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THE PHILIPPINE LAW ON ESTOPPEL

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Our law on estoppel is found in section 333, paragraph 1 of the Code of Civil Procedure and in the decisions of the Supreme Court construing and applying this provision of law. Except as modified by the positive provisions of our statutes, the principles of estoppel prevailing in the United States are also applicable here as our law was borrowed from Anglo-American law.

The salutary policy behind the doctrine of estoppel is to secure fair dealing. While consistency is not always a virtue, yet, as a general rule of conduct, a person should not occupy inconsistent positions. Nothing so easily destroys confidence in a man than to hear him say one thing, and later, to find him denying it or alleging the contrary. If he is not stamped as a down-right liar he is classed among those people whose words must be taken with a grain of salt. It would be irksome and intolerable if persons were not bound by some rule of law to their representations. One would not feel safe to rely on the acts or declarations of another if the latter were completely free to disavow them at some later time. Premium would be placed on misrepresentation. To promote confidence among men in their mutual dealings by binding to what they do or say is the object of estoppel.

Definitions. In the quaint language of Lord Coke, estoppel is so-called "because a man's own act or acceptance stoppeth or closeth up his mouth to plead the truth." (3 Coke Ltt. page 342). This graphic statement speaks of the effect of estoppel as barring the truth. This is probably the reason why the technical estoppels of the Common Law were considered odious and not favored in law. (10 R. C. L. 673). Modern definitions do not explicitly state, as Lord Coke does, that estoppel bars the truth. Thus, estoppel has been defined as "a bar which precludes a person from denying the truth of a fact which has in contemplation of law become settled by the acts and proceed-

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ings of judgment or legislative officers, or by the act of the party himself, either by conventional writing or by representation, or express or implied in pais. (21 C. J. 1059). "An estoppel may be said to arise when a person executes some deed, or is concerned in or does some act, either of record, or in pais, which will preclude him from averring anything to the contrary. (10 R. C. L. 673). The person estopped is precluded from denying the truth of a fact or from averring anything to the contrary because the law considers as true that which has become settled by the acts and proceedings of judgment or legislative officers or by the party himself. Whether, as a matter of fact, what a person estopped would allege, were he allowed to do so, is really the truth, is of no moment to the law of estoppel. It is obvious that what is precluded from being set up may or may not be the truth; in either case it is excluded not because the law considers it false but because the law presumes as true the matter which gave rise to the estoppel.

SECTION 333. *Conclusive presumptions.*—The following presumptions or deductions which the law expressly directs to be made from particular facts, are deemed conclusive:

1. Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he can not, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it. (Code of Civil Procedure).

Estoppel, then, is a conclusive presumption in favor of the person claiming it; it is a bar to the one estopped to allege anything contrary to the matter which gave rise to the estoppel. As a conclusive presumption, estoppel fixes as settled and true as between the parties the matter or fact concerning which the presumption exists. Thereafter, such matter or fact cannot be raised in question or made an issue. As a bar, estoppel is available as a defense in "any litigation arising out of the declaration, act, or omission" of the person estopped.

Estoppel and Admission, Distinguished. It has been observed that no other technical term is more loosely used than the term "estoppel." (10 R. C. L. 673). Estoppel is most often confused with admission. Bouvier defines admission to be "voluntary acknowledgments made by a party of the existence or truth of certain facts." The Code of Civil Procedure provides:

SECTION 298. *To what Facts Evidence may be given.*—

2. The act, declaration, or omission of a party as evidence against such party.

Estoppel is also created by an act, declaration or omission of a party. But admission and estoppel differ in their effect. An admission merely suggests an inference as to the truth of the fact in issue but is not conclusive. Estoppel is a conclusive presumption and fixes as true certain matters or facts. The element missing in admission but found in estoppel is that the act, declaration or omission of a party has been acted upon. It may be said that admission is a first step in estoppel. If nothing takes place beyond the act, declaration, or omission of a party, it remains a simple admission. If, however, a person to whom the act, declaration, or omission is made, is led to believe a particular thing true, and to act upon such belief, a case of estoppel would arise. "It is a principle of law of universal application (and as just as it is general) that *admission,* whether of law or of fact, *which have been acted upon by others* are conclusive against the party making them, in all cases between him and the person whose conduct he has thus influenced." (Toppan vs. Cleveland C. & C. R. Co. Fed. Case No. 14,099, cited in Bismorte vs. Aldecoa, 17 Phil. 480).

