

**MR. AND MRS. ROMEO FERRER AND ANNETTE FERRER,
PETITIONERS, VS. HON. VICENTE G. ERICTA, IN HIS CAPACITY AS
PRE-SIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL,
QUEZON CITY, ...**

G.R. No. L-41767. August 23, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

Mandamus to compel the immediate execution of the Decision of the Court of First Instance of Quezon City, Branch XVIII, presided over by respondent Judge, in Civil Case No. Q-19647, dated July 21, 1975. The pertinent facts are as follows:

In a complaint for damages against respondents, dated December 27, 1974 but actually filed on January 6, 1975 (Civil Case No. Q-19647), and assigned to the sala of respondent Judge, it was alleged that defendants Mr. and Mrs. Francis Pfleider, residents of Bayawan, Negros Oriental, were the owners or operators of a Ford pick-up car; that at about 5:00 o'clock in the afternoon of December 31, 1970, in the streets of Bayawan, Negros Oriental, their son, defendant Dennis Pfleider, who was then only sixteen (16) years of age, without proper official authority, drove the above-described vehicle, without due regard to traffic rules and regulations, and without taking the necessary precaution to prevent injury to persons or damage to property, and as a consequence the pick-up car was overturned, causing physical injuries to plaintiff Annette Ferrer, who was then a passenger therein, which injuries paralyzed her and required medical treatment and confinement at different hospitals for more than two (2) years; that as a result of the physical injuries sustained by Annette, she suffered unimaginable physical pain, mental anguish, and her parents also suffered mental anguish, moral shock and spent a considerable sum of money for her treatment. They prayed that defendants be ordered to reimburse them for actual expenses as well as other damages.

In due time, defendants filed their answer, putting up the affirmative defense that defendant Dennis Pfleider exercised due care and utmost diligence in driving the vehicle afore-mentioned and alleging that Annette Ferrer and the other persons aboard said vehicle were not passengers in the strict sense of the term, but were merely joy riders and that, consequently, defendants had no obligation whatsoever to plaintiffs.

At the pre-trial on May 12, 1975, only plaintiffs-petitioners and their counsel were present. Consequently, defendants-private respondents were declared in default and the plaintiffs-petitioners were allowed to present their evidence ex parte. On May 21, 1975, petitioners moved that they be granted an extension of ten (10) days from May 22, 1975 to present their evidence, which was granted by the court a quo. The presentation of petitioners' evidence was later continued by the trial court to June 16, 1975, when the deposition of Annette Ferrer was submitted by petitioners and admitted by the trial court.

On June 26, 1975, private respondents filed a motion to "set aside the order of default and subsequent pleadings" on the ground that "defendants' failure to appear for pre-trial was due to accident or excusable neglect." This was

opposed by petitioners on the ground that the said pleading was not under oath, contrary to the requirements of Sec. 3, Rule 18 of the Rules, and that it was not accompanied by an affidavit of merit showing that the defendants have a good defense. In view of this, the motion of private respondents was denied by respondent Judge on July 21, 1975. On the same date, respondent Judge rendered judgment against private respondents, finding that the minor, Dennis Pfleider, was allowed by his parents to operate a Ford pick-up car and because of his reckless negligence caused the accident in question, resulting in injuries to Annette, and ordering the defendants, as a result thereof, to pay jointly and severally the plaintiffs the following amounts: (1) P24,500.00 for actual expenses, hospitalization and medical expenses; (2) P24,000.00 for actual expenses for the care, medicines of plaintiff Annette for helps from December 31, 1970 to December 31, 1974; (3) P50,000.00 for moral damages; (4) P10,000.00 for exemplary damages; (5) P5,000.00 for attorney's fees; and (6) costs of suit.

On September 1, 1975, private respondents filed a Motion for Reconsideration[1] of the decision and of the order denying the motion to set aside order of default, based on the following grounds: (1) the complaint states no cause of action insofar as Mr. and Mrs. Pfleider are concerned because it does not allege that at the time of the mishap, defendant Dennis Pfleider was living with them, the fact being that at such time he was living apart from them, hence, there can be no application of Article 2180 of the Civil Code, upon which parents' liability is premised; and (2) that the complaint shows on its face "that it was filed only on January 6, 1975, or after the lapse of MORE THAN FOUR YEARS from the date of the accident on December 31, 1970", likewise appearing from the complaint and, therefore, the action has already prescribed under Article 1146 of the Civil Code.

