

**C.N. HODGES, PLAINTIFF-APPELLEE, VS. FELIX S. YULO,
DEFENDANT-APPELLANT.***G.R. No. 48049. October 18, 1948*

Ponente: PARAS, J.

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As attorney-in-fact of Paz Salas and Carlota Salas, the herein defendant-appellant (Felix S. Yulo) obtained a loan from the herein plaintiff-appellee (C. N. Hodges) in the amount of P28,000.00 for which a mortgage on certain real estate owned by appellant's principals was executed in favor" of the appellee on March 27, 1926. Of said loan, the appellant applied the sum of P10,188.29 to the payment of his personal indebtedness to the appellee consisting of two promissory notes which matured on November 29, 1920, and December 7, 1920, and of the first instalment of the price of certain, property bought by the appellant from the appellee. Upon breach of the mortgage, a foreclosure Action was instituted by the appellee against Paz Salas and Carlota Salas which was in the main decided against the appellee in the Court of First Instance of Negros Occidental. Upon appeal, the Supreme Court rendered judgment on October 21, 1936, holding that the application by the appellant of the sum of P10,188.29 to his personal account was beyond his authority granted in the power of attorney executed by Paz Salas and Carlota Salas and that the latter were bound to pay to the appellee the balance that actually inured to their benefit and credit, or only P17,811.71. On April 16, 1938, the appellee brought an action against the appellant for the recovery of the aforesaid P10,188.29. After trial, the Court of First Instance of Occidental Negros sustained appellee's claim with respect to the sum of P8,188.29, applied by the appellant to his two promissory notes in favor of appellee, but disallowed the other item of P2,000.00 on the ground that the transaction to which it was applied by the appellant in partial payment was usurious; This judgment is now sought by the appellant to be reversed principally on the ground of prescription, defense also set up in, but overruled by the lower court.

Appellant contends that appellee's action had prescribed, because it was not brought within ten years from 1920, the year when appellant's two notes to which the amount of P8,188.29 was applied (Act 190, section 43), and because, even supposing that appellee's right of action was renewed on March 27, 1926, when said notes were paid out of the loan of P28,000.00 secured from the appellee on behalf of Paz Salas and Carlota Salas, said action was likewise not brought within ten years from March 27, 1926 (Act 190, section 50).

We have no hesitancy in ruling that the appellant has rightly invoked the statute of limitations, although the applicable provision is section 49 of Act 190 to the effect that "if, in an action commenced, or (attempted to be commenced, in due time, judgment for the plaintiff be reversed, or if the plaintiff fails otherwise than upon the merits, and the time limited for the commencement of such action has, at the date of such reversal or failure, expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action within one year after such date, and this provision shall apply to any claim asserted in any pleading by a defendant."

There can be little or no doubt that the appellee fell into the honest mistake of believing that when he sued Paz

Salas and Carlota Salas for the full loan of P28,000.00 covered by the mortgage signed by their attorney-in-fact (the appellant) on March 27, 1926, he was suing the right defendants. When the Supreme Court, in its decision of October 21, 1936, held that Paz and Carlota Salas were not liable for the P10,188.29 applied by the appellant to his personal account, the Court in effect ruled that, as to said item, appellee's action was directed against the wrong defendants. In other words, with respect to the amount appropriated by the appellant, the appellee failed otherwise than upon the merits." Inasmuch as on the date of the promulgation of the decision of the Supreme Court (October 21, 1936), and the presumption is that final entry of judgment had been entered ten days thereafter, the time limited for the commencement of appellee's action against appellant had expired, whether appellee's right of action be computed from 1920 (maturity date of appellant's two promissory notes which had been paid off out of the loan of P28,000.00), or from March 27, 1946 (when appellant applied the amount in question to his personal debts), the appellee, under said section 49 of Act 190, had one year from the promulgation of the final judgment within which to commence a new fraction against the right defendant, or the appellant. "It appearing, however, that the action which is the subject of this appeal, was brought on April 16, 1938, or more than one year after October 21, 1936, the same had in fact prescribed.

The present case finds analogy in *Whipple vs. Fardig et al.*, 146 Atl. 847, 849, although in the latter case the second suit was filed within the leaving period of one year. The Supreme Court of Errors of Connecticut said: "The finding presents the situation fairly for the plaintiff in the present case. It shows that he brought the first action rein the belief that the asbestos company was liable as the principal or master of the driver of the automobile. It was established by records and the testimony of officers of the company that this was not the fact. At that trial it developed for the first time who was the real owner of the car. The following day a suit was begun against that owner and her agent, the driver of the automobile. As the officer was unable to find property of one defendants upon which to make an attachment until December 28, 1927, the present action was brought that day. The plaintiff has not been guilty of laches in pressing his claim. It is quite apparent that in the first action, she plaintiff by mistake named the wrong defendant. Under General Statutes 1918, section 6172, he was entitled within one year from the conclusion of the first action to bring another against these defendants, without running counter to the statute of limitations."

