

**FELIPE AGONCILLO, AND HIS WIFE, MARCELA MARIÑO, PLAINTIFFS
AND APPELLEES, VS. CRISANTO JAVIER, ADMINISTRATOR OF THE
ESTATE OF THE LATE ANASTASIO ALANO. FLORENCIO ALANO AND
JOSE ...**

G.R. No. 12611. August 07, 1918

Ponente: FISHER, J.

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FISHER, J.:

On the twenty-seventh day of February, 1904, Anastasio Alano, Jose Alano, and Florencio Alano executed in favor of the plaintiff, Da. Marcela Mariño, a document of the following tenor:

"We, the undersigned, Jose Alano and Florencio Alano (on our own behalf), and Anastasio Alano (on behalf of his children Leonila, Anastasio and Leocadio), the former and the latter testamentary heirs of the Bev. Anastasio C. Cruz, deceased, hereby solemnly promise under oath:

"1. We will pay to Da. Marcela Mariño within one year from this date, together with interest thereon at the rate of 12 per cent per annum, the sum of P2,730.50, Philippine currency, this being the present amount of indebtedness incurred in favor of that lady on the 20th of April, 1897, by our testator, the Rev. Anastasio C. Cruz;

"2. To secure the payment of this debt we mortgage to the said Da. Marcela Mariño the house and lot bequeathed to us by the deceased, situated in this town, on calle Evangelista, formerly Asturias, recorded in the register of deeds on the twenty-second of April, 1895, under number 730;

"3. In case of insolvency on our part, we cede by virtue of these presents the said house and lot to Da. Marcela Mariño, transferring to her all our rights to the ownership and possession of the lot; and if the said property upon appraisal at the time of vthe maturity of this obligation should not be of sufficient value to cover the total amount of this indebtedness, I, Anastasio Alano, also mortgage to the said lady my four parcels of land situated in the barrio of San Isidro, to secure the balance, if any; the title deeds of said property, as well as the title deeds of the said house and lot are this day delivered to Sr. Vicente Ilustre, general attorney-in-fact of Da. Marcela Mariño.

"In witness whereof we have signed these presents in Batangas, this twenty-seventh day of February, 1904.

(Sgd.) "Jose Alano.

(Sgd.) "Anastasio Alano.

(Sgd.) "Florencio Alano."

No part of the interest or of the principal due upon this undertaking has been paid, except the sum of P200 paid in the year 1908 by the late Anastasio Alano.

In 1912, Anastasio Alano died intestate. At the instance of one of his creditors, proceedings upon the administration of his estate were had in the Court of First Instance of Batangas. By order dated August 8, 1914, the court appointed an administrator and a committee to hear claims. Notices were published, as required, in a

newspaper of general circulation, to inform the creditors of the time and place at which they might appear to present their claims against the estate of the deceased (Exhibit No. 1). The time designated in the notice for the presentation of claims expired on March 24, 1915. It appears that no claims whatever were presented to the committee, and it having been shown to the court, by the statement of the administrator, that the claim of the creditor at whose instance the administration proceeding was commenced, had been settled by the heirs, the administrator was discharged and the proceeding terminated by order dated November 8, 1915.

On April 27, 1916, at the instance of the plaintiff, Da. Marcela Mariño, and upon the statement, made on her behalf, that she was a creditor of the deceased and that her claim was secured by mortgage upon real estate belonging to the said deceased, the court reopened the intestate proceeding, and appointed one Javier to be administrator of the estate. No request was made for a renewal of the commission of the committee on claims. The appellants Jose and Florencio Alano objected to the appointment of Javier, but their objection was overruled by the court.

On March 17, 1916, the plaintiffs filed the complaint in this action against Javier, as administrator of the estate of Anastasio Alano and against Florencio Alano and Jose Alano personally. The action is based upon the execution of the document of February 27, 1904, above set forth, which is transcribed literally in the complaint. It is averred that defendants have paid no part of the indebtedness therein acknowledged, with the exception of the P200 paid on account in 1908. It is further averred that on April 22, 1910, the debtors promised in writing that they would pay the debt in 1911, but that they had failed to do so. The prayer of the complaint is that, unless defendants pay the debt for the recovery of which the action was brought, they be required to convey to plaintiffs the house and lot described in paragraph two of the said document; that this property be appraised; and that if its value is found to be less than the amount of the debt, with the accrued interest at the stipulated rate, judgment be rendered in favor of the plaintiffs for the balance. No relief is requested with respect to the undertaking of Anastasio Alano expressed in the third paragraph of the document in suit, as guarantor for the payment of the difference, if any, between the value of the said house and lot and the total amount of the indebtedness.

