

FAUSTINO LICHAUCO ET AL., PLAINTIFFS AND APPELLANTS, VS. RAYMUNDA SORIANO, DEFENDANT AND APPELLEE.

G.R. No. 11413. October 28, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by this appeal is whether the cause of action is prescribed.

From an examination of the record the following facts appear to be undisputed:

First. That on the 29th of November, 1889, the defendant borrowed P6,600 from Cornelia Laochangco, and promised to repay said sum in one year, without interest, in sugar, out of the crop of the year 1890, in the month of May; that said period of one year, under the conditions of the contract, might be extended for an additional year at the will of the creditor.

Second. That on the 29th of April, 1889, the defendant Raymunda Soriano executed and delivered to the said Cornelia Laochangco a mortgage upon a certain piece or parcel of land, particularly described in said mortgage, for the purpose of guaranteeing the payment of the said P6,600. (See Exhibit C, page 78, of the record.)

Third. That no part of said debt having been paid, the said Cornelia Laochangco having died, her heirs, or at least some of them, on the 2d of November, 1910, commenced an action in the Court of First Instance of the Province of Pampanga for the purpose of recovering the amount due and to foreclose said mortgage. (See page 1, record.)

Fourth. That on the 17th of November, 1910, the defendant answered the petition of the plaintiff in that cause, in which she set up a general and special defense, together with a counterclaim. In her special defense she alleged that said debt had been paid in accordance with the terms of the contract. (Exhibit C.) In her counterclaim she alleged that the plaintiffs were indebted to her in the sum of P16,107, with interest.

Fifth. That upon the issue presented by the petition and answer, the cause was brought on for trial.

Sixth. That after hearing the evidence adduced by the respective parties, the Honorable Julio Llorente, judge, on the 27th of June, 1912, rendered a judgment in which he found that the defendant was indebted to the plaintiffs in the sum of P6,600, with interest at 6 per cent from the 30th of October, 1910 (2d of November, 1910).

Seventh. That after excepting to the judgment and making a motion for a new trial, which was denied, both parties appealed to the Supreme Court. (See R. G. No. 8787.)[1]

Eighth. That by agreement both appellants presented but one bill of exceptions. Each presented separate briefs and separate assignments of error.

Ninth. The appeal was finally submitted to the Supreme Court on the 14th of July, 1914. After a consideration of the record and the assignments of error of the respective parties, the judgment of the Honorable Julio Llorente of the 27th of June, 1912, was affirmed.

Tenth. That on the 22d of January, 1915, the defendant presented a motion for a rehearing, which was amended by additional arguments on the 9th of March, 1915. By said motion for a new trial and the amended arguments in support thereof, the defendant-appellant made it appear that all of the necessary parties interested as plaintiffs had not been made parties plaintiff in the action below. Said motion further made it appear that some of the parties plaintiff in the court below, in the original action, had died before the commencement of that action.

Eleventh. That upon a consideration of said motion for a rehearing or a new trial by the Supreme Court, the same was granted and the decision theretofore rendered was declared to be without effect, and the cause was remanded to the court below for such action as the interested parties might deem advisable.

Twelfth. That the cause was duly returned to the lower court and on the 28th of April, 1915, the plaintiffs herein presented an amended petition to the original petition presented in the lower court on the 2d of November, 1910. In said amended petition all of the interested parties in the original contract of mortgage were made parties plaintiff.

Thirteenth. That on the 23d of July, 1915, the defendant answered the amended complaint by a general and special answer. In her general answer she denied each and all of the material allegations of the complaint. In her special defense she alleged that the action of the plaintiffs had been prescribed.

Fourteenth. That upon the issue presented by the amended complaint and the answer the cause was brought on for trial. The plaintiffs presented all of the proof which had been presented during the first trial and in addition thereto presented proof showing that the plaintiffs in the amended complaint were all of the parties interested in said litigation. Said proof was admitted without opposition. The only proof presented by the defendant was the complaint presented by the plaintiffs in the original action, which was marked Exhibit 1, and as Exhibit 2 the Exhibit B which had been presented by the plaintiffs in the former action.

Fifteenth. Upon the issue thus presented, and after hearing the arguments of the respective counsel, the Honorable Percy M. Moir, on the 30th of July, 1915, rendered a judgment in favor of the defendant and against the plaintiffs, absolving the defendant from all liability under the complaint, with costs against the plaintiffs.

Sixteenth. From that decision of the lower court the plaintiffs appealed to this court and made the following assignments of error:

"(a) That the lower court committed an error in declaring that the plaintiffs were without a right of action; (b) in dismissing the complaint with costs against the plaintiffs; (c) in failing to render a judgment against the defendant and in favor of the plaintiffs for the sum of P6,600, with legal interest, from the 1st of June, 1891."

