

**PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS.
DIAMOND SEAFOODS CORPORATION, ROMEO V. JACINTO,
FRANCISCO YU & SHEOLIN YU, RESPONDENTS.**

G.R. NO. 142420. January 29, 2007

Ponente: GARCIA, J.

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GARCIA, J.

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court is the Decision[1] dated May 30, 1997 of the Court of Appeals (CA) in CA-G.R. CV No.45054, as reiterated in its Resolution[2] of March 15, 2000, affirming an earlier Order of the Regional Trial Court (RTC) of Manila, Branch 55, which dismissed, on ground of prescription, the complaint for a sum of money with prayer for a writ of attachment thereat commenced by the petitioner against the herein respondents.

The decision under review recites the factual backdrop as follows:

On August 19, 1981, defendant corporation [now respondent Diamond Seafoods Corporation], represented by Romeo V. Jacinto, and Francisco C. Yu, together with Sheolin M. Yu, as sureties, executed a continuing Surety Agreement in favor of the plaintiff [now petitioner] banking corporation, binding themselves, jointly and severally, to pay the plaintiff all credit accommodations, including Trust Receipts and other credit facilities as may from time to time be incurred by the said defendant, together with their interests, charges and other miscellaneous costs. On December 3, 1982, defendant corporation, through defendant Romeo V. Jacinto, executed and signed Trust Receipt No. 63725 in the sum of P78,595.99 in favor of the plaintiff, obliging itself to hold in trust certain merchandise consisting of two cases of machinery for PBCom's account. The Trust Receipt provided, among other things, that the defendant corporation shall sell the said merchandise and turn over the proceeds thereof to PBCom on or before March 3, 1983. In case of failure to sell the same, defendant undertook to return the goods on or before the same date to the plaintiff. Again, On February 14, 1983, defendant corporation, through the defendant Romeo V. Jacinto, executed Trust Receipt No. L-17572 in the amount of P85,147.00 in favor of PBCom, with the undertaking that it will hold in trust certain merchandise consisting of one (1) lot of electrical fixtures for PBCom's account under the same obligation of selling much (sic) merchandise and to turn over the proceeds thereof to PBCom on or before May 15, 1983, if sold, or to return the goods to the plaintiff on or before the said date if unsold (See Annexes "B" and "C", Complaint). Defendants defaulted to comply with any of the conditions of the aforesaid trust receipts such that as of June 15, 1983 the obligation stood at P327,844.03, minus corresponding marginal deposits which were deducted from the respective accounts. Despite demands made upon the defendant, no payment whatsoever was made on the account prompting the plaintiff to file a complaint against the defendants with the City Fiscal's Office of Manila for Violation of P.D. 115 which was dismissed on January 16, 1985 for failure to prosecute. Thus this civil complaint.

The defendant Romeo V. Jacinto filed an Answer with special and affirmative defenses, among them being that the action has already prescribed, and prayed for a hearing thereon. Such motion, and the Motion for Judgment on the Pleading, were heard on February 14, 1994 and were deemed submitted for resolution.

(Words in brackets supplied.)

In an Order[3] of February 18, 1994, the trial court, addressing the pending incidents before it, dismissed the petitioner's complaint on the ground of prescription. Explains the trial court in its order of dismissal:

From the allegations of the complaint itself, it is rather clear that this action has long prescribed. The Trust Receipts involved here were dated December 3, 1982 and February 14, 1983 (See Annexes "B" and "C," respectively). The obligation to pay and or return the goods reflected thereby became due on March 3, 1983 and May 15, 1983, per the Trust Receipts and the allegations of the complaint. The complaint was filed on July 27, 1993, or some ten (10) years and more than two (2) months after the maturity of the second trust receipt. Surely, the action has prescribed in accordance with Article 1144, par. 1, of the Civil Code, this action being based upon a written contract. The period of prescription was never interrupted from the moment the obligation became due and demandable. The filing of the complaint before the City Fiscal's Office of Manila for Violation of P.D. 115 against the defendants which resulted in its dismissal on January 16, 1985 did not arrest the running of prescriptive period. P.D. 115 is a special law punishing, among other things, the violation of trust receipts. As such, the prescriptive period for filing offenses covered thereby shall be interrupted only upon the filing of a case in court, and not otherwise (See *Luz M. Zaldivia vs. Hon. Andres R. Reyes, Jr., etc.* L-102342, July 3, 1992).

Prescinding from that fact, however, even if we grant that the filing of the complaint with the City Fiscal's Office of Manila arrested the running of the prescriptive period, this case was nevertheless filed beyond the ten year period provided by law.

While the other defendants did not raise the defense of prescription in their Answer, this Court may nevertheless dismiss this case on such ground as it appears very clearly from the very allegations of the complaint and the documents attached thereto that prescription has already set in (See *Ferrer vs. ERICTA, et al.*, L-41767, Aug. 23, 1978).

The action having prescribed, no judgment on the pleading in favor of the plaintiff may be favorably made as the action has got to be dismissed.

Therefrom, petitioner went on appeal to the CA in CA-G.R. CV No. 45054. As stated at the outset hereof, the appellate court, in the herein assailed Decision[4] of May 30, 1997, affirmed the appealed dismissal order of the court of origin saying, *inter alia*, thus:

xxx. We find that appellant [now petitioner] incorrectly invoked Article 1155 of the New Civil Code. Indeed, anent the issue of prescription, what is clearly applicable is Act No. 3326. Section 2 of said Act, which runs counter to Article 1155 of the Civil Code invoked by appellant, provides that prescription is interrupted only when judicial proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed. It goes to show that the running of the prescriptive period shall be halted on the date the case is filed in court, and not on any date prior thereto.

