

MANILA BANKING CORPORATION, PETITIONER, VS. DRI-MULMAC DEVELOPMENT CORPORATION (FORMERLY MULMAC INDUSTRIAL CONSTRUCTION), RICARDO L. PENSON, ENRIQUE B. LAGDAMEO, ERNESTO LAGDAMEO...

Ponente: BARRIOS, J.

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BARRIOS, J.:

The petitioner Manila Banking Corporation (hereafter Manila Banking for brevity) granted a Twenty Million Pesos (P20,000,000.00) loan to Mulmac Industrial Construction Corporation (or Mulmac) and its officers the respondents Ernesto Lagdameo, Jr., Charles Mulvaney and Enrique B. Lagdameo (or the respondents unless individualized as Lagdameo Jr., Mulvaney or Lagdameo) under Promissory Note No. 11194 (or PN No. 11194) dated June 30, 1982 which they executed for Mulmac as its authorized officers and personally for themselves. The note was payable on or before June 30, 1989.

On January 20, 1983, Mulmac obtained another loan from Manila Banking in the amount of Two Million Four Hundred Ninety One Thousand Pesos (P2,491,000.00) under Promissory Note No. 11724 (or PN No. 11724) made in the same capacities by the respondents Mulvaney and Lagdameo. The note was likewise payable on or before June 30, 1989.

Meanwhile Manila Banking was placed under receivership by the Central Bank on May 22, 1987. Sometime in March 1994, Defense Resources Incorporated took over certain assets of Mulmac and in the process a new corporation was formed, the DRI-Mulmac Industrial Corporation (or DRI-Mulmac) which assumed the obligations of Mulmac in exchange for what were ceded.

Both PN No. 11194 and PN No. 11724 matured on June 30, 1989 without the principal amounts and the accumulated interests being paid. On January 25, 2000, Manila Banking filed with the Regional Trial Court of Makati City a collection suit against DRI-Mulmac, and the respondents Ricardo Penson (or Penson), Lagdameo, Jr., Mulvaney and Lagdameo.

Lagdameo promptly filed a Motion to Dismiss on the grounds that the claim of Manila Banking against him is prescribed and was extinguished by novation. Prescribed because both notes provided an acceleration clause that any default in the payment of any installment would render due and demandable the entire obligations including interests due and demandable. The first annual installment scheduled on June 30, 1983 in the case of PN No. 11194 and on January 20, 1984 in the case of PN No. 11724, were not paid and so Manila Bank's causes of action accrued as of said dates. However it filed the complaint only on January 25, 2000 or more than ten years after the said accrual dates, and by then the causes of action have already prescribed. And supposedly this was extinguished through novation by the change of debtor because Manila Banking accepted the offer of DRI-Mulmac and Penson to partially pay the sums owed under the said notes.

This was opposed by Manila Banking arguing that the prescription of its cause of action to sue Lagdameo for the payment of the loan obligation was interrupted by several demand letters seasonably served on and received by

him within the period of prescription. Manila Banking further contended that the obligations of Lagdameo under PN No. 11194 and PN No. 11724 have not been modified nor extinguished by novation because there was never an intent on its part to release him from his liability or to enter into a new agreement with DRI-Mulmac and Penson.

Lagdameo replied that he has not personally received the demand letters allegedly sent to him and so these did not interrupt the running of the prescriptive period. He also asserted that Manila Banking through its Receiver agreed to the substitution of DRI-Mulmac and Penson as debtors as shown by the series of communications between them. Manila Banking is estopped by its previous actions to deny that a novation of the obligation by substitution of debtors has occurred.

Meanwhile, DRI-Mulmac and Penson also filed their Motion to Dismiss on the grounds of prescription, laches and the alleged failure of the complaint to state a cause of action.

On November 8, 2001, the trial court rendered the assailed Resolution, the decretal portion of which reads:

WHEREFORE, in view of the foregoing, the Court hereby renders:

1. The DISMISSAL of the case against defendant ENRIQUE B. LAGDAMEO on grounds of PRESCRIPTION and WANT OF A CAUSE OF ACTION as reflected in very allegations of the complaint;
2. THE DENIAL of the motion to dismiss filed by defendants DRI Mulmac Development Corporation and Ricardo L. Penson, the grounds advanced therein being not indubitable.

SO ORDERED. (p. 64, rollo)

Manila Banking filed a Motion for Partial Reconsideration addressing only the dismissal of the complaint as against Lagdameo. Similarly, DRI-Mulmac and Penson also filed their own Motion for Partial Reconsideration. In an Order dated August 1, 2002, the trial court denied the motions, disposing that:

WHEREFORE, finding no cogent reason to alter the conclusion reached by this Court in the aforesaid Order, plaintiff the Manila Banking Corporation's Motion for Partial Reconsideration and defendants DRI Mulmac Development Corporation and Ricardo L. Penson's Motion for Partial Reconsideration are hereby DENIED.

SO ORDERED. (p. 65, rollo)

Initially Manila Banking took its recourse with the Supreme Court where it filed a Petition for Review on Certiorari under Rule 45 of the Rules on pure questions of law. In a Resolution dated November 11, 2002 of the Third Division, the petition was referred to this Court pursuant to Section 6, Rule 56 of the Rules.

