

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. FRANCISCO BUENASEDA, DEFENDANT AND APPELLEE.

G.R. No. L-17078. January 29, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

Taking into consideration the stipulation of facts submitted by the plaintiff, Philippine National Bank, and defendant Francisco Buenaseda (in Civil Case No. 32496, CFI of Manila), to wit:

"1. That plaintiff has obtained a judgment for a sum of money in its favor against the Philippine Lumber Distributing Agency, Inc., in Civil Case No. 7807, entitled 'Philippine National Bank versus Philippine Lumber Distributing Agency, Inc.' of the Court of First Instance of Manila, Branch I, which remains unsatisfied up to now, and said plaintiff is authorised by said Branch I in said Civil Case to institute this instant action against the defendant;

"2. That defendant purchased from the Philippine Lumber Distributing Agency, Inc. lumber materials in various independent transactions in 1947, amounting to a total of P15,594.00 and payments on said lumber purchase were made by defendant in the total amount of P11,568.35, the last of which payment was on July 13, 1949, leaving an unpaid balance of P4,025.85 in favor of the Philippine Lumber Distributing Agency, Inc.;

"3. That the said series of transactions in 1947 between defendant and the Philippine Lumber Distributing Agency, Inc. were made through 21 sales orders and others by verbal orders, and upon said orders, 69 delivery receipts were issued to defendant representing receipts of lumber by him, which sales orders and delivery receipts will be submitted by the parties in the hearing of this case as Exhibits A, A-1 to A-89;

"The parties further stipulate that with the foregoing facts, the only issues involved in this case are:

'a. Whether the transactions between defendant and the Philippine Lumber Distributing Agency, Inc. partake the nature of oral or written contracts, based on said verbal orders, sales orders and delivery receipts (Exhibits A, A-1 to A-89; and

'b. "Whether the action of plaintiff based on said verbal orders, sales orders and delivery receipts, has prescribed."',

and finding that the 21 sales orders and 69 delivery receipts, upon which the action was based, not in themselves contracts in writing, the court ruled that the filing of the complaint on May 7, 1957 was made beyond the prescriptive 6-year period allowed by law for actions on oral contracts. From this decision, the Philippine National Bank brought the case on appeal to the Court of Appeals which elevated the same to this Court, the issues raised therein being purely legal.

The question to be determined in this instance is whether plaintiff's action, instituted in 1957 and involving transactions entered into in 1947, the last payment on which was in 1949, is already barred by the statute of limitations. The resolution of such question, in turn, depends on whether the aforementioned transaction, evidenced by the herein delivery receipts and sales orders, were based on written contracts.

The lower court, in holding that the printed, as well as the handwritten, sales orders and delivery receipts exhibited as part of the stipulation of facts, do not constitute written agreement, said:

"An examination of the various sales orders and delivery receipts (Exhibits A, A-1 to A-89) shows that they do not contain any agreement of the parties to the transaction, wherein the defendant promised or obligated himself to pay a sum certain in money, because, as a matter of fact majority of said instruments do not contain specific amounts, and those with amounts do not even specify an obligation or a promise to pay said amounts on a day certain.

"The broad and comprehensive language of the statute of limitations providing that an action upon a writing for the payment of money can be commenced only within a prescribed period after the cause of action shall have accrued embraces all kinds of written instruments, without regard to their form or phraseology, which imply a promise or agreement to pay money. As otherwise expressed, to come within the statute, it must appear that the money sued is promised to be paid by the language of the writing sued upon (34 Am. Jur., p. 71, Sec. 85); and if the promise arises only upon proof of extrinsic facts, or if the agreement may be proved only by evidence aliunde, or if the liability sought to be enforced is imported into an agreement from some external source, or if the agreement is partly oral and partly written, the writing is not within the purview of the statute. (34 Am. Jur., pp. 76-77, Sec. 92)."

That these are transactions for which appellee is liable is not herein issue. As a matter of fact, appellee admits the existence and validity of the obligation. The question actually raised in this appeal is whether the action for the enforcement of this obligation, brought on May 7, 1957, or more than 7 years after the last payment on the indebtedness was made, is already barred by the statute of limitations.

Under Act 190, the law applicable to the instant case, an action based upon a written contract prescribes in 10 years,[1] whereas one predicated on a contract not in writing must be commenced in 6 years.[2]

It is the contention of appellant that the 21 sales orders and 69 delivery receipts issued in connection with the lumber purchased and received by appellee constitute written contracts. Appellee, naturally, maintains the contrary view.

