

**BOARD OF LIQUIDATORS, TRUSTEE OF THE LAND SETTLEMENT
& DEVELOPMENT CORPORATION, PLAINTIFF-APPELLEE, VS.
RICMA TRADING CORPORATION AND RICARDO M. MAIPID,
DEFENDANTS, RICMA TRAD...**

G.R. No. L-24318. August 29, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the decision dated December 23, 1964, as well as from the orders dated April 29, 1963, June 8, 1963, June 29, 1963 and July 27, 1963 of the Court of First Instance of Manila (Branch XVII) in its Civil Case No. 52674, entitled Board of Liquidators, etc. et al. vs. Ricma Trading Corporation, et al.

On August 15, 1962, plaintiff-appellee Board of Liquidators, as trustee of the defunct Land Settlement & Development Corporation (LASEDECO), filed a complaint in the Municipal Court of Manila, to recover from the defendants Ricma Trading Corporation and its President and General Manager, Ricardo Maipid, the sum of P2, 800.00 as unpaid balance of the purchase price of certain personal properties consisting of equipment, tools, engine blocks, spare parts, supplies, junks and others located in its Bodega No. 2, at Sta. Mesa Boulevard, Manila, which are described in the said complaint as "Lots Nos. 1 and 2, Bodega 2, Sta. Mesa Compound", with interest thereon at the legal rate from the date of the filing thereof.

On September 29, 1962, defendants moved to dismiss the complaint on two grounds, namely: (1) that appellee's cause of action is barred by the statute of limitations; and (2) that the complaint states no cause of action in so far as defendant Ricardo Maipid[1] is concerned. With regard to the first ground, the contention was that inasmuch as there was no written contract evidencing the sale between the appellee and the defendants nor any written promise or commitment on the part of the latter to pay the alleged unpaid balance of P2,800.00, the former's cause of action was merely based on an oral contract, which, pursuant to Art. 1139 of the Civil Code, should have been filed within six (6) years from the accrual of the cause of action, i.e., from October 24, 1955, the date when the last partial payment was made, to the same day in 1961. So, according to the motion, prescription had already set in on August 15, 1962, the date when the complaint of appellee was filed.

After the appellee had registered its opposition to the motion to dismiss and the defendants had filed a rejoinder thereto, on October 19, 1962, the Municipal Court promulgated an order dismissing the action. After receiving copy of this order on November 7, 1962, appellee filed a motion for the reconsideration thereof on November 12, 1962 (five days after such receipt) and prayed for the admission of an amended complaint thereto attached, both of which, defendants opposed.

Resolving, the motion for reconsideration and the opposition thereto, the Municipal Court issued an order on November 23, 1962, the dispositive portion of which erroneously stated that the "motion to dismiss", instead of the "motion for reconsideration" was the one being denied. The order reads thus:

"IN VIEW OF THE FOREGOING, the motion to dismiss as well as the motion for the admission of the amended com-plaint, are hereby denied for lack of merit."

Appellee received a copy of this order on December 4, 1962. On the same day, upon motion "ex-parte" of the defendants, under date of December 3, 1962, the Municipal Court rendered an amended decision, disposing thus:

"IN VIEW OF THE FOREGOING, motion for reconsideration as well as motion for the admission of the amended com-plaint, are hereby denied for lack of merit."

Copy of this amended decision was received by appel-lee on December 21, 1962. Six days thereafter, or, on December 27, 1962, appellee made an appeal to the Court of First Instance of Manila - hereinafter referred to merely as CFI - which was docketed in said court as Civil Case No. 52674. In the CFI, the first step taken by the defendants was to move to dismiss the appeal on January 18, 1963, on the ground that the order of the Municipal Court dismissing the action had already become final and was, therefore, unappealable. As to be expected, appel-lee immediately opposed said motion and defendants filed a rejoinder to such opposition

On April 29, 1963, the CFI issued an order denying defendant's motion to dismiss appeal this wise:

"It appearing that the notice of appeal interposed on December 27, 1962, by the plaintiff in the Municipal Court is from its amended decision dated De-cember 4, 1962, a copy of which was re-ceived by said plaintiff on December 21, 1962, which appeal is clearly with-in the period provided by the Rules, the motion of the defendants to dismiss said appeal is hereby de-nied for lack of merit and the defendants are directed to answer the complaint within the period provided by the Rules."

A motion for the reconsideration of the above order was denied on June 8, 1963, in a minute order, for lack of merit.

Having failed in their move to dismiss the appeal, defendants filed another, motion, this time one to dis-miss the case, predicated on the same two grounds they had previously alleged in their motion to dismiss in the Municipal Court, to wit, prescription and failure of the complaint to state a cause of action against defendant Ricardo Maipid. After appellee had filed its opposition and the defendants, their rejoinder, the CFI issued on June 29, 1963, the following order:

"It appearing that the motion to dismiss filed by the defendants raises questions of facts which cannot be de-cided without trial on the merits, the same is hereby denied and said de-fendants are directed to answer the complaint within the period provided by the Rules."