Estoppel and res adjudicata. Res adjudicata belongs to the family of estoppel. The terms "estoppel by judgment" and "res adjudicata" are used interchangeably and indiscriminately to indicate the binding force and effect of judgments. Res adjudicata, which in this jurisdiction is a more familiar principle than estoppel by judgment, is understood to be a bar to the bringing of a second suit between the same parties upon the same claim or demand. Estoppel by judgment is the preclusion to deny the facts adjudicated by a court of competent jurisdiction. (21 C. J. 1063). Mr. Justice Field in Cromwell vs. Sac County (94 U. S. 351) distinguishes two situations in the bringing of second suits between the same parties. "There is a difference," he says, "between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which

was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose * * *.

"But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered."

It seems preferable to confine the use of res adjudicata to bar a second action and estoppel by judgment to prevent the raising in issue of facts which have been adjudicated in a former suit between the same parties but upon a different cause of action.

Classification of Estoppels. Estoppels are usually classified into estoppel (1) by record, (2) by deed, and (3) by matter in pais. The first two are sometimes referred to as technical estoppels as distinguished from equitable estoppels or estoppels in pais. (10 R. C. L. 673). Under section 333, par. 1, of the Code of Civil Procedure, there is only one kind of estoppel and that is the one which arises when a party has deliberately and intentionally, by his declaration, act, or omission, led another to believe a particular thing true, and to act upon such belief. This corresponds substantially to the definition of equitable estoppel. Estoppel by record and by deed in this jurisdiction must find support either under section 333, par. 1, C. C. P. or under other provisions of law.

Estoppel by record is "the preclusion to deny the truth of a matter set forth in a record, whether judicial or legislative, and also to deny the facts adjudicated by a court of competent jurisdiction." (21 C. J. 1063). Estoppel by judgment is the most common kind of estoppel by record. It has been discussed above in relation to res adjudicata. Included among conclusive presumptions is the following:

SECTION 333, par. 4. *The judgment or order of a court, when declared by this code to be conclusive.* (Code of Civil Procedure).

Pleadings and stipulation of facts are other common judicial records and are, unlike judgments, made by parties to a suit. Pleadings, however, do not create estoppel. The matters set forth therein constitute admissions admissible in evidence provided the pleading has been signed or authorized by the party against whom the admissions are sought to be introduced. (Lu-

cido vs. Calupitan, 27 Phil. 148; De la Rama vs. Benedicto, 5 Phil. 512). Stipulation of facts unlike a pleading creates estoppel. Admissions or agreements contained in a stipulation of facts are conclusive between the parties. (Irlanda vs. Pitargue, 22 Phil. 383).

Estoppel by deed is a bar which precludes a party to a deed and his privies from asserting as against the other and his privies any right in derogation of the deed, or from denying the truth of any material fact asserted in it. (21 C. J. 1067). Thus, a grantor who purports to convey an estate by deed is estopped, as against the grantee, to assert that he is not the owner of that estate. So also, a mortgagor cannot, as against the mortgagee, say that he had no title on the mortgaged property at the time of constituting the mortgage. The term "deed" can be included in the words "declaration, act, or omission" under Sec. 333, par. 1, Code of Civil Procedure. A person who offers to sell land to another, intentionally and deliberately leading the latter to believe that he is the owner of the land, and acting upon such belief, the vendee buys the land, the vendor would be estopped as against the vendee, to say that he is not the owner of the land at the time of the sale.

Equitable estoppel or estoppel by matter in pais is summed up in the following words: "That a person is held to a representation made or a position assumed, where otherwise inequitable consequences would result to another who, having the right to do so under the circumstances of the case, has, in good faith, relied thereon." (10 R. C. L. 688). As this kind of estoppel corresponds substantially to that defined in Sec. 333, par. 1 of the Code of Civil Procedure, it would be sufficient to point out that the term "equitable estoppel" is generally used to designate estoppels which are not those of record or by deed. (10 R. C. L. 688).

Requisites of estoppel. For convenience, the provision of law on estoppel is again quoted in full as follows:

SEC. 333. *Conclusive presumptions.* The following presumptions or deductions which the law expressly directs to be made from particular facts, are deemed conclusive:

1. Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he can not, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it. (Code of Civil Procedure).

1. *Declaration, act, or omission.* Estoppel originates from the declaration, act, or omission of a party. The group of words "declaration, act, or omission" is comprehensive and is intended to cover all possible manifestations of the human will. It includes "matter in pais", "deed", "stipulation of facts" but not "judgment" as the latter is made by the court and not by a "party". An act implies affirmative action of some sort. Declaration means utterance, statement or representation, whether written or verbal. Omission means inaction. It is the failure to do something which under the circumstances should and ought to be done.

