

**HONGKONG & SHANGHAI BANKING CORPORATION,
PLAINTIFF-APPELLEE, VS. RALPH PAULI, DEFENDANT-APPELLANT.***G.R. No. L-15713. March 31, 1962*

Ponente: LABRADOR, J.

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This is an appeal from a decision of the Court of First Instance of Manila, Hon. E. Soriano, presiding, in Civil Case No. 32799 of that court, entitled "Hongkong & Shanghai Banking Corporation, plaintiff, versus Ralph Pauli, defendant," ordering the defendant to pay the plaintiff the sum of P219,236.20, with legal interest thereon. from June 14, 1957, until fully paid, and costs.

On June 14, 1957, plaintiff filed a complaint against defendant, alleging that it is a banking corporation organized and operating under the laws of the Philippines and that the defendant is of legal age and a resident of Pasay City; that by virtue of an overdraft agreement in writing entered into between them, defendant obtained from plaintiff bank a credit line in the amount of P520,000.00, repayable on demand with interest; that as of January 20, 1948, defendant was still indebted to plaintiff under said overdraft agreement in the amount of P258,964.15, exclusive of interest due from December 31, 1941, also unpaid; that said indebtedness was acknowledged in writing by defendant on March 24, 1955, as shown by Exhibit "A", which is attached to the complaint; that the debt is now overdue and in spite of repeated demands for its payment, defendant refused and still refuses to pay the same; and that plaintiff will incur by virtue hereof expenses of litigation. Plaintiff, therefore, prays for judgment ordering the payment by defendant to it of the sum of P258,964.15, plus interest thereon from December 31, 1941, and the expenses of litigation.

On August 10, 1957, defendant filed his answer, wherein he denies all the allegations of the complaint, except as to the personal circumstances of the parties. As a special defense, defendant alleges that any cause of action which plaintiff may have against him is already barred by the Statute of Limitations. Consequently, he prays for the dismissal of the action.

In the course of the proceedings, and more specifically on August 7, 1958, defendant filed a motion to dismiss the complaint, reiterating the special defense in his answer, j Pursuant to orders of the court, plaintiff filed its opposition thereto, but after a consideration of the pleadings submitted, the lower court denied the motion.

Consequently, the trial court proceeded with the trial of the case, and on June 2, 1959, it rendered the decision appealed from. In its decision, the court found that the documentary evidence. Exhibits "A" and "B" conclusively show the indebtedness of defendant to plaintiff; that the testimony of witness Atty. Nicolas Orosa, dovetails with the contents of said exhibits; that, except the testimony of defendant himself, no evidence was submitted to prove defendant's alleged stock trading transactions with plaintiff bank, and that if such stock trading transactions did even exist, the same, culminated in the agreement Exhibit "A"; that plaintiff's cause of action has not prescribed because, considering the operation of the Moratorium Law only 7 years, 11 months and 28 days have elapsed when the action was filed; that plaintiff has not overreached defendant, there being no evidence to prove it.

Defendant has appealed from the decision of the lower court.

Before this Court, defendant-appellant claims that the trial court failed to resolve the real issue tendered by the pleadings and the evidence; that there is material variance between the principal allegations of the complaint and plaintiff's proofs; that said court erred in not giving credence to the testimony of defendant; that it failed to perform its obligation under Exhibit "A" and to grant defendant relief therefrom; that the trial court erred in not finding that plaintiff's cause of action has prescribed.

We have examined the records of this case, and we agree with the trial court that the issue in this case is whether or not defendant is liable to pay plaintiff the indebtedness amounting to P219,236.20. In his brief, defendant-appellant impugns the correctness of the findings of the trial court, so it has been necessary for us to review the testimonial and documentary evidence presented. The result of our review is to the effect that the findings of fact of the lower court are justified.

During the hearing, plaintiff bank presented one witness, Atty. Nicolas Orosa, who identified the documentary evidence, while the defendant appeared as witness on his own behalf.

The evidence discloses the following facts: Exhibit "A" recites that on or about June 17, 1937, plaintiff granted to defendant a credit line by way of overdraft in an amount not exceeding P520,000.22, and to secure payment of the above obligation defendant mortgaged several properties belonging to him in favor of plaintiff bank; defendant was then engaged in buying and selling stocks and he secured money to finance his deals from plaintiff bank under said overdraft line executing a general letter of hypothecation dated June 17, 1937; defendant failed to pay his indebtedness to the plaintiff bank, which on November 10, 1937, had reached P504,389.14, so a written demand was made by the bank upon him on November 16, 1937; the properties thus mortgaged were sold at public auction to satisfy the debt and the proceeds of the sale amount to P286,418.13; that after deducting the proceeds of said sale from the total obligation of defendant to plaintiff bank, the former was still indebted to the latter in the amount of P220,865.47, as of January 3, 1938; that to collect the unpaid balance, plaintiff bank instituted on January 8, 1938 Civil Case No. 52342 in the Court of First Instance of Manila, which case is entitled "Hongkong & Shanghai Banking Corporation vs. Pauli"; by virtue of said action, a writ of attachment was issued against several other properties of defendant; on January 26, 1938, however, plaintiff and defendant executed the agreement (Exh. "A"), whereby defendant acknowledged indebtedness to plaintiff in the amount of P220,865.47 and undertook to pay the expenses of litigation in said Civil Case No. 52342, pledged some shares of stocks and mortgaged several other properties and leasehold rights, etc., in consideration for the dismissal of said Civil Case No. 52342, instituted by plaintiff.

