

S. N. PICORNELL & CO., PLAINTIFF AND APPELLEE, VS. JOSE M. CORDOVA, DEFENDANT AND APPELLANT.*G.R. No. L-6338. August 11, 1954*

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

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This is an appeal from the judgment rendered on November 15, 1950, by the Court of First Instance of Manila in its Civil Case No. 10115, reviving a prewar judgment (Civil Case No. 51265) against the defendant-appellant Jose M. Cordova and sentencing him to pay the plaintiff-appellee the sum of P12,060.63, plus interest thereon at the legal rate from May 27, 1941, until full payment; with the proviso that the judgment shall not be enforced until the expiration of the moratorium period fixed by Republic Act 342.

The material facts are as follows: In Civil Case No. 51265 of the Court of First Instance of Manila, the appellant Jose M. Cordova was sentenced on March 4, 1939, to pay the firm of Hair & Picornell the amount of P12,715.41 plus interest at the legal rate from May 4, 1937 and costs (Exhibit B). Cordova appealed to the Court of Appeals, where the decision of the Court of First Instance was affirmed on December 27, 1940 (CA-G.R. No. 5471) (Exhibit C). A motion for reconsideration was denied on February 7, 1941, and the parties were notified thereof on February 11, 1941 (Exhibit D). Thereafter, the judgment became final and executory. Execution was issued; several properties of the defendant were levied upon and sold, and the proceeds applied in partial satisfaction of the judgment but there remained an unpaid balance of P12,060.63 (Exhibits E, F, G).

Subsequently, the interest of Hair & Picornell in the judgment was assigned to appellee S. W. Picornell & Co. (Exhibit H). The latter, on January 16, 1950, commenced the present action (No. 10115) to revive the judgment in case No. 51265; but Cordova defended on two grounds: (1) that the action had prescribed; and (2) that the action against him was not maintainable in view of the provisions of section 2, of Republic Act No. 342, since he (Cordova) had filed a claim with the Philippine War Damage Commission, bearing No. 978113, Exhibit I). Both defenses were disallowed by the Court of First Instance, which rendered judgment as described in the first paragraph of this decision. Cordova duly appealed to the Court of Appeals, but the latter certified the case to this Court, as involving only questions of law.

Clearly, the appeal is without merit. The judgment of the Court of First Instance in the original prewar case, No. 51265, did not become final until it was affirmed by the Court of Appeals, precisely because of the appeal interposed by appellant Cordova; hence the period of limitation did not begin to run until final judgment was entered, after the Court of Appeals had denied Cordova's motion to reconsider on February 7, 1941 (old Civil Code, article 1971; new Civil Code, article 1152). From the latter date until the present proceedings were commenced on January 16, 1950, less than ten years have elapsed, so that the action to revive the judgment has not yet become barred (section 43, Act 190; 31 Am. Jur. s. 846).

As to the defense based on the Moratorium Act, R. A. No. 342, our decision in *Rutter vs. Esteban*[*] (1953), 49 Off. Gaz., (No. 5) p. 1807, declaring the continued operation of said Act to be unconstitutional, is conclusive that

it may no longer be invoked as a defense.

Wherefore, the decision appealed from is affirmed except as to the proviso suspending execution of the judgment until eight years after the settlement of appellant's war damage claim. Said condition is hereby annulled and set aside, in accordance with our ruling in the Rutter case.

Paras, C J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.

[*] 93 Phil. 68.

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