A "writing" for the payment of money sued in an action, within the meaning of the ten-year statute of limitations, is one which contains either an express promise to pay or language from which a promise to pay arises by fair implication.[3] It is sufficient if the words import a promise or an agreement or if this can be inferred from the terms employed.[4] Evidently, while it is not necessary that there be an express promise, the writing, to be within the statute, must on its face contain words or language which would fairly imply such a promise to pay. In other words, it must affirmatively appear that the promise of payment was given by the language of the writing itself. If, as stated in the authorities cited by the trial court, the promise arises only upon proof of extrinsic facts, or as sometimes expressed, upon evidence aliunde, the writing is not within the purview of the statute. Stated differently, where the promise or agreement to pay on which the action is based does not appear in express terms or by fair implication in writing, but the cause of action arises out of facts collateral to the instrument, it does not fall within the provision of the statute of limitations.[5] Of course, if the writing upon which the action is based is sufficient to set up a promise or agreement, then the statute applies even though parol evidence is necessary to show a breach of such agreement or the happening of contingencies which would render defendant liable under the agreement.[6]

For the purpose of determining whether the documents upon which the present action is based comply with the strictures of these authorities, we examined the exhibits one by one and found the following:

Of the 69 duly acknowledged delivery receipts, five[7] contain no prices nor term of the transaction. They merely specify the name and address of the person to whom delivery was made, the date of such delivery, and the

quantity and kind of lumber delivered. The only words that would indicate to some degree the nature of the transaction are the following, printed at the bottom of the document:

"We certify that the kind or kinds of timber or lumber listed on this invoice are exactly the same as those sold or delivered, or to be delivered to the purchaser.

Received above in good order and condition

Francisco U. Buenaseda

By:

(Sgd.) A. Legaspi"

There is nothing in the above language used in the receipts which would indicate any promise to pay, how much to pay and when and how to pay for the lumber thus received. Clearly, standing alone, these delivery receipts could not be the writing referred to in the statute of limitations upon which an action can be based.

Sixty-three[8] of the delivery receipts are in the same tenor, except that they contain the prices of the lumber delivered, but like the previous ones, they do not indicate the term of the transactions or the manner by which payment would be made, nor contain a promise by the receiver to pay at all the goods at any time. These receipts do not also correspond to the agreement in writing contemplated in the statute of limitations.

Of the eighteen printed sales orders, seventeen[9] are without prices, although in the space for terms, which probably refers to the manner of payment of the purchased goods, there appears the word "credit". Two of the three Bales orders in appellee's own handwriting,[10] asking for delivery of certain kinds of lumber, while directing them to be "charge (d) to my account as usual", do not contain the prices or value thereof. These, again, do not constitute suable contract in writing within the statute as they do not imply complete agreement. The amount to be paid and the manner of payment do not appear in the writing but must be supplied by oral proof. And, it has been held that where the agreement is partly oral and partly written, the writing is not within the purview of the statute.[11]

The only delivery receipt found to be supported by a sales order is Exhibit A-84, evidencing delivery of lumber worth P446.45. It was issued pursuant to sales order No. 736 (Exh. A-86) which, in turn, was made upon receipt of appellee's handwritten order for goods (Exh. A-85), and with instruction to charge the same to his account.

This single transaction evidenced by these three exhibits is the nearest to an agreement in writing within the contemplation of the statute. Nevertheless, inasmuch as the terms of payment of the amount of P446.45 do not appear in any or all of the three exhibits combined, the agreement is not complete and an indispensable aspect must be supplied by evidence aliunde. Hence, the agreement is thereby partly oral and partly written. The term "charge to my account as usual" makes the obligation thus assumed indefinite and uncertain and liable to be affected by other possible agreements, such as discount in favor of the-purchaser (appellee), or some conditions, precedent or subsequent, or any number of contingencies affecting not only the relationship between the parties but also the nature and extent of the obligation itself and the liability of each of them.

In view of the foregoing, the decision of the lower court appealed from is hereby affirmed, with costs against the appellant. So ordered.

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

[1] Sec. 43, 1st par., now Art. 1144, New Civil Code.

[2]Sec. 43, 2nd par., now Art. 1145, New Civil Code.

[3]111 A.L.R. 984, and cases therein cited.

[4] Ibid.

[5] Curtis vs. Sexton (1907) 201 Mo. 217, 100 S.W. 17, quoted in Quint vs. Kingsbury (1927; Mo. App.) 289 S.W. 667.

[6] Quint vs. Kingsbury, *supra*.

[7] Exhs. A-5, A-6, A-7, A-8, and A-18.

[8] Exhs. A, A-1, A-2, A-9, A-10, A-11, A-12, A-13, A-14, A-15, A-17, A-19, A-20, A-21, A-22, A-23, A-24, A-25, A-26, A-27, A-86, A-37, A-38, A-39, A-40, A-41, A-42, A-43, A-44, A-45, A-46, A-47, A-60, A-51, A-S3, A-54, A-55, A-56, A-57, A-58, A-59, A-60, A-61, A-62, A-63, A-64, A-66, A-67, A-68, A-69, A-70, A-71, A-72, A-73, A-74, A-75, A-76, A-77, A-79, A-80, A-82, A-83, and A-37.

[9] Exhs. A-3, A-4, A-16, A-28, A-29, A-30, A-31, A-33, A-34, A-85, A-47, A-48, A-52, A-65, A-78, A-81, and A-89.

[10] Exhs. A-32 and A-88.

[11]34 Am. Jur., p. 77, Sec. 92, and cases cited therein.

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