

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. JAIME E. NUEVAS, DEFENDANT AND APPELLANT.

G.R. No. 21255. November 29, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On April 12, 1948 a promissory note for P1,500.00 in favor of the Philippine National Bank was executed by Maximo de la Cruz, Edmundo S. Adriano and Jaime R. Nuevas. At maturity, 120 days later, it was not paid. A suit for collection was filed by the payee on April 29, 1950 in the Municipal Court of Manila, against the three makers. Said court rendered judgment on August 4, 1950, thus:

"Defendants Maximo de la Cruz and Edmundo S. Adriano are hereby declared in default. Judgment is hereby rendered for the plaintiff and against the defendants, jointly and severally, for the sum of P1,668.00 with 8% annual interest from January 4, 1950, on P1,500.00, plus 10% of the amount due as attorney's fees, and for costs."

No appeal was taken and the judgment became final. However, it was not satisfied by execution within five years. And on March 4, 1960, the Philippine National Bank filed an action against the same defendants, in the same Municipal Court, to revive the judgment.

In the revival proceedings the Municipal Court rendered judgment on February 11, 1961 in favor of plaintiff against defendant Jaime R. Nuevas. As to the other defendants, the suit was dismissed "without prejudice".

Defendant Nuevas appealed to the Court of First Instance, where plaintiff subsequently moved to set the case for hearing. Nuevas opposed the same on the ground that there could be no trial without including his co-defendants, who had not been located and served with summons. The court denied the opposition and set the case for hearing.

Whereupon Nuevas went on petition for certiorari to the Court of Appeals, in CA-G. R. No. 29779-R, questioning the power of the Court of First Instance to proceed, against him alone, with the suit to revive judgment. Said petition was dismissed by the Court of Appeals in its decision of November 17, 1961.

After trial, the Court of First Instance handed down its decision on January 31, 1963, the dispositive portion whereof states:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered against defendant Jaime R. Nuevas in the sum of P2,738.51, representing the balance of the principal and accrued interest as of December 6, 1962, with interest thereon from December 7, 1962 at the rate of 8% per annum until fully paid, plus 10% of the aforestated amount due as and for attorney's fees and the costs of the suit."

Direct appeal to this Court was taken by defendant Nuevas on the issue: Can a judgment rendered against several defendants, jointly and severally, be revived against one of them only?

Appellant, as noted, was held "jointly and severally" liable together with his co-defendants, Mariano de la Cruz

and Edmundo S. Adriano, in the judgment sought to be revived. It follows, therefore, that said judgment is totally enforceable against any of said judgment debtors. For Article 1216 of the New Civil Code provides: "The creditors may proceed against any one of the solidary debtors or some or all of them simultaneously".* * *

The fact that the present suit is for revival of judgment does not alter the rules on how to proceed against solidary debtors. The reason is that a revival suit is a new action, having for its cause of action the judgment sought to be revived (*Philippine National Bank vs. Bondoc*, L-20236, July 30, 1965). Since, as stated, the Judgment sought to be revived constituted a solidary obligation, a suit with it as the cause of action can proceed against any of the solidary debtors.

Appellant would invoke American Jurisprudence to support his view, American rulings on the matter, however, are conflicting (49 C.J.S. 993). For instance, it was held in *Richardson vs. Painter*, 80 Kan. 574, 102 P 1099, 1100, that:

"* * * In the absence of a statutory provision the rights and relations of judgment debtors are not a matter of concern to the judgment creditor. Having a judgment upon which each is severally liable for the whole, he is entitled to enforce it against either at his option. To require him to institute legal proceedings and become liable for costs and expenses for the protection of judgment debtors as against each other would take away a valuable element of the judgment, and greatly impair his rights under it. * * * As the liability of Bettie Painter was distinctly several and enforceable against her at the option of plaintiff, the judgment may be revived against her, although there can be no revivor as against her co-defendant."

Such is the better view, consistent both with the nature of a suit for revival and the obligations of solidary debtors. It is not doubted that the judgment could have been executed within five years against herein appellant alone. We see no reason why a suit to enforce it could not be brought, or revival had, against him alone.

Wherefore, the judgment appealed from is affirmed, without costs.

So ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

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