

**IN THE MATTER OF THE INTESTATE ESTATE OF JUSTO PALANCA,
DECEASED, GEORGE PAY, PETITIONER-APPELLANT, VS. SEGUNDINA
CHUA VDA. DE PALANCA, OPPOSITOR-APPELLEE.***G.R. No. L-29900. June 28, 1974*

Ponente: FERNANDO, J.

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There is no difficulty attending the disposition of this appeal by petitioner on questions of law. While several points were raised, the decisive issue is whether a creditor is barred by prescription in his attempt to collect on a promissory note executed more than fifteen years earlier with the debtor sued promising to pay either upon receipt by him of his share from a certain estate or upon demand, the basis for the action being the latter alternative. The lower court held that the ten-year period of limitation of actions did apply, the note being immediately due and demandable, the creditor admitting expressly that he was relying on the wording "upon demand." On the above facts as found, and with the law being as it is, it cannot be said that its decision is infected with error. We affirm.

From the appealed decision, the following appears: "The parties in this case agreed to submit the matter for resolution on the basis of their pleadings and annexes and their respective memoranda submitted. Petitioner George Pay is a creditor of the late Justo Palanca who died in Manila on July 3, 1963. The claim of the petitioner is based on a promissory note dated January 30, 1952, whereby the late Justo Palanca and Rosa Gonzales Vda. de Carlos Palanca promised to pay George Pay the amount of P26,900.00, with interest thereon at the rate of 12% per annum. George Pay is now before this Court, asking that Segundina Chua vda. de Palanca, surviving spouse of the late Justo Palanca, he appointed as administratrix of a certain piece of property which is a residential dwelling located at 2656 Taft Avenue, Manila, covered by Tax Declaration No. 3114 in the name of Justo Palanca, assessed at P41,800.00. The idea is that once said property is brought under administration, George Pay, as creditor, can file his claim against the administratrix." [1] It then stated that the petition could not prosper as there was a refusal on the part of Segundina Chua Vda. de Palanca to be appointed as administratrix; that the property sought to be administered no longer belonged to the debtor, the late Justo Palanca; and that the rights of petitioner-creditor had already prescribed. The promissory note, dated January 30, 1962, is worded thus: "'For value received from time to time since 1947, we [jointly and severally promise to] pay to Mr. [George Pay] at his office at the China Banking Corporation the sum of [Twenty Six Thousand Nine Hundred Pesos] (P26,900.00), with interest thereon at the rate of 12% per annum upon receipt by either of the undersigned of cash payment from the Estate of the late Don Carlos Palanca or upon demand.' * * * As stated, this promissory note is signed by Rosa Gonzales Vda. de Carlos Palanca and Justo Palanca." [2] Then came this paragraph: "The Court has inquired whether any cash payment has been received by either of the signers of this promissory note from the Estate of the late Carlos Palanca. Petitioner informed that he does not insist on this provision but that petitioner is only claiming on his right under the promissory note." [3] After which, came the ruling that the wording of the promissory note being "upon demand," the obligation was immediately due. Since it was dated January 30, 1952, it was clear that more "than ten (10) years has already transpired from that time until to-date. The action,

therefore, of the creditor has definitely prescribed." [4] The result, as above noted, was the dismissal of the petition.

In an exhaustive brief prepared by Attorney Florentino B. del Rosario, petitioner did assail the correctness of the rulings of the lower court as to the effect of the refusal of the surviving spouse of the late Justo Palanca to be appointed as administratrix, as to the property sought to be administered no longer belonging to the debtor, the late Justo Palanca, and as to the rights of petitioner-creditor having already prescribed. As noted at the outset, only the question of prescription need detain us in the disposition of this appeal. Likewise, as intimated, the decision must be affirmed, considering the clear tenor of the promissory note.

From the manner in which the promissory note was executed, it would appear that petitioner was hopeful that the satisfaction of his credit could be realized either through the debtor sued receiving cash payment from the estate of the late Carlos Palanca presumptively as one of the heirs, or, as expressed therein, "upon demand." There is nothing in the record that would indicate whether or not the first alternative was fulfilled. What is undeniable is that on August 26, 1967, more than fifteen years after the execution of the promissory note on January 30, 1952, this petition was filed. The defense interposed was prescription. Its merit is rather obvious. Article 1179 of the Civil Code provides: "Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once." This used to be Article 1113 of the Spanish Civil Code of 1889. As far back as *Floriano v. Delgado*, [5] a 1908 decision, it has been applied according to its express language. The well-known Spanish commentator, Manresa, on this point, states: "Dejando, con acierto, el caracter más teórico y gráfico del acto, o sea la perfeccion de éste, se fija, para determinar el concepto de la obligacion pura, en el distintivo de esta, y que es consecuencia de aquél: la exigibilidad inmediata." [6]

The obligation being due and demandable, it would appear that the filing of the suit after fifteen years was much too late. For again, according to the Civil Code, which is based on Section 43 of Act No. 190, the prescriptive period for a written contract is that of ten years. [7] This is another instance where this Court has consistently adhered to the express language of the applicable norm. [8] There is no necessity therefore of passing upon the other two legal questions raised as to whether or not it did suffice for the petition to fail just because the surviving spouse refuses to be made administratrix, or just because the estate was left with no other property. The decision of the lower court cannot be overturned.

WHEREFORE, the lower court decision of July 24, 1968 is affirmed. Costs against George Pay.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Decision, Record on Appeal, 46-47.

[2] Ibid, 48-49.

[3] Ibid, 49.

[4] Ibid.

[5] 11 Phil. 154.

[6] VIII Manresa, *Codigo Civil Español*, Quinta edicion, 305 (1950).

[7] Article 1144 of the Civil Code provides: "The following actions must be brought within ten years from the time the right of action accrues: (1) Upon a written contract; (2) Upon an obligation created by law; (3) Upon a judgment."

[8] Cf. *Azarraga v. Rodriguez*, 9 Phil. 637 (1908); *Brillantes v. Margarejo*, 36 Phil. 202 (1917); *Agoncillo v. Javier*, 38 Phil. 424 (1918); *Sarmiento v. Javellana*, 43 Phil. 880 (1922); *Ban Kiat and Co. v. Atkins, Kroll and Co.*, 44 Phil. 4 (1922); *F. M. Yap Tico and Co. v. Lopez Vito*, 49 Phil. 61 (1926); *Parks v. Province of Tarlac*, 49 Phil. 142 (1926); *Hospicio de San Jose v. Fidelity and Surety Co.*, 52 Phil. 926 (1929); *Lutero v. Suiliong and Co.*, 54 Phil. 272 (1930); *De Borja v. De Borja*, 58 Phil. 811 (1933); *International Banking Corp. v. Yared*, 59 Phil. 72 (1933); *Barretto v. Tuason*, 59 Phil. 845 (1934); *Hijos de F. Escaño v. Nazareno*, 60 Phil. 104 (1934); *Matute v. Matute*, 62 Phil. 676 (1935); *Cunanan v. De Antepasado*, L-16169, Aug. 31, 1962, 5 SCRA 1028; *General Insurance and Surety Corp. v. Republic*, L-13873, Jan. 31, 1963, 7 SCRA 4.

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