



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**REGINA Q. ALBA, JOINED BY
HER HUSBAND, RUDOLFO D.
ALBA,**

Petitioners,

-versus-

**NIDA AROLLADO,* JOINED BY
HER HUSBAND, PEDRO
AROLLADO, JR.,**

Respondents.

G.R. No. 237140

Present:

PERALTA, *CJ.*, Chairperson,
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, and
GAERLAN, *JJ.*

Promulgated:

OCT 05 2020

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R E S O L U T I O N

LOPEZ, J.:

The reckoning date of the prescriptive period for actions based upon an oral contract is the core issue in this Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court seeking to set aside the Decision² dated September 8, 2017 and Resolution³ dated January 22, 2018 of the Court of Appeals (CA) – Cebu City in CA-G.R. CEB CV No. 05317 which dismissed the complaint for sum of money filed by Regina Q. Alba (Regina) against Nida Arollado (Nida) on the ground of prescription.

ANTECEDENTS

Regina is the sole proprietor of Libra Fishing engaged in selling crude oil, petroleum products and related merchandise.⁴ On various dates

* Nina Arollado in the Petition for Review on *Certiorari*.

¹ *Rollo*, pp. 9-21.

² *Id.* at 114-124; penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justices Marilyn B. Lagura-Yap and Geraldine C. Fiel-Macaraig.

³ *Id.* at 131-132.

⁴ *Id.* at 77.

beginning 2000,⁵ Nida purchased on credit from Libra Fishing crude oil and other petroleum products. As payment for the July 26, 2000, November 12, 2000, and November 27, 2000 purchases, Nida issued three checks⁶ which were dishonored by the drawee banks. On May 15, 2013, Regina demanded payment for the outstanding balance⁷ but Nida failed to heed the demand. Thus, on June 4, 2013, Regina⁸ filed a complaint⁹ for sum of money against Nida.¹⁰

In her answer,¹¹ Nida admitted that she issued the three dishonored checks but claimed that she already settled the amounts through installment payments. She averred that she religiously paid her obligations to Regina and denied any outstanding liability. Granting there are still unpaid amounts, Regina's right to collect had already prescribed since the transaction took place more than 10 years ago.

On August 18, 2014, the Regional Trial Court (RTC) granted Regina's claim but limited the liability of Nida to the value of the dishonored checks, *viz.*:¹²

WHEREFORE, judgment is rendered in favor of plaintiffs and against defendants ordering the latter to jointly and severally pay plaintiffs ₱170,260.50 representing [the] total amount of the checks issued by defendant(s) to plaintiffs that were dishonored by the drawee banks.

Defendants are further ordered to pay jointly and severally plaintiffs ₱20,000.00 attorney's fees and litigation expenses, and, the costs of this suit.

The counterclaim and all other claims in connection herewith are ordered dismissed.

SO ORDERED.¹³ (Emphases in the original.)

⁵ See *id.* at 115. Nida purchased petroleum products on the following dates:

Date	Amount
August 22, 2000	P616,169.78
July 26, 2000	P60,000.00
November 12, 2000	P44,092.00
November 27, 2000	P66,168.50
November 29, 2002	P156,662.00
December 21, 2002	P150,996.00

⁶ *Id.* Nida issued the following checks:

Bank Name	Check Number	Amount	Date
Chinabank	A0156896	P60,000.00	July 26, 2000
Maybank	0001386418	P44,092.00	November 12, 2002*
Maybank	0001386598	P66,168.50	November 27, 2002**

**Id.* at 37, 38, 116.

***Id.* at 36, 38, 116.

⁷ *Id.* at 38.

⁸ Regina was joined by her husband, Rudolfo D. Alba, as nominal co-plaintiff; *id.* at 27.

⁹ *Id.* at 27-32.

¹⁰ Nida's husband, Pedro Arollado, Jr., was impleaded as her co-defendant; *id.* at 27.

¹¹ *Id.* at 39-46.

¹² *Id.* at 77-85; penned by Judge Delano F. Villarruz.

¹³ *Id.* at 85.

