

CASES NOTED

OBLIGATIONS AND CONTRACTS—MORATORIUM LAW—*Debts incurred during the Japanese Occupation fall under the provisions of the Moratorium Law and, therefore, creditor not having a right to demand payment does not have a cause of action—*

On October 7, 1944, the defendant filed a complaint alleging that on the 24th of September of the same year he offered to pay the loan of ₱70,000 which he obtained from the plaintiff with the corresponding interests until December 24, 1946, the date when the debt became due and payable. Payment was refused by the plaintiff-creditor and for this reason defendant-debtor made judicial consignation of the payment and petitioned the court to declare the debt paid and to have the mortgage cancelled. However, because of the war, the records of the case were destroyed.

On January 2, 1946, Uy Hoo, the plaintiff demanded from the defendant the payment of the loan with the corresponding interest plus attorney's fees. The defendant having failed to comply with the plaintiff's demand, the latter filed a complaint to recover the loan.

An answer was filed by defendant alleging that several offers to pay the debt were refused, thus necessitating consignation of the payment.

On January 24, 1946, before all the evidence of the plaintiff were presented, defendant filed an amended answer invoking the Moratorium Law as special defense which was admitted by the lower court despite plaintiff's opposition. After plaintiff's presentation of his evidence, defendant asked for the dismissal of the case basing his motion on the Moratorium Law. Motion was granted by lower court and case was dismissed.

Plaintiff appealed and argued that defendant not having presented his defense of Moratorium in his original answer, he is deemed to have waived it.

HELD: Although Sec. 10 of Rule 9 of the Rules of Court state that "Defenses and Objections not pleaded either in a motion to

dismiss or in the answer are deemed waived," it also provides as an exception the defense of failure to state a cause of action which may be alleged in a later pleading.

Debts incurred during the Japanese occupation fall under the provisions of the Moratorium Law and therefore the creditor not having the right to demand payment, does not have a cause of action. (UY HOO v. JOAQUIN YUSECO, G.R. L-3001 JULY 31, 1951)

PURPOSE OF LAW:

The Moratorium usually proclaimed at times of national emergency, is aimed at ameliorating the penury and financial difficulties of the needy, and that provident measure of good government would be rendered useless and of no actual application to any simple instance if, as declared by the lower court, all reciprocal obligations, unqualifiedly, were to be excluded from the effects of its salutary operation. (*Edito Tirol v. C. N. Hodges*, 46 O.G., 608)

HOWEVER, the Moratorium Law was not applied in the following cases:

In a motion for the execution of a judgment ordering the defendant to execute the necessary deed of conveyance for the return of a piece of land to plaintiff, the Supreme Court held that the Moratorium Order refers to the suspension of payment of debts and other monetary obligations. It does not apply to an execution not involving any payment of money. (*Severino Ebero v. Antonio Cañizares*, 45 O.G., 725)

Neither does the Moratorium Law apply in an action to have a deed of pacto de retro sale cancelled and declared to be a mere mortgage, because the action does not involve the recovery of any sum of money. (*Almario v. Simeon Corrales*, 45 O.G., 795)

In *Ricardo Medina v. Ambrosio Santos*, 44 O.G., No. 10, 3811, it was held that an action for the recovery of a truck with prayer for payment of its value in case the truck was not returned, could proceed notwithstanding the Moratorium Law. The Supreme Court observed that the indemnity sought was a subsidiary liability and would not come into being unless and until decision was rendered against the defendants for such payment.

In *Moya v. Barton*, 45 O.G., No. 1, 237, the Court said that when the course of action was in part covered by the Moratorium and in part not, it was not unjust to render judgment for the payment of the entire obligation with the understanding that execution with respect to the amounts that had fallen due before March 10, 1945, would be stayed.

Likewise, the Court held that an action for unlawful detainer and rents in arrears was not affected by the Moratorium, the recovery of the unpaid rentals, it was said, being accessory to the main action.

