

**LUZON SURETY COMPANY, INC., PETITIONER, VS. INTERMEDIATE APPELLATE COURT, AND EUGENIA G. PUYAT, GIL G. PUYAT, JR., ANTONIO G. PUYAT, VICENTE G. PUYAT, VICTOR G. PUYAT, JESUS-PUY...**

*G.R. No. 72645. June 30, 1987*

Ponente: GUTIERREZ, JR., J.

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**GUTIERREZ, JR., J.:**

This is a petition for review of the decision and resolution of the then Intermediate Appellate Court, now the Court of Appeals, in AC-G.R. No. 03693, which respectively dismissed the petitioner's appeal by ruling that the prescription of an action is not counted from the expiration of the five-year period within which the judgment may be enforced by a mere motion but from the finality of that judgment and denied the motion for reconsideration.

The facts of the case are not in dispute and are briefly summarized by the appellate court as follows:

"In Civil Case No. 59506 of the Court of First Instance of Manila, entitled 'Luzon Surety Co., Inc., v. Material Distributors (Phil.), Inc., et al.', judgment was rendered against the defendants, including Gil Puyat, for the principal sum of P20,000.00 with interest at the rate of 12% computed and compounded quarterly from June 25, 1958, and the further sum of P3,608.00 representing premiums and stamps. The judgment became final on April 13, 1967, but was not enforced.

"Within the prescribed period, Civil Case No. 93268 was instituted to revive the judgment in Civil Case No. 59506. On May 24, 1974, judgment was rendered therein of which the following is the dispositive portion:

"'WHEREFORE, judgment is hereby rendered ordering the defendants, jointly and severally, to pay the plaintiff the sum of P20,000.00, with interest at the rate of 12% per annum, computed and compounded quarterly, from June 25, 1958 until fully paid; plus the further sum of P3,608.00, representing unpaid premiums and stamps on the surety bond, with interest at the legal rate from the date of the filing of the complaint in Civil Case No. 59506 on January 11, 1965 until full payment; and the costs of suit in both instances. On the crossclaim, cross-defendants Material Distributors (Phil.), Inc., and Lope Sarreal are hereby ordered to reimburse the defendant and cross-claimant Gil J. Puyat for whatever sums the latter may be held liable or compelled to pay the plaintiffs.' (pp. 29-30, Annex "J", Original Record on Appeal)."

"On March 28, 1981 Gil Puyat died. On September 1, 1982, a claim against the estate of Gil Puyat was filed in Sp. Proc. No. Q-32291 of the Court of First Instance of Rizal, Branch XVIII, in Quezon City, for the principal sum of P178,507.76, including interests, unpaid premiums and stamps, and attorney's fees and costs of suits, as of June 25, 1982.

"The Administrators oppose the claim for the reason that it is unenforceable and barred by laches for no steps were taken by the claimant to secure a writ of execution against defendant Gil Puyat during his lifetime to enforce the judgment in Civil Case No. 59506 or Civil Case No. 93268.

"On November 8, 1983, the Regional Trial Court of Quezon City, Branch LXXXVIII, promulgated its judgment dismissing the case." (pp. 25-26, Rollo).

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Upon appeal by the petitioner, the then Intermediate Appellate Court affirmed the lower court's decision and dismissed the appeal. The appellate court quoted with approval the following findings and conclusions of the lower court, to wit:

"After a thorough evaluation of the record, We can add nothing to what His Honor, the trial judge, has stated in the decision appealed from which We hereby give Our wholehearted imprimatur:

"The Court is of the view that the claim cannot be sustained and must be dismissed. Judgments may be executed on motion within five years from the day it becomes final and executory; after the lapse of such date and before its barred by the statute, judgments may be enforced by action. (Sec. 6, Rule 39, Rules of Court.) The prescriptive period for enforcement of judgments is ten years. (Art. 1144, Civil Code).

"The Court is of the view that the judgment-creditor is only entitled to revive the judgment only once. After the expiration of five years from the date a judgment has become final the judgment is reduced to a mere right of action in favor of the prevailing party. The period of ten years should be computed not from the finality of the judgment in Civil Case 93268 but rather of Civil Case 59506 which became final on April 13, 1967. This judgment would have prescribed on April 30, 1977. However, this judgment was revived by the decision of the Court of First Instance in Civil Case 93268. This latter decision only suspended the running of the second five years contemplated in Sec. 6, Rule 39. The only effect of the filing of Civil Case 93268 was to suspend the running of the statute of limitation for the enforcement of judgment. Therefore, from the time that the judgment in Civil Case 93268 became final and executory the claimant had only five years to enforce that judgment by motion. When this claim was filed on September 1, 1982, more than seventeen years had elapsed from the time judgment in Civil Case 59506 became final and more than five years after the finality of its revived judgment in Civil Case 93268. Clearly, the right of claimant to satisfy the original judgment had long prescribed).