It is not amiss to quote, if only to show what section 49 of Act 190 may also apply to a situation involving a wrong plaintiff, the following passage of the decision of this Court in *Lacson de Arroyo vs. Visayan General Supply Co.*, 53 Phil. 438, 435: "It is entirely clear, we think, that Lucio Echaus, once vice-president and acting general manager of the Visayan General Supply Supply Co., Inc., had no authority to represent the corporation before the committee on claims. The effect of the dissolution of a corporation is to put an end to its existence for all purposes whatsoever, and to destroy all its faculties, with the result that thereafter it cannot maintain an action in court (*Corpus Juris*, 14—A, p. 1149, sec. 3083). The not of dissolution also terminated the faculty of its officers to represent it in litigation, and can be no sort of doubt that Lucio Echaus was without personality to represent or bind the defunct corporation. The action of the committee on claims in disallowing the claim, without considering it on its merits, was therefore not improper. Nevertheless, said action on the part of Lucio Echaus was evidently done in good faith, and with a view to the protection of the legitimate interest of the corporation with which he had formerly been connected.

In other words, such sin action was an attempt on his part to commence a legal proceeding that failed otherwise than upon the merits; and if the case were one falling precisely under section 49 of one Code of Civil Procedure, the corporation would undoubtedly have had the right to begin another action within the one year allowed in said section. But said section is not of direct application here, the sense of it cannot foil, by analogy, to influence the court upon the point now to be determined."

Wherefore, the appealed judgment is reversed and the defendant-appellant absolved from one complaint. So ordered.

Feria, Pablo, Perfecto, Bengzon, and Briones, JJ., concur.

DISSENTING

TUASON, J.:

The defendant-appellant pleaded the statute of limitations, which is ten years, as a bar to the action. The plaintiff-appellee denied that the period of limitations ran against him, except from the date of the effectiveness of this Court's decision, which was promulgated on October 21, 1936. This Court, now, instead of deciding this important and practically the sole issue, reverses the trial court's decision on the ground that the one-year period provided in Section 9 of the Code of Civil Procedure had lapsed when the action was commenced.

The application of Section 49 is, in my judgment, misplaced. This section is a saving provision intended for the benefit of the creditor of the party suing. It is an extension of the basic period available to the plaintiff when the latter period has been allowed to expire due to causes specified in that section. If the running of the basic period of prescription invoked by the defendant was suspended, as the plaintiff contends and as the lower court held, then Section 49 is inoperative. Supposing the plaintiff's contention correct, the basic ten-year period started to run not earlier than the date of the promulgation of this Court's decision on October 21, 1936, and the filing of the present suit was well within that period, making resort to Section 49 absolutely unnecessary. This is the question, and under no circumstances is this Court justified in passing it up or assuming without stating its reason that the plea of limitations is well taken.

Granting for the sake of argument that section 49 may be treated, as the Court appears to have treated it, independently of any other provisions of the statute of limitations, I think it is a serious error to decide the case on the strength of that section. Section 5 of Rule 53 of the Rules of Court provides that "No error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the court, at its option, may notice plain errors not specified, and also clerical errors." If, under this section, only questions stated in the assignment of errors and properly argued in the appellant's brief, may be considered by the appellate court (*Tan Me Nio vs. Collector of Customs*, 34 Phil. 944), there is greater reason against this Court resting its decision on a point which has not even been raised by either of the parties.

Although the defendant's answer raised the question of prescription and Section 49 of the Code of Civil Procedure also deals with the same subject, yet they are two different periods counted from different dates and governed by different situations or contingencies. The shift from the former to the latter is not a mere "change of emphasis from one phase of the case as presented by one set of facts, to another phase made prominent by another set of facts"; it is a material change of theory of the case which was set out in the pleadings and has remained the theory throughout the progress of the cause in the first and the second instance. It is a violation of this Court's rules, unfair to the plaintiff, for the Court to hold that the plaintiff had only one year to bring his action commencing from the time the judgment in the other action became final, when the parties and the court below confined their argument and discussion on the longer period stipulated in the first clause of paragraph 1, or paragraph M-, of the Code of Civil Procedure, which latter period started on the date the defendant's debt was paid out of the loan. This shift perpetrates the very unfairness which the Rules of Court want to guard against in forbidding changes in theory. This Court assumes that the final entry of judgment was made fifteen days after the decision was

promulgated. This assumption is not free from mistake. If the point were in issue and the plaintiff had been given a chance to meet it granting that that was possible;; forgetting for the moment the paradox of the proposition - he might have shown that a motion or motions for reconsideration were filed which delayed the final entry of the judgment. The old record of the case has been destroyed and we have no means of verifying when such motion or motions were really filed and, if so, when they were denied.

