

**REPUBLIC OF THE PHILIPPINES PLAINTIFF AND APPELLEE, VS.
MAMBULAO LUMBER COMPANY AND GENERAL INSURANCE & SURETY CORPORATION, DEFENDANTS AND APPELLANTS.**

G.R. No. L-18942. November 30, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by writ of error from a decision of the Court of First Instance of Manila. Although originally elevated to the Court of Appeals, the latter has forwarded the case to us, only questions of law being raised in the appeal.

It appears that defendant Mambulao Lumber Co. was indebted to plaintiff herein, the Republic of the Philippines, in the sum of P2,972.71 as deficiency sales taxes, including surcharges and penalties, for the year 1948. On July 20, 1954, said lumber company, as principal, and defendant Mambulao Insurance & Surety Corporation, as surety, executed a bond, guaranteeing payment of said sum to the plaintiff, in twelve (12) equal monthly installments beginning from August, 1954, with the stipulation that, in case of default in the payment of any installment, the entire balance may at once be considered due and payable. On June 14, 1957, plaintiff filed this action against said lumber company and its aforementioned surety for the recovery of said sum of P2,972.71 plus interest, upon the ground that none of said installments had been paid despite repeated demands. Defendant filed an answer admitting all of the allegations of the complaint, but denied plaintiff's right to recover said sum of P2,972.71, upon the ground that, as a forest concessionaire, the lumber company had paid to plaintiff the sum of P9,127.52, by way of reforestation charges under Republic Act No. 115, which allegedly imposed upon plaintiff the obligation to spend said amount in the rehabilitation and reforestation of the areas included in the concession of said defendant when denuded and that plaintiff had failed and refused to comply with said obligation, despite demands.

On September 14, 1957, the lower court ordered this case set for hearing on October 15, 1957. Shortly before the latter date, or on October 12, 1957, counsel for the defendants filed a motion for postponement of said hearing. When the case was called for hearing on October 15, 1957, neither the defendants nor their counsel appeared. Thereupon, the court proceeded to receive plaintiff's evidence and on August 25, 1958, rendered judgment for the plaintiff. In due course, defendants moved for a new trial, which was denied. Hence, this appeal by writ of error taken by the defendants, who allege that the lower court has erred: (1) in not granting, first, their motion for continuance of the hearing, and, later, their motion for new trial; (2) in not finding that plaintiff's action is barred by the statute of limitations; and (3) in not finding that plaintiff has no cause of action, in view of its failure to spend the reforestation charges paid by the lumber company in the reforestation of the areas covered by its concession.

It is well settled that motions for continuance or postponement of hearing are addressed to the sound discretion of the court, and that its action thereon will not be disturbed by appellate courts in the absence of a patent and manifest abuse of discretion (*Panti vs. Provincial Board of Catanduanes*, 106 Phil., 1093; *Martir vs. Jalandoni*,

107 Phil., 398; Republic of the Philippines vs. Gumayan, 112 Phil., 476). The records before us do not disclose any such abuse. On the contrary, defendants' motion for postponement of October 12, 1957 is not even sworn to. Hence, His Honor, the trial Judge, had no reason to rely on the allegations of fact made in said motion. Moreover, defendants have offered no plausible excuse for not appearing before the lower court on October 15, 1957, despite the fact that no order granting said motion had been issued.

For the same reasons, no error was committed in denying defendants' motion for a new trial. Besides, it was not alleged therein that the defense set up in the answer could be established by the defendants. They averred in said motion that the sum of P495.46 had been paid on account of plaintiff's credit, which is contrary to the admission, made in said answer, of the truth of all of the allegations in plaintiff's complaint.

Defendants' plea of prescription of action, is based upon Section 331, in relation to Section 183 (A) of the National Internal Revenue Code, pursuant to which internal revenue taxes shall be assessed within five (5) years after the filing of the corresponding return, and, if no such assessment has been made within said period, no action after the expiration thereof may be brought in court. These provisions are, however, inapplicable to the present case. Although the original obligation of the lumber company arose from non-payment of taxes, the complaint against said Company and the Surety is predicated upon the bond executed by them. In other words, plaintiff's right originally arising from law has become a right based upon a written contract, enforceable within ten (10) years from September 1954, upon defendants' default in the payment of the first installment due under said contract (Republic vs. Xavier Gun Trading and Luzon Co., Inc., G. R. No. L-17325 and Republic vs. Dorego, G. R. No. L-16594, April 26, 1962; citing the cases of McCaughn vs. Philadelphia Barge Co. F [2d] 628; U. S. vs. Barth Co., 72 h ed. 746, U. S., 278-279). This action was commenced on June 14, 1957. or long before the expiration of said period. In any event, the plea of prescription is deemed waived by the defendants, in view of their failure to allege it in their answer (Boiiaga vs. Soler, 112 Phil., 651; Fawcett vs. Balao 107 Phil., 570, 57 Off. Gaz. [30] 5395; Vicente vs. Lucas, 95 Phil., 716).

The alleged obligation of the plaintiff to apply to the reforestation of the lands covered by the concession to the lumber company the sum of P9,127.52, claimed to have been paid by the latter by way of reforestation charges, is predicated upon the allegation of fact, in defendants' answer to the effect that said lands are now denuded. There is, however, no proof in support of this allegation.

Wherefore, the decision appealed from is hereby affirmed, with costs against the defendants. It is so ordered.

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

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