

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANTS, VS. HERMOGENES HIPOLITO AND LEONOR JUNSAY, DEFENDANTS AND APPELLEES.*G.R. No. L-16463. January 30, 1965*

Ponente: MAKALINTAL, J.

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Appeal from the order of dismissal by the Court of First Instance of Negros Occidental.

The complaint, filed on June 18, 1959, allege that defendants obtained various sugar crop loans from plaintiff through its Victorias Branch, evidenced by promissory notes (reproduced as annexes to the complaint) respectively dated January 25, 1941, February 13, 1941, March 8, 1941, April 3, 1941, May 2, 1941 and June 23, 1941; that of the total amount of P9,692.00 represented by said notes defendants paid P3,905.61, leaving a balance of P6,786.39, which, added to accrued interest of P5,213. 34, summed up to P11,999.73 as of January 17, 1957; that despite repeated demands, defendants failed and refused to pay said amount; that in view of such demands defendants, on May 7, 1957, went to Attorney Francis I. Medel of the legal department of plaintiff's Victorias branch and offered a plan of payment of the account, but for reasons unknown to plaintiff and probably due to the transfer of defendant Hipolito as supervising teacher to some other province, his proposed plan of payment did not materialize; that said offer of plan of payment was an acknowledgement of defendants' just and valid obligation. The prayer is for the court to order defendants to pay to plaintiff the said amount of P11,993.73, with accrued annual interest thereon at the rate of 5% from January 17, 1957 up to the date of payment, plus attorney's fees equivalent to 10%.

Defendants move for a bill of particulars, but the motion was denied. They then moved to dismiss on the ground that plaintiff's cause of action, if any, had already prescribed. To the motion they attached a joint affidavit of merit, wherein they averred that they never made any acknowledgement of indebtedness nor offered a plan of payment, but on the contrary had always maintained that plaintiff's action had prescribed.

Plaintiff opposed the motion, contending that the prescriptive period had been suspended by "Executive Order No. 32, otherwise known as the Moratorium Law," and interrupted, pursuant to Article 1973 of the old Civil Code, by plaintiff's written extra-judicial demands as well as by defendants' acknowledgment of the indebtedness. Attached to the opposition were (1) a statement of defendants' account dated July 22, 1947; (2) plaintiffs' letter dated October 31, 1953, asking defendants to make arrangements for the liquidation of the debt (3) letter of plaintiffs' Victorias Branch Manager, dated February 4, 1959, addressed to defendant Hipolito (at Iloilo City) requesting him to settle his account, otherwise drastic action would be taken against him as a government employee, and reminding him of his May 7, 1957 interview with Branch Attorney Medel, wherein he proposed a plan of payment which however did not materialize; and (4) defendant Hipolito's answer dated February 16, 1959, requesting said Manager, in his personal and not in his official capacity, to be more "sensitive" to the financial plight of defendants; and requesting further that he or any of his investigators study the case by seeing Mrs.

Hipolito (who was then staying very near the Victorias Branch Office) about "the actual insolvency of the family," ending up with an appeal for help "in this matter."

Defendants replied to plaintiff's opposition, stating among other things that Executive Order No. 32, if at all, suspended the prescriptive period "only for two (2) years, four (4) months and sixteen (16) days, from March 10, 1945, or only up to July 26, 1948," citing *Bachrach Motors Co., Inc. vs. Chua fia Hian*, 101 Phil., 184; 53 Off. Gaz., 6524; that the alleged written extrajudicial demands constitute self-serving evidence; and that defendant Hipolito's letter of February 16, 1959 can not be considered as an acknowledgment of indebtedness.

In dismissing the complaint the lower court ruled that since the seven promissory notes constituted one single obligation, arising as it did from plaintiff's financing of defendants' sugar crop for 1941-42, the date of the last promissory note, June 23, 1941, should be considered as the true date of the written contract, from which the ten year prescriptive period (Art. 1144, par. 1 of the new Civil Code) started; that said period was suspended only for two (2) years, four (4) months and sixteen (16) days (by reason of Executive Order No. 32) until said Order was declared unconstitutional; that prescription set in on November 8, 1953, five (5) years, five (5) months and ten (10) days before the complaint was filed on June 18, 1959; that the alleged letters of demand cannot be considered as extrajudicial demands "under Art. 1155 of the Civil Code" because there is no proof that defendants received them; that plaintiff's letter of demand of February 4, 1959, which was admittedly received by defendant Hipolito, did not work to interrupt the prescriptive period which had already previously elapsed; and that defendant Hipolito's answering letter of February 16, 1959 does not contain any express or tacit acknowledgement of the obligation nor promise to pay the same and hence did not renew the obligation.

We are of the opinion that the dismissal of the complaint is erroneous. In a motion to dismiss defendant hypothetically admits the truth of the allegations of fact contained in the complaint. (*Pangan vs. Evening News Publishing Co., Inc.* 110 Phil., 409; *Pascual vs. Secretary of Public Works and Communications*, 110 Phil., 331; *Republic vs. Ramos*, G.R. No. L-15484, Jan. 31, 1963).

An examination of the complaint herein does not indicate clearly that prescription has set in. On the contrary, it is belied by the allegation concerning defendant's offer of payment made on May 7, 1957. Such offer hypothetically admitted in the motion, worked as a renewal of the obligation.

It is true that defendants attached to the motion a joint affidavit of merit wherein they deny having made an offer of a plan of payment. Such denial, however, being a contrary averment of fact, would be proper in the answer to the complaint but not in a motion for dismissal, for the contradictory allegations would require presentation of evidence (*Alquigue vs. De Leon*, G.R. No. L-15059, March 30, 1963). The same is true of the other allegations in the complaint concerning the demands for payment sent by plaintiff upon defendants and the partial payments made by them, all or some of which may have a material bearing on the question of prescription. In other words, the ground for dismissal not being indubitable, the lower court should have deferred determination of the issue until after trial of the case on the merits. (Sec. 3, Rule 16, Revised Rules of Court; *Geganto vs. Katalbas*, G.R. L-17105, July 31, 1963).

The order appealed from is set aside and the case is remanded to the lower court for further proceedings, with costs against appellees.

Bengzon, C. J., Bautista Angelo, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Bengzon, J. P. and Zaldivar, JJ. concur.

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