

PROCESA PELAEZ, PLAINTIFF AND APPELLEE, VS. FLAVIANO ABREU, DEFENDANT AND APPELLANT.*G.R. No. 8021. December 29, 1913*

Ponente: TRENT, J.

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This is an appeal by the defendant from a judgment in favor of the plaintiff for the sum of P863.81 and denying him affirmative relief. Plaintiff sold to the defendant under pacto de retro a house and lot for P14,000. The contract stipulated that she should continue to occupy the house as a tenant at a rental of P140 per month. She was also to pay taxes, premiums on the insurance policy, for necessary repairs, etc. The property was sold on August 23, 1901, and was redeemed by the plaintiff on December 16, 1902, a period of 15 23/30 months. It appears that the plaintiff, although she occupied the property, paid no rent during this period, and that defendant paid the taxes for the year 1901, amounting to P186.19, and the premium on the insurance policy, amounting to P100. The rent due the defendant at the time the property was redeemed would amount to P2,207.33. It was orally agreed after the date of the sale that the defendant should rent part of the premises to other persons and collect the rents therefor, such collections to be applied on the redemption price. The defendant collected P1,150 in this manner. On December 16, 1902, when the property was redeemed, the plaintiff paid to the defendant the sum of P16,500. The court found that this sum was made up of P14,000, the actual redemption price, and P2,500 for rent. The court found that the plaintiff had overpaid the defendant for rent the sum of P260 (in reality, however, P292.67), but that according to plaintiff's own statement she did not believe that the account presented to her by the defendant a few days before the date of the redemption of the property, was correct. Further, that she was of the opinion that the defendant was entitled to only P14,216.24. Notwithstanding these facts, she paid the account as set forth by defendant. It was held, therefore, that the plaintiff was not laboring under any mistake of fact in paying the P16,500 in settlement with the defendant; and applying articles 1985 and 1900 of the Civil Code, and citing 12 Manresa, 275, the court held that she was not entitled to consideration in the matter of the excess payment of rent. Neither party appealed from this portion of the judgment of the lower court, and it is not therefore before us.

The case presented to this court relates to the oral agreement made by the parties subsequent to the written contract of sale with pacto de retro, whereby the defendant was allowed to lease part of the premises to other persons and collect the rent therefrom, such collections to be applied to the redemption of the property. The court found that no part of these collections was credited to the plaintiff when she redeemed the property. The amount of the judgment in favor of the plaintiff is made up in the following manner:

Rent collected by the defendant which should have been applied to the redemption price.....

P1,150.00

Premium on insurance policy, paid by defendant.....

P100.00

Taxes for 1901, paid by defendant.....

P186.19

286.19

Balance in favor of the plaintiff.....

863.81

Counsel for the defendant and appellant first insists that the lower court erred in overruling the demurrer to the complaint because the complaint showed on its face that prescription of the right of action had occurred. Upon this point it is sufficient to say that the settled practice in this jurisdiction is that the question of prescription cannot be raised by demurrer, but must be pleaded. (*Domingo vs. Osorio*, 7 Phil. Rep., 405; *Marzon vs. Udujan*, 20 Phil. Rep., 232.) The defense of prescription was duly raised by the answer.

The next assigned error is to the effect that the court should have held that the right of action had prescribed. the written contract did not include the express stipulation that the defendant should have the privilege of leasing a portion of the premises to other persons and applying the income thereby obtained to the redemption price, nor can such a privilege be inferred from the language of the contract. The oral agreement was therefore a new and independent contract, entirely distinct from the former, written contract, and no part of it. It was an oral contract as distinguished from the written contract by which the house was sold and rent was collected from the plaintiff.

Section 43 of the Code of Civil Procedure reads:

"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 express or implied, and an action upon a liability created by statute other than a forfeiture or penalty."

The present action falls within paragraph 2 of section 43.

That plaintiff's right of action accrued at least on December 16, 1902, is conceded. She brought this action on November 15, 1909. The court found as a fact that a verbal demand had been made upon the defendant for the settlement of her claim against him in the latter part of 1905 or the first part of 1906.