Meanwhile, the defendants filed a petition for cer-tiorari, prohibition and mandamus with preliminary in-junction with the Court of Appeals (CA-G. R. No. 32448-R, Ricma Trading Corp. and Ricardo Maipid vs. Hon.Arsenio Solidum, Judge, CFI-Manila, and Board of Liquidators, as Trustee of the LASEDECO) praying the appellate court: (1) to restrain the respondent Judge from further proceed-ing with the case (CIVIL CASE No. 52674); (2) to declare the above-mentioned orders of herein respondent Judge dated April 29, 1963, June 8, 1963 and June 29, 1963, null and void; and (3) in lieu of the order of April 29, 1963, for the court to render a decision dismissing the appeal of herein appellee, or, in the alternative, for the court to order the respondent Judge to remand the case to the Municipal Court for trial on the merits as al-leggedly directed by Sec. 10, Rule 40 of the Rules of Court. The Court of Appeals dismissed the petition for being premature, in a resolution dated July 19, 1963, holding that "it cannot be said at this stage that respondent Judge has had all the opportunity to correct his alleged errors or that he has clearly acted without jurisdiction or with grave abuse of discretion."

Unable thus to obtain relief from the Court of Appeals, defendants changed tactics in the CFI. On July 26, 1963, they filed a motion to remand the case to the Municipal Court for trial on the merits, contending that under

Section 10 of Rule 40 of the Rules of Court, the jurisdiction of the CFI in an appeal of the kind taken by the plaintiff (herein appellee) is limited exclusively to the determination of whether or not the inferior court has properly dismissed the case and not to try the case on the merits. The following day, July 27, 1963, appellee joined them in their move and filed a manifestation to that effect. Entertaining a different view, however, the CFI, on the same day, July 27, 1963, issued the following order:

"Upon consideration of the motion filed by counsel for the defendants praying that this case be remanded to the Municipal Court and the manifestation of the plaintiff, the Court finds that said motion is without merit and is hereby denied."

Faced with this order, on August 6, 1963, defendants filed their answer to the complaint, making therein denials and admissions, to which reference will be made later in this decision, and alleging as affirmative and special defenses: (1) lack of jurisdiction of the CFI; (2) full payment; (3) prescription; and (4) lack of cause of action against defendant Ricardo Maipid.

On October 29, 1964, during the trial, both parties, assisted by their respective counsel, entered into a stipulation of facts which they submitted to the court with a manifestation that they were submitting the case on the questions of law raised in their pleadings. The stipulation of facts is as follows:

"1. That the Board of Liquidators which is the agency designated under Republic Act No. 1160, to liquidate the assets of the Land Settlement & Development Corporation, and is acting as trustee of said LASEDECO, has offered for bidding certain personal properties consisting of equipment, tools, engine blocks, spare parts, supplies and other junks at its bodega No. 2 at Sta. Mesa, Manila, which are designated as Lots Nos. 1 and 2 and defendant corporation through its President, defendant Ricardo Maipid submitted its bid thereon on September 7, 1955, but which is not acceptable to plaintiff;

"2. That subsequently the defendant corporation through defendant Maipid negotiated with the plaintiff for the purchase of the afore-mentioned personal properties, and which was awarded to said corporation in the amount of P10, 800.00 as per Resolution No. 7173, dated October 14, 1955, as evidenced by a certified true copy of the extract of the minutes of the meeting of the Board of Liquidators, which is attached hereto and marked as Exhibit 'A';

"3. That in pursuance to said Resolution No. 7173, defendant corporation through defendant Maipid received on October 15, 1955, the above mentioned properties as evidenced by Memorandum Receipts which are attached hereto and marked as Exhibits 'B' and 'B-1';

"4. That defendant corporation paid the plaintiff the sums of P5, 000.00 and P3, 000.00 only on October 15, and 24, 1955, respectively, as evidenced by Official Receipts Nos. 0266790 and A-263397, respectively, and which are attached hereto and marked as Exhibits 'C' and 'C-1';

"5. That actual delivery and receipt of Lot No. 2 in Bodega 2 was effected on October 24, 1955, as evidenced by an Invoice Receipt No. 61 which is attached hereto and marked as Exhibit 'D';

"6. That there is still an unpaid balance of P2, 800.00 due the plaintiff from the defendant corporation, and to secure payment thereof the latter posted a surety bond executed with the Manila Underwriters Insurance Co., Inc., on December 28, 1956, copy of which bond is hereto attached and marked as Exhibit 'E';

"7. That upon demands made by plaintiff, defendant corporation through defendant Maipid renewed said bond extending the same for another year expiring on December 28, 1957, copies of the letter of said defendant and the renewal slip are attached hereto and marked as Exhibits 'F' and 'F-1';

"8. That another renewal of said bond (Exh. 'E') was made on November 20, 1957, copies of which renewal and letter of transmittal are attached hereto and marked as Exhibits 'G' and 'G-1';

"9. That as said balance of P2, 800.00 is still outstanding, plaintiff sent a letter demanding payment thereof to de-fendant corporation on May 25, 1962, and which was duly received by the latter, a copy of which letter is attached hereto and marked as Exhibit 'H'."

