

# Notes and Comments

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## The Philippine Law on Moratorium

"The word 'moratorium' is derived from the Latin word *moratorius* denoting delay and in legal sense it signifies the legal title to delay in making due payment, or a legislative authorization of a suspension of payment."<sup>1</sup> It may also be defined as "term designating a suspension of all, or of certain, legal remedies against debtors, sometimes authorized by law during financial distress,"<sup>2</sup> especially when caused by war such as the world war.<sup>3</sup>

Moratorium is not of recent origin. The Code of Justinian contained provisions on the subject: one on taxes<sup>4</sup> and another on private debts with the consent of the creditors.<sup>5</sup> Nor is the moratorium confined to state laws. Due to Germany's unfavorable trade balance from 1924 to 1931, the budgetary deficit, plus unemployment problem, the economic structure of Germany was threatened. President Hoover on June 20, 1931 proposed a one year world moratorium from July 1, 1931 to June 30, 1932 "of all payments on intergovernmental debts, reparations, and relief debts both the principal and interest . . . not including obligations of governments held by private parties." The scheme was agreeable to every important country except France. It was by common consent allowed to go into effect on July 1, 1931.<sup>6</sup>

We come now to the constitutionality of the Moratorium Law. The power of the legislature to pass stay laws is limited by the Philippine constitution which provides that "No law impairing the obligation of contract shall be passed."<sup>7</sup> Justice Baldwin in the case of *McCracker v. Hayward*<sup>8</sup> said:

"The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence

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<sup>1</sup> *Corpus Juris*, Vol. 41, p. 213. Edited by William Manck and Donald J. Kiser.

<sup>2</sup> *Bouvier's Law Dictionary*, Vol. II, (1914), Rawless Revision, West Publishing Co., St. Paul, Minn. p. 2247.

<sup>3</sup> *Hudspetch v. Davis*, 41 Ala. 389 and *Burt v. Williams*, 24 Ark. 91.

<sup>4</sup> 1 Code 19.

<sup>5</sup> 7 Code 71.

<sup>6</sup> Langsam, Walter Consuelo, *The World Since 1914*, 4th Edition, 1940.

<sup>7</sup> *Philippine Constitution*, Art. III, Sec. 10.

<sup>8</sup> 2 How. 608 (U.S. 1844). See also *Bronson v. Kinzie*, 1 How. 311, *Luter v. United 20 Times 689*, 98 *American Decisions* 494. *The New York Moratorium*

when it is made; these are necessarily referred to in all contracts and forming a part of them, and the measure of the obligation to perform them by the one party; and the right acquired by the other. If any subsequent laws affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party to the injury to the other; hence any law which in its operation amounts to a denial or obstruction of the right accruing by contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution."

The other view was that of Chief Justice Marshall when he said:

"The distinction between the obligation of a contract, and the remedy given by the legislature to enforce that obligation, has been at the bar, and exists in the nature of things. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct."<sup>9</sup>

No matter how reasonable the argument may be for the invalidity of the Moratorium Law, it cannot be denied that the legislature may in times of emergency pass laws for the protection of the state's financial structure. "All contracts are made subject to the exercise by the government of a sovereign right to legislate for the protection of the lives, health, morals, comfort, and general welfare of the people."<sup>10</sup> "That the government may be required in times of public stress, so to legislate as to nullify private contracts, is an implied term of the law of every contract within the meaning of the limitation."<sup>11</sup>

Executive Order No. 25, Title III promulgated on November 18, 1944 provides:

1. Payments of all debts and other monetary obligations contracted after December 31, 1941, except debts and other monetary obligations entered into in any area after declaration by Executive Order that such area has been freed from enemy occupation and control, is temporarily suspended pending action by the Commonwealth Government.

Executive Order No. 32 amending Executive Order No. 25, promulgated on March 10, 1945 provides:

1. Enforcement of payment of all debts and other monetary obligations payable within the Philippines, except debts and other

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*Law* (Sec. 169-a, Civil Practice Act) on Russian Insurance Contract "until the expiration of 30 days next following the *de jure* recognition of the government of Russia by the government of United States was held unconstitutional. 244 N.Y. 382 (1927), 155 N.E. 749.

