

HIJOS DE F. ESCANO, INC., PLAINTIFF AND APPELLANT, VS. FELIX NAZARENO, DEFENDANT AND APPELLEE

G. R. No. 39650. April 17, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

This is an appeal from a decision of the Court of First Instance of Cebu, the dispositive part of which, reads:

"En su consecuencia, el Juzgado absuelve al demandado de la demanda, sin expresa condena de costas."

This is an action to recover from the defendant-appellee the sum of P10,327.61.

The plaintiff is a corporation duly organized in accordance with the laws of the Philippine Islands, with its central office in Cebu, Province of Cebu, and is the successor of the partnership Viuda e Hijos de F. Escano. All of the assets of said partnership were taken over by this corporation, among which was the credit sued for in this case. From July 2, 1917, to December 31, 1922, the defendant had a current account with the partnership Viuda e Hijos de F. Escano. On December 31, 1922, this current account was closed. The plaintiff claims that upon that date there was a balance against the defendant of P10,327.61; that the latter was furnished a statement of this account; that he admitted verbally that it was correct and requested that he be allowed to pay it "little by little". The defendant denies that he was furnished with such a statement; that he promised to pay the alleged balance and contends that his account was fully settled on December 31, 1922.

Assuming the truth of the allegations of the plaintiff, the fact remains that the alleged agreement of the defendant to pay the plaintiff the sum of P10,327.61 was not in writing. Furthermore he has never made any payment on that account since December 31, 1922.

In his amended answer the defendant alleges, as one of his special defenses: "Que de todos modos, la accion entablada ya ha prescrito."

The complaint in this case was filed on October 14, 1929, nearly seven years after the account current of the defendant was closed on December 31, 1922. In his reply brief the attorney for the defendant-appellee has called the attention of this court to this defense. It is true that the judgment of the trial court is based upon other grounds and that court treated the delay in filing this complaint as weakening, to a certain extent, the contention of the plaintiff.

The attorney for the plaintiff in commenting upon this defense cites the cases of *Marella vs. Agoncillo* (44 Phil., 844) and *F. M. Yap Tico & Co. vs. Lopez Vito* (49 Phil., 61). In the first case this court held:

"CURRENT ACCOUNT; DATE OF ACCRUAL.—Where business relations existed between plaintiff and defendant, and their dealings were entered in a current account, the action to demand payment of the balance accrues only on the date when the last balance is struck, and not when those business relations terminate, for it is only on the date the last balance is struck that the final balance is known.

"Therefore, applying the rules of prescription provided by the Civil Code, we have that the plaintiffs' action to demand the payment of the P10,032.42 by Felisa Arriola accrued on July 24, 1899; and on July 18, 1913, when the original complaint was filed by the plaintiffs, the fifteen years, fixed by article 1964 of the Civil Code for the prescription of personal actions having no special period of prescription, had not elapsed, and much less had it elapsed in May of the same year, when they presented their claim to the committee on appraisal in the proceedings for the settlement of the estate of the deceased; and therefore the lower court also erred in holding said action to have prescribed under the provisions of the Civil Code." (Page 854.)

In the Yap Tico case this court held:

"RULE OF CONSTRUCTION AS TO OPEN, MUTUAL, AND CURRENT ACCOUNTS.—'Where there is a mutual, open, and current account consisting of reciprocal demands, the general rule is that the cause of action to recover the balance is deemed to accrue at the date of the last item proved, and that the statute of limitations runs from that time, so that, if the last item on either side of the account is not barred, it "draws to itself all the other items" which will become barred only when the statute has run against the last no matter how far back the account commenced. * * *' (Corpus Juris, volume 37, page 865.)"

In that case the complaint was based upon chits signed by the defendant, the last of which was dated July 30, 1918. The complaint was filed on March 26, 1925, well within the ten-year prescriptive period provided by section 43 of the Code of Civil Procedure for bringing action upon a written agreement.

In the case under consideration the judgment is in favor of the defendant-appellee. This court held in the case of *Garcia Valdez vs. Soterana Tuason* (40 Phil., 943, 951), that:

"* * * It is not incumbent on an appellee, who occupies a purely defensive position and is seeking no affirmative relief, to make assignments of error. Only an appellant is required to make such assignments. Therefore, when the case occurs, as not infrequently happens, that a trial judge decides a case in favor of one of the parties on a certain ground, it is entirely proper for this court, upon affirming the judgment, to base its decision upon some other point which may have been ignored by the trial court or in respect to which that court may have been entirely in error."

Section 43 of the Code of Civil Procedure provides that civil actions other than for the recovery of real property can only be brought within the following periods after the right of action accrues: "2. Within six years: An action upon a contract not in writing, whether such contract is expressed or implied * * *."

There is no evidence to show that the current account agreement in question was ever reduced to writing. The defendant-appellee did not agree in writing to pay the plaintiff-appellant the sum of P10,327.61. The plaintiff's action to demand payment accrued on December 31, 1922. The complaint, as stated above, was filed on October 14, 1929. The plaintiff's right of action had prescribed before this suit was brought against the defendant-appellee.

This conclusion renders it unnecessary to discuss the appellant's seventeen assignments of error.

The judgment of the trial court is affirmed with costs in this instance against the plaintiff-appellant. So ordered.

Malcolm, Villa-Real, Hull, and Imperial, JJ., concur.

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