On December 23, 1964, the CFI rendered its decision subject of the present appeal. In the light of the pleadings and the stipulation of facts, the trial court held:

"The question of law submitted by the parties in their pleadings to the Court for its consideration are: (1) whether the cause of action is barred by the statute of limitations, and (2) whether the complaint states a cause of action against the defendant, Ricardo R. Maipid.

"From the pleadings and stipulations of facts, it appears that the defendant, Ricma Trading Corporation, thru its Pre-sident, defendant Ricardo R. Maipid, bought from the Land Settlement & Development Corporation, as the highest bidder, certain personal properties consisting of equipment, tools, engine blocks, spare parts, supplies, and other junks for the sum of P10,800.00 on October 15, 1955, for which the de-fendant paid P5,000.00 and P3,000.00 on October 15 and 24, 1955, respectively, thereby leaving a balance of P2,800.00. To secure the payment of said balance the defendant corporation posted a surety bond executed by the Manila Underwriters Insurance Co., Inc, on December 28, 1956 (Exhibit 'E9'. Said bond was renewed and extended to December 28, 1957

and again renewed for another year expiring on December 29, 1958.

"It is admitted that the transaction is not evidenced by any written contract of purchase and sale, and therefore, it is verbal. It is the contention of the defendants that inasmuch as the cause of action of the plaintiff is based upon an oral contract, the corresponding complaint should have been filed within six (6) years from October 24 1955 when the defendant, Ricma Trading Corporation, made the last partial payment of P3, 000.00. Since no further payment has been made by the defendant after said date and neither was any demand made by the plaintiff for the payment of said amount, and it appearing that the present case was instituted in the Municipal Court on January 8, 1963, it is obvious, according to the defendants, that the cause of action of the plaintiff has already expired in accordance with the provision of Article 1145 of the new Civil Code to the effect that any action based upon an oral contract must be commenced within six (6) years.

"But it is argued by the plaintiff that the last renewal of the bond (Exhibit 'E') executed by the Manila Underwriters Insurance Co., Inc., on December 28, 1955, to secure the payment of said balance of P2, 800.00, has interrupted the running of said period of limitation. The evidence shows that on January 2, 1957, the defendant Ricma Trading Corporation, thru its President and General Manager, R. M. Maipid, wrote a letter (Exhibit 'G-1') to Mr. Filomeno Kintanar, Manager, Board of Liquidators, Manila, as follows: 'In connection with our Bond #D-050 issued by the Manila Underwriters Co. which expires on December 28, 1956, and in compliance with your request for renewal, we beg to inclose herewith the renewal policy for another year.'

"In the opinion of the Court, this letter is a manifest acknowledgment on the part of the defendant corporation to pay said balance of P2, 800.00 for it is certainly difficult to understand why the defendants should renew the bond precisely to secure the payment of said balance of P2, 800.00 if it was not willing any more to recognize it as its legitimate obligation and to pay the same. It is true that the execution of said bond was for the purpose of securing the verbal obligation of the defendant with the Land Settlement & Development Corporation but when it renewed said bond, especially upon the request of the plaintiff, Board of Liquidators, as trustee of the Land Settlement & Development Corporation, the defendant expressly acknowledged that it was still indebted to the plaintiff in the sum of P2, 800.00. According to Article 1155 of the New Civil Code: 'The prescription of action is interrupted x x x when there is any written acknowledgment of the debt by the debtor.' Consequently, the contention of the defendants that plaintiff's cause of action has already expired is devoid of any legal merit.

"However, as to second legal question as to whether defendant Ricardo Maipid should be held liable for the

payment of said indebtedness, the Court finds that inasmuch as it is evident that in purchasing said equipment and tools from the Land Settlement & Development Corporation, he acted for and on behalf of the Ricma Trading Corporation of which he was then the President and General Manager and not in his personal capacity, it is said corporation which is primarily liable for the payment of said balance of P2,800.00. Consequently, plain-tiff has no cause of action against him."

and, accordingly, rendered judgment thus:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered ordering the defendant, Ricma Trading Corporation, to pay to the plain-tiff, Board of Liquidators, as trustee of the Land Settlement & Development Corporation, the sum of P2, 800.00, with legal interest from the date of the filing of the complaint, until fully paid, and the costs of the suit.

