

JOHANNA H. BORROMEO, CLAIMANT AND APPELLEE, VS. EZEQUIEL ZABALLERO, SR., OPPOSITOR AND APPELLANT.

G.R. No. 14357. August 31, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal by Ezequiel Zaballero, Sr., one of the heirs of the deceased Buenaventura Zaballero, from the order of the Court of First Instance of Quezon dated December 11, 1956, in Special Proceedings No. 3578 for the settlement of the intestate estate of said deceased, in so far as it approves payment to claimant Johanna H. Borrromeo, with interest at 10% per annum from September 14, 1955, the date of the presentation of the claim, of the following promissory note signed by the deceased:

"P2,800.00

Lucena, Tayabas, P. I.

May 8, 1935

On or before the 8th of May, 1937, for value received, I promise to pay JOHANNA BORROMEO, or order, the sum of TWO THOUSAND EIGHT HUNDRED PESOS (P2,800.00) with interest thereon at the rate of ten percent (10%) per annum until paid; provided that the maker hereof may make partial payments on account of the principal at any time in sums not less than FIVE HUNDRED PESOS (P500.00); provided further that his note may be extended from time to time at the agreement of the parties.

(SGD.) Buenaventura Zaballero

Buenaventura Zaballero

Signed in the Presence of:

(Sgd.) Alfredo Bonus

(Sgd.) Emma Hofer" (Exhibit A)

Originally brought to the Court of Appeals, the appeal was certified to us for raising purely questions of law.

The reasons of the trial court for approving the claim are as follows:

"This is a claim against the testate estate of the late Buenaventura Zaballero filed by Johanna H. Borrromeo in the total amount of P3,800.00. To this claim an opposition was interposed by Ezequiel Zaballero, Sr. on the ground that the claim of P2,800 has long prescribed inasmuch as more than 10 years have already elapsed from the accrual of action, and that with respect to the promissory note for P1,000 the interest therein should begin from the time of the filing of the claim on September 14, 1955 and not from June 9, 1954 as claimed by said Johanna H. Borrromeo. The widow, Emma H. Vda. de Zaballero and the heirs of the deceased pray that said claims be approved. After considering said claims, the opposition thereto as well as the manifestation of the widow, it appearing that by the nature of the stipulation in the promissory note for P3,800, the repeated

acknowledgment of the note by the deceased and the agreed new promise, to the effect that he was going to pay the said indebtedness from the moment the properties of his father shall be divided and distributed among them, after his death, said note executed in 1935, to the mind of the Court, is not barred by the statute of limitations."

Appellant Zaballero contests the approval of the claim, and insists that action on the note in question is barred by prescription, and that neither the repeated oral acknowledgments of the debt by the deceased, nor his oral promises to pay the same, after the right of action had accrued, interrupted the period of prescription nor renewed claimant's right of action. In support of his contentions, appellant cites Section 50 of the Code of Civil Procedure, the law applicable when the note in question fell due in 1937, providing:

"Sec. 50. What Shall Renew Right of Action.—When payment has been made upon any demand founded upon contract, or a written acknowledgment thereof or a promise to pay the same has been made and signed by the party sought to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgment, or promise";

and the case of *Pelaez vs. Abreu*, 26 Phil., 415, wherein we held that under the above section, which repealed Article 1973 of the Civil Code of 1889,

"a verbal demand by the creditor does not suspend the operation of the statute, and that a verbal acknowledgment or promise to pay it is not a sufficient acknowledgment of the debt to renew the prescription period."

We find merit in the appeal. From May 8, 1937, when the promissory note for P2,800 matured, to September 14, 1955, when the claim was filed in the estate proceedings, a period of 18 years, 3 months and 25 days has elapsed. From this time should be deducted the moratorium period that interrupted the running of extractive prescription for pre-war obligations,[1] from March 10, 1945, when the second moratorium Executive Order (No. 32) was issued[2], to the lifting of the moratorium for debtors who had no war damage claims (and it does not appear that the deceased filed any) by Republic Act No. 349, enacted on July 26, 1948; that is to say, a period of three (3) years, four (4) months and sixteen (16) days. This leaves over fourteen (14) years and eleven (11) months, time more than enough to bar any action to enforce the obligation, since the prescriptive period for contracts in writing did not exceed ten years under Act 190 of the Philippine Commission (the old Code of Civil Procedure), that was the governing law when prescription started in 1937. By Article 1116 of the new Civil Code, prescription already running before the effectivity of the Code, (1950) shall be governed by the laws previously in force.

The oral promises and agreements to pay the indebtedness upon which the Court below relied, did not renew or interrupt the course of the period of limitation, since section 50 of Act 190 provided that only written acknowledgments could have that effect. This rule was derived from the American law, and, like the statute of frauds, its plain purpose was to avoid uncertainty in the determination of the periods of limitation, not leaving it dependent on the fallacies of human memory.

We are aware that the weight of American authority recognizes instances where an oral acknowledgment or a new oral promise may suffice to take the old obligation out of the operation of the statute of limitations; but, as pointed out in 135 A. L. R. 434, the adjudicated cases limit the exception to cases where such new promise or acknowledgment has for its consideration not the mere moral obligation to pay the barred debt but a new contemporaneous consideration. There was none in the case before us; the debtor assumed no new obligation, but merely promised to pay the old debt at a future time, nor did the creditor receive any value for her forbearance. Hence, the rule of section 50 of Act 190 must apply in full force.

The foregoing disposes of appellee's counter-assignment of error urging the amendment of said judgment in the

sense that interest on the note in question should be paid not only from the time the claim was presented in the intestate proceeding as held by the court a quo, but from the date of its original maturity on May 8, 1937, deducting the period covered by the Moratorium Law, considering that said note is an interest-bearing one. Besides, in asking for an award of interest in excess of that made in the judgment, appellee is actually seeking a substantial modification thereof. This she may not do, not having appealed herself from the lower court's decision (David vs. De la Gruz, 103 Phil., 380; 54 Off. Gaz., 8073; Pineda & Ampil Mfg. Co., et. al. vs. Bartolome, 95 Phil., 930; Gorospe vs. Peñaflorida, 101 Phil., 886).

Wherefore, the order appealed from in so far as it admits the promissory note of May 8, 1935 as a valid claim against the estate of the late Buenaventura Zaballero, and orders that it be paid, with the corresponding interest, is reversed, and said claim ordered dismissed. In other respects, the order is affirmed. Costs against appellee Johanna Hofer Borromeo.

Bengzon, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.
Paras, C.J., and Padilla, J., took no part.

[1] Montilla vs. Pacific Comm. Co., 98 Phil., 138; Manila Motor Go. vs. Flores, 99 Phil., 738; 52 Off. Gaz., (No. 13) 5804. [2]The first order, Executive Order No. 25, covered only occupation debts contracted after December 31, 1941, and does not apply here.

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