The defendants answered denying generally the facts alleged in the complaint, and setting up, as special defenses that (1) any cause of action which plaintiff might have had against the estate of Anastasio Alano has been barred by failure of the plaintiff to present her claim to the committee on claims for allowance; (2) that the document upon which plaintiff relies does not constitute a valid mortgage; and (3) that as to all of the defendants, the action is barred by the general statute of limitations.

The findings of the trial court upon the evidence were substantially as follows:

1. That the document set forth in paragraph two of plaintiffs' complaint was executed by the deceased, Anastasio Alano, and by the defendants Javier and Jose Alano, as alleged;
2. That one year after the execution of the document, plaintiffs made a demand upon Anastasio Alano, deceased, and the other two defendants herein, to comply with the terms of the agreement by the execution of the conveyance of the house and lot, but that they requested an extension of time for the payment of the debt, which was granted them;
3. That on March 27, 1908, the defendants paid P200 on account of the debt.

Upon these findings the court below gave judgment for plaintiffs, and from that judgment the defendants have appealed to this court upon the law and the facts.

The question raised by the appellants require us to analyze the document upon which this action is based, and to determine its legal effect. Appellants contend that the contract evidenced by that instrument is merely a loan

coupled with an ineffectual attempt to create a mortgage to effect the payment of debt. The court below regarded it as a conveyance of the house and lot described in the contract, which took effect upon the failure of the debtors to pay the debt.

The principal undertaking evidenced by the document is, obviously, the payment of money. The attempt to create a mortgage upon the house and lot described in the second clause of the contract is, of course, invalid, as it is admitted that the so-called mortgage was never recorded. Equally inefficacious, and for the same reasons, is the purported mortgage by Anastasio Alano of his land in the barrio of San Isidro described in the third paragraph of the document. (*Compañia Qeneral de Tabacos vs. Jeanjaquet*, 12 Phil. Rep., 195.)

The agreement to convey the house and lot at an appraised valuation in the event of failure to pay the debt in money at its maturity is, however, in our opinion, perfectly valid. It is simply an undertaking that if the debt is not paid in money, it will be paid in another way. As we read the contract, the agreement is not open to the objection that the stipulation is a pacto comisorio. It is not an attempt to permit the creditor to declare a forfeiture of the security upon the failure of the debtor to pay the debt at maturity. It is simply provided that if the debt is not paid in money it shall be paid in another specific way by the transfer of property at a valuation. Of course, such an agreement, unrecorded, creates no right in rem; but as between the parties it is Tperfectly valid, and specific performance of its terms may be enforced, unless prevented by the creation of superior rights in favor of third persons.

The contract now under consideration is not susceptible of the. interpretation that the title to the house and lot in question was to be transferred to the creditor ipso facto upon the mere failure of the debtors to pay the debt at its maturity. The obligations assumed by the debtors were alternative, and they had the right to elect which they would perform (Civil Code, art. 1132). The conduct of the parties (Civil Code, art. 1782) shows that it was not their understanding that the right to discharge the obligation by the payment of money was lost to the debtors by their failure to pay the debt at its maturity. The plaintiff accepted a partial payment from Anastasio Alano in 1908, several years after the debt matured. The prayer of the complaint is that the defendants be required to execute a conveyance of the house and lot, after its appraisal, "unless the defendants pay the plaintiff the debt which is the subject of this action."

It is quite clear, therefore, that under the terms of the contract, as we read it, and as the parties themselves have interpreted it, the liability of the defendants as to the conveyance of the house and lot is subsidiary and conditional, being dependent upon their failure to pay the debt in money. It must follow, therefore, that if the action to recover the debt has prescribed, the action to compel a conveyance of the house and lot is likewise barred, as the agreement to make such conveyance was not an independent principal undertaking, but merely a subsidiary alternative pact relating to the method by which the debt might be paid.

The undertaking to pay the debt, acknowledged by the contract in suit, is indisputably conjoint (mancomunada). The concurrence of two or more debtors does not in itself create a solidary liability. Obligations in solido arise only when it is expressly stipulated that they shall have this character (Civil Code, art. 1137). That being so, the debt must be regarded as divided into as many equal parts as there are debtors, each part constituting a debt distinct from the others. (Civil Code, art. 1138.) The result of this principle is that the extinction of the debt of one of the various debtors does not necessarily affect the debts of the others.