Article 1973 of the Civil Code reads: "Prescription of actions is interrupted by their institution before the courts, by extrajudicial claim of the creditor, and by any act of acknowledgment of the debt by the debtor."

The court held that this article was in force and applicable to the case, and that therefore her verbal demand in 1905 or 1906 had renewed her right of action for another period of six years in accordance with section 43, *supra*.

Section 50 of the Code of Civil Procedure reads:

"What shall renew right of action.—When payment has been made upon any demand founded upon contract, or a written acknowledgment thereof or a promise to pay the same has been made and signed by the party sought to be charged, an action may be brought thereon within the time herein limited, after such payment,

acknowledgment, or promise."

It was insisted by the defendant that section 50 has repealed article 1973, and that therefore the verbal demand addressed to him in 1905 or 1906 was not sufficient to interrupt the running of the prescription period. In deciding adversely to this contention, the lower court held that section 50 can only renew the right of action, and that therefore it cannot apply until after the prescription period has expired. Further, that it did not provide for the interruption of the prescription period by the institution of an action, and that payment as provided for in the said section does not cause the interruption of the prescription period but extinguishes the obligation entirely. To this last objection it is sufficient to say that "payment" as used in section 50 refers to a partial payment and not to full or final payment.

It is incorrect to conclude that the efficacy of section 50 depends upon the expiration of the time within which the action could originally have been brought under the statute. When the debtor has performed any of the acts mentioned in section 50, an action may be brought "within the time herein limited." The quoted phrase refers to the time specified by the various sections of Chapter III, devoted exclusively to the limitation of actions. The section does not state that these acts of the debtor must occur subsequent to the expiration of the original period of prescription. In short, it specifies no time within which these acts of the debtor must occur. It simply says that whenever the debtor has performed any of them, an action may be brought within the time "herein limited." In other words, any one of these acts on the part of the debtor will cause the period to commence to run from the date upon which they were performed in the same manner and for the same length of time as though the right of action had originally accrued on that date. We can do no better than to quote from Wood on Limitations (3d ed.), section 64:

"The statute of James, which is the foundation of all of our statutes of limitations, and which is virtually in force in several of the States, and practically in all of them with some exceptions, contained no exception in case of acknowledgments of indebtedness by the debtor, yet at an early day such an exception was read into the statute by the judges, and there is no instance of judicial legislation that is better sustained by both reason and justice than this. The true reason for these exceptions is that the reason for a statutory bar utterly fails when a debtor from time to time admits the existence and justice of the debt, and the courts, without intending to thwart, but rather to give effect to, the true intention of the statutes, began at an early day to hold that where a debtor expressly promises to pay a pre-existing debt, or acknowledges its existence under such circumstances that a promise to pay it can be implied, the statute is suspended up to that date, and begins to run anew from the date of such new promise or acknowledgment. In other words, that under the circumstances named the debt is revived and put on foot for a new period of life, coextensive with the statutory provision."

While it may be true that, strictly speaking, section 50 "interrupts" the running of the statute if the incidents which it specifies occur before the expiration of the original limitation, and "renews" the period of limitation when such incidents occur after the expiration of the original limitation, in either case the time within which the action may be brought is extended over a period of the same length as the original grant, computed from the date such incidents occur. This is the important point, and not whether the statute of limitations is interrupted or renewed by it.

It is true that section 50 does not provide that the institution of legal proceedings by the creditor shall interrupt or renew the running of the prescription period, while article 1973 of the Civil Code does so provide. But section 50 does not require that the action must be terminated within the period specified. It will be noted that the phrase used in section 39 is, "civil actions can only be commenced within * * *," while in sections 40, 42, 43, and 44, the word "brought" is used. If it were true that the bringing of an action did not interrupt the statute, the plaintiff's claim would be barred unless final judgment had been pronounced before the expiration of the period, and it would often follow that a court having jurisdiction over an action at its inception would lose it during the time the