"This Court has held in *Talbo, et al., v. Laprodes, et al.*, 70 O.G. No. 39, September 30, 1974, citing *Philippine National Bank v. Deloso, et al.*, G. R. No. L-28201, March 30, 1970, 32 SCRA 266, that the prescription of an action is not counted from the expiration of the five-year period within which the judgment may be enforced by a mere motion but from the finality of that judgment." (pp. 27-28, Rollo).

The petitioner takes exception to these conclusions of the appellate court. It opines that the period of ten (10) years prescribed in the statute of limitations should be counted not from the date of the finality of the original judgment but from the date of the finality of the revived judgment. Therefore, the petitioner states that its action to claim under the revived judgment in Civil Case No. 93268, filed on September 1, 1982, was well within the ten-year prescriptive period, this revived judgment having attained its finality in 1974.

The crux of the controversy lies in the interpretation of Article 1144(3) of the New Civil Code in relation to Section 6 of Rule 39 of the Rules of Court. Article 1144(3) provides:

"Art. 1144. The following actions must be brought within ten years from the time the right of action accrues.

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"3. Upon judgment."

while section 6 of Rule 39 of the Rules of Court provides:

"Sec. 6. Execution of motion or by independent action. A judgment may be executed on motion within five (5)

years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

The petitioner citing the case of *Philippine National Bank v. Bondoc* (14 SCRA 770), maintains that the ten-year prescriptive period provided for in Article 1144(3) commences to run only from the finality of the revived judgment. In this case, the Court stated:

"Appellee's theory relates the period of prescription to the date the original judgment became final. Such a stand is inconsistent with the accepted view that a judgment reviving a previous one is a new and different judgment. The inconsistency becomes clearer when we consider that the causes of action in the three cases are different. In the original case, the action was premised on the unpaid promissory note signed by Joaquin Bondoc in favor of the Philippine National Bank; in the second case, the Philippine National Bank's cause of action was the judgment rendered in Civil Case No. 8040; and in the present case, the basis is the judgment rendered in Civil Case No. 30663. Parenthetically, even the amounts involved are different.

"The source of Section 6 aforecited is Section 447 of the Code of Civil Procedure which in turn was derived from the Code of Civil Procedure of California. The rule followed in California in this regard is that a proceeding by separate ordinary action to revive a judgment is a new action rather than a continuation of the old, and results in a new judgment constituting a new cause of action, upon which a new period of limitations begins to run. (*Thomas v. Lally*, 28 Cal. App. 308, 152 P. 53, 54' *Palace Hotel Co., v. Crist*, 6 Cal. App. 2d. 690, 45 P. 2d 415).

"The judgment in Civil Case No. 30663, which provided the cause of action in the case at bar, was rendered on February 20, 1957 and became final in the same year. Pursuant to Article 1144(3) of the New Civil Code the action upon such judgment must be brought within ten years from 1957 or until 1967. The instant case instituted in the court a quo on June 7, 1962 is well within the prescriptive period." (at pp. 772-773).

In the later case of *Philippine National Bank v. Deloso* (32 SCRA 266), however, we practically abandoned the ruling in *Philippine National Bank v. Bondoc*, *supra*, when we said that:

"The other question raised by plaintiff-appellant was squarely ruled upon by this Court in *Gutierrez Hermanos v. De La Riva*, 46 Phil., 827 (1923), where it held that the ten-year prescriptive period commences to run from the date of finality of the judgment and not from the expiration of five (5) years thereafter. Three reasons were there advanced, to wit: (1) Section 447 of the Code of Civil Procedure (which is similar to the last sentence of Section 6, Rule 39 of the Revised Rules of Court) should be construed in relation to Section 43, No. 1, of the said Code (which is similar to Article 1144 of the Civil Code); and as thus construed, 'the conclusion one arrives at is that after the expiration of the five years within which execution can be issued upon a judgment, the winning party can revive it only in the manner therein provided so long as the period of ten years does not expire from the date of said judgment, according to section 43, No. 1, of the same Code.' (2) The right of the winning party to enforce the judgment against the defeated party 'begins to exist the moment the judgment is final; and this right, according to our Code of Procedure, consists in having an execution of the judgment issued during the first five years next following, and in commencing after that period the proceeding provided in section 447 to revive it, and this latter remedy can be pursued only before the judgment prescribes, that is to say, during the five years next following. It is so much an action to ask for an execution as it is to file a complaint for reviving it, because, as we know, by action is meant the legal demand of the right or rights one may have.' (3) If it is held that the winning party has still ten (10) years within which to revive the judgment after the expiration of five (5) years, then the judgment would not prescribed until after fifteen (15) years, which is against No. 1 of section 43 of the Code of Civil Procedure. '[a]nd it cannot be said that such is the letter, and much less, the intention of the law, for there is nothing in section 447 of the said Code, making this new period different from the one prescribed in said section 43, No. 1, or reconciling these two provisions, there being no other way of reconciling them than to say that after the expiration of the first five years next following the judgment, there remain to the victorious party only another five years to review it.' The doctrine

