

FLORENCIA Q. DE ABRAHAM, ALFONSO ABRAHAM, AND JESUS ABRAHAM, PETITIONERS, VS. INTESTATE ESTATE OF JUAN C. YSMAEL, PRISCILLA RECTO-KASTEN, RESPONDENT.

G.R. No. L-16741. January 31, 1962

Ponente: DE LEON, J.

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DE LEON, J.:

This is a petition to review on certiorari the decision of the Court of Appeals in CA-G. R. No. 21222-R.

The facts as shown by the record are as follows: On September 3, 1943, Juan C. Ysmael, obtained a loan from Alfonso Abraham Sr. in the amount of P12,500.00 in Japanese currency notes, and executed a promissory note in favor of the latter promising to pay the loan within 90 days with interest at the rate of 10% per annum. The note was executed in the presence of Florencia Q. Abraham, the creditor's wife, who affixed her signature at the bottom thereof as a witness thereto. Upon the maturity of the note, a demand was made for its payment, but the debtor failed to pay.

On February 9, 1945, Alfonso Abraham Sr. died. On the other hand, Juan C. Ysmael died intestate on April 23, 1952 leaving the note still unpaid.

On November 13, 1954, in Special Proceedings No. Q-285 for the settlement of the intestate estate of Juan Ysmael, pending before the Court of First Instance of Quezon City, Florencia Q. Vda. de Abraham together with her sons, Alfonso and Jesus, all surnamed Abraham, filed a pleading entitled "Reclamacion" demanding payment of the amount represented by the note. Because no regular administrator of the estate had yet been appointed by the court, the "Reclamacion" was not acted upon. However, as soon as Priscilla Recto-Kasten was appointed administratrix, the claimants reproduced their "Reclamacion" before the lower court and the same was finally set for hearing. As agreed upon by the parties, the reception of evidence was delegated to a commissioner. During the hearing before the commissioner, the counsel for the administratrix interposed a general and continuing objection to the testimony of Florencia Vda. de Abraham invoking the provisions of Section 26 (c), Rule 123 of the Rules of Court. However, after the claimant had testified, he lengthily cross-examined her on the very matters against which he interposed a general objection.

On October 4, 1956, the lower court issued an Order-Decree allowing the claim against the intestate estate of Juan C. Ysmael, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATION, the Court rules that the claimants established a just and valid claim against the estate of Juan C. Ysmael, and therefore the "reclamacion" under consideration is hereby APPROVED.

"The administratrix is hereby ordered to pay the claimants herein the amount of P5,000.00 with interest thereon at 10% per annum, in accordance with the Ballantyne Scale of Value for the year December, 1943, out of the funds of the estate in the course of her administration.

"SO ORDERED."

From the above Order-Decree, Priscilla Recto-Kasten, the administratrix, appealed to the Court of Appeals. The appellate court concluding that "the lower court erred in finding that the claimants have established a just and valid claim, and in allowing the claim—supposing it was a claim with consideration—when the same had been barred by prescription, estoppel and laches," reversed the Order-Decree appealed from. Hence, this petition for review brought by the claimants.

The main issue in this petition is whether or not petitioners have established a just and valid claim. And if the answer is in the affirmative, whether the same is already barred by prescription and laches.

The record shows that petitioners have established the due execution and genuineness of the promissory note and that respondents failed to present any evidence to destroy the same. Thus, in the Order-Decree appealed from, the lower court observed:

"It is interesting to note that the promissory note executed by the deceased was produced before the Court and marked as Exhibit B-1, and the circumstances under which the same was executed was extensively described by Florencia Q. de Abraham during the hearing, who, strikingly is one of the witnesses to the said instrument. Much to the surprise of the Court this description was more vividly given by the said witness not in answer to the questions propounded by her lawyer but on cross-examination of counsel for the administratrix, who feebly attempted to destroy the due execution and genuineness of the said document. It is indeed unfortunate that counsel for the administratrix did not choose to present evidence to destroy the alleged genuineness of the promissory note (Exhibit B-1) in support of his theory, despite insinuation during the course of the trial that he might try to secure the services of an expert to determine the genuineness of the signature of the late Juan C. Ysmael mentioned therein. (t.s.n., p. 83) Again counsel manifested that if Exhibit B-1 is a genuine document the same has been fully paid already, (t.s.n., p. 85), however, counsel did not present any proof to support this contention."