Feeling aggrieved, Nida appealed to the CA. On September 8, 2017, the CA rendered its Decision¹⁴ finding the action had already prescribed. The CA noted that the parties entered into a verbal contract for Regina to sell the petroleum products to Nida on credit. Thus, Regina had six years to recover the amount owed by Nida, computed from the date of dishonor of the checks or at most until April 4, 2009. Since the complaint was filed only on June 4, 2013, Regina's action had already prescribed, thus:

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 18, 2014 of the Regional Trial Court, Branch 16, Roxas City, Capiz in Civil Case No. V-27-13 is hereby **REVERSED** and **SET ASIDE**. The instant complaint for sum of money and damages is **DISMISSED**.

SO ORDERED.¹⁵ (Emphases in the original.)

Regina sought reconsideration, but her motion was denied on January 22, 2018.¹⁶ Hence, this petition.

Regina professes that the prescriptive period should be reckoned from the date of last partial payment of the outstanding debt by the debtor, or from the date of extrajudicial demand. Since the complaint was filed on June 4, 2013, or barely seven months after the last payment was made on November 8, 2012, or several days from the extrajudicial demand on May 15, 2013, prescription has not yet set in.

RULING

The petition is bereft of merit.

Prefatorily, Regina did not seek reconsideration of the RTC's Decision limiting Nida's liability to the value of the dishonored checks. It is only in her Appellees' Brief¹⁷ that Regina claimed gross misapprehension of evidence, when the court *a quo* ruled that she failed to prove the existence of the ₱616,169.75, ₱156,662.00, and ₱150,996.00 unpaid amounts. It is well-settled that a party cannot impugn the correctness of a judgment not appealed from by him.¹⁸ He may make counter assignment of errors but he can do only to sustain the judgment on other grounds. Further, he may not seek modification or reversal of the judgment, for in such case, he must appeal. Thus, the trial court's Decision had become final and shall be binding upon Regina. This Court shall therefore confine its discussion on the reckoning date of the prescriptive period to collect the ₱170,260.50 covered by the dishonored checks.

¹⁴ *Supra* note 2.

¹⁵ *Rollo*, p. 123.

¹⁶ *Supra* note 3.

¹⁷ *Rollo*, pp. 107-113.

¹⁸ *Tangalin v. Court of Appeals*, 422 Phil. 358, 364 (2001), citing *Santos v. Court of Appeals*, 293 Phil. 45, 49 (1993).

It is admitted that the sale of petroleum products on credit is not evidenced by a formal written agreement. Further, Nida issued three checks to settle certain purchases. The checks issued, however, did not convert their agreement into a written contract. In *Manuel v. Rodriguez, et al.*,¹⁹ the Court held that to be a written contract, all its terms must be in writing, and, a contract partly in writing and partly oral is, in legal effect, an oral contract.²⁰ Also, the three checks are not the kind of "writing" or "written agreement" contemplated by law for the 10-year limitation to apply. We quote with approval the disquisition of the CA, viz.:

x x x In *Philippine National Bank v. Francisco Buenaseda*,²¹ the Supreme Court thoroughly explained what "writing" purports, thus:

Under Act 190, the law applicable to the instant case, an action based upon a written contract prescribes in 10 years, whereas one predicated on a contract not in writing must be commenced in 6 years.

It is the contention of appellant that the 21 sales orders and 69 delivery receipts issued in connection with the lumber purchased and received by appellee constitute written contracts. Appellee, naturally, maintains the contrary view.

A "writing" for the payment of money sued in an action, within the meaning of the ten-year statute of limitations, is one which contains either an express promise to pay or language from which a promise to pay arises by fair implication. It is sufficient if the words import a promise or an agreement or if this can be inferred from the terms employed. Evidently, while it is not necessary that there be an express promise, the writing, to be within the statute, must on its face contain words or language which would fairly imply such a promise to pay. In other words, it must affirmatively appear that the promise of payment was given by the language of the writing itself. If, as stated in the authorities cited by the trial court, the promise arises only upon proof of extrinsic facts, or as sometimes expressed, upon evidence *aliunde*, the writing is not within the purview of the statute. Stated differently, where the promise or agreement to pay on which the action is based does not appear in express terms or by fair implication in writing, but the cause of action arises out of facts collateral to the instrument, it does not fall within the provision of the statute of limitations. Of course, if the writing upon which the action is based is sufficient to set up a promise or agreement, then the statute applies even though parol evidence is necessary to show a breach of such agreement or the happening of contingencies which would render defendant liable under the agreement.

