

PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLANT, VS. TERESITA OSETE, JOSE CRESPO AND ESTELITA CUYA, DEFENDANTS-APPELLEES.

G.R. No. L-24997. July 18, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal from an order of dismissal of the Court of First Instance of Manila.

The Philippine National Bank commenced this action, in the Municipal Court of Manila, on January 30, 1963, to recover from Teresita Osete, Jose Crespo and Estelita Cuya the sum of P522.00, with interest thereon, attorney's fees and costs, based upon a judgment in Civil Case No. 23442 of said court, dated January 8, 1953. Estelita Cuya and Jose Crespo separately pleaded prescription of action, whereas the complaint was dismissed, without prejudice, insofar as Teresita Osete is concerned, "for non-service of summons." In due course thereafter, said court rendered judgment for the bank and against Estelita Cuya and Jose Crespo.

Crespo appealed to the Court of First Instance of Manila —hereinafter referred to as the CFI—in which he reproduced his aforementioned answer to the complaint. Plaintiff, in turn, filed its answer to the counterclaim in Crespo's answer. After a pre-trial conference subsequently held, plaintiff filed an amended complaint, the admission of which was, however, denied by the CFI. So was a motion for reconsideration of the order of denial. The CFI later issued the order complained of, dismissing the case with costs against the plaintiff, upon the ground of prescription of action. Hence, this appeal by the plaintiff, which maintains that the lower court erred:

1. ". . . in holding that plaintiff's complaint states no cause of action because this case was filed ten years after the rendition of judgment sought to be enforced without considering the written demands by the creditor for payment on the judgment debt.
2. ". . . in finding that plaintiff's action has prescribed in spite of the facts that the adjudged debtor, . . . made partial payments on the judgment debt within the ten year period from the date of judgment sought to be revived.
3. ". . . in denying the prayer to admit amended complaint after the plaintiff was granted leave by the honorable court to file amended complaint without any objection by the defendant or his counsel
4. ". . . in not taking into consideration the documentary evidence presented by the plaintiff during the trial on the merits in the municipal, (now city) court of Manila in support of its stand at the pre-trial conference.
5. ". . . in concluding that Article 1155 of the New Civil Code refers to tolling of the period of prescription of the action to collect not of the action to enforce judgment."

At the outset, it should be noted that the decision of the municipal court of January 8, 1953, had admittedly become final and executory on January 23, 1953. Manifestly, more than ten (10) years had elapsed, therefore, when this action was commenced on January 30, 1963..

Plaintiff alleges, however, that the running of said period was interrupted by the written demands and the partial payments relied upon in its first two (2) assignments of error; but, said demands and payments were not alleged in the complaint filed with the municipal court. Although said pleading was sought to be amended in the CFI, by alleging therein the aforementioned partial payments, the amendment was not allowed by the said court. Needless to say, no evidence thereon was introduced therein.

Then, again, the written demands, invoked by the plaintiff, were, according to its evidence in the municipal court, addressed, not to Jose Crespo, but to Estelita Cuya, who did not appeal from the decision of that court. Accordingly, said demands were not alleged in the amended complaint sought to be filed in the CFI, and could not have tolled the running of the period of prescription, as regards Crespo.

With respect to the alleged partial payments, it is worthy of notice that, Art. 1973 of the Civil Code of Spain provided:

"The prescription of actions is interrupted by the commencement of a suit for their enforcement, by an extra-judicial demand by the creditor, and by any act of acknowledgment of the debt by the debtor."

Under this, article, a partial payment could, as an "act of acknowledgment of the debt," interrupt the prescriptive period. Said provision was amended, however, by Article 1155 of the Civil Code of the Philippines, to read:

"The prescription of actions is interrupted when they are filed before the court, when there is a written extra-judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor."

Under this provision, not all acts of acknowledgment of a debt interrupt prescription. To produce such effect, the acknowledgment must be "written", so that payment, if not coupled with a communication signed by the payor, would not interrupt the running of the period of the prescription.

Moreover, the lower court expressed the view that said "An. 1155 of the New Civil Code refers to the tolling of the period of prescription of the action to collect, not to the action to enforce" or revive—a "judgment". Understandably, either an "extrajudicial demand" by the creditor or an "acknowledgment of the debt" may interrupt the prescription of the action to collect, not based upon a judgment, since the demand indicates that the creditor has not slop! on Ins rights—and removes the basis of the statute of limitation of actions—but, was vigilimi in the enforcement thereof, whereas an acknowledgment In the debtor provides a tangible evidence of the existence and validity of the debt. Who would, however, make an "extrajudicial demand" for the payment of a judgment, when the same may be enforced by a writ of execution? And, how could an acknowledgment or partial payment at feet the rights til a creditor, when the same are based, no longer upon his contract with the debtor or upon law, but upon no less than a judicial decree, which is final and executory?

At any rate, it was discretionary for the CFI to permit or not to permit the amendment of plaintiff's complaint, after the issues had been joined and a pre-trial held.[1] What is more, the CTI was right in not allowing said amendment, for its effect would have been to change substantially the nature of the issue between the parties. Indeed, under the pleadings in the municipal court, the only issue was whether or not more than ten (10) years had elapsed from January 8, 1953—when the judgment sought to be revived was rendered—to January 30, 1963—when the present action was instituted—considering that said judgment had concededty become final and executory on January 23, 1953. Under the plaintiff's amended complaint in the CFI, the issue would have been whether the running of said period had been interrupted by the partial payments allegedly made by Crespo. Inasmuch as the case was in the CFI, on appeal from a decision of the municipal court, said change of issue, which is substantial, was not proper. The previous permission given to plaintiff to file an amended complaint, without specifying the nature of the amendment and without any objection on the part of Crespo, was a general permission, which did

not sanction a substantial amendment, to which Crespo later objected.

In short, the lower court did not err: 1) in not admitting plaintiff's amended complaint in the CFI, because it would, on appeal, change materially the issue between the parties; 2) in not considering that written demands had tolled the running of the period of prescription, for such demands were not alleged in said amended complaint and were not addressed to Jose Crespo, the only defendant who had appealed to the CFI; 3) in not considering that prescription had been interrupted by partial payments allegedly made by Crespo, because the amended complaint, in which said payments were alleged, was not admitted, and, even if admitted, would not have produced said interruption, pursuant to Sec. 1155 of our Civil Code; 4) in not resolving the issue of prescription in plaintiff's favor, on the basis of the documents it had produced at the pre-trial, not only because said documents had not, as yet, been introduced in evidence, but, also, because they would not have the effect of interrupting the period of prescription; and 5) in not giving to Art. 1155 the said effect, because the language and the spirit thereof suggest that said provision refers to actions to collect not based on a judgment sought to be revived.

WHEREFORE, the order appealed from is hereby affirmed, with costs against the plaintiff, Philippine National Bank.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

[1] Rule 10, Section 3, Rules 3, Rules of Court; *Torres v. Tomacruz*, 49 Phil. 913; *Cu unjieng v. Hongkong & Shanghai Banking Corporation*, 68 Phil. 559; *Bascos v. Court of Appeals*, L-8400, Jan. 30, 1956.

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