<sup>9</sup> *Sturges v. Crowninshield*, 4 Wheat. 122 (U.S. 1919).

<sup>10</sup> *Manigault v. Springs*, 199 U.S. 127.

<sup>11</sup> *Marcus Brown Co. v. Feldman*, 256 U.S. 465. See also *Von Baunbach v. Bude*, 76 Am. D. 283 and *Chadwick v. Moore* 8 W & S 49, 49 Am. D. 227.

monetary obligations entered into in any area after the declaration by Presidential Proclamation that such area has been freed from enemy occupation and control, is temporarily suspended pending action by the Commonwealth Government.

The moratorium by virtue of the amendment was made to apply to all debts and monetary obligations whether before or after December 31, 1941. But what does the phrase "all debts and other monetary obligations" mean? The Secretary of Justice in an opinion rendered on February 11, 1947 said that "the word debt refers to a sum of money promised at a future day or to a sum of money now due and payable, the former being debt owing and the latter debt due and it also means a liability to pay a certain sum and it makes no difference how the liability arises whether by contract or whether it be imposed by law without contract, while the phrase 'and other monetary obligations' has been construed to refer to monetary obligations which are in the nature of a debt." The Ohio Supreme Court said, "The courts of many states make a distinction between liability *ex contractu* and liability in tort and *ex delicto* and in some jurisdiction it has been held that where a claim arising out of a wrong or tort has become liquidated by judgment, such judgment is no debt."<sup>12</sup>

But according to the opinion of the Secretary of Justice Delfin Jaranilla on July 7, 1945: "Moratorium does not suspend payment of taxes since it is not a debt but an enforced contribution by the state. The former is founded on contract express or implied, the latter do not. Neither can it be included in 'and other monetary obligations' since by the construction *ejusdem generis* the phrase refers only to monetary obligations in the nature of a debt." The Supreme Court has decided in the case of *Oching v. Rodas*<sup>13</sup> that the moratorium applies to the execution of judgment against the employer for liability under Workman's Compensation Act. "That it excludes from its operation obligations arising under the Workman's Compensation Act in favor of employees for physical injuries sustained in line of duty and other labor accidents is untenable. Executive Order No. 32 is very comprehensive and evidences no intent to make any exception." It is important to note that the case just cited was decided with six justices for the majority and four dissenting. The dissenting justices were Justices Perfecto, Hilado, Moran and Pablo. The basis of the objection was that the majority opinion had made the moratorium applicable to obligations created by law such as the Workmen's Compensation Act, license fees, etc.

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<sup>12</sup> *Ohio Casualty Ins. Co. v. Galvin*, 108 A.L.R. 1036.

<sup>13</sup> *Oching v. Rodas*, G.R. L-1419, July 31, 1947.

According to Justice Pablo in rendering the opinion of the court in the case of *Moya v. Barton*:<sup>14</sup>

Hay varias maneras de poner en practica la moratoria.

1. Una ley que limita la jurisdiccion de los juzgados durante cierto periodo de emergencia para ver solamente causa que no versan sobre el pago de obligaciones monetarias;

2. Una ley que suspende todos los procedimientos durante una invasion militar sobre cobro de obligaciones monetarias;

3. Una ley que prohíbe, durante el tiempo de emergencia la ejecucion de las sentencias sobre cantidad de dinero;

4. Una ley que suspende todos los procedimientos judiciales contra personas que estan en el servicio militar y naval por un tiempo limitado y razonable fueron declaradas constitucionales en Estados Unidos.

The Supreme Court in the case of *Ma-ao v. Barrios*<sup>15</sup> said that "Executive Order No. 25 as amended by Executive Order No. 32 not only suspends the execution of judgment that the court may render so far as it orders the payment of debts and other monetary obligations, but also suspends the filing of suits in the courts of justice; for the enforcement of the payment of debts and other monetary obligations therein referred to *if timely objection is set up by the defendant debtor*. It is to be borne in mind that the debt moratorium is a right granted by law to the debtor and as such it may be waived because its waiver does not affect the public interest or the rights of third parties."

As far as the jurisdiction of the court is concerned the following principles have been so far adjudicated by the Supreme Court of the Philippines:

1. When the prayer of the complaint is not for the payment of any monetary obligation in the first instance, but asks of the court to first pass upon the ownership of the subject matter of the action and upon failure of the party required to deliver the property that he be compelled to pay its equivalent value, the court can proceed to try the case for "It does not demand in payment of any monetary obligation. The court will first pass on the ownership of the truck and if the plaintiff is declared owner and the defendant fails to return only then is the obligation to pay monetary obligation created."<sup>16</sup>

2. An action against an intestate estate for the collection of an indebtedness incurred by the deceased during his lifetime before the outbreak of the World War II cannot be dismissed. This is

<sup>14</sup> *Moya v. Barton*, G.R. L-745, August 27, 1947.

<sup>15</sup> G.R. L-1539, December 3, 1947.

<sup>16</sup> *Medinu v. Hon. Ambrosio Santos*, G.R. L-1180, May 26, 1947.

reasonably so since all debts must be settled in testate or intestate proceedings otherwise the claim is barred.<sup>17</sup>

3. The moratorium does not apply to an action compelling the defendant to turn over the property to the plaintiff and to execute the proper deed of conveyance after receiving the consigned payment of a loan obtained from the defendant on July 3, 1941.<sup>18</sup>

4. In an action for collection of rents from November 1, 1944 to October 1, 1945 which therefore involves a cause of action partly protected by the moratorium and partly not, it would not be unjust to render judgment for the payment of the whole obligation without prejudice to the right of the court of ordering that no execution be issued of such part of the sentence which is protected by the moratorium referring to the amount owed before March 10, 1945. It would be too much bother to require the plaintiff to bring a separate action for rents up to March 10, 1945.<sup>19</sup>

5. But where no part of the obligation is properly enforceable and the purpose of the action is only for recognition of the debt and to compel the defendant debtor who has not yet defaulted to pay legal interest from the filing of the action and the agreed attorney's fees, there is no cause of action and the complaint should be dismissed.<sup>20</sup>

By virtue of the Presidential Proclamation No. 6<sup>21</sup> declaring Manila liberated as of March 10, 1945, the moratorium is inapplicable to debts or other monetary obligations incurred in Manila after said date. The determination of the time of the creation of the monetary obligation is not as easy as it seems. The Supreme Court has held that judgments which compel a party to pay a specific amount of money where previously there was no such obligation,<sup>22</sup> or where the amount was not liquidated or could not be determined before judgment,<sup>23</sup> such judgment creates the debt or the monetary obligation within the meaning of the Moratorium Law, so that if the judgment is rendered after the liberation of the place execution will lie for its enforcement<sup>24</sup> otherwise no execution will lie.<sup>25</sup> Yet the Supreme Court in a highly contested decision<sup>26</sup> with

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<sup>17</sup> *Henares v. Judge Buenaventura*, G.R. L-1536, November 28, 1943. Also *Rules of Court*, Rule 87, Sec. 5.

<sup>18</sup> *Ebero v. Hon. Antonio Canizares*, G.R. L-1379, November 1, 1945.

<sup>19</sup> *Moya v. Barton*, G.R. L-745, August 27, 1945.

<sup>20</sup> *Ma-ao Sugar Central Co. v. Hon. Conrado Barrios*, G.R. L-1539 December 3, 1947.

<sup>21</sup> *Presidential Proclamation No. 6*, 41 O.G. 76.

<sup>22</sup> *De La Fuente v. Borromeo*, G.R. L-131, March 30, 1946.

<sup>23</sup> *Tarnate v. Daza*, 43 O.G. 857.

<sup>24</sup> *Ricardo Medina v. Hon. Ambrosio Santos*, G.R. L-1180, May 26, 1947.

<sup>25</sup> *Palacio v. Daza*, G.R. L-61, October 16, 1945.

<sup>26</sup> *Ochina v. Rodas*, G.R. L-1419, July 31, 1947.

four out of ten justices dissenting held that the moratorium is applicable in a case for damages decided on July 31, 1947. Let me quote from the dissenting opinion of Justice Hilado with whom concur Justice Moran and Justice Pablo. "In the third place, the very nature of the claims involved in these compensation cases militates against their being considered as 'debts and other monetary obligations' within the meaning of Executive Order No. 32 before they were reduced to judgment. In the cases at bar, the claims for compensation made by the dependents of the deceased workmen and the subject of the respective cases pending in the courts upon the promulgation of the executive orders, were unliquidated until the final judgment was rendered. In other words, the employer could not be required to pay any amount until the rendition of the final judgment, for up to that time he did not know what amount to pay for the simple reason that the amount depended upon many factors which had to be considered and appreciated in the judgment, there being no agreement between the parties (a) that he was bound to pay and (b) as to the amount that he should pay."

The place where the debt was contracted or incurred is another question that the court must determine before hearing a case, to determine its jurisdiction.

The moratorium also applies to monetary obligations of provincial governments to persons for the value of the lands which they may have expropriated.<sup>27</sup> Where, however, a debtor brings an action to compel the creditor to recognize a consignment made during the Japanese occupation and for the purpose of releasing a mortgaged property from the encumbrance he cannot set up the moratorium as a defense for the payment of interest or whatever amounts still due from him, even if collection for such amounts were unenforceable under the Moratorium Law.<sup>28</sup>

Rents due and payable before March 10, 1945 cannot be collected by judicial proceedings,<sup>29</sup> but as already explained in the first part of this article the Court may declare the whole amount of rent due, and issue execution only of so much which is enforceable under the Moratorium Law.<sup>30</sup>

"Unless the statute expressly so provides, the remedy by attachment is not available in respect to a demand which is not due and payable and even if attachment is issued upon a demand without

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<sup>27</sup> *Palacio v. Daza*, supra.

<sup>28</sup> *Borromeo v. Sabido*, C.A.G.R. No. 40-R, May 28, 1947.

<sup>29</sup> *De la Fuente v. Avila*, G.R. L-131, March 30, 1946; *Cruz y Gumatay v. Avila*, 42 O.G. No. 9, February 14, 1946; *Amparo Vda. de Ordoñez v. Angkiangco*, G.R. L-199, July 9, 1946. *Icasiano v. Lavidés*, March O.G. 1948.

<sup>30</sup> *Maua v. Bostan*, C.R. L-777.

statutory authority it is void.”<sup>31</sup> Neither can there be a foreclosure of a mortgage “for a mortgage is not a debt but security for payment thereof.”<sup>32</sup> Being an accessory to a principal contract, its foreclosure depends upon the date when the principal obligation becomes due.

The amounts due the heirs as their share in the estate is not a debt so that the heirs have a right to demand payment of unpaid monthly allowances.<sup>33</sup> “Neither may the period of redemption be considered suspended by the debt moratorium. The redemption of properties sold under execution implies no payment of a debt to the purchaser but involves the exercise of the right to repurchase by a judgment debtor. When the judgment debtor redeems property he does not pay any debt because the debt had already been paid for and extinguished by sale of the property. (*Murphy v. Casselman*, 39 N.W. 802).”<sup>34</sup> The same rule applies to contractual right of repurchase.

What is the effect of the moratorium on interest? “The Moratorium only provided for the temporary suspension pending action of the government of the enforcement of payment of certain debts but did not and cannot leave without force and effect the provision of the Civil Code concerning the satisfaction of interest in cases of the defaulted payments.”<sup>35</sup> This principle was enunciated by the Court of Appeals in an action to compel acceptance of consignment made during the occupation and to free the plaintiff’s property from a mortgage. The default referred to was incurred during the Japanese occupation from June 19, 1943 until consignment was made on May 15, 1944 so that actually it could not have been affected by the Moratorium Law. It is clear that the moratorium could not affect stipulated interest as profit,<sup>36</sup> but could there be default in spite of the Moratorium Law? There can only be default before the Moratorium Law and after it is lifted for during its effectivity no creditor can validly demand payment by judicial process nor can an extra-judicial demand cause default. It is not denied that he can make an extra judicial demand and if paid, such payment will constitute waiver in the part of the debtor to the benefits of the law, but the creditor cannot commence adding the default interest if the debtor fails to pay upon such demand. If, however, the

<sup>31</sup> *Luis General v. Venecia*, G.R. L-894, July 30, 1947.

<sup>32</sup> *Opinion of Secretary of Justice* dated February 11, 1947.

<sup>33</sup> *Seifert v. Bachrach*, G. R. L-323, December 1947; *Tarnate v. Daza*, G.R. L-1379, December 1947.