"The Complaint with respect to the other defendant, Ricardo Maipid, is hereby dismissed without costs."

Not satisfied with this decision, defendant Ricma Trading Corporation has interposed the present appeal posing for our consideration three issues, to wit: (1) whether or not the appeal taken by appellee from the orders of the Municipal Court (now City Court) had been perfected within the reglementary period provided for by the Rules of Court; (2) whether or not appellee's action had already prescribed under the statute of limitations; and (3) whether or not, under Section 10 of Rule 40, the court a quo had jurisdiction to try and decide the case on the merits despite the fact that the action had been brought to it on appeal from the inferior court which, according to appellant, had disposed of the case only upon a question of law without any valid trial on the merits.

The first issue is discussed under appellant's first assignment of error which reads:

"THE LOWER COURT ERRED IN NOT DISMISSING THE APPEAL TAKEN BY PLAINTIFF-APPELLEE FROM THE ORDER OF THE MUNICIPAL COURT OF MANILA (NOW CITY COURT) DISMISSING ITS COMPLAINT FOR ITS FAILURE TO PERFECT SAID APPEAL WITHIN THE REGLEMENTARY PERIOD PROVIDED BY LAW."

The discussion centers on two points, namely: (1) that His Honor allegedly erred in holding, in his order of April 29, 1963, that the appeal of herein appellee now (appellant in the court below) was from the amended decision of December 4, 1962 and not from the order of dismissal of October 19, 1962 and the erroneously worded order of November 23, 1962, and (2) that the said amended decision of December 4, 1962 "did not change or alter (its) the previous order dated November 23, 1962, and is not appealable in nature." Accordingly, appellant contends, appellee's period to appeal to the CFI should have been considered as resumed, after its suspension by, the filing of the motion for reconsideration of November 12, 1962, from December 4, 1962, when appellee received the said erroneously worded order of November 23, 1962, and not from December 21, 1962 when it received the amended decision of December 4, 1962.

This contention is clearly without merit. As regards the first point, whatever reason might have been actually, given by His Honor in giving due course to appellee's appeal is secondary, what is decisive is that in fact and in law, said appeal was filed on time. There can be no denying the fact that appellee was appealing only from the orders of October 19, 1962 and December 4, 1962; it could not have meant to appeal from the order of November 23, 1962 for the simple reason that its dispositive part, which suffered from no ambiguity or equivocation whatsoever, was favorable to it. Now, it appears that on the same date that appellee was notified of the erroneously worded order of November 23, 1962, the Municipal Court issued the amended decision in question. In other words, on the very date appellee's period to appeal was to be resumed, the Municipal Court amended its order of November 23, 1962. As the said order was issued within the period for appeal and appears on its face to have been intended to correct the original order, it must be considered as having taken the place of such original

order, hence it could not bind the parties, particularly, the appellee until it was notified thereof. Necessarily, appellee's period to appeal was re-summed only from the date of this notice. (Fabie vs. Gutierrez David, 75 Phil. 526) In *Cuento v. Paredes*, 40 Phil. 346, this Court held that where a judgment is amended, the date of the amendment should be considered as the date of the decision for the computation of the period for perfecting the appeal therefrom. This was reiterated in *Capistrano v. Cariño*, 93 Phil. 710.

Appellant raises, however, the point that the amended decision "did not change or alter (its) the previous order dated November 23, 1962." Such argument is neither factually nor legally correct. It is an incontrovertible fact that the order of November 23, 1962 clearly and definitely stated that what was being denied was appellee's motion to dismiss. The dispositive part of the said order made no reference at all to the motion for reconsideration. Legally speaking, the fact that the motion before the court was appellee's motion for reconsideration, and not the defendant's motion to dismiss, and the further fact that what was discussed in the body of the order was said motion for reconsideration and not the motion to dismiss, are of no moment, since the rule is that when the dispositive part of a final order or decision is definite, clear and unequivocal and can be wholly given effect without the need of interpretation or construction, the same is considered as the judgment of the court, to the exclusion of anything said in the body thereof. (*Contreras vs. Felix*, 78 Phil. 570; *Edwards vs. Arce*, 98 Phil. 688) This is particularly true in this case, where the order or decision in question is that of a court not of record which is not constitution-ally required to state the facts and the law on which its judgment is based.