¹⁹ 109 Phil. 1. (1960).

²⁰ *Id.* at 7, citing *Fey v. Loose Wiles Biscuit Co.*, 75 P2d 810; *Peifer v. NewComer, et al.*, 157 NE 240; 12 Am. Jur. 550.

²¹ 114 Phil. 1 (1962).

For the purpose of determining whether the documents upon which the present action is based comply with the strictures of these authorities, we examined the exhibits one by one and found the following:

Of the 69 duly acknowledged delivery receipts, five contain no prices nor term of the transaction. They merely specify the name and address of the person to whom delivery was made, the date of such delivery, and the quantity and kind of lumber delivered. The only words that would indicate to some degree the nature of the transaction are the following, printed at the bottom of the document:

“We certify that the kind or kinds of timber or lumber listed on this invoice are exactly the same as those sold or delivered, or to be delivered to the purchaser.

Received above in good order and condition.
Francisco U. Buenaseda

By:
(Sgd.) A. Legaspi”

There is nothing in the above language used in the receipts which would indicate any promise to pay, how much to pay and when and how to pay for the lumber thus received. Clearly, standing alone, these delivery receipts could not be the writing referred to in the statute of limitations upon which an action can be based.

Sixty-three of the delivery receipts are in the same tenor, except that they contain the prices of the lumber delivered, but like the previous ones, they do not indicate the term of the transactions or the manner by which payment would be made, nor contain a promise by the receiver to pay at all the goods at any time. These receipts do not also correspond to the agreement in writing contemplated in the statute of limitations.²² [Citations omitted.]

Similarly, nothing in the three (3) dishonored checks indicate any promise to pay. Clearly, no written contract was executed by the parties, instead they verbally agreed for Nida to sell the petroleum products of Regina and in turn, Nida shall be given an amount of P2.00 per liter of the products sold.²³ (Emphasis supplied.)

Thus, Regina’s right to collect a sum of money against Nida must be enforced within six years under Article 1145²⁴ of the Civil Code. Relative thereto, Article 1150²⁵ of the same code provides that the prescriptive

²² *Id.* at 4-6.

²³ *Rollo*, pp. 118-120.

²⁴ Art. 1145. The following actions must be commenced within six years:

(1) Upon an oral-contract;

(2) x x x.

²⁵ Art. 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

period for actions which have no special provision ordaining otherwise shall be counted from the day they may be brought. It is the legal possibility of bringing the action that determines the starting point for the computation of the period of prescription.²⁶ This accrual refers to the cause of action, which is defined as the act or the omission by which a party violates the right of another.²⁷

A cause of action exists if the following elements are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.²⁸ It is only when the last element occurs that a cause of action arises.

In this case, the check issued to settle the obligation for the July 26, 2000 purchases was dishonored by the drawee bank on August 25, 2000,²⁹ and the November 12, 2002 and November 27, 2002 checks were both dishonored on April 4, 2003.³⁰ The dishonor of the three checks resulted in a breach of contract for non-payment. It is at this point that the right to bring an action for collection of a sum of money accrues. Counting six years therefrom, Regina had until August 25, 2006 to collect the amount covered by the July 26, 2000 check and until April 4, 2009 for the November 12 and 27, 2002 checks. Regina filed the complaint on June 4, 2013; hence, the action had already prescribed.

To be sure, prescription of actions is interrupted when (1) they are filed before the court, (2) when there is a written extrajudicial demand by the creditors, or (3) when there is any written acknowledgment of the debt by the debtor.³¹ In this case, however, Regina filed the complaint in court only on June 4, 2013 and issued the demand letter only on May 15, 2013 when the prescriptive period to collect has already set in. Further, we cannot lend credence to Regina's contention that Nida acknowledged her obligation when she made partial payments on November 8, 2012; hence, the prescriptive period should commence on that date. Regina failed to present

²⁶ *Multi-Realty Development Corp. v. The Makati Tuscan Condominium Corp.*, 524 Phil. 318, 337-338 (2006); *Khe Hong Cheng v. Court of Appeals*, 407 Phil. 1058, 1067 (2001); *Tolentino v. Court of Appeals*, 245 Phil. 40, 46 (1988); and *Español v. The Chairman & Members of the Board of Administrators PVA*, 221 Phil. 667, 669-670 (1985).

