

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. GALICANO ADOR DIONISIO AND ASUNCION R. DIONISIO, DEFENDANTS AND APPELLEES.

G.R. No. L-18342. September 19, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

An appeal from two Orders of the Court of First Instance of Manila, dated January 23, 1961, dismissing plaintiff's complaint on the ground of prescription of action, and March 4, 1961, denying motion for reconsideration of the first order.

On December 21, 1949, the CFI of Manila rendered judgment in Civil Case No. 9694, in favor of herein plaintiff-appellant and against defendants- appellees, for the payment of various sums of money representing loans. As the five (5) year period within which to enforce judgment by mere motion, had already elapsed, plaintiff, on October 8, 1960, filed a complaint for revival of the aforesaid judgment. Defendants, instead of answering the complaint, presented on January 10, 1961, a Petition to Dismiss, claiming that the action is now barred by the statute of limitations. Plaintiff opposed said motion, arguing that although ten (10) years and nine (9) months had elapsed since the aforesaid judgment was rendered, when the instant complaint for revival was presented, its action had not as then prescribed, because the prescriptive period had been legally interrupted when plaintiff sent two (2) extrajudicial written demands to the defendants on March 29, 1954 and September 5, 1954, for the payment or satisfaction of the judgment. A reply to the above opposition was filed by defendants. On January 23, 1961, the trial court issued an Order, to wit—

"After considering the 'Petition to Dismiss' filed by counsel for the defendants, the opposition thereto by counsel for the plaintiff dated January 19, 1961 and the reply to the plaintiff's opposition filed with this Court on January 21, 1961, for reasons stated in said petition to dismiss and the reply to the plaintiff's opposition, the Court orders the dismissal of this complaint, with costs against the plaintiff, because the action has already prescribed."

Plaintiff moved to reconsider the above order, in a motion dated February 21, 1961, wherein it elaborated on the grounds contained in its opposition to the Petition to Dismiss. It supported its motion for reconsideration with the cases of *Marella, et al. vs. Agoncillo*, 44 Phil. 844; *Compana General de Tabacos vs. Martinez, et al.*, 29 Phil. 515; and *Aldeguer vs. Gemerio, et al.*, 68 Phil., 421. The opposition to the motion pointed out that the doctrines enunciated in the cited cases, are not applicable to the one under consideration. On March 4, 1961, the trial court denied the motion for reconsideration. It would seem that the only issue involved in the present appeal is whether or not the sending of extra-judicial written demands, asking the satisfaction of the judgment, suspended the period within which to bring an action upon said judgment.

It is alleged that the pertinent provisions of the law that governs the case are the following—

"Article 1144. The following actions must be brought within ten years from the time the right of actions

accrues:

* * * * *

(3) Upon a judgment."

"Article 1152. The period of prescription of actions to demand fulfillment of obligations declared by a judgment commences from the time the judgment become final."

"ARTICLE 1155. The prescription of actions.—The prescription of actions are 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." (Civil Code).

The trial court held that the ten (10) year period was not suspended: with the sending of the written extrajudicial demands; that the provision which states that prescription of actions are interrupted when there is a written extra-judicial demand, refers to an action which has not been passed upon in a Judgment, but not an action to enforce a judgment; that Article 1144 provides that action upon a judgment must be brought within ten (10) years from the time the right of action accrues, which is "from the time the judgment becomes final" (Art. 1152); that if written extra-judicial demands interrupts an action upon the prescriptive period on a final judgment, the case will never be terminated; that the provisions of the civil code, did not contemplate such a predicament; and considering further that a judgment is ordinarily enforced by a writ of execution, as provided for in Sec. 6, Rule 39, and not by an extra-judicial demand as contemplated in Art. 1159, supra, it stands to reason that the said extrajudicial demands, refer to those made by the creditors before an action is filed and not in cases where final judgments have already been secured, as in the present case, and that for one thing, appellant Bank is guilty of laches, in not executing the judgment in its favor for number of years.

We are of the opinion, however, that article 1155, N.C.C heretofore quoted, is not applicable to the instant case. The judgment in question became final on December 21, 1949, from which date prescription began to run., The new Civil Code took effect August 30, 1950, and article 1116 thereof states—

"Art. 1116. Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable even though by the former laws a longer period might be required."

The law applicable, therefore, in determining whether prescription has been interrupted in the case at bar, is Act No. 190, which provides as follows—

"Sec. 50. What shall renew right of action—When payment has been made upon any demand founded upon contract, or a written acknowledgment thereof or a promise to pay the same has been made and signed by the party sought to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgment, or promise."

As will be seen, Section 50, gives as grounds for suspending the running of the period of prescription when payment has been made upon any demand founded upon contract or a written acknowledgment thereof or a promise to pay the same has been made and signed by the party sought to be charged. It did not include written extrajudicial demand made by the creditor, mentioned in Article 1155, New Civil Code, above quoted. This being true, the extra-judicial demands effected in the instant case, did not suspend the running of the period and the present action has already prescribed.

On the ground herein set forth, the orders appealed from, are hereby affirmed, with costs against appellant Bank, in both instances.

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

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