195-197.

However there is an impressive array of authority which supports the trial court's decision that, as commonly understood and especially where the parties to a contract so intend, war ends when hostilities cease. See *Keiser vs. Hopkins*, 6 Cal 2d 537, 58 p. 2d 1278, 1279; *Supp. Hotel Operating Co. vs. Donn*, 158 Pla, 541, 29 So. 2d 441 (involving a lease for the duration of the present World War); \* \* \* (*Darnell vs. Day* 37 N.W. 2d 277)."

"Similarly, where private contracts are in term limited to the 'duration of the war,' the courts have generally held that the meaning of that phrase is to be decided by determining the intent of the parties, \* \* \*. However there is some authority holding that, despite the clear intent of the parties to the contrary, such a contract remain in force until peace is formally restored. *Palmer vs. Pokorney*, supra." (Italics is ours.)

It should be observed that the same authorities specifically qualify the rule with "where the parties to a contract so intend," or by "determining the intent of the parties".

Supposing therefore that the above enunciate the binding principle as to contracts, it appears from the same, and the citations therein, that war terminates when peace is formally proclaimed, except where the parties have intended otherwise and meant mere cessation of hostilities—in which case their intention must be given effect.

Indeed, an annotation (1947) in vol. 168 American Law Reports p. 173 et seq. on the meaning of "end of war" in a contract reaches the conclusion, after review of the cases, that the determination of the question depends upon the intent of the parties.

Logically, an exception to the general rule must be proven by adequate circumstances, facts, declarations etc. None is described in the decision now under scrutiny, and none may be cited to support or require a declaration that Maria Josef a de la Paz Fabie and Narciso Mordeno actually intended mere cessation of hostilities as termination of the war.

On the contrary, the short period of three months indicates both parties contemplated the return of complete normalcy, not merely the end of armed conflict, for everybody knows that the months and years after such ending, are periods of reconstruction and economic hardship.

Anyway, in this jurisdiction the language of a writing is to be interpreted according to the legal meaning it bears in the place of its execution" \* \* \* (Rule 123 sec. 58) and as stated in the *Raquiza*, *Yamashita* and *Untal* cases, the war terminates in a legal sense, upon official proclamation, of peace.

Undoubtedly in April 1946 (when the offer to repurchase was made) no peace treaty had been signed between the United States and Japan, and no formal declaration of peace had been published (President Truman issued his

proclamation in December 1946). Therefore, in that month (April 1946) plaintiffs' period for repurchase had not yet passed.

Error was thus committed in the Court of Appeals on this major point, which error constituted the basis of this petition for the reversal of its decision and consequent confirmation of the judgment of the Court of First Instance. And as the appellee Mordeno ascribed no other mistake to said inferior court (he filed no brief and did not appear at the oral argument);

The decision under review is hereby reversed, and the judgment of the court of First Instance affirmed, with costs against respondent Narciso Mordeno. So ordered.

Pablo, Reyes, Jugo, Bautista Angelo, Labrador Concepcion, and Reyes, J.B.L., JJ., concur.

Judgment reversed.

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[1] 178 Phil., 780.

[2] 75 Phil., 50.

[3] 75 Phil., 563.

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