A more or less similar situation confronted this Court and was resolved in the case of *Semira vs. Enriquez*, 88 Phil. 228, decided on February 27, 1951. As stated in the decision, the facts were as follows:

"In civil case No. 43 of the Court of First Instance of Batangas between Trinidad Semira and Isidoro G. Mercado, as plaintiffs, and Bienvenido Azores, Apolonia Azores, Manuel Azores, Juana Azores, Jose R. Azores, Sinforosa Azores, Antonio Azores and Norberta Azores, as defendants, judgment was rendered in favor of the latter on July 7, 1944, notice of which was received by counsel for plaintiffs on August 7, 1944. On August 30, 1944, counsel for plaintiffs filed a motion for reconsideration. On May 26, 1948, after the record had been reconstituted, the Court of First Instance of Batangas denied the motion for reconsideration, notice of which was received by counsel for plaintiffs on June 21, 1948. On June 5, 1948, that is, before receipt of the notice of denial, counsel for plaintiffs filed a motion for an extension of fifteen days within which to perfect an appeal in case the motion for reconsideration should be denied. In the resolution of May 26, 1948, the court made it appear that the defendants filed the motion for reconsideration and the plaintiffs filed an opposition thereto, when the fact was that the plaintiffs filed the motion and the defendants filed the opposition. In view of this mistake, the plaintiffs filed, on the same day he received the order of denial, a motion for correction which was set for hearing on July 3, 1948. Failing to receive notice of any action either on the motion for extension or on the motion for correction, counsel for plaintiffs sent a letter of inquiry to the clerk of court. Thus prompted, the court issued an order dated September 25, 1948, -received by plaintiffs on October 2, 1948, holding that the judgment of July 7, 1944, had become final and executory for plaintiffs' failure to perfect their appeal on time even if the motion for an extension of fifteen days was granted, the motion for correction filed by plaintiffs on June 21, 1948, not having suspended the time for appeal." (Pp. 229-230)

Upon these facts and over the opinion of the lone dissenter, which was along the same line as the contention of the appellant's herein, that the error in the order in question consisted merely in the "transposition of the parties, mistakenly attributing to the defendants the motion for reconsideration, and imputing to the plaintiffs the opposition thereto, when it should be the other way, is a mere oversight, a clerical error, unsubstantial, immaterial and harmless, which can neither prejudice nor mislead anyone", meaning impliedly that the parties should have acted in relation to said order regardless of the error and as if it did not exist, this Court held:

"The inherent power of the court 'to amend and control its process and orders so as to make them conformable

to law and justice,' (Sec. 5, Rule 124), carries the concomitant duty to correct its orders on its own initiative or upon motion of the parties. This duty is not affected by the nature of the error sought to be corrected. In the case at bar, the petitioners timely called the attention of the respondent judge to the mis-statement contained in his order of May 26, 1948, and, more timely still, filed the motion for an extension of fifteen days to perfect an appeal. The respondent judge, in his order of September 25, 1948, admitted that, for unknown reasons, he was not able to dispose of the two motions sooner, but ruled in the same breath that the judgment of July 7, 1944, had become final and executory because the error was merely clerical and the period to appeal had expired even if the petitioners were granted the 15-day extension. The unfairness and in-justice of this ruling are obvious from the fact that, while the respondent judge in effect admitted the necessity of swift action on petitioner's motions, the petitioners are made to suffer the consequences of his inaction.

The petitioners might have resorted to too technical a move, but this circumstance did not dispense with the duty of the respondent judge to straighten out the record of the case for all purposes. The petitioners are expected to file a record on appeal containing pertinent pleadings, motions and orders which are correct; and it cannot rightly be contended that they are ready to do so before the order of the respondent judge of May 26, 1948, is changed in the sense indicated in petitioners' motion for correction." (Pp. 231-232, *ibid.*)

Indeed, this is the better rule. It does not accord with the dignity and solemnity of judicial proceedings that parties should be made to act on the basis of court orders that do not state exactly and correctly what is meant by the court, whether what is intended is legally tenable or not. Much less should the parties concerned be made responsible for any of the legal consequences of an erroneously worded order or judgment of the court, particularly, when they opportunely call the attention of the court, as in this case, to its mistake. The parties have a right to a correct and clear expression of a court's orders and judgments, regardless of its nature and legal propriety, and the responsibility of the judges cannot be any less, correspondingly, to exercise proper circumspection in the preparation of their orders and judgments so as to avoid any misunderstanding and confusion in their implementation and compliance, and also to be reasonably tolerant whenever their errors are brought to their attention. With an eye solely to the attainment of substantial justice, they should disregard *amor proprio* and trivial technicalities and act in such a way as to minimize, if not completely avoid unnecessary inconvenience, effort and expense to all concerned and the consequent untold prejudice to the public interest.

The Court, therefore, holds that the court *a quo* did not commit any error in holding that appellee's appeal 'to it made on December 27, 1962 from the Municipal Court's order of October 19, 1962 and its amended decision of December 4, 1962 was made on time.