2. *Belief that a particular thing is true.* The law expressly requires, for estoppel to arise, that a party has intentionally and deliberately led another to believe a particular thing to be true. The belief is the result of the declaration, act, or omission. The party, against whom estoppel is to operate, must have made the declaration, act, or omission with the intention to induce belief in the mind of the other party as to the truth of a particular thing, and further, that he has succeeded in inducing such belief. Consequently, a mere casual admission, declaration or statement made without such intention of engendering belief will not create estoppel. Thus, the act of a claimant of a piece of land in signing two resolutions of the principalia of the pueblo impliedly acknowledging ownership of said pueblo over that piece of land was held to constitute an admission which may be rebutted, but not estoppel. (Municipality of Oas vs. Roa, 7 Phil. 20). The element of intention to cause belief is apparently absent in the mere act of signing the resolutions.

The intention alone is not enough; belief must in fact be created in the mind of the other party. If no belief is induced either because such other party knows the real facts or for any reason whatever, no case of estoppel would arise. In the case of U. S. vs. Macaspac, (12 Phil. 26), the defendant was prosecuted for estafa. Three months after the misappropriation was discovered, the defendant executed in favor of the offended party a document purporting to be one of loan for the payment of the sum misappropriated. On its face, the document evidenced a loan. It was introduced in evidence by the prosecution. The defense asserted that the offended party in whose favor the document was executed was estopped from testifying contrary to the contents of said document, i. e., she could not deny that the transaction was not one of loan. The Supreme Court held there was no estoppel. "When signing it, the accused was well

aware of the real facts as they occurred, because she had been the principal actor in all of them. The accused could not, in good faith, believe the contrary of what she did herself * * *. She was therefore well aware that it was not really a question of loan, although it was so apparently stated in document that she signed three months after the affair at bar had taken place. She was not induced, nor was it possible to induce her to believe, in good faith, to the contrary * * *. This being the case, the citation of section 333 of the Code of Civil Procedure is in every sense inopportune and not pertinent."

3. *Action upon such belief.* The law requires as a last requisite of estoppel that the party induced to believe a particular thing true must have acted upon such belief. If no action is taken in reliance to such belief, there is yet no estoppel. It is the action taken because of and pursuant to the belief that completes and "clinches" the estoppel. In order to create an estoppel it is necessary to prove not only the conduct of the person sought to be estopped but also that the person claiming estoppel knew of such conduct and acted upon it to his damage. (Trinidad vs. Ricafort, 7 Phil. 449; Fabie vs. City of Manila, 10 Phil. 64).

In the case of Amancio vs. Pardo (20 Phil. 213) it was held that the plaintiff was estopped by a declaration in his will. The action was for the recovery of land sold under the execution. The defendant was the purchaser and the judgment creditor. Alcantara, a son-in-law of the plaintiff was the judgment debtor. Plaintiff, it was shown, had executed an open will, acknowledged before the notary public in which he stated that the disputed land had been sold to Alvaro Alcantara, the judgment debtor. The Supreme Court said: "Such a voluntary statement of his made in his will, is entirely incompatible with his present claim that he is still the owner of the land already sold to Alcantara. As a result of this, it is evident that the plaintiff's testator (the Spanish text of the decision reads 'demandante testador') comes within the rules of estoppel referred to in section 333 of the Code of Civil Procedure." There is no affirmative finding or statement in the decision that the defendant judgment creditor was led to buy the land because he had read in the will that the land had been sold to the judgment debtor. From a reading of the decision, it cannot be said with certainty, that the defendant had known the contents of the will before the execution sale took place. In view of the provision of the law and the principles enunciated in the cases of Trinidad

vs. Ricafort and Fabie vs. City of Manila (supra), it seems that the case of Amancio vs. Pardo presents a loose application of the doctrine of estoppel. The same result could have been secured by treating the declaration in the will as an admission.

Application of the doctrine of estoppel. The case of Mirasol vs. Municipality of Tabaco (43 Phil. 610) illustrates the concurrence of all the requisites necessary to create estoppel. It was there said: "The doctrine of estoppel having its origin in equity and therefore being based on moral right and natural justice, its applicability to any particular case depends, to a very large extent, upon the special circumstances of the case. In the present case the plaintiff is a participant in the benefits of the well in question; he gave his express consent to the boring of the well upon the premises and thereby led the defendant to believe that the license would not be revoked. Acting upon this belief, the defendant caused the well to be bored and incurred large expenses. We doubt that any authoritative judicial decision will be found whereupon such or similar facts the applicability of the doctrine of estoppel has been denied."

