

[WITH RESOLUTION OF JULY 14, 1960]*G.R. No. L-15044. May 30, 1960*

Ponente: BARRERA, J.

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From the decision of the Court of First Instance of Manila (in Civil Case No. 34566), in which it was ordered to refund to plaintiff Belman Compañía Incorporada the amounts of P273.41 and P172.87, with legal interest from the date the complaint was filed until fully paid, and the amount of P250.00 as attorney's fees, and to pay costs, defendant Central Bank of the Philippines interposed this appeal.

Two issues both legal, are presented in this appeal; (a) whether the action has already prescribed, and (b) whether defendant Central Bank can be compelled to make the refund after the amounts involved had already been turned over to the National Treasury of the Government. We take up only the first question because it is decisive.

On April 26, 1951 and May 4, 1951, plaintiff paid to the Philippine National Bank its obligations for foreign exchange obtained under Credits Nos. 43729 (PNB I/B 36747) and 41347 (PNB I/B 37605), respectively. On the same dates, defendant Central Bank collected from plaintiff, as exchange tax,[1] the amounts of P273.41 (CBP O. R. No. 002801 dated April 26, (1951) and P172.87 (CBP O. R. No. 002928 dated May 4, 1951) Plaintiff paid said amounts to defendant, under protest.

On November 8, 1951, plaintiff requested defendant to refund to it both amounts, but defendant refused to do so. Plaintiff reiterated said request for the refund of P273.41 on September 2, 1957, and of P172.87 on October 7, 1957; and for both amounts, on December 2, 1957. Defendant, however, likewise refused to comply with plaintiff's request[2].

Plaintiff, therefore, on December 20, 1957, filed with the above-mentioned court a complaint praying, inter alia, that defendant's Monetary Board Resolution No. 286, series of 1951, be declared null and void, and that defendant be ordered to refund to plaintiff said amounts of P273.41 and P172.87 it paid as exchange tax.

On January 3, 1958, defendant filed a motion to dismiss on the grounds that (1) the court has no jurisdiction over the subject matter of the action; (2) the complaint states no cause of action; and (3) the cause of action, if any, is barred by the statute of limitations. On January 10, 1958, plaintiff filed an opposition to said motion, to which, defendant filed a reply on January 17, 1958.

On April 7, 1958, the court issued an order holding in abeyance its resolution on defendant's motion to dismiss, until after the parties shall have presented their evidence.

On April 11, 1958, defendant filed its answer reiterating as defenses, the grounds alleged in its motion to dismiss.

After the issues have been joined and due hearing had, the lower court rendered a decision which, in pertinent part, reads:

* * * * *

"Defendant's collection of the Exchange Tax on April 26, 1951 and May 4, 1951, when plaintiff paid its obligations under Credits Nos. 43729 and No. 41347 is erroneous and without any legal basis because the plaintiff on these dates did not purchase any foreign exchange from the Bank but merely liquidated its existing accounts under the Credits. The sale of foreign exchange in the present case took place at the moment when the applications for Letters of Credit were approved and given due course that is, on May 29, 1950 and January 2, 1951, at which time, Republic Act 601 imposing a tax on the sale of Foreign Exchange was not, as yet, in existence.

* * * * *

"Under these circumstances, and considering the fact that the amount of P273.41 under Official Receipt No. 002801 was collected by the defendant seven (7) days (April 26, 1951) before Resolution No. 286 was approved on May 3, 1951, the conclusion is inescapable that Central Bank Resolution No. 286 is null and void not only because it has not been published as required by law in the Official Gazette, but as admitted by the defendant itself under oath in par. XV of Exhibit 'B', the same is erroneous interpretation of Section 1 of Republic Act 601.

"The present suit is directed against the Central Bank, a corporation duly authorized by its Charter to sue and be sued. Resolution No. 286 was issued by the Central Bank and the defendant cannot now be permitted to claim exemption from the consequences of an illegal resolution of its own making.

"There is nothing to the contention that plaintiff's action has prescribed, because no vested or acquired rights can arise from acts or omissions which are against the law or which infringe upon the rights of others. (Art. 2254, New Civil Code).

"In View of the Foregoing Considerations, this Court hereby renders judgment in favor of the plaintiff and against the defendant declaring Central Bank Resolution No. 286 illegal and void ab initio. Defendant is hereby ordered to return to the plaintiff the sums of P273.41 and P172.87 with legal interests thereon from the date of the filing of the complaint until fully paid and the amount of P250.00 as attorney's fees. Defendant shall pay the costs."

Defendant-appellant urges in this appeal that the lower court erred in not dismissing plaintiff-appellee's complaint on the ground that it has prescribed.

The contention is correct. It is to be noted that the excise tax law (Rep. Act No. 601, contain no provision regarding the period within which a taxpayer must bring his action to recover an excise tax erroneously or illegally collected. Accordingly, Articles 18 and 1149 of the New Civil Code, should be applied in order to determine said period. The articles referred to, respectively, provide:

"Art. 18. In matters which cure governed by the Code of Commerce and special laws, their deficiency shall be governed by the provisions of this Code." (Emphasis supplied.).

"Art. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues." (Id.)