With this point regarding the non-finality of the Municipal Court's decision out of the way, the next questions to resolve are those raised in appellant's third and fourth assignments of error. (For a more logical order of discussion, appellant's second assignment of error will be taken up last.) These assignments are as follows:

"III

"THE LOWER COURT ERRED IN NOT FINDING THAT IT HAS NO APPELLATE JURISDICTION TO TRY AND DECIDE THE CASE ON THE MERITS."

"IV

THE LOWER COURT ERRED. IN REFUSING TO REMAND THE CASE TO THE INFERIOR COURT FOR FURTHER PROCEEDINGS INSTEAD OF RENDERING JUDGMENT IN FAVOR OF PLAINTIFF-APPELLEE AND AGAINST DEFENDANT-APPELLANT FOR THE SUM OF P2, 800.00 WITH LEGAL INTEREST FROM THE DATE OF THE FILING OF THE COMPLAINT, PLUS COSTS OF THE SUIT."

Otherwise stated, the position of appellant is that the trial court should have remanded the case to the Municipal

Court immediately after it issued the order of June 29, 1963 denying the defendant's motion to dismiss because by then it had lost jurisdiction to proceed further with the case. According to appellant, inasmuch as the Municipal Court had not decided the case on the merits but upon questions of law, the only power the trial court had under the circumstances was to decide whether or not the ruling of the Municipal Court in its order denying defendant's motion to dismiss was correct or not, and if it was not correct, to reverse the same and remand the case to said court in order that it may try the case on the merits.

This posture of the appellant overlooks the important fact that as matters stood, after the issuance of the order of June 29, 1963, properly speaking, the trial court had not yet passed upon the correctness or incorrectness of the order of dismissal of the Municipal Court. It must be noted first of all that said order was a resolution of defendant's motion to dismiss the complaint. Actually, what appellant should have filed is a motion inviting the attention of the CFI to the effect that the order of the Municipal Court they had appealed from was not a decision after a trial on the merits but merely an order of dismissal founded on points of law, namely, prescription and failure to state a cause of action as against defendant Ricardo Maipid, and asking that the CFI review and reverse said ruling. This defendant did not do. Instead, they filed a motion to dismiss based on said two grounds, which motion, of course, is not exactly what the Rules contemplate, since the filing of such a motion could even be misinterpreted as a submission of the case by the defendants to the original jurisdiction of the CFI.

Assuming, however, that defendant's motion to dismiss could be properly considered as the correct procedural step envisaged by the Rules or that their motion to dismiss may be construed as a motion to resolve the questions of law passed upon in the Municipal Court's order of dismissal, what now appears to this Court as quite obvious is that the order of June 29, 1963 did not definitely rule that the order of the Municipal Court dismissing the case was erroneous. Rather, the said order of June 29, 1963 merely deferred the consideration of the said motion to dismiss until after the trial on the merits because His Honor felt that reception of evidence was needed.

True, what His Honor actually stated was that the motion "raises questions of fact which cannot be decided without trial on the merits" and it may be contended that under Section 10 of Rule 40, the CFI had no jurisdiction to hold such a trial on the merits, a proposition, which although apparently supported by existing jurisprudence, we do not consider it necessary to discuss and pass upon anew for the present, even if there could be reason to hold that the provision of the Rules referred to does not really set down a rule of jurisdiction, which is within the province of the legislature, but only one of procedure, the Court believes that whatever flaw there might have been in the procedure adopted by the Court *quo*, the same is insubstantial and harmless. After all, what His Honor actually tried and resolved were none other than exactly the same two legal points involved in the dismissal order of the municipal court, namely, the alleged prescription of the plaintiff's action against the defendant Ricardo Maipid. And having sustained the Municipal Court on both scores there was no reason for the trial court to remand the case thereto. Hence, the third and fourth assignments of error aforequoted are overruled.

The remaining assignment of error is as follows:

"II

THE LOWER COURT ERRED IN NOT DISMISSING THE CASE AS AGAINST DEFENDANT-APPELLANT, RICMA TRADING CORPORATION, ON THE GROUND THAT PLAINTIFF-APPELLEE'S CAUSE OF ACTION HAS ALREADY PRESCRIBED."

Again, this assignment of error is without merit.

The main thesis of appellant in regard to this alleged error is that the transaction upon which appellee's action is based was not evidenced by any written agreement and, being verbal, said action prescribes in six years, and, therefore, appellee's complaint should have been dismissed, considering that it was filed only on August 15, 1962

whereas the said transaction took place in October, 1953. Overruling this contention, the court a quo sustained the claim of appellee that even if the said transaction was verbal "the renewal of the bond executed by the Manila, Underwriters Insurance Co., Inc., on December 28, 1955, to secure the payment of said balance of P2, 800.00, has interrupted the running of said period of limitation." It held thus:

"x x x The evidence show that on Jan-uary 2, 1957, the defendant, Ricma Trading Corporation, thru its President and General Manager, R. M. Maipid, wrote a letter (Exh-hibit 'G-1') to Mr. Filomeno C. Kintanar, Manager, Board of Liquidators, Manila, as follows: 'In connection with our Bond #D-050 issued by the Manila Underwriters Co. which expires on December 28, 1956, and in compliance with your request for renewal, we beg to enclose herewith the renewal po-licy for another year.'