Considering that the prescriptive period in the case at bar is ten (10) years (Article 1144 of the Civil Code), and that the complaint below was filed on July 27, 1993, the cause of action of plaintiff-appellant has indeed long prescribed.

Ineluctably, We believe and so hold the trial court committed no reversible error in dismissing the complaint for recovery of a sum of money, on the ground of prescription. (Words in bracket supplied)

Its motion for reconsideration of the aforementioned decision having been denied by the CA in its Resolution[5] of March 15, 2000, petitioner is now with this Court via the instant recourse on its singular submission that the two (2) courts below erred "WHEN THEY [A] DISMISSED THE CIVIL COMPLAINT ON THE GROUND OF PRESCRIPTION BASED ON ACT NO. 3326 INSTEAD OF ARTICLE 1155 OF THE NEW CIVIL CODE;

AND [B] COMPUTED THE PERIOD OF PRESCRIPTION CONTRARY TO WELL-SETTLED JURISPRUDENCE.”

The petition is without merit.

Petitioner invokes Article 1155 of the Civil Code which provides:

ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgement of the debt by the debtor. (Emphasis supplied.)

Petitioner insists on the applicability of the aforequoted legal provision, particularly the underscored portion thereof, relying heavily on alleged demands it made upon the respondents, as stated in paragraph 8 of its complaint, to wit:

8. Notwithstanding demands made by PBCom upon the defendants, the latter failed and refused to pay their long overdue obligations;[6]

While the truth of the foregoing allegation is ordinarily hypothetically admitted in the resolution of the issue of prescription in a motion to dismiss, the petitioner itself prevented such hypothetical admission when it stated in paragraph 9 of the same complaint that:

9. PBCom made several attempts to get in touch with the defendants to demand payment or settle their obligations but same proved futile for reasons beyond PBCom’s control.[7] (Emphasis supplied.)

There could have been no valid and effective demand made in this case considering that the demand letters were never received by the respondents. Petitioner reaffirmed such fact of non-receipt when it expressly stated in its Appeal Brief[8] before the CA that the demand letters it sent to the respondents on July 17, 1984 were never received by the latter, to wit:

However, the plaintiff-appellant sent its demand letters on July 17, 1984, but despite several notices, defendants-appellees refused to claim the same. As a consequence thereof, some of the demand letters were returned to sender (PBCom) on August 23, 1984.[9] (Emphasis supplied.)

There can be no other factual conclusion in this case, therefore, than that there was no valid and effective extra-judicial written demand, as required by Article 1155 of the Civil Code, supra, for the petitioner’s claimed interruption of the running of the prescriptive period.

Petitioner alternatively claims that the criminal complaint it lodged against the respondents before the City Fiscal’s Office of Manila may be considered as an extra-judicial demand for purposes of Article 1155. There is, however, nothing on record which shows that the respondents were duly notified of the filing of such complaint before said office. Just like in the case of the aforementioned demand letters, the filing of the criminal complaint adverted to did not have the effect of a valid demand for purposes of Article 1155.

Besides, petitioner itself admits that said criminal complaint was dismissed by the Fiscal’s Office for failure to prosecute. Hence, no criminal action for alleged violation of the Trust Receipts Law was ever instituted in any court of law against the respondents upon which the civil aspect thereof may be said to have been deemed instituted.

From the records of the case before the Court, therefore, there was nothing that interrupted the running of the ten-year prescriptive period from the time petitioner’s cause of action accrued, with the non-payment of the civil obligations arising from the maturity of the subject trust receipts.

We disagree, however, with the ruling of the CA that the provisions of Act No. 3326,[10] as amended, instead of Article 1155, should apply. Act No. 3326, as amended, will apply only if what is in issue is the prescription of a criminal action for violation of special laws, like the Trust Receipts Law. The Act, which is a penal statute, finds no application in computing the period when a civil suit for breach of contract based on trust receipts, such as the instant case, prescribes. Petitioner is thus correct in citing Article 1155 as the pertinent law in this civil case.

The CA's error notwithstanding, the Court sustains the result of its affirmance of the trial court's dismissal of the complaint in this case because the instant civil action was indeed filed beyond the 10-year prescriptive period provided under Article 1144[11] of the Civil Code, which had not been interrupted by any action filed in court, or any written extrajudicial demand as explained above, or any written acknowledgement of the debt by herein respondents as provided in Article 1155.

WHEREFORE, the instant petition is DENIED for lack of merit.

Costs against the petitioner.

SO ORDERED.

Puno C.J., (Chairperson), Sandoval-Guitierrez, Corona and Azcuna, JJ. concur.

[1] Penned by Associate Justice Jainal D. Rasul (now ret.), with Associate Justices Godardo A. Jacinto and Demetrio G. Demetria (both now ret.), concurring. Rollo, pp. 107-114.

[2] Id. at 119.

[3] Id. at 95-97.

[4] Supra note 1.

[5] Id. at 119.

[6] Id. at 36.

[7] Id. at 36-37.

[8] Id. at 63-86.

[9] Id at 78.

[10] AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN.

[11] 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.

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