

**RIO Y COMPAÑIA (SUCCESOR OF RIO Y OLABARRIETA), PLAINTIFF
AND APPELLANT, VS. VICENTE SANDOVAL, MARIA R. DE SANDOVAL,
AND RAFAEL R. SANDOVAL, DEFENDANTS AND APPELLEES.***G.R. Nos. L-9391-9392. November 28, 1956*

Ponente: FELIX, J.

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This is an appeal from an order of the Court of First Instance of Manila dismissing the above-entitled cases without pronouncement as to costs. The ground for said dismissal is that the cause of action alleged in each of the complaints had prescribed, the plaintiff having no longer any cause of action against the respective defendants.

The facts of CFI-Civil Case No. 20609 (G. R. No. L-9391) are as follows: the complaint filed on September 15, 1953, avers that plaintiff is a general co-partnership organized and existing under the laws of the Philippines and engaged, among others, in interisland shipping business. Before the year 1935, defendant spouses Vicente Sandoval and Maria R. de Sandoval were appointed representatives of Rio y Olabarrieta at Coroh, Palawan, in connection with the latter's shipping business, with authority and power to collect fares for the passengers and freightage for cargoes shipped on board the vessels owned by said company and for other items connected therewith. In 1935 said defendant spouses authorized their son and co-defendant, Rafael R. Sandoval, to carry on the agency for and in their behalf, and from March of that year to December, 1940, defendants came to owe Rio y Olabarrieta the sum of P10,918.99, representing the balance of the proceeds of the fares and freightage and other items collected by defendants and not accounted for to their principal which in 1951 assigned and conveyed its credit to plaintiff. Both plaintiff and its predecessor in interest repeatedly demanded from defendants the payment of said P10,918.99 but defendants refused and failed to do so. Despite this failure and by reason of the Executive Orders on moratorium neither plaintiff nor its predecessor could bring after liberation any judicial action which had to be deferred until after Republic Act No. 342 and Executive Orders Nos. 25 and 32 on moratorium were declared unconstitutional by this court.

As the complaint alleged that defendants were disposing or about to dispose their properties and assets for the purpose of defrauding plaintiff, the latter prayed that: (a) a writ of preliminary attachment of the property of the defendants be issued upon plaintiff giving a bond for the purpose; (b) judgment be rendered in favor of plaintiff requiring defendants to pay, jointly and severally, the sum of 710,918.99 with the interest at legal rate from the date of the filing of the complaint until the said amount is fully paid; and (c) plaintiff be given such other and further remedies it is entitled under the premises, with costs against the defendants.

On September 22, 1958, defendants filed a motion to dismiss alleging that plaintiff's cause of action was barred by the statute of limitations, and upon its denial they move for a bill of particulars which was granted by the Court and which plaintiff complied by submitting Annexes A, B, B-1, B-2, E-3, B-4, and B-5 (pp. 34-67 of the record). Then defendants answer was filed. They set therein various affirmative defenses and counterclaim which have no bearing on this appeal, except their claim of prescription, as the case was not decided on the merits. The case was

then set for trial but in view of the absence from the city of the manager and principal witness of the plaintiff, the latter prayed for the postponement of the hearing to some other day, which motion was objected to by the defendants, who in turn, renewed their motion to dismiss which was finally granted as stated at the beginning of this decision.

The same procedure was followed in CFI Case No. 20655 (G. R. No. L-9392), wherein plaintiff, also at the request of defendants, submitted Annexes A, B, B-1, B-2, B-3 and B-4 (p. 26 to 72 of the record). The complaint in this second case, filed on September 18, 1958, was against the spouses Maria R. de Sandoval and Vicente Sandoval only and it averred, among other things, that in the year 1921, Maria R. de Sandoval, with the knowledge and consent of her said husband, was granted a current account loan by Rio y Olabarrieta in connection with defendants' logging business in Palawan; that from July, 1921 to December, 1940 defendants became indebted to plaintiff's predecessor in the sum of P5,475.04 representing the balance of the credits extended to them over the payments made thereof; that Rio y Olabarrieta assigned and conveyed its credit to plaintiff Rio y Compania (sucesora de Rio y Olabarrieta) in 1951; that both plaintiff and its predecessor in interest repeatedly demanded the payment of said sum of P5,475.04 from defendants, who refused or failed to pay the same. The complaint further alleged the moratorium as a reason for not bringing the action earlier and as defendants were disposing or about to dispose their properties and assets for the purpose of defrauding plaintiff, the latter prayed that (a) a writ of preliminary attachment of the property of defendants be issued upon plaintiff giving a bond for the purpose; (b) judgment be rendered requiring defendants to pay-jointly and severally the sum of P5,475.04 with interest at legal rate from the date of the filing of the complaint until the said amount is fully paid; and (c) that plaintiff be given such other remedies it is entitled under the premises, with costs against defendants.

The record does not show that any writ of attachment has been issued in any of these 2 cases. In this instance, the only issues raised by appellant are limited to the following propositions:

Did the Moratorium Law suspend the running of the period of limitation in the present case from November 18, 1944, the date Executive Order No. 25 was issued, to May 18, 1953, the date of the promulgation of the decision in the case of *Butter vs. Esteban* G. R. No. L-3708, holding said law unconstitutional. If it does, then only about 4 years, 3 months, and 15 days had elapsed before the filing of the complaint. If it does not, then 12 years, 9 months and 15 days had elapsed.