Thereafter, defendant continued using the overdraft line and making withdrawals thereunder, so that as of December 31, 1941, defendant was indebted to the bank in the amount of P259,125.96 (Exh. "C"). The said use is proved by the following: The increase of defendant's indebtedness (P220,865.47 in 1938 to P259,125.96 in 1941); the withdrawals and payments on said overdraft line from 1945 to 1948, as appearing from Exhibit "C"; the acknowledgment made by defendant on March 24, 1955, to the effect that as of December 31, 1954, he was still indebted to the plaintiff bank in the amount of P219,236.20.

Further explaining the subsequent dealings between plaintiffs and defendant, we find the following: On March 24, 1955, defendant acknowledged in writing that as of December 31, 1954, he was still indebted to the plaintiff bank in the amount of P219,236.20 (Exh. "B"). According to the statement of accounts prepared by the Credit Department of the plaintiff bank, defendant was still indebted to it in the amount of P219,236.20, as of December 2, 1957 (Exh. "C"). It appears from said statement that plaintiff bank is holding 52,000 shares of stock of different mining companies pledged as securities by defendant, but Atty. Nicolas Orosa, witness for the plaintiff bank,

declared that these securities are worthless.

On January 24, 1957, counsel for plaintiff bank demanded in writing payment of the debt of P219,236.20 from defendant, whose counsel, on September 23, 1957, answered also in writing that he will pay said debt provided the bank accepts in payment this assignment of the first P100,000 of the receipts due his son-in-law, Mr. Mateo Garganera, from his (Garganera) contract with the Luzon Stevedoring Company for the operation of mining claims.

Defendant claims that Exhibit "A" does not represent the true transaction between him and the bank; that the transaction giving rise to said Exhibit "A" was a stock trading transaction, wherein defendant buys and sells stocks of companies, using his own as well as the bank's money; that he sold and bought stocks with commission for himself and for the plaintiff bank; that he put up securities in said transaction because he was using the bank's money in his transactions; that this stock trading transaction was in writing, but he lost his copy of the agreement during the war; that Exhibit "A" was a "standstill agreement" but that plaintiff bank violated the same; that plaintiff bank did not account for the proceeds of the sale of defendant's properties located at Mandaluyong, Rizal. It is significant to note, however, that defendant did not deny being indebted to the plaintiff bank, but he claimed that such indebtedness arose out of stock trading transactions.

No other evidence was presented by defendant, and while it may have been true that there was a stock trading agreement between the parties, we find that the documentary evidence submitted by plaintiff bank, especially Exhibits "A", "B" and "C" represent the true result of said transactions between plaintiff bank and defendant and the exact amount of defendant's debt. The trial court, therefore, correctly disregarded defendant's testimony.

The appellant claims that the trial court failed to resolve the real issue in this case, that is, whether or not the defendant-appellant is liable under the written agreement Exhibit "A". The defendant denied that Exhibit "A" represents the true agreement between the plaintiff and himself. To find out if this claim of the defendant is supported by the evidence, we have taken pains to examine his own testimony and we find the following: that the business relations between the plaintiff and the defendant started around the year 1932, when defendant made a deposit of :37,000 and was given an overdraft account of P20,000. From that time on, according to the defendant, their relationship ran as follows: that when the mining boom began in 1932 the plaintiff and the defendant entered into a stock trading agreement whereby the defendant was to make purchase of stocks in the stock market with funds belonging in part to the bank; that one-half of the funds was furnished by the bank and the other half, which was chargeable to the defendant, was also furnished by the bank upon an overdraft account extended by it to the plaintiff, the defendant "pledging the shares of stock that belonged to him to secure or guarantee the overdraft that from small beginnings in 1932 the purchases of shares of stock by defendant reached considerable proportions such that around the year 1936, when the stock market began to lag he had obtained a loan of about half a million pesos in the overdraft account, and pledged shares amounting to one million pesos in value, but which were reduced considerably in value thereafter. Upon examination of Exhibit "A" we find that the origin of the debt as outline in the recitals therein, as we have already set forth in our findings of fact, tallies with the allegation of the defendant in his testimony that the transactions between them originated from stock trading wherein shares were purchased, the plaintiff giving him an overdraft and the defendant pledging his shares of stock to guarantee the payment of said indebtedness. It is not true, therefore, as claimed that Exhibit "A" does not represent the final agreement between the plaintiff and the defendant originating in the stock trading agreement and finally resulting in the sale of securities and shares of stock pledged and the reduction of the indebtedness of the defendant from around P520,000 in 1937 to around P220,000 on January 26, 1938. By his testimony, therefore, plaintiff has practically affirmed the transactions that led to the execution of the contract Exhibit "A". We find, therefore, that by his testimony the defendant has practically acknowledged his indebtedness as it

appears in the contract Exhibit "A".