The petition raises the following issues for our consideration:

I

THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT AS AGAINST RESPONDENT ENRIQUE B. LAGDAMEO ON THE GROUND OF PRESCRIPTION.

II

THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT AS AGAINST RESPONDENT ENRIQUE B. LAGDAMEO ON THE GROUND OF WANT OF CAUSE OF ACTION. (p. 30, rollo)

On the first issue. The Civil Code provides that an action upon a written contract, an obligation created by law, and a judgment must be brought within ten years from the time the right of action accrues (Article 1144, Civil

Code). However 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 (Article 1155, Civil Code).

Manila Banking's action for collection of a sum of money is based on a written contract and prescribes after ten years from the time its right of action arises. Assuming that the causes of action accrued as of the dates the first annual installment thereon was not paid, or on June 30, 1983 in the case of PN No. 11194 and January 20, 1984 in the case of PN No. 11724, then the ten-year prescriptive period to collect on the said notes would have expired on June 30, 1993 and January 20, 1994 respectively.

But then the prescriptive period is interrupted when there is a written extrajudicial demand by the creditors. The interruption of the prescriptive period by written extrajudicial demand means that the said period would commence anew from the receipt of the demand (*Permanent Savings & Loan Bank vs. Velarde*, G. R. No. 140608, Sept. 23, 2004). The averments in the complaint as well as the documentary evidence attached as annexes show that several demand letters were sent by Manila Banking to Lagdameo within the ten-year prescriptive period. One of the demand letters dated May 16, 1990 showed on its face that it was served on Lagdameo on May 18, 1990. Accordingly, the prescriptive period was by then interrupted and ran afresh, so that the filing of the complaint on January 25, 2000 was well within the renewed prescriptive period. Furthermore, Lagdameo's claimed failure to receive the demand letters crucial on the issue of prescription, is purely factual and evidentiary and best threshed out in a trial on the merits.

This requirement of a full-blown trial on the merits to resolve the issue of prescription, finds jurisprudential basis in the case of *National Irrigation Administration vs. Court of Appeals* (G. R. No. 129169, 318 SCRA 255), where the Supreme Court ruled that:

As to the defenses of laches and prescription, they are evidentiary in nature which could not be established by mere allegations in the pleadings and must not be resolved in a motion to dismiss. Those issues must be resolved at the trial of the case on the merits wherein both parties will be given ample opportunity to prove their respective claims and defenses. x x x An allegation of prescription can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has prescribed.

Coming to the other issue, novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have dual functions — one to extinguish an existing obligation, the other to substitute a new one in its place — requiring a conflux of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation (*Fabrigas vs. San Francisco del Monte*, G. R. No. 152346, Nov. 25, 2005).

Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken (*California Bus Lines, Inc. vs. State Investment House, Inc.*, 418 SCRA 297).

Applying these to the case at hand, We find that no extinguishment by novation took place. The parties did not unequivocally declare that the obligation of Lagdameo under the promissory notes had been extinguished by the creation of a new contract. Not even the exchange of communication between Manila Banking on the one hand

and DRI-Mulmac and Penson on the other hand, expressly and unequivocally demonstrate the consent or intention of Manila Banking to release Lagdameo and his group from their obligation to pay under the promissory notes. At the most, its correspondence with DRI-Mulmac and Penson merely shows Manila Banking's acceptance of the offer of partial payment without any express agreement to release Lagdameo and his group from their obligation under the promissory notes. In order to change the person of the debtor, the old one must be expressly released from the obligation, and the third person or new debtor must assume the former's place in the relationship. To repeat, novation is never presumed. Consequently, that which arises from a purported change in the person of the debtor must be clear and express (Garcia vs. Llamas, 417 SCRA 292).

Moreover, for novation to be valid, the law requires that the creditor expressly consents to the substitution of a new debtor (Article 1293, Civil Code). Since novation implies a waiver of the right the creditor had before the novation, such waiver must be express. It cannot be supposed, without any clear proof, that Manila Banking has abandoned its right to exact fulfillment from Lagdameo by its mere acceptance of the offer of DRI-Mulmac and Penson of partial payment of the obligation. As held by the Supreme Court in the case of Reyes vs. Court of Appeals (264 SCRA 35):

x x x A thorough examination of the records shows that no hard evidence was presented which would expressly and unequivocally demonstrate the intention of respondent AFP-MBAI to release petitioner from her obligation to pay under the contract of sale of securities. It is a rule that novation by substitution of debtor must always be made with the consent of the creditor. x x x

The consent of the creditor to a novation by change of debtor is as indispensable as the creditor's consent in conventional subrogation in order that a novation shall legally take place. The mere circumstance of AFP-MBAI receiving payments from respondent Eleazar who acquiesced to assume the obligation of petitioner under the contract of sale of securities, when there is clearly no agreement to release petitioner from her responsibility, does not constitute novation, at most, it only creates a juridical relation of co-debtorship or suretyship on the part of respondent Eleazar to the contractual obligation of petitioner AFP-MBAI and the latter can still enforce the obligation against the petitioner x x x.

We find no compelling reason here and now to digress from this jurisprudence.

WHEREFORE, the petition is GRANTED. The assailed Resolution dated November 8, 2001 is REVERSED and SET ASIDE insofar as the dismissal of the complaint against the respondent Enrique B. Lagdameo is concerned. SO ORDERED.

Guariña, III and Tagle, JJ., concur.

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