

INTESTATE ESTATE OF FRANCISCO UBAT, DECEASED. JOSE L. SORIANO, PETITIONER AND APPELLEE VS. ATANASIA UBAT DE MONTES, ET AL., OPPOSITORS AND APPELLEES, PHILIPPINE NATIONAL BANK, C...*G.R. No. L-11633. January 31, 1961*

Ponente: PARAS, C.J.

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On October 7, 1936, Eduardo Ubat obtained a loan of P400.00, evidenced by a promissory note, from the Philippine National Bank and, as security for payment, mortgaged his land covered by OCT No. 561. He died after having paid three installments, and his only son, Francisco Ubat, inherited the mortgaged property. On September 18, 1946, Francisco Ubat borrowed P400.00 from the Philippine National Bank, executing a chattel mortgage on the standing crops of his land covered by OCT-3231. Francisco Ubat died on September 25, 1954, when the unpaid balance of his indebtedness was P82.00. The children instituted a proceeding for the summary settlement of his estate wherein the bank filed its claim. Believing that the matter called for an intestate case, the Court dismissed said summary proceeding, and the claim of the bank was therefore not given due course. On July 9, 1955, Jose L. Soriano, a creditor of Francisco Ubat, filed an intestate proceeding in the Court of First Instance of Davao, wherein two parcels of land were alleged to be owned by the deceased Francisco Ubat, namely, the land covered by OCT No. 561 in the name of Eduardo Ubat and that covered by OCT No. 3231 in the name of Francisco Ubat. Atanasia Ubat de Montes, daughter of Francisco, was appointed administratrix. The bank filed two claims, the first referring to the indebtedness of Francisco Ubat in the amount of P82.00, with interest, plus P100.00 as attorney's fees, and the second referring to the account of Eduardo Ubat in the sum of P310.37, or the unpaid installments due in 1939, 1940, 1941, 1942, 1943, 1944 and 1945, with interest, plus P200.00 as attorney's fees. The administratrix admitted the first claim but opposed the second, on the ground that, since this obligation was payable in ten equal yearly installments, all the unpaid installments, except the one that fell due on October 7, 1945, had already prescribed. In its order dated March 1, 1956, the court approved the first claim; and, as to the second, only the sum of P55.23, representing the tenth installment, was allowed, plus 8% interest and P100.00 as attorney's fees. From this order, the bank has appealed.

The promissory note executed on October 8, 1936, that formed the basis of the second claim filed by the appellant bank in part reads as follows:

"On or before the 7th day of October, 1946, for value received I promise to pay to the order of the Philippine National Bank, at its office in Manila, Philippine Islands, the sum of Four Hundred Only pesos (P400.00) with interest thereon compounded semi-annually, at the rate of eight per cent (8%) per annum from date hereof until paid and with interest at the same rate on annual installments overdue and unpaid. Payment of the principal and the corresponding interest shall be made in ten equal annual installments of P59.61 each in accordance with the following schedule of amortization."

The appellee construes this obligation assumed by the deceased Eduardo Ubat as divisible, and because its

payment was stipulated to be in ten equal yearly installments, it results that, according to the appellee, on October 7, 1939, when the fourth installment had become due and payable, the prescriptive period of ten years commenced to run as to said installment, and that, following a similar computation as to the other installment, only the tenth installment of P59.61, which fell due on October 7, 1945, was recoverable when the present claim was filed on September 26, 1955.

We agree with appellee's construction. It is to be observed that the note provides that "payment of the principal and the corresponding interest shall be made in ten equal annual installments of P59.61 each"; and this stipulation is couched in mandatory tenor, deducible from the use of the unequivocal terms "shall be made", thereby making it an absolute duty (not merely an optional benefit) on the part of the debtor to pay such installments yearly. In other words, each installment, if not paid, gave rise to a separate cause of action, which might be the subject matter of suit by the bank. The statute of limitations consequently began to run, as to each unpaid installment, from the date the bank could sue the debtor therefor, because, under Article 1150 of the Civil Code, "the time for the prescription for all kinds of actions, when there is no special provision which ordains otherwise shall be counted from the day they may be brought." While the promissory note was payable "on or before the 7th day of October, 1946", this period was limited by the particular provision requiring (not merely allowing) payment in ten "equal annual installments." Under the law, the prescriptive period starts from the time when the creditor may file an action, not from the time he wishes to do so.

It is urged for the bank that the parties could not have intended a divisible obligation because no fixed date was agreed upon for the payment of each installment. This overlooks the fact that the debtor was bound to pay the installments in accordance with the schedule of amortizations set forth in the promissory note executed on October 7, 1936, for which it is clear that said installments were to be settled at the "End of Year 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10" (Record on Appeal, p. 38), computed logically without saying from the date of the note, October 7, 1936.

It appears that the promissory note was secured by a mortgage providing that, in case the mortgagor failed or refused to pay any amortization, "all the other amortizations shall then be and become due and payable and the mortgagee may forthwith foreclose this mortgage in accordance with law". This is considered by the bank merely as optional acceleration clause for its sole benefit. While the bank was thus granted a permissive right to foreclose the mortgage, it is obvious that said permissive right did not prevent all the amortizations from becoming due and payable, because the covenant is that upon failure to pay one amortization, all the others "shall then be and become due and payable", again in mandatory vein. Under the law, the right of the bank to sue the debtor for the whole mortgage debt had accrued when the fourth installment was not paid, in the absence, as in this case, of any agreement on the part of the bank that it was waiving the acceleration clause. We need not resort to American authorities, since under article 1150 of the Civil Code the prescriptive period for all kind of actions shall be counted from the day the action may be brought. There is no pretense herein that the bank ever had waived its right to sue for the entire obligation under the acceleration clause or for any unpaid installment and gave corresponding notice thereof to the debtor, such that the latter would be sure that no action could yet be filed against him. Even the citation from 54 C.J.S., p. 90, invoked by the bank in its favor, acknowledges that "there is authority to the contrary."

However, we have to sustain the bank's contention with respect to the suspensive effect of the Moratorium Law on the unpaid account in question, namely, that the claim for the installments beginning with the sixth (which fell due on October 7, 1942) has been filed within the ten-year prescriptive period. The appellee, seemingly agreeing to the applicability of the debt moratorium, observes that the sixth installment has already prescribed because it matured on October 7, 1941. This is erroneous, since the promissory note was executed on October 7, 1936, and

said installment accordingly became payable on October 7, 1942. It results that only the fourth and fifth installments amounting to P119.22 according to the schedule of amortizations are no longer collectible.

We agree with the appellee that the assessment of attorney's fees is within judicial discretion, depending upon the circumstances of each case. In this particular instance, the allowance by the lower court of P100.00 as attorney's fees for the two claims is reasonable.

Wherefore, the administratrix-appellee is ordered to pay to the appellant, Philippine National Bank's first claim, the sum of P98.38 with interest at the daily rate of P0.0133 from September 19, 1955; the sum of P191.15^[1] in the second claim with interest at the rate of eight per cent (8%) per annum computed semi-annually from September 18, 1955; and the sum of P10000 as attorney's fees. So ordered.

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

[1] Explanation of amount:

Original amount of second claim

P310.37

Deductions for 4th and 5th installment

119.22

Balance of original claim after deducting 4th & 5th installment

191.15

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