Coming now to the main or only issue which this Court has brushed aside, the court below, to my mind, properly debarred the defendant from setting up the defense of limitations. By the defendant's own conduct he led the plaintiff to believe that the debt was paid. The plaintiff beyond doubt assumed in entire good faith that the defendant's debt had been extinguished by the liquidation. In other words, there was an honest mistake on the part of the plaintiff induced by the defendant's acquiescence if not by his positive and active assurance.

The plaintiff's mistake was not a mistake of law; it was a mistake of fact - the fact of the defendant's authority to use the loan he was to obtain, to pay off his personal obligation. The existence of such authority was not to be gathered from the terms of the power of attorney. It was purely a matter which, in the nature of things, only the defendant and the Salas sisters could know. The payment of defendant's debt out of the proceeds of the loan did not involve an interpretation of the terms of the power of attorney. The defendant's authority to dispose of, the money after he secured the loan was alien to and distinct from his authority to borrow money. If the defendant had applied the money to satisfy an obligation in favor of another creditor, or squandered it for purposes of his own, his action would not have been any different from his payment of his debt to the plaintiff. What Yulo did with the proceeds of the loan was no concern of the payee or obligee; it was the affair of the agent and his principals. The fact that the amount with which the defendant's debt was paid did not pass through his hands did not in any way erase the fundamental distinction just noted. The nature and effect of the payment would not have been altered had the total loan of P25,000.00 been handed to the defendant, and the latter, after receiving the money, had handed back to the plaintiff the amount he owed.

This is an important feature which, with all due respect to the opinion of this Court in G. R. No. 24958, seems to have been overlooked. It has an important bearing on the good faith of the parties herein. It could not have been intended in that case, and it can not be contended here, that the misappropriation, if misappropriation there was, was forced on the defendant by the plaintiff. The power of attorney did not direct the defendant to get the loan from the plaintiff, nor did it prohibit the defendant from negotiating a loan from other sources. The defendant could have gone to another money lender if he was not willing to pay his debt to Hodges out of his sisters-in-law's money or if he believed that he had no power to appropriate to his personal benefit any part of it.

As for Hodges, there is not so much as an intimation that he used any undue pressure to have Yulo get the loan from him and liquidate Yulo's indebtedness. As a matter of fact, no amount of duress could have sufficed to make Yulo yield to Hodges' demand, if it can be conceived that Hodges made any such demand. Yulo knew his legal right better than Hodges. He is said to be a lawyer at least he had finished law. Moreover, Hodges had not much reason to worry over the collection of Yulo's debt. That debt was secured by a chattel mortgage, and Hodges' money was earning a good 12% interest.

As has been said, the plaintiff's mistake, without question, was real. It could not have been otherwise. If Hodges had had any notion that the payment of the defendant's debt was invalid and did not bind the Salas sisters, it would have been foolish for him to cancel the proof of Yulo's indebtedness and release the security. That Hodges did not include Yulo in the action against Yulo's sisters-in-law is, if anything, one more proof of his belief in the authority of Yulo to use part of the loan to settle his (Yulo's) debt. The fact that Hodges was a shrewd, unscrupulous money lender, as alleged, only serves to bolster this conclusion.

On the other hand, good faith can hardly be imputed to Yulo. If the payment of his debt to Hodges out of the loan did not meet with his sisters-in-law's approval, he kept quiet about it. From the time the loan was obtained and his debt was paid, March 27, 1926, to the time the action was brought against the Salas sisters, March 27, 1934, eight years had elapsed; and from the time of the payment to the time the decision was rendered by this Court, on October 21, 1936, there was an interval of over ten years. At no time after he got the loan and liquidated his own obligation did the defendant inform Hodges that his sisters-in-law had disauthorized or repudiated his action and that he remained personally liable for the debt. He lulled Hodges into the continued false assurance, for eight years, that the settlement of his (Yulo's) debt was in order. He could not have been unaware of his sisters-in-law's attitude if the sisters had protested against and refused to sanction the use of the proceeds of the loan to his profit. It can not be said that the Salas sisters were ignorant of the misappropriation, unless the defendant deceived them as to the exact amount of the loan contracted in their behalf. If he made any concealment from his sisters-in-law, then his conduct only serves to emphasize his bad faith. The most favorable view that can be taken of the defendant's side is that he contributed to the plaintiff's mistake; and the greatest blame that can be laid on the plaintiff is that he was over-trusting and permitted himself to be outwitted or deceived by Yulo.