In Bismorte vs. Aldecoa & Co. (17 Phil. 480) the defendant raised the question that the plaintiff could not sue alone for the recovery of a steamer. Plaintiff's husband for himself and as the legal representative of his wife made settlement of an account in a document one of the stipulations of which was that the steamer *San Rafael* was to be the exclusive property of the wife, now plaintiff. The defendant contended that it had not been shown that the steamer was acquired by the separate funds of the wife or that it belonged to her exclusively and hence the husband should be joined in the action. The Supreme Court held that the defendant could not deny the exclusive ownership of the wife over the steamer. "It was specifically agreed in the contract * * * that the plaintiff should be the exclusive owner of the steamer San Rafael. In the face of this express agreement, the defendant seeks to avoid complying with its part of this obligation, in so far as the plaintiff is concerned, by now claiming that the plaintiff's husband has an interest in this steamer. We think this is a clear case of estoppel by contract. As the defendant had agreed that the plaintiff should be the exclusive owner of the boat it should not now be permitted to say that her husband has an interest in it. The estoppel of the defendant was fixed by the execution of the contract."

Application of estoppel to agency. It might be doubted if the principal might be estopped by the declaration, act, or omission of his agent in view of the fact that the law says "Whenever a party has, by his *own* declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief * * *". (Sec. 333, par. 1, C. C. P.). It is, however, elementary in the law of agency that the act of an agent within the scope of his authority is the act of the principal. By fiction, the legal identity of the principal and agent is merged. If the law were strictly construed to mean that the declaration, act, or omission of an agent would not affect the principal for purposes of estoppel, then corporations, partnerships and other associations which must necessarily act through agents or officers, would in no case be estopped. This is not borne out by the cases.

In Campbell & Go Tauco vs. Behn, Meyer & Co. (3 Phil. 590), the plaintiff sued on a contract for the filling up of a lot. The defendant made a counterclaim based on an alleged short delivery of sand. It was proved that the sand was measured by agents of the defendant at each delivery and corresponding receipts were issued. "In view of the fact," said the Supreme Court, "that the defendants, by their authorized representatives actually measured the sand and earth, at the time of the delivery of each banca load, in the manner directed by the manager of the defendant, we can not now say that the latter measurement is all wrong and the new measurement all right * * *. This case in the absence of evidence of mutual mistake is governed by the doctrine of estoppel. The defendants measured the sand, they receipted for it, and they paid for it. They can not now say they did not receive it."

The estoppel of the principal by the act of his agent was also applied in the case of Agustinos Recoletos vs. Lichauco (34 Phil. 5). The action was for the recovery of lawyer's fees in the amount of ₱5,000. Cuyugan, presumably acting as agent for the defendants secured from the plaintiff the cancellation deed of a mortgage under the understanding that ₱5,000 attorney's fees would be paid. The Supreme Court held: "Whether Cuyugan represented them (the defendants) with regard to attorney's fees or not, the fact that he obtained delivery of the cancellation deed for the benefit of the defendants upon the representation that the defendants in consideration of the de-

livery, would pay a certain sum of money (attorney's fees). If they accept the benefits of the agreement they must accept also the responsibilities."

Even the relation of principal and agent may be created by estoppel. The rule as laid down in the case of Macke et al vs. Camps (7 Phil. 553) is that "one who clothes another with apparent authority as his agent, and holds him out to the public as such, can not be permitted to deny the authority of such person to act as his agent, to the prejudice of innocent third parties dealing with such person in good faith and in the honest belief that he is what he appears to be."

Estoppel to deny corporate existence. Not everybody can attack the corporate existence of an association pretending to be a corporation. Section 19 of the Corporation Law (Act 1459) provides: "The due incorporation of any corporation claiming in good faith to be a corporation under this Act and its right to exercise corporate powers shall not be inquired into collaterally in any private suit to which the corporation may be a party, but such inquiry may be had at the suit of the Insular Government on information of the Attorney-General. From the context of the law, it is inferred that it is intended to apply to the so-called de facto corporations. If a corporation is corporation de jure, there would be no occasion for a private individual or the Government to complain that it is not the duly organized. No question would arise as to the due incorporation of a de jure corporation. It is apparent also from the provision cited that no collateral attack is allowed in any case, not even by the Insular Government. Only a direct suit by quo warranto proceedings at the instance of the Government is allowed. Hence, if a corporation is a de facto corporation, private individuals cannot raise the question of its due incorporation, directly or collaterally. The only case then when private individuals may challenge corporate existence is where the pretended corporation is not de jure or de facto, i. e., when it is no corporation at all. But in this latter case estoppel may come in and prevent a person from denying corporate existence.