case was pending. It would be most difficult for the plaintiff to determine whether it were advisable for him to bring the action because he could not certainly ascertain whether there was sufficient time left to complete it. Practically, this would shorten the time allowed claimants for securing judicial redress to an indefinite extent. It would offer a strong inducement to the defendant to adopt dilatory tactics which would otherwise be of no benefit to him. It cannot be presumed that the Legislature intended the section to produce any such confusion and uncertainty. What Chapter III of the Code of Civil Procedure really provides is that a claim is not barred by its provisions until the specified number of years after the right of action accrues has elapsed. It interposes a definite period, which can not be varied by either party or by the court, between the origin and the extinguishment of defendant's liability. But it is a rule so well known as to require no comment that under the statute of James and its descendants, the institution of an action at once stops the running of the prescription period. So that the effect of instituting an action under section 50 is the same as the institution of an action under article 1973; i e., it interrupts or suspends the operation of the statute and allows the creditor to prosecute his claim judicially and secure final judgment in the matter, even though this is rendered subsequent to the expiration of the prescription period. The argument, therefore, that section 50 does not provide for the interruption of the running of the statute by the institution of legal proceedings is without foundation.

The real differences between section 50 and article 1973 are: (1) Article 1973 provides that prescription is interrupted by an extrajudicial claim of the creditor, while section 50 does not; and (2) that article 1973 permits the interruption of the prescription period by any act of acknowledgment of the debt by the debtor, while section 50 restricts such acts to (a) a payment on the debt, or (b) a written acknowledgment of it, or (c) a written promise to pay signed by the debtor. It is clear, therefore, that under section 50, a verbal demand by the creditor does not suspend the operation of the statute, and that a verbal acknowledgment or promise to pay is not a sufficient acknowledgment of the debt to renew the prescription period.

Article 1973 not only includes all of the causes which, under section 50, will renew the right of action, but also provides that many other possible acts of lesser import on the part of the debtor will produce this result.

Section 39 of the Code of Civil Procedure reads: "Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action accrues; but where a different limitation is prescribed by this code, that shall govern."

It is evident that according to this article, the different periods of prescription applicable to the various civil actions must be found in the Code of Civil Procedure. Those articles of the Civil Code (arts. 1961 to 1968, inclusive) which deal with this subject are therefore repealed, and if article 1973, which is intended to mitigate the rigorosity of prescription when certain circumstances exist, is to have any effect, it must be held applicable to the said provisions of the Code of Civil Procedure. As section 50 of that code serves the same purpose, we would then have two provisions of law applicable on this point.

It seems clear that Chapter III of the Code of Civil Procedure was intended by the Legislature to constitute the complete law on the subject of prescription of civil actions, except, possibly, in certain special cases. We have been furnished with no valid reason, nor can we conceive of any, for applying the supplementary provisions of the Civil Code on this subject to the law as set forth in the Code of Civil Procedure. Nor, had it been the intention that article 1973 should apply to the provisions of the last named code, would it have been necessary to enact section 50, since as shown above, all of this section and something more is included within article 1973.

The increased rigorosity of the law of prescription resulting from the repeal of article 1973 and the enactment in its stead of section 50 was a matter of legislative concern. That section was taken from the Code of Ohio (sec. 4992), and similar provisions are found in some other jurisdictions. (*Frellsen & Stevenson vs. Gantt*, 25 La. Ann.,

476; *Pierce vs. Seymour*, 52 Wis., 272; *George W. Helm Co. vs. Griffin*, 112 N. C., 356; *Pollack vs. Billing*, 131 Ala., 519, 32 S., 639.)

We therefore hold that article 1973 of the Civil Code is no longer in effect, and that section 50 of the Code of Civil Procedure contains the law applicable to the present case. A verbal demand on the debtor not being sufficient, under section 50, to renew the prescription period, it follows that the time within which the present action could have been brought expired by operation of law, prior to the institution of this action. It is therefore barred by section 43, quoted *supra*.

The judgment of the lower court is reversed and the defendant absolved from the demand. In so far as that judgment absolves the plaintiff from the demand for affirmative relief, it is affirmed upon the facts as found by the trial court. No costs will be allowed in this instance.

Torres, Johnson, and Carson, JJ., concur.

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