Under said assignments of error, the appellants, in effect, argue but one question, to wit, that the cause of action had not been prescribed. They insist that the twenty years within which the action might have been brought, under the provisions of article 1964 of the Civil Code, have not expired. They argue that inasmuch as the contract was made on the 29th of April, 1889, and payable within a period of one year, with the right (to have that period extended for another year, at the will of the creditor, the period of prescription did not begin to run until after the lapse of two years from the date of the contract. Two years from the date of the contract (the 29th of April, 1889) would be not later than the 30th of April, 1891. That argument is based upon the theory that the contract was payable at the end of two years and that no action, therefore, could have been brought until the expiration of two full years from the date of the contract. It will be remembered that the contract was payable in one year, subject to be extended at the will of the creditor for another year. If the payment was, in fact, extended until the end of the second year, then, of course, the period of prescription did not begin to run until the end of the second year, or on or about the 30th of April, 1891. We have examined the record in vain to find any proof showing that the creditor elected to extend the time for the payment of the said debt to the end of the second year. In the absence of such

proof, may we assume that she did elect to extend the payment of the indebtedness to the end of the second year instead of at the end of the first year? We are inclined to answer that question in the negative. The mere failure to insist upon the payment at the end of the first year, of and in itself, was not necessarily an election on the part of the creditor to extend the time of payment to the end of the second year. A mere delay in the payment by the debtor is not of itself sufficient to amount to an election on the part of the creditor to extend the time of payment. There should have been an express election to extend the time of payment. The plaintiffs allege that the defendant did not pay, in the month of May, 1890, any portion of said indebtedness, nor has she paid any portion of said indebtedness since. (See paragraph 6 of complaint.) It is true, however, that the plaintiffs allege in paragraph eight of their complaint that the defendant was in default of the payment of the said indebtedness on the 1st of June, 1891. It will be remembered that the contract provided that the defendant should pay said indebtedness in the month of May, 1890; that is to say, the defendant had during the entire month of May, 1890, to pay the amount due. Therefore, that being true, no action could have been brought until the 1st of June, 1890, for a failure to comply with the terms of the contract, but if the period for the payment of said indebtedness had been in fact extended, no action could have been brought thereon until the 1st of June, 1891. In accordance with our view however, that the period of payment had not been extended for the second year, the action by the plaintiffs might have been brought upon the 1st of June, 1890. That being true the period of prescription began to run on that date. Commencing, then, with the 1st of June, 1890, and counting a period of twenty years, the last day on which the action might have been brought in accordance with said article 1964 was the 1st of June, 1910. The action was not brought until the 2d of November, 1910. The period of prescription, therefore, had barred the action in favor of the original plaintiffs. The commencement of the action on the 2d of November, 1910, stopped the running of the statute of prescription as to the plaintiffs in that action, but it is very doubtful whether it stopped the running of the statute with reference to the new plaintiffs who were added in the amended complaint which was presented on the 10th of May, 1915. As to them, however, not only is article 1964 of the Civil Code applicable, but, if we hold that the period of prescription continued to run until the presentation of the amended complaint, then, their right of action is not only barred by said article (1964) but it is also barred by virtue of the provisions of the sections prescribing a period of ten years of Act No. 190, for the reason that more than ten years had expired after the 1st of October, 1901, before the presentation of the amended complaint in which the new parties plaintiff were added.

From all of the foregoing, our conclusions may be stated as follows:

First. That inasmuch as the record does not show that the plaintiff expressly elected to give an additional year within which to pay said indebtedness, an action might have been brought upon the 1st of June, 1890.

Second. That the period of prescription began to run, therefore, from the date on which the action might have been brought, or upon the 1st of June, 1890.

Third. That inasmuch as the period of twenty years within which the action might have been brought had expired prior to the 2d of November, 1910, the action is barred by virtue of article 1964 of the Civil Code.

Fourth. That by virtue of the view which we have taken, it is not necessary to discuss the effect of the amended complaint upon the running of the period of prescription, further than to say that, inasmuch as the amended complaint was presented within a reasonable time after the cause was returned to the lower court, we are of the opinion that the running of the period of prescription having been stopped by the presentation of the complaint in November, 1910, it did not begin to run again, as to the original parties.

In view of all of the foregoing, we are of the opinion that the judgment of the lower court should be affirmed and it is so declared. Therefore, let a decree be entered affirming the judgment of the lower court, with costs against the plaintiffs. So ordered.

Arellano, C. J., Trent, and Araullo, JJ., concur.
Moreland, J., concurs in the result.
Carson, J., did not take part.

[1] December 23, 1914, not published.

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