A Supplemental Motion for Reconsideration[2] was subsequently filed by defendants-private respondents on September 10, 1975, alleging that their defense of prescription has not been waived and may be raised even at such stage of the proceedings because on the face of the complaint, as well as from the plaintiff's evidence, their cause of action had already prescribed, citing as authority the decision of this Court in *Philippine National Bank v. Pacific Commission House*,[3] as well as the decisions quoted therein. The Opposition[4] to the above supplemental motion interposed by plaintiffs-petitioners averred that: (a) the defense of prescription had been waived while the defense that the complaint states no cause of action "is available only at any time not later than the trial and prior to the decision"; (b) inasmuch as defendants have been declared in default for failure to appear at the pre-trial conference, they have lost their standing in court and cannot be allowed to adduce evidence nor to take part in the trial, in accordance with Section 2 of Rule 18 of the Rules of Court; and (c) the motion and supplemental motion for reconsideration are pro forma because the defenses raised therein have been previously raised and passed upon by respondent court in resolving defendants' motion to set aside order of default. Being pro forma, said motion and supplemental motion do not suspend the running of the thirty-day period to appeal, which was from August 5, 1975, when defendants received a copy of the decision, to September 4, 1975, and hence the decision has already become final and executory. Plaintiffs-petitioners accordingly prayed that a writ of execution be issued to enforce the judgment in their favor.

On September 23, 1975, respondent judge, without setting aside the order of default, issued an order absolving defendants from any liability on the grounds that: (a) the complaint states no cause of action because it does not allege that Dennis Pfleider was living with his parents at the time of the vehicular accident, considering that under Article 2180 of the Civil Code, the father and, in case of his death or incapacity the mother, are only responsible for the damages caused by their minor children who live in their company; and (b) that the defense of prescription is meritorious, since the complaint was filed more than four (4) years after the date of the accident, and the action to recover damages based on quasi-delict prescribes in four (4) years. Hence, the instant petition for mandamus.

The basic issue is whether the defense of prescription had been deemed waived by private respondents' failure to allege the same in their answer.

As early as *Chua Lamko v. Diosa, et al.*,^[5] this Court sustained the dismissal of a counterclaim on the ground of prescription, although such defense was not raised in the answer of the plaintiff. Thus, this Court held that where the answer does not take issue with the complaint as to dates involved in the defendant's claim of prescription, his failure to specifically plead prescription in the answer does not constitute a waiver of the defense of prescription. It was explained that the defense of prescription, even if not raised in a motion to dismiss or in the answer, is not deemed waived unless such defense raises issues of fact not appearing upon the preceding pleading.

In *Philippine National Bank v. Perez, et al.*,^[6] which was an action filed by the Philippine National Bank on March 22, 1961 for revival of a judgment rendered on December 29, 1949 against Amando Perez, Gregorio Pumuntoc and Virginia de Pumuntoc pursuant to Section 6, Rule 39 of the Rules of Court, the defendants were declared in default for their failure to file their answer. Thereupon, the plaintiff submitted its evidence, but when the case was submitted for decision, the court a quo dismissed the complaint on the ground that plaintiff's cause of action had already prescribed under Articles 1144 and 1152 of the Civil Code. The plaintiff in said case, contending that since prescription is a defense that can only be set up by defendants, the court could not *motu proprio* consider it as a basis for dismissal, moved to reconsider the order, but its motion was denied. When the issue was raised to this Court, We ruled:

"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 that in this particular instance no such defense was invoked because the defendants 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." (Italics supplied.)

Again, in *Philippine National Bank v. Pacific Commission House*,^[7] where the action sought to revive a judgment rendered by the Court of First Instance of Manila on February 3, 1953 and it was patent from the stamp appearing on the first page of the complaint that the complaint was actually filed on May 31, 1963, this Court sustained the dismissal of the complaint on the ground of prescription, although such defense was not raised in the answer, overruling the appellants' invocation of Section 2 of Rule 9 of the Rules of Court that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." We held therein that "**** 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."

In the present case, there is no issue of fact involved in connection with the question of prescription. The complaint in Civil Case No. Q-19647 alleges that the accident which caused the injuries sustained by plaintiff Annette Ferrer occurred on December 31, 1970. It is undisputed that the action for damages was only filed on January 6, 1975. Actions for damages arising from physical injuries because of a tort must be filed within four years.^[8] The four-year period begins from the day the quasi-delict is committed or the date of the accident.^[9]

WHEREFORE, the instant petition for mandamus is hereby DISMISSED, without pronouncement as to costs.

Fernando, (Chairman), Barredo, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] Annex "K", Petition, p. 37 Rollo.

[2] Annex "L", Petition, p. 39, Rollo.

[3] L-22675, March 28, 1969, 27 SCRA 766.

[4] Annex "L", supra, p. 42, Rollo.

[5] L-6923, October 31, 1955, 97 Phil. 821.

[6] L-20412, February 28, 1966, 16 SCRA 270.

[7] L-22675, March 28, 1969, 27 SCRA 766, 768-769.

[8] Article 1146, par. 2, New Civil Code.

[9] Diocesa Paulan, et al. v. Zacarias Sarabia, et al., L-10542, July 31, 1958, 104 Phil. 1050; Jamelo v. Serfino, L-26730, April 27, 1972, 44 SCRA 464.

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