"In the opinion of the Court, this letter is a manifest acknowledgment on the part of the defendant corporation to pay said balance of P2, 800.00 for it is certainly difficult to understand why the defendant should renew the bond precisely to secure the payment of said bal-ance of P2, 800.00 if it was not willing any more to recognize it as its legitimate ob-ligation and to pay the same. It is true that the execution of said bond was for the purpose of securing the verbal obligation of the defendant with the Land Settlement and Development Corporation but when it renewed said bond, especially upon the re-quest of the plaintiff, Board of Liquidators, as trustee of the Land Settlement and Devel-opment Corporation, the defendant expressly acknowledged that it was still indebted to the plaintiff in the sum of P2, 800.00. Acc-ording to Article 1155 of the New Civil Code, 'The prescription of actions is interrupted x x x when there is any written acknowledg-ment of the debt by the debtor.' Consequently, the contention of the defendants that plain-tiff's cause of action has already expired is devoid of any legal merit." (Pp. 151-152, Record on Appeal)

This ruling is on the whole correct, but the truth of the matter is that although, according to His Honor, "it is admitted that the transaction is not evidenced by any writ-ten contract of purchase and sale and, therefore, it is verbal", it is clear from the record that by this statement, His Honor must have meant only that there was no formal contract executed in due form by the parties. For in the stipulation of facts submitted by the parties, which this court may not disregard, it is clearly stated that:

"1. That the Board of Liquidators which is the agency designated under Republic Act No. 1160 to liquidate the assets of the Land Settlement and Development Corporation, and is acting as trustee of said LASEDECO, has offered for bidding certain personal proper-ties consisting of equipment, tools, engine blocks, spare parts, supplies, and other junks at its bodega No. 2 at Sta. Mesa, which are designated as Lots Nos. 1 and 2, and defen-dant corporation through its President, de-fendant Ricardo Maipid submitted its bid thereon on September 7, 1955, but which is not acceptable to plaintiff;

"2. That subsequently the defendant corp-oration through defendant Maipid negotiated with the plaintiff for the purchase of the aforementioned personal properties, and which was awarded to said corporation in the amount of P10, 000.00 as per Resolution No. 7173, dated October 14, 1955, as evidenced by a cer-tified true copy of the extract of the minutes of the meeting of the Board of Liquidators, which is attached hereto and marked as Exhi-bit 'A';

"3. That in pursuance to said Resolution No. 7173 defendant corporation through defen-dant Maipid received on October 15, 1955, the above-mentioned properties as evidenced by Memorandum Receipts which are attached hereto and marked as Exhibits 'B' and 'B-1';

"4. That defendant corporation paid the plaintiff the sums of P5, 000.00 and P3, 000.00 only on October 15 and 24, 1955, respectively, as evidenced by Official Receipts Nos. A-026-6790 and A-0263397, respectively, and which are attached hereto and marked as Exhs. 'C' and 'C-1';

"5. That actual delivery and receipt of Lot No. 2 in bodega 2 was effected on October 24, 1955, as evidenced by an Invoice Receipt No. 61 which is attached hereto and marked as Exh. 'D';" (Pp. 146-147, Record on

Appeal)

Thus, while there was no formal written contract signed by the parties, it cannot be denied that the Resolution 7173 of appellee Board, signed by all its members, a transcript of which is quoted on pp. 45-46 of the Record on Appeal as follows:

"1. The meeting was called to order at 4:05 o'clock P.M.

x x x x x

"13. Mr. Ricardo Maipid, for and in be-half of RICMA Trading Corporation, appeared before the Board in connection with the award in his favor of Lots 1 and 2, Bodega 2, Sta. Mesa Compound. He informed the Board that he is accepting the price of the Board for Lot 1 at P4, 500.00 but requests that Lot 2 in the same bodega be awarded to him at P5, 500.00. Inasmuch as the property had been advertised for sale thru public bidding three times al-ready and that the immediate disposal thereof would redound to the best interest of the gov-ernment as the monthly rental of P500.00 would be saved as well as the salaries of the three guards guarding the premises, the Board, upon motion duly seconded and carried, approved Res-olution No. 7173, as follows:

'RESOLVED, in view of the reasons above-cited, to award to the RICMA Trad-ing Corporation, Lot 1, except the "Far-mal" tractor, under tag No. BL-120, and Lot 2, both at the Sta. Mesa Compound for P10, 800.00 tax included, provided the property is withdrawn immediately upon payment of the agreed price and pro-per advise given to the NDC that the bo-dega is vacated thereby eliminating pay-ment of monthly rental and dispensing with the services of the three guards in the premises.'

