FIRST DIVISION

[G.R. No. 237140, October 05, 2020]

REGINA Q. ALBA, JOINED BY HER HUSBAND, RUDOLFO D. ALBA, PETITIONERS, VS. NIDA AROLLADO,* JOINED BY HER HUSBAND, PEDRO AROLLADO, JR.,RESPONDENTS.

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 Decision[2] dated September 8, 2017 and Resolution[3] 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 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 checks[6] which were dishonored by the drawee banks. On May 15, 2013, Regina demanded payment for the outstanding balance[7] but Nida failed to heed the demand. Thus, on June 4, 2013, Regina[8] filed a complaint[9] 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 P170,260.50 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 P20,000.00 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.)

Feeling aggrieved, Nida appealed to the CA. On September 8, 2017, the CA rendered its Decision[14] 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' Brief[17] that Regina claimed gross misapprehension of evidence, when the court *a quo* ruled that she failed to prove the existence of the P616,169.75, P156,662.00, and P150,996.00 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 P170,260.50 covered by the dishonored checks.

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.
> >
> > 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 1145[24] of the Civil Code. Relative thereto, Article 1150[25] of the same code provides that the prescriptive 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