In *Realty Investments Inc. et al. v. Mariano Villanueva et al.*, G. R. No. L-1949, Oct. 31, 1949; the plaintiff, which sold to the defendant a piece of land on installment basis, was demanding payment of the installments still unpaid or, in default, restoration of the ownership and possession of the property. The Supreme Court revoked the lower court's order of dismissal and ordered the lower court to go ahead with the trial of the action on the merits without prejudice to the right of the defendant to arrest the execution should one, for the payment of money be issued.

The cases of *De Venecia v. General*, 44 O.G. 4912, and *Mao Sugar Central Co. v. Conrado Barrios, et al.*, 45 O.G. 2444, were distinguishable from *Moya v. Barton*, supra, *Medina v. Santos*, supra, and *Alejo v. Gomez*, supra, in that the suits in the first two named cases had for their sole object the enforcement of a monetary obligation.

Following the relaxed rule of the later decisions, the Supreme Court refused to apply the Moratorium Law in a petition for receivership in a suit for a foreclosure of a mortgage executed to secure some promissory notes. Said the Court, "The alleged violation of the conditions of the mortgage contract, if true, makes it necessary if not imperative, for the protection of the interest of the plaintiff, that the mortgaged properties be placed in the custody of the court." The Court further declared that receivership being an auxiliary remedy, dismissal of the main action would eliminate the only basis for the appointment of receiver and thus completely bar the door to any relief from mischief. (*Ernest Berg v. Valentin Teus*, G.R. No. L-2987, Feb. 20, 1951)

THE APPLICABILITY OF THE MORATORIUM LAW TO PHILIPPINE NATIONAL BANK LOANS: In *Phil. Nat. Bank v. Jose Jacinto*, G.R., No. L-3477, March 19, 1951, the Supreme Court cited with approval the case of *Phil. Nat. Bank v. John Randrup, et al.*, G.R. No. L-1944, Sept. 20, 1950, wherein it was held: "that the debt moratorium is general in scope and does not make any discrimination in favor of the plaintiff bank. We cannot subscribe to the argument that Com. Act No. 672, passed on July 19, 1945, had the effect of repealing the Moratorium Order in so far as the plaintiff bank is concerned, because the principal purpose of said Act was merely to allow the plaintiff bank to resume business with

the view of its rehabilitation, and this purpose may obviously be accomplished inspite of the debt moratorium."

REP. ACT NO. 342: ITS EFFECTS ON THE MORATORIUM LAW: Sec. 2 of Rep. Act No. 342, provides that "all debts and other monetary obligations payable by private parties within the Philippines originally incurred or contracted before Dec. 8, 1941, and still remaining unpaid, any provision or provisions in the contract creating the same or in any subsequent agreement affecting such obligation to the contrary notwithstanding, shall not be due and demandable for a period of eight (8) years from and after settlement of the war damage claim of the debtor by the U.S.-Philippine War Damage Commission, without prejudice, however, to any voluntary agreement which the interested parties may enter after the approval of this act for the settlement of said obligations."

Before one can invoke the provisions of Rep. Act 342, the defendant must first establish by competent evidence that he has filed a war damage claim with the War Damage Commission and in the absence of such war damage claim, pre-war obligations are now enforceable. (*PNB v. Jacinto*, G.R. No. L-3477, March 19, 1951; *Community Investments Finance Corporation v. H. B. Reyes*, G.R. No. L-2111, Sept. 19, 1950; *Intestate Estate of Dairo v. Patubo*, L-1769, May 13, 1949)

In *Pindangan Agricultural Co. v. Ludovico Estrada*, G.R. No. L-2841, May 28, 1951, the Court held that said Rep. Act No. 342 which took effect on July 29, 1948, has no retroactive effect, and therefore is not applicable to a complaint filed on Dec. 11, 1947.

However, it is not necessary, so as to entitle a debtor to the benefits of the debt moratorium, that a war damage claim be actually paid and settled. While "settlement of the war damage claim of the debtor" marks the starting point of the eight (8) year moratorium period, "it does not exclude from the beneficial scope of the law a debtor whose claim is still pending and disallowed, because the latter is as much a war sufferer as the former intended to be protected by Rep. Act No. 342." (*Gregoria Aranzado v. Gregorio Martinez*, G.R. No. L-3448, April 25, 1951)

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