It has been held that a person who deals with an entity as a corporation and by such conduct recognizes the corporate existence is estopped from raising the question that said entity is not a corporation. (Chamber of Commerce vs. Pua Te Ching, 14 Phil. 222; Cia. de Ultramar vs. Reyes, 4 Phil. 2). The effect of such estoppel is that no inquiry can be made as to whether the

entity in whose favor the estoppel is created is duly organized under the Corporation Law or that it had attempted to comply with the provisions of said law at all. It would seem that an association of persons which has taken no step at all to organize under the Corporation Law but holds itself out as a corporation and is dealt with as a corporation by a third person, could sue such third person as a corporation and in a corporate name. For purposes of that particular suit, at least, such association has the appearance of a corporation. Can corporations be created by estoppel?

Unlike the relation of agency which is established by the will of the principal and agent, a corporation cannot be created by the will of its members alone. A corporation is an artificial being created by operation of law. The charter or articles of incorporation is in the nature of a contract between the State and the members composing the corporation. Corporations can exist only as willed by the State through its appointed mode. Is it possible then to create a corporation independent of the will of the State solely on the strength of the relations sustained between a group of persons pretending to be a corporation and a third person dealing with them?

In view of the fundamental principles underlying the nature and existence of corporations, it would be incorrect in law to say that corporations can be created by estoppel. When a group of persons, not a corporation, sue under a corporate name and the defendant is, under the rules of estoppel, precluded from denying the corporate existence, the plaintiff does not thereby becomes a corporation, capable and competent, after the suit, to assume and exercise corporate powers as a regular corporation. The Court only assumes that the plaintiff in such a case has capacity to sue as a corporation in view of the inability of the defendant to deny it because of estoppel. Beyond that, the Court does nothing more.

Procedure. Estoppel by deed or by matter of record must be specially pleaded under the rules of Common Law. (Davis vs. Davis, 26 Cal. 23). This is also true under the system of Code Pleading. As said in the case of Caldwell vs. Auger and Hebert (77 American Decisions 517), "the principles of pleading under both systems are the same." There is, however, some conflict of authority as to whether equitable estoppel in pais must be specially pleaded. California court decisions held that equitable estoppel in pais must be specially pleaded to

be available. (Davis vs. Davis, 26 Cal. 23; Carpy vs. Dowdell, 115 Cal. 687). It was also held in Cloud v. Malnin, (108 Iowa 52, 75 N. W. 645) that "it is well settled that, if not pleaded, it (estoppel) cannot be considered." The dissenting note is found in the decision of the Supreme Court of Minnesota to the effect that facts going to prove an estoppel need not be pleaded. (Caldwell v. Auger & Hebert, 4 Minn. 217, 77 Am. Dec. 517). Pomeroy says, however, that according to the decided weight of authority, an estoppel in pais cannot be proved under a general denial, but is new matter. (Pomeroy, Code Remedies, sec. 588).

There is an exception to the rule that estoppel must be specially pleaded. A party is not bound to plead an estoppel where he is without knowledge that his demand would ultimately rest upon it. This rule was laid down in the case of Donnelly v. San Francisco Bridge Co. (177 Cal. 415). This case was an action for damages based on the negligence of the superintendent of the defendant. The defendant proved that before the injury happened it had assigned the contract to said superintendent who was at the time of the injury performing the work independently. Plaintiff then sought to hold the defendant liable under the rules of ostensible agency. It was claimed on appeal by the defendant that if the agency was ostensible, the plaintiff should have pleaded, under the rule that estoppel must be pleaded. The Court held: "To this, however, it need only be said that a party is not bound to plead an estoppel where he is without knowledge that his demand would ultimately rest upon it. Estoppel in this case was not the foundation of plaintiff's claim. He believed, and was given cause to believe that Stone (the superintendent) was the actual agent. By the evidence of the defense he was driven to rest upon proof of an ostensible agency and this proof, under the circumstances, he was clearly entitled to make without a direct pleading to the point."