"x x x x x x"

and the invoice receipt signed in two parts by defendant Maipid on behalf of appellant, which is copied on pages 22-25 of the Record on Appeal thus:

"ANNEX 'A'

"REPUBLIC OF THE PHILIPPINES OFFICE OF THE PRESIDENT BOARD OF LIQUIDATORS
LASEDECO UNIT Manila

Prepared by D. de la Cerna..... Invoice No.61

Check by..... Date Oct. 24, 1955

Entered by..... Nature of Sale Bid

Carded by..... Location of goods

NDC COM. BODEGA 2

SOLD TO Ricma Trading

Ricardo Maipid

Stock No.& Unit Qty. Read by

Lot No. Qty. Description price Amount the Buyer

2 lot Bodega No. 2

at the NDC

P6,300.00 tax included

(Spare Parts)

Paid under OR #A-0266790 and part

of OR # A-0263398

Sub-total..... P6, 300.00 tax included

Tax.....

TOTAL

(Sgd.) Illegible

For: RICARDO MAIPID

(Signature)

Residence Cert. No.....

Issued on....., 195...

At

APPROVED:

BOARD OF LIQUIDATORS

By:

Resolution (Illegible)

dated October 14, 1955

I HEREBY CERTIFY that the arti-cles shown in the column "Quan-tity Received" were delivered to the Buyer this 24th day of October, 1955.

(Sgd.) MARTINO S. REYES

Property Officer

LASEDECO

NDC COMPOUND

DELIVERY AUTHORIZED

(Sgd.) GODOFREDO MENDUETA

S. Y. ROTE A

Acting Officer-in-Charge

LASEDECO UNIT

WITNESS TO DELIVERY:

(Sgd.) CRISPOLO UMALI

(Name of Witness)

Auditor's Representative

(Official Designation or Address)

(I/WE) HEREBY CERTIFY that (I/WE) have this 24th day of Oct. 1955 accepted the articles shown in the "Quantity Received" by the Buyer".

(Sgd.) RICARDO MAIPID

(Signature of the Buyer)

A true copy:

Legal Division-vcs

October 12, 1962."

not to speak of the official receipts issued for the payment of the articles in question, constitute written evidence of the agreement: because these documents, although actually separate ones, if taken together, embody not only all the elements of a contract but even all the terms and conditions of the agreement of purchase and sale between the appellant and appellee. Besides, judicial notice may be taken of the fact that contractual transactions with government or any of its instrumentalities are invariably in writing.

In the case of *Peralta de Guerrero vs. Madrigal Ship-ping Co., Inc.*, 106 Phil. 485, the trial court sustained a motion to dismiss an action for the recovery of damages resulting from the death of a passenger of defendant's ship when it capsized on the ground that the same was not based on a written contract, there being none alleged in the complaint. This Court rejected this contention thus:

"We are inclined to uphold the contention of appellants, for a cursory reading of the complaint would show that their cause of action is predicated upon the failure of appellee to comply with its contract of carrying the deceased from Malangas, Zamboanga to the City of Manila safely, in that the vessel on which he was riding belonging to defendant capsized because of the reckless and imprudent manner it was managed and steered by its crew. It is true that the complaint does not in so many words state that the transportation was undertaken by virtue of a written contract of carriage, but this can be implied from the complaint because it is a matter of common knowledge that whenever a passenger boards a ship for transportation from one place to another he is issued a ticket by the shipper wherein the terms of the contract are specified. According to appellants, 'This ticket is in itself a complete written contract by and between the shipper and the passenger. It has all the elements of a complete contract, namely: (1) the consent of the contracting parties manifested by the fact that the passenger boards the ship and the shipper consents or accepts him in the ship for transportation; (2) cause or consideration which is the fare paid by the passenger as stated in the ticket; and (3) object, which is the transportation of the passenger from the place of departure to the place of destination which are stated in the ticket.'" (p. 487)

With much more reason can We hold in the case at bar that appellee's action is based on a written contract. The reference to an action "upon a written contract" in Article 1144 of the Civil Code does not preclude instances when the agreement may not be found in one single document but in two or more separate writings related to each other, which when taken together contain all the elements of a contract.

WHEREFORE, the judgment of the trial court is affirmed, with costs against appellant.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Fernando, Capistrano and Teehankee, JJ., concur.

Castro, J., did not take part

Reyes and Zaldivar, JJ., are on official leave of absence.

[1] This defendant did not appeal to the Supreme Court as the judgment of the CFI was also favorable to him.

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