

REMEDIOS QUIOQUE, ET AL., PLAINTIFFS AND APPELLEES, VS. JACINTO BAUTISTA, ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 13159. February 28, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action to foreclose two deeds of mortgage executed to secure the payment of two loans, one for P2,000.00 and another for P6,000.00, covering two parcels of land situated in the City of Manila. The first deed was executed on May 9, 1944 and the second on October 11, 1944 and it was stipulated therein as a common provision that the two loans cannot be repaid within one year from the date of the termination of the last world war.

The defendants set up the defense that the present action is already barred by Civil Case No. 11969 filed in the same court between the same parties, and that if there is any amount recoverable from them the same shall be computed in accordance with the Ballantyne schedule. They also set up a counterclaim for moral damages in the amount of P10,000.00.

On August 27, 1957, the trial court rendered decision in favor of plaintiffs sentencing defendants to pay the sum of P12, 829.81, with interest at the rate of 6% and 3% per annum on the amounts of P8,000.00 and P4,829.81, respectively, from July 21, 1957, plus costs, and in default of payment, it was ordered that the properties mortgaged be sold at public auction and the proceeds thereof applied to the payment of the judgment.

Defendants have appealed to this Court on purely questions of law.

It appears that prior to the filing of the present complaint plaintiffs had instituted before the Court of First Instance of Manila an action to foreclose a first mortgage on the same properties and that on the date said action was filed the two loans covered by the second and third mortgages which are herein foreclosed had already matured (Civil Case No. 11969). It likewise appears that judgment was duly entered in the first case and when a writ of execution was issued to enforce it was fully satisfied by defendants on August 18, 1952 by paying to the sheriff the sum of P9,000.00.

It is now contended that the trial court erred (1) in not dismissing this case as premature; (2) in not finding that this case is barred by the decision rendered in Civil Case No. 11969; and (3) in not converting the amounts recoverable under the Ballantyne scale of values.

With regard to the first contention, the lower court said:

"Considering that the Japanese Peace Treaty terminating the Second World War between Japan and the Allied Powers, of which the Philippines was a signatory, was signed on September 8, 1951 at San Francisco, U.S.A., the interpretation of counsel for the defendants that the war did not terminate for the Philippines until July 23, 1956 is not tenable.

"Wherefore, defendants' motion to set aside the decision rendered in this case and to order a new trial is hereby

denied."

Counsel for defendants argues that the trial court erred in not dismissing this case as premature because since it was agreed that the loan cannot be paid within one year from the termination of the last world war and according to the treaty between Japan and the Allied Powers the same should come into force for each State only after its ratification and from date of the deposit of its instrument of ratification, it cannot be said that the war has terminated when this action was brought on June 23, 1956, it appearing that the instrument of ratification was deposited only on July 23, 1956.

This contention is untenable. In *Navarre vs. Barredo*, (99 Phil., 164; 53 Off. Gaz., [21] 7696) we said that "in the legal sense, war formally ended in the Philippines the moment President Harry S. Truman officially issued a proclamation of peace on December 31, 1946 * * *. And if counsel meant that there should be a formal treaty of peace, we may say that this purpose has also been accomplished when the treaty of peace with Japan had been signed in San Francisco, California on September 8, 1951 by the United States and the Allied Powers, including the Philippines." At any rate, even granting that the date of the deposit of the instrument of ratification of the treaty should be reckoned with to determine when the last world war should be deemed legally terminated, this point is now moot since said instrument was deposited on July 23, 1956.

The contention that this action is already barred by the filing of Civil Case No. 11969 for the simple reason that the two loans herein involved could have been included in said action because at the time it was filed they had already matured, is likewise untenable, considering that the first case refers to a transaction different from those covered in the present case. Section 3, Rule 2, of our Rules of Court, invoked by appellants, which provides that a single cause of action cannot be split up into two or more parts so as to be made the subject of different complaints, does not apply, for here there is not a single cause of action that was split up, but several causes that refer to different transactions. And it was held that a contract embraces only one cause of action because it may be violated only once even if it contains several stipulations.[1] Thus, non-payment of a loan secured by mortgage constitutes a single cause of action. The creditor cannot split up this single cause of action into two separate complaints, one for payment of the debt and another for the foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the second complaint. In other words, the complaint filed for the payment of certain debt shall be considered as a waiver of the right to foreclose the mortgage executed thereon. [2] The lower court, therefore, did not err in denying the motion to dismiss on this ground.

The third contention that the recoverable amounts should be converted into money according to the Ballantyne scale of values cannot also be sustained it having been agreed between the parties that said loans shall be payable after the termination of the last world war. The rule is well-settled "that where the obligation incurred during the Japanese occupation was made payable after a fixed period, the maturity falling after liberation, the promissor must pay in Philippine currency the same amount stated in the obligation, that is, the obligation must be settled peso for peso in Philippine currency. He cannot discharge his debt by paying only the equivalent in Philippine currency of the value of the military notes he had received." [3]

Wherefore, the decision appealed from is affirmed, with costs against appellants.

Bengzon, C. J., Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

Concepcion, J., concurs in the result.

[1] Moran, Comments on the Rules of Court, 1957 ed., p. 17, citing Sutherland, Code Pleading, Practice and Forms, p, 143.

[2]Baehrach Motor Co., vs. Icarañgal, 68 Phil., 287.

[3] Aguilar vs. Miranda, L-16510, November 29, 1961; See also Garcia vs. De los Santos, 93 Phil., 683; 49 Off. Gaz., [11] 4830; Roño vs. Gomez, 83 Phil., 890; Gomez vs. Tabia, 84 Phil., 269.

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