Whatever the case may be, the defendant should not be allowed to interpose the bar of limitations. He is the one that should be barred - by estoppel. Good conscience estops him from saying that the plaintiff should have sued him sooner than he did. He should not be allowed to say that the plaintiff should have gone after him when he himself had executed an agreement on the face of which he was no longer indebted to Hodges. In fact, Hodges had no cause of action against Yulo, at least before his sisters-in-law defaulted and were taken to court. And Hodges was entirely ignorant of the attitude of the defendant's sisters-in-law with respect to the payment of Yulo's debt with their money, because, as has been seen, Yulo concealed that attitude from his creditor.

In the light of these facts, is it fair or good law to allow Yulo to assert the statute of limitations, charging Hodges with neglect, when he himself had induced, fraudulently or through negligence, the delay?

"The prevailing rule is that the doctrine of equitable estoppel may, according to the Judicial decisions on the question, in a proper case be invoked to prevent defendant from relying on the statute of limitations, since it has been laid down as a general principle that, when a defendant electing to set up the statute of limitations has previously, by deception or any violation of duty toward plaintiff, caused him to subject his claim to the statutory bar, he must be charged with having wrongfully obtained an advantage which the court will not allow him to hold. Thus estoppel to plead limitations may arise from agreement of the parties, or from the defendant's conduct, or even from his silence when under an affirmative duty to speak" (53 C. J. S. 962-964.)

By analogy, the doctrine of laches is brought into play. Estoppel to invoke laches and estoppel to invoke the statute of limitations are founded on the same principles of reason, morals and ethics. The Philippine courts are both courts of equity and law. The following citations are then in point:

"Laches" says Mr. Justice Brown in *Gallagher vs. Cadwell*, 152 U. S. 368, 12 Sup. Ct. 873, proceed on the assumption that the party to whom they are imputed has knowledge of his rights, and ample opportunity to establish them in the proper form; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that, because of the change in condition of relation during this period of delay, it would be an injustice to the latter to permit him to assert them. In a well considered oral opinion in the case of *Halstead vs. Grimman* this court held that laches could not be imputed to one who was ignorant of his rights, and for that reason failed to assert them. This case was affirmed by the supreme court (152 U. S., 142, 14 Sup. Ct., 641), in which case the court says: 'There can be no laches in failing to assert rights of which a party is wholly ignorant, and whose existence he had no reason to apprehend * * * .' (*Lasher vs. McCreery*, 66 Fed., 834, 841.)

"As a general rule laches cannot be imputed to one who has been justifiably ignorant of the facts creating his

right or cause of action, and who therefore has failed to assert it, or as the rule is sometimes expressed, it is an essential element of laches that the party charged with it should have had knowledge or the means of knowledge of the facts creating his right or cause of action. The rule receives its most familiar application in suits for relief on the ground of fraud, where time begins to run not from the perpetration of the fraud but from the discovery thereof; mere lapse of time, however long continued, will not bar the defrauded party's right to relief while he remains ignorant of the fraud and has no knowledge of facts which would lead a reasonably prudent man to the discovery of it." (21 C. J., 244-245.)

"The doctrine of equitable estoppel may, in a proper case, be invoked to prevent defendant from relying upon the statute of limitations, it being laid down as a general principle that when a defendant, electing to set up the statute, previously by deception or any violation of duty toward plaintiff has caused him to subject his claim to the statutory bar, he must be charged with having wrongfully obtained an advantage which equity will not allow him to hold." (37 C. J. 725-726.)

"Where a defendant has, by deception or by any violation of duty towards plaintiff, caused him to subject his claim to the bar of limitations, equity will not permit him to hold the advantage thus obtained." (Clark v. Augustine, 62 N. J. Eq. 689, 51 Atl. 69.)

"A court of equity may enjoin a defendant in an action at law from using the statute of limitations fraudulently, and this even where the cause of action did not arise out of a fraudulent act, if defendant has misled plaintiff in regard to it." (Holloway vs. Appelget, 55 N. J. Eq. 583; 40 Atl. 27, 62 Am. St. Rep., 827.)

"Equity aids only the vigilant. We fully recognize this principle as being sound and just, but it must be remembered that it is qualified by another principle of equity, to the effect that the party seeking to take advantage of the maxim must be free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter." (Kentland Coal & Coke Co. vs. Elswick, 167 Ky., 593; 181 S. W., 181, 182, 183.)

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