in Gutierrez Hermanos has tacitly, yet consistently, been adhered to by this Court (Cf. *Asociacion Cooperativa de Credito Agricola de Miagao v. Monteclaro, et al.*, 74 Phil., 281 [1943]; *Philippine National Bank v. Silo*, G.R. No. L-3498, March 19, 1951; *Ansaldo v. Fidelity and Surety Co.*, G.R. No. L-2378, April 27, 1951; *Carrasozo v. Fuentebella*, G.R. No. L-5888, April 22, 1953; *Miciano v. Watiwat, et al.*, G.R. No. L-8769, November 21, 1957; *Lazaro, et al. v. Gomez, et al.*, G.R. Nos. L-12664-65, September 30, 1960; *Potenciano v. Gruenberg, et al.*, G.R. No. L-16956, February 27, 1962; *Philippine National Bank v. Monroy*, G. R. No. L-19374, June 30, 1964; x x x; so that it is now settled that the ten-year period within which an action for revival of a judgment should be brought, commences to run from the date of finality of the judgment, and not from the expiration of the five-year period within which the judgment may be enforced by mere motion (Art. 1152, Civil Code). (at pp. 270-272; Underlining supplied).

The petitioner's argument that the case of *Philippine National Bank v. Deloso*, supra, is not applicable to the instant case deserves scant consideration. From the context of both decisions in the cases of *Philippine National Bank v. Bondoc* and *Philippine National Bank v. Deloso*, it is clearly seen that the same issue was raised. This is whether the ten-year prescriptive period to file an action to enforce a judgment pursuant to Article 1144(3) of the New Civil Code commences to run from the finality of the original judgment or from the revived judgment. Under the later case of *Philippine National Bank v. Deloso*, the 10-year prescriptive period must commence from the finality of the original judgment.

The decision in Civil Case No. 59506 became final and executory on April 13, 1967. The judgment was not enforced. The petitioner instituted Civil Case No. 93268 within the prescriptive period to revive the judgment in Civil Case No. 59506. The revived judgment was rendered on May 24, 1974. This judgment became final and executory sometime in 1974. Again, this was not enforced. On September 1, 1982, the petitioner filed a claim in Special Proceedings No. Q-32291 before the then Court of First Instance of Rizal. What is sought is a second revival of the judgment that had become final in 1967. This can no longer be done due to the lapse of the allowable period.

The decision in *Philippine National Bank v. Deloso*, supra, is the later and better interpretation of the law. We apply it to the instant case. We find that the right of the petitioner to enforce the judgment against Gil Puyat, an accommodation party and a defendant in Civil Case Nos. 59506 and 93268, filed on September 1, 1982 had already prescribed considering that more than ten (10) years had already elapsed from the finality of the original judgment on April 13, 1967.

The failure of the private respondents to raise prescription in their "Comment to Claim" does not imply the waiver of such defense. In the instant case, there is no new issue of fact that arises in connection with the question of prescription. All the pertinent dates showing that the petitioner's enforcement of the judgment under Civil Case No. 93268 has already prescribed can be found in the petitioner's allegations in the "claim" as well as its evidence filed in Special Proceedings No. Q-32291. This removes the case from the general rule that prescription if not pleaded in the answer is deemed waived (*Ferrer v. Ericta*, 84 SCRA 706; and *Garcia v. Mathis*, 100 SCRA 250).

Considering these findings, we find no need to discuss the other issues raised by the petitioner.

WHEREFORE, the instant petition is hereby DISMISSED. The questioned decision of the then Intermediate Appellate Court, now the Court of Appeals, is AFFIRMED. Costs against the petitioner.

**SO ORDERED.**

Fernan, (Chairman), Paras, Padilla, and Cortes, JJ., concur.

Bidin, J., no part.

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