It is contended on behalf of the administrator of the estate of Anastasio Alano that the failure of the plaintiff to present her claim for allowance to the committee on claims is a bar to her action so far as this defendant is concerned. We are of the opinion that this objection is well taken. Section 695 of the Code of Civil Procedure expressly requires that a claim of this kind be presented for allowance to the committee, and declares that the

failure to do so operates to extinguish the claim. The operation of this statute and the absolute nature of the bar which it interposes against the subsequent assertion of claims not presented in accordance with its requirements have frequently been considered by this court, and the doctrines announced need not be here repeated. (*Estate of De Dios*, 24 Phil. Rep., 573; *Santos vs. Manarang*, 27 Phil. Rep., 209). While it is true that under certain circumstances and within the statutory limits (sec. 690 of the Code of Civil Procedure) the probate court may renew the commission of the committee on claims, and permit the presentation of belated demands, in no case may a claim proper to be allowed by the committee, such as is the one now under consideration, be enforced by an original action against the executor or administrator of the estate. Our opinion is, therefore, that the objection to the action interposed on behalf of the administrator of the estate of Anastasio Alano was well taken and that the court erred in rejecting it.

This conclusion makes it unnecessary to consider the effect of the payment made by Anastasio Alano in 1908 as regards the interruption of the period of prescription with respect to him. In this connection, however, we feel constrained to remark that a careful reading of the document makes it extremely doubtful whether Anastasio Alano was ever personally bound by its terms. It will be noted that he purports to have signed it only as the representative of his children, Leonina, Anastasio, and Leocadio, who are not parties to this suit.

With respect to the defendants Florencio and Jose Alano, their original liability admits of no dispute and the only question open for consideration is that presented by their plea of prescription. The debt matured February 27, 1905, and as the complaint was not filed within ten years from that date (Code of Civil Procedure, sec. 43), it is obvious that the plea of prescription is well taken, unless the running of the statute was interrupted.

While it appears that some verbal and written demands for payment were made upon these defendants, it has been recently decided, upon mature consideration, that an extra-judicial demand is not sufficient, under the law as it now stands, to stop the running of the statute. (*Pelaez vs. Abreu*, 26 Phil. Rep., 415). There must be either (1) a partial payment, (2) a written acknowledgment or (3) a written promise to pay the debt. It is not contended that there has been any written acknowledgment or promise on the part of the defendants Jose and Florencio Alano, or either of them— plaintiff relies solely upon the payment made in 1908 by Anastasio Alano. But there is not the slightest foundation in the evidence for the belief that the payment made by Anastasio was for the benefit of Jose or Florencio or that it was authorized by either of them. Bearing in mind the express declaration of article 1138 of the Civil Code that joint (*mancomunada*) obligations are, as regards each of the debtors, to be reputed as separate debts with respect to each of the debtors, it follows of necessity that a payment or acknowledgment by one of such joint debtors will not stop the running of the period of prescription as to the others. That such is the law may be demonstrated by ample authority.

In his commentaries on articles 1138 and 1139 of the Civil Code, Manresa says that one of the effects of the rule established by the code that the debt is to be regarded as "divided into as many parts * * * as there are debtors" is that "the interruption of prescription by the claim of a creditor addressed to a single debtor or by an acknowledgment made by one of the debtors in favor of one or more of the creditors is not to be understood as prejudicial to or in favor of the other debtors or creditors." (Manresa, *Commentaries on the Civil Code*, vol. 8, p. 182.)

The same doctrine is recognized in the Italian Civil Law, as stated by Giorgi in his work on Obligations as follows:

"The obligation appears to be one, when as a matter of fact it is an aggregate of as many separate and independent obligations as there are creditors and debtors. Each creditor cannot demand more than his part; each debtor cannot be required to pay more than his share. Prescription, novation, merger, and any other cause of modification or

extinction does not extinguish or modify the obligation except with respect to the creditor or debtor affected, without extending its operation to any other part of the debt or of the credit. The obligation is, in a word, *pro rata*, or in *partes viriles*." (Giorgi on Obligations, vol. 1, p. 83, Spanish translation.)

