

BENITO GONZALEZ, PLAINTIFF AND APPELLEE, VS. FLORENTINO DE JOSE, DEFENDANT AND APPELLANT.

G.R. No. 43429. October 24, 1938

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This action was instituted by the plaintiff to recover from the defendant the amount of two promissory notes worded as follows:

"I promise to pay Mr. Benito Gonzalez the sum of four hundred three pesos and fifty-five centavos (P403.55) as soon as possible.

Anterior

P71.10

474.65

Sept. 12, 1922

300.00

Balance

174.65

"Manila, June 22, 1922.

(Sgd.) "Florentino de Jose

"Quezon, Nueva Ecija"

"I promise to pay Mr. Benito Gonzalez the sum of three hundred and seventy-three pesos and thirty centavos (P373.30) as soon as possible.

"In Manila, this 13th day of September, 1922.

(Sgd.) "Florentino de Jose"

Defendant appealed from the decision of the Court of First Instance of Manila ordering him to pay the plaintiff the sum of P547.95 within thirty days from the date of notification of said decision, plus the costs.

In his answer the defendant interposed the special defenses that the complaint is uncertain inasmuch as it does not specify when the indebtedness was incurred or when it was demandable, and that, granting that the plaintiff has any cause of action, the same has prescribed in accordance with law. Resolving the defense of prescription, the trial court held that the action for the recovery of the amount of the two promissory notes has not prescribed in accordance with article 1128 of the Civil Code, which provides:

"ART. 1128. If the obligation does not specify a term, but it is to be inferred from its nature and circumstances that it was intended to grant the debtor time for its performance, the period of the term shall be fixed by the court.

"The court shall also fix the duration of the term when it has been left to the will of the debtor."

It is practically admitted by the parties that the obligations arising from the two promissory notes should be governed by said article, inasmuch as it was the intention of the plaintiff, evidenced by the terms of the said notes, to grant the debtor a period within which to pay the debts. The four errors assigned by the defendant turn on the applicability of article 1128 and on the prescription of the action brought by the plaintiff. The defendant contends that article 1113 of the Civil Code should be applied inasmuch as the obligations derived from the promissory notes were demandable from the time of their execution, and adds that even supposing that article 1128 is applicable, the action to ask the court to fix the period had already prescribed in accordance with section 43 (1) of the Code of Civil Procedure.

We hold that the two promissory notes are governed by article 1128 because under the terms thereof the plaintiff intended to grant the defendant a period within which to pay his debts. As the promissory notes do not fix this period, it is for the court to fix the same. (*Eleizegui vs. Manila Lawn Tennis Club*, 2 Phil., 309; *Barretto vs. City of Manila*, 7 Phil., 416; *Floriano vs. Delgado*, 11 Phil., 154; *Levy Hermanos vs. Paterno*, 18 Phil., 353.) The action to ask the court to fix the period has already prescribed in accordance with section 43 (1) of the Code of Civil Procedure. This period of prescription is ten years, which has already elapsed from the execution of the promissory notes until the filing of the action on June 1, 1934. The action which should be brought in accordance with article 1128 is different from the action for the recovery of the amount of the notes, although the effects of both are the same, being, like other civil actions, subject to the rules of prescription.

The action brought by the plaintiff having already prescribed, the appealed decision should be reversed and the defendant absolved from the complaint, without special pronouncement as to the costs in both instances. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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