

## PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. JOAQUIN BONDOC, DEFENDANT AND APPELLEE.

*G.R. No. L-20236. July 30, 1965*

Ponente: BENGZON, J.P., J.

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### **BENGZON, J.P., J.:**

On June 29, 1949 the Philippine National Bank obtained a judgment in Civil Case No. 8040 from the Court of First Instance of Manila against Joaquin M. Bondoc for P10,289.60 plus interest at the rate of 7% per annum computed from June 30, 1949 and attorney's fees. This judgment was never executed.

After five years and upon the instance of the Philippine National Bank said judgment was revived in Civil Case No. 30663 on February 20, 1957 where the Court of First Instance of Manila condemned Joaquin M. Bondoc to pay the Philippine National Bank the sum of P16,841.64 plus 7% interest and costs. Neither was this judgment enforced during five years thereafter.

But on June 7, 1962 the Philippine National Bank instituted in the Court of First Instance of Manila Civil Case No. 50601 for the enforcement of the judgment rendered in Civil Case No. 30663. On motion of defendant, however, the complaint for revival of judgment was dismissed on grounds of prescription and lack of cause of action.

The lower court held that the right to revive the judgment has prescribed inasmuch as more than ten years had elapsed since it was first rendered on June 29, 1949. It further ruled that the Code of Civil Procedure (Act 190) or the New Civil Code does not provide for the revival of a revived judgment.

Plaintiff has appealed from the order of dismissal. The only issue is whether or not a revived judgment may itself be revived.

Section 6 of Rule 39 states:

"Sec. 6. Execution by motion or by independent action.—A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the (lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

Section 6, above quoted, makes no distinction as to the kind of judgment which may be revived by ordinary independent action. Such being so, appellees proposition that a revived judgment cannot any more be enforced by action under said section has no justification. When the law does not distinguish, neither should we.

A judgment rendered on a complaint for the revival of a previous judgment is a new judgment, and the rights of the plaintiff rest on the new judgment, not on the previous one. Precisely, the purpose of the revival of a judgment is to give a creditor a new right of enforcement from the date of revival.[1] The rule seeks to protect judgment creditors from wily and unscrupulous debtors who, in order to evade attachment or execution, cunningly conceal their assets and wait until the statute of limitations sets in.

Section 6 aforementioned requires that the judgment sought to be revived is not barred by prescription. Under Article 1144(3) of the New Civil Code the right to enforce a judgment prescribes in ten years counted from the date said judgment becomes final.[2]

A judgment is revived only when the same cannot be enforced by motion, that is, after five years from the time it becomes final. A revived judgment can be enforced by motion within five years from its finality. After said five years, how may the revived judgment be enforced? Appellee contends that by that time ten years or more would have elapsed since the first judgment became final, so that an action to enforce said judgment would then be barred by the statute of limitations.

Appellee's theory relates the period of prescription to the date the original judgment became final. Such a stand is inconsistent with the accepted view that a judgment reviving a previous one is a new and different judgment. The inconsistency becomes clearer when we consider that the causes of action in the three cases are different. In the original case, the action was premised on the unpaid promissory note signed by Joaquin Bondoc in favor of the Philippine National Bank; in the second case, the Philippine National Bank's cause of action was the judgment rendered in Civil Case No. 8040; and in the present case, the basis is the judgment rendered in Civil Case No. 30663. Parenthetically, even the amounts involved are different.

The source of Section 6 aforecited is Section 447 of the Code of Civil Procedure which in turn was derived from the Code of Civil Procedure of California. The rule followed in California in this regard is that a proceeding by separate ordinary action to revive a judgment is a new action rather than a continuation of the old, and results in a new judgment constituting a new cause of action, upon which a new period of limitations begins to run.[3]

The judgment in Civil Case No. 30663, which provided the cause of action in the case at bar, was rendered on February 20, 1957 and became final in the same year. Pursuant to Article 1144(3) of the New Civil Code the action upon such judgment must be brought within ten years from 1957 or until 1967. The instant case instituted in the court a quo on June 7, 1962 is well within the prescriptive period.

Wherefore, the order appealed from is hereby set aside and this case remanded to the lower court for further proceedings. Costs against appellee. It is so ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Regala, Makalintal, and Zaldivar, JJ., concur.

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[1] *Compañia General de Tabacos vs. Martinez* 29 Phil., 515, 519.

[2] *Lazaro vs. Gomez*, 109 Phil., 518; *Philippine National Bank, vs. Monroy*, L-19374, June 30, 1964.

[3] *Thomas vs. Lally*, 28 Cal. App. 308, 152 Pac. 53, 54; *Palace Hotel Co. vs. Crist*, 6 Cal. App. 2d 690, 45 Pac. 2d 415.

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