

DEVELOPMENT BANK OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. MANUEL S. OZARRAGA, AS ADMINISTRATOR OF THE INTESTATE ESTATE OF LEON CUÑAT, DEFENDANT AND APPELLEE*G.R. No. L-16631. July 20, 1965*

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This action is one to foreclose a mortgage, filed in the Court of First Instance of Agusan by the Development Bank of the Philippines (as successor of the Agricultural and Industrial Bank) against the administrator of the Estate of Leon Cuñat, mortgage debtor. Upon defendant's motion that court held the action to have prescribed, and so dismissed the complaint. Plaintiff has appealed on the sole question of prescription.

The indebtedness, in the sum of P800.00 was incurred on August 7, 1941. It was payable in five yearly instalments, the last of which would be due on August 7, 1946. As security Cuñat executed a mortgage on a parcel of land owned by him. He died in 1942 and neither he nor his heirs after him paid anything on the loan.

The creditor, plaintiff-appellant Bank, filed this foreclosure suit on July 13, 1959. The cause of action should have accrued on the date the last installment became due August 7, 1946—but was suspended by the debt moratorium (Executive Order No. 32, issued March 10, 1945). The moratorium was lifted by Republic Act No. 342 on July 26, 1948, except for those who had filed war damage claims; and since it is neither pretended nor shown that Leon Cuñat was a war damage claimant the period of prescription (10 years) in regard to his indebtedness to plaintiff-appellant must be counted from that date.

This action having been commenced beyond that period, the question is whether there had been an interruption thereof in the interim, as plaintiff-appellant contends. Several circumstances are relied upon in support of this contention.

(1) It is alleged that after Leon Cuñat's death his heirs, namely, his widow and children, by their acts induced appellant to delay the enforcement of its claim. Such acts are denied by them. No finding thereon, one way or the other, has been made by the lower court in its order dismissing the complaint; and this is a question of fact which, we must assume, appellant has elected to forego by appealing directly to this Court.

(2) On July 18, 1958 appellant filed a petition for the appointment of an administrator of Cuñat's estate. It is now urged that prescription was interrupted then— eight days before the ten-year period expired. The filing of the petition did not produce such result. Neither in express terms nor by implication does the statute of limitations support appellant's argument. A petition to open an administration proceeding over the estate of a deceased debtor, even if brought by the creditor, does not discharge the function of an action to enforce the debt.

(3) Reference is made by appellant to demand letters sent to Leon Cuñat on different dates in 1950, 1952 and 1957, before appellant learned of his death, as well as to letters sent to his widow and children thereafter. Such

extra-judicial demands, however, did not have the effect of interrupting prescription, which started under the law in force (Act No. 190) prior to the new Civil Code. According to Article 1116 of this Code prescription already running before it became effective shall be governed by laws previously in force; and under Section 50 of Act No. 190 a written extra-judicial demand for payment was not among the grounds which would renew a right of action, although now it does have that effect according to Article 1155 of the New Code. Appellant's reliance on this Article is misplaced and the lower court committed no error in holding it to be inapplicable, and consequently in dismissing the complaint.

The order appealed from is affirmed, with costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, Paredes, Dizon, Bengzon and Zaldivar, JJ., concur.

RESOLUTION

September 20, 1965

MAKALINTAL, J.:

Plaintiff-appellant moves for reconsideration of the decision of this Court of July 20, 1965, affirming the order of the Court a quo dismissing the complaint on the ground of prescription.

The first ground relied upon in the motion that the prescriptive period is twenty (20) and not ten (10) years—is without merit, the law applicable being sections 40 and 43 of the Code of Civil Procedure (Act 190) and not the Civil Code, inasmuch as the said period started before the effectivity of this Code (Art. 1116).

The second ground is likewise without merit. Appellants contend that the period of the debt moratorium (Executive Order No. 32) during which prescription was suspended expired not on July 26, 1948, when Republic Act No. 342 was enacted, but on May 18, 1953, when the decision in the case of Rutter vs. Esteban (93 Phil. 68) was promulgated. In support of this contention appellant points out that the burden of proof rests on defendant-appellee to show that the deceased Cuñat was not a war damage claimant in order that the shorter moratorium period (up to July 26, 1948) may be applicable in this case, citing our decisions in Rio y Cia vs. Datu Jolkipli, 105 Phil., 447 and Rio y Cia vs. Court of Appeals, 115 Phil. 486.

It was held in those cases that where the defendant sets up the defense of prescription the period of which started to run upon the lifting of the moratorium by virtue of Republic Act No. 342, it is for him to prove that he was not a war sufferer and had filed no war damage claim, and that in the absence of such proof the presumption is to the contrary, in which event the longer moratorium period should apply, the principle being that one who claims prescription as a defense must establish every element thereof.

It appears from the record of this case, however, that both parties have taken it for granted that the debt moratorium insofar as the obligation of the deceased Cuñat in favor of appellant bank was concerned lasted only up to July 26, 1948, when Republic Act No. 342 was enacted. This is clear from the motion to dismiss filed by defendant-appellee in the trial court and from the opposition thereto filed by plaintiff-appellant. Thus it is stated in said opposition: "Even after the war, the court in Agusan was not immediately restored, and assuming that it was functioning, Executive Order No. 32 was then enforced which suspended the statute of limitations from March 10, 1945 to July 26, 1948 . . ." The same argument was reiterated in the memorandum presented by plaintiff-appellant in support of said opposition. Neither has it questioned the applicability of the shorter moratorium period in its brief on appeal. Appellant's narration of facts therein impliedly admits that the deceased Cuñat was not a war damage claimant, its argument against appellee's claim of prescription being based on other factors. Appellant is

now estopped to assert in its favor the absence of evidence on the point.

The motion for reconsideration is denied.

Bengzon, C.J., Bautista Angelo, Concepcion, Dizon, Bengzon and Zaldivar, JJ., concur.

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