

**ERLINDA STERNBERG AND LUZ STERNBERG, THE LATTER
REPRESENTED BY HER GUARDIAN AD LITEM ANTONIO STERNBERG,
PLAINTIFFS AND APPELLEES, VS. GONZALO SOLOMON, DEFENDANT
AND APPELLANT.**

G. R. No. 10691. January 31, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an action for the foreclosure of a real estate mortgage constituted on August 7, 1944, by defendant Gonzalo Solomon, in favor of plaintiffs Erlinda Sternberg and Luz Sternberg, to guarantee the payment to each of them of P3,000, Philippine currency, or the total sum of P6,000, Philippine currency, one (1) year from said date, extendible for another year, with interest thereon at the rate of 6 per cent per annum. Plaintiffs alleged in their complaint—filed with the Court of First Instance of Manila, in which the mortgage property is situated—that defendant has failed to pay said debt, despite repeated demands by the former and repeated promises of the latter, for which reason it is prayed that judgment be rendered against said defendant for the principal of said obligation and the interest thereon, and, in the event of failure to pay the same, that the mortgage be foreclosed.

In his answer, defendant admitted the indebtedness above referred to, as well as the real estate mortgage constituted to secure its satisfaction, and alleged that non-payment thereof is due to plaintiff's demand that settlement be made in Philippine currency on a peso-to-peso basis, notwithstanding the fact that the principal of the indebtedness was received by him in Japanese military notes, and that he is bound to pay only its equivalent in Philippine currency pursuant to the Ballantyne Schedule of Values. Defendant prayed, therefore, that judgment be rendered only for the equivalent, in Philippine currency, of said sum of P6,000, in Japanese military notes, as may be determined by the court.

Maintaining that this answer raises merely a question of law, plaintiffs, thereupon, moved for a judgment on the pleadings, which was not objected to by the defendant. Later on, both parties filed their respective memoranda, after which the Court of First Instance of Manila rendered a decision sentencing the defendant to pay to the plaintiffs the sum of P6,000, Philippine currency, without interest, and without any pronouncement as to costs. Defendant has appealed from this decision and he now maintains that:

"1. The lower court erred in refusing to apply the Ballantyne Scale of Values to defendant-appellant's wartime obligation.

"2. The lower court erred in finding judgment for the plaintiffs-appellees and against the defendant-appellant for the sum of P6,000, Philippine currency, considering that the obligation was P6,000 in Japanese war notes."

Appellant's pretense is untenable. We have repeatedly held that obligations contracted during the Japanese occupation and payable only after liberation become due and payable in Philippine currency on the peso-to-peso basis (*Wilson vs. Berkenkotter*, [1] 49 Off. Gaz., 1401). In the case at bar, the deed of mortgage in question dated

August 7, 1944, provides, not only that the obligation guaranteed thereby shall be paid "one year from date thereof", or on August 7, 1945, and, hence, after the liberation of Manila, which took place in February of that year, but, also:

"That strict compliance is the essence and nature of this agreement and as such this mortgage shall be paid one year from date hereof as provided above and expressly agreed not sooner; or upon the expiration of the time extension if so extended." (Italics ours.)

In other words, it was expressly agreed upon that plaintiff's debt could not be paid before August 7, 1945. Since Manila was liberated several months before that date, it follows that, in line with the view consistently adhered to by this Court (Rono vs. Gomez [2] 46 Off. Gaz., Suppl.

No. 11, 339; Gomez vs. Tabia,[1] 47 Off. Gaz., Suppl. No. 2, 641; Arevalo vs. Barretto, 89 Phil., 633; Garcia vs. De los Santos,[2] 49 Off. Gaz., 4830; Berg vs. Teus, 96 Phil., 102; Kare vs. Imperial,[3] 54 Off. Gaz., 2165; plaintiffs were, and are, entitled to demand payment of their credit on a peso- to-peso basis.

Wherefore, the decision appealed from is hereby affirmed, with costs against the defendant-appellant. It is so ordered.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1]92 Phil., 918

[2]83 Phil., 890. 998

[1]84 Phil., 269

[2]93 Phil., 683

[3]Supra, 173

PADILLA, J., dissenting:

I dissent for the same reasons stated in my opinion in the cases of Del Rosario vs. Sandico,[4] 47 Off. Gaz. 2866; La Orden de PP. Benedictinos vs. Philippine Trust Co.[5], 47 Off. Gaz. 2894; Salvante vs. Cruz, 88 Phil., 236; Henson vs. J. K. Pickering & Co., Ltd., 88 Phil., 312; Philippine Refining Company, Inc. vs. Ledesma, 88 Phil., 569; Araneta vs. Hongkong & Shanghai Banking Corporation, 88 Phil., 576; Peoples Bank & Trust Co. vs. Philippine National Bank, 88 Phil., 625; Hongkong & Shanghai Banking Corporation vs. Araneta, G. R. No. L-3613, 20 June 1951; Ponce de Leon vs. Syjuco, 90 Phil., 311; Pacific Commercial Co. vs. Go Tian Gee & Co., 90 Phil., 439; Dungao vs. Roque, 90 Phil., 657; Winship vs. Philippine Trust Co., 90 Phil., 744; Wilson vs. Berkenkotter,[6] 49 Off. Gaz., 1401; Valenzuela vs. Bakani,[7] 49 Off. Gaz. 4836; Shotwell vs. Lazatin,[8] 52 Off. Gaz. 2003; Nicolas vs. Matias, 97 Phil., 795; Zaragoza vs. Alagar,[9] 51 Off. Gaz. 2907; and Kare vs. Imperial, supra, p. 173.

Paras, C. J., concurs.

[4]85 Phil., 170

[5]85 Phil., 217

[6]92 Phil., 918

[7]93 Phil., 672

[8]97 Phil., 677

[9]97 Phil., 1005

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