We also dismiss as untenable defendant's claim that there is variance between the evidence and the allegations of the complaint. In the complaint, plaintiff states that defendant is indebted to it and prays for payment of said debt. The fact of debt and its non-payment are adequately and completely borne out by plaintiff's evidence, Exhibits "A", "B", "C", "D" and "E" and by the testimony of plaintiff's witness. Besides, this fact of indebtedness was not denied by defendant himself during the trial.

Appellant also claims that the lower court should have ordered plaintiff bank to account for his securities and collaterals given to the bank and sold by it to satisfy defendant's debts. This contention is without merit. In paragraphs 4 and 5 of Exhibit "A" it is declared that said shares and securities were sold for P286,418.93; as a result of which his indebtedness was reduced to P220,865.47. The contract Exhibit "A" reads thus:

"WHEREAS, on the 20th day of December, 1937, the BANK through the Sheriff of the City of Manila, duly proceeded with s the foreclosure of the general letter of hypothecation executed by Pauli to said Sheriff to sell all the shares of stock and other securities pledged and hypothecated thereby, at public auction, upon proper prvious notice as required by law, on the 3rd day of January, 1938, said Sheriff having realized from such sale the net sum Of TWO HUNDRED AND EIGHTY-SIX THOUSAND, FOUR HUNDRED EIGHTEEN PESOS AND NINETY-THREE CENTAVOS (P286,418.93) ; and

"WHEREAS, after deducting the said sum of F286,418.93 from paulj's indebtedness to the BANK on that date, January 3, 1938, then amounting to five hundred and seven thousand, two hundred AND EIGHTY-FOUR PESOS AND FORTY CENTAVOS (P507,284.40), as adjusted for interest, there remained as of the dose of business on the 3rd day of January, 1938, two hundred and twenty thousand, EIGHT HUNDRED AND SIXTY-FIVE PESOS AND FORTY-SEVEN CENTAVOS (P220,865.47) still due from and owing by said PAULI to said BANK; and." (Exhibit "A", p. 3)

Furthermore it was proved that some securities still in the possession of plaintiff are useless.

It is finally assigned as error of the trial court that plaintiff's cause of action has prescribed. It is contended that the trial court incorrectly tolled from the period of prescription of ten years the period from July 26, 1948, when Republic Act No. 342 took effect, to May 18, 1953, when the Moratorium Law was declared null and void by this Court in our decision in the case of Rutter vs. Esteban, 93 Phil., 68; 49 Off. Gaz. 1807. It is further argued that as defendant was not a war damage claimant, the period of prescription should commence to run again from July 26, 1948, to continue up to March 24, 1955, when defendant acknowledged the debt, but as this acknowledgment is not effective because it was made when the action had already prescribed, such acknowledgment is to no avail.

The above reasoning of the defendant-appellant would be correct if no payment on the overdraft line was made in the intervening period by the defendant-appellant. But the evidence for the plaintiff-appellee shows without contraction, according to the ledger of the said plaintiff, a copy of which is reproduced as Exhibit "C", that payment was made by the defendant-appellant on October 23, 1945 in the amount of P6,000.00. On March 13, 1946, payment was again made by the defendant-appellant on the overdraft line in the amount of P10,000. These payments made on the overdraft line had the effect of renewing the right of action which the plaintiff had, in accordance with the provisions of Section 50 of Act 190, which reads as follows:

"Sec. 50.—What Shall Renew Right of Action.—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 limited¹, after such payment, acknowledgment, or promise."

It must be added that the period of prescription of the obligation subject of the action is governed by the law in

force prior to the approval of the Civil Code of the Philippines, which is the Code of Civil Procedure, pursuant to Article 1116 of said Code, which reads as follows:

"Art. 1116.—Prescription already running before the effectivity of this Code shall be governed by laws previously in force."

In accordance with Sec. 50 of the Code of Civil Procedure, the prescriptive period began to run from March 13, 1946, the date of the last payment. But inasmuch as the Moratorium Law was in force until July 26, 1948, when Republic Act No. 342 became effective, no action could then be instituted, so the period of prescription of the action actually started from July 26, 1948 when the moratorium ended. As the action was filed on June 14, 1957, the action has clearly, not prescribed.

But we will now view the case from another angle, that is, from the fact that on March 24, 1955, the defendant made a written acknowledgment of the debt (by Instrument marked Exhibit "B"). As we have already pointed out, the prescriptive period having commenced to run on July 26, 1948, before the effectivity of the present Civil Code, the law that governed the limitation of the action is the Code of Civil Procedure, in accordance with Article 1161 of the Code. Pursuant to Section 50 of the Code of Civil Procedure, the prescriptive period which commenced to run on July 26, 1948 was again renewed when the debt was acknowledged on March 24, 1955. As the action was brought in 1957, the action had not yet prescribed.

The judgment appealed from is therefore affirmed, with costs. So ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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