²⁷ RULES OF COURT, Rule 2, Sec. 2.

²⁸ *Pilipinas Shell Petroleum Corp. v. John Bordman Ltd. of Iloilo Inc.*, 509 Phil. 728, 745 (2005), citing *China Banking Corp. v. Court of Appeals*, 499 Phil. 770, 775 (2005); *Swagman Hotels and Travel, Inc. v. Court of Appeals*, 495 Phil. 161, 169 (2005); *Nabus v. Court of Appeals*, 271 Phil. 768, 787 (1991); *Cole, et al. v. Gregorio, Vda. de, et al.*, 202 Phil. 226, 236 (1982).

²⁹ *Rollo*, p. 35.

³⁰ *Id.* at 36-37.

³¹ CIVIL CODE, Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor. See also *Ampeloquio, Sr. v. Napiza*, 536 Phil. 1102, 1114 (2006).



evidence to corroborate her claim.

In *PNB v. Osete, et al.*,³² we clarified that not all acts of acknowledgment of debt interrupt prescription.

With respect to the alleged partial payments, it is worthy of notice that, Art. 1973 of the Civil Code of Spain provided:

“The prescription of actions is interrupted by the commencement of a suit for their enforcement, by an extra-judicial demand by the creditor, and by any act of acknowledgment of the debt by the debtor.”

Under this article, a partial payment could, as an “act of acknowledgment of the debt,” interrupt the prescriptive period. Said provision was amended, however, by Article 1155 of the Civil Code of the Philippines, to read:

“The prescription of actions is interrupted when they are filed before the court, when there is a written extra-judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.”

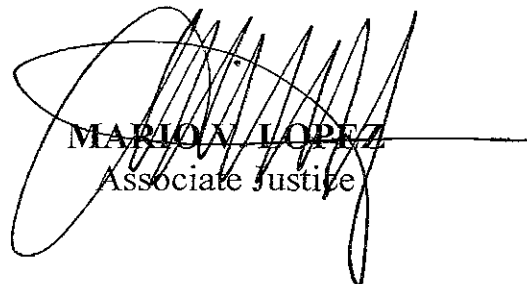
Under this provision, not all acts of acknowledgment of a debt interrupt prescription. To produce such effect, the acknowledgment must be “written[,”] so that payment, if not coupled with a communication signed by the payor, would not interrupt the running of the period of the prescription.³³ (Emphasis supplied.)

The evidence attached to the records shows that the last receipt issued to Nida for payment of purchases on credit was dated November 21, 2006 for ₱2,000.00.³⁴ As such, Regina may bring an action to collect any outstanding liability from Nida only until November 21, 2012.

In all, we find no reason to depart from the findings and conclusion of the appellate court.

FOR THESE REASONS, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated September 8, 2017 and Resolution dated January 22, 2018 of the Court of Appeals – Cebu City in CA-G.R. CEB CV No. 05317 are **AFFIRMED**.

SO ORDERED.



MARION LOPEZ
Associate Justice

³² 133 Phil. 66 (1968).

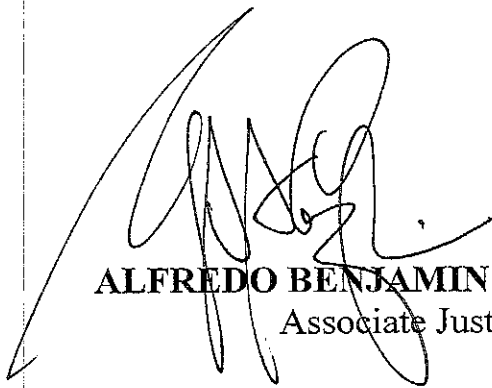
³³ *Id.* at 68-69.

³⁴ *Rollo*, p. 72.

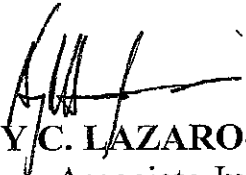
WE CONCUR:




DIOSDADO M. PERALTA
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice