

RIO Y COMPANIA (SUCCESSOR TO RIO Y OLABARRIETA), PLAINTIFF AND APPELLANT, VS. DATU JOLKIPLI, DEFENDANT AND APPELLEE.*G.R. No. L-12301. April 13, 1959*

Ponente: REYES, J.B.L., J.

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This appeal originated from the decision of the Court of First Instance of Palawan, dismissing the above-entitled case on the ground that the cause of action alleged in the complaint had prescribed, and the plaintiff had no longer any cause of action against the defendant.

The undisputed facts of this case are as follows: In December 1936, Rio y Olabarrieta (now Rio y Compania), entered into a contract with defendant-appellee, Datu Jolkipli, wherein the latter agreed to undertake the exploitation of a timber concession of the former in the municipality of Brooke's Point, Palawan. To give Jolkipli the opportunity to carry on the venture, Rio y Olabarrieta extended credit to him. As of January 1939, Jolkipli had incurred an outstanding obligation of P620.82 in favor of plaintiff-appellant Rio y Compania (successor to Rio y Olabarrieta) and as of the filing of the complaint, on April 19, 1954, the accumulated interests from January 1939 amount to P948.11. Upon motion of Jolkipli, the complaint was dismissed by the Justice of the Peace on the ground of prescription; and plaintiff appealed to the Court of First Instance of Palawan. However, the decision of the Justice of the Peace Court was there sustained and, upon the denial of the plaintiff-appellant's motion for reconsideration, it interposed the present appeal.

Plaintiff predicates its case mainly on two points: (1) that the court below improperly denied it an opportunity to prove that the Justice of the Peace Court at Brooke's Point was not open during the Japanese occupation and the period of military operations for the liberation of the Philippines; and (2) that the court below erroneously declared that the moratorium period to be deducted from the term of extinctive prescription extended only from March 10, 1945 (as declared by President Osmena's Executive Order No. 32) to July 26, 1948 when the Moratorium Law, Republic Act No. 342 was enacted.

We rule for plaintiff-appellant on both points. As to the first, while it is true that the suspensive effect of Executive Orders Nos. 26 and 32, together with Republic Act 342, do not cover the period of invasion and the liberation of the Philippines, this Court has in several cases already held that:

"The statute of limitations is only suspended by war, rebellion, insurrection when the regular course of justice is interrupted to such an extent that the courts cannot be kept open." (*España vs. Lucido*, 8 Phil., 419, 420; *Palma & Los Baños vs. Celda*, 81 Phil., 416, 46 Off. Gaz. Suppl. No. 1, p. 198.) (Italics supplied.) "The interruption in the functions of the courts by the war interrupted the running of the prescriptive period of actions." (*Talens, et al. vs. M. Chuakay & Co.*, G. R. No. L-10127, June 30, 1958.)

In the light of these decisions, it is clear that the statute of limitation is suspended, if during the war time courts are not or can not be kept open. But in order that the plaintiff-appellant may invoke our ruling, it must first show that the Justice of the Peace Court of Brooke's Point was closed or could not be opened for business as a

consequence of chaos and confusion. The determination of this matter is a question of fact, which should be ventilated in the hearing of the case on the merits; and the court below should not have refused the plaintiff an opportunity to substantiate its contention.

As to the second issue tendered by appellant, it must be pointed out that the obligation of the defendant was contracted before December 31, 1941; hence, the moratorium order applicable to it was the second, i.e., Executive Order No. 32, issued on March 10, 1945.[1] Regardless whether or not the local court was open during the occupation, the period for the enforcement of appellant's cause of action stopped running on that date. If the defendant was not a war sufferer, the suspension ran only from March 10, 1945 to July 26, 1948, when Republic Act No. 342 went into effect. But if the defendant was a war sufferer, and had filed a war damage claim, then the period of suspension extended from March 10, 1945 until May 18, 1953, when our decision in the Rutter case,[2] holding unconstitutional the further operation of Republic Act 342, became operative. Admittedly, in this last case, the appellant's complaint was filed on time.

Under the circumstances, it was incumbent upon the defendant to plead and prove that he was not covered by the Moratorium Law, Act 342, in order to establish that plaintiff's action was barred by prescription in all cases that may be established under the complaint. The rule, on the authority of *Lyon vs. Bertram*, 20 How. (U.S.) 149, 15 Law. Ed. 847, is stated by American Jurisprudence to be as follows:

"A plea of the statute (of limitations) can not be sustained which rests upon a supposed state of facts which may not exist. It must be an answer to any case which may be legally established under the declaration. So where the statute imposed a bar on certain contracts after three years and on others after two years the plea of the statute was held to be bad where it did not show that the contract in question was of the latter class." (34 Am. Jur. 341, Sec. 431, note 8.)

The defendant has not shown nor pleaded that he was not a war sufferer and had not filed a war damage claim. While constituting negative averments, they are of the essence of his contention that plaintiff's claim was barred, and hence the burden of proving them lay on defendant- appellee (Rule 123, sec. 70). Moreover, it appears that in his motion for reconsideration, plaintiff offered to prove that defendant was such a war damage claimant, but the court below rejected the offer. Plainly, the rejection is reversible error.

If defendant is a war damage claimant, appellant's action was initiated only 7 years, 1 month and 10 days after the cause of action accrued, well before the expiration of the ten year limitation period; because from the total of 15 years, 3 months and 18 days that elapsed from the accrual of the cause of action on January 1, 1939, to the filing of the complaint on April 15, 1954, we must deduct the moratorium period of 8 years, 2 months and 8 days (from March 10, 1945 to May 18, 1953).

Wherefore, the order of dismissal of the complaint is revoked and set aside, and the records ordered remanded to the court of origin for further proceedings. Costs against appellee Datu Jolipli. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion and Endencia, JJ., concur.

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