

**TEAL MOTOR COMPANY, INC., PLAINTIFF AND APPELLEE, VS. THE
CONTINENTAL INSURANCE CO., DEFENDANT AND APPELLEE.
MANILA BUILDING AND LOAN ASSOCIATION, DEFENDANT AND
APPELLANT.**

G. R. No. 37757. March 28, 1934

Ponente: HULL, J.

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HULL, J.:

In these cases plaintiff brought suit in the Court of First Instance of Manila against defendant insurance companies on contracts of insurance covering the building owned by plaintiff for damage caused by a fire on the afternoon of January 6, 1929. Defendant Manila Building and Loan Association holds a mortgage on the building and has a partial assignment on the three insurance policies here in question for its benefit as the holder of the mortgage.

The Manila Building and Loan Association refused to join as party plaintiff and was thereupon made party defendant and entered a cross-complaint requesting the foreclosure of its mortgage.

After trial the Court of First Instance of Manila gave judgment against the insurance companies for the sum of P125,000 for damage to the building but dismissed the cross-complaint of the Manila Building and Loan Association, holding that its action was premature.

The insurance companies perfected their appeal which was decided by this court in a decision promulgated this day. Due to the lack of notice of the action of the trial court, the Manila Building and Loan Association was not able to perfect its appeal from the decision dismissing its cross-complaint until a much later time, and the appeal now being considered relates only to the denial of the cross-complaint.

The mortgage provides for monthly payments on or before the 5th of the month. There is also the following provision :

"Failure to pay any amount on time will render the whole sum overdue and demandable."

During the year preceding the fire, plaintiff-appellee often failed to pay the monthly installments on or before the 5th of the month, and their payments at a later date were accepted without protest on the part of the plaintiff. The payment due in January, 1929, was tendered on the 12th, whereupon the building and loan association promptly returned the tendered payment and demanded the payment of the mortgage. This was refused by the appellee. With its claim that the forbearance of the building and loan association in 1928 rendered the clause for prompt payment of no force, we cannot concur. Mere forbearance does not cause a novation of the contract. Especially is this true in a mutual building and loan association, where all stockholders should be treated alike.

There is a dispute between the building and loan association and the appellee as to the amount due. On the present state of the record, we shall not attempt to state the account.

The decision of the Court of First Instance of the City of Manila dismissing the cross-complaint is vacated and reversed and the case remanded to state the account and for further proceedings in accord with this opinion. Costs against plaintiff-appellee. So ordered.

Street, Malcolm, Villa-Real, Abad Santos, Imperial, Butte, Goddard, and Diaz, JJ., concur.

Justice Vickers voted to reverse the decision of the lower court in these cases, but was absent at the time of promulgation, and his signature does not appear signed to the decision.—STREET, Acting C. J.

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