

COSMIC LUMBER COMPANY, INC., PLAINTIFF AND APPELLEE, VS. AGAPITA MANAOIS, DEFENDANT AND APPELLANT.*G.R. No. 12692. January 30, 1960*

Ponente: PADILLA, J.

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The defendant's appeal from a judgment of the Court of First Instance of Pangasinan, Fourth Branch, ordering her to pay the plaintiff the sum of P4,147.74, lawful interest thereon from 24 March 1954 when the original complaint was filed until fully paid (civil case No. 12902), was certified by the Court of Appeals to this Court for it involves only a question of law.

As agreed upon by the parties, the facts are: On different-dates from 10 November 1952 to 30 June 1953 the appellant bought, took delivery and received from the appellee hardware goods, lumber and construction materials valued at the total sum of P12,127.57 (par. 1, stipulation of facts; Exhibits A to Z; AA to OO), and from 4 November 1952 to 10 March 1954 the appellant paid the appellee the total sum of P6,979.83 which the latter credited to the former's account (par. 3, stipulation of facts; Exhibits PP, PP-1, QQ, QQ-1 to QQ-2). On 23 December 1954, after the original complaint had been filed by the appellee (24 March 1954), the appellant paid the appellee the sum of P1.000 which the latter also credited to the former's account (par. 6, stipulation of facts), thereby reducing her total indebtedness to P4,147.74.

The appellant does not deny that she received the wares and materials listed in the invoices (Exhibits A to Z and AA to OO), and that she is still indebted to the appellee in the sum of P4,147.74. At the hearing of the case on 4 June 1956, her counsel withdrew the objection (filed earlier during the day) to the items listed in some of the invoices (Minutes of the session of 4 June 1956). However, she argues that as no time for payment was stipulated or fixed and from the nature and the circumstances of the obligation it could be inferred that a period was intended, the Court should fix the period for payment pursuant to article 1197 of the new Civil Code.

The parties entered into a contract of sale on credit. In the invoices (Exhibits A to Z and A A to OO) of the wares and materials sold and delivered to the appellant, the words "credit sales" appear and it is stated that—

All civil actions on this contract shall be instituted in the courts of the City of Dagupan and it is hereby agreed that all my/our purchases from this Company are payable in the said City of Dagupan. It is agreed that if this bill is not paid within _____ () days from date hereof I/we will pay interest at the rate of 10 per centum per annum on all overdue accounts. The buyer hereby agrees to pay any and all attorney's fees and court costs should the seller institute legal action. Goods travel at buyer's risk. No claim of whatsoever nature will be considered after 24 hours from date of delivery.

The parties intended to fix a period for payment of the appellant's obligation but failed to do so. Under article 1197 of the new Civil Code, the Court may fix it. Taking into consideration that from 10 November 1952, the first sale, and 30 June 1953, the last sale, to the present, more than six and nearly seven years already have elapsed, the appellant who does not deny her obligation must be ordered to pay the appellee the amount she still owes it within

fifteen (15) days from the date the judgment shall have become final.

With the slight modification just mentioned, the judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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