The same view is taken by the French law writers. In the article on obligations in Dalloz' Encyclopedia (Jurisprudence Generale) vol. 33, p. 297, the author says:

"The conjoint (*pro rata*) obligation is divided by operation of law among the nonsolidary codebtors. It is as though there were many debts as there are persons bound. Hence it follows that if one of the debtors is insolvent the loss falls upon the creditor and not upon the other debtors, and that if prescription is interrupted with respect to one of the debtors, it is not interrupted with respect to the others."

In the State of Louisiana, whose Civil Code, like ours, is largely taken from the Code of Napoleon, the Supreme Court has established the same doctrine on the subject of the interruption of prescription.

In the case of *Buard vs. Lemee, Syndic* (12 Robinson's Reports, 243), the Supreme (5ourt of Louisiana said:

"It results * * * that when the acknowledgment of a debt is made by a joint debtor, such acknowledgment does not interrupt the prescription with regard to the others. Each is bound for his *virile* share of the debt; and, therefore, each is at liberty to act for himself, and the effect of his acts cannot be extended to the benefit or prejudice of his codebtors; so true is this that the law has never intended that a suit brought against one of the several debtors should interrupt prescription with regard to all, unless they be debtors in *solido*."

This doctrine was recognized and applied by the Supreme Court of Louisiana in the subsequent cases of *Succession of Cornelius Voorhies* (21 La. Ann., 659) and *Smith vs. Coon* (22 La. Ann., 445).

There is no presumption that one conjoint (*pro-rata*) debtor is authorized to perform any act having the effect of stopping the running of the statute of limitations as to the others. When the act relied upon is performed by some person other than the debtor, the burden rests upon the plaintiff to show that it was expressly authorized. (17 R. C. L., 911 and cases there cited.) In this case there is no such evidence. The statement in the letter of Da. Maria Lontok, to whom the P200 payment was made, is that it was a payment made on account of "the debt of Anastasio Alano." (Plaintiffs' Exhibit D.) Da. Maria Lontok in her testimony does not attempt to say that the payment was made for the account of any one but Anastasio Alano, from whom she received it. The statement that Florencio Alano was with Anastasio at the time is not in itself sufficient to constitute proof that the payment was made for his benefit. (*Lichauco vs. Limjuco and Gonzalo*, 19 Phil. Rep., 12.)

Plaintiff argues that the undertaking to convey the house and lot constitutes an indivisible obligation, and that even where the promise is not in *solidum*, the concurrence of two or more debtors in an obligation whose performance is indivisible creates such a relation between them that the interruption of prescription as to one of necessity interrupts it as to all. The distinction is one which is well established, although the authorities cited do not fully support plaintiffs' contentions, but in this particular case the question is academic, for the undertaking is in the alternative to pay a sum of money—an essentially divisible obligation—or to convey the house. As the alternative indivisible obligation is imposed only in the event that the debtors fail to pay the money, it is subject to a suspensive condition, and the prescription of the obligation whose nonperformance constitutes the condition effectively prevents the condition from taking place.

We are, therefore, constrained to hold with defendants and to reverse the decision of the lower court. We do this most regretfully, as the evidence in this case shows that plaintiff has been extremely lenient with defendants and has refrained from pressing her claim against them when it fell due, and for a long period of years thereafter, purely out of consideration for them. The defense of prescription interposed, particularly as regards Jose and

Florencio Alano, is as indefensible from the standpoint of fair dealing and honesty as it is unassailable from the standpoint of legal technicality. However, the law, as we see it, is clear and it is our duty to enforce it.

The judgment of the lower court is reversed and the action is dismissed as to all the defendants. No costs will be allowed. So ordered.

Torres, Johnson, Street, and Avanceña, JJ., concur.

Malcolm, J., dissents.

RESOLUTION ON MOTION FOR A RECONSIDERATION.

September. 20, 1918.

FISHER, J.:

Plaintiff seeks a reconsideration of the decision of this court rendered herein. With respect to plaintiff's contention concerning the action against the estate of Anastasio Alano, we have nothing to add to what was said in the former decision. As regards the defendants, Florencio Alano and Jose Alano, the principal argument advanced by plaintiff is that those defendants, as testamentary heirs of the late Anastasio C. Cruz, are liable, in solidwm, for the debt in suit, which is evidenced by the document signed by these defendants on February 27, 1904, set forth at length in our decision. Plaintiff argues that the obligation being solidary, by reason of its hereditary origin (*Fabie vs. Yulo*, 24 Phil. Rep., 240) the running of the statute of limitations was interrupted with respect to all the debtors, by the payment of P200 made by the late Anastasio Alano in 1908. The whole argument rests upon article 1084 of the Civil Code and the statement contained in the document of February 27, 1904, that the Alano brothers are the "testamentary heirs" of the original debtor, and the assumption that the latter died, and that his inheritance was accepted, before the present Code of Civil Procedure was enacted. There is nothing in the record to indicate, even remotely, when the Reverend Cruz died. If he died after the new Code took effect, the acceptance of his inheritance did not impose upon his testamentary heirs any personal obligation to respond to the payment of the debts of the deceased. (*Pavia vs. De la Rosa*, 8 Phil. Rep., 70.) There having been neither allegation nor proof with respect to the date of the death of the original debtor, we cannot presume, to the prejudice of the defendants, that he died and that his succession was opened under the old regime.

But even had it been proved that the late Reverend Cruz died before Act No. 190 took effect, and that the debt, by reason of its hereditary origin, imposed upon the five Alano brothers the solidary obligation of paying it, as the evidence does not show that the payment made by Anastasio Alano in 1908 was authorized by any one of the solidary debtors, it cannot have the effect of interrupting the prescription. It must be kept in mind that Anastasio Alano was in no sense a solidary debtor of the plaintiff, either with respect to the origin of the obligation or by his participation in the execution of the document by which the indebtedness was acknowledged. It is unquestionable that payment made by any one of the several solidary debtors interrupts the running of the statute of limitations with respect to the others, and that a third person may make a payment without the knowledge and even against the will of the debtor, but payments so made by a stranger to the debt do not interrupt the operation of the statute of limitations.

"The general rule is that an acknowledgment or new promise to pay must, in order to take a case out of the statute, be made by the person to be charged or by some person legally authorized by him so to act." (17 Ruling Case Law, p. 911.)

"In the case of a part payment by a stranger, or by a person not authorized to represent the debtor, it is obvious

that there is no ground for assuming any admission of an existing liability on his part or for inferring a new promise by him to pay the balance of the debt." (17 Ruling Case Law, p. 935.)

Furthermore, it is to be observed that in accordance with the express terms of article 50 of the Code of Civil Procedure, payment in order to have the effect of interrupting the running of the statute, must be made by the person to be charged.

Independently of these considerations, it is obvious that this action was not brought as though based upon an obligation which had accrued under the provisions of the Civil Code, formerly in force, relating to the acceptance of an estate without benefit of inventory. The action has been brought solely and exclusively for the enforcement of the obligation created by the execution of the document of credit of 1904. This is the reason, no doubt, why plaintiff made no effort to prove the date of the death of Reverend Cruz; whether his heirs accepted the inheritance with or without the benefit of inventory; if they were all adults at the time of the death of the testator; whether they inherited in equal parts or in some proportion. It is natural that she should have made no effort to produce evidence upon these points, as there is nothing in the allegations of the complaint to support its admission. If the defendants had replied admitting the facts alleged, it is evident that it would have been necessary to decide the case in accordance with the law in force in 1904, considering the execution of the document in question as the act from which the obligation in suit originated, although it appears from the document that the consideration for its execution was the debt of a third person.

When the plaintiff deliberately adopts a certain theory with respect to the basis of his right of action, and the case is tried and decided in the court below and in this court upon that theory, plaintiff will not be permitted to change the theory of his action upon a motion for rehearing. (*Molina vs. Somes*, 24 Phil. Rep., 49.) To do so would be to deprive the defendant of an opportunity to defend. The defendant naturally produces evidence relating to the evidence offered on behalf of plaintiff. If the issue of the liability of Florencio and Jose Alano upon the theory now advanced by plaintiff had been presented in the court below, it is possible that these defendants might have been able to prove that their testator died after the enactment of the new code or, if he died before, that they were minors at that time; that the inheritance was accepted by their guardian without the intervention of the family council (Civil Code, art. 992), or that it was expressly accepted with benefit of inventory, and that the value of the property inherited is less than the amount of the debt (Civil Code, art. 1023), or that the effect of the execution of the document of 1904 was a novation of the obligation by which the latter was converted into a simple joint indebtedness. The defendants Florencio and Jose Alano having had no opportunity to invoke any of these defenses, which might have been available to them, it would be unjust to give judgment against them upon the theory of their obligation now invoked by plaintiff. The motion for a rehearing is denied.

Torres, Johnson, Street, and Avanceña, JJ., concur.

Malcolm, J., dissents.

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