From the annexes attached to CFI-Civil Case No. 20609 (G. R. No. L-9S9i), it appears that on December 31, 1940, the consignment account of "Sr. D. Rafael R. Sandoval" with Rio y Olabarrieta (Annex A), showed a balance of P10,918.99 in favor of the latter. Likewise, in CFI-Case No. 20655 (G. R. No. L-9392), the statement of the current account of "Sr. Da: Maria R. de Sandoval" with Rio y Olabarrieta (Annex A) shows that on December 31, 1940, there was a balance of P5,454.84 in favor of the latter.

According to appellant, its cause of action in the 2 cases accrued in December, 1940, and that it had six years within which to file its claim against appellees under paragraph 2, Section 43, of the Code of Civil Procedure then in force; that although the complaint in the first case was filed on September 15, 1958, and in the second case on September 18 of the same year, the period from November 18, 1944, the date Executive Order No. 25 was issued, to May 18, 1953, the date the decision of this Court in the case of *Rutter vs. Esteban*, (93 Phil., 68; 49 Off. Gaz., (5) 1807) was promulgated, should be deducted because the running of the period of the limitation of actions was suspended by the Moratorium Law.

Paragraph 2, Section 43 of Act 190 fixes within six years after the right of action accrues, the period for bringing "an action upon a contract not in writing, whether such contract is express or implied, and an action upon a liability created by statute other than a forfeiture or penalty", and appellees do not raise any question as to this

period of six years, though they claim that the Moratorium Law is not applicable to the relation of principal and agent and that the phrase "other monetary obligations" used therein, can have reference only to obligations under the concept of "indebtedness".

Article 2270, No. a, of the Civil Code, prescribes that "the provisions of the Code of Civil Procedure on prescription (are repealed) as far as inconsistent with this code", and the provisions of said section 43, paragraph 2, are not and cannot be inconsistent with this Code, because Article 1145 thereof merely reiterates that actions -upon an oral contract must be commenced within six years. Although in the prayers of the complaints, plaintiff asks the Court to sentence defendants to pay unto it the respective specific amounts mentioned therein—

from which it could be inferred that plaintiff was after the collection of sums of money, which Article 417, Nos. 1 and 4, of the Civil Code considers as personal property, and actions for the recovery of personal property must be instituted within four years (Art. 43, paragraph 3 of Act 190 in connection with Art. 2270, No. 3, 116, 1146 and 1149 of the Civil Code)—

We hold that period of prescription applicable to the 2 cases at bar is of six years because the indebtedness that plaintiff seeks to collect from defendants is based on a contract of agency in the first case and of loan in the second case, which apparently were not put in writing. And precisely because the rights that plaintiff seeks to enforce by means of these 2 cases refer to defendants' "indebtedness", the phrase "other monetary obligations" quoted from Executive Order No. 32 on Moratorium is applicable to them.

In the case of Adela Santos Vda. de Montilla vs. Pacific Commercial Company, (98 Phil, 133), promulgated on December 20, 1955, this Court held:

"Another circumstance that may be invoked in favor of appellant is the adoption of Executive Order Nos. 25 and 32, known as Debt Moratorium, promulgated on November 18, 1944 and March 10, 1945, respectively, and Republic Act 342 passed on July 26, 1948, limiting the moratorium, to war sufferers, which have the effect of tolling further the limitation of the period for the institution of a court action, for the general rule is that 'moratorium acts ordinarily operate to suspend the running of limitations as to suits barred by the provisions of the act, irrespective of whether or not the debtor has sought relief thereunder.' (54 C. J. S. p. 288). And this seems to be also the rule in this jurisdiction when this Court has repeatedly held in a number of cases that during the time the moratorium was in force no action could be taken to collect any outstanding monetary obligations within the purview of the moratorium orders (Cruz vs. Avila, 42 Off. Gaz. No. 9, p. 2114; De la Fuente vs. Botomeo, 42 Off. Gaz. p. 3172; Ma-ao Sugar Central Co. vs. Barrios, 45 Off. Gaz. p. 2444)."

With regards to CFI-Civil Case No. 2p609 (G. R. No. L-9391), the amount of P10,918.99 for which defendants are sued, was, according to Annex A, due and demandable on December 31, 1940. From this date to March 10, 1945, when Executive Order No. 32 was issued (because Executive Order No. 25 dated November 18, 1944, only covers debts and other monetary obligations contracted after December 31, 1941, intervenes a period of 4 years, 2 months and 10 days, which shall be added to the span that extends from May 18, 1953, when the case of Rutter vs. Esteban was promulgated, to September 15, 1953, the date of the filing of CFI-Civil Case No. 20609 (G. R. No. L-9391), an additional period of 3 months and 28 days, or a total of 4 years, and six months and 8 days.

Anent CFI-Civil Case No. 20655 (G. R. No. L-9392), the amount sought to be collected by means thereof was, according to Annex A, due and demandable on December 31, 1938, and between this date and March 10, 1945, there is a period of 6 years, 2 months and 10 days, which added to the period of 4 months that intervened from the promulgation of our decision in the case of Rutter vs. Esteban on May 18, 1953, to September 18, of the same year, when the second complaint was filed, unnerves the strength or efficacy of this second action of plaintiff which comes with the grasp of the statute of limitations.

We see, therefore, that plaintiff's cause of action in CFI Case No. 20609 (G. R. No. L-9391) has not yet

prescribed, while plaintiff's cause of action in CFI case No. 20655 (G. R. No. L-9392) is no longer enforceable because of the statute of limitations.

Wherefore, the order appealed from is reversed in so far as CFI case 20609 (G. R. No. L-9391), which is hereby remanded to the lower court for further proceedings, and affirmed as to CFI case No. 20655 (G. R. No. L-9392). Without pronouncement as to costs. It is so ordered.

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

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