<sup>34</sup> *Opinion of Secretary of Justice* dated November 28, 1946; *Driz v. Lapuz*, 43 O.G. No. 10, *Lapak v. Sugera*, C.A. G.R. 1310, April 21, 1948.

<sup>35</sup> *Borromeo v. Sabido*, C.A. G.R. 40-R, May 18, 1947.

<sup>36</sup> *Johnson v. Duncan*, 6 Am. D. 675.

debtor defaulted before the promulgation of the Moratorium Law, defaulted interest whether stipulated or legal accrues but is suspended for the duration of the effectivity of the Moratorium Law. For it is the essence of defaulted interest that an additional burden is imposed for non-payment during the time when payment is due. It is therefore inconsistent to give a right to refuse payment and punish the debtor for such refusal.

There should be a distinction made between debts or other monetary obligations incurred before December 31, 1941 and those after said date. Executive Order No. 25 before its amendment was promulgated on November 18, 1944 and included only monetary obligations incurred after said date so that as to such debts defaulted interest is suspended from November 18, 1944, while as to those incurred before December 31, 1941 the defaulted interest continues to accrue until the amendment of Executive Order No. 25 by Executive Order No. 32 on March 10, 1945 extending its application to debts incurred before December 31, 1941.

Republic Act No. 342<sup>37</sup> passed by the Philippine Congress which became effective upon its approval on June 12, 1948 lifted the moratorium over pre-war obligations with certain exception. Section 3 of said Act provides:

Sec. 3. Title III, Debt Moratorium, Executive Order No. 25 dated November 18, 1944, as amended by Executive Order No. 32 dated March 10, 1945, is hereby further amended by lifting the moratorium therein declared in so far as it affects pre-war obligations except that as regards those pre-war obligations referred to in Section 2 hereof, the lifting of said moratorium shall be subject to the conditions provided in said section.

The exception to which the above section refers provided in Sec. 2 reads:

Sec. 2. All debts and other monetary obligations payable by private parties within the Philippines originally incurred or contracted before December 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 United States Philippine War Damage Commission, without prejudice, however, to any voluntary agreement which the interested parties may enter into after the approval of this Act for the settlement of said obligations.

There is no case decided or opinion rendered so far to explain the above quoted law. But one can see that the law suffers from vagueness due to the fact that while its purpose is to protect the

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<sup>37</sup> *The Philippine Law Journal*, August issue, 1948.

war sufferers, it gives no accurate definition as to who are the war sufferers sought to be protected. The law has the following effects:

1. For the purposes of the Law only those who filed claims with the United States Philippine War Damage Commission and whose claims have been or will be approved are war sufferers. A careful reading of Section 2 will show that it makes no distinction as to whether the claim is under consideration or has already been settled. As to those whose claims have been disapproved, there is nothing to settle with them, hence the law presumes that they have not suffered from the ravages of war.

2. As to these war sufferers the moratorium is extended until the expiration of eight years "from and after the settlement of the war damage claim." They are not required by law to pay right after the settlement of their claim for it is not the purpose of the law to have the debtors deliver to the creditors the amount they have received from the Commission but to give them time to rehabilitate themselves.

3. Only pre-war obligations with the conditions stated are affected by the lifting of the moratorium law.

4. As to pre-war debts therefore defaulted interest resumes if it had merely been suspended during the effectivity of the moratorium and commences as to those which should have incurred default had it not been for the moratorium.

5. Sec. 2 which extends the moratorium for war sufferers does not include in its protection debts and other monetary obligations due and payable from the government, its branches and other parties not private. This is clear in the first clause of Section 2 which provides "All debts and other monetary obligations payable by private parties. . . ."

The law can be criticized for depending too much on the results of the investigations made by the United States Philippine War Damage Commission. While the investigations of the Commission may be presumed to be thorough, it certainly cannot be as thorough as an investigation by the court, especially if it is borne in mind that the approval of the claim by the Commission would mean corresponding obligation on their part to pay. If the court were allowed to determine who are the war sufferers it would not concern itself as to the cause of the destruction so long as the destruction or loss is duly proved, for a person whose house is burned by a U. S. Army personnel is no poorer than one whose house is burned by any other person.