It is not disputed that under the doctrine laid down in the cases of Philippine National Bank vs. Zulueta, 101 Phil., 1071; 55 Off. Gaz. (2) 222; Philippine National Bank vs. Union Books, Incorporated, 101 Phil., 1084; and Philippine National Bank vs. Arrozal, 103 Phil., 213; 54 Off. Gaz. (21) 5698,[3] said amounts of P273.41 and P172.87, were erroneously or illegally collected by defendant from plaintiff inasmuch as the latter had applied for the letters of credit (Nos. 41347 and 43729) with the PNB, on May 29, 1950 and December 28, 1950, long before the enactment of Republic Act No. 601 on March 28, 1951, imposing the excise tax on the purchase on foreign exchange. Pursuant to Article 1149 of the New Civil Code above-quoted, plaintiff's right of action to reCover the aforementioned amounts should have prescribed on April 26, 1956 (as to the P273.41) and May 4, 1956 (as to the

P172.87).

However, it appears that on November 8, 1951, plaintiff requested defendant, in writing, to refund to it said amounts. Pursuant to Article 1155 of the New Civil Code,[4] the five-year period is interrupted and should start to be counted again from November 8, 1951. Thus computed, the right of action should expire on November 11, 1956. Since the complaint was filed only on December 20, 1957, the action is clearly barred. It is true that other extrajudicial written requests or demands were made on September 2, 1957 and October 7, 1957, and lastly on December 2, 1957, but all of these came after the period had already prescribed, as stated, on November 11, 1956.

Article 2254 of the new Civil Code which provides that "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others", and which was cited by the lower court as authority for its conclusion that plaintiff's action has not prescribed, is inapplicable. This article is among the transitional provisions of the New Civil Code. It must be read in relation to, and within the context of Article 2252 which speaks of "Changes made and new provisions and rules laid down by this Code which may prejudice or impair vested or acquired rights in accordance with the old legislation" which changes shall have no retroactive effect. The second paragraph of Article 2252 reads:

"For the determination of the applicable law in cases which are not specified elsewhere in this Code, the following articles shall be observed:"

And, one of these "following articles", is Article 2254 cited by the lower court.

Here in the instant case, all the pertinent facts occurred after the effectivity of the New Civil Code. There is, therefore, no reason to apply Article 2254, especially so, when no vested or acquired right is being here asserted by defendant Central Bank, the only question being, whether the right of plaintiff to bring the action had already prescribed.

In view of the conclusion at which we have arrived, we find no necessity in taking up the other questions raised in this appeal.

Wherefore the decision appealed from is hereby reversed, with costs against the appellee. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, and Gutierrez David, JJ., concur.

Reyes, J.B.L., J., on leave, took no part.

[1] Pursuant to its Monetary Board Resolution No. 286, series of 1951. [2] All said requests for refund, were in writing.

[3] See also *Belman compania Incorporada vs. Central Bank* 104 Phil., 877; 55 Off. Gaz. (33) 6665.

[4] "Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

RESOLUTION

July 14, 1960

BARRERA, J.:

In the decision of this Court promulgated May 30, 1960, we held that plaintiff-appellee's action for the refund of payments made on April 26 and May 4, 1951 for exchange tax, filed and instituted on December 20, 1957, had already prescribed and, consequently, we reversed the lower court's decision directing the refund, with costs against the appellee.

Plaintiff-appellee has filed a motion for, reconsideration urging that his action was still timely because, it is argued, the period of prescription applicable to the case is ten (10) years from date of payment. To support this contention, Article 1144, paragraph (2) is cited, which provides:

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

(1) * * *;

(2) Upon an obligation created by law;"

Since, it is claimed, the payment here was made by reason of a mistake in the interpretation of Republic Act 601, the obligation to return arises by virtue of Article 2155, in relation to Article 2154 of the New Civil Code and is, therefore, one created by law.

Movant-appellee is partly correct. However, Articles 2154 and 2155 relied upon, specifically refer to obligations of the nature of solutio indebiti which are expressly classified as quasi-contracts under Section 2, Chapter 1 of Title XVII of the New Civil Code. Consequently, the law regarding prescription applicable to the action herein involved is not Article 1144-(2) cited by movant, but Article 1145(2) of the New Civil Code providing:

"Article 1145.—The following actions must be commenced within six years:

(1) * * *;

(2) Upon a quasi-contract."

In this case, the first payment was made on April 26, 1951. Extrajudicial written demand for refund was made on November 8, 1951 (after a lapse of 6 months and 12 days). The demand was denied November 14, 1951. The second demand was on September 2, 1957, or after a lapse of 5 years, 9 months and 18 days from November 14, 1951. Granting the interruption provided in Article 1155,[1] the period of prescription that had elapse totals to 6 years and 4 months. Consequently, the complaint filed on December 20, 1957 is clearly barred.

The second payment was made on May 4, 1951. From said date to November 8, 1951, when the first demand was made, 6 months and 4 days had elapsed. From November 14, 1951 (date of denial of the demand) to October 7, 1957 when the second demand on this payment was made, 5 years, 10 months and 23 days had elapsed. Adding up the two periods will sum up to 6 years, 4 months and 27 days. Again, the complaint based on the second payment is beyond the six (6) years provided for the prescription of this kind of action.

The plea is made that inasmuch as the collection of the Exchange tax by the defendant was clearly illegal or erroneous, movant should not be made to pay the costs for filing the case for the refund of the payments made. This would be true if the action was timely instituted before it was barred by the statute of limitations. But if, as in this case, plaintiff files its claim after it has already been lost and; therefore, had no longer any enforceable cause of action against the defendant, certainly the latter is entitled to have his costs.

For the reasons above set forth, the motion for reconsideration is denied. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur.

[1] "Art. 1155. The prescription of actions is interrupted when they are filed before the Court, when there is a written extrajudicial demand by the creditors, and when there is any written, acknowledgment of the debt by the debtor."

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