

## PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLANT, VS. PACIFIC COMMISSION HOUSE, DEFENDANT-APPELLEE.

*G.R. No. L-22675. March 28, 1969*

Ponente: MAKALINTAL, J.

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### MAKALINTAL, J.:

On 3 February 1953 the Philippine National Bank obtained a judgment in the Court of First Instance of Manila in Civil Case No. 14799, entitled "Philippine National Bank, plaintiff, vs. The Pacific Commission House, defendant." The judgment reads as follows:

"1. Under the first cause of action, defendant Pacific Commission House is hereby ordered to pay plain-tiff Philippine National Bank the sum of three thousand twenty-two peso and forty-two centavos (P3,022.42), with legal interest on P2,313.77 from June 21, 1949 full payment thereof;

"2. Under the second cause of action, defendant Pacific Commission House is hereby ordered to pay plain-tiff Philippine National Bank the sum of ten thousand three hundred forty-five pesos and thirty-one centavos (P10,345.31), with legal interest on P8,335.59 from June 21, 1949 until the date of full payment thereof; and

"3. Under the third cause of action, defendant Pacific Commission House is hereby ordered to pay plaintiff Philip-pine National Bank the sum of twelve thousand seven hundred eighty-one pesos and fifteen centavos (P12,781.15) with legal interest on P9,893.31 from June 21, 1949 until the date of full payment thereof.

Costs against defendant."

On 31 May 1963 the Philippine National Bank filed a complaint against the same defendant for the revival of said judgment and for the recovery of the sums adjudged therein, with interest, attorney's fees and costs. For failure to answer after due service of summons the defendant was declared in default and the case was set for hearing for the reception of the evidence for the plaintiff. On 3 January 1964 the trial court rendered the following decision:

"This is an action to revive a judg-ment rendered by the Court of First Instance of Manila on February 3, 1953 in Civil Case No. 14799 in favor of the herein plaintiff and against the defend-ant.

It is patent from the stamp appearing on the first page of the complaint that the complaint was actually filed on May 31, 1963 although it was dated March 1, 1963. It is not true, therefore, that this action was filed less than ten years after entry of the original judgment.

During the presentation of the evidence by the plaintiff, it did not introduce any evidence as to the date of the entry of the judg-ment. The Court cannot presume that the date of the entry is with-in ten years prior to the date the complaint herein was actually filed.

WHEREFORE, the complaint is dismissed without costs.

The plaintiff moved to reconsider, and upon denial of the motion perfected the present appeal. The principal issue posed by the appellant is whether or not the Court *motu proprio* may properly consider the defense of prescrip-tion of action notwithstanding the defendant's failure to raise the same, not having appeared in the case

nor filed an answer to the complaint. The appellant's negative sub-mission on the issue is based on Rule 9, Section 2, that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived," the exceptions being failure to state a cause of action or lack of jurisdiction over the subject-matter, the first of which, according to the same rule, may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; and the second imposes upon the court the duty to dismiss the action whenever such lack of jurisdiction appears.

However, the fact that the plaintiff's own allegation in the complaint or the evidence it presented shows clearly that the action had prescribed removes this case from the rule regarding waiver of the defense by failure to plead the same. Thus in *Philippine National Bank vs. Amando Perez, et al.*, G. R. No. L-20412, Feb. 28, 1966, where the defendants were similarly declared in default and where it was disclosed by the plaintiff's own evidence that the action for revival of the judgment was filed more than ten years after it became final, this Court held:

"It is true that the defense of prescription can only be considered if the same is invoked as such in the answer of the defendant and in this particular case no such defense was invoked because the defendant had been declared in default, but such rule does not obtain when the evidence shows that the cause of action upon which plaintiff's complaint is based is already barred by the statute of limitations."

A clearer exposition of the point is found in the decision of this Court penned by Justice, later Chief Justice, Cesar Bengzon in *Chua Lamko vs. Dioso et al.*, 97 Phil. 521. It is there stated:

"It is true that if the defense of prescription is not raised in the answer it is deemed waived under Rule 9, Secs. 9, 10 of the Rules of Court. But the waiver applies to defenses of prescription that would raise issues of fact not appearing upon the pre-ceding pleading."

"The defendant may set forth by answer as many affirmative defenses as he may have. All such grounds of defense as would raise issues of fact not arising upon the preceding pleading must be especially pleaded, including fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and all other matter by way of confession and avoidance." (Sec. 9, Rule 9.)

"The plaintiffs were not required to specifically plead prescription, because the pleading of Chua Lamko disclosed that the judgment had been rendered in March 7, 1939 and it was asserted only in March, 1950; i.e., more than ten years before. No issue of fact was involved by their claim of prescription; these two dates were not denied. Therefore their failure to plead it did not constitute waiver."

In the present case, as in the one just cited, there is no issue of fact involved in connection with the question of prescription. The judgment sought to be revived was rendered on 3 February 1953 and the action to revive it was filed on 31 May 1963. Furthermore, the appellant does not deny the categorical finding in the decision of the Court *a quo* that the ten-year period had expired.

The other argument of the appellant is that the appellee made a partial payment on the judgment debt on 29 September 1954, thereby interrupting the prescriptive period, invoking Article 1155 of the Civil Code, which provides that "the prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditor, and when there is an written acknowledgment of the debt by the debtor." Payment interrupts prescription because it amounts to an acknowledgment of the debt (*Veloso et al., vs. Fontañosa, et al.*, 13 Phil. 79). This reason however, obviously does not apply where the debt has been confirmed by final judgment, since acknowledgment by the debtor would not render the adjudication any stronger or more efficacious. In *Philippine National Bank vs. Osete, et al.*, G. R. No. L-24997, 18 July 1968, this Court, speaking through Chief Justice Roberto Concepcion, said:

"Under this provision (ART. 1155, Civil Code) not all acts of acknowledgment of a debt interrupt,

prescription. To produce such effect, the acknowledgment must be "written," so that payment, if not coupled with a communication signed by the payor, would not interrupt the running of the period of prescription.

Moreover, the lower court expressed the view that said "Art. 1155 of the New Civil Code refers to the tolling of the period of prescription of the action to collect, not to the action to enforce" or revive - a "judgment." Understandably, either an "extrajudicial demand" by the creditor or an "acknowledgment of the debt" may interrupt the prescription of the action to collect, not based upon a judgment, since the demand indicates that the creditor has not slept on his rights - and removes the basis of the statute of limitation of actions - but, was vigilant in the enforcement thereof, whereas an acknowledgment by the debtor provides a tangible evidence of the existence and validity of the debt. Who would, however, make an "extrajudicial demand" for the payment of a judgment, when the same may be enforced by a writ of execution? And, how could an acknowledgment or partial payment affect the rights of a creditor, when the same are based, no longer upon his contract with the debtor or upon law, but upon no less than a judicial decree, which is final and executory?"

Even under the Code of Civil Procedure, Act No. 190, a distinction was made between a debt based on contract and one already confirmed by judgment insofar as the effect of acknowledgment was concerned. Under Section 43 thereof an action upon a contract or upon a judgment prescribed in ten years; but under Section 50 the renovating effect of payment or of a written acknowledgment of the debt is limited to the first kind of action, thus: "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."

WHEREFORE, the decision appealed from is affirmed, without pronouncement as to costs.

Concepcion, C.J., Reyes, JBL, Dizon, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, and Barredo, JJ., concur.

Teehankee, J., concurs in the result.

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