It is true that Section 26 (c), Rule 123 of the Rules of Court provides:

"(c) Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify, as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind;"

However, there was a waiver of the prohibition when the counsel for the administratrix extensively cross-examined the witness on the very matters subject of the prohibition. (Wright vs. Tinio, G. R. No. L-4004, May 29, 1952; see also Tongco vs. Vianzon, 50 Phil. 698; Macfarlane vs. Green, 54 Phil. 551). It was for this reason that the trial judge eventually overruled the counsel's previous general and continuing objection and admitted the testimony of the witness. Furthermore, it is difficult to believe that the counsel's lengthy cross-examination on the prohibited matters was merely for the purpose of establishing the "motive, prejudices and predilection" of the witness. In this connection, it has been said:

"* * * The reason for the rule apparently is that a litigant cannot be permitted to speculate as to what his examination of a witness may bring forth. Having made his selection of one of two courses which he may pursue, he has no right, after he discovers that the course selected is not (to his advantage, and after he has put the opposite party to the expense, and has consumed the time of the courts in a trial of the case in accordance with the course selected, to change his position and make another and different selection. Such course would be unfair both to the opposite party and to the court and should not be countenanced in any court of justice. (IV Francisco, RULES OF COURT, 876, 877, citing the case of Comstock's Adm'r vs. Jacobs, 89 VT. 133, 94 A. 497, Ann. Cas. 1918A, 465)".

The next issue is whether or not the claim is already barred by prescription and laches. Under the New Civil Code, an action upon a written contract must be brought within 10 years from the time the right of action accrues. (Art. 1144, par. 1). In the case at bar, the cause of action accrued on December 3, 1943 (the date when the note became due and demandable) and petitioners filed their "reclamacion" only on November 13, 1954. Apparently, the action has already prescribed, because more than ten years had elapsed before any suit was filed. However, it must be remembered that the provisions on moratorium had the effect of suspending the statute of limitations from November 18, 1944 when Executive Order No. 25 was issued, to May 18, 1953, the date of promulgation of the decision in the case of *Rutter vs. Esteban* (93 Phil., 68; 49 Off. Gaz., [5] 1807) holding such provisions no longer applicable (*Rio y Compañia vs. Sandoval*, 10Q Phil., 407; 58 Off. Gaz. [17] 1705; *Compañia Maritima vs. Court of Appeals*, 108 Phil., 469; 58 Off. Gaz., [6] 1117). Thus, from December 3, 1943 to November 13, 1954, eleven years, eleven months and ten days have elapsed. Deducting from this period eight years and six months, the time during which the statute of limitations was suspended, it is clear that petitioners' claim has not yet prescribed when it was filed on November 13, 1954.

Respondents, however, contend that Republic Act No. 342, which took effect on July 26, 1948, lifted the moratorium on debts contracted during the Japanese occupation. The contention is untenable. This court has already held that Republic Act No. 342 did not lift the moratorium on debts contracted during the war (*Uy vs. Kalaw Katigbak*, G. R. No. L-1830, Dec. 81, 1949) but modified Executive Order No. 32 as to prewar debts, making the protection available only to debtors who had war damage claims (*Sison vs. Mirasol*, G. R. No. L-4711, Oct. 31, 1952).

In order that the defense of laches may prosper, the following elements must be present: 1) conduct on the part of defendant, or one under whom he claims, giving rise to the situation complained of, 2) delay in asserting complainant's right after knowledge or notice of defendant's conduct and an opportunity to sue, 3) lack of knowledge or notice on the part of the defendant that complainant would assert the right on which he bases suit, and 4) injury or prejudice to defendant in the event relief is accorded. (*Villoria vs. Secretary of Agriculture and Natural Resources*, 107 Phil., 879; 58 Off. Gaz., [28] 4963). Assuming that the first three elements are present, we do not see how the last element may exist, for neither injury or prejudice to respondent may occur by the allowance of the claim. It should be emphasized here that mere lapse of time during which there was neglect to enforce the right is not the sole basis of the rule on laches, but also the changes of conditions which may have arisen during the period there has been neglect. When there are no changes of condition detrimental to the defendant, the defense of laches may not prosper.

In view of the foregoing, the decision of the Court of Appeals in CA-G. R. No. 21222-R is hereby reversed and the Order-Decree dated October 4, 1956 of the Court of First Instance of Quezon City in Special Proceedings No. Q-285 is hereby affirmed in all respects. Without costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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